

DECLARATION OF
COURTYARD ON PARK COMMUNITY

January 1, 2020

Upon recording, return to:
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**DECLARATION OF
COURTYARD ON PARK COMMUNITY**

THIS DECLARATION is made this 1st day of January 2020 by COURTYARD ON PARK, LLC, a Nebraska limited liability company (hereinafter referred to as "**Declarant**");

WITNESSETH:

WHEREAS, Declarant is the owner in fee simple of the parcel of real estate located in the City of Omaha, Douglas County, Nebraska, legally described in Attachment 1 hereto (the "**Real Estate**"); and

WHEREAS, it is the desire and intention of Declarant to enable the Real Estate, together with the buildings, structures, improvements, easements, rights, and appurtenances belonging thereto, and all other fixtures, of whatsoever kind, now or hereafter thereon, along with all rights and privileges belonging or in any way now or hereafter pertaining thereto (collectively, with the Real Estate, the "**Property**") to be owned by Declarant, and by each successor-in-interest of Declarant, under that certain type of ownership commonly known as condominium; and

WHEREAS, Declarant desires, intends, and does hereby submit and impose upon the Property in conformity with the Nebraska Condominium Act, Neb. Rev. Stat. 76-825 et. seq. (the "**Act**"), the provisions, rights, options, privileges, terms, and conditions of the Act and as set forth in this Declaration; and

WHEREAS, Declarant desires and intends to reserve unto itself, its successors, and its assigns, certain special declarant and development rights with respect to the Property; and

WHEREAS, Declarant is further desirous of establishing for its own benefit and for the mutual benefit of all future owners or occupants of the Property, or any part thereof, certain easements, interests, and rights in, over, and upon said premises and certain mutually beneficial restrictions, options, and obligations with respect to the proper use, conduct, and maintenance thereof; and

WHEREAS, Declarant desires and intends that the several owners, mortgagees, occupants and other persons hereafter acquiring any interest in said Property shall hold their interests subject to the rights, options, easements, privileges, and restrictions as set forth in the Act and in this Declaration at all times hereafter; and

WHEREAS, Declarant has formed Courtyard on Park Homeowner Association, a Nebraska not-for-profit corporation (the "**Association**"), to govern, manage, and administer the administrative details, procedures, and functions of the Community and Declarant has prepared the Bylaws of the Courtyard on Park Homeowner Association.

NOW, THEREFORE, Declarant, as the owner of the Property for the purposes above set forth, does hereby declare and provide as follows:

1. SUBMISSION TO THE ACT; DEFINITIONS.

1.1 Submission to the Act. Declarant hereby submits the Property to the Act and this Declaration. The Property shall hereafter be known as the Courtyard on Park Development. Declarant, pursuant to the Act and to establish a plan of ownership for the Units, does hereby divide the Property

into separate Units and Common Elements and does hereby designate such Units for separate ownership. The Units are shown on the Plans and are contained in two (2) buildings. The units are legally described pursuant to the Plans. Each Unit constitutes a fee simple legal estate in the portion of the Property encompassed by the Unit. Every deed, lease, mortgage, or other instrument may legally describe a Unit by its identifying number or symbol as shown on the Plans and as set forth in the Declaration; and every such description shall be deemed good and sufficient for all purposes, and shall be deemed to convey, transfer, encumber, or otherwise affect the Unit's corresponding Percentage of Ownership at all times (including when not expressly mentioned or described therein). The description of each Unit shall include all rights and privileges of said Unit. The Community is located in the City of Omaha, Nebraska. This Declaration does not contain any provisions for right of first refusal to purchase, option to purchase, or similar rights. Each Owner may freely convey and transfer its Unit subject to the terms and conditions of this Declaration, the Plans, the Bylaws, and the applicable zoning ordinances.

1.2 Definitions. The words and phrases used in this Declaration, the Bylaws, or elsewhere in any Community document(s) relating to the Courtyard on Park Community shall have the meanings set forth below unless the context shall clearly indicate otherwise. The following definitions also contain substantive terms, conditions, and provisions of this Declaration.

- a. Act – shall have the meaning ascribed in the recitals above.
- b. Articles of Incorporation - The Articles of Incorporation of the Association, as they exist from time to time.
- c. Assessments - The Common Expense Liability, together with dues, fees, charges, interest, late fees, fines, collection costs, attorneys' fees, and any other amount due to the Association by the Owner or levied against a Unit by the Association.
- d. Association – the Courtyard on Park Homeowners Association, a Nebraska not-for-profit corporation.
- e. Board or Board of Managers or Board of Directors or Executive Board – means the board of directors of the Association which shall be the governing body of the Association as appointed pursuant to the Bylaws.
- f. Building(s) – Means one or both of the residential structures located at 1007 Park Avenue, Omaha Nebraska.
- g. Bylaws - The Bylaws of the Association as they exist from time to time.
- h. Common Elements - All portions of the Community other than the Units as defined in the Declaration. The Common Elements include all areas on the Plans designated "Common Element," "Common," "Common Area," "C.E.," "C.A.," or any similar designation. Any installation or system exclusively serving only one Unit, whether such installation or system is located wholly or partially within or outside said Unit, shall be considered as being "within" and being a part of said Unit and, thus, is not a Common Element. Any heating, hot water, and air conditioning equipment exclusively serving only one Unit, whether such equipment is located wholly or partially within or outside said Unit, shall be considered "within" and part of said Unit and, thus, is not a Common Element.
- i. Common Expenses - All expenditures made by, or financial liabilities of, the Association including but not limited to the expenses for the maintenance, repair, replacement,

administration, and operation of the Common Elements and reserve allocations. Notwithstanding the Percentage of Ownership, certain special allocations to particular Units of certain Common Expenses and Common Expense Liabilities may be allocated as provided herein.

j. Common Expense Liability – That portion of the cost of maintaining, repairing, and managing the Property including Common Elements to be paid by each Owner to the Association in the percentage shown in Attachment 3 hereof. The percentage so assigned may be changed as a result of an increase or decrease in the number of Units contained in the Community. Notwithstanding the Percentage of Ownership, certain special allocations to particular Units of certain Common Expenses and Common Expense Liabilities may be allocated as provided herein.

k. Community – The community created by this Declaration, known as "Courtyard on Park".

l. Declarant – Courtyard on Park, LLC and its successors and assigns.

m. Declaration – This instrument, (all Attachments hereto), and any other amendments which may be recorded from time to time.

n. Development Period - The period commencing on the date of recording hereof and continuing until such time as Declarant owns fewer than 4 Units in its individual capacity.

o. Development Rights - The rights reserved by the Declarant pursuant to Article 18.

p. Elevators – The elevator within the Building, if any, including shafts, pits, cars, machine rooms, and appurtenant facilities.

q. Eligible Mortgagee - Each holder, insurer, or guarantor of a duly recorded first mortgage or deed of trust on any Unit which has made written request to the Board of the Association for notice of all matters of which such party is entitled pursuant to the provisions of this Declaration, the Act, or the Bylaws. An Eligible Mortgagee includes the Declarant's real estate lender as of the date hereof having a security interest in Declarant's rights, title, and interests in the Building together with such lender's successors and assigns.

r. Eligible Mortgage Holder – Each Eligible Mortgagee which is a holder of a mortgage or deed of trust.

s. Environmental Laws – are any local, state, or federal laws, regulations, or ordinances, existing or adopted hereafter, relating to protection of human health, safety, or the environment and include, but are not limited to, the Federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. ss 9601, et.seq.), the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. ss 9601, et.seq.), the Federal Clean Water Act (3 U.S.C. §1251 et seq.) and all Nebraska equivalents or constituents thereof.

t. Hazardous Substance – is any material that, because of its quantity, concentration, physical, or chemical characteristics, poses a material hazard to human health, safety, or to the environment. Such materials include but are not limited to those regulated under Environmental Laws.

u. Immediate Family – The Owner’s spouse, life partner, children, stepchildren, parents, siblings, stepparents, grandparents, and grandchildren.

v. Law - shall mean all laws, permits, statutes, codes, injunctions, variances, orders, judgments, licenses, ordinances, regulations, and requirements (including, without limitation, all fire, health, sanitation, ecological, historical, handicapped access, zoning, environmental protection, wetlands, and building laws and all changes to each of the foregoing, but only to the extent such laws, permits, statutes, codes, injunctions, variances, orders, judgments, licenses, ordinances, regulations, and requirements and any such changes are applicable to the Property) of all governmental authorities having jurisdiction over all or any part of the Property.

w. Lease – An instrument conveying the occupancy and use of a Unit between an Owner and a Person setting forth the terms and conditions of occupancy and use of the Unit by the tenant.

x. Material Amendment - Any material amendment to any provision of the Declaration, Plans, Bylaws, or the addition of any material provision thereto including, but not limited to, any amendment or addition to any provision which establishes, provides for, governs, or regulates any of the following: (i) voting; (ii) Assessments, Assessment liens, or subordination of such liens; (iii) reserves for maintenance, repair, and replacement of Common Elements; (iv) insurance or fidelity bonds; (v) rights to use of Common Elements; (vi) responsibility for maintenance and repair of the Property; (vii) expansion or contraction of the condominium regime or the addition, annexation or withdrawal of property to or from the regime (except for the Special Declarant Rights and Development Rights); (viii) interests in Common Elements; (ix) convertibility of Units into Common Elements or of Common Elements into Units; (x) leasing of Units; (xi) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey such Owner’s Unit; or (xii) provisions which are for the express benefit of Eligible Mortgages.

y. Occupancy Permit – The Certificate of Occupancy issued by the City of Omaha Planning Department.

z. Owner – The Person or Persons, individually or collectively, having fee simple ownership of a Unit.

aa. Parking Area - all parking areas, parking spaces, driveways, parking ramps, parking entrances, and all other structures, devices and facilities for the use and operation of the Parking Area. The Parking Area shall be a part of the Common Elements and shall not include an individual Unit's garage entrance doors, garage access control devices, or the interior of a Unit's garage.

bb. Percentage of Ownership - The allocated interest to each Unit in the aggregate to the undivided ownership in the Common Elements as described in Article 4 and Attachment 3.

cc. Person - A natural person, partnership, corporation, limited liability company or any other legal entity capable of holding title to real property.

dd. Pet – For the purposes of this Declaration “Pet” shall be limited to dogs (not heavier than 70 lbs per dog and no more than 2 per Unit), cats (no more than 2 per Unit), birds, and fish. The Board, at its sole discretion, may at any time exclude any aggressive or exotic animals (as defined by local, state or federal statute) or any animal that is deemed by the Board to

be a nuisance in accordance with the other provisions of this Declaration, the Association's Bylaws; and any Regulations adopted by the Board from time to time.

ee. Plans - The drawings attached hereto as Attachment 2 which were prepared by a registered architect and which contains the information required by the Act, as such drawing may be amended from time to time.

ff. Property – shall have the meaning ascribed in the recitals above.

gg. Regulations - The rules and regulations of the Association initially adopted by the Board and relating to the appearance, use, and occupancy of the Property, including exterior appearance, use, and occupancy of the Units and Common Elements, as amended from time to time.

hh. Special Assessments - The special assessments established by the Board under the provisions of this Declaration from time to time as may be necessary or appropriate for the Units or collection thereof.

ii. Special Declarant Rights - Those rights reserved for the benefit of the Declarant: (i) to complete the improvements indicated on the Plans; (ii) to maintain sales offices, management offices, signs advertising the Community and models; (iii) to use easements through the Common Elements for the purpose of making improvements within the Community or within real estate which may be added to the Community; (iv) to maintain and locate construction trailers, tools and equipment on the Property; and (v) to adjust the dimensions and layout of the Residential Units, as evidenced via a unilateral amendment to the Plans and this Declaration.

jj. Systems - All fixtures, equipment, pipes, lines, wires, computer cables and conduits used in the production, heating, cooling and/or transmission of air, water, gas, electricity, communications, waste water, sewage, and audio and video signals.

kk. Unit or Community Unit - A physical portion of the Community designated for separate ownership or occupancy. Each Unit is designated and delineated on the Plans and is designated by this Declaration for separate ownership.

ll. Utility Services – Public or private services pertaining to items such as: water; sanitary and storm water sewers; telephone; power; electricity; natural gas; cable television; irrigation; or other similar services.

mm. Vote - Each Unit shall have a vote in proportion to its Percentage of Ownership shown in Attachment 3.

1.3 Unless the context otherwise requires, any other terms used in this Declaration shall be assumed to have the meaning attributed to said term in the Act.

2. UNITS.

2.1 As shown on the Plans, the Declarant initially plans to construct twelve (12) Units which are generally comprised of a lower level with garage reached from a common drive; a main level with kitchen, dining room, family room, powder room, closet, pantry, patio, and outdoor deck; and a second level containing a master suite and an additional bedroom suite. Six of such units will have access to a rooftop deck.

2.2 The boundaries of each Unit, both as to vertical and horizontal planes, as shown on the Plans, are the undecorated surfaces of the perimeter walls facing the interior of such Unit, the undecorated surface of the ceiling facing the interior of the Unit, and the top most surfaces of the subflooring facing the interior of the Unit, but does not include: (a) any of the structural components of the Buildings located in the unit; or (b) any Systems which serve more than one Unit.

2.3 The legal description of each Unit shall consist of the identifying number and/or symbol of such Unit as shown on the Plans. Every deed, lease, mortgage, or other instrument may legally describe a Unit by such legal description and every such description shall be deemed good and sufficient for all purposes, as provided in the Act. Any measurements and square footage sizes set forth on the Plans as to each Unit are nominal values taken from the plans and specifications for the Property and may not be precisely accurate as to any Unit due to variances in construction and interior floor plans. Declarant shall not be liable to any Owner as a result of any discrepancies in actual Unit measurements or square footage from those set forth on the Plans and each Owner waives any such claim or cause of action against Declarant [by accepting a deed to a Unit].

2.4 Each Unit and the improvements thereon shall be used solely for purposes designated on the Plans, the zoning requirements of the City of Omaha, and this Declaration.

3. ASSOCIATION OF UNIT OWNERS.

3.1 The Association (which has been formed prior to the recording hereof or when will be formed prior to the date on which the first Unit is conveyed by the Declarant to a third party purchaser) shall be the governing body for all of the Owners for the maintenance, repair, replacement, administration, and operation of the Property as provided in the Act, this Declaration; [and the Bylaws.]

3.2 The Board of Directors of the Association shall be deemed to be the "Board" for the Owners referred to herein and in the Act.

3.3 The Association shall not be deemed to be conducting a business of any kind and all funds received by the Association shall be held and applied by it for the Owners in accordance with the provisions of this Declaration, the Bylaws, and the Act.

3.4 Each Owner shall be a member of the Association so long as that person or person is an Owner and such membership shall automatically terminate upon the transfer of the Owner's ownership interest in a Unit. The new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. The Association may issue certificates evidencing membership therein.

3.5 The aggregate number of Votes for all members of the Association shall be twelve (12) which shall be divided among the respective Owners in accordance with their respective Percentages of Ownership described in Article 4 below.

3.6 Each Owner shall be a Member of the Association and shall be deemed to have agreed to be bound by all the provisions of this Declaration, and all amendments, as well as by the Articles of Incorporation, and Bylaws of the Association by purchase or acquisition and ownership of a Unit in the Community. No Owner may avoid the obligations and burdens coincident to ownership of a Unit or membership in the Association.

3.7 Upon assignment, sale, or other transfer a Unit to a new Owner, the transferring Owner shall be relieved of liability for any Assessments levied on such Unit by the Association after the closing date of such assignment, sale, or transfer. All Assessments levied or accrued prior to the closing date shall be paid at, or prior to, the closing by the transferor or seller.

3.8 The Declarant shall control the Association during the Development Period. Upon expiration of the Development Period, or any time elected by the Declarant prior to such point, all Directors shall be elected by the Owners (including the Declarant if an Owner.)

4. OWNERSHIP OF THE COMMON ELEMENTS AND COVENANT AGAINST PARTITION.

4.1 Each Owner shall own an undivided interest in the Common Elements equal to the Percentage of Ownership allocated to the respective Unit owned by such Owner as set forth in the schedule attached hereto as Attachment 3.

4.2 The ownership of each Unit and of the Owner's corresponding Percentage of Ownership in the Common Elements shall not be separated. As long as the Property is subject to the provisions of the Act, the Common Elements shall remain undivided and no Owner shall bring, or have a right to bring, any action for partition or division of the Common Elements. The Common Elements are not subject to partition and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void ab initio. Nothing contained herein shall prevent partition of a Unit as between co-unit owners thereof, if such right of partition shall otherwise be available. Notwithstanding the above, no Unit may be partitioned or subdivided without the prior approval of the holder of any first mortgage or deed of trust lien on such Unit and the Association.

4.3 No Owner shall own any pipes, wires, conduits, public utility lines, sanitary sewer lines, or chases running through such Unit and serving more than the Unit owned by such Owner except to the extent of such Owner's Percentage of Ownership.

5. RIGHTS AND RESTRICTIONS AS TO USE.

5.1 Except as provided in Article 5, each Owner, together with such Owner's tenant, occupant, guest, designee, invitee, agent, or contractor, shall have the right to the use of the Common Elements and any equipment contained therein in common with all other Owners as may be required for the purposes of access or ingress and egress to, and use and occupancy and enjoyment of, the respective Unit owned by such Owner. The Association may, from time to time, establish certain regulations and fees for the private use of certain Common Elements by Owners and their guests.

5.2 No sign, awning, canopy, antenna, satellite dish, or other item of any kind shall be placed or displayed on any portion of the Common Elements or around any Unit so as to be visible from outside the Unit. Signs advertising the Units are open "for rent" shall be permitted by the Board. With respect to any approved signage, the Owner of such improvement agrees to keep and maintain such signage in good condition and in compliance with Laws at its sole cost and expense and shall pay all costs with respect to such signage. Upon the removal of any such signage, the applicable Owner shall [as its sole cost and expense] repair and restore any damage to the Common Elements.

5.3 No commercial trucks, commercial vehicles, boats, campers, recreational vehicles, house trailers, boat trailers, or trailers of any other description shall be kept or parked upon any

portion of the Property without prior written approval of the Board. Notwithstanding the foregoing, motorcycles, scooters, mopeds, and bicycles are not restricted from the Property. No junk or derelict vehicles, or other vehicles on which current registration plates are not displayed, shall be kept or parked upon any portion of the Property. Vehicle repairs, other than ordinary light maintenance, are not permitted on the Property. The Association shall enact reasonable Regulations regarding delivery trucks, deliveries, and the use of loading dock areas, if any.

5.4 No unlawful, noxious, or offensive activity as determined by regulations issued by the Board shall be carried on in any Unit or in the Common Elements nor shall anything be done which will become an annoyance or a nuisance to reasonably prudent Owners or occupants.

5.5 Each Owner and occupant shall comply with all applicable provisions of the Act, this Declaration, the Bylaws, and such Regulations as from time to time are promulgated by the Board, as amended from time to time, and failure to comply with any such provisions and Regulations shall be grounds for an action by the Association. An aggrieved Owner, or any Person or class of Persons adversely affected may petition the Board, for appropriate relief, including recovery of damages, injunctive relief, or both. Punitive damage may be awarded in the case of willful, wanton, and malicious failure to comply with any provision of the Act.

5.6 The rights to use the Common Elements shall extend to each Owner; *provided, however,* that such rights shall be subject to and governed by the provisions of the Act, this Declaration, the Bylaws, and the Regulations. The Association shall have the authority to lease or rent or to grant licenses or concessions with respect to any parts of the Common Elements subject to the provisions of the Declaration and Bylaws.

5.7 Each Owner (for itself and its tenants, subtenants, employees, agents, successors and assigns) covenants, promises, and agrees that it will not willingly or unwillingly violate, or cause, the violation of any Environmental Laws in, at, on, under, upon, or in a manner impacting: (a) the Unit owned by such Owner; (b) any Common Element; or (c) in any manner impacting the Building, the Property, or the surrounding property whatsoever. Each Owner (for itself and its tenants, subtenants, employees, agents, successors, and assigns) further covenants, promises and agrees to indemnify, defend, and hold the other Owners, the Declarant, and the Association harmless from and against any and all claims, demands, liabilities, damages, suits, actions, judgments, fines, penalties, losses, and/or any other obligation whatsoever (including attorney's fees) arising from or relating to any breach by such Owner of any of its obligations in this Section 5.7.

5.8 Owner, at its expense, shall maintain its Unit in good condition and in good order and repair, and shall not do or allow anything to be done in its Unit which may increase the rate, or cause the cancellation of, insurance on other Units or on the Common Elements.

5.9 Trash, garbage, and other waste shall be kept only in designated containers and shall be disposed of in a clean and sanitary manner in accordance with applicable Environmental Laws and as prescribed from time to time in the Regulations.

5.10 No Owner, individually or through their employees, agents, guests, or otherwise, shall cause damage the Common Elements or other Units.

5.11 Subject to the Regulations and Law, no animals, except service animals or Pets shall be kept, raised, or bred in any portion of the Property. Any Pet creating a nuisance or unreasonable disturbance or noise (in the sole judgment of the Board) shall be permanently removed from the Property upon written notice from the Board. Any Pet owner shall be responsible for complying with all

regulations relating to pets established by the Board and may be required to pay a Pet deposit to cover damage potentially caused by a Pet.

6. COMMON EXPENSES.

6.1 Each Owner shall pay its proportionate share of the Common Expenses in relation to each Owner's corresponding Percentage of Ownership.

6.2 Payment of the Common Expenses shall be in such amounts and at such times as determined in the manner provided in Article 7 and the Bylaws.

6.3 Declarant shall have the same responsibility as an Owner pursuant to this Article 6 during such time as Declarant owns any Unit which has received an Occupancy Permit.

6.4 The Board shall give written notice to each Eligible Mortgagee of a Unit if the Owner for such Unit shall fail to pay any Common Expenses when due if such failure continues for a period of sixty (60) days.

7. ASSESSMENTS.

7.1 During the Development Period, Declarant reserves the right to pay all Assessments of the Community and not to assess Units individually. Declarant has the sole discretion in determining commencement of initial assessments of all Owners. The Association shall possess the right, power, authority, and obligation to establish and levy a regular monthly Assessment of the Owners which shall be sufficient, in the judgment of the Board, to pay Common Expenses when due. Such monthly Assessments shall initially be an amount equal to one hundred dollars (\$100) per month and be payable by the Owners on the first day of each calendar month and shall be applied to the payment of charges for which the Association is responsible including, without limitation: (a) charges relating to maintenance and repair of elements of the Property (e.g. landscape maintenance, trash removal, snow removal, and exterior cleaning) which are not the responsibility of the Owners; (b) care of the Common Elements; (c) casualty, general liability, and other insurance coverages required, or permitted to be maintained, by the Association; (d) governmental impositions not separately levied and assessed; (e) utilities relating to the Common Elements or not separately metered; (f) professional services such as management, accounting, and legal and such other costs and expenses as may reasonably relate to the proper maintenance, care, operation, and management of the Property; and (g) the administration of the Association and the Community established hereby including an adequate reserve fund for the periodic maintenance, repair, and/or replacement of the Common Elements. No consent or approval of the Owners shall be required for the establishment of the monthly Assessments. Collection of monthly Assessments, as to each Owner, shall commence upon the acquisition by such Owner of title to their Unit so long as the Declarant has commenced the initiation of Assessments.

7.2 Prior to the commencement of each fiscal year of the Association, in accordance with the Bylaws, the Board shall prepare and deliver to each Owner a budget setting forth the anticipated Common Expenses for the ensuing year. Any cost relating to the Common Elements not listed on the initial budget of the Association will be allocated by the Board pursuant to the following guidelines: (a) expenses related to items, systems, and issues which directly benefit a specific Owner will be charged directly to that Owner; (b) items that can be practically allocated based on usage through sub-metering or other method will be allocated based on usage; (c) Common Expenses which benefit all of the Owners in either equal measure or in a non-quantifiable way will be allocated pro rata; and (d) if an Owner causes an expense to occur such Owner will be responsible for paying for the costs related thereto. The budget shall be in sufficient detail so as to inform each Owner of the nature and extent of the Common Expenses

anticipated to be incurred, and shall be accompanied by a statement setting forth each Owner's monthly share thereof and the date as of which such monthly Assessment commences to be payable. No further communication shall be necessary to establish the amount of each Owner's obligation regarding the monthly Assessment payable hereunder and the failure of the Board to timely deliver the budget provided for herein shall in no event excuse or relieve an Owner from the payment of the monthly Assessments contemplated hereby. Any budget prepared and delivered to the Owners as hereby contemplated may be amended as and to the extent reasonably necessary and an Owner's monthly Assessment shall be changed to correspond therewith.

7.3 In addition to the monthly Assessments contemplated by Section 7.1 and subject to Attachment 3 hereof, the Association, in such event, and Board shall possess the right, power, and authority to establish Special Assessments from time to time as necessary or appropriate to pay non-recurring Common Expenses relating to the proper maintenance, care, alteration, improvement, operation, and management of the Community and the administration of the Association. No consent or approval of the Owners shall be required for the establishment of a Special Assessment as contemplated by this Section 7.3. *Provided, however,* any Special Assessment relating to the removal, alteration, or improvement of any Common Element of the Community, must be approved by the affirmative vote of those Owners holding not less than seventy-five percent (75%) of the votes allocated by this Declaration present at a qualified meeting of the Association duly called for purposes of considering the same. Any Special Assessments shall be due and payable within ten (10) days of written notice from the Association unless otherwise stated by the Board.

7.4 Each Owner shall be personally obligated to pay their share of all Assessments duly established pursuant to this Article 7. Unpaid Assessments due as of the date of the conveyance or transfer of a Unit shall not constitute a personal obligation of the new Owner (other than such new Owner's pro-rata share of any reallocation thereof); *provided, however,* the old Owner shall continue to be personally liable for such unpaid Assessment.] No Owner shall be entitled to exempt themselves from liability for their obligation to pay such Assessments by waiver of the use and enjoyment of the Common Elements; an abandonment of their Unit; or by any other action whatsoever. Any Assessment not paid within five (5) days of the date due shall bear interest at the highest allowable rate in Nebraska and, in addition, incur a late fee of \$25.00. Payment shall be recoverable by the Association, together with interest as aforesaid and all costs and expenses of collection (including reasonable attorneys' fees,) by suit in a court of competent jurisdiction sitting in Douglas County, Nebraska. It shall be the responsibility of the Board to collect any such delinquent Assessment.

7.5 Declarant hereby reserves and assigns to the Association a lien against each Unit; the rents, if any, payable to the Owner of any Unit, and insurance proceeds received by the Owner of any Unit to secure the payment of all Assessments. Such lien shall be and constitute a lien and encumbrance, in favor of the Association, upon such Owner's Unit, Unit rents, and any insurance proceeds. The liens established herein shall be prior and superior to all other liens and encumbrances subsequently created upon such Unit, rents, and insurance proceeds regardless of how created, evidenced, or perfected, but, shall not include the lien securing the payment of first lien indebtedness (provided such lien was recorded prior to the date on which the assessment became delinquent) and liens for unpaid taxes, assessments, special assessments, and other governmental impositions. The liens and encumbrances created herein may be enforced by any means available at law or in equity, including, without limitation, a non-judicial foreclosure sale of the Unit of a defaulting Owner. The Owner of each Unit, by acquisition of each Unit, grants to the Association a power of sale in connection with the Association's liens. By written resolution, the Board may appoint, an officer, agent, trustee or attorney for the to exercise the power of sale on behalf of the Association. The Association may purchase the Unit, as a Common Expense, at any such foreclosures sale. The foreclosure by a first mortgagee of a Unit in order to satisfy first lien

indebtedness will extinguish the subordinate lien for any Assessments which became payable prior to the date of such foreclosure sale.

7.6 Subject to Section 7.1 hereof, the obligation to pay Assessments with respect to each Unit owned by an Owner other than Declarant shall vest on the first day of the calendar month following the month in which this Declaration is recorded. Each Owner shall be obligated to commence payment of all Assessments against their Unit on the date the Unit is conveyed to the Owner. If such date is not the first day of a month, then such Owner shall be obligated to pay only a pro-rata share of the Assessment based on the number of days during such month that the Owner will hold title to the Unit. The obligation of Declarant to commence payment of Assessments on the Units owned by Declarant shall begin upon either: (a) the creation of such Units, platting of said Units, and the issuance of an Occupancy Permit; or (b) upon the initiation by Declarant of Assessments against any Unit in the Community.

7.7 If the Owner defaults in its monetary obligations to the Association, the Association may notify other lien holders of the default and the Association's intent to foreclose its lien. The Association shall notify any holder of a recorded lien or duly perfected mechanic's lien against the Owner's monetary default or the Association's intent to foreclose its lien, as well as any right to cure that the Board deems justified. Nothing contained in this Declaration shall prohibit the Association from taking a deed in lieu of foreclosure or from filing suit to recover sums that may be secured by lien.

8. SEPARATE MORTGAGES.

8.1 Each Owner shall have the right to make a separate mortgage or encumbrance on the Owner's respective Unit together with the Owner's respective ownership interest in the Common Elements. [Except only to the extent of the Owner's own Unit and the Owner's respective ownership interest in the Common Elements] No Owner shall have the right or authority to make, create, or cause any mortgage, encumbrance, or other lien on or affecting the Property.

8.2 Each Eligible Mortgagee shall be given a copy of any and all notices permitted or required by this Declaration which are given to the Owner of a Unit subject to such Mortgagee's mortgage or deed of trust.

8.3 In the event any Owner shall default in the payment of any monies required to be paid under the provisions of any mortgage or deed of trust against such Owner's Unit, the Association shall have the right to cure such default by paying the amount so owing to the party entitled thereto [in accordance with the provisions of such mortgage or deed of trust] and shall thereupon have a lien against such Unit, which lien may be perfected and foreclosed in any manner prescribed by law with respect to liens for failure to pay a share of the Common Expenses. In the event the Association does not elect to cure such default, then the lien holder may proceed to foreclose such lien and sell the property in accordance with the mortgage or deed of trust. Nothing herein contained shall be construed to require the holder of a mortgage or deed of trust to furnish notice of default under said mortgage or deed of trust to the Association.

8.4 Each holder of a first mortgage or deed of trust on a Unit who comes into possession of the Unit by virtue of foreclosure, deed/assignment in lieu of foreclosure, or via foreclosure sale, will take the Unit free of any claims for unpaid Assessments and charges against the Unit which accrue prior to the time such holder or purchaser comes into possession of the Unit if such holder's mortgage or deed of trust, or the mortgage or deed of trust so foreclosed, was properly recorded prior to the date of the notice of delinquency with respect to such Assessments.

9. SEPARATE REAL ESTATE TAXES AND SPECIAL TAX ASSESSMENTS.

9.1 The real estate taxes on each Unit shall be separately paid by each Owner as provided in the Act.

9.2 Owner shall pay its individual tax bill as issued by the taxing authorities and, in the absence of such individual tax bill, each Owner shall pay its individual share of the taxes as determined by the Board in accordance with each Owner's Percentage of Ownership.

10. UTILITIES.

10.1 Each Owner shall pay for its own telephone, cable, electricity, water, gas, and other utilities which are separately metered or billed. Utilities which are not separately metered or billed shall be treated as part of the Common Expenses.

10.2 The Board may grant utilities the right to lay, construct, renew, alter, remove, operate, and maintain conduits, cables, pipes, wires, transformers, switching apparatus, and other equipment into and through the Common Elements for the purpose of providing Utility Services to the Property. The Board may hereafter grant additional utility easements over, under, along, and on any portion of the Common Elements, and each Owner hereby grants to the Board an irrevocable power of attorney to execute, acknowledge, register, and record, such instruments as may be necessary to effectuate the foregoing.

11. INSURANCE.

11.1 Commencing not later than the time of conveyance of the first Unit to a Person other than the Declarant, the Association shall maintain to the extent reasonably available the insurance required by the Act and the insurance described in this Article 11. The premiums for such insurance shall be a Common Expense.

11.2 The Association shall obtain insurance for the Property against loss or damage by fire and such other hazards as the Association may deem advisable for the full insurable replacement cost of the Common Elements and the Units (excluding any improvements, fixtures or betterments added by the Owners to their respective Units and excluding excavations, foundations and footings). Such insurance shall provide protection against loss or damage by fire and other perils normally covered by the standard special form coverage and against all other perils which are customarily covered with respect to projects similar in construction, location, and use as the Property. The policies obtained by the Association shall also have agreed-amount and inflation guard endorsements. Such insurance coverage shall be written in the name of the Association or the Board. The proceeds thereof shall be payable to the Association as the trustee for both the Owners and such Owner's mortgagee(s), if any, in their respective Percentages of Ownership. Any insurance proceeds so paid which are disbursed for reconstruction of damaged premises shall be disbursed by a title insurance company or other escrow agent selected by the Board pursuant to an agreement between the Association and such agent providing appropriate mechanic's lien protection. Application of the insurance proceeds to reconstruction, and disposition of the Property where the insurance proceeds are insufficient for reconstruction, shall be as provided in the Act. In the event of damage or destruction of the Property, the insurance proceeds shall be used in accordance with the provisions of the Act.

11.3 The Association shall obtain commercial general liability insurance which includes medical payments insurance, workmen's compensation insurance, and other insurance to such extent and in such limits as it shall deem desirable. The premiums for such insurance shall be Common Expenses. Notwithstanding anything set forth above, the commercial general liability coverage shall be

for at least \$1,000,000 combined for bodily injury, including deaths of persons, and property damage arising out of a single occurrence and coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injury, and death in connection with the operation, maintenance, or use of the Common Elements. The Association shall also obtain medical payments insurance in an amount not less than \$10,000.00.

11.4 If any of the insurance required in Sections 11.2 and 11.3 of this Article 11 is not reasonably available, the Association shall promptly cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Owners.

11.5 Insurance policies carried pursuant to subsections 11.2 and 11.3 of this Article 11 shall provide that:

- a. Each Owner is an insured person under the policy with respect to liability arising out of Owner's interest in the Common Elements or membership in the Association;
- b. The insurer waives its rights to subrogation under the policy against: (i) any Owner or members of the Owner's household; (ii) the tenant or subtenant of any Unit; (iii) the employees and agents of the Owner, its tenant, or subtenant; and (iv) in the case of an entity, to the directors, officers, shareholders, owners, and agents of the entity;
- c. No act or omission by any Owner, unless acting within the scope of Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and
- d. If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

11.6 Each Owner shall be individually responsible for procuring insurance on: (a) the contents of such Owner's Unit, and all betterments, improvements, decorating, furnishings, and personal property therein; (b) the Owner's personal property stored elsewhere on the Property; (c) and Owner's personal liability to the extent not covered by the liability insurance for all of the Owners obtained as part of the Common Expenses as above provided. Each Owner shall place on file with the Association a copy of its current insurance certificate.

11.7 In the event of substantial damage to or destruction of any of the Unit improvements, the Owner of such Unit shall give prompt written notice of any such damage or destruction to all Eligible Mortgagees with respect to such Unit. In the event of substantial damage to or destruction of any part of the Common Elements, the Association shall give prompt written notice of any such damage or destruction to all Eligible Mortgagees with respect to any Unit.

11.8 If the Property is at any time located within an area having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program (the "NFIP"), the Board shall obtain a master or blanket policy of flood insurance on the Property in an amount equaling the lesser of: (a) the maximum coverage available under the NFIP for all buildings and other insurable property within the Property; or (b) 100% of the current replacement cost of all such buildings and other insurable property.

11.9 Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance and if permitted by law, the Board shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Each Owner, by acceptance of a deed from the Declarant or any other Owner to any Unit, hereby appoints the Board as attorney-in-fact for the purpose of; (a) purchasing or maintaining such insurance; (b) the collection and appropriate disposition of the proceeds thereof; (c) negotiation of losses and execution of releases of liability; and (d) the execution of all documents and the performance of all other acts necessary to accomplish such purpose. The Board shall receive, hold or otherwise properly dispose of any proceeds of insurance in trust for the Owners and their mortgage holders, as their interests may appear.

11.10 Unless otherwise required by law, the Board may, in its discretion, require fidelity bonds or other insurance or surety products for officers and employees of the Association handling or responsible for Association funds in whatever amount the Board deems necessary. The premiums on such products shall constitute a Common Expense.

11.11 All insurance obtained pursuant to subsections 11.2 and 11.3 of this Article 11 shall require such insurer: (a) to issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner or Eligible Mortgagee; and (b) to provide the Association, Owner, Eligible Mortgagee, or other beneficiary with written notice no less than thirty days prior to cancellation, substantial modification, or refusal to renew such policy. All policies of insurance of the character described herein shall be carried in the name of the Association as trustee for each of the Owners and lien holders as their interests may appear and may include a loss payable clause containing the words, "to the holder or holders of mortgages or deeds of trust of record, if any, as their interest may appear". *Provided, however,* policies of insurance described in subsections 11.2 and 11.3 shall not permit payment of proceeds to any mortgagee or beneficiary under a deed of trust as described herein.

11.12 The responsibility to pay the deductible of insurance maintained by the Board shall be as follows: (a) if the loss is to a Common Element only, the Association shall pay the deductible; (b) if a loss is to a particular Unit or group of Units, owned by an individual Owner, such Owner shall pay the deductible; (c) if a loss involves more than one Unit owned by separate Owners, such Owners shall pay the deductible in proportion to their respective losses; and (d) if the loss is to a Common Element and Unit(s) then the Owner(s) of such Unit(s) and the Association shall pay the deductible in proportion to their respective losses. Notwithstanding the foregoing, if any loss described in Subsections (a) through (d) herein is clearly and directly caused by an Owner or such Owner's tenant, occupant, guest, designee, invitee, agent, or contractor or anyone acting on behalf of any of the foregoing parties, such Owner shall pay the deductible regardless of the Unit(s) or Common Elements effected and regardless of such Owner's negligence or participation in the action or inaction causing the loss.

12. RESTRICTIONS ON LEASING AND SALE OF UNITS.

12.1 Units shall be used for residential purposes in accordance with the ordinances and regulations of the City of Omaha, Nebraska. No commercial activities shall be conducted in any Unit except those commercial activities permitted by the Zoning Code of the City of Omaha and Section 12.2 below. Although Units may be leased, no Owner of a Unit shall be permitted to lease or allow occupancy of that Unit for transient or hotel purposes, *provided, however,* that Units may be utilized as vacation rentals upon an Owner providing notice to the Board who shall have discretion in approving such use and establishing policies and limitations therefore. No Owner shall hang or fly banners, flags, or pendants from their Unit without the written permission of the Board.

12.2 Home business use shall be allowed for any Unit for occupations, business, or commercial activity conducted, at or in a Unit by the Owner or by a member residing at the Unit. Such

occupation, business, or activity shall employ only its (1) non-related employee and shall otherwise comply in strict conformance with all applicable Laws and occupancy permit requirements relating to home business and home occupations applicable to property zoned residential. *Provided, however*, that the following business uses are forbidden in any Unit: (a) dog grooming; (b) provision of care, instruction, or training of children or adults (excluding those which are for the exclusive benefit of the Owner or a member of such owner's Immediate Family); (c) any wholesale or jobbing business not conducted entirely by telephone, internet, and/or mail; (d) any manufacturing business; (e) a clinic or hospital; (f) a barber shop or beauty parlor; (g) a stable, animal hospital, dog kennel, or dovecote; (h) any occupation which involves the use of any mechanical equipment other than what is usual for purely domestic or hobby purposes; or (i) any activity that involves the use, manufacture, storage, production or disposal of any Hazardous Substances.

12.3 Leases shall be in writing and shall be subject to all provisions of this Declaration and the Regulations.

12.4 Leases shall include a provision that any violation of this Declaration or of the Regulations shall be a default under the Lease and shall be the basis for termination of the Lease by the Association.

12.5 Leases shall appoint the Association as agent, third-party beneficiary and attorney-in-fact for the Owner for the purposes of terminating the Lease and evicting the tenant if any violation of this Declaration or the Bylaws is not cured within thirty (30) days of written notice from the Association.

12.6 Owner shall provide Association with notice of any lease affecting a Unit executed by such Owner and, if requested, provide a copy such lease to the Association.

13. MAINTENANCE, REPAIRS AND REPLACEMENTS.

13.1 Maintenance, repairs, and replacements of the Common Elements, unless specifically noted herein, shall be furnished by the Association as part of the Common Expenses, although, the allocation of such expenses may be to a Unit or group of Units by the Declaration.

13.2 All incidental damage caused to a Unit by any work on or to the Common Elements done by or for the Association shall be repaired by the Association and the cost thereof shall be a Common Expense.

14. DECORATING OF UNITS.

14.1 Each Owner shall furnish and be responsible for, at Owner's expense, all of the interior decorating within such owner's Unit. Such decorating includes but is not limited to painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, provision of lamps and other furnishings, and interior decorating.

14.2 The interior surfaces of all windows forming part of a perimeter wall of the Building shall be cleaned or washed at the expense of each respective Owner. The use of and the covering of the interior surfaces of such windows, whether by draperies, shades, or other items visible on the exterior of the Unit, shall be subject to the restrictions of this Declaration and the Regulations.

15. UNIT ALTERATIONS, ADDITIONS, IMPROVEMENTS AND MECHANIC'S LIENS.

15.1 An Owner may make any improvements or alterations to its Unit or the improvements thereon that do not impair the structural integrity or Systems in the Building; lessen the support of any portion of the Building or reduce the effectiveness of any sound barriers in the floors and the walls of the Unit.

15.2 Except as expressly allowed hereby, an Owner may not change the appearance of the Common Elements or the exterior appearance of the Building or any other portion of the Community without the affirmative vote of those Owners holding not less than seventy-five percent (75%) of the Votes allocated by this Declaration present at a qualified meeting of the Association duly called for the purpose of considering same.

15.3 Owner(s) (including Declarant) owning adjoining Units shall have the right to relocate the boundaries between such adjoining Units by removing and relocating all or any part of any intervening partition, regardless of such partition being a Common Element, *provided that*: (a) no portion of any bearing wall or bearing column is weakened or removed and no portion of any Common Element (other than the partition) is damaged, destroyed, or endangered; (b) that Common Elements located within said partition (such as pipes, flues, conduits, shafts, vents, ducts, wiring and the like) are modified in good and workmanlike manner by a capable and experienced workman and fully operational upon completion of such relocation; and (c) such Owner or Owners submit plans and specifications relating to such alterations to the Board for its approval, which shall be implied absent a written objection delivered to such Owners(s) by the Board within sixty (60) business days after receipt thereof. Upon approval, the Association shall cause an appropriate instrument of amendment to this Declaration to be prepared, executed, and recorded in accordance with the provisions of Article 17 hereof. The instrument of amendment shall: (x) contain such Plans as are necessary to show the boundaries between the Units involved, which shall be certified as to their accuracy by a registered architect or engineer; (y) recite the occurrence of any conveyance between the Owners of the Units affected; and (z) specify any reasonable reallocation of the aggregate Percentage of Ownership pertaining to the Units affected. The Association hereby agrees to cooperate reasonably with such Owner(s) in effectuating such amendment to this Declaration, *provided that* all costs and expenses incurred by the Association in connection therewith, including attorneys' fees, shall be paid exclusively by such Owner(s). In the event any damage is caused to any bearing wall, Common Element (other than the partition), or another Owner's Unit, all such damage shall be repaired at the sole cost and expense of the Owner(s) exercising the rights hereunder.

15.4 Subsequent to the completion of the improvements described on the Plans, no labor performed or materials furnished and incorporated in a Unit with the consent or at the request of an Owner, its agent, its contractor, or subcontractor shall be the basis for filing a lien against the Unit of any other Owner or against the Common Elements without the written consent of such Unit owner or the Board. Each Owner shall indemnify and hold harmless each of the other Owners from and against all liability arising from the claim of any lien against the Unit of any other Owner or against the Common Elements.

15.5 Owners shall indemnify, defend, and hold harmless Declarant and the Association, and their respective officers, directors, partners, members, shareholders, agents, and employees, from and against any and all claims, demands, damages, losses, liabilities, costs, and expenses, including reasonable attorneys' fees, arising out of or relating to any post-closing construction or improvement to their Unit undertaken by, or at the request of, such Owner including , without limitation: (a) any violation of city, state, or federal law, ordinance, or regulation, including the City of Omaha, Nebraska Building Code; (b) any damage to: (i) the Common Elements, including the structural

components and improvements to the Property and the Systems serving the Property; or (ii) other Units; or (c) any failure by the Owners or any other party performing such work to comply with the Declaration. Any such work shall be performed strictly in accordance with the Law, Declaration and Regulations. Due to the fact the Association's contractors, other Owners' contractors, and the Owner's contractors may be working simultaneously, each Owner's contractors (and their subcontractors or affiliates) retained to work on a Unit shall provide the Declarant ten (10) days' notice prior to starting any work so as to enable harmonious work between all contractors working within the Building. If at any time any picketing, a work stoppage or a strike occurs and interferes with the Association's construction on the Property (or other Owners' contractors'), the Owner shall cause their contractors (and/or subcontractors) to be removed from and around the Property. The foregoing shall not be deemed to permit a prospective purchaser of Unit to undertake any construction in the Community prior to Closing on their Unit.

16. REMEDIES.

16.1 In the event of a default by an Owner under the provisions of the Act, Declaration, Bylaws, Articles of Incorporation, or Regulations, the Association and the Board may exercise any and all of the rights and seek any and all remedies detailed in any of the aforementioned documents. Further, these rights shall be in addition to, and not in limitation of, any and all rights available to the Board and/or the Association at law or in equity. The Board, the Association, or both may prosecute any action or other proceedings against any defaulting Owner and/or any other Person and such actions may include but are not limited to: (a) enforcement of any lien, statutory or otherwise and including foreclosure of such lien and the appointment of a receiver for the Unit and ownership interest of such Owner; (b) requesting damages, injunction, specific performance, or judgment for payment of money and collection thereof; and (c) for any combination of remedies or other relief.

16.2 All expenses of the Board in connection with any such actions or proceedings, including court costs and attorney fees and other fees and expenses and all damages (liquidated or otherwise) together with interest at the rate of twelve percent (12%) or such rate as may be established by the Board from time to time (in either event not to exceed the maximum legally permissible rate per annum) until paid, shall be charged to and assessed against such defaulting Owner and shall be added to and deemed part of the Owners' respective share of the Common Expenses. Further, the Association shall have a lien right for all of the same and for non-payment of the Owner's respective share of the Common Expenses upon the Unit and ownership interest in the Common Elements of such defaulting Owner and upon all of the Owner's additions and improvements thereto and upon all of the Owner's personal property in the Unit or located elsewhere. The rights herein shall be in addition to and not to the exclusion of all other rights available to the Board or the Association at law or in equity.

16.3 Upon the occurrence of an event of default by an Owner, the Board shall have the power to issue a written ten (10) day notice the Owner indicating its intent to terminate the rights of said defaulting Owner to use, occupy, or control its Unit. Once issued, an action in equity may be filed thereupon for a decree of mandatory injunction or, in the alternative, for a decree declaring: (a) the termination of the defaulting Owner's right to occupy, use or control the Unit; (b) ordering that all right, title, and interest of the Owner be sold at a judicial sale upon such notice and terms as the court shall establish; and (c) enjoining the defaulting Owner from reacquiring its interest at such judicial sale. In lieu of the remedies above, the Board may also foreclose any lien provided by the Act in like manner as if such lien were secured by a deed of trust containing a power of sale. The proceeds of any such sale shall first be paid to discharge court costs, master's or commissioner's fees, court reporter charges, reasonable attorney fees, and all other expenses of the proceeding, which shall be taxed against the defaulting Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid Assessments, liens, or other amounts owed by such Owner, including the costs or commissions related to carrying, advertising, and selling such property hereunder, shall be paid to the Owner. Upon the confirmation of

such sale, the purchaser of said Unit shall be entitled to a deed to the Unit and to immediate possession thereof and may apply to the court for a writ of execution for the purpose of acquiring such possession. It shall be a condition of any such sale, and any decree shall so provide, that the purchaser shall take the interest in the Property sold subject to this Declaration shall become an Owner in the place and stead of the defaulting Owner.

16.4 Nothing herein contained shall diminish any right in law any Owner may have to enforce compliance with the provisions of the Act, Declaration, Bylaws, Articles of Incorporation, or the Regulations.

16.5 The Association shall not enforce any remedies until it provides the defaulting Owner with written notice of default and a thirty (30) day period to cure such default subsequent to such notice.

17. AMENDMENT OF DECLARATION, PLANS AND BY-LAWS.

17.1 This Declaration, the Plans, and the Bylaws may be amended from time to time upon the approval by the Association pursuant to a resolution or written consent, given in accordance with the Bylaws, receiving seventy-five percent (75%) of the Votes.

17.2 All amendments to this Declaration shall be prepared, executed, and certified on behalf of the Association by any officer or officers of the Association designated for that purpose in the amendment, or in the absence of designation, by the president of the Association. All such amendments shall be recorded in accordance with the Act.

17.3 The prior written approval of at least 51% of Eligible Mortgage Holders having an interest in the Common Elements is required for any Material Amendment and all Eligible Mortgage Holders holding mortgages on Units shall be given prompt written notice of the proposed amendment by the Association prior to any such Material Amendment to the Declaration.

18. DEVELOPMENT RIGHTS AND DECLARANT'S SPECIAL RIGHTS.

18.1 During the Development Period, Declarant retains, for itself and its successor and assigns, easement rights across the prior completed portions of the Community to the extent necessary or convenient to construct the remaining Units, Common Elements, and Systems in the Community.

18.2 Notwithstanding any provision hereof to the contrary, at all times and from time to time, Declarant (and its successors, assigns, and mortgagees) shall have the right to exercise the Special Declarant Rights [until the expiration of the Development Period].

19. EASEMENTS.

19.1 Each Owner is [hereby] granted a perpetual non-exclusive easement through the common hallways of the Common Elements for access to the Unit owned by such Owner. In addition thereto, each Owner is hereby granted an exclusive perpetual easement to use and occupy any portion of any balcony, patio, exterior doorway, or terrace which adjoins his Unit and to which he has sole access; *provided, however*, that no Owner shall enlarge, modify, improve, decorate, or landscape any such balcony, patio, or terrace without the prior written consent of the Board.

19.2 If settlement or shifting of any building, cause any part of the Common Elements or Unit to encroach upon any part of another Unit or Common Elements, to easements for the maintenance of any such encroachment hereby established [for as long as such encroachment exists]; *provided, however*, that no easement shall be created in the event the encroachment is due to the willful conduct of the Owners.

19.3 Each Owner shall have an easement in common with all other Owners to use all Common Elements, including, without limitation, all pipes, wires, ducts, cables, conduits, utility lines, structural components, and any Common Elements located in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of the Owners of other Units to construct and use the chases, pipes, wires, ducts, cables, conduits, public utility lines, structural components, and other Common Elements located in such Unit and serving other Units.

19.4 Each Unit shall have a perpetual easement over, on, across and through such other Units existing within the Condominium for structural support.

19.5 The Property shall be subject to a perpetual easement in gross allowing the Association and its appointees, employees, and agents ingress and egress to perform obligations and duties required by this Declaration and Bylaws. Should it be necessary to enter a Unit in furtherance of such duties, the Board shall provide the Owner with written notice describing the details of such entry. Each Owner and/or occupant of a Unit shall not unreasonably interfere with the entry described in the Board's notice. If deemed necessary by the Board, the forced entry may be utilized to carry out the duties described herein and shall not subject the Board, its appointees, employees, or agents to trespass, *provided, however*, that any damage to the Unit as a result of forced entry or any repair of a Common Element from within such Unit shall be repaired by the Board as part of the Common Expenses. In the event any Owner or occupant fails to provide access to the Unit as herein provided, the Board may (in addition to exercising other lawful remedies) obtain a court order for such access, and the costs and reasonable attorney fees shall be taxed against the Owner or occupant. The Association may exercise its rights hereunder without providing notice to the Owner if, in its discretion, an emergency makes providing such notice impracticable.

19.6 The Property shall be subject to a perpetual easement in gross allowing the Declarant access over and through the Common Elements as may be reasonably necessary for [making improvements within the Property and for the purpose of discharging Declarant's obligations and/or rights arising under the Declaration, Bylaws, or the Act.

19.7 Easements, as shown on the Plans or as subsequently granted, are established and dedicated for sanitary and storm sewers, electricity, gas, water, telephones, and for all other public utility purposes, and shall include the right to install, lay, maintain, repair and replace any items affiliated therewith. The Declarant shall have the right to grant access and utility easements through the Common Elements to serve the Property and/or for the benefit of any other properties that are adjacent to the Property during the Development Period, which shall pass to the Association upon expiration thereof.

19.8 All easements and rights herein established shall run with the land and inure to the benefit of and be binding upon: the Declarant, its successors or assigns; any Owner, Eligible Mortgagee, or other Person having an interest in any portion of the Property, and the Association whether or not such easements are mentioned or described in any deed of conveyance.

19.9 The Property presently is subject to the existing easements, restrictions, and other title matters of record described in Attachment 1.

20. EMINENT DOMAIN.

20.1 If all or any part of the Property is taken, or threatened to be taken, by condemnation, eminent domain, or by any other similar act, the Association and each Owner shall be entitled to participate in proceedings incident thereto. The Association shall give notice of such proceeding(s) to all Owners and to each Eligible Mortgagee. The expense of participation in such proceeding by the Association shall be a Common Expense while each Owner or Eligible Mortgagee shall bear its own expense. The Association is specifically authorized to engage attorneys, appraisers, architects, engineers, expert witnesses, and any other service the Association, in its discretion, deems necessary or advisable to aid and/or advise in matters relating to such proceedings. All damages or awards for any taking shall be deposited with the Association, acting as trustee, and applied or paid as provided in this Article 20.

20.2 In the event an action in eminent domain is brought to condemn a portion of the Common Elements, the Association shall have the sole authority to: (a) determine whether to defend any such proceeding; (b) make any settlement with respect thereto; or (c) to convey such property to the condemning authority in lieu of such condemnation proceeding. With respect to any taking of Common Elements, all damages and awards shall be determined as a whole and not for each Owner's interest therein. After the damages or awards for such taking are determined, the Association shall call a meeting of the Owners and, upon a majority vote of such members, either: (y) distribute the proceeds to each Owner in proportion to Owner's Percentage of Ownership; or (z) utilize the proceeds to repair or replace such Common Elements and distribute any surplus proceeds to the Owners as described in Subsection 20.2 (y) herein.

20.3 If any Unit(s) is (are) condemned or taken, all damages and awards shall be paid by the Association to the accounts of such Owner(s) in proportion to the Owners' Percentage of Ownership.

20.4 Any damages or awards provided in this Article to be paid to or for the account of any Owner by the Association, acting as trustee shall be applied as follows: (a) first to the payment of any taxes or assessments by governmental authorities past due or unpaid with respect to such Unit; (b) second, to amounts due under any mortgages or deeds of trust affecting such Unit; (c) third, to the payment of any unpaid Common Expense assessments charged to or made against the Unit; and (d) lastly, to the Owner.

21. NOTICES.

21.1 Notices required to be given to the Board may be delivered to any member of the Board either personally or by certified U.S. mail addressed to such member or officer at his Unit, return receipt requested. Notice required to be given to the Declarant or to the Declarant while acting as the Board shall be given by certified U.S. mail, return receipt requested at:

Courtyard on Park, LLC
1001 PARK AVENUE
OMAHA, NE 68105

21.2 The Association and Declarant may designate different addresses for notices by giving written notice of such change to all Owners.

21.3 Within thirty (30) days of an Owner obtaining title to a Unit, such Owner shall provide the Association with a notice address. Any Owner may designate a different address for notices by giving written notice of such change to the Association and the Declarant.

21.4 Notices must be in writing and shall be deemed delivered when hand delivered or mailed by certified U.S. Mail, return receipt requested.

21.5 Notices required for any devisee or personal representative of a deceased Owner may be delivered either personally or by certified U.S. Mail, return receipt requested, to such party at the address appearing in the records of the court wherein the estate of such deceased Owner is being administered.

22. RIGHTS AND OBLIGATIONS.

22.1 The rights and obligations of the respective Owners under this Declaration are covenants running with the land and shall inure to the benefit of and be binding upon each and all of the respective Owners and their respective heirs, executors, administrators, legal representatives, successors, assigns, purchasers, lessees, grantees, mortgagees, and others having or claiming an interest in the Property for so long as the Property remains subject to the provisions of the Act and this Declaration.

22.2 Each grantee of Declarant hereby accepts the same restrictions, conditions, covenants, reservations, options, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration or to which this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved, or declared and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any Persons having, at any time, any interest or estate in the Property and shall inure to the benefit of such Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

23. TERMINATION OF COMMUNITY.

The Community may be terminated in either: (a) any manner provided by the Act; or (b) upon the approval of at least seventy-five percent (75%) of both: (i) the Owners; and (ii) the Eligible Mortgage Holders following substantial destruction, condemnation, or other occurrence which may necessitate termination of the Community.

24. WARRANTIES.

Except for the warranties described herein, the Declarant expressly disclaims all express and implied warranties in relation to the Property, Common Elements, and the sale of Units in the Community, and all such Units shall be deemed to have been purchased "AS IS" and "WHERE IS".

25. MISCELLANEOUS.

25.1 If any provision of this Declaration or any section, sentence, clause, phrase or word, or the application thereof, is held invalid, the validity of the remainder of this Declaration and of the application of any such provision, section, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby and all parties hereto or affected hereby shall endeavor to amend such sentence, clause, phrase, and its affiliated Section and/or Article in a manner consistent with the subject matter and duties or rights enumerated therein or contemplated thereby.

25.2 In the event of any conflict between this Declaration and the Act, the terms of this Declaration shall govern provided the terms do not violate any provision of the Act which, in such instance, shall supersede the terms herein to the same extent discussed in Section 25.1.

25.3 No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration or the Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

25.4 The provisions of this Declaration shall be liberally construed to effectuate its purposes of creating a uniform plan for the development and operation of a mixed condominium. Should any provision of this instrument be deemed to violate the Rule Against Perpetuities, then such provision shall not be stricken but shall be deemed to continue in force and effect for the longest time permitted under Nebraska law, or for the life or lives in being plus twenty-one years thereafter. The captions of the various Articles and Sections are for purposes of reference only, and are not deemed to have any substantive effect.

26. CONSENT OF BOARD FOR LITIGATION OR ARBITRATION: The Association shall not initiate or participate in any arbitration or litigation (other than the collection of dues payable to the Association) in its own name or on behalf of the Members without complying with the provisions of this Article 26. Prior to initiation or participation in any arbitration or litigation, the Board must first give due consideration to the expense, distraction, and commitment of financial and other resources that could be incurred or suffered by the Association; and if mediation is a valid and reasonable alternative to arbitration or litigation. If the Board determines that arbitration or litigation is necessary, the Board shall: (a) procure a budget prepared by the attorneys engaged by the Association to conduct such litigation or arbitration and post such budget at the principal office of the Association immediately thereafter; (b) mail or otherwise deliver said budget to all Owners and Members; (c) call special meeting of Members no less than thirty (30) days after mailing said budget to the Owners and Members pursuant to the terms of the Bylaws of the Association in order to: (i) report all of the Board's concerns, deliberations, and conclusions as required pursuant this Article; and (ii) describe and discuss the budget for such litigation or arbitration; (iii) recommend that the Association initiate or participate in arbitration or litigation; and (iv) recommend adoption of the budget for such action. Notwithstanding any other provision of this Declaration, the Articles, or the Bylaws, and regardless of the number of Members actually attending such special meeting, the Association shall not initiate or participate in any arbitration or litigation without the prior written consent of Members holding at least sixty-six percent (66%) of the total voting power of the Association (based upon the Members' applicable interest in the Common Elements) and the same percentage of Members must concurrently approve the imposition of a Special Assessment to fund such action or proceeding in accordance with the budget. All cost and expenses of any action or proceeding requiring the approval of the Owners in accordance with the preceding sentence shall be funded by means of a Special Assessment pursuant to Section 7.3 hereof and in no event may the Association use reserve funds or incur any indebtedness in order to pay any costs and expenses incurred for such purpose. Furthermore, if the Association commences any action or proceeding against Owner(s) or the Declarant, such party shall be exempted from the obligation to pay the Special Assessment(s) levied in order to pay the costs and expenses if such action or proceeding and shall be excluded from the vote authorizing such action or proceeding. The Association shall be authorized to expend funds for such action or proceeding in excess of the amount contemplated by the approved budget; *provided that*, an amended budget has been approved in accordance with the procedures specified herein. The restrictions in this Article shall not apply to any action to collect or otherwise enforce Assessments or any related fines, late charges, penalties, interest, or costs and expenses (including reasonable attorney's fees) in an amount of \$25,000.00 or less. Further, the procedures in this Article shall not be required whenever the Association is named as a defendant in arbitration or litigation; *provided, however*, the Board shall attempt to mediate

or seek alternative dispute resolution in any such dispute and the Association shall not expand the scope of such dispute by prosecuting a counterclaim without the consent of the Members as required by this Article. In no event shall the Association retain an attorney on a contingency basis unless; (x) a copy of the contingency fee agreement has been mailed or delivered to all Owners and posted at the principal office of the Association no less than thirty (30) days prior to the effective date of such fee agreement; (y) the Board has called a special meeting of the Owners (which may be the same meeting as otherwise required in this Article 26) for the approval of such fee agreement; and (z) the contingency fee arrangement and contingency fee agreement has been approved in writing by Members holding at least sixty-six (66%) of the total votes in the Association, regardless of the number of Owners actually attending such special meeting.

27. ATTACHMENTS.

The following attachments are attached hereto and incorporated herein by this reference:

Attachment 1 -	Legal Description of the Property
Attachment 2 -	Community Plans
Attachment 3 -	Percentage of Ownership

(Signature page is next.)

IN WITNESS WHEREOF, the undersigned have caused this Declaration to be executed in its behalf.

DECLARANT

COURTYARD ON PARK, LLC, a Nebraska limited liability company

By: [Signature]
Larry Jensen, Manager

STATE OF NEBRASKA)
) SS.
County of Douglas)

On this 30th day of January, 2020 before me appeared Larry Jensen known to me personally known, who, being by me duly sworn, did say that she is the Manager of Courtyard on Park, LLC, and acknowledged the execution of the foregoing instrument in behalf of such company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid the day and year first above written.



Notary Public [SEAL]

My commission expires: January 26, 2022

[Signature]

ATTACHMENT 1
TO
DECLARATION OF CONDOMINIUM OWNERSHIP
FOR
COURTYARD ON PARK COMMUNITY

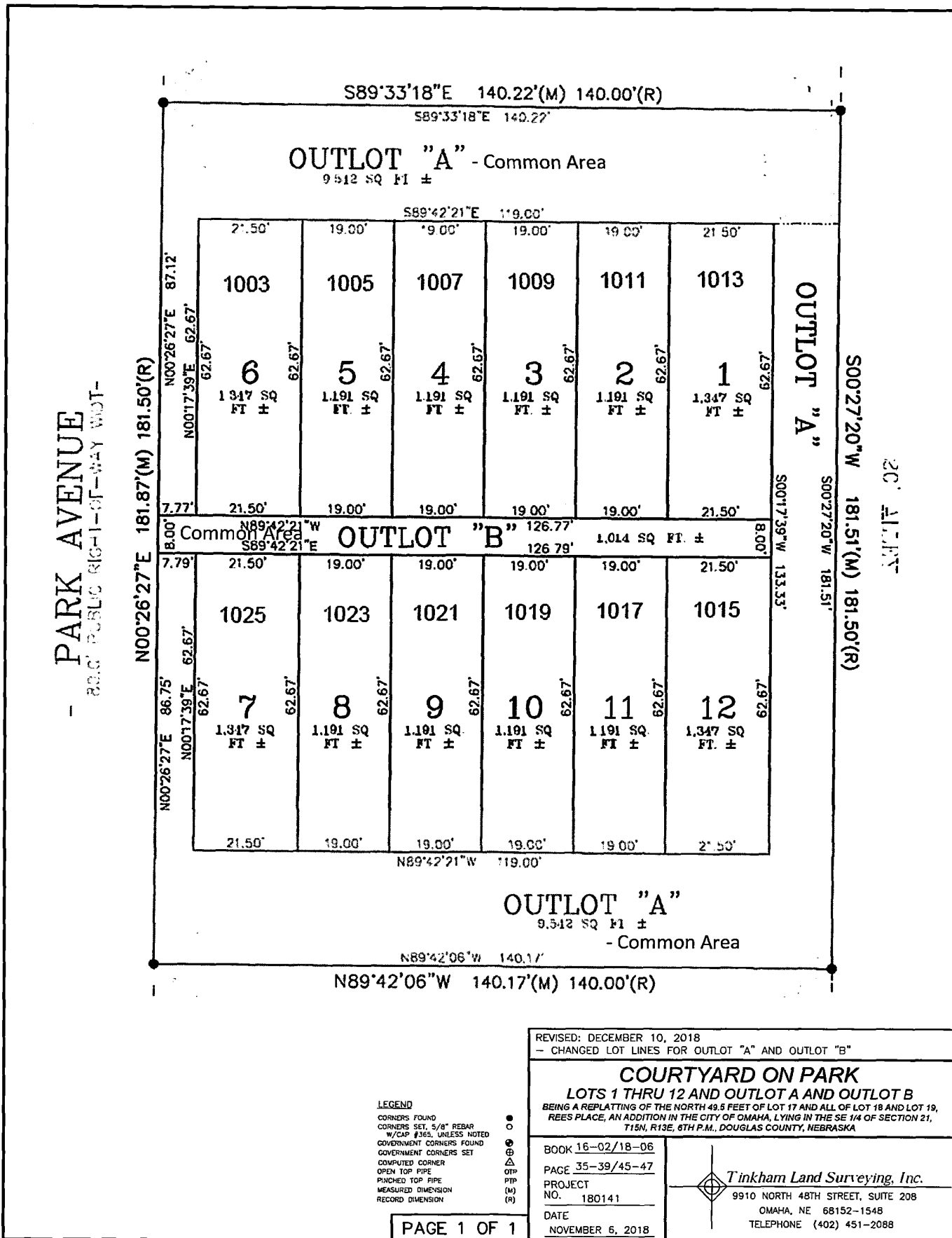
LEGAL DESCRIPTION OF THE PROPERTY

COURTYARD ON PARK, LOTS 1 THRU 12 AND OUTLOT A AND OUTLOT B, AN
ADDITION IN THE CITY OF OMAHA, DOUGLAS COUNTY, NEBRASKA.

ATTACHMENT 2
TO
DECLARATION OF CONDOMINIUM OWNERSHIP
COURTYARD ON PARK COMMUNITY

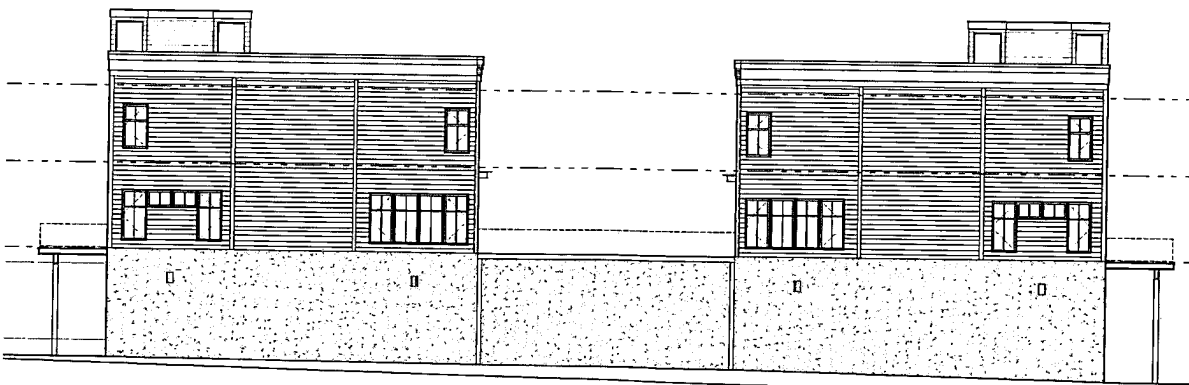
COMMUNITY PLANS

(see next pages)





2 SOUTH COURTYARD ELEVATION
21 1/8"=1'-0"



3 EAST ELEVATION (ALLEY)
22 1/8"=1'-0"



4 NORTH ELEVATION (GARAGE SIDE)
23 1/8"=1'-0"

ATTACHMENT 3
 TO
 DECLARATION OF CONDOMINIUM OWNERSHIP
 COURTYARD ON PARK COMMUNITY

PERCENTAGE OF OWNERSHIP

<u>UNIT #</u>	<u>Percentage of Ownership</u>	<u>Votes</u>	<u>Allocation of Common Expense Liability</u>
1	8.33...%	1	1/12
2	8.33...%	1	1/12
3	8.33...%	1	1/12
4	8.33...%	1	1/12
5	8.33...%	1	1/12
6	8.33...%	1	1/12
7	8.33...%	1	1/12
8	8.33...%	1	1/12
9	8.33...%	1	1/12
10	8.33...%	1	1/12
11	8.33...%	1	1/12
12	8.33...%	1	1/12
Total	100.00%	12	100.00%