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Douglas County, NE Assessor/Register of Deeds DIANE L. BATTIATO

DECLARATION

OF

BOXCAR 10 CONDOMINIUM

AFTER RECORDING RETURN TO:
ROBERT G. DAILEY
MCGRATH NORTH MULLIN & KRATZ, PC LLO
1601 DODGE STREET, SUITE 3700
OMAHA, NE 68102

DECLARATION

OF BOXCAR 10 CONDOMINIUM

This Declaration of BOXCAR 10 CONDOMINIUM (this "Declaration") is made and entered into this 8th day of March, 2022, by CHICKS & BRICKS, LLC, a Nebraska limited liability company ("Declarant").

RECITALS:

A. Pursuant to the terms of the Nebraska Condominium Act, Neb. Rev, Stat, §76-825 et seq. (the "Act"), Declarant, as the sole record owner of the Property as defined in Section 1.26 below located in Omaha, Douglas County, Nebraska legally described in Exhibit A attached hereto and incorporated herein by this reference and all Improvements and facilities constructed or to be constructed thereon does hereby subject the Property to the condominium form of ownership as "Boxcar 10 Condominium", as provided for in the Act and in this Declaration,

B. By virtue of the recording of this Declaration, the Property shall be owned, held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the provisions of this Declaration and the Act and every grantee of any interest in the Property, by acceptance of a deed or other conveyance of such interest, and every Owner of any portion of the Property, whether or not such deed or other conveyance of such interest shall be signed by such person and whether or not such person shall otherwise consent in writing, shall own and take subject to the provisions of the Act and this Declaration and shall be deemed to have consented to the terms hereof.

C. In addition to the formation of Boxcar 10 Condominium by this Declaration, Declarant hereby reserves unto itself and its successors and assigns acting as Declarant, Special Declarant Rights, as defined in the Act, to include by way of example and not limitation, the right to exercise Development Rights, as defined in the Act, including the right and option, but not the obligation, in its own discretion and by its own act, to (i) relocate the boundaries of any Unit or Units, (ii) further subdivide any one or more of the Units into additional Units, Common Elements or both, and (iii) annex additional property to be subject to this Declaration, as detailed on the Plans, as further defined herein below and as set forth on Exhibit B attached hereto, all as further provided in Article XIII of this Declaration and pursuant to the terms of the Act.

D. Declarant hereby makes this Declaration which shall apply to, govern, control, and regulate the sale, resale, or other disposition, acquisition, ownership, use, and enjoyment of the Property, and does hereby specify, agree, designate and direct that this Declaration and all of its provisions shall be and are covenants to run with the Property and shall be binding on Declarant and all its successors and assigns and all subsequent owners of the Property, together with their personal representatives, successors and assigns.

DECLARATION:

Declarant, for the purposes above set forth, does hereby declare the Property to be a condominium property, hereunder known as Boxcar 10 Condominium, under the Act and in furtherance thereof declares and provides:

ARTICLE I.
DEFINITIONS

The following terms, as used herein or elsewhere in any of the Condominium Documents, unless otherwise provided, are defined as follows:

1.1 Allocated Interests means the undivided interest in the Common Elements and Common Expense Liability allocated to each Unit as calculated under this Declaration.

1.2 Articles of Incorporation means the Articles of Incorporation of the Association as the same now exist or may be hereafter amended.

1.3 Association means Boxcar 10 Condominium Association, Inc., a Nebraska nonprofit corporation.

1.4 Association's Board of Directors, Board of Directors, Board or Executive Board means the Board of Directors of the Association, the members of which shall be elected pursuant to the provisions of the Act from time to time as provided in this Declaration, the Bylaws and the Articles of Incorporation. The Board of Directors shall be the governing body of the Association.

1.5 Bylaws means the Bylaws of the Association as the same now exist or may be hereafter amended.

1.6 City means the City of Omaha, Nebraska.

1.7 Commercial Unit means Unit 1 as shown on the Plans, to be used or occupied as a commercial use.

1.8 Common Elements means all portions of the Condominium other than the Units.

1.9 Common Expenses means expenditures made by or financial liabilities of the Association, together with any allocations to reserves. Common Expenses may include water and sewer fees incurred by the Association.

1.10 Common Expense Liability means the liability for Common Expenses allocated to each Unit pursuant to the terms of this Declaration and the Act.

1.11 Condominium or Condominium Project means the Property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions.

1.12 Condominium Documents means this Declaration, the Plan, the Articles of Incorporation, the Bylaws, and any other documents for the Condominium project.

1.13 Declarant means Chicks & Bricks, Inc., a Nebraska limited liability company, and its successors and assigns in interest who succeed to any Special Declarant Rights inclusive of the Developments Rights.

1.14 Declaration means this Declaration of Boxcar 10 Condominium, as it may be amended from time to time.

1.15 Development Guidelines or Guidelines shall mean the design and development guidelines and standards and the review and approval procedures that may be prepared and issued from time to time by the Board for the purpose of assisting lessees, Unit Owners and Purchasers in preparing development and improvement plans for a Unit.

1.16 Development Rights means any right, or combination of rights, reserved by the Declarant in this Declaration to add Real estate to the Condominium, to create Units, Common Elements or Limited Common Elements within the Condominium, to subdivide Units or convert Units into additional Units or Common Elements within the Condominium or both, or to relocate the boundaries of any Unit within the Condominium, including without limitation the rights reserved to Declarant as set forth in Article XIII below.

1.17 Dispose or Disposition means a voluntary transfer to a Purchaser of any legal or equitable interest in a Unit, but does not include the grant, transfer or release of a security interest.

1.18 Identifying Number means a symbol or address which identifies only one Unit in the Condominium as shown on the Plans.

1.19 Improvements shall mean all buildings, structures, lighting, elevators, walkways, gutters, storm drains, drainage ways, utilities, driveways, screening walls, walls, exterior doors, windows, window boxes, awnings, stairs, stairwells, decks, patios, balconies, plantings, planted trees and shrubs, sidewalks, poles, flags, signs, storage, or display areas, loading areas, garages, docks, fountains, water features, facilities, and all other structures or improvements of every type and kind.

1.20 Limited Common Element means a portion of the Common Elements allocated by this Declaration, the Bylaws or by the Act for the exclusive use of one or more but fewer than all of the Units. Any Limited Common Element shown on the Plans shall be for the exclusive use of the Unit or Units marked as benefited by such Limited Common Element.

1.21 Managing Agent means the Person who undertakes the duties, responsibilities and obligations of the management of the Association, and the Condominium. Managing Agent may be employed or terminated by a vote of the Board of Directors, subject to any outstanding contract rights as might exist.

1.22 Parking area shall mean those Parking areas provided for parking of motor vehicles, as shown on the Plans.

1.23 Parking Unit or Units means a physical portion of the Condominium, other than the Commercial Unit and the Residential Units, designated for separate ownership and use as a parking space only for personal vehicles, the boundaries of which are described in Article II of this Declaration and in the Plans and pursuant to the Act.

1.24 Plan or Plans means the drawings and metes and bounds legal description prepared by a registered surveyor, an architect or professional engineer containing the information required by the provisions of the Act, as set forth on Exhibit B attached hereto and incorporated herein by this reference.

1.25 Person means a natural person, corporation, partnership, limited liability company, business trust, estate, trust, partnership, association, joint venture, government,

governmental subdivision or agency, or other legal or commercial entity; provided however, that for a land trust, "Person" means the beneficiary of the trust rather than the trustee of the trust.

1.26 Property means that certain property located in Omaha, Douglas County, Nebraska legally described in Exhibit A attached hereto and incorporated herein by this reference and all Improvements and facilities constructed or to be constructed thereon.

1.27 Purchaser means any Person other than Declarant or a Person in the business of selling Real estate for his own account, who by a voluntary transfer acquires a legal or equitable interest in a Unit other than as security for an obligation.

1.28 Qualified Lender means any bank, insurance company or other financial institution which holds a first recorded mortgage, deed of trust or other lien on a Unit (the Owner of which must, pursuant to Section 10.2, provide the Board of Directors with written notice of the lien specifying the name and address of the lien holder).

1.29 Real estate means any fee, leasehold or other estate or interest in, over, or under land including structures, fixtures, and other improvements and interest which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without, upper or lower boundaries, and spaces which may be filled with air or water and specifically includes the Property.

1.30 Recreational facility means the exterior patio located on the 2nd floor of the Property as shown on the Plans.

1.31 Residential Unit or Units means all of the Units located in the Condominium other than the Commercial Unit and the Parking Units, to be used or occupied as single-family residences.

1.32 Rules and Regulations means the rules, regulations and restrictions contained in this Declaration and such additional rules, regulations and restrictions that may be adopted by the Association from time to time. The Association may not enact any rule, regulation or restriction affecting Declarant's rights under this Declaration or any other Condominium Document or the Act without Declarant's prior written consent which may be withheld in Declarant's sole and absolute discretion.

1.33 Special Declarant Rights means rights reserved for the benefit of Declarant: to complete Improvements indicated on the Plans; to exercise any Development Rights; to maintain sales offices, management offices, advertising signs for the Condominium project, and models; to use easements through the Common Elements (including the Limited Common Elements) for the purpose of making Improvements within the Condominium project; to create or add additional Units, Common Elements, or both; to relocate the boundaries between any of the Units; to subdivide any Unit or Units; and, during the period of Declarant Control, to appoint and remove any officer of the Association or any member of the Board of Directors.

1.34 Super-Majority and Super-Super-Majority Vote shall mean 67% or more (Super-Majority) or 80% or more (Super-Super- Majority) of the votes entitled to be cast by the members of the Association at any regular or special meeting of the Association called for that purpose.

1.35 Unit means a physical portion of the Condominium designated for separate ownership or occupancy and use as a residential dwelling, commercial facility or parking space

only for personal vehicles, the boundaries of which are described in Article II of this Declaration and in the Plans and pursuant to the Act.

1.36 Unit Owner or Owner shall mean the fee simple interest owner of record of any Unit or Units, but excluding mortgagees and others who hold such title merely as security. Owner.

Unless the context shall otherwise require, all references herein to sections, articles and exhibits shall mean references to Sections, Articles and Exhibits of this Declaration.

ARTICLE II.
CONDOMINIUM UNITS

2.1 The Units. The Units shall be legally described and further identified as shown on the Plans. The Condominium project shall consist of 7 Units, 1 of which is a Commercial Unit, 3 of which are Residential Units and 3 of which are Parking Units. Each Unit includes an Allocated Interest that is appurtenant thereto. Each Unit may be described by its Identifying Number or symbol as shown on the Plans and as set forth in this Declaration and shall be deemed good and sufficient for all purposes.

2.2 Allocated Interest. Each Unit's appurtenant percentage of undivided interest in the Common Elements and each Unit's Common Expense Liability shall be allocated as the Allocated Interest as set forth in Exhibit C attached hereto and incorporated herein by this reference, subject to amendment and recalculation as set forth below. This allocation was originally calculated by the Declarant based upon a fraction, the numerator of which is the total number of finished square feet included in each Unit and the denominator of which is the total number of finished square feet included in all of the Units constructed in the Condominium; provided however, that Declarant shall calculate in the same manner any reallocation of the Allocated Interests upon the relocation of the boundaries of any Units, the conversion of any Units into Common Elements or the conversion of Common Elements into Units in the same manner. The Common Expense Liability shall be based on the operation and maintenance costs for the Common Elements and the amount of the assessment will change on a yearly basis according to these costs. Any transfer of a Unit shall be deemed to convey, transfer, encumber, or otherwise affect the Unit Owner's corresponding Allocated Interests even though the same is not expressly mentioned or described therein. Ownership of each Unit and the Unit Owner's corresponding Allocated Interest shall not be separated.

2.3 Dimension of Units. The Units and their dimensions are depicted on the Plans. Except as otherwise provided herein, and as otherwise set forth in Article III describing the Common Elements, each Unit includes that part of the structure which lies within the following boundaries:

(a) The upper horizontal boundary of each of the Units shall be in the horizontal plane of the lowermost unfinished surface of the ceiling, such that the ceiling, roof and all of its support systems, shall not be deemed to be included within the boundaries of the Unit. The lower horizontal boundary of each Unit is the horizontal plane of the uppermost unfinished surface, such that the concrete slab of the floor shall not be deemed to be included within the boundaries of the Unit.

(b) The vertical boundary (parametric) of each Unit is the interior surface of the exterior perimeter wall surfaces of all such walls; provided however, that where there are windows or doors, the boundary is the interior surface of such doors and windows

when closed. Where a wall physically separates one Unit from another Unit, the boundary of such Units shall be from the internal surface of the drywall inward, such that the drywall, structural supports, utility service lines, and air space, if any, between two such Units shall be Common Elements, and shall not be deemed to be included within the boundaries of the Units.

(c) The horizontal and vertical boundaries above identified shall be extended to their intersections with each other, but, as set forth in Section 2.3(b), vertical boundaries between Units shall run parallel and not abut.

2.4 Further Definition of Units. Included in a Unit are systems, equipment, installations, and facilities of the Unit which are exclusively used for the benefit of the Unit, whether situated within or outside of the Unit's boundaries, including, but not limited to the following:

(a) All internal walls or partitions which are contained wholly within the Unit;

(b) All central and appurtenant installations for services such as electrical, power, light, voice/data communication, gas, hot and cold water and heat (including all ducts, pipes, valves, wires, cables and conduits used in connection therewith or any replacements thereof) which exclusively service the Unit;

(c) Fans, vents and exhausts and all piping, ducts and equipment which exclusively service the Unit, wherever the same may be located;

(d) Light fixtures, wiring, risers, electrical feeders, switches, and electrical meters exclusively servicing the Unit;

(e) All other facilities or fixtures located within or immediately connected to the Unit which exclusively serve or benefit or are necessary for the existence, maintenance, operation, or safety of the Unit

(f) All lath, firring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces of the walls, floors, or ceilings within the designated boundaries of the Unit.

No Unit shall include any piping, wiring, ductwork, machinery, equipment, or other materials not used exclusively by such Unit. Further, no Unit shall include any portion of any exterior patio or balcony serving the Unit, all of which shall be designated on the Plans as Limited Common Elements and allocated to the Units they service.

2.5 Dimension of Parking Units. Notwithstanding the foregoing, the upper horizontal boundary of each of the Parking Units shall be in the horizontal plane of the lowermost unfinished surface of the ceiling, such that the ceiling shall not be deemed to be included within the boundaries of the Parking Unit. The lower horizontal boundary of each Parking Unit is the concrete slab of the floor. The vertical boundary of each Parking Unit begins at the middle point of the parking stripe on either side of the Parking Unit. If the Parking Unit is next to a wall, the vertical boundary of said Parking Unit is the interior surface of the exterior perimeter wall surface of said wall. The wall in front of the Parking Unit and the back edge of the parking stripe at the end of the Parking Unit shall constitute the exterior portions of the Parking Unit. The horizontal and vertical boundaries above identified shall be extended to their intersections with each other.

ARTICLE III.
COMMON ELEMENTS

3.1 Common Elements. The Common Elements of the Condominium are as follows:

(a) The Real estate upon which the structures containing the Units are located, and such structures themselves, including the foundations, exterior walls, roofs, hallways, elevator systems, stairways, entrances and exits, the lobbies, trash compactor systems, mail boxes, master television antenna system, if any, gutters, downspouts, chutes, chases, flues, ducts, wires, conduits, bearing walls, bearing columns, the Parking area, lobbies, elevators, the roof deck, fire suppression and detection systems, whether situated partially within or outside the boundaries of any Unit, including, without limitation, all piping, fittings, valves and sprinkler heads, or any other fixtures which lie partially within and partially outside of the designated boundaries of a Unit and which serve more than one Unit and are not otherwise assigned or allocated to any one or more Units as a Limited Common Element.

(b) Except as may be shown on the Plans, the Common Elements shall include, without limitation, service or utility areas and facilities now or hereafter erected, constructed or installed on or in the Property and any adjacent public or private right-of-ways that the Association is directly responsible for maintaining, including without limiting the generality of the foregoing, trees, shrubs, lawns, decorative urns and planters, pavements, sidewalks, storm and water systems, sewage lines, utility installations, and pipes, wire and conduits and connections for television, electricity, light, water and plumbing and other utilities, except those items that are exclusively within or for the benefit of a particular Unit and not used to service any Unit other than that particular Unit.

(c) All other appurtenances not herein specifically designated which are not included within a Unit.

3.2 Undivided Interest in Common Elements. The Owner or Owners of each Unit shall own an undivided Allocated Interest in the Common Elements as a tenant (or tenants) in common with all the other Unit Owners and, except as otherwise limited in this Declaration, shall have the right to use the Common Elements for the purposes incidental to the use and occupancy of his, her or their Unit and such other incidental uses as may be permitted by this Declaration, which right shall be appurtenant to and run with such Person's or Persons' Unit.

3.3 Allocated Interests. The Allocated Interest appurtenant to each Unit shall be determined as set forth in Section 2.2. Each Owner, by acceptance of the deed to a Unit, expressly agrees to the allocation and reallocation of the Allocated Interest appurtenant to his or her Unit as set forth in Section 2.2. Allocations and reallocations of the Allocated Interest percentages may be subject to minor variations attributable to rounding off. The Allocated Interest appurtenant to each Unit shall be computed to four significant figures so the sum of the Allocated Interests appurtenant to all Units equals 100% percent.

ARTICLE IV.
COVENANTS

4.1 No Partition of Common Elements. As long as the Property is subject to the provisions of the Act, the Common Elements shall remain undivided and no Unit Owner or Owners shall bring any action for partition or division of the Common Elements, and any agreement to the contrary shall be null and void; provided however, that this restriction shall not

prevent partition of a Unit as between any Persons who are Co-Owners thereof, if such right of partition shall otherwise be available, but any such partition shall not be in-kind.

4.2 No Severance of Ownership. No Owner shall execute any deed, mortgage, lease or other instrument affecting title to his or her Unit Ownership without including therein both his or her interest in the Unit and the Allocated Interest appurtenant thereto, including his or her share in the Common Elements, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also the other shall be deemed and taken for all purposes to include the interest so omitted even though the latter is not expressly mentioned or described therein.

4.3 Rights of Action. The Association shall hold a right of action against any Owner who fails to comply with the provisions of this Declaration or the decisions lawfully made by the Association. Unit Owners shall have a right of action against the Association for violation of the Declaration but shall not have any right of action against any Owner who fails to comply with the provisions of this Declaration or the decisions lawfully made by the Association.

ARTICLE V.
EASEMENTS AND LIMITED COMMON ELEMENTS

5.1 Encroachments. In the event that, by reason of construction, settlement or shifting of any building or structure, any part of the Common Elements encroaches or shall hereafter encroach upon any part of any Unit, or any part of any Unit encroaches or shall hereafter encroach upon any part of the Common Elements, or if by reason of the design or construction of any Unit it shall be necessary for a Unit Owner to use or occupy, for normal uses and purposes, any portion of the Common Elements, consisting of an unoccupied space within the Property and adjoining his or her Unit, valid easements for the maintenance of such encroachment and for the use of such adjoining space are hereby established and shall exist for the benefit of such Unit and the Common Elements, as the case may be, so long as all or any part of the building containing such Unit shall remain standing; provided however, that in no event shall a valid easement for an encroachment be created in favor of any Unit Owner or in favor of the Owners of the Common Elements if such encroachment occurred because of the willful conduct of the Unit Owner or the Owners of the Common Elements, as the case may be. In the event any structure is partially or totally destroyed and then rebuilt, minor encroachments of part of the Common Elements because of construction shall be permitted and valid easements for such encroachments and the maintenance thereof shall exist.

5.2 Limited Common Elements. Unless the context of this Declaration otherwise requires, Limited Common Elements shall be as provided in the Act and assigned and allocated, exclusively to the Units so served and shall include balconies and patios assigned to Units.

5.3 Easement to Unit Owners. Except as to the use of any Unit or Limited Common Elements that are assigned and allocated to any Unit, perpetual easements are hereby established for all Unit Owners, their families, guests, invitees, successors and assigns for the use and enjoyment of all Common Elements, subject to such Rules and Regulations as may be in effect from time to time. Except for the rights of the Declarant herein, no Owner of a Unit shall have any right to access, occupy or use any Limited Common Elements exclusively assigned and allocated to any other Unit.

5.4 Utility Easements. Easements as shown on the Plans or as may be hereafter established by the Association are established and dedicated for sewers, heating, ventilating and air conditioning equipment, electricity, television, water, voice/data communication, and all

other utility purposes, including the right to install, lay, maintain, clean, repair, and replace water mains and pipes, heating, ventilating and air conditioning equipment, sewer lines, drainage pipes and conduits, television wire and equipment, voice/data communication wire and equipment, and electrical wires and conduits, over, under, along, across and through any portion of the Common Elements.

5.5 Easements in Gross. The Property shall be subject to a perpetual easement in gross to the Association, its successors and assigns, for ingress and egress, to perform its obligations and duties as required by this Declaration. Should it be necessary to enter any Unit to repair a Common Element or Limited Common Element, the Association's employees, agents, contractors, subcontractors, or workmen shall be entitled to entrance during reasonable hours with at least 24 hours' prior written notice, provided that entrance to any Unit may occur at any time without prior notice in an emergency situation. Any such emergency shall be evidenced by an emergency order signed by a member of the Board of Directors or by the Managing Agent that is presented to the Unit Owner at the time of any such emergency entry.

5.6 Granting of Utility Easements. The Association shall have the right and power to grant easements and restrictions in the Common Elements, such utility easements, licenses or similar rights, including easements for cable television, under, through, across, or over Common Elements as may be reasonably necessary to or desirable for the ongoing development or operation of the Condominium.

5.7 Easements in Units. To the extent that any utility line, pipe, wire, or conduit serving any Unit shall be wholly or partially within the boundaries of any other Units, such other Units shall be burdened with and there hereby is reserved and created an easement for the use, maintenance, repair, and replacement of such utility line, pipe, wire, or conduit, such easement to run to the benefit of the Unit or Units served by the same.

5.8 Common Element Easements. For so long as Declarant is a Unit Owner and for a period of 1 year after the last Unit is sold by Declarant to a Purchaser, the right of the Unit Owners to use and possess the Common Elements as set forth herein shall be subject to a blanket easement over the Common Elements in favor of Declarant and its duly authorized agents, representative and employees, for the purpose of (i) access and ingress to and egress from the Common Elements or any part thereof, (ii) construction, installation, repair, replacement, and restoration of utilities, driveways, buildings, landscaping and any other improvements on or to the Property or any part thereof, (iii) the installation and maintenance of signs advertising the Units within the Property or any part thereof and signs directing potential purchasers to the sales and marketing office and model Units, (iv) use and show one or more unsold and unconveyed Units or portion or portions of the Common Elements as a model Unit or Units, sales and/or marketing and sales office, construction office, administrative office, or for such other purposes deemed necessary or desirable by Declarant in connection with such construction, marketing, sales, brokerage, or administration, (v) set up, staff and maintain marketing materials, kiosks, racks and tables in the Common Elements and use the Common Elements for special events, and (vi) post and maintain such signs and lighting within the Property as Declarant deems necessary or desirable in connection with any of the foregoing.

5.9 Sales Office. For so long as Declarant is a Unit Owner and for a period of 1 year after the last Unit is sold by Declarant to a Purchaser, Declarant, its duly authorized agents, representative and employees shall have, and Declarant hereby expressly reserves, an easement for the maintenance of a sales offices and/or model Units on the Property. Such sales offices and/or model Units may be maintained in such number and size as determined by the Declarant and may be located and relocated in Units and/or in any Improvements on the

Common Elements. Exercise of the rights of such easement shall be by Declarant and its designates.

5.10 Easements for Construction. For so long as Declarant is a Unit Owner and for a period of 1 year after the last Unit is sold by Declarant to a Purchaser, Declarant and its duly authorized agents, representative and employees shall have a perpetual easement for ingress, egress and access to and throughout the Property at any time and from time to time as may be required in connection with the construction and equipping of any Units or Common Elements. In connection therewith, Declarant and its duly authorized agents, representatives and employees shall have the right, at any time and from time to time, to take into and through and maintain on the Property any and all material and equipment that may be required in connection with such construction and equipping, and to temporarily suspend operation of entrances, doors, corridors, water risers, voice/data communication systems, cable television systems, master antennas, and other Common Elements without liability to any Unit Owner or lessee of any Unit and to utilize the garbage dumpsters; provided however, that Declarant and its authorized agents, representative and employees shall make every commercially reasonable effort to ensure as little inconvenience to the Unit Owners and lessees of any Unit as is reasonably possible under the circumstances and that that at all times Unit Owners and lessees of any Unit have reasonable access to their respective Units and Limited Common Elements. Declarant shall promptly repair or cause to be repaired any damage to the Common Elements or any Unit caused by the exercise of its rights and easements under this Section 5.10. The Association may not enact rules or regulations to impair Declarant's rights under this Section.

5.11 Easement for Improvements. Declarant shall have and does hereby reserve a transferable easement on and over the Common Elements for the purpose of making improvements on the Property contemplated by this Declaration, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

5.12 Restoration of the Condominium. The party benefited by any easement rights granted hereunder shall have the duty and obligation to repair or cause to be repaired any damage to the servient portion of the Condominium caused by the exercise of its easement rights, and to restore the servient portion of the Condominium to the condition which existed immediately prior to the exercise of such easement rights.

5.13 Declarant's Signage. For so long as Declarant is a Unit Owner and for a period of 2 years after the last Unit is sold by Declarant to a Purchaser, Declarant reserves the right to install and maintain a sign at all entrances to the Condominium which identifies the Condominium's association with Declarant.

5.14 Parking area Easements. Easements are hereby declared and granted to the Declarant, Association, and each Unit Owner across, over and through the Parking areas (but not the Parking Units) for purposes of (i) ingress and egress to and from a Parking Unit owned by such party and (ii) access to utility, storage, and systems closets and areas located in the Parking area. Each Unit Owner agrees not to create any obstruction in a Parking area which would impede the foregoing. These easements do not allow use of a Parking space by anyone other than the Declarant, the Association and the party owning a Parking Unit.

5.15 Easements for Structural Columns in Parking areas. Easements are hereby declared and granted to Declarant and the Association for the right to maintain each and every structural column, pole and beam in each Parking area. The easement includes the right to maintain, repair, replace, recondition, refurbish, reconfigure, inspect, test, clean and paint the same.

5.16 Effect of Easements. All easements and rights herein established in this Declaration shall run with the land and inure to the benefit of and be binding on the Declarant, its successors and assigns, and any Unit Owner, Purchaser, mortgagee, or other Person having an interest in any portion of the Property, whether or not such easements are maintained or described in any deed of conveyance.

5.17 Recreational facility. The Recreational facility is made available to the use of the Owners and permitted occupants and their guests and invitees for the recreational use, benefit and enjoyment thereof, subject to the rules and regulations as the Board may adopt from time to time. Provided, however, that such use of the Recreational facility shall be subject to and governed by the provisions of this Act, this Declaration and Bylaws and the Rules and Regulations of the Association. Such rights to use the Recreational facility shall extend not only to each Unit Owner or allowed occupants thereof, but also to her or his family members, guests and invitees.

ARTICLE VI.
RESTRICTIONS

6.1 Permitted Uses - Units. Subject to the Special Declarant Rights during the Period of Declarant Control: (a) the Residential Units shall be restricted to single-family residential use and may not be used for any other purpose; (b) the Parking Units shall be restricted to parking of personal motorized vehicles and may not be used for any other purpose; and (c) the Commercial Unit shall be restricted to those uses allowed under the City's zoning code applicable to the Property, including permitted, conditional and special permit uses and in all events a lawful purpose and shall not create a nuisance. Nothing in this Section is intended to prohibit an Owner from keeping his or her personal business or professional records or accounts in his or her Residential Unit, handling his or her personal business calls or correspondence from his or her Residential Unit, or engaging in a "home occupation" (as herein defined) in his or her Residential Unit. For purposes hereof, a "home occupation" shall mean an accessory occupational use conducted entirety within a Residential Unit by its inhabitants which is clearly incidental to the residential use of the Residential Unit and does not change the residential character of the Residential Unit. Furthermore, a use will qualify as a "home occupation" only if: (i) no noise, odors, bright lights or other external effects attributable to the use are noticeable outside of the Unit, (ii) no individuals other than residents of the Unit are employed to work in the Unit, (iii) there is no display, purchase or sale of commodities or goods in the Unit, (iv) there are no deliveries or services by commercial vehicles or trucks to the Unit related to the occupational use, and (v) there is no excessive foot traffic to the Unit.

6.2 Prohibited Uses - All Units, Common Elements and Limited Common Elements. In addition to all restrictions now existing against the Property and all Improvements now or hereafter constructed thereon, the use, occupancy and operation of the Units, Common Elements and Limited Common Elements is hereby expressly restricted as follows:

(a) Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept in any Unit except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purposes. Each Unit shall be permitted to have no more than 2 pets, such as one dog and one cat, two cats, or two dogs. When outside the Owner's Unit, all pets must be kept on a leash and each Owner shall be responsible for cleaning up any waste or mess made by the pet. Any damage done by pets, including but not limited to, any damage done to floor coverings or landscaping in Common Elements, shall be the responsibility of the Owner of such pet. The Association shall have the right to require removal of pets in the

individual cases where such pets are or become a nuisance and unreasonably disturb the quiet enjoyment of the Property by other Unit Owners. The Association may levy a per incident charge for any pet waste that is not cleaned up by the Owner of such pet, in such amount as may be established by the Association from time to time.

(b) Use of Property. Except for the right of ingress and egress established in this Declaration, the Owners of Units are hereby prohibited and restricted from using any property outside of their respective Units, except as may be allowed by the Association's Board of Directors. It is expressly acknowledged and agreed by all parties concerned that this Section 6.2(b) is for the mutual benefit of all Unit Owners within the Condominium and is necessary for the protection of the Unit Owners.

(c) Antennas. To the extent allowed by law, no television antenna or radio receiver, satellite dish, or other similar devices may be installed by any Unit Owner, lessee, occupant or other Person. Any installations shall comply with Rules and Regulations established by the Association. No radio or television signals, nor any other form of electromagnetic radiation shall be permitted to originate from any Unit which may unreasonably interfere with the reception of television or radio signals within the Condominium project; provided however, that Declarant and the Association shall not be prohibited from installing equipment necessary for the operation of any master antenna, security, cable television, mobile radio, or other similar systems within the Condominium project.

(d) Vehicles, Etc. No vehicles shall be parked in loading or Parking areas located in the Common Elements, and no vehicle repairs, other than emergency repairs or repairs of a minimal nature needed to be performed in order to move the vehicle off the Condominium Property, shall be allowed on the Condominium Property. No vehicles shall be parked or stored on blocks or other such devices on the Common Elements or any other portion of the Condominium project. No vehicles shall be parked so as to obstruct the fire lanes or roadways as may exist within the Condominium project. The Association is expressly authorized to tow away, at an offending Owner's expense, any vehicle which is in violation of this Section, or which is placed on the Condominium Property in violation of the Rules and Regulations. No boats, boat trailers, campers, canoes, recreational vehicles, vehicles used primarily for recreational purposes, or vehicles primarily used for commercial purposes, shall be stored, allowed to remain, or parked on any portion of the Condominium project. The Board shall have the right to designate areas within the Condominium project for the parking of motorcycles and bicycles.

(e) Signs. Except as placed or erected by or at the direction of Declarant, its successors, assigns or agents, no signs, billboards or awnings shall be erected, placed, or permitted to remain on the Property. Other than Declarant, no Unit Owner shall display a "for rent" or "for sale" sign without the express written consent of the Board. Notwithstanding the foregoing, the owner of the Commercial Unit may erect 1 identification sign within the Commercial Unit which is visible from the exterior of the Condominium, provided, however, such sign is first approved in writing by the Board.

(f) Window Shades. All windows in the Residential Units currently include "Insolroll Interior Shades Sandia 3%" window shades (the "Window Shades") and are the color "SPR (Spruce) Mountainside", with clutch control Right Roll Direction Standard with a 3" fascia colored bronze. The windows in the Residential Units shall always have Window Shades as described in the preceding sentence.

(g) Hazardous Uses. Neither the Condominium Property nor any portion of the Condominium Property shall be used in any way or for any purpose which may endanger the health or safety of, or unreasonably disturb the quiet enjoyment of the Condominium Property by, the Unit Owners, lessees, occupants or other Person.

(h) Smoking. No smoking or vaping of any kind, including smoking of tobacco or marijuana or any illegal substance, shall be allowed in the Units or the Common Elements.

(i) Miscellaneous Prohibited Uses. No Unit shall be occupied, operated or maintained in an unsanitary or hazardous condition.

6.3 Security and Frozen Pipes. The Unit Owner is responsible for securing his or her Unit at all times, including engaging all locks, providing security lighting, and heating the interior sufficient to keep pipes from freezing. Insurance claims or costs incurred by the Association or the Board for damage from frozen pipes in a Unit may be offset by a special assessment levied against the Unit in an amount equal to the damage claim.

6.4 Unsightly Appearances. No offensive or unsightly appearance shall be maintained or allowed to exist on those portions of any Unit visible from the exterior of the Unit. All equipment and storage areas associated with a Unit shall be kept in a manner so as to conceal them from view of neighboring Units, unless otherwise authorized by the Association's Board of Directors; provided however, a Unit Owner's exterior personal patio furnishings, such as chairs, grills and swings, located within his or her Unit's balcony, patio, porch, terrace, or deck shall be permissible, subject to the Rules and Regulations.

6.5 Acts Affecting Insurance. No Unit Owner, lessees, occupants or other Person shall permit or suffer anything to be done or kept in his or her Unit which will increase the rate of insurance acquired by the Association.

6.6 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained by any Unit Owners upon or within the Condominium, except for customary household items in their Units and, except such machinery or equipment as is usual and customary in connection with the Declarant's construction, marketing, sales, operation, or maintenance of the Improvements, and except for machinery and equipment which Declarant or the Association may require or permit for the operation and maintenance of the Common Elements and Units.

6.7 Leasing of Units; Sale of Parking Units.

(a) A Unit Owner may lease his or her Unit (but not less than his or her entire Unit) from time to time provided that:

(i) The initial term of any lease shall be for a period of not less than twelve (12) months;

(ii) The lease includes at least 1 Parking Unit appurtenant to the Unit being leased;

(iii) No Unit may be leased or subleased without a written lease or sublease; and

(iv) The rights of any lessee of a Unit shall be subject to, and each such lessee shall be bound by, the covenants, conditions and restrictions set forth in the Declaration, Bylaws and Rules and Regulations, and a default thereunder shall constitute a default under the lease or sublease; provided however, that the foregoing sentence shall not impose any direct liability on any lessee or sub-lessee of a Unit to pay any Common Expenses or special assessments allocated to the occupied Unit on behalf of the Owner of the Unit.

(b) Parking Units may not be leased unless in connection with the lease of a Unit.

(c) The Owner of a Unit shall at all times have one Parking Unit appurtenant to his or her Residential Unit and may not own more than two Parking Units without written permission from the Board. Subject to the foregoing and such Rules and Regulations as the Board may adopt from time to time, Parking Units are freely transferable between Owners of Units.

6.8 Lawful Use. No improper or unlawful use shall be permitted on any part of the Condominium. All valid laws, zoning ordinances, and regulations of all government bodies having jurisdiction over the Condominium shall be observed. Any violation of such laws, zoning ordinances or regulations shall be a violation of this Declaration.

6.9 Nuisances and Offensive Activity. No Owner, lessee, occupant, or other Person shall create a nuisance within the Condominium, or use any portion of the Condominium for any activity or purpose which is considered by the Board, in its sole and absolute discretion, to be objectionable due to sound, odor, visual effect, or physical impact, or which the Board determines will disturb or tend to unreasonably disturb the quiet enjoyment of the Property by other Unit Owners or lessees, or which is determined by the Board to constitute a nuisance. Included among the uses or activities prohibited because of their detrimental effect upon the general appearance, enjoyment and use of the Condominium are, without limitation, the following:

(a) Any public or private nuisance.

(b) Any vibration, noise, sound, or disturbance that is objectionable due to intermittence, beat, frequency, shrillness, loudness, or pulsating effect.

(c) Any lighting which is flashing or intermittent or is not focused downward or away from any Unit within the Condominium, unless otherwise approved by the Board.

(d) Any air pollution, including without limitation any dust, dirt, mold, microbial or other environmental pollutants in excessive quantities.

(e) Any emission of excessive, offensive, or noxious odors.

No nuisance shall be permitted to exist or operate within the Condominium and no activity shall be conducted within the Condominium which is offensive or detrimental to any portion of the Condominium or any Owner or other occupants of the Condominium. No exterior speakers, horns, whistles, bells, or other sound devices, except security or other emergency devices used exclusively for security or emergency purposes, shall be located, used or placed on or in the Condominium project.

6.10 Enforcement. The Association may enforce this Declaration, including all restrictions set forth herein, and the Rules and Regulations by injunctive relief, specific performance or the imposition of reasonable monetary fines as provided in the Act, and suspension of use and voting privileges. The foregoing enumeration of enforcement powers, however, shall not be construed as limiting any other legal means that may be available to the Association to enforce such restrictions or Rules and Regulations. Any fines so imposed shall be considered an assessment against the offending Unit and may be collected by the Association in the manner provided for collection of other assessments. In addition to the foregoing, if any Owner shall fail to maintain his or her Unit in a reasonably safe and sanitary condition, the Association may, at the Board's option, and after 10 days written notice to the Unit Owner, perform any clean-up, repair and/or replacement to cure any such condition, and all costs and expenses reasonably incurred by the Association, plus interest thereon at the rate of 16% per annum, shall be reimbursed to the Association by such Unit Owner within 30 days after work has been completed. The Association may levy a special assessment against any such Unit, which may be enforced in accordance with Sections 8.8 and 8.9.

ARTICLE VII.
MAINTENANCE

7.1 Maintenance of Units and Limited Common Elements.

(a) By the Owner. Except as provided in subsection (b) of this Section, each Owner shall have the obligation to maintain, keep attractive, keep in good repair, and replace all portions of his or her Unit. Each Owner must provide routine maintenance and keep attractive any of their Limited Common Elements. This shall not include repairs or replacements of the Limited Common Elements but shall only mean routine cleaning. Any maintenance, repair, replacement, or upkeep required to be performed by an Owner hereunder shall be in conformance with any standards as set forth by the Board from time to time. In explanation of the foregoing and not to be construed as a limitation, each Owner shall maintain, repair, and keep in good condition (subject to the Association's obligations hereinafter set forth), his or her Unit. Each Unit Owner at his or her own expense shall furnish and be responsible for all decorating within his or her Unit as may be required from time to time, including painting, decorating, wallpapering, washing, cleaning, and installing paneling, floor covering, draperies, window treatments, curtains, lighting, and other furnishings. Each such Unit Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceilings of his or her Unit, and such Unit Owner shall maintain said interior surfaces in good condition at his or her sole expense, as may be required from time to time. Said maintenance and use of interior surfaces shall be subject to the Rules and Regulations, but each such Unit Owner shall have the right to decorate such interior surfaces from time to time as he or she may see fit and at his or her sole expense. Each Unit Owner shall furnish and be responsible for, at his or her own expense, all of the maintenance, repairs, and replacements within his or her Unit, including, without limitation, all additions, improvements, betterments, and alterations, all interior doors appurtenant thereto, and all internal installations of such Unit, such as refrigerators, ranges and other kitchen appliances, lighting fixtures and electrical fixtures, furnaces, air-conditioners, condensers and plumbing, and except as described in Subsection (b) below, any portion of any other utility service facilities located within the Unit; provided however, that such maintenance, repairs and replacements as may be required for the bringing of water, electricity and other utility services to the Units shall be furnished by the Association as part of the Common Elements. All work to a Unit by a Unit Owner shall comply with the Guidelines, if any.

(b) By the Association. The Association shall maintain, keep in good repair and upkeep, and replace (subject to applicable and available insurance proceeds), as a Common Expense assessed in accordance with this Declaration, all of the Condominium Property, the Parking area and the balconies (except routine cleaning as set forth in Section 7.1(a) above) not required to be maintained and kept in good order by a Unit Owner and as otherwise set forth in this Section. The Association shall, by way of explanation and not limitation, be responsible to maintain, keep attractive, keep in good repair, and replace all of the Common Elements including, but not limited to, all windows and window frames appurtenant thereto, exterior doors and all screens, as may be required from time to time. The Association shall also be responsible for the repair, upkeep and maintenance of all roofs and foundations in respect to Improvements containing the Units. In the event the need for maintenance, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of a Unit Owner, his or her family, guests, lessees, or invitees, then, the Association shall give the Owner written notice of the repair, replacement or maintenance work needed and an estimated cost to accomplish such repair, replacement or maintenance work. The Owner shall have 15 days within which to pay the Association such estimated costs, and in the event of a failure to pay, such costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Owner's Unit. Despite any provision herein contained to the contrary, the Association shall not be liable for injury or damage to any Person or property: (i) caused by the elements or by any Unit Owner or by any other Person; (ii) resulting from any rain, water, snow, or ice which may leak or flow from any portion of the Common Elements; or (iii) caused by the leaking, failure or disrepair of any pipe, plumbing, drain, conduit, appliance, equipment, or utility lines or facilities, the responsibility for the maintenance of which belongs to the Association or otherwise. The Association, at its expense, shall be responsible for the maintenance, repair and replacement of those portions, if any, of each Unit which contribute to the support of the Property, but excluding, however, those items required to be maintained and kept in good order by a Unit Owner as set forth in subsection (a) of this Section. In addition, the Association shall maintain, repair and replace all pipes, wires, conduits, flues, shafts, and other facilities for the furnishing of utility services which may be located within the Unit boundaries and forming part of any system not exclusively serving such Unit, exclusive of any portions of the foregoing which may be located at or beyond the wall outlets. Maintenance, repairs and replacements of the Common Elements (but not the Limited Common Elements unless otherwise provided herein) shall be furnished by the Association as part of the Common Expenses, subject to the By-Laws and Rules and Regulations of the Association.

(c) HVAC. Notwithstanding anything contained herein, the HVAC equipment servicing the Units and located on the roof of the Building will be serviced under a contract entered into by the Association and under the direction of the Association. The cost of servicing and/or replacing or repairing an HVAC unit shall be allocated to the Unit it serves.

(d) Failure to Maintain. If the Board of Directors of the Association determines that any Owner has failed or refused to discharge his or her obligations with regard to the maintenance, repair, upkeep, or replacement of any items for which he or she is responsible hereunder, including, but not limited to, a failure to maintain, repair or replace a condition which may increase the possibility of fire or other toss or damage to the Condominium, then the Association (except no notice shall be required in an emergency situation in which case the Association may proceed immediately) shall

provide the Unit Owner with written notice specifying the nature of the maintenance, repair or replacement and the estimated costs thereof with reasonable particularity. The Owner shall have 15 days to complete any such repairs, maintenance or replacements; provided however, that the Board may grant the Unit Owner more than 15 days if such performance cannot reasonably be completed within fifteen 15 days and the Unit Owner is diligently pursuing the completion. In the event the Owner fails, neglects or refuses to repair, maintain or replace any such items within 15 days after the receipt of the notice (or such longer time period as may have been granted by the Board), then the Association shall have the right to cause the repairs, maintenance or replacements to be made, and the Unit Owner shall, within 30 days after the completion of such work, reimburse the Association for all costs and expenses incurred by the Association in connection therewith. In the event any such repairs or replacements are to the Common Elements, the Association shall complete all such work and the Unit Owner responsible for such repairs, maintenance or replacements shall have 30 days after demand, is made to reimburse the Association for all costs and expenses incurred by the Association in connection therewith. Any costs incurred by the Association under this Section shall be special assessments and shall be added to and become a part of the assessment to which such Unit Owner is subject and shall become a lien against his or her Unit.

(e) General. The Association and, by taking title to a Unit, each Owner acknowledges and agrees that building or associated construction items require maintenance and upkeep and that it was not possible for Declarant or its contractors, subcontractors, architects, or engineers to design or construct the Property in a manner which would eliminate the need for such maintenance and upkeep. Therefore, the Association and, by taking title to a Unit, each Owner, acknowledges and agrees that maintenance and upkeep are their responsibility and that neither Declarant nor any of its contractors, subcontractors, architects, or engineers shall have any responsibility for maintenance or upkeep of the Property or any portion thereof or for any additional deterioration of or damage to the Property or any portion thereof resulting from any neglected maintenance and upkeep. The Board shall periodically have the Property inspected by a qualified outside inspection service, which shall report its findings and recommendations to the Board. Upon receipt of such report, the Board will reasonably take actions to complete the maintenance recommended to the extent possible. Failure of the Board to arrange for periodic inspections or to accomplish the maintenance recommended will relieve Declarant and its contractors, subcontractors, architects and engineers from any liability, not only for repair of the neglected maintenance but also for repair of any additional deterioration or damage to the Property resulting from any neglected maintenance and upkeep.

ARTICLE VIII.
ASSOCIATION GOVERNANCE, BY-LAWS, ASSESSMENTS AND LIENS

8.1 General Information. The Association will administer the Condominium pursuant to the terms and conditions set forth in this Declaration and the Bylaws. The fiscal year of the Association shall be the calendar year. The office of the Association shall be located at such location as the Board of Directors or the Managing Agent shall designate from time to time. All Unit Owners, by virtue of their ownership of a Unit in the Condominium, are automatically mandatory Members of the Association and shall be entitled to vote on all matters upon which Members of the Association are entitled to vote, pursuant to this Declaration and in accordance with the Bylaws. The foregoing is not intended to include any Person who holds an interest merely as security for the performance of an obligation. Subject to the provisions of the

Condominium Documents, the Owner or Owners of each Unit shall be entitled to a vote equal to the Allocated Interest assigned to such Unit. However, if a Unit Owner shall have, in the sole opinion of the Board, an unresolved delinquency with respect to the Association, such Owner's vote shall not be eligible and shall not be entitled to be cast or counted.

8.2 Meetings and Voting. Annual and Special Meetings of the Association, including all notice and quorum requirements and voting of the membership shall be set forth in the Bylaws.

8.3 Directors. During the Period of Declarant Control, the business of the Association shall be managed by a Board of Directors comprised of at least 3 Directors, who shall serve without compensation. During the Period of Declarant Control, during which time fewer than 75% of Units have been conveyed, Declarant shall have the power to appoint all Directors of the Association. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board. In that event, Declarant may require, during the Period of Declarant Control, that the actions of the Association or Board of Directors, as might be described in a recorded instrument executed by Declarant, be approved by the Declarant before they become effective. At end of the Period of Declarant Control, the membership of the Board shall be comprised of 3 Persons and the qualification, election, term, removal, resignation, and replacement of each Board member shall be determined in accordance with the Bylaws.

8.4 Director's Meetings. Provisions for regular and special meetings of the Board of Directors, including the notice and quorum requirements and voting of the Board, shall be set forth in the Bylaws.

8.5 Powers and Duties of the Board of Directors. All of the powers and duties of the Association existing under the Act, this Declaration and the Bylaws shall be exercised by the Board of Directors, its duly appointed agents, contractors or employees, subject only to approval by the Unit Owners where specifically required by this Declaration, the Bylaws or the Act. Compensation of employees of the Association shall be fixed by the Directors. A Director may be an employee of the Association and a contract for management of the Condominium may be entered into with a Director or Declarant.

8.6 Officers. During the Period of Declarant Control, Declarant shall have the power to appoint all officers of the Association. The executive officers of the Association shall consist of a President, who must also be a Director, a Vice President, Treasurer, and Secretary. The Bylaws shall provide for the: (i) election of officers; (ii) resignation of officers; (iii) removal of officers from office; (iv) filling of any vacancy in any office; and (v) powers, duties and responsibilities of the officers of the Association.

8.7 Assessments.

(a) All Owners shall be obligated to pay the assessments imposed by the Association to meet the Association's estimated Common Expenses. The Common Expense Liability of the Association shall be assessed among all of the Unit Owners in accordance with the Owner's respective Allocated Interests as set forth in Section 2.2 of this Declaration. Assessments for the estimated Common Expenses of the Association shall be due in advance of the first day of each calendar month or less frequently as may be determined by the Board of Directors.

(b) Each Unit Owner's obligation to pay assessments allocated to his or her Unit shall begin on the day which title to the Unit is transferred to such Unit Owner and

shall extend to any assessments against such Unit which are due and unpaid as of the day title to the Unit is transferred to such Unit Owner; provided however, that a Qualified Lender (or its successor) identified in Section 8.9(a)(ii) who obtains title to a Unit pursuant to the remedies set forth in its mortgage, deed of trust or other lien instrument shall take title to the Unit free and clear of anything more than 6 months of Common Expense assessments made prior to the transfer of title and any lien or liens filed in respect thereof. Each Unit Owner shall pay 2 months of assessments in advance on the date the closing of the Unit occurs. On any subsequent sale of a Unit, the Unit Owner may receive the 2 month reserve advance from its Purchaser.

(c) In the event an Owner's ownership of a Unit, title to which is derived directly from Declarant, commences on a day other than the first day of the assessment period, the assessment for that period shall be prorated as between Declarant and such Owner.

(d) Assessments shall be based upon the aggregate cash requirements which the Board of Directors of the Association shall from time to time determine to be necessary or appropriate to provide for the payment of all estimated expenses growing out of or connected with the maintenance, repair, operation, additions, alterations, and improvements of and to the Common Elements and those Limited Common Elements which are the responsibility of the Association, which sum may include, but shall not be limited to: management fees, expenses and liabilities incurred by the Managing Agent, taxes and special tax assessments (unless and until separately assessed), security, janitorial, heating and air conditioning for the Common Areas, elevator maintenance and repair, snow removal, road and sidewalk repair, premiums for insurance, landscaping and care of grounds, repair, maintenance and replacement of decks, patios and stoops, common lighting, repairs and renovation, trash and garbage collections, wages, common water, natural gas and sewer charges, legal and accounting fees, the creation of a reasonable contingency, working capital and sinking fund reserves, as well as other costs and expenses relating to the Common Elements or Limited Common Elements which are the responsibility of the Association.

(e) Pursuant to the provisions of this Declaration and the Bylaws, the Association may levy assessments for the purpose of creating a reserve fund to defray the cost of repair or reconstruction of the Improvements or any portion thereof in the event of deterioration, damage or destruction thereof.

(f) The Association may levy a special assessment against any individual Unit or any Unit Owner for the reasonable expense incurred in the reconstruction or repair to the Common Elements, Limited Common Elements or the individual Unit for damage or destruction caused by the misconduct, negligence or infraction of the Rules and Regulations of the Association by the Unit Owner or his or her family members, guests or invitees.

(g) The omission or failure by the Association to fix any assessment or deliver or mail a statement thereof for any period of time shall not be deemed a waiver, modification or release of the Association's right to fix the assessment or the Owner's obligation to pay the same.

(h) The Board shall have the power and authority to assess any Common Expenses benefiting fewer than all of the Units exclusively against the Units benefited thereby as contemplated in the Act.

(i) The Association shall have all of the powers of the Association enumerated in the Act.

(j) Within 30 days after adoption of any proposed budget for the Condominium, the Board of Directors shall provide a summary of the budget to all the Unit Owners, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget, which date shall not be less than 14 nor more than 30 days after mailing of the summary. The budget shall be deemed ratified, unless at that meeting a majority of all the Unit Owners reject the budget, whether or not a quorum is present at the meeting. In the event the proposed budget is so rejected, the periodic budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board of Directors.

8.8 Owner's Personal Obligation for Payment of Expenses. The amount of the Common Expenses assessed by the Association against each Unit shall be the personal and individual debt of the Owner thereof. No Owner may exempt themselves from liability for this contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Elements, the Property or any Improvements owned by the Association, or by non-use or abandonment of his or her Unit. The Board of Directors shall have the responsibility to take prompt action to collect any unpaid assessments which remain unpaid for more than 10 days from the date for payment thereof. The failure to make payment of any assessments or installment thereof related to any Unit on or before the 10th day after the due date shall constitute a default and such Unit Owner shall pay, in addition to the amount due: (a) a late charge on the outstanding balance as established by the Board from time to time; (b) interest on all delinquent amounts from the original due date thereof at a rate equal to 16% per annum or the maximum interest rate allowed by law, whichever is less; and (c) all costs and expenses incurred by the Board or its authorized representatives in the collection of such amounts, including reasonable attorneys' fees and costs. Such additional amounts shall be part of the assessment past due and the full assessment shall be a lien against such Unit. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing the lien but no such suit shall be construed to be a waiver of the lien.

8.9 Association Lien for Non-Payment of Common Expenses.

(a) All sums assessed by the Association but unpaid for the share of Common Expenses chargeable to any Unit and fines imposed against the Unit Owner shall constitute a lien on such Unit superior to all other liens and encumbrances, except for (i) liens and encumbrances recorded before the recording of this Declaration, (ii) a mortgage, deed of trust or other lien on the Unit held by a Qualified Lender (or its successor) and recorded before the date on which the assessment or fine sought to be enforced became delinquent and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit. To evidence such lien, the Board of Directors shall prepare a written notice of assessment lien setting forth the amount of such unpaid indebtedness, the amount of the accrued interest and late charges thereon, the name of the Owner of the Unit and a description of the Unit Such notice of lien shall be signed by one of the members of the Association's Board of Directors or by one of the officers of the Association on behalf of the Association and shall be recorded in the Office of the Register of Deeds of Douglas County, Nebraska. Such lien shall attach and be effective from the due date of the assessment until all sums, with interest and other charges thereon, shall have been fully paid. The Association's recorded assessment lien may be released by a release of lien signed by one of the members of the Association's Board of

Directors or by one of the officers of the Association on behalf of the Association and recorded in the Office of the Register of Deeds of Douglas County, Nebraska.

(b) Such lien may be enforced by the foreclosure of the defaulting Owner's Unit by the Association in the manner of a mortgage on real property. In any such proceedings, the Owner shall be required to pay the costs, expenses and attorney's fees incurred for filing the lien, and in the event of foreclosure, all additional costs and expenses of the suit and reasonable attorney's fees incurred. The Owner of the Unit being foreclosed shall be required to pay the Association the monthly assessment for the Unit during the period of foreclosure, and the Association shall be entitled to a receiver during foreclosure without the requirement for the posting of any bond or other surety, which requirement is expressly waived by the Owner. The Association shall have the power to bid on the Unit at foreclosure or other legal sale and to acquire title to the Unit through foreclosure or other legal sale and thereafter hold, lease, mortgage, vote the rights appurtenant to, convey, and otherwise deal with the Unit as the Owner.

(c) The Association shall report to any Qualified Lender of a Unit any assessments remaining unpaid for longer than 60 days after the same are due, whereupon the Qualified Lender may pay, but shall not be required to pay, any unpaid Common Expenses payable with respect to such Unit. No such payment will entitle the Qualified Lender to be subrogated to the Association's assessment claim or lien in respect of the Common Expenses so paid.

8.10 Ascertainment of Unpaid Common Expenses.

(a) The Board of Directors shall furnish a statement of a Unit Owner's assessment account to or at the direction of the Unit Owner, provided that the Unit Owner has given the Board at least 10 days prior written notice requesting the statement and paid the Association a reasonable processing fee as may be imposed by the Board from time to time. The statement of account shall include the amount of any unpaid Common Expenses, the amount of the current assessments, the dates that assessments are due, and the amount of any advanced assessment payments made.

(b) The provisions set forth in this Section shall not apply to the initial sales and conveyances of the Units made by Declarant, and such sales shall be free from all unpaid Common Expenses to date of conveyance made or to a date as agreed upon by Declarant and Declarant's grantee.

8.11 Financial Statements. The Board of Directors of the Association may hire an accounting firm to prepare audited financial statements for each fiscal year, or may prepare or have prepared unaudited financial statements. The financial statement for the preceding fiscal year shall be available to the holder, insurer, or guarantor of any mortgage, deed of trust or other lien that is secured by a Unit in the Condominium project on submission of a written request therefor by the Unit Owner. The financial statements must be available within 120 days of the Association's fiscal year end.

ARTICLE IX.
INSURANCE AND CONDEMNATION

9.1 Scope of Coverage. Commencing not later than the date of the first conveyance of a Unit by Declarant to an Owner, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(a) Property insurance on the Common Elements, Limited Common Elements and Units, exclusive of any improvements and betterments installed in Units by the Owners thereof and other than the original improvements and betterments installed or constructed within any Unit by Declarant (which shall be covered by the Unit Owner's insurance), insuring against all risk of direct, physical loss commonly insured against in an amount equal to the maximum insurable replacement value of the Common Elements, Limited Common Elements and Units, as determined from time to time by the Board of Directors; provided however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the then-current replacement cost of the insured property, exclusive of land, excavations, foundations, and other items normally excluded from a property policy.

(b) Commercial general liability insurance, including medical payments insurance, in an amount determined from time to time by the Board of Directors, but not less than $1,000,000.00 per injury or injuries, including death, arising out of a single occurrence, and $50,000.00 property damage; or, in the alternative, a liability policy affording coverage for bodily injury and property damage with a combined single limit in an amount not less than $1,050,000.00. The policy or policies shall cover the Association, the Association's Board of Directors and the officers of the Association, committee members, all agents and employees of the Association, and all Owners and other Persons entitled to use or occupy any Unit or other portion of the Condominium for occurrences commonly insured against, arising out or in connection with the use, ownership or maintenance of the Common Elements, Limited Common Elements, or other portion of the Condominium which the Association has the responsibility to maintain and shall also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the owner.

(c) Fidelity bonds shall be obtained by the Managing Agent covering all employees and agents of the Managing Agent in an amount which shall exceed the actual funds to which the Managing Agent has access or an amount equal to three (3) months of assessments to all Units, whichever is greater. The Association may obtain fidelity bonding separate from that of the Managing Agent for any officers, directors, employees, and agents of the Association having access to Association funds. Any fidelity bonds obtained must require that the Association be notified of any cancellation in coverage not less than 30 days prior to such cancellation being effective.

(d) Such other insurance as the Association shall from time to time determine to be appropriate to protect the Association, its officers, directors and employees, or the Owners.

(e) The insurance policies purchased by the Association, to the extent reasonably available, shall contain the following provisions:

(i) Each Owner shall be an insured under the policy with respect to liability arising out of his or her ownership of an undivided interest in the Common Elements or their membership in the Association.

(ii) The Association's insurance carriers shall have no right of subrogation with respect to or against the Association, its officers, directors, agents and employees, the Owners and members of their household, or Declarant or any of its members, officers, employees, contractors, subcontractor, architects or engineers. The Association and each Owner hereby waives,

releases and discharges any right of subrogation for any loss arising out of damage to or destruction of all or any portion of the Property or contents thereof when such loss is caused by any perils included within such party's insurance coverage.

(iii) No act or omission by any Owner, unless acting within the scope of their authority on behalf of the Association, shall void the policy or be a condition to recovery on the policy.

(iv) The coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased separately by Owners or their mortgagees, beneficiaries under deeds of trust or other lien holders.

(v) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association, its officers, directors, employees or agents, or other Owners.

(vi) Statement of the name of the insured as Boxcar 10 Condominium Association, Inc. for the use and benefit of the individual Owners (designated by name if required by the insurer).

(vii) For policies of hazard insurance a standard mortgagee clause providing that the insurance carrier shall notify the Qualified Lender named in the policy at least thirty (30) days in advance of the effective date of any reduction or cancellation of the policy.

(viii) "Agreed Amount" and "Inflation Guard" endorsements.

It shall be the duty of the Board at least annually to conduct an insurance review to determine if the policy in force is adequate to meet the needs of the Association and to satisfy the requirements of this Declaration and the Act. Such responsibility may be performed and shall be deemed reasonably performed, by the Board's Managing Agent requesting the Association's insurance agent to verify that the insurance policies in existence meet the needs of the Association as set forth herein and satisfy the requirements of this Declaration and the Act.

9.2 Certificate of Insurance. An insurer that has issued an insurance policy providing coverage required under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner or his or her mortgagee, beneficiary under a deed of trust or other lien holder. Any insurance obtained as required pursuant to this Article may not be canceled until 30 days after notice of the proposed cancellation has been mailed to the Association, each Owner and each Qualified Lender.

9.3 Payment of Premiums. Premiums for all insurance obtained and maintained by the Association pursuant to this Article shall be Common Expenses and shall be paid for by the Association.

9.4 Insurance Obtained by Owners. The issuance of insurance policies to the Association pursuant to this Article shall not prevent an Owner from obtaining insurance for his or her own benefit and at his or her own expense covering his or her Unit and personal property and providing personal liability coverage.

9.5 Payment of Insurance Proceeds. Any loss covered by property insurance obtained by the Association in accordance with this Article shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee, beneficiary under a deed of trust or other lien holder. The Association is empowered to act as attorney-in-fact for all Persons in interest to conduct any negotiation, settlement or pursuit of insurance proceeds on behalf of the Owners and all other Persons in interest. The Association shall hold any insurance proceeds in trust for Owners and lien holders as their interests may appear. Subject to the provisions of Sections 9.6 and 9.7, the proceeds shall be disbursed for the repair or restoration of the damage to Common Elements, Limited Common Elements and Units. Owners and lien holders shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of record after the Common Elements, Limited Common Elements and Units have been completely repaired or restored, or this Declaration terminated.

9.6 Use of Insurance Proceeds. In the case of fire or any other casualty, the insurance proceeds, if sufficient to reconstruct any Improvements so damaged or destroyed, shall be applied to such reconstruction. Reconstruction of the Improvements, as used herein, means restoring the Improvements to substantially the same condition in which they existed prior to the fire or other casualty, with each Unit and the Common Elements having the same vertical and horizontal boundaries as before. Any damage to the Condominium caused by fire or other casualty shall be promptly repaired by the Association unless (i) the Condominium is terminated, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (iii) 80% of the Unit Owners including the Unit Owner of every Unit which will not be rebuilt and every Unit to which a Limited Common Element is assigned which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves will be a common expense. If the entire Condominium is not repaired or replaced: (i) the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Condominium, (ii) the insurance proceeds attributable to the Units and Limited Common Elements which are not rebuilt must be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were assigned or the Qualified Lenders, as their interest may appear, and (iii) the remainder of the proceeds must be distributed to all the Unit Owners or Qualified Lenders as their interest may appear in proportion to the allocated interest of all the Units. If the Unit Owners vote not to rebuild any Unit, that Unit's allocated interest will be automatically reallocated upon the vote as if the Unit had been condemned as set forth herein and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations.

9.7 Procedure where Insurance Proceeds are Insufficient. In case of fire or other casualty, if the insurance proceeds are insufficient to reconstruct the Improvements and the Unit Owners and all other Persons in interest do not voluntarily make provision for reconstruction of the Improvements within 180 days from the date of damage or destruction, the Association may record a notice setting forth such facts; and upon the recording of such notice:

(a) The Property shall be deemed to be owned as tenants-in-common by the Unit Owners;

(b) The undivided interest in the Property owned in common of each Unit Owner shall be each Owner's Allocated Interest percentage determined in accordance with Section 2.2;

(c) Any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Unit Owner in the Property as provided herein; and

(d) The Property shall be subject to an action for partition at the suit of any Unit Owner, in which event the net proceeds of such sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one fund, and shall be divided among all the Unit Owners in a percentage equal to the percentage of undivided interest owned by each Unit Owner in the Property, but only after first paying out of the respective share of each Unit Owner (to the extent sufficient for the purpose) all liens on the undivided interest in the Property owned by such Unit Owner.

9.8 Insurance Deductibles. If maintenance or repair to the Property is required as a result of an insured loss, the amount of the deductible shall be considered a maintenance expense to be paid by the Person or Persons who would be responsible for such repair in the absence of insurance. If the loss affects more than one (1) Unit, or a Unit and Common Elements, the amount of the deductible may be apportioned equally by the Board of Directors among the parties suffering loss in accordance with the total cost of maintenance or repair.

9.9 Condemnation. The Association shall represent the Unit Owners in any condemnation proceedings and in negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Elements, or any part thereof, by the condemning authority in lieu of condemnation. The Association is empowered to act as attorney-in-fact for the Owners and all other Persons in interest for such purposes. In the event of a taking or acquisition of a part or all of the Common Elements by a condemning authority, the award or proceeds of a settlement shall be payable to the Association to be held in trust for Unit Owners and the holders of mortgages, deeds of trust or other liens on the Units as their interest may appear.

9.10 Settlement as Proceeds. For the purposes of this Article IX, the proceeds of any insurance settlement shall be deemed as insurance proceeds. The proceeds of any sale of any part of the Condominium project made under threat of condemnation shall be deemed as condemnation proceeds.

ARTICLE X.
MORTGAGES

10.1 Requirements.

(a) Any mortgage, deed of trust or other lien on a Unit and the obligations secured thereby shall be deemed to provide, generally, that the mortgage, deed of trust or other lien instrument and the rights and obligations of the parties thereto shall be subject to the provisions of the Act and this Declaration and shall be deemed to provide specifically, but without limitation, that the mortgagee, trustee or other lien holder shall have no right (i) to participate in the adjustment of losses with insurers or in the decision as to whether or not or how to repair or restore damage to or destruction of the Property, or (ii) to receive or apply the proceeds of insurance to the reduction of the secured indebtedness or otherwise, except in the event and to the extent either of a distribution of such proceeds to Unit Owners pursuant to §76-871 of the Act or of insurance proceeds in excess of the cost of repair or restoration being received by the Owner of the Unit encumbered by such mortgage, deed of trust or other lien; or (iii) to accelerate the secured indebtedness or to have any other remedies by virtue of waste or alleged waste

or other conditions occurring anywhere on the Property other than within the Unit securing the indebtedness, and the obligation secured shall be pre-payable, without penalty, upon the happening of any termination of the Condominium or determination not to restore or replace the affected Unit. Nothing contained in this Section 10.1(a) or elsewhere in this Declaration shall give a Unit Owner, or any other party, priority over any rights of the mortgagee, deed of trust trustee or other lien holder of a Unit pursuant to its mortgage, deed of trust or other lien instrument in case of a distribution to such Unit Owner of insurance proceeds or condemnation awards arising from a loss to or a taking of more than 1 Unit, or a Unit and Common Elements.

(b) No Unit Owner or purchaser of a Unit shall deliver any mortgage, deed of trust or other lien instrument secured by a Unit unless it has first notified the Board of the name and address of the proposed mortgagee, trustee or other lien holder and the amount of the debt proposed to be so secured.

10.2 Qualified Lenders.

(a) When a mortgage, deed of trust or other lien instrument encumbering a Unit is delivered to a lender or other lien holder, the Unit Owner shall simultaneously provide executed or conformed copies to the Board. Upon receipt of such copy of a mortgage, trust deed or other lien instrument, the Secretary of the Board may, at its option, instruct the insurer of the property to add the name of the Qualified Lender to the mortgagee loss payable provision of the hazard insurance policy covering the property and to provide such Qualified Lender with a Certificate of Insurance showing that the Qualified Lender's name has been so added.

(b) The Secretary shall maintain a register of Qualified Lenders showing the names and addresses of the Qualified Lenders, the amount secured by each Qualified Lender, and whether such amount secured is a first mortgage, deed of trust or other lien.

10.3 Rights of Qualified Lenders.

(a) A Qualified Lender (or its servicer) shall receive some or all of the following as designated in the request (notices must be delivered to Qualified Lenders in the case of (iv)-(viii) and (x) below):

(i) Copies of budgets, notices of assessment, or any other notices or statements provided under this Declaration by the Board to the Owner of the Unit covered by the mortgage, deed of trust or other lien;

(ii) Any audited or unaudited financial statements of the Association which are prepared for the Board and distributed to the Unit Owners. The holder of any mortgage, deed of trust or other lien on a Unit shall be entitled to obtain an audited statement at its own expense, if one is not otherwise available;

(iii) Copies of notices of meetings of the Unit Owners;

(iv) Notice of substantial damage to or destruction of any Unit (in excess of $1,000) or any part of the Common Elements (in excess of $10,000);

(v) Notice of the commencement of any condemnation or eminent domain proceedings with respect to any part of the Property;

(vi) Notice of any default of the Owner of the Unit which is subject to the mortgage, deed of trust or other lien, where such default is not cured by the Unit Owner within 60 days;

(vii) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(viii) Any condemnation or casualty loss that affects either a material part of the Condominium Property or the Unit securing the Qualified Lender's mortgage, deed of trust or other lien;

(ix) Such other financial data as such Qualified Lender shall reasonably request; or

(x) Any proposed action which would require the consent of Qualified Lenders as set forth in Section 12.1.

(b) The request of a Qualified Lender or its servicer shall specify which of the above items it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Board. The Board need not inquire into the validity of any request made hereunder by a Qualified Lender. The Board may refuse to honor any request where, after reasonable inquiry, it shall determine that the Person making such request is not entitled to the material so requested and may establish reasonable rules to implement this Section 10.3.

(c) Failure to comply with the requirements set forth above shall in no way invalidate the otherwise proper actions of the Association and the Board.

(d) Any Qualified Lender shall have the right, exercisable upon written request to the Board and payment to the Association of a reasonable fee established by the Board from time to time, to examine the books and records of the Association at any reasonable time.

ARTICLE XI.
MISCELLANEOUS PROVISIONS

11.1 Effective Covenants. Each grantee of Declarant and each subsequent Purchaser, its successors and assigns, by the acceptance of a deed of conveyance, accept the conveyed Property subject to all restrictions, conditions, covenants, reservations, options, liens and charges, and the jurisdiction, rights and powers granted or reserved by this Declaration or to which this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any Person having at any time any interest or estate in the Property, and shall inure to the benefit of each such Unit Owner in like manner as though the provisions, terms and restrictions of this Declaration were received and stipulated at length in each and every deed of conveyance.

11.2 Waiver. No covenant, restriction, condition or provision of this Declaration or in the Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same at any time, irrespective of the number of violations or breaches which may occur.

11.3 Savings Clause. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration herein contained, as the case may be, shall not render the remainder of this Declaration nor any other part herein contained invalid.

11.4 Controlling Instrument. In the event of a conflict between the provisions of this Declaration and the Bylaws, this Declaration shall prevail except to the extent that this Declaration is inconsistent with the Act.

ARTICLE XII.
AMENDMENT AND TERMINATION

12.1 Amendments, Modifications and Terminations.

(a) The prior written approval of a Super-Super-Majority Vote of the Unit Owners (which approval is concurred with by the approving Owners' Qualified Lenders in writing) shall be required to:

(i) Terminate the condominium status of the Property for any reasons, including substantial destruction or condemnation of the Property;

(ii) Abandon, encumber, sell or transfer any Common Elements (the granting of easements for public utilities or for other public purposes consistent with the intended uses of the Common Elements shall not be deemed a transfer within the meaning of this subsection); or

(iii) The use of hazard insurance proceeds for losses to any Condominium Property (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of such Condominium Property.

(b) The prior written approval of a Super-Majority Vote of the Unit Owners (which approval is concurred with by the approving Owners' Qualified Lenders in writing) shall be required to make an amendment of a material nature to the Condominium Documents. A change in the provisions of any Condominium Document directly relating to any of the following shall for this purpose be considered material:

(i) A change in the manner or formula by which Common Elements or Limited Common Elements are allocated, or a change in the manner or formula by which the voting interests of a Unit are allocated;

(ii) Voting rights;

(iii) Increases in assessments that raise the previously assessed amount by more than 25% over the previous year's assessment, or the priority or the subordination of assessment liens;

(iv) Reduction in reserves for maintenance, repair and replacement of the Common Elements;

(v) Reallocation of interests in the Common Elements or Limited Common Elements or rights to their use;

(vi) Convertibility of Units into Common Elements or of Common Elements into Units;

(vii) Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;

(viii) Insurance or fidelity bond requirements;

(ix) Change of restrictions on the leasing of any Units;

(x) Imposition of any restrictions of a Unit Owner's right to sell or transfer his or her Unit;

(xi) Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than as specified in the original Plan for the Condominium;

(xii) The method of assessments described in this Declaration;

(xiii) Provisions that expressly benefit Qualified Lenders;

(xiv) Redefinition in any Unit boundaries; or

(xv) The imposition of any right of first refusal or similar restriction upon the rights of an Owner to convey a Unit.

(c) Any amendments to this Declaration, the Bylaws or Association's Certificate of Incorporation which have a material adverse nature to a Qualified Lender must be agreed to by Qualified Lenders that represent at least 51% of the votes of Unit Owners that are subject to the mortgages of Qualified Lenders. Any action to terminate the condominium status of the Property must be agreed to by Qualified Lenders that represent at least 51% of the votes of the Unit Owners that are subject to a mortgage of a Qualified Lender.

12.2 Approval of Qualified Lenders. The approval rights granted in Section 12.1 to Qualified Lenders shall be subject to the limitations imposed by §76-856 of the Act.

ARTICLE XIII.
DECLARANT RIGHTS

13.1 Development Activities. During the Period of Declarant Control, notwithstanding any provision in this Declaration to the contrary, the Declarant shall have the following rights and privileges, which are hereby reserved only to itself and to its successors and assigns and their respective agents:

(a) To exercise any Special Declarant Rights provided for under the Act.

(b) To erect and maintain on the Common Elements, advertising signs, sales flags or other sales devices and banners for the purpose of aiding the sale of Units in the Condominium, and to maintain sales and business offices in at least one Unit or in any Common Element or building in the Condominium to facilitate the completion of

construction of the Improvements comprising the Condominium and sale of the Units therein contained.

(c) To erect or maintain on the Common Areas any sales office facilities, either of a modular or permanent construction, in the sole discretion of the Declarant, its successors, assigns or their agents, that will aid in the sale, marketing or advertising of the Units.

The consent of Unit Owners or holders of mortgage, deed of trust or other liens thereon shall not be required for the exercise of any of the foregoing Development Rights, and the Declarant may proceed with the exercise of such Development Rights at its sole option and its sole discretion. The option reserved to (i) relocate the boundaries of any Unit or Units, and (ii) further subdivide any one or more of the Units into additional Units, Common Elements or both, shall be exercisable by the Declarant, its successors and assigns, who shall have the unilateral right to reallocate percentages of undivided interests in the Common Elements, liability for payment of Common Expenses, allocation of Limited Common Elements, and allocation of votes in the Association, as to be done in accordance with this Declaration and the Act. The Declarant shall exercise this option by its adoption, execution or recordation of an Amendment to this Declaration by recording such certificates and plans as are required by the Act. Such amendment shall be adopted by the Declarant pursuant to the terms hereof without the consent of any Unit Owners or holders of mortgage, deed of trust or other liens thereon. From time to time, as the Declarant shall file permitted amendments to this Declaration, each then-Owner and each Person or entity thereafter becoming an Owner and its successors in title shall, upon the reallocation of such Common Elements or Limited Common Elements automatically be vested with his or her appropriate Allocated Interest and be vested with his or her appropriate undivided percentage interest in such Common Elements and Limited Common Elements.

13.2 Permanent Access and Utility Easement. The Declarant reserves unto itself, its successors and assigns, a permanent easement for ingress, egress and utility purposes to any adjacent properties now or hereafter owned by Declarant, its successors and assigns as shown on the Plans, if any.

13.3 Special Amendment. In addition to any other method of amending this Declaration provided for elsewhere herein, Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration: (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages or deeds of trust covering Units, (iii) to bring this Declaration into compliance with the Act, or (iv) to correct clerical or typographical errors in this Declaration or any exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to a Special Amendment on behalf of each Unit Owner and the holder of any mortgage, deed of trust or other lien thereon. Each mortgage, deed of trust deed other evidence of obligation or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant to make, execute and record Special Amendments. The reserved rights of Declarant under this Article XIII shall terminate three (3) years from the date of recording of this Declaration.

ARTICLE XIV.
CONSTRUCTION DEFECTS

14.1 Defect Claims. The Association waives its claim for damages against Declarant to the extent of any insurance proceeds realized from the Association's property insurance. The Association shall not initiate any proceeding against Declarant asserting a claim for or based upon a defect or alleged defect in the design or construction of the Property or any part thereof, unless it first proposes that the Association act on behalf of at least 2 Owners who are or claim to have been damaged by the defect or alleged defect, and without having first (i) distributed to all Owners a written description of the basis for the defect claim, including a good faith estimate of the range of probable costs for legal fees and other expenses that the Association may incur in pursuing the defect claim and the probable outcome in terms of likelihood of success and amount of recovery, and (ii) obtained the prior written approval of a Super-Majority Vote of the Unit Owners (which approval is concurred with by the approving Owners' Qualified Lenders in writing). In addition, the following procedures shall govern all such defect claims, whether brought by the Association or by any Owner:

(a) Notice. If any Owner, or the Association on behalf of more than one Owner (hereafter "Claimant") alleges a defect in the design or construction of the Property or any portion thereof, including any Units, Common Elements or Limited Common Elements, Claimant shall notify Declarant and any other Person against whom such defect claim is targeted (hereafter "Respondent") in writing (the "Defect Notice"), which shall state plainly and concisely: (i) the nature of the defect claim, including the persons involved and Respondent's role or alleged role in the defect claim; (ii) the legal basis of the defect claim (i.e., the legal theory or authority out of which the defect claim arises); (iii) the proposed remedy; and (iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the defect claim. A Defect Notice that is sent by a Claimant in conformity with the "notice of claim" requirements of applicable construction defect laws shall be deemed to qualify as a Defect Notice under this Section.

(b) Negotiation and Mediation.

(i) In addition to the Claimant satisfying the Defect Notice process described in Section 14.1(a) hereof, Claimant and Respondent shall each make every reasonable effort to meet in person and confer for the purpose of resolving the defect claim by good faith negotiation. If requested by a Respondent in writing, accompanied by a copy of the Defect Notice, the Board shall appoint a representative with full authority to bind Claimant to assist the parties in negotiation.

(ii) If the parties do not resolve the defect claim within 90 days after the date of the Defect Notice (or within such other period as may be agreed upon by the parties), Claimant shall have 30 additional days to submit the defect claim to mediation under the auspices of an independent mediation service designated by the Association or, if the parties otherwise agree, to an independent agency providing dispute resolution services in the Omaha, Nebraska area.

(iii) If Claimant does not submit the defect claim to mediation within such time frame, or having submitted the defect claim to mediation within such time frame but does not appear for the mediation, Claimant shall be deemed to have waived his or her defect claim, and Respondent shall be forever released

and discharged from any and all liability, costs or damages to Claimant on account of such defect claim.

(iv) Any settlement or other compromise of the defect claim through mediation shall be documented in writing by the mediator and signed by the parties, and, within a reasonable time thereafter, Claimant shall execute a full and complete release of the claim in a form acceptable to the Respondent. If the parties do not settle the defect claim within 30 days after submission of the matter to mediation, or within such other time frame as may be determined by the mediator to be reasonable or agreed to by the parties, the mediator shall issue a notice of termination of the mediation proceedings (the "Termination of Mediation"). The Termination of Mediation notice shall set forth that the parties are at an impasse and the date that mediation was terminated.

(c) Final and Binding Arbitration.

(i) If Claimant and Respondent do not agree in writing to a settlement of the defect claim within 15 days of the Termination of Mediation, Claimant shall have 15 additional days to submit his or her defect claim to arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. If not timely submitted to arbitration, or if timely submitted to arbitration but Claimant fails to appear for the arbitration proceeding, the defect claim shall be deemed abandoned and Respondent shall be forever released and discharged from any and all liability, costs or damages to Claimant arising out of such defect claim.

(ii) This Section 14.1(c) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Nebraska. Such agreement to arbitrate and all terms relating thereto in this Section (including, without limitation, restrictions on Claimants rights to damages) shall apply to any action. The arbitration proceeding shall be held at a location selected by the arbitrator(s) in the city that is the principal place of business of Respondent, or in such other city as may be mutually agreed to by the parties. The arbitration decision and the award, if any (the "Decision") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Nebraska.

(d) Allocation of Costs of Resolving Defect Claims. Each party, including, without limitation, any individual Owner and the Association as separate parties, shall share equally all fees, expenses and charges payable to the mediator and all fees, expenses and charges payable to the arbitrator(s) and the arbitration firm for conducting the arbitration proceeding. Under no circumstances, however, shall any party be entitled to recover any of its attorneys' fees, expenses or other mediation or arbitration costs from any other party. BY TAKING TITLE TO A UNIT AND AS A MEMBER OF THE ASSOCIATION, EACH OWNER ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF ATTORNEYS' FEES OR EXPENSES IN CONNECTION WITH THE ARBITRATION OF A DEFECT CLAIM UNDER THIS SECTION. The limitation described above on awarding attorneys' fees and expenses shall not apply to enforcement actions undertaken pursuant to Section 14.1(f).

(e) Limitation on Damages. Claimant shall not be entitled to receive any award of damages in connection with the arbitration of a defect claim other than its direct, actual damages, if any, and the Association and any Owner have waived and shall be deemed to have waived their respective rights to receive any damages in respect of a defect claim other than direct, actual damages, including, without limitation, the full waiver of right to obtain or recover attorneys' fees and expenses, special damages, indirect damages, incidental damages, consequential damages, and punitive or exemplary damages, including loss of use, rents, value or financing, lost or deferred sales, and additional interest, penalties and taxes paid or payable. BY TAKING TITLE TO A UNIT AND AS A MEMBER OF THE ASSOCIATION, EACH OWNER KNOWINGLY AND WILLINGLY ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND SHALL BE DEEMED TO HAVE WAIVED IN CONNECTION WITH THE ARBITRATION OF ANY DEFECT CLAIM UNDER SUBSECTION 14.1(c) OR OTHERWISE, THE RIGHT TO ANY AWARD OF CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR OTHER NON-COMPENSATORY DAMAGES OR SIMILAR DAMAGES, INCLUDING ALL DAMAGES FOR EMOTIONAL DISTRESS, WHETHER FORESEEABLE OR UNFORESEEABLE AND REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON (BUT NOT LIMITED TO) CLAIMS ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY OR CONDITION, BREACH OF CONTRACT, VIOLATION OF BUILDING CODES (LOCAL, STATE OR FEDERAL), CONSTRUCTION OR DESIGN DEFECTS, MISREPRESENTATION OR NEGLIGENCE OR OTHERWISE.

(f) Enforcement of Resolution. If the parties agree to a resolution of any defect claim through negotiation or mediation in accordance with Subsection 14.1(b) above, and any party thereafter fails to abide by the terms of such agreement, or if any party fails to comply with a Decision, then any other party may file suit or initiate proceedings to enforce such agreement or Decision without the need to again comply with the procedures set forth in this Section. Notwithstanding the terms of Section 14.1(d), in such event, the party taking action to enforce the agreement or Decision shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata) all costs incurred in enforcing such agreement or Decision including, without limitation, attorneys' fees and court costs.

(g) Multiple Party Claims. Multiple party disputes or claims not consolidated or administered as a "mass action" pursuant to the following sentence will be subject to and will be arbitrated individually. Only with the written request of all parties involved, but not otherwise, the Arbitrator may: (i) consolidate in a single arbitration proceeding any multiple party defect claims that are substantially identical and (ii) arbitrate the multiple defect claims as a single "mass action."

(h) No Amendment; Enforcement by Declarant. The terms and provisions of this Section 14.1 inure to the benefit of and are enforceable solely by Declarant, and this Section 14.1 shall not ever be amended without the prior written consent of Declarant in each and every instance, without regard to whether Declarant owns any portion of the Real estate at the time of such amendment. BY TAKING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS SECTION ARE A SIGNIFICANT INDUCEMENT TO DECLARANT'S WILLINGNESS TO DEVELOP AND SELL THE UNITS AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS SECTION, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE UNITS FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS. BY ACCEPTING TITLE TO A UNIT, EACH OWNER

ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS SECTION LIMIT HIS, HER OR ITS RIGHTS WITH RESPECT TO THE RIGHTS AND REMEDIES THAT MAY BE AVAILABLE IN THE EVENT OF A POTENTIAL OR ACTUAL DESIGN AND/OR CONSTRUCTION DEFECT AFFECTING THE CONDOMINIUM OR ANY PORTION THEREOF, INCLUDING ANY UNIT.

14.2 No Representations or Warranties. NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, SHALL BE DEEMED TO HAVE BEEN GIVEN OR MADE BY DECLARANT OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH ANY PORTION OF THE CONDOMINIUM, OR ANY IMPROVEMENTS THEREON, ITS OR THEIR PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, FITNESS FOR INTENDED USE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF, UNLESS AND EXCEPT AS SHALL BE SPECIFICALLY SET FORTH IN WRITING IN A SEPARATE DOCUMENT.

[Signature Page Follows]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be signed the day and year first above written.

DECLARANT:

CHICKS & BRICKS, LLC,
a Nebraska limited liability company

By: _____, MANAGER
Nancy Mammel, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 8th day of March, 2022, before me a Notary Public in and for said county and state, personally appeared Nancy Mammel, known to me to be the identical person who subscribed her name to the foregoing as the Manager of CHICKS & BRICKS, LLC, and acknowledged the execution thereof to be her voluntary act and deed and the voluntary act and deed of said limited liability company.

Laurie S. Harper
Notary Public

GENERAL NOTARY - State of Nebraska
LAURIE S. HARPER
My Comm. Exp. March 21, 2023

EXHIBIT A

LOT 2, BLUEBARN HILL REPLAT 1, AN ADDITION TO THE CITY OF OMAHA, DOUGLAS COUNTY, NEBRASKA

EXHIBIT B

(See drawings on following pages)

BOXCAR 10 CONDOMINIUM REGIME

UNITS 1, 2, 3, 4, P2, P3 AND P4

LEGAL DESCRIPTION: LOT 2, BLUEBARN HILL REPLAT 1, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA.

I HEREBY CERTIFY THAT THIS DRAWING WAS MADE UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NEBRASKA.

NEBRASKA REGISTERED LS-308 LAND SURVEYOR JAMES D. WARNER

DECEMBER 7, 2021
DATE

JAMES D WARNER
NEBRASKA RLS #308

TD2 engineering & surveying
Thompson, Dreessen & Dorner, Inc.
10836 Old Mill Rd
Omaha, NE 68154
p 402.330.8860 f 402.330.5866
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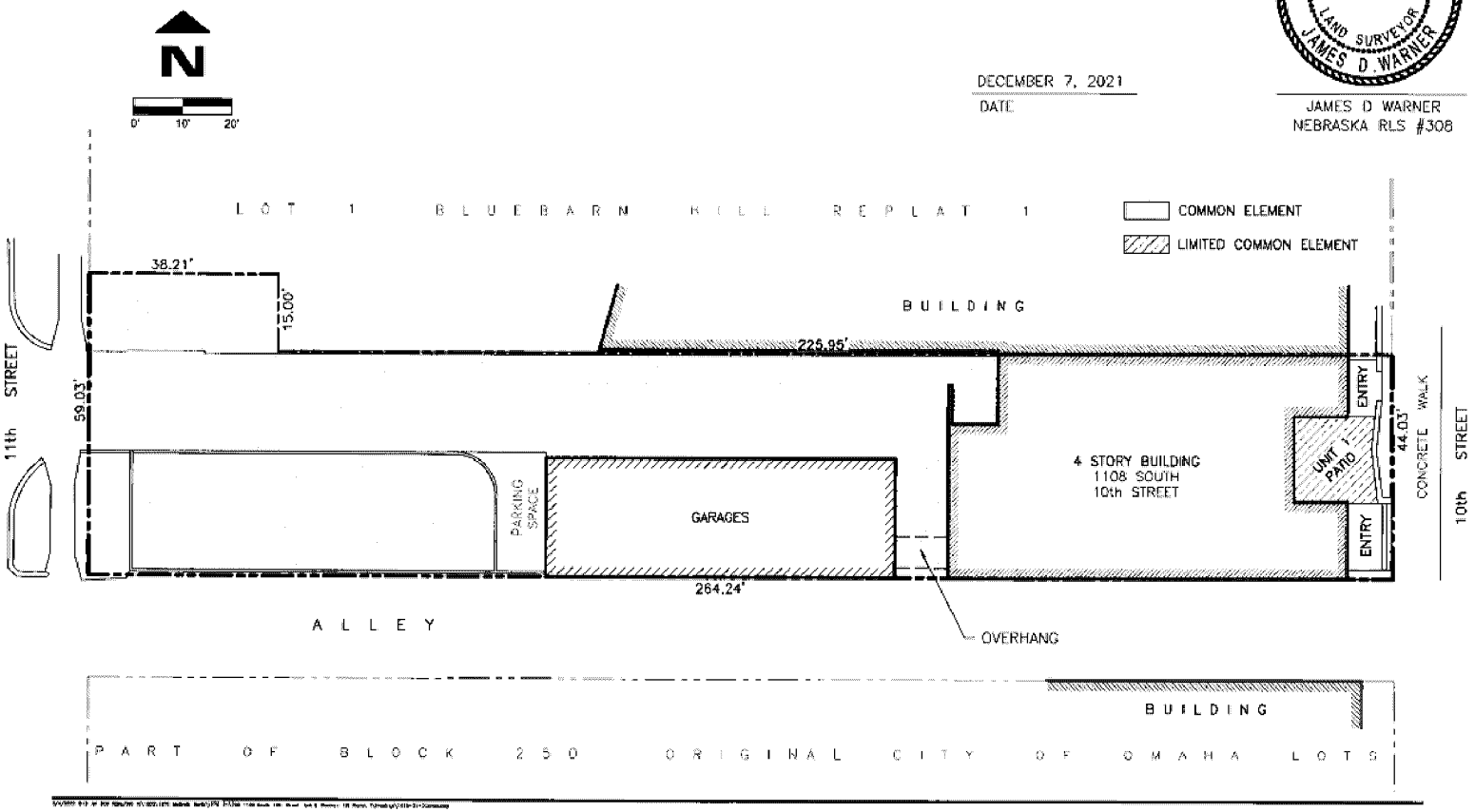


BOXCAR 10 CONDOMINIUM REGIME
UNITS 1, 2, 3, 4, P2, P3 AND P4

Revision/Date

No	Description	MM-DD-YY
1		
2		
3		
4		

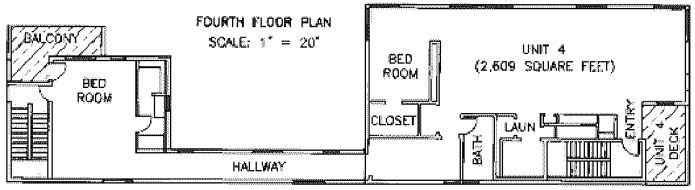
Job No.: 1678-21-5(Condo)
Drawn By: RJR
Reviewed By: JDW
Date: DECEMBER 7, 2021
Grid Book: 126
Page: X472

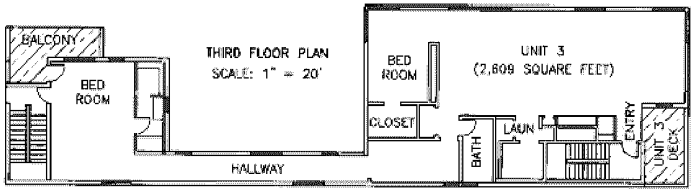
Sheet Title

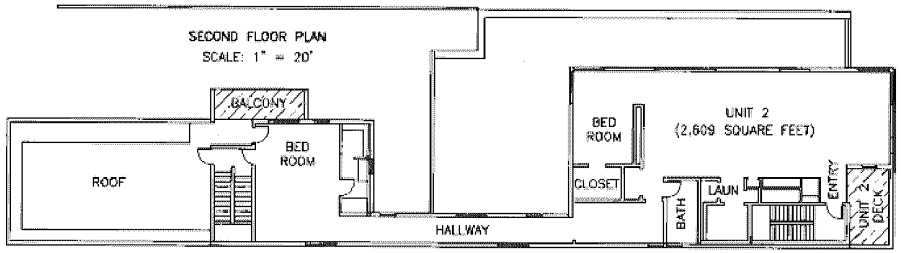
Sheet Number

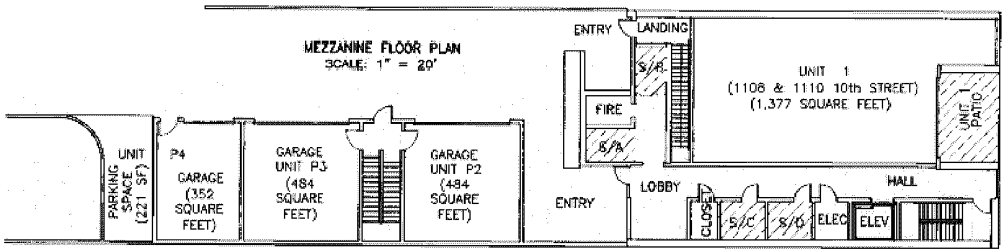
SHEET 1 OF 4

BOXCAR 10
CONDOMINIUM REGIME
UNITS 1, 2, 3, 4, P2, P3 AND P4
FLOOR PLANS









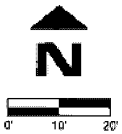
N O T E S :

1. UNIT FLOOR AREAS ARE MEASURED TO THE DOMINANT INTERIOR SURFACE OF ALL WALLS WHICH ABUT THE EXTERIOR WALL OF THE BUILDING AND TO THE INTERIOR WALL OF ALL OTHER WALLS.
2. FRACTIONAL NUMBERS ARE ROUNDED UP OR DOWN TO THE NEAREST EVEN NUMBER.

COMMON ELEMENTS

LIMITED COMMON ELEMENTS FOR THE UNIT DESIGNATED

STORAGE UNIT INFORMATION
S/A STORAGE UNIT A 59 SQUARE FEET LIMITED COMMON ELEMENT FOR UNIT 2
S/B STORAGE UNIT B 53 SQUARE FEET LIMITED COMMON ELEMENT FOR UNIT 1
S/C STORAGE UNIT C 60 SQUARE FEET LIMITED COMMON ELEMENT FOR UNIT 4
S/D STORAGE UNIT D 59 SQUARE FEET LIMITED COMMON ELEMENT FOR UNIT 3



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BOXCAR 10 CONDOMINIUM REGIME
UNITS 1, 2, 3, 4, P2, P3 AND P4

No	Description	MM/DD/YY

Job No.: 1678-21-5(Condo1)
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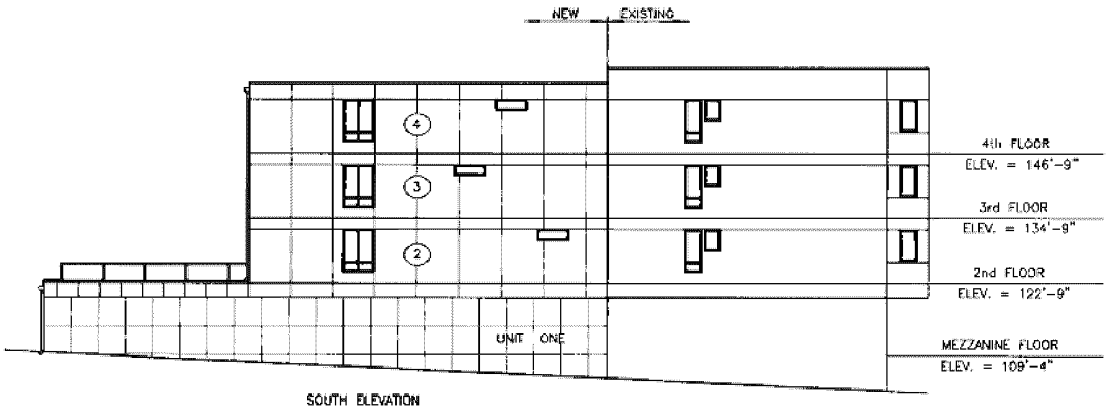
Reviewed By: JCW
Date: DECEMBER 7, 2021
Old Book: 128
Page: 11&12

SHEET 2 OF 4

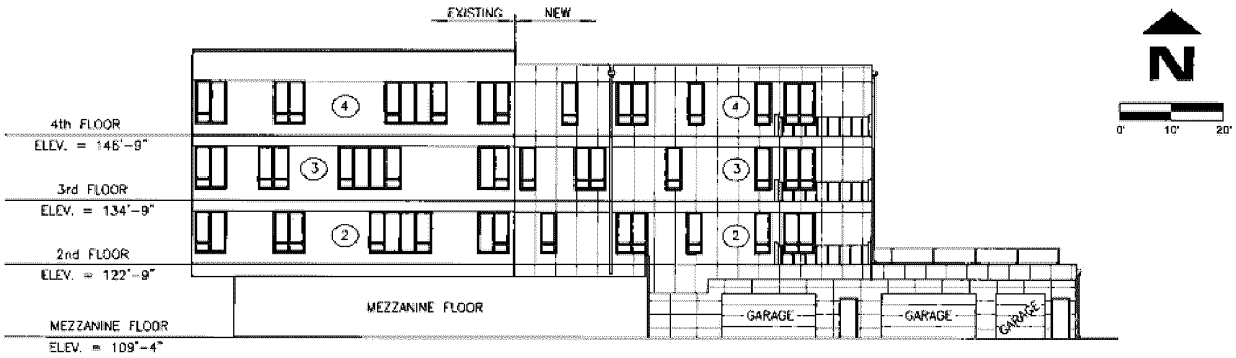
BOXCAR 10 CONDOMINIUM REGIME

UNITS 1, 2, 3, 4, P2, P3 and P4

ELEVATIONS



SOUTH ELEVATION
SCALE: 1" = 20'



NORTH ELEVATION
SCALE: 1" = 20'

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BOXCAR 10 CONDOMINIUM REGIME
UNITS 1, 2, 3, 4, P2, P3 AND P4

Revision Dates

No	Description	MM-DD-YY

Job No.: 1878-21-5 (Condo2)
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Reviewed By: JDW
Date: DECEMBER 7, 2021
Bk: 126
Pages: 71&72

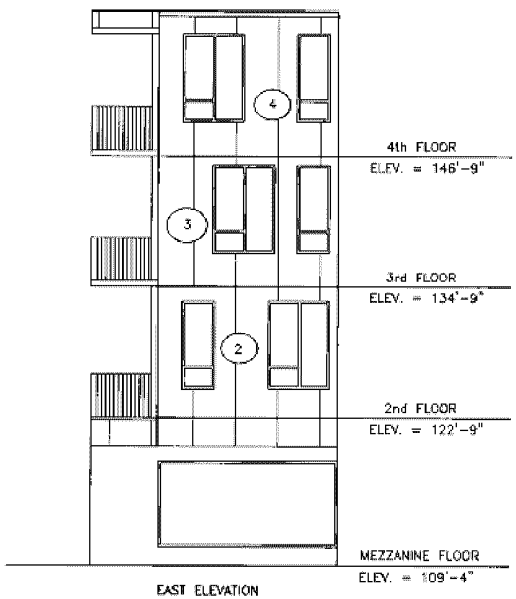
Sheet Number

SHEET 3 OF 4

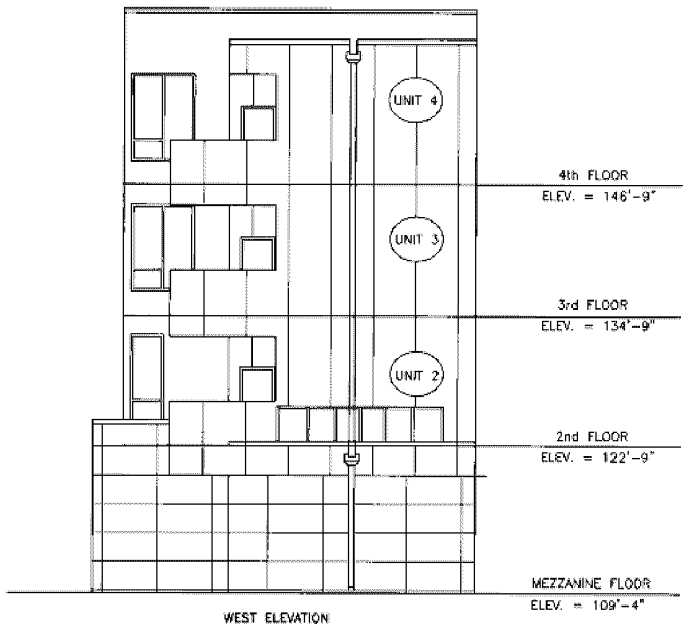
BOXCAR 10 CONDOMINIUM REGIME

UNITS 1, 2, 3, 4, P2, P3 AND P4

ELEVATIONS



EAST ELEVATION
SCALE: 1" = 10'



WEST ELEVATION
SCALE: 1" = 10'

N

0' 25' 10'

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BOXCAR 10 CONDOMINIUM REGIME
UNITS 1, 2, 3, 4, P2, P3 AND P4

Revision Dates

No.	Description	MM-DD-YY
-	-	-
-	-	-
-	-	-
-	-	-

Job No.: 1878-21-5(Condo)
Drawn By: RJR
Reviewed By: JDM
Date: DECEMBER 7, 2021
Book: 126
Pages: 71&72

Sheet Number

SHEET 4 OF 4

EXHIBIT C

ALLOCATED INTEREST

UNIT NUMBER	SQ. FT.	ALLOCATED INTEREST
1	1,377	12.83%
2	2,609	24.28%
3	2,609	24.28%
4	2,609	24.28%
P2	484	4.50%
P3	484	4.50%
P4	573	5.33%
TOTAL:	**10,745**	**100%**