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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR 370 NORTH

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR 370 NORTH ("Declaration".) is made effective on this 14th day of June, 2017, by Dowd Grain Company, Inc., a Nebraska corporation, or its successors and assigns ("Declarant").

RECITALS

A. Declarant is the sole owner of certain real property situated in the County of Sarpy, State of Nebraska, legally described as follows, to-wit:

> Lots 1 through 17 and Outlots A through E, 370 North being a platting of Tax Lot 5 and part of the South 1/2 of the SE 1/4 all in the South 1/2 of Section 26, T14N, R11E of the 6th P.M., a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska (referred to collectively as the "Property").

B. Declarant intends by this Declaration to impose upon the Lots covenants, conditions, restrictions and to create easements to establish a general plan for the improvement, development, maintenance, use and operation of the Lots consistent with a first class automobile sales service and business park, more commonly known as "370 North".

C. By virtue of the recording of this Declaration, the Lots shall be owned, held, transferred, sold, leased, conveyed, developed, used, occupied, operated, improved and mortgaged or otherwise encumbered subject to the provisions of this Declaration and every grantee of any interest in any Lot or any portion thereof, by acceptance of a deed or other conveyance of such interest, and every Owner of a Lot or any portion thereof, 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 this Declaration and shall be deemed to have consented to the terms hereof.

D. Declarant desires to form a Nebraska nonprofit corporation to be known as the 370 North Property Owners Association, Inc. for the purposes of, among other things, holding title to or otherwise

controlling the Common Areas, preserving the values and amenities of the Lots in regard to which the Association will be delegated certain powers of administering and maintaining the Common Areas and enforcing this Declaration, collecting, and disbursing and enforcing the Assessments created herein; subject to the powers, rights and duties reserved by Declarant as set forth in this Declaration.

E. Declarant does hereby specify, agree, designate and direct that this Declaration and all of its provisions shall be and are covenants to run with the Lots and shall be binding on the present owners of the Lots and all its successors and assigns and all subsequent owners of the Lots and Improvements (as defined below), together with their grantees successors, heirs, executors, administrators, devisees and assigns.

NOW, THEREFORE, Declarant hereby imposes the following covenants, conditions and restrictions on the Lots, which shall run with the equitable and legal title to the land and shall be for the benefit or burden, as the case may be, of the Owners and Occupants of the Lots or any portion thereof within 370 North, their respective heirs, legal representatives, successors and assigns, and any mortgagees.

ARTICLE I.
DEFINITIONS

1.1 Architectural Committee or Committee. "Architectural Committee" or "Committee" shall mean the Architectural and Development Control Committee created pursuant to Article V below.

1.2 Articles. "Articles" shall mean the Articles of Incorporation of the Association, as they may from time to time be amended or restated, which shall be filed with the Nebraska Secretary of State.

1.3 Assessments. "Assessments" shall mean all regular assessments described in Section 10.5, special assessments described in Section 10.6, reimbursement assessments described in Section 10.7 and capital improvement assessments described in Section 10.8 below.

1.4. Association. "Association" shall mean and refer to the Nebraska nonprofit corporation (and its successors and assigns) organized by Declarant to exercise the rights, powers and duties set forth in this Declaration. Declarant intends to name the Association the "370 North Property Owners Association, Inc.".

1.5 Auto Park Lots. "Auto Park Lots" shall mean and refer to Lots 8-14, inclusive, all in 370 North, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska, and all combinations or subdivisions thereof.

1.6 Board or Board of Directors. "Board" or "Board of Directors" may be used interchangeably herein and shall mean and refer to the Board of Directors of the Association.

1.7 Bylaws. "Bylaws" shall mean the Bylaws of the Association, as they may from time to time be amended or restated.

1.8 City. "City" shall mean the City of Papillion, Nebraska.

1.9 Common Area or Common Areas. The terms "Common Area" or "Common Areas" shall mean and refer to those portions of the 370 North owned by the Association in fee, to include but

not to be limited to Outlots A through E, inclusive, or against which an easement has been imposed under this Declaration or another instrument in favor of the Association, and any other areas with respect to which the Association has assumed in writing, at its election, administrative or maintenance responsibilities, provided that Declarant reserves the right to administratively replat Outlots C and D so that Outlot C contains the area necessary for stormwater retention/detention; in the event this administrative replat is accomplished, Outlot C shall then be conveyed to the Association and Outlot D shall be retained and/or transferred by the Declarant. The initial Common Area is depicted on the Site Plan attached hereto as Exhibit A and incorporated herein by this reference.

1.10 Declaration. "Declaration" shall mean this "Declaration of Covenants, Conditions, Restrictions and Easements for 370 North, as it may be amended or supplemented from time to time.

1.11 Exempt Property. "Exempt Property" shall mean (i) all Common Area owned in fee by the Association, and (ii) all land and improvements owned by or dedicated to and accepted by the City of Papillion, Nebraska or other governmental subdivision of the State of Nebraska for so long as the City or other public or governmental authority is the owner of beneficiary thereof, as shown on the Plat. In no event shall any Lot be considered as Exempt Property. Exempt Property shall be exempt from Assessments and from all rights and obligations of membership in the Association, but shall not be exempt from all other covenants, restrictions and easements contained herein, including but not limited to all use and development restrictions.

1.12 Improvements. "Improvements" shall mean all land preparation and excavation, buildings, outbuildings, structures, underground installations, slope and grade alterations, lighting, roads, walkways, curbs, gutters, storm drains, drainageways, utilities, driveways, parking areas, fences, screening walls and barriers, retaining walls, stairs, decks, patio areas, windbreaks, plantings, planted trees and shrubs, sidewalks, poles, flags, signs, storage or display areas, loading areas, docks, water retention areas, fountains, water features, ponds, recreational facilities, sediment erosion control and detention (or Post Construction Stormwater Detention/Retention), and all other structures, land development or landscaping improvements of every type and kind.

1.13 Lessee. "Lessee" shall mean the owner of a leasehold interest (including any subtenancy) or license or other occupancy right in any Lot or a portion thereof.

1.14 Lot or Lots. "Lot" or "Lots" shall mean Lots 1 through 15, inclusive, 370 North, or any subsequent administrative subdivision, replat, revision or amendment thereof. If any Lot is hereafter lawfully subdivided by administrative lot split, lot line adjustment, lot combination or otherwise, the Owner of the effected Lot shall record an instrument, which shall serve as an amendment to this Declaration, with copies attached thereto of the Land Surveyor's Certificate or Replat (in the event of a replatting approved by the Papillion City Council) recorded in the office of the Sarpy County Register of Deeds.

1.15 Member. "Member" shall mean and refer to every person or entity who is a Member of the Association pursuant to Article IV.

1.16 Mixed Use Development Agreement. "Mixed Use Development Agreement" shall mean that certain Mixed Use Development Agreement entered into by and among the City of Papillion, Nebraska, 370 North, LLC, and Dowd Grain Company, Inc., dated March 21, 2017, as it may be amended or supplemented from time to time.

1.17 Mortgage. "Mortgage" means any instrument recorded or filed in the office of the Sarpy County Register of Deeds encumbering a Lot or any portion thereof as security for the performance of an obligation given in good faith and for valuable consideration which is not a fraudulent conveyance under Nebraska law, including, without limitation, a deed of trust, but does not mean any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code or an encumbrance affecting any leasehold interest in a Lot or Lots (such as leasehold mortgage).

1.18 Mortgagee. "Mortgagee" shall mean a mortgagee under a Mortgage or a beneficiary under a deed of trust.

1.19 Net Acre. For the purposes of establishing the number of votes for each Lot and the assessments for each Lot, the term "Net Acre" shall mean and refer to an acre of land, or a fraction thereof, which does not include any area dedicated as a right-of-way for public use, but shall include the area covered by the easements for other Common Areas and the easements shown on the Plat or otherwise of record against any Lot.

1.20 Owner. "Owner" shall mean the fee simple interest owner of any Lot or Lots, including, without limitation, one who is buying a Lot or Lots under a recorded contract, but excluding Mortgagees and others who hold such title merely as security. Owner shall not include a Lessee of a Lot or Lots, except where the fee simple interest owner has assigned its rights and obligations under the Declaration to a Lessee, and the Lessee has accepted such rights and obligations, pursuant to a written instrument signed by such fee simple interest owner and by such Lessee and recorded in the land records of Sarpy County, Nebraska, in which event the Lessee shall be an Owner for all purposes hereunder during the term of its lease.

1.21 Period of Declarant Control. The "Period of Declarant Control" shall commence with the recording of this Declaration and shall continue as long as Declarant owns at least eighty percent (80%) of the memberships as computed under Section 4.1 below, unless and until Declarant elects, in its discretion, to transfer, relinquish and/or surrender all of its rights and obligations in this Declaration in the manner set forth in Article XVI.

1.22 Person. "Person" shall mean and refer to a natural person, corporation, partnership, limited liability company, a trust or any other legal entity.

1.23 Plat. "Plat" shall mean the final subdivision plat for 370 North recorded on May 16, 2017as Instrument No. 2017-0910, in the official records of Sarpy County, Nebraska, and any amendments, administrative subdivisions, minor plats or other modifications thereof.

1.24 Prime Rate. "Prime Rate" shall mean the prime commercial lending rate announced by First National Bank of Omaha (or any successor) as its "prime rate", as the same may be changed from time to time. If for any reason any such institution shall at any time discontinue quoting or charging a prime rate in the manner set forth above, the Association shall, in the exercise of reasonable judgment, substitute another means of determining the annual lending rate of interest charged by major commercial banks in the Omaha metropolitan area on 90-day unsecured commercial loans to their most creditworthy borrowers, and the rate so determined shall thereafter be the Prime Rate as defined herein.

1.25 370 North. "370 North" shall mean and refer to all of the Property located within the subdivision known as 370 North.

ARTICLE II
GENERAL PROVISIONS

2.1 Establishment of Restrictions. Declarant hereby declares that the Property and any other property hereafter annexed hereunder is now held, and shall hereafter be held, transferred, sold, leased, conveyed and occupied subject to the restrictions herein set forth, each and all of which is and are for, and shall inure to, the benefit of and pass with each and every portion of the Property and shall apply to and bind the heirs, assignees and successors in interest of any Owner thereof.

2.2 Purpose of Restrictions. The purpose of these covenants and restrictions is to promote proper development and use of the Property, to protect the Owner of each Lot against any improper development and use of any Lot, to prevent the erection on the Property of structures built of improper design or materials, to encourage the erection of attractive improvements at appropriate locations, to prevent haphazard and inharmonious improvements, to enhance and protect the value, desirability and attractiveness of all the Property, and in general to provide for high quality improvements on the Property in accordance with a uniform plan of development.

ARTICLE III
THE ASSOCIATION

3.1 Formation of Association. The Association shall be a nonprofit corporation formed under the laws of the State of Nebraska, charged with the duties and empowered with the rights prescribed by law and set forth herein and in the Bylaws and in the Articles. Upon the incorporation of the Association by Declarant, the Association shall be charged with the duties and vested with the powers set forth in the Articles, the Bylaws and this Declaration.

3.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. The Board shall adopt Bylaws to govern the affairs of the Board and the Association. Except as otherwise provided herein or in the Articles or Bylaws, all acts of the Association shall be made by a majority of the members of the Board. The Board may also appoint various committees at its discretion and may contract with a Person to serve as a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager and any employees of the Association.

3.3 Powers. The Association shall have all the powers of a nonprofit corporation organized under the laws of the State of Nebraska concerning nonprofit corporations, subject only to such limitations on the exercise of such powers as are set forth in the Articles, Bylaws and this Declaration. It shall have the power to do any lawful acts that may be authorized, required, or permitted to be done by the Association under this Declaration (including any rights, duties and responsibilities assigned by Declarant from time to time pursuant to Article XVI), the Articles and the Bylaws, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the following:

3.3.1 commence and maintain actions or restrain and enjoin any actual or threatened breach of this Declaration and enforce by mandatory injunction or otherwise any of the provision of this Declaration;

3.3.2 pay taxes, special assessments and other liabilities which are or would become a lien on the Property;

3.3.3 levy assessments and perfect and enforce liens as hereinafter provided;

3.3.4 enter into contracts to perform the duties set forth herein, including, without limitation, the maintenance and repair of the Common Areas and enforce said contracts;

3.3.5 adopt, amend and repeal rules and regulations as its deems reasonable;

3.3.6 enter onto the Lots to enforce the provisions of this Declaration in accordance with the provisions of Article XIV;

3.3.7 enter into contracts with Owners or the City or such other governing authority regarding the maintenance of landscaped areas, parking areas or other areas;

3.3.8 elect to landscape and maintain any areas within or adjoining 370 North;

3.3.9 purchase such insurance as the Board deems necessary or appropriate; and

3.3.10 borrow funds to pay costs of operation, secured by Assessments revenues due for succeeding years or by assignment or pledge of rights against delinquent Owners; provided, however, that a majority of the outstanding votes of the Owners, and the vote of Declarant during the Period of Declarant Control, shall be required to borrow in excess of one year's budgeted expenses of the Association.

3.4 Rules and Regulations. The Board may adopt, amend and repeal rules concerning all aspects of the Association's rights, activities and duties. The rules and regulations may govern and restrict the use of any area in 370 North; provided, however, that the same shall not discriminate among Members except to reflect their different rights as provided herein, shall not be inconsistent with this Declaration, the Articles or the Bylaws, and shall not impair the use of any Lot that has been approved in accordance with the terms and conditions of this Declaration. Upon adoption, the rules and regulations shall have the same force and effect as if set forth herein. Any amendment to the rules and regulations must be approved by a majority of the outstanding votes of the Members.

3.5 Disclaimer of Liability. No member of the Board, or of any committee of the Board or Association, nor any member of the Architectural Committee nor any officer or employee of the Association or any manager, or the Declarant, or any agent employee or officer of Declarant, shall be personally liable to any Owner, or to any Lessee, contract purchaser, or other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such person or entity if such person or entity has, on the basis of such information as may possessed by such person, acted in good faith without willful or intentional misconduct.

3.6 Articles and Bylaws. Neither the Articles nor the Bylaws shall be amended or interpreted in a manner that is inconsistent with this Declaration.

ARTICLE IV
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

4.1 Memberships. Each Owner, including the Declarant, shall have a number of memberships equal to the total number of Net Acres owned by such Owner within its Lot (but specifically excluding any Exempt Property). For example, an Owner of 6.350 Net Acres shall have six and thirty five hundredths memberships, and the Owner of 1.852 Net Acres shall have one and eight hundred fifty two thousandths memberships and the Owner of 3.500 Net Acres shall have three and five tenths memberships. The number of Net Acres in each Lot (and the number of memberships attributable to each Lot) is set forth on Exhibit B attached hereto and incorporated herein by this reference. In the event of (i) a subdivision or re-subdivision of any Lot or portion thereof, or (ii) the exclusion of property or the annexation of any additional property hereunder, the revised number of Net Acres and the number of memberships attributable thereto will change from that set forth in Exhibit B, and Exhibit B may be amended accordingly by the Declarant and/or resolution of the Board of Directors.

4.2 Transfer of Memberships. An Owner shall, upon becoming the record Owner of a Lot, automatically become a Member of the Association and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Such membership shall be appurtenant to and pass with the ownership of such Lot. The membership shall not be transferred, pledged or alienated in any way, except as appurtenant to a transfer of ownership of a Lot. Except as provided for in Section 1.20, any attempt to transfer a membership except as appurtenant to the transfer of ownership of a Lot shall be void and shall not be reflected upon the Association's books and records.

4.3 Voting; Multiple Owners; Appointment of Agent. Each Owner shall have one vote for each membership owned as provided in Section 4.1 above. All voting pursuant to the terms of this Declaration shall be made in accordance with the provisions of this Section 4.3. Each vote must be cast as a single unit. If an Owner consists of more than one Person, then all persons constituting an Owner of such Lot shall, simultaneously with or immediately after their acquisition of such Lot, deliver to the Association a written instrument appointing one Person as the agent for all Persons constituting the Owner of such Lot, which agent shall thereupon receive notices of Assessment and other notices, demands, cast votes hereunder, and take any and all actions required or permitted to be taken by an Owner under the terms of this Declaration. An Owner may change its designated agent by written notice to the Association as set forth above, which change shall be effective only upon actual receipt of such notice by the Association. No change in the ownership of a Lot shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof. An Owner may assign all, but not less than all, of its voting rights to a Lessee, which shall be effective only upon actual receipt of such notice by the Association. If more than one Person casts or attempts to cast a vote for a particular Lot, all such votes shall be deemed void.

4.4 Initial Board of Directors. The initial Board of Directors of the Association shall consist of not less than three Directors and shall be appointed by the Declarant upon the incorporation of the Association. During the Period of Declarant Control, the Declarant shall have the sole right, in its absolute discretion, to appoint and remove the Directors of the Board; however, the Declarant may temporarily or permanently relinquish its right to appoint or remove some or all of the Directors at any time as provided in Article XVI. If the Declarant relinquishes its appointment rights, the Members (including the Declarant) shall then elect all Directors as provided in the Bylaws.

4.5 Subsequent Board of Directors. After the expiration of the Period of Declarant Control the Members (including the Declarant) shall elect the Directors as provided in the Bylaws, and the Bylaws may provide for staggered terms and lengths of terms for Directors chosen by the Association Members which are different than those initially set forth in this Declaration and may provide for a

greater number of Directors to be chosen by the Members than is set forth herein; provided, however, that in no event shall there be fewer than three Directors. The Board shall undertake all duties and responsibilities of the Association and the management and conduct of the affairs thereof, except as expressly reserved herein to a vote of the Members.

4.6 Administration and Compliance. If the Articles or Bylaws are in any way inconsistent with the Declaration, then this Declaration shall prevail and control. Each Owner and Lessee of a Lot shall comply with, and shall cause their respective invitees to comply with the provisions of this Declaration, the Articles and Bylaws, the Mixed Use Development Agreement, and rules of the Association, if any, as amended from time to time, and failure to so comply shall be grounds for (a) action for damages and/or injunctive relief, and (b) such remedies, by legal proceedings or otherwise, as are available by reason of this Declaration or by law, each of which remedies shall be cumulative and in additions to any other available remedy.

ARTICLE V
ARCHITECTURAL AND DEVELOPMENT CONTROL COMMITTEE

5.1 Committee Composition. An Architectural Committee shall be organized by the Declarant and shall consist of five persons.

5.2 Alternate Members. There shall also be two alternate members to be designated by the Declarant to act as a substitute for any member of the Committee in the event of his or her unavailability or disability.

5.3 Appointment. The members of the Committee shall be selected as follows:

5.3.1 So long as the Declarant owns at least ten percent (10%) of the memberships as computed under Section 4.1 herein above, the members of the Committee shall be as follows:

1. Two representatives appointed by the Declarant;
2. A representative appointed by the Owner(s) of Lots 8-11;
3. A representative appointed by the Owner(s) of Lots 8-11, until such time as Synergy Group (or its successors or assigns) owns in fee simple one of Lots 12, 13 or 14, at which time Synergy Group is to appoint said representative; and
4. An independent third party to be agreed upon between the representatives appointed by the Declarant and the representatives appointed by the Owner(s) of Lots 8-11.

The initial members of the Committee shall be as follows:

1. Duane J. Dowd (appointed by Declarant)
2. Matthew J. Dowd (appointed by Declarant)
3. S. Mickey Anderson (appointed by the Owner of Lots 8-11)
4. Tim Kerrigan (appointed by the Owner of Lots 8-11)
5. Jay Noddle (Agreed upon Third Party)

5.3.2 After Declarant no longer owns at least ten percent (10%) of the memberships as computed under Section 4.1 herein above, the Association through its Board shall appoint and remove members and alternate members of the Committee, enforce and implement the Mixed Use Development Agreement and perform Declarant's obligations under this Article.

5.4 Terms of Office. The term of all Committee members and alternates appointed by Declarant under Section 5.3.1 shall be set by Declarant. The term of all Committee members and alternates appointed by the Owner(s) of Lots 8-11 or appointed by Synergy Group (or its successor or assigns) under Section 5.3.1 shall be set by such Owner(s) and/or by Synergy Group, respectively. After Declarant no longer owns at least ten percent (10%) of the memberships as computed under Section 4.1 herein above the term of all Committee members and alternates appointed by the Board shall be one year. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members whose terms have expired may be reappointed or re-elected. A member of the Committee shall not be required to satisfy any particular qualifications for membership and may be a member of the Board, an officer of the Association, an officer or employee of Declarant or a Person who is not a member or Owner or Lessee or otherwise affiliated with 370 North.

5.5 Resignations; Vacancies. Any member of the Committee may, at any time, resign from the Committee upon written notice to Declarant, if appointed by Declarant, or to the Owner(s) of Lots 8-11 or to Synergy Group, if appointed by either so long as Declarant owns at least ten percent (10%) of the memberships as computed under Section 4.1 herein above. After Declarant no longer owns at least ten percent (10%) of the memberships as computed under Section 4.1 herein above , then any member of the Committee may, at any time, resign from the Committee upon written notice to the remaining Committee members and to the Board when the right to appoint any members is vested in the Board. So long as Declarant owns at least ten percent (10%) of the memberships as computed under Section 4.1 herein above, vacancies on the Committee of members appointed by Declarant, however caused, shall be filled by Declarant and vacancies on the Committee of members appointed by the Owner(s) of Lots 8-11 or by Synergy Group shall be filled by the Owner(s) of Lots 8-11 or to Synergy Group, as applicable. The independent Third Party is to be agreed upon by the members of the Committee. After Declarant no longer owns at least ten percent (10%) of the memberships as computed under Section 4.1 herein above , vacancies on the Committee of members appointed by the Association, however, caused, shall be filled by the Board.

5.6 Powers and Duties. The Architectural Committee shall have all of the powers and authority conferred upon it by this Declaration and the Articles and Bylaws, and shall have the right to hire and retain services of engineers or other consultants and professionals as they deem necessary to perform the duties of the Committee, and shall have the authority to enforce and carry out all provisions contained the Mixed Use Development Agreement, including but not limited to any design criteria for improvements and/or landscaping constructed on the Lots and any Common Areas. It shall be the duty of the Committee to perform the functions required of it by this Declaration; to consider and act upon all Applications and the plans, specifications and other documents submitted to it pursuant to the terms hereof; and to perform all other duties delegated to and imposed upon it by this Declaration. The Board shall determine the compensation, if any, to be paid to the members of the Committee.

5.7 Meetings. The Committee shall meet as often as it, in its sole discretion, shall deem necessary to properly perform its duties hereunder. The vote or written consent of any two members or designated alternates shall constitute an act by the Committee. The Committee shall keep written records of all actions taken by it.

5.8 Development Guidelines. In addition to the architectural and development standards set forth herein, the Committee shall, adhere to and enforce all design criteria contained in the Mixed Use Development Agreement.

ARTICLE VI
RESERVATION OF EASEMENTS

6.1 Easements for Common Areas. Declarant hereby reserves to itself, its successors and assigns, and to the Association, and their respective employees, contractors and other authorized designees, an easement over, upon, under and across all Common Areas, together with a nonexclusive easement for ingress and egress over and upon the Lots and all other areas within 370 North, for the following purposes: installation, repair, reconstruction, restoration, replacement, landscaping and maintenance of the Common Areas (including without limitation entryway signs, walls, utilities, landscaping and other features, and all landscaping corridors), and for other maintenance, rights and duties permitted to or required of the Declarant or the Association in this Declaration.

6.2 Reservation of Utility Easements. Declarant hereby reserves for its own use and benefit, and for the use and benefit of each Owner, easements for the location, installation and maintenance of utilities of convenience or necessity as may be requested or required by Declarant, or by an Owner with the prior written approval of Declarant during the Period of Declarant Control, or the Board thereafter. However, any such easement cannot be imposed against any land on which a building has been constructed or has been approved for construction pursuant to Article VII by the Committee. Upon approval of an easement area, the benefitted Owner shall have the right at all reasonable times to enter upon the land covered by said easements and to install, maintain, repair, replace and service utilities thereon for the use and benefit of the benefitted Lot or Lots; provided, however, that any such Owner shall comply with any requirements imposed by Declarant or the Board as the case may be, as a condition to its approval, and shall promptly restore said land and any Improvements, at said Owner's expense, in a good and workmanlike manner and free of liens to substantially the same condition as existed prior to such entry. The Owner of any Lot shall have the right to assign the benefit and use of any such easement to any electric company, gas company, telephone company, flood control district, or other utility company for the purpose of installing, operating and maintaining utilities and enforcing the current easement rights. For the purpose hereof, "utilities" or "utility" shall include electricity, gas mains and lines, water distribution lines, storm water sewers, sanitary sewers, cable television lines and cables, telephone cables and lines, and other similar or related facilities commonly regarded as utilities. No conveyance by Declarant of any Lot, or any interest therein, shall be deemed to be or construed as a conveyance or release of the easements herein reserved. Notwithstanding the foregoing, Declarant reserves the right unto itself, by express language to such effect from time to time in any deed or other recorded instrument, to release any Lot or portions thereof from any of the above reserved easements. No utility easement shall unreasonably interfere with the operation and use of any Lot; (ii) no permanent building, structures, tree or other improvements (excluding improvements typically found in common areas of business parks, such as surface parking and drive-lanes) shall be placed over or encroach upon such installations; (iii) relocation of such installations shall be allowed where the work will be at the requesting Owner's sole cost and expense, utility services are not interrupted, and no relocation affecting any Lot or utility services thereto shall be performed without the consent of the Owner of such affected Lot; (iv) once commenced, any construction shall be diligently prosecuted to completion to minimize any interference with the business at a parcel; (v) except in an emergency, the right of entry upon a Lot of another Owner or to prosecute work if the same interferes with utility or other easements, shall be conducted in a manner to minimize interference with the business at any such Lot; (vi) no monetary obligation shall be imposed

upon the other Owner, and the Owner undertaking such work shall with due diligence repair at its sole cost any damage caused by such work and restore the affected portion of the Lot; and (vii) the Owner undertaking such work shall pay all costs associated therewith and shall indemnify the other Owners from all damages attributable to such work.

ARTICLE VII
ARCHITECTURAL CONTROL AND REGULATION OF IMPROVEMENTS

7.1 Approval of Plans.

7.1.1 Approval Required. Except for Improvements constructed and installed by Declarant, no Improvement shall be constructed, erected, placed, expanded, added to, maintained or permitted to remain in 370 North, and no alterations or other work which alters the exterior appearance of any Lot or Improvement, until an Application is submitted to and approved in writing by the Committee. Each Application (an "Application") shall include a statement of proposed use of the Improvements, plans and specifications including without limitation site plans, floor plans, exterior elevations, grading plans, drainage and water retention plans, materials, colors, landscaping, irrigation plans, signage, exterior lighting and any other information needed to accurately describe the exterior appearance or functional characteristics of said Improvements, and any other documentation requested by the Committee. Three sets of the Application shall be filed with the Committee. Improvements approved in writing by Declarant prior to the recording of this Declaration shall be deemed to have been approved by the Committee.

7.1.2 Filing Fee. As a means of defraying its expenses, the Committee may institute and require a reasonable filing fee to accompany the Application for each building or other construction project submitted. If resubmission of an Application is necessary, the Committee may require an additional filing fee.

7.1.3 Governmental Regulations. All Applications for Improvements submitted to the Committee hereunder shall comply with any and all laws, rules, regulations or ordinances applicable to 370 North which have been promulgated by any local, state, federal or other governmental agency or authority.

7.1.4 Basis for Approval. The Committee shall have the right to disapprove the Application submitted to it, whether a preliminary or final submittal, if any part of it is:

7.1.4.1 not in accordance with this Declaration or the Mixed Use Development Agreement or the Plat;

7.1.4.2 incomplete;

7.1.4.3 not in compliance with relevant approval requirements or regulations of local, state, federal or other governmental agencies;

7.1.4.4 deemed by the Committee to be contrary to the best interests of 370 North or the Owners; or

7.1.4.5 incompatible with the architectural style, quality or aesthetics of existing Improvements or development plans for proposed Improvements, based in part on the criteria set forth in subsections (i) through (ix) below in this Subsection 7.1.4.

The Committee shall not unreasonably withhold its approval of an Application submitted to it. In this connection, the Committee may also base its approval or disapproval on criteria which may include, but are not limited to, the following: (i) the adequacy of the building locations and dimensions on the Lot; (ii) the adequacy of the parking to be provided; (iii) conformity and harmony of external design with neighboring structures; (iv) effect of location and use of proposed Improvements on neighboring Lots and the types of operations and uses thereof; (v) relation of topography, grade and finish ground elevation of the Lot being improved to that of neighboring Lots; (vi) proper facing of main elevations with respect to nearby streets; (vii) adequacy of screening of trash facilities, storage areas, parking areas for service vehicles, mechanical and heating and air-conditioning facilities and rooftop installations; (viii) adequacy of landscaping; and (ix) conformity of the Application to the purpose and general plan and intent of this Declaration. Any decision of the Committee made after Declarant is no longer entitled to appoint the members of the Committee, may be appealed to the Board. The decision of the Board shall be final. As long as Declarant is appointing the members of the Committee, any decision of the Committee shall be final.

7.1.5 Time for Decision. The Committee shall approve or disapprove each Application, whether a preliminary or final submittal, within thirty (30) days from the receipt thereof. If the Committee fails either to approve or disapprove the Application within said 30-day period; then it shall be irrevocably deemed that the Committee has approved the Application. At least one set of the Application shall, with the approval or disapproval endorsed thereon, be returned to the submitting person and one set shall be retained by the Committee for its permanent files. Notwithstanding Section 7.1.1, no application or Notice shall be deemed filed with the Committee until it is actually received by at least one Committee member by certified mail (return receipt requested).

7.1.6 Time for Commencing. Upon receipt of approval from the Committee pursuant to this Section and upon receipt of approvals from the City, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all approved construction, refinishing, alterations, excavations and landscaping. In all cases, work shall be commenced within twelve (12) months of the date of such approval, or the approval given or deemed given pursuant to this Article shall be deemed revoked unless the Committee, upon request made prior to the expiration of said 12-month period, extends the time for commencing work by written notice to the Owner, which may be withheld or conditioned in the Committee's discretion.

7.1.7 Completion of Work. All construction, refinishing, alteration or excavation of any Improvements approved under this Section 7.1 shall be undertaken and pursued diligently to completion, but in any event shall be completed within two years after the date of approval by the Committee. However, the time for completion shall be extended for any period such completion is rendered impossible or would result in great hardship due to strikes, fires, national emergencies, natural calamities or other similar supervening forces beyond the control of the Owner or its Lessees. Failure to comply with this subsection 7.1.7 shall constitute a breach of this Declaration and subject the defaulting parry or parties to all enforcement procedures set forth herein or any other remedies provided by law or in equity.

7.1.8 Disclaimer of Liability. Neither Declarant, the Committee nor any member thereof, nor any agents, officers or employees of Declarant or of the Committee, shall be liable in any way for any damage, loss or prejudice suffered or claimed by an Owner, Lessee or any other Person who submits an Application; except to the extent arising from the bad faith acts or intentional misconduct thereof. Any person or entity who submits an Application shall forever defend, indemnify and hold the Declarant, the Committee, the members thereof, and the employees, officers and agents of each, harmless from all damage, loss or liability (including reasonable attorneys' fees) suffered or claimed by any third party on account of (i) any defects in any plans, drawings, specifications or other documentation submitted in any Application, or revised or approved in accordance with the foregoing provisions, or for any structural or other defects in any work done according to such plans, drawings, specifications or other documentation; (ii) the approval or disapproval of any Application, whether or not defective; (iii) the construction or performance of any work, whether or not pursuant to an approved Application; or (iv) the development of any Lot within 370 North, except to the extent arising from the bad faith acts or intentional misconduct of the Declarant, the Committee or any member thereof, any agents, officers or employees of Declarant or of the Committee, or the violation of the terms of this Declaration.

7.1.9 No Representations or Warranties. In no event shall an approval by the Committee of any Application, or any written or oral statements made by the Board or any officer or employee of the Association, Declarant or any employee or officer or agent of Declarant, or the Committee or any member, agent or employee thereof, be deemed to constitute in any way any representations or warranties of any kind, express or implied, with regard to the Application and any plans, drawings, specifications or other documentation constituting a part of the Application, including without limitation representations or warranties regarding compliance with zoning, subdivision and land use laws, or compliance with any other applicable codes, regulations and laws, or with regard to fitness for a particular purpose.

7.1.10 Presumption of Compliance: Estoppel Certificate. The foregoing notwithstanding, after the expiration of one (1) year from the date the Committee receives from an Owner either (i) a copy of the certificate of occupancy issued by the applicable governmental authority for any Improvement, or (ii) after an Improvement has been completed by an Owner and said Owner has delivered a valid notice of completion with respect to such Improvement to the Committee, then said Improvement shall, in favor of purchasers and encumbrances in good faith and for value, be deemed to be in compliance with the provisions of this Article VII unless a notice of non-compliance or non-completion with respect thereto has been executed by Declarant or the Committee and recorded in the office of the Register of Deeds of Sarpy County, Nebraska or unless legal proceedings shall have been instituted to enforce compliance or completion with respect to said Improvement.

7.1.11 Approval Cannot be Assigned. Any approvals given pursuant to this Article VII shall be personal to the Owner submitting the Application and cannot be assigned or transferred by such Owner without the prior written consent of the Board, which shall not be unreasonably withheld. Without such consent, any subsequent Owner of a Lot for which a previous Owner has obtained approval of an Application shall submit a new Application pursuant to this Section 7.1 for review and approval as though no prior approvals had been received from the Committee with respect to such Lot.

7.2 Variances. The Architectural Committee is hereby authorized and empowered to grant variances for Improvements within 370 North prohibited or regulated by the Mixed Use Development Agreement (if such requested variance is approved by the City) or this Declaration and further to grant reasonable requests for relief from the provisions of this Declaration, or any portion hereof, in order to overcome practical difficulties and to prevent unnecessary hardship in the application of the provisions

contained herein. Notwithstanding the foregoing, the Committee shall not grant such a variance to any Owner unless:

7.2.1 such Owner has obtained all necessary governmental approvals,

7.2.2 the construction of Improvements or the uses which are called for under the request for the variance shall be consistent in design, character, appearance and quality of construction with the other Improvements and uses in 370 North,

7.2.3 the variances do not materially injure, in the judgment of the Committee, any of the Lots or Improvements in 370 North, and

7.2.4 the construction of Improvements and/or the uses called for under the request for variance are otherwise subject to and conform with all applicable laws, ordinances. rules and regulations, including, but not limited to, zoning regulations of any governmental agency or political entity having jurisdiction over 370 North.

No variance granted pursuant to the authority granted herein shall constitute a waiver of any provision of this Declaration as applied to any other Person or portion of the Property, and the grant of a variance shall not obligate the Committee to grant other variances. In addition to the variance powers provided herein, the Committee shall be empowered to issue from time to time reasonable interpretations of the intent of the provisions of this Declaration or the Mixed Use Development Agreement, which interpretations shall not constitute variances from the provisions of this Declaration, but shall be designed to further the implementation of this Declaration in a manner consistent with its provisions.

7.3 Landscaping – Common Areas. Declarant, if during the Declarant Control Period, or the Association if after the Declarant Control Period, shall install landscaping on all or any portion of the Common Areas, including any adjacent public right-of-way, as necessary to provide for compatible and continuous landscape development of 370 North, and as required by the Mixed Use Development Agreement. All landscaping shall be installed pursuant to the provisions of the Mixed Use Development Agreement, including but not limited to the provisions of the Architectural and Site Design Guidelines attached to the Mixed Use Development Agreement as Exhibit "C", the Overall Landscape Plan attached thereto as Exhibit "E" and the Entry and Lot Specific Landscape Requirements attached thereto as Exhibit "F, all of which are incorporated herein by reference.

7.4 Maintenance.

7.4.1 General. Notwithstanding the existence of any insurance covering an Owner, the Association, or both, against loss, damage and destruction, the Association and each Owner shall have the affirmative obligation for maintenance, repair and restoration as set forth in this Article.

7.4.2 Maintenance of Undeveloped Lots. Except as otherwise provided herein, all undeveloped portions of each Lot shall be maintained at all times by the Owner in a well-maintained condition, free of unsightly or unattractive weeds or other growth or the accumulation of rubbish, junk, and debris thereon. Once construction is commenced and Improvements are completed, then the respective provisions of Subsections 7.4.3 and 7.4.4 shall apply with respect to construction activities and completed Improvements, as the case may be.

7.4.3 Maintenance During Construction. All construction activities of any kind on any Lot shall be governed by the provisions of this Subsection and any corresponding provisions in the Mixed Use Development Agreement. All construction activities shall be carried out in an orderly and timely manner and all partially completed Improvements shall be kept in an orderly condition during construction. Any construction equipment and building materials stored on a Lot may be kept only in areas approved by the Committee, and the Committee may also require screening of such storage areas. All portable toilets shall be located at least fifty (50) feet from the boundary lines of the Lot and shall be emptied as often as necessary to ensure the absence of odors. Dust from all construction sites shall be controlled at all times. If trucks entering and leaving the Lot deposit mud or dust on any streets or walkways, the Owner of the Lot on which or for whose benefit the construction is being performed shall be responsible for maintaining the streets (or causing the same to be maintained) in a clean condition on a daily basis, as determined by the Committee. If the provisions hereof conflict with the provisions of the Mixed Use Development Agreement with respect to construction activities, the more restrictive provision shall control.

7.4.4 Maintenance of Completed Improvements. Each Owner shall maintain or cause to be maintained, at its expense, its Lot and all Improvements completed thereon (except those Common Area Improvements to be maintained by the Association pursuant to Section 7.5) in a well-maintained, clean, neat and attractive condition at all times and shall comply with all governmental health, fire, building and safety ordinances, codes, regulations and requirements applicable thereto. Such maintenance requirements shall include, without limitation, the following:

7.4.4.1 maintaining paved surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally approved by the Committee and then installed, or such substitute as shall in all respects be equal in quality, use and durability to that originally approved and installed;

7.4.4.2 removing all paper, mud and sand, snow and ice, trash, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

7.4.4.3 placing, keeping in repair and replacing any necessary or appropriate directional signs, markers and lines;

7.4.4.4 operating, keeping in repair and replacing, where necessary, such artificial lighting facilities (including lighted Signs) as shall be required or permitted during the Application approval process;

7.4.4.5 maintaining all signs and all perimeter walls and exterior building walls (including but not limited to all retaining walls) and other exterior surfaces in a good condition and state of repair in compliance with the approved Application;

7.4.4.6 except as otherwise provided herein, maintaining, mowing, weeding, thinning, trimming, watering, fertilizing, cultivating and pruning all landscaped areas to maintain the same in a neat, well-groomed condition, and replacing as necessary shrubs and other landscaping on a regular basis; dead or dying plants shall be removed and replaced within thirty days; all plants and trees are to be irrigated as often as necessary to maintain healthy growing conditions; Owners shall also adjust tree guys, stakes, etc., on a regular basis to maintain a neat appearance and to prevent damage to trees; and

7.4.4.7 promptly removing all graffiti or other similar markings from all perimeter walls, exterior building walls and other exterior surfaces, paved areas and other portions of any Improvements.

7.4.5 Alteration and Repair of Common Areas. If any act, omission or condition caused by any Owner or its Lessees, or their agents, employees, customers or invitees, results in the destruction or removal of any landscape or other improvements within Common Areas maintained by the Association hereunder, such Owner shall repair and replace, in a good and workmanlike manner, free of liens and to as good a condition as the condition of such Improvements prior to such destruction or removal, all such Improvements in such Common Areas. Any landscape Improvements shall be promptly replaced with landscaping and other materials of like size and kind as approved by the Committee.

7.4.6 Lateral Support. Each Owner shall maintain its Lot with sufficient landscaping and plantings to prevent any erosion upon its Lot that will result in damage to that Lot or to any adjacent Lot.

7.5 The Association's Obligation for Common Areas. The Association shall maintain the Common Areas, including Improvements within the Common Areas thereon and all landscaping within the Common Areas, in good condition and repair, and replace the same as may be necessary from time to time, subject to the following:

7.5.1 The Board shall maintain a reasonably high standard in providing for the repair, management, maintenance and replacement of the Common Areas and other properties maintained by the Association (including without limitation removal of graffiti and repair of other damage caused by vandalism); however, the Board shall be the sole judge as to the appropriate maintenance thereof.

7.5.2 All landscaping shall be maintained pursuant to the provisions of the Mixed Use Development Agreement, including but not limited to the provisions of the Architectural and Site Design Guidelines attached to the Mixed Use Development Agreement as Exhibit "C".

7.5.3 The cost of maintenance, repair and replacement for which the Association is responsible under this Section shall be assessed as part of the regular assessments in accordance with the provisions of Section 10.5 hereof; provided, however, that the cost of any maintenance, repair or replacement of the Common Areas for which an Owner is responsible pursuant to Section 7.4.5 shall be reimbursed by such Owner as a reimbursement assessment as provided in Section 7.4.5 and in accordance with Sections 14.1.1 and 10.7 hereof.

The obligation of the Association to maintain landscaping within the above portions of the Common Areas shall not be modified or deleted from this Declaration without the prior written approval of the City.

7.6 Excavation. No excavation shall be permitted except in connection with construction of an Improvement, and upon completion thereof, exposed openings shall be backfilled, and disturbed ground shall be graded and leveled. No Owner shall perform any excavation upon its Lot that will result in damage to any adjacent Lot.

7.7 Damage and Destruction Affecting Lots - Duty to Rebuild. If all or any portion of a Lot or any Improvement on any such Lot is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Lot to do the following:

7.7.1 rebuild, repair or reconstruct the Lot and the Improvements thereon in a manner which will restore them to a condition and appearance approved by the board and the City;

7.7.2 raze and remove the damaged Improvements, restoring the Lot substantially to its original unimproved condition; or

7.7.3 any combination of the above in a manner satisfactory to the Board.

The Owner of any Lot on which damaged Improvements are located shall be obligated to proceed with all due diligence hereunder, and such Owner shall cause cleanup and removal and/or reconstruction to commence within three (3) months after the damage occurs and to be completed within twelve (12) months after damage occurs, unless prevented by causes beyond its reasonable control, as determined by the Board.

7.8 Insurance Obligation of Owners. Each Owner shall purchase such liability, fire or other casualty insurance as such Owner desires or as may be required by any mortgagee of a Mortgage encumbering its Lot. The Association shall not be obligated to insure any Lot or any portion thereof or any Improvements thereon.

7.9 Leases. Any agreement for the lease of all or any portion of a Lot must be in writing and must provide by its terms that it is subject to this Declaration, the rules of the Association, the Mixed Use Development Agreement, the Articles and the Bylaws, and that any violation of the Declaration or other documents listed above shall be a default under the lease. An Owner shall notify the Association regarding the existence of all leases. However, the Owner of the Lot shall remain liable for any violations of this Declaration, the rules of the Association, the Mixed Use Development Agreement, the Articles and the Bylaws. All notices hereunder shall be sent to the Owner, and it shall be such Owner's obligation to provide notices to Lessee, if applicable.

ARTICLE VIII
DEVELOPMENT STANDARDS

8.1 Parking. No on-street parking of any nature whatsoever will be permitted on those portions of 150th Street, Crest Road, and Frontier Road bordering or within 370 North regardless of whether parking plans have been approved by the Committee, the City, and/or Sarpy County. Paved on-site parking as required herein or in the Mixed Use Development Agreement and by any applicable rules

or regulations of any governmental authority shall be provided by each Owner on its Lot to accommodate all parking needs for employees, visitors, Lessees, invitees and company vehicles for the use and occupancy of the Lot. Notwithstanding prior approvals of parking layouts by the Committee, the Declarant, the City, or any other governmental jurisdiction or authority, if parking requirements increase on any Lot as a result of any change in use or number of employees or invitees, additional on-site parking shall be provided on said Lot to satisfy the intent of this Section and eliminate the need for any on-street parking, which will be absolutely prohibited.

8.2 Refuse Collection Areas. All refuse collection areas in 370 North shall be located in areas approved by the Committee. No refuse collection area shall be permitted between any street and the respective building setback line. All exterior refuse collection areas in 370 North shall be screened by building walls or screen walls as required by the Committee, and all dumpster enclosures shall also meet the requirements of the City. All dumpsters and containers shall remain within said screening walls. The location of all such enclosures shall allow for adequate ingress and egress by collection trucks within the boundaries of the Lot.

8.3 Exterior Storage Areas and Service Yards. No storage shall be permitted between any public street and the respective building setback line of any building in 370 North. Storage areas shall be located in the least visible area of each Lot. Subject to the provisions concerning motor vehicles immediately herein below, all outdoor storage areas and service yards in 370 North shall be visually screened from streets and adjoining property within 370 North by a continuous screen wall as required by the Committee. No work in progress, stored merchandise, inventory or racks shall extend above the height of such screen wall.

All motor vehicles (other than passenger vehicles and any vehicles offered for sale or lease on a Lot as permitted by this Declaration) and all equipment operated on Lots in 370 North shall be stored in a screened outdoor storage area approved by the Committee, except that the Committee may permit exceptions to the foregoing restriction during the construction, maintenance and repair of Improvements on a Lot. All manufacturing and vehicle service, repair, cleaning and maintenance activities in 370 North shall be conducted within a building, except that ancillary activities associated with business operations may be located outside in a service yard.

8.4 Equipment. All roof-mounted equipment and ventilators projecting above the roof parapet of any building in 370 North shall be screened by an enclosure designed and painted to be compatible with the building. No wall-mounted equipment shall be permitted on the front or sides of any such building. Any ground-mounted building, electrical or mechanical equipment will be allowed and only in side or rear yards, and the same must be screened from view by walls or dense landscaping. No above-ground storage tanks shall be allowed on any of the Lots without the prior written consent of the Committee.

8.5 Signs. All Signs shall comply with the zoning code of the City, State of Nebraska, and federal authorities and must be approved prior to installation by the Committee; provided, however, all signs shall be monument signs, or building façade signs. No roof signs shall be permitted, and all approved signage shall consist of predominantly individual letter signage, logos and electronic signs. Except as approved by the Committee, no Signs of any kind shall be allowed. Temporary Signs for marketing, development or construction signs may be placed on the actual property so advertised on or which development work is underway, subject to the Mixed Use Development Agreement and prior approval by the Committee. All permanent Sign concepts and designs shall be approved by the Committee prior to fabrication and installation. All Signs in 370 North shall be located within sign areas

indicated on plans for Improvements approved by the Committee. All Signs shall be designed as an integral part of the building to which it relates and shall be compatible with the exterior architecture of such building with regard to location, scale, color and lettering.

8.6 Utility Lines and Antennas. Except as may be approved by the Committee, no utility lines or wires or other devices in 370 North for the communication or transmission of electric current, gas, power or signals (including telephone, television, microwave or radio signals), shall be constructed, placed, or maintained anywhere in or upon any Lot other than within buildings or structures unless the same shall be contained in conduits or cables constructed, placed, or maintained underground or concealed in or under buildings or other structures in a manner approved by the Committee. Antenna dishes or other services for the transmission or reception of telephone, television, microwaves, or radio signals may be placed on any building or other Improvement on any Lot subject to the Mixed Use Development Agreement and prior written approval of the Committee as to location, size, and screening. Nothing contained herein shall be deemed to forbid the erection or use of temporary power or telephone facilities incidental to the construction or repair of Improvements on any Lot, subject to approval of the Committee.

8.7 Landscaping. In addition to the requirements of Section 7.3 above, all landscape areas required and approved for a Lot shall be landscaped prior to the opening of the Owner's business, weather permitting. If an Owner fails to install landscaping as required hereunder, the Board may enter upon the Lot and install such landscaping as permitted by Section 14.1.1. Every Lot upon which Improvements are constructed shall be landscaped in accordance with the Application submitted to and approved by the Committee pursuant to Section 7.1 hereof. An automatic irrigation system complying with the standards set forth in the Mixed Use Development Agreement shall be installed and maintained in good repair in all landscaped areas. These provisions are intended to promote compatible and continuous landscape development designed to enhance and unify 370 North.

8.8 Restriction on Further Subdivision; Property Restrictions and Rezoning.

8.8.1 No Further Subdivision Without Approval. Subject to the provisions of Section 15.3 herein, no Lot shall be subdivided or separated into smaller Lots by any Owner by deed, ground lease or otherwise, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner by deed, ground lease or otherwise, without the prior written approval of Declarant during the Period of Declarant's Control, and thereafter by the Architectural Committee. This provision shall not apply to transfers of an undivided ownership interest in the whole of any Lot.

8.8.2 Plats; Site Plans and Subsidiary Declarations to be Approved. Subject to the provisions of Section 15.3 herein, no subdivision plat or further covenants, conditions, restrictions or easements shall be recorded by any Owner or other person against any property in 370 North unless the provisions thereof (including any site plan required by the City) have first been approved in writing by the Declarant during the Period of Declarant's Control, and thereafter by the Architectural Committee. All conditions, covenants, restrictions and easements so approved shall constitute Subsidiary Declarations. Any other plat or other covenants, conditions, restrictions or easements recorded, or any site plan filed, without such approval being evidenced thereon shall be null and void.

8.8.3 Rezoning, Variances, and Use Permits to be Approved. Subject to the provisions of Section 15.3 herein, no application for rezoning of any area in 370 North, and no applications for variances or use permits, shall be filed with any governmental authority unless the proposed use of the property has been approved by the Declarant during the Period of Declarant's Control and thereafter by the Architectural Committee, and unless the proposed use otherwise complies with this Declaration and the general plan of development of 370 North.

8.8.4 Declarant Exempt. Any portion of the Property owned by Declarant is exempt from the restrictions on subdividing, platting, rezoning, the recording of Subsidiary Declarations and other restrictions set forth in this Section 8.8.

8.9 Retention and Drainage. This Section shall govern all Lots. All drainage plans for such Lots shall be reviewed and approved by the Committee, and no change in the drainage pattern or Improvements may be made without the prior written approval of the Committee. An Owner shall not at any time fill, block or obstruct any drainage facilities or drainage structures on its Lot and each Owner shall repair and maintain all drainage facilities and drainage structures located on its Lot. No structure of any kind shall be constructed and no vegetation shall be planted or allowed to grow within any drainage areas which may impede the flow of water under, over or through said areas.

8.10 Height Limitation. No Improvements (excluding approved architectural features which do not materially or adversely affect the visibility of any Lot, as determined by the Committee) shall be constructed on Lots 1-7, 16 and 17, 370 North, with a height of more than twenty-five (25) feet above the surrounding grade elevation without the express written consent of the Owners of Lots 8-11, 370 North, and the consent of Declarant (during the Period of Declarant Control) or the Committee (after the Period of Declarant Control).

8.11 Lot 15 Visibility Corridor. Attached hereto as Exhibit "C" and incorporated herein by this reference is a drawing establishing a visibility corridor across the eastern portion of Lot 15, 370 North. This Visibility Corridor and the "Lot 15 Visibility Corridor Requirements" set forth on Exhibit "C" shall run with the land and shall be binding on the Owners of Lot 15 as presently configured or as it may be hereafter replatted. The Lot 15 Visibility Corridor and the Lot 15 Visibility Corridor Requirements may not be changed or amended until September 30, 2019, and thereafter may only be changed or amended by the ACC, provided that if after such date, Synergy Group, LLC, or any related successor entity, owns any of Lots 12-14, 370 North, any such change or amendment shall require the written consent of Synergy Group, LLC or a related successor entity, as the case may be.

8.12 Mixed Use Development Agreement. Each Owner and Lot shall comply with all architectural and development standards adopted and set forth in the Mixed Use Development Agreement. In the event of a conflict between this Declaration and the Mixed Use Development Agreement, the more restrictive provision shall control.

8.13 Effect of Other Limitations. Any limitations on Improvements in 370 North contained herein or in the Mixed Use Development Agreement are supplemental to any controls established by zoning, subdivision, building, health, fire or other jurisdictional codes and regulations, and the more restrictive controls shall apply in each instance.

ARTICLE IX
USE RESTRICTIONS

9.1 Permitted Uses - (Lots 8 through 14, inclusive, Auto Park Lots). The following uses are permitted on Lots 8 through 14, inclusive (the "Auto Park Lots"), and each Auto Park Lot shall be used only for such uses, subject to all other provisions of this Declaration; provided, however, the Declarant, during the Period of Declarant Control or the Association thereafter shall have the right to approve such other uses that are allowed by the City under the terms of the Mixed Used Development Agreement:

9.1.1 New and used auto, new and used passenger truck and/or new and used recreational vehicle sales and services (dealerships and/or independents), provided that (i) automobile and/or passenger truck leasing shall be permitted, (ii) no used vehicle sales or leasing shall be permitted within Auto Park Lots except in conjunction with a new vehicle franchise or dealership, unless such used vehicle sales or leasing have been specifically permitted by Declarant in a recorded document which refers to this Section, and such sales and leasing activities shall be conducted in compliance with the covenants, conditions and restrictions set forth in such document, provided that, the Auto Park Lots may be used as a "Carmax" type dealership, or other similarly situated and nationally recognized dealership that specialized in the sale and service of used auto and passenger truck vehicles; and (iii) no recreational vehicle (new or used) sales and/or leasing shall be permitted except in conjunction with a new automobile or passenger truck franchise or dealership, unless such recreational vehicle sales and/or leasing have been otherwise specifically permitted by the Declarant in a recorded document which refers to this Section, but such sales and leasing activities shall be conducted in compliance with the covenants, conditions and restrictions set forth in such document.

9.1.2 Repair, maintenance and servicing of motor vehicles or related appliances or component parts for motor vehicles in connection with a new vehicle sales franchise or dealership.

9.1.3 Vehicle storage areas, including new and used vehicles, operated in connection with a new vehicle sales franchise or dealership.

9.1.4 Retail and wholesale vehicle parts and supplies, but only if associated with a new vehicle sales franchise or dealership.

9.1.5 Vehicle financing services and the sale of insurance products in connection with a new vehicle sales franchise or dealership.

9.2 Permitted Uses - All Lots Except Auto Park Lots; Certain Auto Park Uses Prohibited. Except as otherwise provided herein or in the Mixed Use Development Agreement, and subject to all other provisions of this Declaration and to all other restrictions and limitations in any Subsidiary Declaration or other recorded restrictions, or in any ground lease or similar instrument executed by Declarant and any Owner, all uses permitted pursuant to the Mixed-Use Development Agreement, as amended, by and between Declarant and City are allowed on all Lots in 370 North which are not Auto Park Lots, except that the following uses are prohibited on all Lots in 370 North which are not Auto Park Lots:

9.2.1 New and used auto, new and used passenger truck, new and used recreational vehicle, new and used semi-truck or other large commercial truck sales and services (dealerships and/or independents).

9.2.2 Repair, maintenance and servicing of motor vehicles or related appliances or component parts for motor vehicles.

9.2.3 Vehicle storage areas, including new and used vehicles.

9.2.4 Retail and wholesale vehicle parts and supplies, provided that nothing herein shall prevent the sale, installation, or service of such products as an incidental part of any business, such as a convenience store selling motor oil and/or similar vehicle accessories and supplies, a convenience store operating a car wash, a "Batteries Plus" type retail store selling vehicle batteries, or a "Stereo West" type retail store selling and installing vehicle audio systems.

9.2.5 Nothing herein shall prevent new and used motorcycle sales, related services and related motorcycle storage on any Lot in 370 North, provided however that any used motorcycle sales, any motorcycle storage and any related services must be operated in conjunction with a new motorcycle sales franchise or dealership.

9.3 Prohibited Uses - All Lots. Except as permitted in Sections 9.1 and 9.2 operations and uses which will not be permitted on any Lot include, without limitation, the following:

9.3.1 Agriculture; Animals. Agricultural uses, including animal husbandry, commercial breeding businesses or feed lots. No animal, livestock, poultry or fowl of any kind shall be maintained on or in any Lot, except for: (a) guard dogs kept within buildings or fenced areas on a Lot; (b) reasonable numbers of generally recognized domestic pets maintained within a fully-enclosed building in connection with the retail sale to the public of such pets in a pet store (but not in connection with the operation of a commercial breeding business), provided that the same do not make an unreasonable amount of noise or create a nuisance; (c) animals undergoing treatment in a veterinary office or hospital, or being temporarily boarded in such an office or hospital in connection with such treatment, provided that (i) such use is approved by the Committee as provided in Section 9.3.10, (ii) such animals do not make an unreasonable amount of noise or create a nuisance, and (iii) such boarding facilities shall be fully enclosed in a manner approved in advance by the Committee.

9.3.2 Residential/Lodging. Any residential use (other than quarters for a property caretaker, but only with the prior written approval of the Committee); mobile home parks and trailer courts; recreational vehicle parks; camping or labor camps. In no event shall this provision be deemed to cover hotel/motel uses.

9.3.3 Storage Yards; Parking Lots. Storage yards for bulk materials; public or private parking lots, except lots in conjunction with approved projects; truck, bus, or heavy equipment garages; dispatching and weighing stations; bulk storage and distribution of petroleum or other hydrocarbon products or other chemicals; or tent shelters or (except temporary use thereof for promotional events as may be approved in advance in writing by Declarant or the Committee, either of whom may prescribe requirements and conditions to be met to engage in such temporary use).

9.3.4 Food or Plant Products Processing. Manufacturing or processing of fish products, sauerkraut, vinegar, sugar beets, coffee roasting, chocolate or cocoa products; grain mills, grain storage bins and elevators; feed grain manufacturing and/or processing; seed treatment, processing or extraction of oil; processing of paper or wood pulp.

9.3.5 Animal Products Processing. Fat rendering; stockyards or slaughtering of animals; meat smoking or packing.

9.3.6 Wrecking and Salvaging Operations. Auto wrecking and salvage; junk yards; house movers and related machinery and equipment; storage or wrecking yards; metals crushing or separating for salvage; waste paper or glass recycling or other recycling operations.

9.3.7 Mining/Exploration: Excavation. All surface mining operations, including aggregate or minerals; subsurface mining of any kind; drilling for and/or the removal of gas, oil or hydrocarbons or geothermal steam; any commercial excavation of materials for building and construction.

9.3.8 Heavy Manufacturing; Smelting; Refining. Manufacture of bricks, blocks or large concrete precast items such as pipe and construction shapes, cast stone items; processing of cement, clay, cinders, aggregate or pumice; concrete and asphaltic concrete mixing plants; saw mills or planing mills; plating works; battery manufacturing; refining of petroleum or other hydrocarbon products; manufacturing or distillation of chemicals, including paint, insecticides and herbicides; smelting of metals; rolling or stamping of metal; foundry casting; steel fabrication (plate, structural, reinforcing bar, tanks); sand blasting yards.

9.3.9 Sewage/Garbage. Sewage disposal or treatment plants; equipment yards for septic tanks or cesspool servicing; or the processing of garbage, dead animals, refuse or silage.

9.3.10 Public Facilities. Stadiums; cemeteries; carnivals, circuses, rodeos and the like, except on a special "one-time" temporary basis with written approval of the Committee; animal shelters and hospitals, except with written approval of the Committee; jail or detention facilities.

9.3.11 Used Vehicle Sales and Leasing. Used automobile, used passenger truck and/or used recreational vehicle sales, leasing and services (except in conjunction with a new vehicle franchise or dealership or as otherwise as set forth in Section 9.1.1).

9.3.12 Automotive Repair and Maintenance. Repair, maintenance and servicing of motor vehicles or appliances or component parts for motor vehicles (except for such repair, maintenance and servicing that is ancillary to and performed by and in conjunction with a new vehicle franchise or dealership as set forth in Section 9.1.2).

9.3.13 Vehicle Storage. Vehicle storage (except in conjunction with a new vehicle franchise or dealership as set forth in Section 9.1.3).

9.3.14 Retail and Wholesale Vehicle Parts. Retail and wholesale vehicle parts and supplies (except in conjunction with a new vehicle franchise or dealership as set forth in Section 9.1.4).

9.4 Nuisances: Objectionable Activities. No Owner, Lessee or other Person shall create a nuisance in 370 North or use any Lot for any activity or purpose which is considered by the Board or the Committee, in its sole and absolute discretion, to be objectionable due to sound, odor, visual effect or physical impact and which in the opinion of the Board or the Committee will disturb or tend to disturb other Owners or Lessees in 370 North, or which is deemed by the Board or the Committee to constitute a nuisance. Included among the uses, activities or operations prohibited hereunder because of their detrimental effect upon the general appearance, enjoyment and use of the Property, or other commercial property in the vicinity of 370 North, and their conflict with the reasonable standards of appearance and maintenance required by this Declaration, including without limitation the uses, activities or operations which produce or are accompanied by the following characteristics:

9.4.1 Any public or private nuisance.

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

9.4.3 Any lighting which is flashing or intermittent or is not focused downward or away from adjacent Lots, unless otherwise approved by the Committee pursuant to Section 7.1.

9.4.4 Any rubbish, trash or debris of any kind placed or permitted to accumulate upon or adjacent to any Lot.

9.4.5 Any electro-mechanical or electromagnetic disturbance or radiation.

9.4.6 Any air pollution or water pollution, including without limitation any dust, dirt or flyash in excessive quantities.

9.4.7 Any emission of odor, or noxious, caustic or corrosive gas or matter, whether toxic or non-toxic.

9.4.8 Any explosion or other damaging or dangerous firing, detonation or activity, including the firing or detonation of ammunition or explosives or the storage, display or sale of explosives or fireworks.

9.4.9 Open burning of paper, trash, debris, garbage or construction materials of any kind.

9.5 Additional Restrictions. Prior to the close of a sale of a Lot or Lots by Declarant, Declarant may record additional restrictions on said Lot or Lots. If such restrictions refer to this Declaration and provide, for incorporation by that reference, said restrictions shall be deemed to be part of this Declaration and shall be enforceable as provided herein. Any such restrictions may not be inconsistent with the provisions of this Declaration, except that such restrictions may be more restrictive than the provisions set forth herein.

9.6 Compliance With Laws. No use or operation will be made, conducted or permitted on or with respect to all or any part of the Property which is in violation of any applicable governmental law, regulation, rule, ordinance or code, including without limitation all zoning and other ordinances, regulations and codes of the City.

ARTICLE X
FUNDS AND ASSESSMENTS

10.1 Creation of Lien; Personal Obligation for Assessments. Declarant, for each Lot owned within 370 North, hereby covenants, and each successive Owner, by acceptance of a deed therefor, whether or not expressed in such deed, is deemed to covenant and agree to pay to the Association the Assessments which the Board is authorized to levy pursuant to the provisions of this Declaration. All Assessments, which shall include all late charges, interest, costs and reasonable attorneys' fees due with respect thereto, shall be a charge on the land and shall be secured by a continuing lien upon the Lot against which each Assessment is levied. Each Assessment, including interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment became due and owing. The personal obligation for delinquent Assessments shall not pass to said Person's successors in title, unless expressly assumed by them. If more than one Person was the Owner of a Lot, the personal obligation to pay such Assessment respecting such Lot shall be both joint and several.

10.2 Purpose of Assessments. The Assessments shall be used to enhance, maintain and protect the desirability, attractiveness and safety of 370 North; for the improvement and maintenance of the Common Areas; to reimburse the Association for the costs incurred in bringing an Owner into compliance with this Declaration, the Articles, Bylaws, Mixed Use Development Agreement and/or rules adopted by the Board; to reimburse the Association for amounts which may be paid for the maintenance, repair, modification and/or replacement of the Project Identification Sign; and for the common good and benefit of 370 North, the Association and the Members, as determined by the Board. As used in this Declaration, "Project Identification Sign" shall refer to the identification signs and related utilities and improvements located or to be located in accordance with the site plan attached hereto.

10.3 Budgets and Financial Statements of the Association. The following financial information shall be regularly prepared and distributed by the Board to all Members of the Association:

10.3.1 Within seventy-five (75) days after the end of each fiscal year of the Association, the Board shall prepare, or cause to be prepared, and distribute to all Members of the Association an operating budget for the next fiscal year setting forth the estimated revenues and expenses for said fiscal year and the total cash reserves of the Association currently available for expenditures.

10.3.2 After the close of the Association's fiscal year, the Board shall prepare and distribute to each Member a balance sheet and a statement of actual expenses and income for the preceding fiscal year.

10.4 Accounts. The Association shall establish and maintain a reserve account into which the Board shall deposit all funds collected as reserves for contingencies and the repair and replacement of Common Area Improvements. The Association shall also maintain one or more operating accounts into which the Board shall deposit all other funds paid to the Association as Assessments or otherwise

received by the Association as provided in this Declaration. All funds shall be held in trust by the Association for the use and benefit of its Members.

10.5 Regular Assessments.

10.5.1 Purpose. Regular assessments shall be used for all expenses incurred by the Association for (i) the Regular assessments shall be used for all expenses incurred by the Association for (i) the administration (not to exceed ten percent (10%) of all other Association costs (on an annual basis), operation, maintenance, repair and replacement of the Common Areas and any Improvements therein, including all taxes and insurance; (ii) the operation, maintenance, repair and replacement of the Project Identification Sign(s); (iii) maintaining the landscaping on all of the Common Areas as set forth in Section 7.3 herein, and (iv) carrying out the duties, rights and obligations of the Association, including the Board and the Architectural Committee, as provided for in this Declaration.

10.5.2 Date of Commencement of Regular Assessments. The regular assessments provided for in this Article X shall commence as to all Lots, including any Lot owned by the Declarant, on the first day of the month following the later of (i) the incorporation of the Association, or (ii) the conveyance of the first Lot to an Owner; provided, however, that Declarant may, at its option, delay the start of regular assessments so long as Declarant elects to perform all maintenance and other obligations of the Association at its sole cost and expense. The first regular assessment shall be adjusted according to the number of months remaining in the fiscal year.

10.5.3 Budget. Within sixty (60) days after the end of each fiscal year of the Association, beginning with the first full fiscal year after regular assessments commence, the Board shall meet for the purpose of establishing the regular assessment for the forthcoming fiscal year. At such meeting, the Board shall review an operating statement showing income and expenses for the preceding fiscal year and a preliminary budget, any written comments received from any Member, and any other information available to it and, after making any adjustments that the Board deems appropriate, without a vote of the Members of the Association, shall establish an operating budget and the regular assessment for the forthcoming year.

10.5.4 Payment of Assessments. Regular assessments shall be due and payable by the Owners to the Association in four equal quarterly installments on or before the first day of April, July, October and January, or in such other manner as the Board shall designate.

10.5.5 Failure to Fix Regular Assessments. Failure by the Board to fix regular assessments hereunder before the expiration of any fiscal year shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owner from the obligation to pay the Assessments, or any installment thereof, for that or any subsequent year, but the Assessment fixed for the preceding year shall continue until a new Assessment is fixed.

10.6 Special Assessments.

10.6.1 Purpose. Special assessments may be levied by the Board from time to time during any fiscal year if the Board determines that the estimated total amount of

funds necessary to defray the expenses of the Association for a given fiscal year is or will become inadequate to meet expenses due to unanticipated delinquencies or costs and fees incurred to enforce this Declaration, costs of construction or unexpected repairs, replacements or reconstruction of Improvements in the Common Areas, unanticipated costs owed by the Association for the Project Identification Sign or if funds are otherwise required for any activity or purpose of the Association permitted under this Declaration.

10.6.2 Budgeting. The Board shall determine the approximate amount necessary to defray the expenses set forth in Subsection 10.6.1 above, and, if the amount is approved by a majority vote of the Board, it shall become a special assessment.

10.6.3 Time and Manner of Payment. The Board may, in its discretion, prorate a special assessment over the remaining months of the fiscal year or levy the assessment immediately against each Lot. Special assessments shall be due and payable within ten (10) days after a Member receives written notice from the Board specifying the amount of the special assessment, unless the Board specifies in such notice a later date of payment.

10.7 Reimbursement Assessment. The Board may levy a reimbursement assessment against any Owner who fails to comply in any respect with this Declaration, the Articles, Bylaws, the rules promulgated by the Board or the Mixed Use Development Agreement, or as otherwise permitted elsewhere in this Declaration, in an amount equal to any monies expended by the Association in remedying an Owner's failure to comply under this Declaration or in the amount of a fine or penalty imposed pursuant to this Declaration. All such reimbursement assessments shall be paid to the Association within five (5) days after demand.

10.8 Capital Improvement Assessment.

10.8.1 Purpose. Capital improvement assessments may be levied by the Association for the purpose of defraying, in whole or in part, the cost of construction of any Improvements deemed reasonably necessary by the Board for the benefit of 370 North. Capital improvements in excess of $50,000.00 shall require the consent of 2/3rds of the membership interest of the Owners.

10.8.2 Time and Manner of Payment. Capital improvement assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate for the payment thereof.

10.9 Rate of Assessment. All Assessments (other than a reimbursement assessment levied against an Owner pursuant to Section 10.7) shall be fixed at a uniform rate and levied based upon the proportion of memberships owned by each Owner in relationship to the total memberships in the Association at the time the Assessment is levied or imposed, as reflected in the records of the Association.

10.10 Estoppel Certificate. The Board, on not less than twenty (20) days prior written request and for a reasonable fee to be established from time to time by the Board, shall execute, acknowledge and deliver to the party making such request a written statement certifying whether or not, to the knowledge of the Association with no duty to investigate or make further inquiry, a particular Owner is in default as to its Lot under the provisions of this Declaration, and further stating the dates to which installments of Assessments have been paid as to such Lot. Any such certificate may be relied on by a prospective

purchaser of the Lot or a Mortgage, but reliance on such certificate shall not extend to any default (except one involving the payment of Assessments) of which the signer had no actual knowledge.

10.11 Exempt Property. The foregoing notwithstanding, all Exempt Property shall be exempt from paying Assessments and the Assessment liens provided for in Article XI, but an Owner of Exempt Property shall not be a Member and shall have no voting rights.

ARTICLE XI
COLLECTION OF ASSESSMENTS; ASSESSMENT LIENS

11.1. Right to Enforce. The right to collect and enforce Assessments, including all related interest, late charges, costs and fees, is vested in the Board acting for and on behalf of the Association. The Board, or its authorized representative, can enforce the obligations of the Owners to pay Assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may enforce the continuing lien against the Owner's Lot by judicial foreclosure proceedings. Any suit to recover a money judgment for unpaid Assessments, together with all other amounts described in this Article XI, may be maintainable with or without foreclosing or waiving the lien rights.

11.2 Notice of Default: Interest: Late Charges: Creation of Lien. Failure to make payment of any Assessment or installment thereof related to any Lot on or before the due date shall constitute a default and all amounts that are delinquent shall bear interest at a rate per annum equal to five percent (5%) more than the Prime Rate on the date of default (and shall fluctuate thereafter as the Prime Rate changes from time to time) and, if not paid within ten (10) days, a late charge of five percent (5%) (or such lower interest and late charges as the Board shall determine in its discretion) shall also be due on the outstanding balance, and all costs and expenses incurred by the Board or its authorized representative in the collection of the amounts, including reasonable attorneys' fees and costs, shall be part of the Assessment past due and the full Assessment shall be a lien against such Lot. The lien created pursuant to this Article shall not be foreclosed until the Board or its authorized representative has delivered written notice to the delinquent Owner or Owners not less than fifteen (15) days before commencement of any proceedings to enforce such lien, which shall set forth notice of default and a demand for payment, and unless such delinquency has not been cured in full within said 15-day period, including payment in full of all interest and late charges.

11.3 Notice of Lien; Foreclosure. Upon the giving of notice and failure to cure as provided in Subsection 11.2, the Association may record a notice of assessment lien against the Lot of the defaulting Owner. In addition, the Association may proceed to foreclose the Recorded Assessment Lien provided for in this Article in any manner provided or permitted for the foreclosure of realty mortgages in the State of Nebraska (including the right to recover any deficiency). The Association shall not be obligated to release any Recorded Assessment Lien until all delinquent Assessments, including interest, late charges, attorneys' fees and collection costs, have been paid in full, whether or not all such amounts are set forth in the recorded notice. On becoming delinquent in the payment of any Assessments or installments thereof, each delinquent Owner shall be deemed to have absolutely assigned all rents, issues and profits of his Lot to the Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Association, be enforced by the Association through specific performance). The Association, acting on behalf of the Owners, shall have the power to bid upon the Lot at foreclosure sale and to acquire, hold, lease, mortgage and convey the Lot.

11.4 No Offsets. All Assessments shall be payable in the amounts covered by the particular Assessment and no offsets against such amount shall be permitted for any reason, including, without

limitation, nonuse or abandonment of a Lot or a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

11.5 Priority; Subordination of Lien to First Mortgages.

11.5.1 Priority of Lien. The Assessment lien herein shall be superior to all charges, liens and encumbrances, including without limitation all mortgages and deeds of trust (except as provided in Section 11.5.2 below), federal and state tax liens, judgment liens, and liens for labor or materials, which may be hereafter imposed against any portion of the Property.

11.5.2 Subordinate to First Mortgages. Notwithstanding the foregoing, the Assessment liens provided for herein shall be subordinate and subject to the lien for governmental taxes and assessments which is deemed superior hereto by applicable law and the lien of any first Mortgage encumbering a Lot which is recorded prior to the Recorded Assessment Lien referred to in Section 11.3, but only as to advances or payments made pursuant to said Mortgage prior to the time the Recorded Assessment Lien is placed of record, and provided further that each such first Mortgage must have been made in good faith and for value and duly recorded in the office of the Sarpy County Register of Deeds prior to the recording of the Recorded Assessment Lien. The sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such Assessments only as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from any obligation to pay any Assessments thereafter becoming due nor from the lien securing any subsequent Assessments. Where the holder of a first Mortgage or other purchaser of a Lot obtains title to the same as a result of foreclosure, such title holder, its successors and assigns, shall not be liable for Assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer, except for the share of Assessments resulting from a reallocation of Assessments which are made against all Lots. The Assessment lien herein shall not be subordinate to the lien of any Mortgage which is junior to a first Mortgage.

11.6 Transfer of Property. After the sale of any Lot within 370 North, the selling Owner or Owners shall not be personally liable for any Assessment levied on its Lot after the date of such transfer of ownership and written notice of such transfer is delivered to the Association. However, except as provided in Section 11.5 with respect to a transfer of a Lot pursuant to foreclosure proceedings, the transferred Lot shall remain subject to the lien securing payment of all Assessments, including Assessments levied prior to the date of transfer. The selling Owner(s) shall also remain personally responsible for all Assessments and charges levied on his Lot prior to any such transfer. Upon the transfer of ownership of any Lot or Lot (excluding the initial sale by Declarant), the Board, in its discretion, may charge a reasonable transfer assessment to cover administrative costs associated with said transfer of ownership, which administrative costs shall not exceed the sum of $250.00.

11.7 Other Enforcement Measures. In addition to the other remedies set forth in this Article, the Board shall have the right to suspend the right of any Owner who is in default on any Assessments to vote pursuant to Section 4.3 above or the Articles and the Bylaws during the period of any default.

11.8 Contracts with Owners. If the Association elects to enter into contracts with Owners for the performance of special maintenance or other services to that Owner's Lot, any fees charged to that

Owner for such services shall be due within ten (10) days after billing, shall be an Assessment, shall be secured by the Assessment lien, shall be the Owner's personal responsibility, and shall be enforceable as provided herein with respect to the Assessments.

ARTICLE XII
DESTRUCTION OR CONDEMNATION OF COMMON AREAS

12.1 Repair. Within a reasonable time after the damage or destruction of all or any portion of the Common Areas, the Board shall cause the same to be repaired, reconstructed and restored substantially to the same condition as the same existed prior to such damage or destruction.

12.2 Insurance Proceeds Insufficient. If upon such damage or destruction the proceeds of insurance available to the Association are insufficient to cover the cost of repair, reconstruction and restoration of the damaged or destroyed portions of the Common Areas, the Board shall be authorized to specially assess all Owners and Lots for the additional funds needed pursuant to Section 10.6.

12.3 Eminent Domain. The Board shall represent all Members in connection with any condemnation proceeding regarding the Common Areas and shall be entitled to negotiate and settle with the condemning authority and to make a voluntary sale to the condemning authority in lieu of legal action. All condemnation proceeds regarding the Common Areas shall be paid to the Association to be used by the Board in its sole discretion for the purposes set forth in Section 10.2, after paying any costs or fees incurred by the Association in negotiating, settling and contesting the condemnation.

ARTICLE XIII
DURATION. MODIFICATION AND TERMINATION

13.1 Duration of Covenants. This Declaration, and all covenants, conditions, restrictions and easements herein, shall continue and remain in full force and effect at all times with respect to 370 North and each part thereof, now or hereafter made subject thereto (subject, however, to the right to amend and terminate as provided in Section 13.2 below) for a period of thirty (30) years, commencing on the date this Declaration is recorded in the Office of the County Register of Deeds of Sarpy County, Nebraska. From and after said date, this Declaration, as amended from time to time, shall be automatically extended for successive periods of ten (10) years each, unless earlier terminated as provided in Section 13.2 below.

13.2 Termination or Modification. This Declaration, or any provisions hereof, may be terminated, modified, or amended with respect to all or any portion of 370 North, by a vote of all Owners holding at least 2/3rds of the memberships in the Association.

ARTICLE XIV
ENFORCEMENT

14.1 Enforcement by Board; Right to Perform.

14.1.1 Failure to Maintain Improvements and Lots. Upon a failure to maintain and repair in accordance with Sections 7.4 and 7.5 above, or to perform any other obligations thereunder, the Board shall notify the respective Owner in writing pursuant to Section 17.7 of such default. If such default is not cured by the Owner or its Lessee within thirty (30) days from the date such notice is given to the Owner, the Board, or its designated agent or contractors, shall have the right, in addition to Section 14.2, to enter

upon the Lot for the purpose of maintaining, restoring or repairing said Improvement or Lot. The costs incurred by the Board in restoring, maintaining or repairing said Improvement or Lot, together with a charge for the overhead of the Board and the Association in an amount equal to twenty-five percent (25%) of such costs, shall be paid by such Owner as a reimbursement assessment in accordance with Section 10.7 hereof.

14.1.2 Failure to Install Landscaping. If any landscaping has not been installed within the period required in Section 8.7, the Board shall notify the Owner in writing that the landscaping is to be installed within thirty (30) days from the date of such notice. If the landscaping has not been installed within such additional 30-day period, the Board or its designated agent or contractors shall have the right, in addition to Section 14.2, to enter upon the Lot for the purpose of installing the approved landscaping. If a landscape plan has not been approved by the Committee, the Board may cause a plan to be prepared and submitted to the Committee for approval prior to installation. All costs incurred by the Board in preparing a landscape plan and installing such landscaping, together with a charge for the overhead of the Board and the Association in an amount equal to twenty-five percent (25 %) of such costs, shall be paid by the Owner as a reimbursement assessment in accordance with Section 10.7 hereof.

14.1.3 Off-Site Parking. Adequate off-street parking shall be provided by each Owner in accordance with Section 8.1 above. If the vehicles of any employee, visitor or business invitee of an Owner or any Lessee or any company vehicles thereof are parked on any street, the Board shall have the right, in addition to Section 14.2, to notify the Owner in writing pursuant to Section 17.7 that on-street parking is occurring. If on-street parking continues to occur five (5) days after the date upon which the Board gives such notice to the Owner, the Board, or its designated agent or contractors, shall have the right (i) to have such vehicles towed at the Owner's expense, and/or (ii) to assess a reasonable fine against said Owner for each day such on-street parking continues to occur five days after notice is given. All such amounts shall be paid by said Owner to the Board or to such other person or entity designated by the Board, and shall be paid as a reimbursement assessment in accordance with Section 10.7 hereof.

14.1.4 Other Covenants. Declarant and/or the Board or their duly authorized agents shall have the right, upon violation or breach of any other covenant, restriction or easement set forth herein, if such violation or breach continues for a period of thirty (30) days after written notice thereof is given to the Owner, to enter upon the Lot where such violation or breach exists, and summarily remove, at the expense of the Owner thereof who shall pay all such expenses within five (5) days after demand, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions of this Declaration.

14.1.5 Inspection Rights. Declarant and/or members of the Board and Architectural Committee, or authorized representatives thereof, have the right from time to time, during reasonable hours, to enter upon and inspect any Lot and the Improvements thereon for the purpose of determining whether or not the provisions of this Declaration have been, or are being, complied with, and the exercise of such rights shall not be deemed a trespass upon such Lot.

14.1.6 Other Enforcement Measures. In addition to other remedies set forth herein, the Board shall have the right to suspend a defaulting Owner's right to vote under Section 4.3 and the Articles and Bylaws during the period of any default.

14.2 Additional Remedies: Rights of Other Owners. In addition to the rights and remedies set forth in Article XI and Section 14.1 above, in the event of any breach, default, non-compliance, violation or failure to perform or satisfy any of the covenants, conditions, restrictions and easements contained in this Declaration by an Owner or by a Lessee or other Person with respect to the Lot of an Owner (collectively referred to herein as a "default"), and the default is not cured within thirty (30) days after written notice describing the default is given to such Owner by Declarant (or if any such default is not reasonably capable of being cured within such 30-day period, then if such Owner has not commenced to cure the default promptly after such notice is given and does not thereafter diligently continue to prosecute such cure to completion), then Declarant, the Association or any Owner with the right to enforce this Declaration under Section 17.3 below may enforce any one or more of the following rights or remedies in this Section 14.2, or any other rights or remedies available at law or in equity, whether or not set forth in this Declaration. All rights and remedies set forth in this Declaration or available at law or in equity shall be cumulative and not mutually exclusive.

14.2.1 Damages. Declarant, the Association or any such Owner may bring a suit for damages arising from or with respect to any such default.

14.2.2 Declaratory Relief. Declarant, the Association or any such Owner may bring suit for declaratory relief to determine the enforceability of any of the provisions of this Declaration.

14.2.3 Injunctive Relief; Specific Performance. It is recognized that a default hereunder may cause material injury or damage not compensable by an award of money damages and that Declarant, the Association and/or any Owner shall be entitled to bring an action in equity or otherwise for a specific performance to enforce compliance with this Declaration, or for any injunctive relief to enjoin the continuance of any default or to prevent a default.

14.2.4 Fines. This Subsection may be enforced only by the Association. Upon a default that is defined in this Section 14.2, the Board may assess fines based on a schedule of fines adopted from time to time by the Board for various types of defaults that may arise under this Declaration, or as the Board may assess for defaults not covered by existing schedule of fines, provided that the Board shall assess a fine that is reasonable and appropriate under the circumstances, and provided further that the assessment of a fine shall be in addition to all other rights and remedies available hereunder.

14.3 Rights of Lenders. No default under or violation of any provision of this Declaration shall defeat or render invalid the lien of any Mortgage or similar instruments securing a loan made in good faith and for value with respect to the development or permanent financing, or any refinancing, of any Lot or portion thereof, or any Improvement thereon. However, all of the provisions of this Declaration shall be binding upon and effective against any subsequent Owner of any Lot or any portion thereof whose title is acquired by foreclosure, trustee sale, deed in lieu of foreclosure or otherwise pursuant to the lien rights under any such Mortgage or similar instrument.

14.4 Attorneys' Fees. In any legal or equitable proceeding to determine the rights of the parties and/or to enforce or restrain the violation of this Declaration, the losing party or parties, as determined by the court for this purpose, shall pay the reasonable attorneys' fees, legal costs and expenses of the prevailing party or parties, as fixed by the court in such proceedings.

14.5 Failure to Enforce Not a Waiver of Rights. No delay or failure on the part of an aggrieved party to invoke any available remedy in respect to a violation of any provision of this Declaration shall be held to be a waiver by that party of (or an estoppel of that party to assert) any right available to him upon the recurrence or continuance of said violation or the occurrence of a different violation, nor shall there be construed to be a duty upon Declarant or the Board a duty to take any action to enforce the provisions of this Declaration.

14.6 No Liability Regarding Enforcement. Neither Declarant, the Board or any member thereof, the Committee or any member thereof, nor their successors or assigns (if such Persons have acted in good faith, without willful or intentional misconduct) shall be liable to any Owner or Lessee of any real property subject to this Declaration by reason of any mistake in judgment, negligence, nonfeasance, action or inaction in regard to the enforcement or failure to enforce the provisions of this Declaration, or any part hereof. Each Owner and Lessee acquiring an interest in 370 North agrees that it will not bring any action or suit against Declarant, the Board or any member thereof, or the Committee or any member thereof, from time to time, or their successors and assigns, to recover any such damages or to seek equitable relief relating to their duties under the operation of this Declaration, except any such damages or equitable relief caused by such party's bad faith, willful misconduct or gross negligence.

ARTICLE XV
RESERVED RIGHTS OF DECLARANT

15.1 Right to Use Common Areas to Promote 370 North. Declarant shall have, and hereby reserves the right to, reasonable use of the Common Areas and services offered by the Association in connection with the promotion and marketing of Lots and Lots within the Property. The rights of Declarant shall include, without limitation, the right (i) to erect and maintain on any part of the Common Areas and on any portion of the Property owned by Declarant, such signs, temporary buildings and other structures as Declarant may reasonably deem necessary or proper from time to time in connection with the promotion, development and marketing of Lots and Lots within 370 North; (ii) to use vehicles and equipment on the Common Areas or any portion of the Property owned by Declarant for promotional purposes; and (iii) to permit purchasers of Lots against which a Subsidiary Declaration has been recorded which permits further subdivision thereof, to use the Common Areas in a manner reasonably designated by Declarant, at its sole election, to promote, develop and market subdivided portions of said Lot to Persons interested in purchasing the same.

15.2 Right to Construct Additional Improvements Within Common Areas. Declarant shall have, and hereby reserves the right, to construct additional Improvements within the Common Areas from time to time for the improvement and enhancement of the Common Areas and of 370 North and for the benefit of the Association and its Members, and the same shall thereafter be maintained by the Association pursuant to Section 7.5.

15.3 Right to Complete Development of 370 North. Notwithstanding anything contained herein to the contrary, Declarant shall have, and hereby reserves, the right: (i) without the approval of the Association, the Board, or the Architectural Committee to subdivide or re-subdivide, replat or otherwise split or combine any portion of the Property owned by Declarant, including Lot 15 in order to complete

development of such Lots owned by Declarant; (ii) to amend the Mixed Use Development Agreement, but only with respect to matters and issues relating to Lots owned by the Declarant; and further provided, however, that any amendment to the Mixed Use Development Agreement regarding Permitted Uses, Architectural and Site Design Guidelines, Overall Landscape Plan, or the Entry and Lot Specific Landscape Requirements must be approved in writing by the Committee (in addition to approval from the City of Papillion); or (iii) without the approval of the Association, the Board, or the Architectural Committee to maintain an office for construction, sales, promotion or leasing purposes or other similar facilities on any Lot owned by Declarant within the Property.

15.4 Right to Approve Conveyance or Change in the Use of Common Areas. During the Period of Declarant Control, the Association shall not, without first obtaining the prior written consent of Declarant, which consent shall not be unreasonably withheld, convey, change or alter the use of the Common Areas, record a Mortgage against the Common Areas or use Common Areas other than for the benefit of the Members.

15.5 Declarant's Right to Grant Additional Easements. During the Period of Declarant Control, Declarant shall have, and hereby reserves the right to grant or create, temporary or permanent easements from time to time for construction, access, utilities, drainage and other purposes for the development and sale of the Property in, on, under, over and across any Lots or other portion of the Property owned by Declarant, and the Common Areas. The foregoing notwithstanding, with respect to Common Areas located within a Lot, Declarant shall not grant an easement which adversely impairs the use of such Common Areas for the purposes originally intended without the approval of the Owner of such Lot.

15.6 Right to Convey Additional Property for Use as Common Area. During the Period of Declarant Control, Declarant shall have, and hereby reserves, the right to convey additional real property and any Improvements thereon, or grant easements against the Property, to the Association at any time and from time to time for use as Common Areas, and the Association shall be obligated to assume administrative and maintenance responsibilities thereof in accordance with Section 7.5.

Notwithstanding anything herein to the contrary, either during or after the Period of Declarant Control, Declarant shall have, and hereby specifically reserves, the right to convey to the Association for use as Common Area that portion of Outlot "C" necessary for stormwater retention/detention as is more thoroughly addressed in Section 1.9 hereinabove.

15.7 Amending Plat. Declarant shall have, and hereby reserves, the right to record amendments to the Plat relating only to Property owned by Declarant from time to time.

15.8 Reserved Rights Do Not Create Obligations. Anything in this Article XV to the contrary notwithstanding, the foregoing rights in favor of Declarant shall not in any way be construed as creating any obligation on the part of Declarant to exercise any such rights or to perform any of the activities, construct any Improvements, convey any property or grant any easements referred to in this Article.

ARTICLE XVI
ASSIGNMENT OF DECLARANT'S RIGHTS AND DUTIES

Any and all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant from time to time, in its discretion, to any Person who will assume the duties of Declarant pertaining to the particular rights, powers and reservations assigned. Upon such assignment, any such Person assuming such duties (and its heirs, successors and assigns) shall have, to the extent of such

assignment, the same rights and powers and shall be subject to the same obligations and duties as are given to and assumed by Declarant in this Declaration. Any assignment made under this Article shall be in recordable form and shall be recorded in the Office of the Register of Deeds of Sarpy County, Nebraska. Notwithstanding any provision of this Declaration to the contrary, Declarant may, at any time and from time to time without the consent of the Board or other Owners, temporarily or permanently relieve itself of all or a portion of its rights and obligations under this Declaration by filing in the Register of Deeds of Sarpy County, Nebraska, a notice stating that Declarant has surrendered the rights and obligations specified therein, and upon the recording of such notice, said powers and obligations so specified shall immediately vest in the Board of Directors unless otherwise specified therein.

Notwithstanding anything herein to the contrary, the Owners of the Auto Park Lots shall have the right, without the approval of the Declarant, the Association, the Board, or the Architectural Committee, to amend the Mixed Use Development Agreement, but only with respect to matters and issues relating to such Auto Park Lots; and further provided, however, that any amendment to the Mixed Use Development Agreement regarding Permitted Uses, Architectural and Site Design Guidelines, Overall Landscape Plan, or the Entry and Lot Specific Landscape Requirements must be approved in writing by the Committee (in addition to approval from the City of Papillion).

ARTICLE XVII
ADDITIONAL PROVISIONS

17.1 Constructive Notice and Acceptance of Declaration. Every Person who now or hereafter owns or acquires any right, title or interest in or to any portion of 370 North is and shall be conclusively deemed to have consented and agreed to this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquired an interest in said 370 North.

17.2 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Nebraska. Venue for enforcement hereof shall lie exclusively in Sarpy County, Nebraska, and each Person with rights hereunder hereby waives the right to sue or be sued in any other place.

17.3 Mutuality and Reciprocity. This Declaration is made for the direct, mutual and reciprocal benefit of each and every Lot within 370 North; shall create mutual, equitable servitudes upon each Lot within 370 North in favor of every other Lot of 370 North; and shall create reciprocal rights and obligations between the respective Owners and privity of contract and estate between all grantees of real property in 370 North, their heirs, successors and assigns.

17.4 Declarant's Disclaimer. Declarant makes no warranties or representations that the plans presently envisioned for the development of 370 North can or will be carried out, or that any Lot is or will be committed to or developed for any particular use. In addition, while Declarant has no reason to believe that any of the provisions of this Declaration are or may be unenforceable, Declarant makes no representations as to enforceability. Declarant shall have no liability for the development of 370 North or the enforcement of this Declaration.

17.5 Headings. Headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.

17.6 Effect of Invalidation. If any provision of this Declaration is held to be invalid by any court, the same shall not affect the validity of the remaining provisions of this Declaration and all remaining provisions shall continue unimpaired and in full force and effect.

17.7 Notices.

17.7.1 To Declarant or Committee. Any and all notices, or other communication made pursuant hereto, shall be in writing and shall be deemed properly delivered, given to or received by Declarant or the Committee, as the case may be (a) when personally delivered against receipted copy, or (b) four (4) business days after being mailed by certified or registered mail, postage prepaid; in either case to the Declarant or the Architectural Committee at the following address:

Dowd Grain Company, Inc.
220 N. 89th Street, Suite 201
Omaha, NE 68114

Declarant and/or the Architectural Committee may change its address by (i) giving notice to all Owners, or (ii) giving notice to the Board at the principal office of the Association, or (iii) recording a Notice of Change of Address in the Office of the Register of Deeds of Sarpy County, Nebraska.

17.7.2 To Owners. A notice to any Owner shall be deemed duly given, delivered and received (a) when personally delivered against receipted copy, or (b) four (4) business days after mailing by certified or registered mail, postage prepaid; in either case to the address of the Owner's Lot or to such other address as the Owner has specified in writing to the Association.

17.8 Exhibits. All Exhibits attached hereto are incorporated herein by this reference and shall constitute a part of this Declaration.

17.9 Requirements of City. The covenants and restrictions contained herein are in addition to the requirements, codes and ordinances imposed by the City on 370 North. In the event of a conflict or inconsistency between the provisions of this Declaration and the requirements, codes or ordinances of the City applicable to 370 North, then the more restrictive requirement shall govern.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

DECLARANT:

DOWD GRAIN COMPANY, INC.,
a Nebraska corporation

By: _____
Its: President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

Before me, the undersigned Notary Public in and for said county and state, appeared Duane J. Dowd, President of Dowd Grain Company, Inc., a Nebraska corporation, known to me to be the identical person who executed the above instrument and acknowledged the execution thereof to be his voluntary act and deed on behalf of said corporation.

WITNESS my hand and Notarial Seal this 19th day of June, 2017.

GENERAL NOTARY - State of Nebraska
ANDREA M. MULDOON
My Comm. Exp. October 24, 2019

Andrea M Muldoon
Notary Public