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345 West O Street
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AMENDED AND RESTATED CONDOMINIUM DECLARATION
(345 West O Street)

The undersigned (Declarant), as the owner of all of the units in the Condominium and as provided for in paragraph 29 of the Declaration, amends and restates the Declaration of the **345 West O Street Condominium** which was recorded with the Register of Deeds of Lancaster County, Nebraska on July 20, 2009 as Inst. No. 2009-040277.

1. **NAMES:** The name of the Condominium is 345 West O Street, a Condominium. The name of the Association is 345 West O Street Association, an unincorporated association.

2. **DESCRIPTION:** The Condominium is situated in Lancaster County on the real estate legally described in the attached Exhibit "A".

3. **NUMBER OF UNITS:** The initial number of units to be created is 5. The total number of units may be expanded by amendment to this Declaration as provided for in the Act.

4. **BOUNDARIES:** The boundaries of each unit, including the unit's identifying letter or number, are shown on Exhibit "B" (Plat and Plan).

5. **COMMON ELEMENTS:** The Common Elements are:

a. **Unit A - Common Driveway, Utility and Parking.** A common access driveway and utility easement over and upon all of Unit A. This common access driveway and utility easement is created for the benefit of Declarant, unit owners, their tenants, employees, invitees, and licensees for ingress and egress from and between their units to West "O" street and the extension of any utilities to serve current or future units. Other than underground utilities, no improvements other than a driveway or curb shall be constructed within Unit A.

The Limited Common Elements are:

b. **Unit B - Salt Creek Levee Easements.** Unit B is subject to certain recorded easements and restrictions for the maintenance and repair of the existing Salt Creek Levee. Unit B is created as a limited commons allocated exclusively to Unit 1.

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- c. Unit C - Developable Limited Commons. Unit C is created as a limited commons allocated exclusively to Unit 1. This limited commons may be used for any purpose reasonably related to the development and use of Unit 1, including, but not limited to soil excavation, the establishment of detention cells, relocation of existing surface water drainage or such others uses and purposes as the Owner of Unit 1 may determine. Declarant reserves the right to create additional developable units from within Unit C that may be added to the Condominium together with associated commons.
- d. Title and Transfer of the Commons and Limited Commons. Title to Unit A Shall be conveyed to the Association. Title to Units B and C shall be held by Declarant and the Declarant, its successors or assigns, may, subject to the terms of the Declaration, sell, transfer, dedicate or convey title, easements, rights or other interests in or to Units B and C to any governmental or public entity.

6. SPECIAL DECLARANT RIGHTS: The Declarant may, in addition to the rights provided for above, create additional units upon which improvements may be constructed and associated commons from and within Unit C at anytime. Any further development of Unit C shall be made by the recordation of an amendment to this Declaration, and the allocated interests shown on Exhibit "C" shall be reallocated. The reallocation shall be made based upon the square footage of any unit upon which improvements may be constructed. The expense of preparation of the amendment, reallocation of allocated interests, and recording fees shall be borne by the Declarant.

7. ALLOCATED INTERESTS: The allocated interests are shown on Exhibit "C." The formula used to establish the allocated interests is the ratio of the square footage of a unit upon which improvements may be constructed to the total square footage of all units upon which improvements may be constructed within the Condominium. The formula to be used to establish the allocated interests if any additional units are created, combined or further subdivided is the same.

8. CONVEYANCES , RESTRICTIONS OF RECORD AND INTERESTS:

- a. Conveyances. Any unit may be conveyed or encumbered subject to the provisions of this Declaration.
- b. McDonald's Lease. The Condominium and the ownership and use of the units is subject to the terms, conditions, restrictions and rights provided for in the Lease by McDonald's USA, LLC evidenced by Memorandum filed July 8, 2005 as Instrument No. 2005-37479 and Supplement to Lease filed January 30, 2006 as Instrument No. 2006-004397, (collectively, "McD Lease"). Declarant has executed a Non-Disturbance and Attornment Agreement, filed July 8, 2005 as Instrument No. 2005-37478 in connection with the McD Lease.

- c. Monitoring Well. Two monitoring wells located in the southeast corner of Unit A were installed and are being maintained by the Burlington Northern Sante Fe Railroad with the permission of the Declarant. The continuation of this use is permitted.
- d. Unit 1 Improvements. Unit 1 has certain improvements, including but not limited to, outdoor lighting, signs and a sprinkler system which are connected to the systems associated with the improvements on Unit 2. Until such time as a building is constructed upon Unit 1, the owner of Unit 2 shall maintain and pay for all costs associated with the operation and maintenance of these systems. Upon construction of a building upon Unit 1, the owner of Unit 1 shall separate all of the connected systems at its sole cost and expense and the Owner of Unit 2 shall have no further obligations with regard to the systems on Unit 1.

9. SUBDIVISION AND BUILDING RESTRICTION: With the written approval of the Executive Board, units may be combined or divided and incorporated within the boundaries of one or more other units. Upon approval, the Executive Board shall record an Amendment to this Declaration, and the allocated interests shown on Exhibit "C" shall be reallocated. The expense of preparation of the Amendment, reallocation of the allocated interests, and recording fees shall be assessed against the units affected.

10. MAINTENANCE AND IMPROVEMENT OF UNITS: Each unit shall be maintained by the unit owner. Each unit owner shall promptly report to the Executive Board any need for repairs to the Common Elements for which the Association is responsible. Notwithstanding the general provisions for maintenance, the Executive Board may establish specific maintenance responsibilities which shall be uniform as to all units.

11. USE OF UNITS: The units may be used for any purpose permitted within the Lincoln, Lancaster County, Nebraska, zoning classification(s) for the real estate within the Condominium.

12. NUISANCE: No noxious or offensive activity shall be permitted within any unit, or anything which is an annoyance or nuisance or which endangers the health or unreasonably disturbs the quiet of the occupants of adjoining units. The use of any unit shall comply with the environmental performance standards relating to noise, emissions, dust, odor, glare and heat approved by the City of Lincoln, Nebraska.

13. ASSOCIATION: The Association is the 345 West O Street Association (Association) an unincorporated association which shall provide for the management of the Condominium. The Declarant or unit owners holding more than 75% of the allocated interests in the Association may elect to incorporate the Association.

14. MEMBERSHIP/EXECUTIVE BOARD: Every person or entity who becomes an owner of a unit upon which improvements may be constructed shall be a member of the Association. Any person who holds an interest in a unit merely as security for an obligation shall not be a member. The Executive Board of the Association shall be selected by the

members based upon one director for each of the units 1 and 2. Units A, B and C shall not be entitled to select a director for the Executive Board; provided should Unit C be developed, any unit(s) created upon which improvements may be constructed shall each be entitled to select a director

15. MAINTENANCE OF COMMON EASEMENT/UNITS: The owner of Unit 2 shall maintain, repair and replace the Common Elements. The cost of maintaining the Common Elements shall be a Common Expense. Should the owner of Unit 2 fail or refuse to maintain the Common Elements, the Association may exercise those rights. The Association shall have the right to enter any unit at reasonable times to perform maintenance on any unit that fails to satisfy any maintenance requirements established by the Executive Board.

16. INSURANCE: The Association may elect to insure the Condominium and the Association against risk, including tort liability, in the manner set forth in any Bylaws which may be adopted by the Association. A unit owner shall obtain insurance, at their own expense, for the unit owner's account and benefit, covering the unit and the Common Elements. Each unit owner's policy shall include as an additional insured the Association providing coverage to the Association for the unit owner's use of the Common Elements which coverage shall be in proportion to allocated interests shown on Exhibit "C." The minimum amounts of coverage may be established by resolution of the Executive Board.

The limits of coverage for insurance obtained by and on behalf of the Association shall be established by resolution of the Executive Board. Premiums for any such insurance carried by the Association shall be a Common Expense paid according to the allocated interests.

17. DAMAGE: Any damage to the Common Elements shall be promptly repaired by the Association in the manner set forth in the Bylaws, unless the Condominium is terminated or repair or replacement would be illegal under any state or local health or safety statute or ordinance. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

18. LIABILITY: Any tort liability arising from the use of Common Elements for which the Association is responsible shall be a Common Expense. Any deficiency in insurance coverage of such liability shall be borne by all unit owners in proportion to the allocated interests.

19. CONDEMNATION: If any part of the Common Elements is condemned for public use, the award shall be payable to the Association and Declarant in proportion to their respective interests. Actual damage to physical improvements shall be repaired and the fund created by the award shall be administered as insurance proceeds in the manner set forth in the Bylaws.

20. USE OF COMMON ELEMENTS: The Association, Declarant and each unit owner shall have the right to use the Common Elements, and shall, subject to Declarant's rights, have an easement over the Common Elements for that use.

21. EASEMENTS OVER COMMON ELEMENTS: The Declarant or Executive Board may grant easements, leases, licenses and concessions over the Common Elements for the installation and maintenance of utilities and related purposes as the Board or Declarant deem to be in the best interests of the Condominium.

22. COMMON EXPENSES AND LIEN: The members shall pay annual and special assessments for the Common Expenses when billed. Annual and special assessments shall be in proportion to allocated interests shown on Exhibit "B". Each assessment shall be the personal obligation of the member who is the unit owner of the unit assessed at the time of the assessment, shall bear interest at the rate of 18 percent per annum 30 days after the date billed until paid and, when shown of record, shall be a lien upon the unit assessed.

23. REPAIRS: The Executive Board may assess a member with the cost of maintenance or repair of a Common Element necessitated by willful or negligent conduct of the member and the member's invitees, agents and guests, by adding such cost to the next assessment against the member's unit.

24. PRIORITY OF LIENS: The lien of any annual or special assessment is prior to all other liens and encumbrances on a unit except (1) liens and encumbrances recorded before the recordation of the Declaration, (2) a First Mortgage or Deed of Trust on the unit recorded before the date on which the assessment sought to be enforced was recorded, and (3) liens for real estate taxes and other governmental assessments or charges against the unit.

25. FIRST LIEN HOLDER RIGHTS. A holder, insurer or guarantor of a first lien, upon written request to the Association (such request to state the name and address of the lien holder), will be entitled to timely written notice of:

- a. Any proposed amendment of the Condominium instruments affecting a change:
 - i. The boundaries of any unit or the appurtenant easement rights;
 - ii. The interests in the Common Elements, or the liability for Common Expenses for any unit;
 - iii. The number of votes in the Association for any unit; or
 - iv. The use to which any unit or Common Elements are restricted;
- b. Any proposed termination of the Condominium;
- c. Any condemnation or casualty loss which affects a material portion of the Condominium or which affects any unit on which there is a written request for notice;
- d. Any delinquency longer than 60 days in the payment of assessments or charges by any owner of a unit;

e. Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to paragraph 16 above.

26. ASSESSMENTS AND CAPITAL IMPROVEMENTS: Annual and special assessments, other than for capital improvements, may be levied by the Owner of Unit 2 for the costs incurred to maintain, repair and replace the Common Elements or by a majority of the Executive Board. Any special assessment for capital improvements shall be approved by the affirmative vote of unit owners representing all of the allocated interests, present in person or by proxy, at a regular meeting of the members or at a special meeting of the members if notice of the special assessment is contained in the notice of the special meeting.

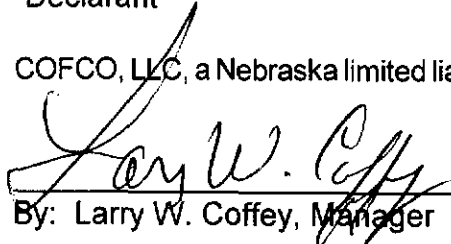
27. BINDING EFFECT: The covenants contained in this Declaration shall run with the land and shall bind the Declarant and all persons claiming under the Declarant.

28. ENFORCEMENT: Enforcement of the covenants contained in this Declaration may be by proceedings at law or in equity against any person violating or attempting to violate any covenant. The proceedings may be to restrain the violation or recover damages and, by the Association, may be to enforce any lien or obligation created by the covenants.

29. AMENDMENTS: The Condominium established by this Declaration may only be amended or terminated, in writing, by all of the unit owners.

30. SEVERABILITY: The invalidation of any one of the provisions of this Declaration shall not affect the validity of the remaining provisions.

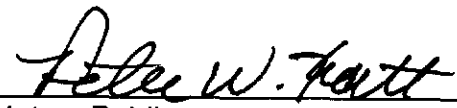
Dated: August 19, 2009.

"Declarant"
COFCO, LLC, a Nebraska limited liability company

By: Larry W. Coffey, Manager

STATE OF NEBRASKA)
) ss:
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 19th day of August, 2009, by Larry W. Coffey, Manager of COFCO, LLC, a Nebraska limited liability company, on behalf of the company.




Notary Public

LEGAL DESCRIPTION:

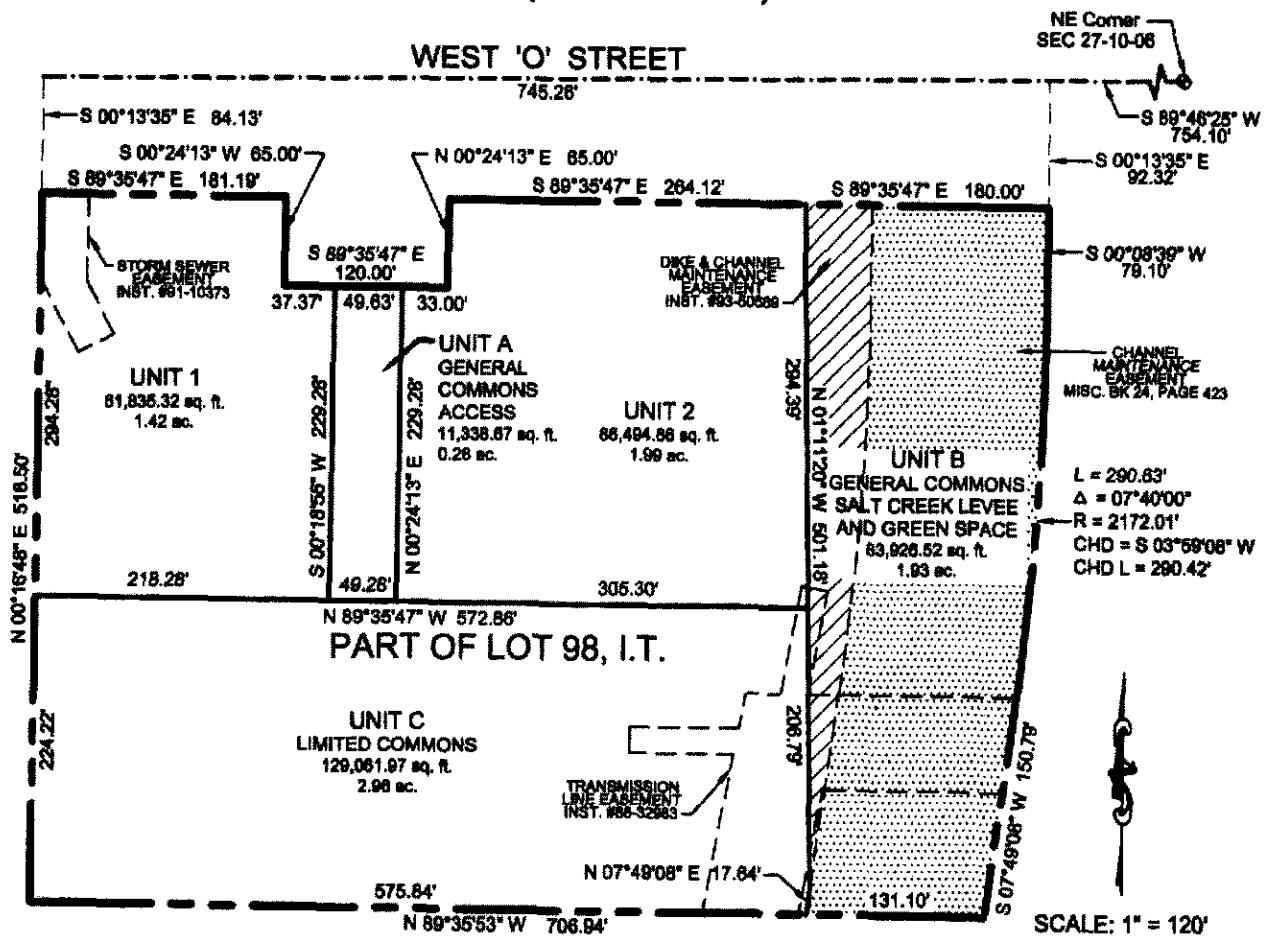
A tract of land out of and part of Lot 98, Irregular Tracts in the Northeast Quarter of Section 27, Township 10 North, Range 6 East of the 6th P.M., Lincoln, Lancaster County, Nebraska, and being more particularly described by metes and bounds as follows to wit; Beginning at a 5/8 inch x 30 inch rebar for the Northeast corner of the tract herein described on the South right of way line of West "O" Street, said point also being the Northeast corner of said Lot 98, Irregular Tracts, and being South 89 degrees 28 minutes 18 seconds West 754.10 feet, and South 00 degrees 31 minutes 42 seconds East 92.32 feet from the Northeast corner of the aforesaid Section 27; thence South 00 degrees 09 minutes 09 seconds East (assumed bearing) a distance of 79.10 feet along and with the East line of said Lot 98, Irregular Tracts to the point of curvature of a curve to the right, having a central angle of 07 degrees 40 minutes 00 seconds, a radius of 2172.01 feet, an arc length of 290.63 feet, and a chord bearing South 03 degrees 41 minutes 00 seconds West 290.42 feet; thence Southwesterly along and with the arc of said curve, a distance of 290.63 feet to the point of tangency thereof; thence South 07 degrees 31 minutes 00 seconds West, continuing along the aforesaid East line of Lot 98, Irregular Tracts, a distance of 150.79 feet, to a point thereon for the Southeast corner of the tract herein described; thence North 89 degrees 54 minutes 00 seconds West, a distance of 708.04 feet, to the Southeast corner of Lot 70, Irregular Tracts and being the Southwest corner of the tract herein described; thence North 00 degrees 06 minutes 00 seconds East, a distance of 518.50 feet along and with the East line of said Lot 70, Irregular Tracts, to the Northeast corner thereof and the Northwest corner of the tract herein described, on the South right of way line of "O" Street; thence south 89 degrees 53 minutes 55 seconds East, a distance of 745.31 feet along and with the said South right of way line to the place of beginning; EXCEPT the North 65 feet of the East 120 feet of the West 301.19 feet conveyed to the City of Lincoln by Warranty Deed filed October 27, 2004 as Instrument Number 2004-705711

Address: 345 West O Street, Lincoln, NE 68528



EXHIBIT
B

345 WEST 'O' STREET (Plat and Plan)



SURVEYOR'S CERTIFICATE:



I hereby certify that this survey was made by me or under my supervision and that I am a licensed surveyor under the laws of the State of Nebraska.

Lyle L. Loth

Lyle L. Loth, L.S. 314

345 WEST 'O' STREET

LEGAL DESCRIPTION

UNIT 1

A legal description of a tract of land in a portion of Lot 98 of Irregular Tracts located in the Northeast Quarter of Section 27, Township 10 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska, more particularly described as follows:

Commencing at the NE Corner of said Section 27 and extending thence S 89°46'25" W along the north line of said Section 27 a distance of 1499.36 feet; Thence S 00°13'35" E a distance of 84.13 feet to the true POINT OF BEGINNING;

Thence S 89°35'47" E along the north line of said Lot 98 a distance of 181.19 feet;
Thence S 00°24'13" W a distance of 65.00 feet;
Thence S 89°35'47" E a distance of 37.37 feet;
Thence S 00°18'56" W a distance of 229.28 feet;
Thence N 89°35'47" W a distance of 218.28 feet;
Thence N 00°16'48" E a distance of 294.28 feet to the POINT OF BEGINNING containing a calculated area of 61,835.32 square feet or 1.42 acres.

LEGAL DESCRIPTION

UNIT 2

A legal description of a tract of land in a portion of Lot 98 of Irregular Tracts located in the Northeast Quarter of Section 27, Township 10 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska, more particularly described as follows:

Commencing at the NE Corner of said Section 27 and extending thence S 89°46'25" W along the north line of said Section 27 a distance of 754.10 feet; Thence S 00°13'35" E a distance of 92.32 feet; Thence N 89°35'47" W along the north line of said Lot 98 a distance of 180.00 feet the true POINT OF BEGINNING;

Thence S 01°11'20" E a distance of 294.39 feet;
Thence N 89°35'47" W a distance of 305.30 feet;
Thence N 00°24'13" E a distance of 229.28 feet;
Thence S 89°35'47" E a distance of 33.00 feet;
Thence N 00°24'13" E a distance of 65.00 feet;
Thence S 89°35'47" E a distance of 264.12 feet to the POINT OF BEGINNING containing a calculated area of 86,494.66 square feet or 1.99 acres.

LEGAL DESCRIPTION

UNIT A

A legal description of a tract of land in a portion of Lot 98 of Irregular Tracts located in the Northeast Quarter of Section 27, Township 10 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska, more particularly described as follows:

Commencing at the NE Corner of said Section 27 and extending thence S 89°46'25" W along the north line of said Section 27 a distance of 754.10 feet; Thence S 00°13'35" E a distance of 92.32 feet; Thence N 89°35'47" W along the north line of said Lot 98 a distance of 444.12 feet; Thence S 00°24'13" W a distance of 65.00 feet; Thence N 89°35'47" W a distance of 33.00 feet to the true POINT OF BEGINNING;

Thence S 00°24'13" W a distance of 229.28 feet;

Thence N 89°35'47" W a distance of 49.28 feet;

Thence N 00°18'56" E a distance of 229.28 feet;

Thence S 89°35'47" E a distance of 49.63 feet to the POINT OF BEGINNING containing a calculated area of 11,338.67 square feet or 0.26 acres.

LEGAL DESCRIPTION

UNIT B

A legal description of a tract of land in a portion of Lot 98 of Irregular Tracts located in the Northeast Quarter of Section 27, Township 10 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska, more particularly described as follows:

Commencing at the NE Corner of said Section 27 and extending thence S 89°46'25" W along the north line of said Section 27 a distance of 754.10 feet; Thence S 00°13'35" E a distance of 92.32 feet to the true POINT OF BEGINNING;

Thence S 00°08'39" W a distance of 79.10 feet to a point on a circular curve to the right having a central angle of 07°40'00", a radius of 2172.01 feet, and whose chord (290.42 feet) bears S 03°59'08" W;

Thence along the arc of said curve a distance of 290.63 feet to a point of tangency;

Thence S 07°49'08" W a distance of 150.79 feet;

Thence N 89°35'53" W a distance of 131.10 feet;

Thence N 07°49'08" E a distance of 17.64 feet;

Thence N 01°11'20" W a distance of 501.18 feet;

Thence S 89°35'47" E a distance of 180.00 feet to the POINT OF BEGINNING containing a calculated area of 83,926.52 square feet or 1.93 acres.

LEGAL DESCRIPTION

UNIT C

A legal description of a tract of land in a portion of Lot 98 of Irregular Tracts located in the Northeast Quarter of Section 27, Township 10 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska, more particularly described as follows:

Commencing at the NE Corner of said Section 27 and extending thence S 89°46'25" W along the north line of said Section 27 a distance of 1499.36 feet; Thence S 00°13'35" E a distance of 84.13 feet; Thence S 00°16'48" W a distance of 294.28 feet to the true POINT OF BEGINNING;

Thence S 89°35'47" E a distance of 572.86 feet;

Thence S 01°11'20" E a distance of 206.79 feet;

Thence S 07°49'08" W a distance of 17.64 feet;

Thence N 89°35'53" W a distance of 575.84 feet;

Thence N 00°16'48" E a distance of 224.22 feet to the POINT OF BEGINNING containing a calculated area of 129,061.97 square feet or 2.96 acres.

EXHIBIT "C"
(345 West O Street)

<u>Unit Number</u>	<u>Square Footage</u>	<u>Allocated Interest Percentage</u>	<u>Association Votes</u>
UNITS UPON WHICH IMPROVEMENTS MAY BE CONSTRUCTED:			
Unit 1	61,835.32	41.69%	1
Unit 2	86,494.66	58.31%	1
Total	148,329.98	100%	2
UNITS UPON WHICH IMPROVEMENTS MAY NOT BE CONSTRUCTED:			
Unit A		0.00%	0
Unit B		0.00%	0
Unit C		0.00%	0