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Doc ID: 021522190082 Type: GEN
Recorded: 09/12/2008 at 03:00:18 PM
Fee Amt: \$412.00 Page 1 of 82
Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2008-00018140
BK 12776 PG 296-377

DECLARATION
OF
SUBMISSION TO HORIZONTAL PROPERTY REGIME
OF
e5w
A
CONDOMINIUM PROJECT
LOCATED IN THE CITY OF DES MOINES
COUNTY OF POLK
STATE OF IOWA

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Declarant: e5w, L.L.C.

Legal Description: See Exhibit 1 attached pg 56

Previously Recorded Document: NA

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TO
HORIZONTAL PROPERTY REGIME FOR
e5w**

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**DECLARATION OF SUBMISSION
TO
HORIZONTAL PROPERTY REGIME FOR e5w**

RECITALS:

THIS DECLARATION is made and executed as of this 26 day of August, 2008, by e5w, L.L.C., an Iowa limited liability company (the "Declarant").

A. Declarant is the owner of certain real property situated in the City of Des Moines, Polk County, Iowa, more particularly described on **Exhibit 1** attached hereto and incorporated herein by this reference ("Real Estate"); and

B. Declarant intends to construct on the Real Estate a multi-story building and other improvements (the "Building") which Declarant desires to subject to condominium ownership under this Declaration pursuant to the provisions of Iowa Code Chapter 499B; and

C. Declarant desires to subject the Real Estate and improvements to certain covenants, conditions, restrictions, easements, reservations, uses, limitations, and other obligations set forth herein for the purpose of protecting the value and desirability of said Real Estate and for the purpose of furthering a plan for the improvement, sale, and condominium ownership of said Real Estate for residential and commercial use so that the health, comfort, safety, convenience, and general well-being of Declarant, its successors and assigns, and of the occupants thereof, may be promoted and safeguarded.

NOW, THEREFORE, Declarant hereby submits the Real Estate together with all improvements, appurtenances, and facilities thereto belonging, to the condominium form of ownership under the Act, as the same may be amended from time-to-time, and hereby imposes upon all of said Real Estate the following covenants, conditions, restrictions, easements, reservations, uses, limitations, and other obligations, which shall be deemed to run with the Real Estate and shall be a burden and a benefit to Declarant, its successors, assigns, and any person acquiring an interest in the Real Estate and the improvements which are the subject of this Declaration and their respective grantees, mortgagees, successors, heirs, personal representatives, executors, administrators, devisees, or assigns.

1. **Definitions.**

As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

"Act" means the Horizontal Property Act, Chapter 499B, Code of Iowa.

"Agencies" means and collectively refers to the Federal National Mortgage Association ("**FNMA**"), the Government National Mortgage Association ("**GNMA**"), the Federal Home Loan Mortgage Corporation ("**FHLMC**"), the Department of Housing and Urban Development ("**HUD**"), the Veterans Administration ("**VA**"), the "Iowa Finance Authority" ("**IFA**") and any other governmental or quasi-governmental agency and any other public, quasi-public, or private entity which performs (or may perform in the future) functions similar to those currently performed by such entities.

“Allocated Interest(s)” means, with respect to each Condominium Unit, the appurtenant undivided interest in the General Common Elements, the Common Expense liability and votes in the Association allocated to said Condominium Unit.

“Articles” means the Articles of Incorporation of the Association, as the same may be amended, modified, and/or restated from time-to-time.

“Assessments” means and includes all assessments for Common Expenses provided for in this Declaration. Assessments are classified as Common Expense Assessments, Special Assessments and Reimbursement Assessments, as provided in paragraph 20.

“Association” means The e5w Condominium Owners’ Association, Inc., an Iowa nonprofit corporation, its successors and assigns, the Articles and Bylaws of which, along with this Declaration, shall govern the administration of the Project, and the members of which shall be all of the Owners. The term is synonymous with “Owners’ Association” and “Council of Co-owners.”

“Board of Directors” or **“Board”** means the governing body of the Association.

“Budget” shall mean the then-current annual budget for the operations of the Association prepared by the Board pursuant to paragraph 20.c.

“Building” means the building structure(s) and improvements erected on the Real Estate and located at the intersection of East 5th Street and Walnut Street in Des Moines, Iowa.

“Bylaws” means the bylaws of the Association as the same may be amended, modified and/or restated from time-to-time, and as initially established in **Exhibit 2**.

“Commercial Unit” means Units 101, 102, 201 and 202 initially designated on the Condominium Survey as “Commercial Units.” Additionally, “Commercial Unit” shall include a Unit created by subdivision or combination of a Commercial Unit or Commercial Units or by redesignation of another type of Unit as a Commercial Unit, pursuant to paragraph 4.

A Commercial Unit shall consist of the airspace within one or more rooms occupying all or part of a floor or floors in the Building, which enclosed space is not owned in common with the Unit Owners of other Units, and which airspace is bounded by the unfinished floors, ceilings, and interior and perimeter walls thereof as shown on the Condominium Survey. A Commercial Unit shall include the doors and window glass serving the respective designated Commercial Units. A Commercial Unit shall include both the portion of the Building so described and the airspace so encompassed, excepting General Common Elements and Limited Common Elements, and shall be consistent with the meaning of the term “Apartment” as used in the Act.

“Common Expenses” means expenditures made or liabilities incurred by or on behalf of the Association, together with allocations for reserves, and shall include, without limitation, the following items:

- (1) all unpaid sums lawfully assessed against any Owner by the Board and amounts incurred or expended to collect the same;

- (2) expenses of general administration, management, and operation of the Project, and for maintenance, repair, alteration, renovation, reconstruction, restoration, and replacement of, and for additions to, the General Common Elements;
- (3) expenses declared Common Expenses by provisions of this Declaration or the Act; and
- (4) other expenses relating to the use and enjoyment of the Project agreed upon as Common Expenses by a vote of the Owners representing an aggregate ownership interest of at least fifty-one percent (51%) of the General Common Elements.

"Condemnation Award" is defined as set forth in paragraph 30.b.

"Condominium Survey" is defined as set forth in paragraph 2.

"Condominium Instruments" means, collectively, this Declaration, and the Articles, Bylaws and Rules and Regulations of the Association, all as amended from time-to-time.

"Condominium Unit" means the fee simple title in and to a Residential Unit, a Parking Unit, or a Commercial Unit as designated on the Condominium Survey, together with the corresponding, undivided interest in the General Common Elements, including the Owner's rights with respect to any Limited Common Elements appurtenant to a Unit, and all other rights and burdens created by this Declaration.

"Declarant" means the Declarant named herein, and any successor and/or assignee designated by written notice or assignment duly executed and recorded by Declarant or by any successor or assignee so designated. Declarant is the successor in interest to the Developer identified in the original Declaration.

"Declaration" means this Declaration, together with any supplements or amendments hereto recorded in the Records.

"Development Rights" means those rights granted or reserved to the Declarant as set forth in the Condominium Instruments or the Act including, without limitation, the rights set forth in subparagraph 3.1(7).

"Development Rights Period" means the period of time commencing on the date of this Declaration and ending on the earlier of: (i) the sale of all of the Condominium Units within the Project to third-party purchasers; (ii) the date that is five years after the date of Declarant's execution of this Declaration; or (iii) the date that Declarant waives all remaining Development Rights pursuant to an express written waiver executed and acknowledged by Declarant and recorded in the Records.

"Eligible Mortgagee" is defined as set forth in paragraph 32.

"Expiration of Declarant's Appointment Period" is defined as set forth in subparagraph 18.3(3)(d).

"First Mortgage" means and includes a Mortgage on a Condominium Unit which has first and paramount priority under applicable law over all other Mortgages encumbering said Unit, and any other Mortgage or Construction Mortgage that encumbered the Real Estate described on **Exhibit**

1 at the time this Declaration was filed. A vendor under a Contract for Deed on a Unit shall be deemed a First Mortgagee unless said Unit is encumbered by the interest of a prior Mortgagee or prior contract vendor.

"General Common Elements" means all of the Project except the portions thereof which constitute Units, and shall include, without limitation, all parts of the Building or any facilities, improvements, and fixtures located within a Unit which are or may be necessary or convenient to the support, existence, use, occupation, operation, maintenance, repair, or safety of the Building or any part thereof or any other Unit therein. The term is synonymous with "Common Elements." Without limiting the generality of the foregoing, the following shall constitute General Common Elements:

- (1) all of the land, appurtenances, and beneficial easements which are part of the Real Estate;
- (2) all foundations, columns, girders, beams, and supports of the Building;
- (3) all deck areas, balconies, patios, doors and windows (subject to reservation for individual Owner use as Limited Common Elements, as hereafter defined and provided);
- (4) the exterior walls of the Building, the main or bearing walls within the Building, the main or bearing sub-flooring, and the roof of the Building (subject to the corresponding easements for support and access as hereafter defined and provided);
- (5) the unfinished surfaces of the floors, ceilings, and perimeter walls of the Units, as well as non-weight bearing walls and building structures within the Units;
- (6) all entrances, exits, vestibules, halls, corridors, lobbies, lounges, and related facilities, stairways, elevators and fire escapes, if any, not within any Unit;
- (7) all driveways and parking areas (excluding Parking Units);
- (8) all other parts of the Project necessary in common use or convenient to its existence, maintenance, and safety;
- (9) any roof deck now or hereafter constructed;
- (10) all landscaping;
- (11) equipment, piping, conduits, and installations used in connection with the provision of sewer, water, electrical, and any other common utilities serving the Project; fixtures and decorating in common areas; and sprinkler, fire, alarm, and security system components; and
- (12) those areas and things within the definition of "General Common Elements" as set forth in the Act.

"Guest" means any tenant of a Unit Owner, and any family member, guest, or invitee or such Owner or of such tenant, PROVIDED that the Association Board reserves the right to exclude from the Project any non-Owner as hereinafter provided.

"Index" shall mean the Consumer Price Index for Wage Earners and Clerical Workers (CPI-W) (1982-84=100), U.S. City Average for "All Items" issued by the Bureau of Labor Statistics of the United States Department of Labor. Any reference to the "Index" in effect at a particular time shall mean the Index as then most recently published and/or announced. If the Index shall be converted to a different standard reference base or otherwise revised, any computation of the percentage increase in the Index shall be made with the use of such conversion factor, formula or table for converting the Index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice-Hall, Inc., or failing such publication, by any other nationally recognized publisher of similar statistical information as may be selected by the Association.

"Junior Mortgage" is defined as set forth in paragraph 27.

"Limited Common Elements" means those General Common Elements which are limited to and reserved for the use of one or more but less than all of the Owners, as designated on the Condominium Survey, in this Declaration or in the deed from Declarant to the initial third-party purchaser of a Unit, including but not limited to: (i) the delineated, individual balcony, patio, and deck areas, as well as equipment rooms or spaces, and air conditioning and heating equipment associated with or providing service to one or more but fewer than all Condominium Units; (ii) those portions of the Project treated as Limited Common Elements by operation of the Act; (iii) those portions of the Project expressly designated by the Association Board as Limited Common Elements either temporarily or permanently.

"Managing Agent" means a person or entity selected by the Board to perform the management and operational functions of the Association, and so designated.

"Mortgage" means an interest in real estate created by contract or conveyance which secures payment or performance of an obligation including, without limitation, a mortgage, deed of trust, trust deed, security deed, contract for deed, and any other consensual lien or title retention contract intended as security for an obligation. The term includes the interest of any holder, insurer, or guarantor of a Mortgage, and that of any grantee, beneficiary, successor, or assign of a Mortgagee, as well as the interest of a vendor under a Contract for Deed on a Unit and that of such vendor's successors and assigns.

"Mortgagee" shall include any holder, grantee, or beneficiary of a Mortgage, and any successor or assign thereof, and any insurer or guarantor of a Mortgage. The term shall also include a vendor under a Contract for Deed.

"Occupancy" means the actual occupancy of any Condominium Unit in a manner consistent with the normal usage and purposes of the Condominium Unit or the right to so occupy the Condominium Unit, regardless of whether such right is ever exercised. It shall be presumed from the exercise of rights of a landlord even though actual occupancy is by a tenant. The terms "occupy", "occupancy", and "use" are synonymous for the purposes of this Declaration and any other Condominium Instruments.

"Owner" means the Person or Persons owning a Condominium Unit in fee simple. The Declarant is the initial Owner of each Condominium Unit until the Condominium Unit is

conveyed to another Person, and as to Units owned by Declarant, Declarant shall enjoy the same rights and shall be subject to the same obligations as other Owners. If a Condominium Unit is sold under a Contract for Deed, the vendee, as the equitable owner while the Contract for Deed remains executory, shall be deemed the Owner of the Condominium Unit for purposes of this definition. The term shall be deemed synonymous with the term "member" as used in the Act.

"Parking Lot" means the area east of the Building encompassing the Parking Units and handicapped parking space and so depicted on the Condominium Survey.

"Parking Unit" means any one of the Units located in the Parking Lot designated on the Condominium Survey with a "P" followed by a number or any one of the Units located in the Parking Lot designated on the Condominium Survey with a "P" followed by a number (except the handicapped parking space designated P21 is a part of the Common Elements and not a Parking Unit).

A Parking Unit shall consist of the airspace defined by the perimeter boundaries as depicted and numbered on the Condominium Survey (enclosed by an imaginary line connecting the ends of surface painted stripes) and the hard surface of the Parking Lot extended vertically from that surface to a height of eight (8) feet above said surface.

"Person" means a natural person, corporation, partnership, limited liability company, association, trust, or any other legally cognizable entity, or combination thereof.

"Project" means all of the Real Estate, the Condominium Units and General Common Elements, including specifically the Building, grounds, and improvements submitted to this Declaration.

"Records" shall mean the real property records of the Recorder of Polk County, Iowa, and any and all other official public records relating to the ownership, use, and transfer of real estate located in Polk County, Iowa.

"Reimbursement Assessment" is defined as set forth in paragraph 20.g.

"Residential Unit" means any one of the Units designated on the Condominium Survey as a "Residential Unit." Additionally, "Residential Unit" shall mean any such Unit created by subdivision or combination of a Residential Unit or Residential Units or portions thereof redesignation of other type(s) of Unit(s) as a Residential Unit or any such Unit created by conversion of a portion of the General Common Elements either by itself or in combination with part or all of another Unit(s) pursuant to paragraph 4.

A Residential Unit shall consist of the airspace within one or more rooms occupying all or part of a floor or floors in the Building, which enclosed space is not owned in common with the Unit Owners of other Units, and which airspace is bounded by the unfinished floors, ceilings, and interior and perimeter walls thereof as shown on the Condominium Survey. A Residential Unit shall include the doors and window glass serving the respective designated Residential Units. A Residential Unit shall include both the portion of the Building so described and the airspace so encompassed, excepting General Common Elements and Limited Common Elements, and shall be consistent with the meaning of the term "Apartment" as used in the Act.

"Rules and Regulations" means the content of any instrument, however denominated, which is adopted and/or promulgated by the Association pursuant to the Condominium Instruments or the

Act and relating directly or indirectly to the operation and management of the Project or any portion thereof.

"Special Assessment" is defined as set forth in paragraph 20.f.

"Units" means those spaces within the Building as depicted on the Condominium Survey and identified by an identifying number as a Unit. It is synonymous with Condominium Unit as herein defined and with "Apartment" as used in the Act. The term includes Residential Units, Parking Units and Commercial Units.

Notwithstanding anything herein, no General Common Element or Limited Common Element located within a Unit as described above shall be considered part of the Unit.

"Use" means the use of any Condominium Unit or the General Common Elements in a manner consistent with the normal usage and purposes of the Condominium Unit or the right to so use the Condominium Unit, regardless of whether such right is ever exercised. The terms "occupy", "occupancy", and "use" are synonymous for the purposes of this Declaration and any other Condominium Instruments.

"Utility Easement(s)" shall be as defined in paragraph 15.f.

2. **Condominium Survey.**

A Condominium Map of the Project complying with the requirements of Section 499B.6 of the Act, and augmenting compliance with the requirements of Section 499B.4 of the Act, is attached hereto as **Exhibit 3** (the "Condominium Survey"). Additionally, the Condominium Survey designates each Unit as a Residential Unit, a Parking Unit or a Commercial Unit. The dimensions of Residential and Commercial Units and General Common Elements shown on the Condominium Survey have been calculated from the center of any demising walls.

Except as otherwise provided in this Declaration or as otherwise required by the Act, the Condominium Survey may not be amended or supplemented except with the vote or agreement of the Owners owning at least a 67% interest in and to the Common Elements.

Notwithstanding the foregoing, Declarant, in its sole and absolute discretion, at any time prior to the expiration of the Development Rights Period, shall be entitled to amend and/or supplement Condominium Survey, without the approval of the Unit Owners or any Mortgagees as necessary to allow the exercise of the Development Rights. After said period, the Association, in its sole and absolute discretion, shall be entitled to amend and/or supplement the Condominium Survey without the approval of the Owners or any Mortgagees, but subject to any restrictions set forth in this Declaration, as necessary in connection with any amendments to the Declaration. In interpreting any and all provisions of this Declaration, and in interpreting any deeds to or Mortgages of any Condominium Units, the actual physical boundaries of a Unit as constructed (or, in the case of Parking Units, the actual boundaries as shown on the Condominium Survey) shall be conclusively presumed to be its boundaries.

3. **Required Elements of Declaration/Division Into Units.**

- a. **Requirements of Act** In compliance with certain of the requirements set forth in Section 499B.4 of the Act, Declarant hereby states as follows:

- (1) The land that is the subject of this Declaration constitutes the Real Estate which is legally described on **Exhibit 1**.
- (2) The Building consists of one five (5) story structure, roof and surface Parking Lot. The Building is principally constructed of concrete, brick, masonry, steel, wood, gypsum board, metal, and other building materials typical in the state of Iowa.
- (3) The Condominium Survey depicts the location and number of each Condominium Unit. The Condominium Survey and this Declaration shall govern for the purposes of the Act as meeting the following requirements.
 - (a) The dimensions, area, and location of General Common Elements or Limited Common Elements affording access to each Condominium Unit;
 - (b) The location of General Common Elements and Limited Common Elements reflecting the Condominium Units for which said Limited Common Elements are reserved; and
 - (c) The Unit number of each Condominium Unit, the relative location of each, approximate area of Units, number of rooms encompassed by each Unit, and other data necessary for proper identification of Units, General Common Elements, and Limited Common Elements.
- (4) The description of the boundaries of each Unit created by this Declaration is set forth on the Condominium Survey and in the definitions of terms herein, and each Unit's identifying number is shown on the Condominium Survey.
- (5) A depiction of Limited Common Elements is shown on the Condominium Survey and is set forth in the definition of the terms "General Common Elements" and "Limited Common Elements" herein.
- (6) Portions of the Project may be allocated subsequently as Limited Common Elements in accordance with paragraph 4 or pursuant to the deed from Declarant to an initial third-party owner of any Condominium Unit.
- (7) In addition to the rights reserved by the Declarant as set forth elsewhere in this Declaration, Declarant reserves the absolute and unrestricted right without any further authorization or consent (unless expressly provided for herein) to:
 - (a) Create General Common Elements or Limited Common Elements from portions of Units owned by it as set forth in paragraph 4.a;
 - (b) Subdivide or combine Units, or portions thereof, or convert Units into General Common Elements or Limited Common Elements as set forth in paragraph 4.a;
 - (c) Complete any improvements to the Project whether or not indicated on the Condominium Survey;

- (d) Maintain sales offices, management and leasing offices, and signage advertising the Project, all as more fully described in paragraph 34.h;
- (e) Make any improvements, alterations, or additions to the Project, at Declarant's expense, as Declarant may deem necessary or desirable for the marketing of the Units, and in connection therewith to allow the use of easements through the General Common Elements and other Units by Declarant and Declarant's agents and contractors;
- (f) Designate, appoint, or remove any officer of the Association or any member of the Board as specified in paragraph 18, the Articles, or the Bylaws;
- (g) Create Units from General Common Elements or Limited Common Elements as set forth in paragraph 4.a;
- (h) Redesignate any: i) General Common Elements to Limited Common Elements; ii) Limited Common Elements to General Common Elements provided the consent of any Unit Owner and Mortgagee whose Unit is affected is first obtained; iii) General Common Elements to a Unit provided the consent of any Unit Owner and Mortgagee whose Unit is affected is first obtained; iv) Limited Common Elements to a Unit provided the consent of any Unit Owner and Mortgagee whose Unit is affected is first obtained; or v) Unit to General Common Elements or Limited Common Element provided the consent of any Unit Owner and Mortgagee whose Unit is affected is first obtained; and
- (i) Amend this Declaration, the Condominium Survey, the Articles, and/or Bylaws in order to obtain approvals from one or more of the Agencies or to exercise any Development Rights.

The rights specified in this subparagraph 3.a(7) are included in the Development Rights, apply to the Project, and must be exercised prior to the expiration of the Development Rights Period.

- (8) Each Unit's Allocated Interest is shown on **Exhibit 4** and governs in establishing each Unit's undivided interest in the General Common Elements as set forth in paragraph 3.b, the allocation to each Unit of Common Expenses as set forth in paragraph 20.a, and the allocation to each Unit of votes in the association as set forth in paragraph 18.c.
- (9) Restrictions on the use and occupancy of Units are set forth throughout this Declaration and in the Bylaws, and in Rules and Regulations, as amended from time-to-time.
- (10) The percentage of votes by Owners which shall be determinative of whether to rebuild, repair, restore, or sell the Project in the event of damage or destruction of all or part of the Project is set forth in paragraph 29. The amount that a Unit Owner is entitled to receive upon any condemnation of, or casualty loss to, such Owner's Unit or the Project or upon termination of the condominium regime is set forth in paragraphs 29 and 30.

- (11) The recording data for recorded easements and licenses appurtenant to, or included in the Project, or to which any portion of the Project is or may become subject by virtue of a reservation in this Declaration, is set forth on the Condominium Survey.
 - (12) Notice of matters affecting the Project shall be given to Owners in accordance with paragraph 34.c, and to Mortgagees in accordance with paragraphs 30.f and 32.
 - (13) The method by which the Declaration may be amended is set forth in paragraphs 7, 31, and 32.
- b. **Creation of Condominium Units.** Declarant does hereby submit the Project to condominium ownership pursuant to the Act, and the Project is hereby divided into twenty-nine (29) Residential Units, twenty (20) Parking Units (with the space labeled as P21 being a Common Element), and four (4) Commercial Units consisting of a separate fee simple estate in a particular Unit, and an appurtenant undivided interest in the General Common Elements. The undivided interest in the General Common Elements appurtenant to each Unit is determined by the Allocated Interests set forth on **Exhibit 4**. The Allocated Interest has been computed by calculating and assigning to each Residential, Parking and Commercial Unit a percentage determined by a fraction, the numerator of which is the square feet of the Unit (as measured from the center of any demising walls) and the denominator of which is the total square footage of all Units. The square footage of the Parking Units is based upon the number of useable square feet determined by the Declarant in its sole discretion. The square footage of each Residential and Commercial Unit is based upon the square footage as determined by the architectural firm that prepared the Condominium Survey, which square footage may or may not be the exact square footage of the Unit. The square footages as so determined, for purposes of computing the percentage interests in the General Common Elements, shall be final and conclusive notwithstanding the fact that any Owner may conclude that the square footage of any particular Unit is different by some measure than that so determined.

4. **Right to Combine, Subdivide, and Redesignate Units/Creation of Units, General Common Elements, and Limited Common Elements.**

a. **Declarant Rights.**

- (1) **Combination and Subdivision.** Declarant hereby reserves the right to: 1) physically combine the total area or space of one Unit with the total area or space of one or more adjacent Units (whether adjacent horizontally or vertically); 2) physically combine a part of or combination of parts of the area or space of one or more Units with a part of or combination of parts of the area or space within one or more adjacent Units (whether adjacent horizontally or vertically); 3) physically subdivide one or more Units into two or more Units; and 4) redesignate and reallocate Limited Common Elements in connection with any combination or subdivision of any Unit(s). Declarant shall not exercise its rights pursuant to this paragraph 4.1 unless it is the Owner of or has the consent of all Owners of the Unit(s) to be subdivided or combined, nor shall Declarant exercise such rights without the written consent of any First Mortgagee having an interest in said Unit or Units. Any such combination or subdivision shall result in a

corresponding reallocation of the Allocated Interest for the affected Units, provided that the Allocated Interests of all other Units shall remain unchanged.

- (2) **Create and Convert Common Elements.** Declarant reserves the right to convert any Units owned by it into General Common Elements or Limited Common Elements. Declarant further reserves the right to relocate the boundaries of any or all of the Units located on the Project to the extent Declarant owns any of such Units to incorporate any portion or all of the General Common Elements or Limited Common Elements located adjacent thereto as part of such Units. If Declarant so relocates the boundaries of any such Unit, it may designate, as additional Limited Common Elements appurtenant to such Unit, any walls, floors or other structural separations that formerly constituted the Unit boundary, or any space that would be occupied by such structural separations but for the relocation of the Unit boundary. If Declarant converts any Units to General Common Elements or Limited Common Elements pursuant to this subparagraph, the Allocated Interest appurtenant to the remaining Units shall be reallocated proportionally in accordance with their respective percentages as set forth in **Exhibit 4**, and an appropriate amendment to **Exhibit 3** shall be prepared by Declarant and recorded in the Records.

Except for the "Stairways", "Hallways" and any "Elevator" as shown on the Condominium Survey, Declarant further reserves the right to convert any General Common Elements or Limited Common Elements into Units. If Declarant converts any General Common Elements or Limited Common Elements to Units pursuant to this subparagraph, the Allocated Interest appurtenance to all Units shall be reallocated proportionately in accordance with the formula set forth in paragraph 3.b and an appropriate amendment to **Exhibit 3** shall be prepared by Declarant and recorded in the Records. Any conversion of General and/or Limited Common Elements to Units shall require the consent of any Unit Owner and First Mortgagee whose Unit is affected.

- (3) **Redesignation of Units.** Declarant reserves the right, subject to the requirements of applicable zoning ordinances and regulations and recorded covenants and restrictions affecting the Project, to redesignate any Commercial Unit or Residential Unit as a Unit of any other type and to convert a redesignated Unit back to a Unit of any other type. Declarant's rights as stated in the previous sentence specifically include the right to redesignate one or more existing or future Commercial Units as Residential Units, in which event said units shall no longer be Commercial Units but shall for all purposes under the Declaration become Residential Units. Upon conversion of any Commercial Units to Residential Units or any Residential Units to Commercial Units, the Allocated Interest of such Units shall remain unchanged.
- (4) **Condominium Survey Supplements and Other Procedures.** If Declarant exercises one or more of its rights as set forth above or any other Development Right which affects the Condominium Survey after the Condominium Survey has been recorded, it shall cause a supplemental or amended Condominium Survey or other appropriate document to be recorded in the Records reflecting the same, and shall record an amendment, if necessary, to **Exhibit 4** reflecting the same. Upon any physical combining of Units, the resulting Unit shall be allocated the Allocated Interest appurtenant to the Units so combined. Upon any such physical

combining of Units to create a single Unit, the Owner of such combined Unit shall be responsible for the assessments for Common Expenses allocable to the Units so combined, as determined pursuant to paragraph 20. Declarant reserves the right to designate, as additional Limited Common Elements appurtenant to such combined Unit, any walls, floors, or other physical separations between the Units so combined, or any space which would be occupied by such physical separations but for the combination of such Units; provided, however, that such walls, floors, or other physical separations or such space shall automatically become General Common Elements if the combined Units become subject to separate ownership in the future. Upon any subdivision of any one or more Units to create additional Units, the resulting Units shall be allocated the Allocated Interest of the Units so subdivided, which undivided interests shall be allocated between or among such Units by Declarant in accordance with the formula set forth in paragraph 3.b, and such determination shall be final and conclusive.

- (5) **Expiration of Reserved Rights.** The reserved rights of Declarant set forth in this paragraph 4.1 shall terminate upon the expiration of the Development Rights Period. Declarant states that: (i) its rights under this paragraph 4.a or under any other provision of this Declaration may be exercised with respect to the General Common Elements, Limited Common Elements, or various Units at different times; (ii) no assurances are made as to the boundaries of the Units, General Common Elements, or Limited Common Elements that may be subject to Declarant's rights under this paragraph 4.a, or under any other provision of this Declaration, or as to the order in which General Common Elements, Limited Common Elements, or Units, if any, may be subjected to such rights; and (iii) if Declarant exercises any rights as to any Units pursuant to paragraph 4.a or under any other provision of this Declaration, such rights may, but need not, be exercised as to all or any other portion of the Project.

- b. **Unit Owner Rights.** Each Owner of a Unit shall have the right to combine two or more adjacent Units (whether adjacent horizontally or vertically), or to divide two or more Units which have previously been divided or combined, as the case may be, by Declarant in accordance with paragraph 4.a, or by an Owner in accordance with this paragraph 4.b. Except as provided in the foregoing sentence, there may be no other division or combination of Units or relocation of boundaries of adjacent Units by Owners. A proposed combination or division of Units by an Owner shall require the consent of the Association and, if during the Development Rights Period, by Declarant, and shall be accomplished in accordance with the procedures set forth by the Board. The exercise of the rights granted in this paragraph 4.b shall be subject to the prior written consent of each Mortgagee having an interest in any such combined or divided Units. If Units are combined, the undivided interest in the General Common Elements appurtenant to the combined Unit shall be the sum of the previous Allocated Interests in the Units that were combined. Any previously combined Units that are later divided shall have the Allocated Interests that they had prior to the previous combination.

5. **Limited Common Elements.**

Subject to the definition thereof and the Development Rights, the Limited Common Elements, except those specified under the Act, shall be designated herein, in the Condominium Survey, or in a deed from Declarant as appurtenant to one or more particular Condominium Units. Any door, window, balcony, patio, or deck that is accessible from, associated with, or which adjoin(s)

a Unit and which is identified as a Limited Common Element in the Condominium survey and designated as appurtenant to a particular Condominium Unit or Condominium Units shall, without further reference thereto, be used in connection with the Unit or Units to which the feature is appurtenant to the exclusion of the use thereof by the other Owners, except by invitation or by reason of easement rights herein created. Except as otherwise permitted by paragraph 4 or by the exercise of the Development Rights by Declarant, the allocation of a Limited Common Element may not be altered without the consent of the Unit Owners and First Mortgagees whose Units are affected, and then only with the approval of the Board of Directors.

6. **Inseparability of a Condominium Unit and Ownership of Common Elements.**

An Owner's undivided interest in the General Common Elements, including such Owner's interest in any appurtenant Limited Common Elements, shall not be separated from the Unit to which such interest is appurtenant, and shall be deemed to be conveyed or encumbered with the Unit even though the interest is not expressly mentioned or described in a deed or other instrument. Any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the General Common Elements made without a like transfer of the Unit to which that interest is allocated shall be void.

7. **Description of Condominium Units.**

- a. **Subsequent to Recording.** Subsequent to the recording of the Declaration and the Condominium Survey, every deed, lease, Mortgage, and other instrument affecting title to a Condominium Unit shall legally describe a Condominium Unit by its identifying Unit number and percentage interest in the General Common Elements and followed by the words "e5w, a Condominium, City of Des Moines, Polk County, Iowa, in accordance with and subject to the Declaration of Submission to Horizontal Property Regime for e5w, City of Des Moines, Polk County, Iowa, recorded on [with this blank completed], 2008, in Book [with this blank completed], at Page [with this blank completed], in the records of the Polk County, Iowa Recorder." Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber, or otherwise affect not only the Unit, but also the Allocated Interest appurtenant thereto, as well as the right to the use of the Limited Common Elements appurtenant thereto. Each such description shall be construed to include a non-exclusive easement for ingress and egress throughout and for use of the General Common Elements which are not Limited Common Elements; the right to the use of the appurtenant Limited Common Elements; and the other easements, obligations, limitations, rights, encumbrances, covenants, conditions, and restrictions created by the Act, Declaration, Bylaws, or Rules and Regulations.
- b. **Reference Includes Amendments.** The reference to the Condominium Survey, Articles, Declaration, Bylaws, and Rules and Regulations, shall be deemed to include any supplement(s) or amendment(s) thereto without specific reference.

8. **No Partition.**

The General Common Elements shall be owned as tenants-in-common by all of the Owners and shall remain undivided, and no Owner or other Person shall bring any action for partition or division of the General Common Elements. Similarly, no action shall be brought for partition of a Unit between or among the Owners thereof. Each Owner, by virtue of ownership of a Condominium Unit, hereby expressly waives any and all rights that might otherwise exist to institute or maintain an action for partition or any other division of a Condominium Unit or the

General Common Elements, except as otherwise expressly permitted by this Declaration or the Act.

9. **Separate Taxation.**

Each Condominium Unit shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, including ad valorem levies and special assessments. The lien for such taxes assessed to any Condominium Unit shall be confined to that Condominium Unit. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Condominium Unit or appurtenant interest in the General Common Elements. If such taxes or assessments for any year are not separately assessed to each Owner, but rather are assessed on the Project as a whole, then each Owner shall pay the proportionate share thereof in accordance with their Allocated Interests in the General Common Elements, and in said event such taxes or assessments shall be a Common Expense. Without limiting the authority of the Board provided for elsewhere herein, the Board shall have the authority to collect from the Owners their proportionate share of taxes or assessments for any year in which taxes are assessed or payable on the Project as a whole.

10. **Title.**

A Condominium Unit may be held and owned by more than one Person as joint tenants or tenants-in-common, and any real property tenancy relationship that is recognized under the laws of the State of Iowa may be created and maintained with respect thereto.

11. **Certain Work Prohibited.**

- a. No Owner shall undertake any work, improvements, or alterations in a Unit which would jeopardize the soundness or safety of the Project, impair the structural integrity of the Building, the electrical systems, or the mechanical systems, or lessen the support of any portion of the Project, or impair an easement or hereditament thereon or thereto. No Owner shall enclose, by means of screening or otherwise, any balcony, deck, or patio which is accessible from, associated with, and which adjoins a Unit, nor shall any Owner enclose or otherwise partition any Parking Unit, without having first obtained the prior written approval of the Board (which approval may be withheld for any reason, or made subject to conditions or qualifications imposed in the sole discretion of the Board) for such enclosure or partition and for the materials, plans and specifications for such enclosure or partition. Structural alterations shall not be made by an Owner to the exterior portions of a Unit or to the Building, nor shall an Owner make any changes to the water, gas or steam pipes, electric conduits, plumbing, or other fixtures, nor shall an Owner remove any additions, improvements, or fixtures from the Building, without in any such case having first obtained the prior written approval of the Board (which approval may be withheld for any reason or made subject to conditions or qualifications imposed in the sole discretion of the Board). No Owner may change the appearance of any of the General Common Elements, including any Limited Common Elements appurtenant to such Owner's Unit, which are visible from the exterior of the Building or such Unit without the Board's approval, nor may any Owner in any way alter the appearance of any Parking Unit without the Board's approval. The foregoing restrictions shall not be applicable to Declarant during the Development Rights Period.

- b. The Association shall have the right to make attachments to the Building and to penetrate the Common Elements for that purpose and otherwise for the purpose of installing antennas and conduits for power, broadcasting, and related purposes, and shall have corresponding easements for those purposes and easements for access to and support of all such facilities.

12. **Liens Against Condominium Units – Removal Of Lien – Effect of Part Payment.**

- a. **Limitation on Units Affected.** No labor performed or materials furnished with the consent or at the request of an Owner of a particular Condominium Unit, or his agent, contractor, or subcontractor, shall be the basis for the filing of a lien pursuant to applicable law against the Condominium Unit or other property of another Owner not expressly consenting to or requesting the same, except that express consent shall be deemed to be given by the Owner of any Condominium Unit to the Managing Agent or the Board in the case of emergency repairs. Labor performed or materials furnished for the General Common Elements, if duly authorized by the Managing Agent or the Board in accordance with the Declaration or Bylaws, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for filing of a lien pursuant to applicable law against each of the Condominium Units in the Project.
- b. **Partial Release.** If a lien is effected against one or more Condominium Units, the Owners of the separate Condominium Units may remove their Condominium Units from said lien by payment of the amount attributable to each of the Condominium Units affected. The amount of the payments allocable to the affected Condominium Units shall be apportioned based upon their respective Allocated Interests. Subsequent to payment, discharge, or other satisfaction, the Condominium Unit shall be released from the lien thus paid, satisfied, or discharged. Partial payment, satisfaction, or discharge shall not prevent the lien or from proceeding to enforce rights against any Condominium Unit not so released or discharged.
- c. **Indemnity.** Each Owner shall indemnify and hold each of the other Owners and the Association harmless from and against liability or loss arising from any claim resulting from or any lien for labor performed or materials furnished in connection with any work on such Owner's Condominium Unit. At the written request of any Owner, or upon action by the Board of Directors on its own initiative, the Association shall enforce such indemnity by collecting from the Owner of the Condominium Unit on which the labor was performed or materials furnished the amount necessary to discharge any such lien assessed against the Condominium Unit of another Owner or against the General Common Elements, and all costs incidental thereto, including reasonable attorney's fees. If not paid within ten days after the Association's request for payment, the Association may proceed to collect such amounts in the manner provided herein for collection of assessments for the purpose of discharging the lien.

13. **Use and Occupancy of Units.**

a. **Residential Units.**

- (1) **Transferability of Residential Units.** The Residential Units are individual Condominium Units that may be sold, leased, or licensed by the Owner thereof, including without limitation Declarant, subject to the terms of this Declaration, the Bylaws, the Rules and Regulations, and applicable laws. Each Owner of a

Residential Unit, including Declarant, shall have the right to sell, lease, license, or otherwise transfer such Residential Unit(s) upon such terms as the Owner, in the Owner's sole and absolute discretion, deems appropriate.

- (2) **Use and Operation of Residential Units.** Except as otherwise permitted by this paragraph 13.a, each Residential Unit shall be used for residential purposes only, and no such Unit shall be occupied for living or sleeping purposes by more persons than it was designed to accommodate safely. For the purposes of the foregoing sentence, each Residential Unit shall be deemed to have been designed to accommodate safely a maximum of two occupants per bedroom (with any studio Units being deemed to have one bedroom for such purpose). No Residential Unit shall be used at any time for any business or commercial activity, except as follows: (i) the Owner thereof may lease or rent such Unit for private residential or living purposes (subject to paragraph 28.i); (ii) the Owner or tenant thereof may use a portion of the Unit as a home office if and to the extent permitted by applicable law; (iii) Declarant or its nominee or agents may use any Unit(s) for such purposes as may be authorized by paragraph 34.h below; and (iv) the Association shall have the right, but not the obligation, to purchase, own, or lease one or more Condominium Units for a manager's residence and/or office, a building superintendent or engineer's residence and/or office, a guest suite as overnight sleeping accommodations upon terms and conditions approved by the Board or for such other purposes as the Association may deem appropriate. Further, the Association and/or Managing Agent may maintain offices within the General Common Elements, provided the Association's right to do so during the Development Rights Period shall be subject to Declarant's prior written approval.

b. **Parking Units.**

- (1) **Transferability of Parking Units.** The Parking Units are individual Condominium Units, which may be sold, leased, or licensed by the Owner thereof, including without limitation Declarant, subject to the terms of this Declaration, the Bylaws, the Rules and Regulations, and applicable laws. Each Owner of a Parking Unit, including Declarant, shall have the right to sell, lease, license, or otherwise transfer such Parking Unit(s) upon such terms as the Owner, in the Owner's sole and absolute discretion, deems appropriate.
- (2) **Use and Operation of Parking Units.** Subject to paragraph 28.j, Parking Units shall be used for the parking and storage of automobiles, motorcycles, and similar vehicles. The Association may adopt Rules and Regulations restricting or regulating storage uses including, but not limited to, property that may be stored, storage locations, and storage containers. The Rules and Regulations may differentiate between Parking Units and other existing or acquired parking spaces.
- (3) **Incidental Encroachment.** In the ordinary and customary use of the Parking Units, a parked vehicle may permissibly encroach on Common Element areas of the Parking Lot beyond the strict boundaries of the Parking Unit so long as such encroachment does not materially inhibit vehicular passage on the designated concrete parking and drive, infringe upon another Parking Unit, or cause a safety hazard.

c. **Commercial Units.**

- (1) **Transferability of Commercial Units.** The Commercial Units are individual Condominium Units that may be sold, leased, or licensed by the Owner thereof, including without limitation Declarant, subject to the terms of this Declaration, the Bylaws, the Rules and Regulations, and applicable laws. Each Owner of a Commercial Unit, including Declarant, shall have the right to sell, lease, license, or otherwise transfer such Commercial Unit(s) upon such terms as the Owner, in the Owner's sole and absolute discretion, deems appropriate.
- (2) **Use and Operation of Commercial Units.** Subject to paragraph 28.j, Commercial Units shall be used for lawful commercial purposes and associated storage. Commercial Units shall not be used for residential purposes. The Association may adopt Rules and Regulations restricting or regulating storage uses including, but not limited to, property that may be stored, storage locations, and storage containers. The Rules and Regulations may differentiate between and among Commercial Units on a rational basis.

- d. **Building Attachments and Improvements.** Subject to the provisions of paragraph 11.b hereof, the Association shall have the right to attach, maintain, replace, and remove satellite dishes and antennas and related transformers and equipment of whatever type and nature within the outside perimeter of the Building or elsewhere within the condominium regime, including on the roof of the Building; to install, maintain, replace, and remove conduits to and from such dishes and antennas for power and broadcast signals over, across, under, and through the General Common Elements; and to construct, maintain, replace, and remove structures in the outside parking area east of the Building that may be auxiliary to the use and functional efficiency of such dishes and antennas or related transformers and equipment. The Association shall have easement rights necessary to effectuate the foregoing and rights of ingress and egress for those and related purposes.

Unit Owners may only install dishes or antennas with the prior, written consent of the Association Board of Directors, subject to reasonable regulation of location, manner of attachment, appearance, and connection. Recognizing that dishes and antennas are typically, by their very nature, visible, the color of the dishes and antennas will be as unobtrusive as can be, consistent with their effective, efficient use and enjoyment, and all related transformers, equipment, wires, conduits, and structures will be screened where feasible and otherwise installed and maintained as unobtrusively as reasonably possible.

- e. **General Provisions.** Each Owner shall be entitled to the exclusive ownership and possession of one or more Units. The use of all Units shall be subject to: (i) all applicable governmental rules, regulations, laws, ordinances, and restrictions, and (ii) such reasonable usage and signage Rules and Regulations as may be adopted by the Association from time-to-time. Commercial Units will be permitted signage that complies with all local codes and ordinances. The preceding sentence cannot be amended without an affirmative, written approval of Owners representing an aggregate ownership interest of 75% or more of the General Common Elements.

14. **Use of General Common Elements and Limited Common Elements.**

- a. **Use of General Common Elements.** Subject to this Declaration and the Rules and Regulations, each Owner and each Owner's Guests may use the General Common Elements in accordance with the purposes for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners or their Guests.
- b. **Limited Common Elements.** Certain portions of the General Common Elements are reserved for the exclusive use of certain Owners and their Guests, and such items and areas are referred to as Limited Common Elements. The Limited Common Elements shall be appurtenant to the Units to which they have been reserved pursuant to this Declaration, the Condominium Survey, or in a deed from Declarant, and no reference thereto need be made in any subsequent deed or in any Mortgage, instrument of conveyance, or other instrument describing any Unit.
- c. **Use of Limited Common Elements.** Subject to this Declaration and the Rules and Regulations, only the Owner of a Unit, and such Owner's Guests, shall have the right to use the Limited Common Elements appurtenant to such Owner's Unit, and all such use shall be without hindering or encroaching upon the lawful rights of the other Owners or their Guests.
- d. **Rules and Regulations.** Subject to the procedures set forth in paragraph 19.i below, the Association Board of Directors may from time-to-time adopt Rules and Regulations governing the use of the General Common Elements, but such Rules and Regulations shall be uniform and non-discriminatory among Unit Owners in both intent and effect except as expressly allowed in this Declaration, the Bylaws, or as may be reasonably necessary to ensure the safety and security of Owners and their Guests, or to protect rights herein granted. Each Owner, by accepting a deed or other instrument of conveyance for a Unit, agrees to be bound by any Rules and Regulations so adopted.
- e. **Hallways, Stairways and Elevators.** Except as shown on the Condominium Survey, each "Stairway," "Hallway," "Elevator" and other common areas and features as shown on the Condominium Survey, which service or enhance the Units or the Project shall be General Common Elements. Access and use of the Hallways on each of floors 2-5 shall be provided only to the Owners of the Units on such floor, such Owners' Guests, the Association and its agents, and emergency personnel. Said Hallways are designated as Limited Common Elements on the Condominium Survey.

The Board shall have the right to adopt reasonable Rules and Regulations governing use of the Hallways, Stairways, Elevators and other common areas and features. Use of the Hallways, Stairways, Elevators and other common areas and features located in the Building or elsewhere within the Project, however, shall also be subject to the easements created pursuant to paragraph 15.

15. **Various Rights and Easements.**

- a. **Owners' Easements for Access, Support and Utilities.** Except as otherwise expressly provided in this Declaration, each Owner and each Owner's Guests shall have a non-exclusive easement for access between such Unit and the roads and streets adjacent to the Project and the roadways and driveways within the Project. Further, each Owner and each Owner's Guests shall have a non-exclusive easement to use the halls on the floor on which such Owner's Unit is located, and to use the corridors, stairs, walkways, elevators and bridges within and adjacent to the Project which are shown on the Condominium

Survey as General Common Elements or Limited Common Elements appurtenant to such Owner's Unit, and to use the exterior access and other easements which are part of the General Common Elements subject to the rights of the Board to adopt Rules and Regulations governing access and use as set forth in paragraph 14. The Board shall have the right to adopt such reasonable rules restricting use of the easements as it deems necessary to ensure the safety and security of other Owners and their Guests. Each Owner shall have a non-exclusive easement in, on, and over the General Common Elements, including the General Common Elements within the Unit of another Owner, for horizontal and lateral support of their Unit, for utility service to that Unit, including but not limited to water, sewer, gas, electricity, telephone, cable, and television service, and for the release of smoke arising from any fireplace within a Unit through the flue or chimney leading therefrom.

- b. **Certain Association Rights.** The Association, the Board, and the Managing Agent, and their respective agents and contractors, shall have a non-exclusive right and easement to make such use of and to enter into or upon the General Common Elements, the Limited Common Elements, and the Units as may be necessary or appropriate for the performance of the duties and functions which they are obligated or permitted to perform under this Declaration and/or the Bylaws. The foregoing shall include the right to install satellite dishes and antennas. The Association shall likewise have a right to an easement for unfettered access to the roof for the purpose of repair and maintenance of the roof and related purposes, and for the purpose of installing, repairing, maintaining, and replacing facilities of whatever nature for general services to and the common good of all Unit Owners.
- c. **Recorded Easements.** The Project is now or may hereafter be subject to the easements, licenses, and other recorded documents, or any of them, which may be set forth on the Condominium Survey.
- d. **Easements for Encroachments.** If any part of the General Common Elements encroaches or shall hereafter encroach upon a Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the General Common Elements, or upon another Unit, the Owner of that Unit shall and does have an easement for such encroachment and for the maintenance of same. Such encroachments shall not be considered to be encumbrances either on the General Common Elements or on a Condominium Unit for purposes of marketability of title or otherwise and shall exist as long as the physical boundaries of the Unit are in substantial accord with the boundary that appears in the Condominium Survey. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Building, by error in the Condominium Survey, by settling, rising or shifting of the earth or other movement of any portion of the Project, or by changes in position caused by repair or reconstruction of the Project or any part thereof.
- e. **Easements for Units for Repair, Maintenance, and Emergencies.** Some of the Common Elements are or may be located within a Unit or may be conveniently accessible only through a particular Unit. The Association, Board, and Managing Agent shall have a non-exclusive right and easement for access through each Unit and to all General Common Elements, from time-to-time, during such reasonable hours as may be reasonably necessary for the maintenance, repair, or replacement of any of the General Common Elements located therein or accessible therefrom or for making emergency

repairs therein necessary to prevent damage to the General Common Elements or to another Unit. When access to or through a Unit is required, at least twenty-four (24) hours prior notice shall be provided to the Owners/occupants of such Unit, except when said Owners/occupants have no objection to earlier entry and except in the case of an emergency. Access permitted by any one Owner of a Unit will be deemed conclusively to be permitted by all Owners of that Unit. The cost to repair damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair, or replacement of any of the General Common Elements, or as a result of repairs within another Unit, at the instance of the Association, the Board, or the Managing Agent, shall be a Common Expense of all of the Owners. No diminution or abatement of Common Expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the exercise of the foregoing rights, the making of repairs or improvements, or from action taken to comply with any law, ordinance, or order of any governmental authority. Restoration or repair of the damaged improvements shall be to substantially the same condition as they existed prior to the damage. Notwithstanding the foregoing, if any such damage is the result of the activities of any Owner, or said Owner's Guest(s), then the Owner shall be responsible for all costs and losses incurred as a result of such damage, including any expenses incurred to avoid or repair such damage and any losses suffered by other Owners as a result of such damage.

- f. **Utilities.** There is hereby created a blanket easement upon, across, and through the General Common Elements and any Unit for the installation, replacement, repair, and maintenance of utilities (herein "Utilities"), including but not limited to water, sewer, gas, telephone, electricity, heating, ventilating, air conditioning, computer, cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the facilities, equipment, and appurtenances on the General Common Elements necessary to operate, repair, and maintain the Utilities. The foregoing easements shall also apply to the Parking Units, provided that no Utilities may be placed within any Parking Unit (except temporarily for purposes of installation) in a manner that would unreasonably interfere with its use for the parking of an automobile, motorcycle, or similar vehicle. Further, Declarant, during the Development Rights Period, or the Association, after the expiration of the Development Rights Period, may grant easements over the General Common Elements for the installation, operation, maintenance, repair, renovation, and reconstruction of any Utilities necessary or desirable for the Project or desirable to cross any portion of the Project, without the need for any further approval from the Owners or any Mortgagee. The easements provided for in this paragraph 15.f shall not affect, avoid, extinguish, or modify any other recorded easement(s) affecting the General Common Elements, nor shall these easements unreasonably interfere with the use and enjoyment of any Unit by the Owner/occupant thereof.
- g. **Declarant's Rights Incident to Completion of the Project and Sale of Units.** Declarant hereby retains a right to use, and an easement for ingress and egress over, in, upon, under, and across, the General Common Elements and Units, including the right to store materials in the General Common Elements and the right to make such other use of the General Common Elements as may be reasonably necessary or incidental to: (i) any proposed construction or renovation of the Project and the sale or lease of the Units; (ii) the exercise of Declarant's Development Rights; and (iii) discharge of Declarant's obligations; provided, however, no such rights shall be exercised by Declarant in such a way as to interfere unreasonably with any Owner's or Guest's occupancy, use, or enjoyment of, or access to, such Owner's Unit or the General Common Elements. The

rights of Declarant under this paragraph shall terminate upon expiration of the Development Rights Period.

- h. **Maintenance Easement.** An easement is hereby granted to the Association, its officers, directors, agents, employees, contractors and assigns, and to the Managing Agent, upon, across, over, in, and under the General Common Elements, together with the right to make such use of the General Common Elements as may be necessary or appropriate to perform the duties and functions which the Association is obligated or permitted to perform pursuant to this Declaration, including the right to construct, reconstruct, relocate, and maintain on the General Common Elements maintenance and storage facilities for use by the Association or others.
- i. **Emergency Easement.** A non-exclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, and to any security personnel now or hereafter employed by the Association to provide services to the Project (without implying any obligation on the part of Declarant or the Association to provide for such security services), to enter upon all common areas, streets, roads, and driveways and General Common Elements located in the Project in the performance of their duties.
- j. **Parking Lot Easement.** The Parking Lot shall be subject to a non-exclusive easement in favor of all Owners and their respective Guests to allow access to the General Common Elements or handicapped parking space located in or adjacent to the Parking Lot, provided all Persons shall exercise their rights pursuant to such easement in a manner which will not interfere unreasonably with use of the Parking Units by Owners thereof or their respective Guests, or the Rules and Regulations adopted by the Association Board of Directors.
- k. **Easement Deemed Appurtenances.** The easements, uses, and rights herein created for an Owner shall be appurtenant to the Condominium Unit of that Owner, and all conveyances of and other instruments affecting title to a Condominium Unit shall be deemed to grant and reserve the easements, uses, and rights provided for herein, even though no specific reference to such easements, uses, and rights appears in any such conveyance or instrument. All such easement rights of a Person as an Owner shall terminate when such Person ceases to be an Owner.

16. **Owners' Maintenance Responsibility.**

- a. Except as otherwise provided in this Declaration and subject to paragraphs 16.b and 16.c, each Owner shall be responsible for the maintenance, repair, alteration, remodeling, and replacement of said Owner's Unit. For purposes of maintenance, repair, replacement, alteration, and remodeling, an Owner shall have the right and obligation to maintain, repair, alter, and remodel the electrical and plumbing equipment that exclusively serves the Unit, the interior non-supporting walls, and the materials (such as, but not limited to, plaster, gypsum dry wall, paneling, wallpaper, paint, wall and floor tile, and flooring, but not including the subflooring) making up the finished surfaces of the perimeter walls, ceilings, and floors within the Unit, and the interior surface of the perimeter doors and windows (including the interior glass surface but excluding the glass itself), and the interior finished surfaces of any patio, balcony, or deck railing which is a Limited Common Element appurtenant to such Unit. Subject to the immediately preceding sentence, repair and maintenance of the patios, balconies, and decks and any other

Limited Common Elements shall be performed solely by the Association, and the expense thereof shall be a Common Expense unless the repair or replacement is required as a result of the negligence of a Unit Owner or Guests, in which event the Unit Owner shall be responsible for the expense. Further, repair or replacement of the electrical and plumbing systems, perimeter windows and doors of a Unit shall be performed solely by the Association, and the expense thereof shall be assessed to the Owner of the affected Unit(s) as a Reimbursement Assessment, and shall be due within 30 days after notice to the affected Owner(s) of the amount of such assessment.

No Owner shall make any changes or alterations of any type or kind to the exterior surfaces of the perimeter doors or windows to a Unit nor to any General Common Elements (including, but not limited to, the exterior portions of a Unit and any windows, doors, or balcony doors), nor shall any Owner make any changes or alterations to the interior surface of any patio, balcony, or deck appurtenant to such Owner's Unit that is visible from the exterior of the Building, without the prior consent of the Association and, during the Development Rights Period, by Declarant.

The Owner shall not be deemed to own the Utilities running through the Owner's Unit that serve one or more other Units. Each Owner shall have the obligation to replace any finishing or other materials removed with materials of similar quality or better quality than those removed. An Owner shall maintain and keep the Owner's Unit in good repair and in a clean, safe, attractive, and slightly condition, including the fixtures and the surfaces of the doors and windows of the Unit. Also, an Owner shall keep in a neat and clean condition the interior surfaces of any deck, balcony, and/or patio areas adjoining and/or leading to the Owner's Unit that are Limited Common Elements appurtenant to such Owner's Unit. Except as previously provided, the Association shall be responsible for repair, replacement, and maintenance of all Limited Common Elements. All fixtures, appliances, and equipment installed within a Unit, commencing at a point where they connect to the Utilities, shall be maintained and kept in repair by the Owner thereof. The HVAC equipment serving the Unit shall be repaired and maintained solely by the Association; however, the expense thereof shall be assessed to the Owner of the affected Unit(s) as a Reimbursement Assessment and shall be due within thirty (30) days after notice to the affected Owner of the amount of such assessment. If any Owner fails to carry out or neglects the responsibilities set forth in this paragraph, the Board or the Managing Agent may fulfill the same and charge such Owner therefor. Any expense incurred by an Owner under this paragraph shall be the sole responsibility of said Owner.

- b. Any work performed by an Owner as provided by paragraph 16.a will be completed within a reasonable period of time after commencement; shall be completed in a good and workman-like manner, free of liens and encumbrances; and shall be completed in conformity with all applicable codes and ordinances.
- c. No work by an Owner as contemplated by paragraph 16.a shall be undertaken without fifteen (15) days prior written notice to the Association or Managing Agent and without the approval of the Board. Such notice shall identify in detail all work proposed and those proposed to do the work. The approval of the Board may be made subject to such conditions as the Board may deem appropriate.

17. **Compliance With Provisions of Declaration, Articles, and Bylaws of the Association.**

Each Owner shall comply strictly with, and shall cause each of such Owner's Guests to comply strictly with, all of the provisions of this Declaration, the Articles and Bylaws, and the Rules and Regulations, decisions, and resolutions of the Association or the Board, as the same may be lawfully enacted or amended from time-to-time. Failure to comply with any of the same shall be grounds for an action or actions to recover sums due, for damages, and/or for injunctive relief, along with costs of suit and reasonable attorneys' fees, maintainable by the Managing Agent or Board of Directors in the name of the Association on behalf of the Owners, or, in a proper case, by an aggrieved Owner. Such failure also may result in the imposition of a Reimbursement Assessment pursuant to paragraph 20. No fine shall be levied unless the Association gives the Owner at least ten (10) days prior written notice and an opportunity to be heard. Notwithstanding any contrary provision contained in this Declaration, in no event may the Association commence any action or proceeding against any person seeking equitable relief, or seeking either an unspecified amount of damages or damages in excess of \$25,000.00; or any action or proceeding where the estimated cost of legal fees exceeds \$5,000.00, unless the following conditions are satisfied: (a) the decision to commence such action or proceeding shall be taken at an annual or special meeting of the Association; (b) a budget for such litigation, including all fees and costs assuming trial and all potential appeals, shall have been prepared by the attorneys who will be engaged by the Association for such purpose, and shall have been mailed or delivered to all Owners and posted at the principal office of the Association at least 30 days prior to such meeting; and (c) at such meeting Owners representing an aggregate ownership interest of 75% or more of the General Common Elements shall approve the decision to commence, and the proposed budget for, such action or proceeding, and shall concurrently approve the imposition of a Special Assessment to fund the costs of such action or proceeding in accordance with the approved budget. The Association shall be authorized to expend funds for such proceeding in excess of the amount contemplated by the approved budget only after an amended budget has been approved in accordance with the procedures specified in the foregoing subparts (a), (b) and (c). The procedural requirements set forth in this paragraph 17, however, shall not apply to any action to collect or otherwise enforce Assessments and any related fines, late charges, penalties, interest, or costs and expenses, including reasonable attorneys' fees, in an amount of \$25,000.00 or less, or any such action where the estimated cost of legal fees is less than \$5,000.00. All of the costs and expenses of any action or proceeding requiring the approval of the Owners in accordance with this paragraph shall be funded by means of a Special Assessment pursuant to paragraph 20.f below, and in no event may the Association use reserve funds or contingency funds, reallocate previously budgeted operating funds, or incur any indebtedness in order to pay any costs and expenses incurred for such purpose. Further, if the Association commences any action or proceeding against a particular Owner or particular Owners requiring the approval of the Owners in accordance with the foregoing, the Owner(s) against whom suit is being considered shall be exempted from the obligation to pay the Special Assessment(s) levied in order to pay the costs and expenses of such action or proceeding. The monetary thresholds stated in this paragraph 17 shall increase by 3% each year on the anniversary of filing this Declaration. The provisions of this paragraph 17 cannot be amended without the approval of at least 75% of all Allocated Interests.

18. **The Association.**

- a. **General Purposes.** The Association is an Iowa non-profit corporation formed to manage the General Common Elements and to perform its functions as provided in this Declaration and the Bylaws in furtherance of the interests of the Owners.
- b. **Membership.** The Owner of a Condominium Unit shall automatically become a member of the Association. Said membership is appurtenant to the Condominium Unit of said

Owner and shall automatically pass with fee simple title to the Condominium Unit. Each Owner automatically shall be entitled to the benefits and shall be subject to the burdens of such membership. If the fee simple title to a Condominium Unit is held by more than one Person, each such Person shall be a member of the Association. Memberships in the Association shall be limited to Owners of Condominium Units in the Project or, following termination of the Project, all former Owners entitled to distributions of proceeds under the Act or this Declaration and their respective heirs, personal representatives, successors, or assigns.

- c. **Voting.** Each Owner shall be entitled to vote on all matters that are subject to a vote by the Owners. The size of each Owner's vote shall be equal to the Allocated Interests as shown on **Exhibit 4**. The vote for each particular Condominium Unit shall be cast as one collective vote, as the Owners of the Unit agree. If the Owners do not agree when called upon to vote, the Owners will be treated as having abstained. No split vote may be cast. No votes allocated to any Condominium Unit(s) owned by the Association may be cast.

- d. **Board of Directors.** The affairs of the Association shall be managed by a Board of Directors in accordance with the provisions of this Declaration, the Articles, and the Bylaws.

- (1) **Definitions.** For purposes of this paragraph 18.d, the following terms shall be defined as follows:

- (a) **"Phase I Period"** shall mean the period commencing on the date of the filing of this Declaration and expiring two years after the date of this Declaration or upon the Declarant's sale of all Units to third-party purchasers, whichever is earlier.
- (b) **"Phase II Period"** shall mean the date commencing upon the expiration of the Phase I Period and expiring two years thereafter or upon the Declarant's sale of all Units to third-party purchasers, whichever is earlier.
- (c) **"Phase III Period"** shall mean the date commencing upon the expiration of the Phase II Period and expiring one year thereafter or upon the Declarant's sale of all Units to third-party purchasers, whichever is earlier.

A sale shall be deemed to include conveyance of title and delivery of possession, as well as an installment contract sale upon delivery of possession.

- (2) **Number of Directors.** The Board of Directors shall initially consist of six (6) members.

- (3) **Election of Directors.** Members of the Board of Directors shall be elected in the following manner:

- (a) Subject to subparagraph 18.d(3)(d) below, Declarant shall be entitled to appoint and remove, in its sole and absolute discretion, all members of the Board of Directors from the date the Association is created until the expiration of the Phase I Period.

- (b) Subject to subparagraph 18.d(3)(d) below, following the expiration of the Phase I Period and until the expiration of the Phase II Period, Declarant shall be entitled to appoint and remove, in its sole and absolute discretion, four members of the Board of Directors.
 - (c) Subject to subparagraph 18.d(3)(d) below, following the expiration of the Phase II Period and until the expiration of the Phase III Period, Declarant shall be entitled to appoint and remove, in its sole and absolute discretion, two members of the Board of Directors.
 - (d) Declarant's right to appoint and remove members of the Board of Directors shall terminate upon the earlier to occur of the following: (i) the expiration of the Phase III Period; (ii) five years after the first sale of a Unit by Declarant to an Owner other than Declarant; or (iii) such earlier time as Declarant may determine, in its sole discretion (the earlier to occur of said dates is herein referred to as the "Expiration of Declarant's Appointment Period"). From and after such date, a majority of the members of the Board of Directors shall be Unit Owners other than Declarant or designated representatives of Declarant.
 - (e) Members of the Board of Directors not appointed by Declarant as provided in this subparagraph 18.d(3), shall be appointed by the Owners as set forth in the Bylaws.
- (4) **Composition of Board of Directors.** After the expiration of the Phase III Period, at least two members of the Board of Directors shall be an Owner of a Commercial Unit or an employee of such an Owner. This subparagraph (4) cannot be amended or altered except by the affirmative vote of at least 75% of the aggregate ownership interests in the General Common Elements.
- e. **Managing Agent.** The Association may employ a Managing Agent to administer and manage the affairs of the Association. Any contract with a Managing Agent shall not exceed three years and shall provide for the right of the Association to terminate such contract without penalty at any time upon 90 days notice.
 - f. **Duty to Keep Association Records.** The Association shall keep books, records, and financial statements sufficiently detailed to enable the Association to comply with the Act, including, but not limited to, financial records sufficiently detailed to provide a statement setting forth the amount of any unpaid Assessments currently levied against an Owner. The Association additionally shall cause a reviewed financial statement to be available annually within 120 days after the end of each fiscal year. In addition, the Association shall maintain current copies of this Declaration, the Condominium Survey, Articles, Bylaws, and Rules and Regulations, and of all amendments to any of said documents. The foregoing items shall be available for inspection by any Owner, mortgagee, or prospective purchaser of a Unit upon advance arrangements during normal business hours.
 - g. **Bylaws and Articles.** The purposes and powers of the Association and the rights and obligations with respect to Owners set forth in this Declaration may and shall be amplified, but not modified, by provisions of the Articles and Bylaws of the Association. The initial Bylaws are attached hereto as **Exhibit 2**.

19. **Certain Rights and Obligations of the Association.**

- a. **Association as Attorney-in-Fact for Owners.** The Association is hereby irrevocably appointed attorney-in-fact for the Owners, and each of them, to manage, control, and deal with the interest of each Owner in the General Common Elements so as to permit the Association to fulfill all of its duties and obligations, and to exercise all of its rights hereunder, and to deal with the Project as may be deemed expedient and/or upon its destruction or obsolescence. The acceptance by any Person of any interest in any Condominium Unit shall constitute an appointment of the Association as attorney-in-fact as provided above and hereinafter. The Association shall have all rights expressly granted by this declaration, the Articles, the Bylaws, or the Act, and shall have and may exercise all of the powers necessary to govern, manage, maintain, repair, rebuild, administer, and regulate the Project, and to perform all of the duties required of it subject to the restrictions set forth in this Declaration. Notwithstanding the foregoing provisions of this paragraph 19.a, but subject to the provisions of paragraphs 3.a.6, 3.1.7, 4, 8, 29, 30 and 31.b, unless Owners representing an aggregate ownership interest of 67% or more of the General Common Elements (excluding Declarant before expiration of the Development Rights Period) have given their prior written approval, the Association shall not be empowered or entitled to:

- (1) by act or omission, seek to abandon or terminate the Project;
- (2) change the pro rata interest or obligations of any individual Condominium Unit for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;
- (3) partition any Condominium Unit or subdivide any Condominium Unit other than Units previously combined pursuant to paragraphs 4.a or 4.b;
- (4) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer (excluding the exercise of the Association's rights under paragraphs 14 and 15.f) any of the General Common Elements; and
- (5) use hazard insurance proceeds for loss to the improvements (whether Units or General Common Elements) for other than repair, replacement, or reconstruction of such improvements.

During the Development Rights Period, none of the foregoing determinations shall have any force or effect unless approved in writing by Declarant.

- b. **General Common Elements and Limited Common Elements.** The Association shall provide for the care, operation, management, maintenance, repair, and replacement of the General Common Elements and Limited Common Elements, except as provided in paragraph 16. Without limiting the generality of the foregoing, said obligations shall include the keeping of such General Common Elements and Limited Common Elements in good, clean, attractive, and sanitary condition, order, and repair; removing snow and any other materials from such General Common Elements (except patios, balconies, or decks of Units) which might impair access to the Project or the Units; keeping the Project safe, attractive, and desirable; and making necessary or desirable alterations, additions, betterments, or improvements to or on the General Common Elements and Limited Common Elements.

- c. **Other Association Functions.** The Association may undertake any activity, function, or service in connection with the use and enjoyment of the Project for the benefit of or to further the interests of all, some, or any Owners on a self-supporting, special assessment, reimbursement assessment, or common assessment basis, but any assessments levied pursuant to this paragraph 19.c shall be subject to the limitations and provisions of paragraph 20. Such activities, functions, or services may include the provision of police or similar security services, the provision of garbage and trash collection services, the provision of firewood, and the provision of maid and cleaning service for individual Units.
- d. **Labor and Services.** The Association may: (i) obtain and pay for the services of a Managing Agent to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any Person with whom or with which it contracts; (ii) obtain and pay for legal and accounting services and other professional services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration except as limited by the provisions of paragraph 17; and (iii) arrange with others to furnish lighting, heating, water, trash collection, sewer service, and other common services and facilities.
- e. **Property of Association.** The Association may pay for, acquire, hold or lease real property and tangible and intangible personal property, and may dispose of the same by sale or otherwise. Subject to the Rules and Regulations, each Owner and each Owner's Guests may use such property as may be designated by the Association for such use. Upon termination of condominium ownership of the Project and dissolution of the Association, if ever, such property shall be deemed to be owned by the then-Owners as tenants-in-common in the same proportion as their respective interests in the General Common Elements. A transfer of a Condominium Unit, including a transfer resulting from a mortgage foreclosure, shall transfer to the transferee the transferor's interest in such property as above-described without any reference thereto. Each Owner may use such property in accordance with the purposes for which it is intended so long as such use does not hinder or encroach upon the lawful rights of the other Owners and is in keeping with the duly enacted Rules and Regulations promulgated by the Board.
- f. **Association Right to Lease and License Condominium Unit or General Common Elements.** The Association shall have the right to lease, license, grant easements or concessions, or permit the use of any portion of the General Common Elements or any Condominium Unit owned by the Association (including any Condominium Unit purchased from the Declarant). The rights of the Association under this paragraph shall not be deemed an encumbrance or transfer within the meaning of paragraph 19.a.
- g. **Enforcement by Association.** Subject to the restrictions contained in paragraph 17, the Association may take judicial action against any Owner to enforce compliance with the Rules and Regulations and all other obligations arising under this Declaration or the Bylaws, or to obtain damages and/or injunctive relief for any noncompliance therewith, all to the extent permitted at law or in equity. Additionally, after not less than ten (10) days' prior written notice and an opportunity for the Owner to be heard, the Association may levy reasonable fines against any Owner for violations of this Declaration, the Bylaws, and/or the Rules and Regulations. In any action or proceeding commenced pursuant to this subparagraph, the Association shall have the right to recover reasonable

attorneys' fees and costs from any Owner who violates this Declaration, the Bylaws, or the Rules and Regulations. The Association, however, shall not have the power to suspend any Owner's voting rights in the Association or the right of an Owner and said Owner's Guests to use the amenities due to such Owner's failure to comply with any obligation arising under this Declaration. The foregoing shall not be deemed a limitation upon a court of competent jurisdiction from issuing a negative or affirmative injunction against an Owner and Owner's Guests, without bond.

- h. **Certificate.** The Board of Directors may, from time-to-time, record a certificate of the identity and the mailing addresses of the persons then-comprising the Board of Directors, together with the identity and address of the Managing Agent, if any. Such certificate shall be conclusive in favor of any Person relying thereon reasonably and in good faith.
- i. **Rules and Regulations.** The Association shall have the right to promulgate such reasonable rules and regulations (the "Rules and Regulations") as it deems necessary or desirable to effectuate the intent and to enforce the duties and obligations set forth in this Declaration, the Articles, and Bylaws. Any rule so promulgated by the Association shall be effective ten days after the date that written notice of such rule is provided to the Owners. A rule that becomes effective thirty (30) days or more prior to the next following annual meeting of the Association may be challenged at, or at any time prior to, such annual meeting, or at a special meeting called for such purpose prior to the date of such annual meeting. Any rule which becomes effective less than thirty (30) days prior to the next following annual meeting of the Association may be challenged at, or at any time prior to, either such annual meeting or at the next year's annual meeting, or at a special meeting called for such purpose prior to the date of the next year's annual meeting. Such challenge shall be in the form of a petition objecting to the rule, and must be signed by Owners representing an aggregate ownership interest of 15% or more of the General Common Elements. If a petition with sufficient signatures is delivered to the Association at least one day prior to the annual meeting at which such rule must be challenged, enforcement of the challenged rule shall be suspended until the meeting at which the challenge is to be presented, and the ratification or termination of the challenged rule shall be an item of business at the applicable meeting. Provided that a quorum is present at such meeting (or, in the absence of a quorum, any continuation of such meeting where a quorum is present), the rule shall be deemed ratified if it is approved by Owners representing a majority of the ownership interests present or voting by proxy at such meeting, and shall be deemed revoked if it is not supported by such a majority. Any rule that has not been challenged by the annual meeting or meetings referenced above, as applicable, may no longer be challenged in accordance with the foregoing procedures. Each Unit Owner, by acceptance of a conveyance or contract for sale with delivery of possession, agrees to obligate their tenants, invitees, and guests to comply with Rules and Regulations promulgated by the Association. The foregoing shall apply even if any such tenancy existed prior to the recording of this Declaration and Rules and Regulations promulgated by the Association shall be deemed promulgated by each Owner as if issued by such Owner as landlord under Iowa Code Chapter 562A.
- j. **Acquisition/Encumbrance of General Common Elements.** The Association may acquire, hold, encumber, carry in its own name, and transfer any right, title, or interest to real or personal property.
- k. **Assignment of Income.** The Association may assign, as collateral or otherwise, its rights to future income, including the right to receive any type of assessment.

1. **Right to Exclude Persons.**

- (1) **Right.** There is reserved to the Association the continuing right to exclude from the Project any Person who is not an Owner and not a tenant pursuant to a rental agreement predating the recordation of this Declaration. Such right shall be and remain subject only to laws and ordinances prohibiting various forms of discrimination.
- (2) **Exercise.** Upon the election of the Board to exercise the foregoing right, written notice thereof shall be given to all Owners and a special meeting of the Association shall be scheduled. At that meeting a quorum shall be the sum of the Allocated Interests represented by Owners present and those represented by proxy, and a vote of at least 66 2/3% of the Allocated Interests of those present or voting by proxy shall be required to exercise the right.
- (3) **Effect of Exercise.** In the event that the right is so exercised, any Owner whose tenant, invitee, or Guest will be excluded from the Project shall have the right, for a period of thirty (30) days, to give a written notice to the Association informing the Association of the intention to sell the Owner's Unit to the Association. Upon receipt of such a notice the Board shall schedule another special meeting of the Association to be held within fifteen (15) days for the purpose of considering affirmation or rescission of the action previously taken. The quorum requirements shall remain the same for such meeting as provided for the prior meeting pursuant to subparagraph (2) above. If the previous action affirmed by at least 66 2/3% of the Allocated Interests of those present or voting by proxy, the Association shall be deemed to have agreed to purchase the Unit and the procedures for determining the price and for the timing for closing on the purchase will be as provided in paragraph 29.e of this Declaration. In such event, the Board may immediately issue notice to the Person to be excluded from the Project and otherwise enforce the decision to effectuate that exclusion by all means available at law or in equity.
- (4) **Limitation upon Ownership Transfers.** Each Owner, by acceptance of a conveyance or contract for sale with delivery of possession, agrees that no transfer of an ownership interest, license, or lease of a Unit can be made to a Person previously identified by the Board in a notice to Owners provided for in subparagraph (b) above unless the exclusion is not accomplished as provided in subparagraphs (b) and (c) above. Any attempted lease, license, or transfer of an ownership interest in violation of this subparagraph (d) shall be null and void.

20. **Assessment for Common Expenses and Other Items.**

- a. **Common Expense Assessments.** All Owners, including Declarant, shall be obligated to pay the assessments imposed by the Association to meet Common Expenses. Common Expenses shall be assessed against the Units pro rata in proportion to the Allocated Interests set forth on **Exhibit 4**. The Limited Common Elements shall be maintained in the same manner as other General Common Elements, except as otherwise expressly provided in paragraph 16 above. Owners having exclusive use thereof shall be assessed, as a Reimbursement Assessment, for the repair or maintenance thereof if necessitated by the actions of that particular Owner or such Owner's Guests, or the failure of the Owner

to fulfill the Owner's maintenance responsibilities. Assessments for Common Expenses shall be due and payable monthly in advance on the first day of each calendar month.

- b. **Commencement of Assessments.** Assessments for Common Expenses by the Association shall commence on the first day of the month immediately following the sale by Declarant of the first Unit to a third-party and shall be made monthly based on the budget of the Association for the then-current fiscal year. Prior to said date, Declarant shall pay all Common Expenses of the Association prorated to said date.
- c. **Budget.** The Board of Directors shall cause to be prepared, at least thirty (30) days prior to the commencement of each fiscal year, a budget for such fiscal year (a "**Budget**"). The Budget shall show, in reasonable detail, the categories and estimated amounts of expenses for Common Expenses, any expected income of the Association for the coming fiscal year, any expected surplus from the prior year and any existing surplus held by the Association. The Budget shall include an amount for contingencies and amounts deemed necessary or desirable for capital and/or replacement reserves to provide for the repair, renovation, reconstruction, or replacement of, or for any additions to, the General Common Elements, and such other expenditures permitted hereunder. Within thirty (30) days after the adoption of any Budget by the Board of Directors, the Board shall: (i) mail by ordinary first class mail, or otherwise deliver, a summary of the Budget to all Owners; (ii) cause a copy of the Budget to be posted at the principal office of the Association, and (iii) set a date for a meeting of the Owners to consider ratification of the Budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Such meeting may be concurrent with the annual meeting of Owners as provided in the Bylaws. Unless at that meeting a majority of all of the Owners present or voting by proxy reject the Budget, the Budget shall be deemed ratified, whether or not a quorum is present. No further approval of the Owners shall be required for any expenditure contemplated by the Budget irrespective of the amount thereof. If the Budget is rejected, the periodic Budget last ratified by the Owners shall constitute the Budget adopted by the Owners and shall remain in effect until such time as the Owners ratify a subsequent Budget proposed by the Board, it being the intention that at least annually a Budget shall be adopted by the Association either by affirmatively adopting the proposed Budget or ratifying the last periodic Budget.
- d. **Amount of Assessments.** Assessments for Common Expenses shall be based upon the cash requirements of the Association which shall be deemed to be such aggregate sum as the Board of Directors shall from time-to-time determine is to be paid by the Owners to provide for the payment of all estimated expenses of ownership, maintenance, repair, alteration, addition, improvement, and operation of the General Common Elements, as reflected in the Budget. Such sums may include, but shall not be limited to, expenses of management; taxes and special assessments; premiums for insurance; landscaping and care of grounds; common lighting and heating and other common utility charges; cable television charges; trash and garbage collections; wages; common water and sewer charges; legal and accounting fees (subject to the limitations of paragraph 17); management fees; fees and charges for the amenities; expenditures for repair, replacement, renovation, reconstruction, or alteration of, or for additions to, the General Common Elements; expenses and liabilities incurred by the Association or the Managing Agent on behalf of the Unit Owners under or by reason of this Declaration, the Articles, or the Bylaws; any deficit remaining from a previous period; the creation of a reasonable contingency reserve and working capital; and all other costs and expenses related to the General Common Elements. Further, provision shall be made for an adequate reserve

fund to provide for repair, reconstruction, and replacement of the General Common Elements and for a general operating reserve.

- e. **Assessments/Utilities.** In addition, the Assessments for Common Expenses shall include each Owner's pro rata share of common sewer, water, and building electricity expenses and charges. Charges for Utilities separately metered to Units shall be the separate responsibility of each Owner and shall not be deemed a Common Expense; provided, however, that the Association or the Managing Agent shall have the right (but not the obligation) to pay for such Utilities on behalf of a delinquent Owner, as an advance in favor of such Owner for the purpose of preventing damage to any portion of the Project or avoid or remove a lien or claim against the Association or General Common Elements. The amount of any such advance shall be due upon demand from such Owner, together with interest on the amount advanced at the rate provided for delinquent assessments from the date of advance until paid, and such advance shall be deemed to be in the nature of a Reimbursement Assessment.
- f. **Special Assessments.** The Board of Directors shall have the further right during any fiscal year, upon not less than thirty (30) days' notice to the Owners, to levy and assess against the Owners, in a manner similar to Assessments for Common Expenses, a special assessment ("Special Assessment") for such purpose or purposes as may be necessary or appropriate to maintain the Project to such standard as the Board deems appropriate. Special Assessments may include, without limitation, assessments for the cost of any construction, reconstruction, repair, or replacement of any General Common Elements, real or personal property owned by the Association, including fixtures and personal property, to the extent such cost is in excess of the amount contemplated by the approved Budget for such fiscal year. Within thirty (30) days after the determination by the Board to levy any such special assessment, the Board shall set a date for a meeting of the Owners in accordance with the procedures set forth in paragraph 20.c. At such meeting, the proposed Special Assessment(s) may be vetoed by a vote of the Owners representing a majority of the Allocated Interests who are present or voting by proxy at a meeting called for this purpose, whether or not a quorum is present, and if not so vetoed the Special Assessment shall be deemed ratified. Notwithstanding the foregoing, however, Special Assessments imposed for the purposes described in paragraph 17 above shall be subject to the procedures and requirements set forth in said paragraph.
- g. **Reimbursement Assessments.** The Board of Directors may, subject to the provisions hereof, levy an assessment against any Owner of a Unit if the failure of the Owner or such Owner's Guests to comply with this Declaration, the Articles, the Bylaws, or the Rules and Regulations causes the Association to incur any expenses, liability, or potential claim, including any such sums expended for attorneys' fees and any sums expended to pursue appropriate compliance ("Reimbursement Assessment"). Except for Reimbursement Assessments imposed pursuant to paragraph 16 above (which may be imposed without notice as costs are incurred), the Association shall not levy a Reimbursement Assessment until after first giving the Owner at least ten (10) days prior written notice of the proposed levy and an opportunity for the Owner to be heard by the Board. The amount of the Reimbursement Assessment imposed pursuant to this paragraph shall be due and payable to the Association thirty (30) days after notice to the Owner of the decision of the Board of Directors, after hearing, that the Reimbursement Assessment is owing. The Association shall have the power to enforce Reimbursement Assessments in accordance with the provisions of paragraph 24. If any such Reimbursement Assessment results from the need to provide reimbursement for any

expenditure of funds by the Association, the amount of such assessment shall bear interest from the date the expenditure was made at a rate equal to the lesser of eighteen percent (18%) per annum or the maximum rate permitted by law. Any claim, controversy, or dispute over the imposition, amount, or any other aspect of a Reimbursement Assessment shall be resolved by binding arbitration in accordance with paragraph 34.k.

- h. **Failure to Fix Assessment.** The omission or failure to establish any Assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification, or release of the Owners from their obligations to pay the same.
- i. **Surplus Funds.** The Association shall not be required to credit any surplus funds of the Association remaining after payment of, or provision for, the Common Expenses against any future Assessments to be levied by the Association.
- j. **Late Charges/Interest.** Assessments shall be due on the due date established by the Board from time-to-time. If any Assessment, fine, or penalty shall remain unpaid after the due date thereof, the Association shall be entitled to collect from the defaulting Owner: (i) a late charge in an amount the Board determines from time-to-time to be sufficient to cover the extra costs and expenses involved in handling such delinquent payment; (ii) interest at the rate of eighteen percent (18%) per annum or the highest lawful rate, whichever is less on the amount of any delinquent Assessment, fine, or penalty from the due date thereof; and (iii) all costs and expenses incurred by the Association in connection with the collection of the same, including reasonable attorneys' fees. The rate of default interest specified above may be changed by the Board from time-to-time by resolution, but may not exceed the maximum rate permitted by law. Amounts charged under this paragraph shall constitute a lien as set forth in paragraph 24.

21. **Assessment Reserves.**

Upon each sale of a Unit, the purchaser shall deposit at closing with the Association an amount determined by the Association, which sum shall not exceed two times the amount of the monthly Common Expense assessment then allocable to such Unit. Such sum shall be non-refundable and shall be held, with or without interest, by the Association or Managing Agent in a segregated account as a reserve for working capital, and may be used for such purposes as the Association or the Board deems necessary or appropriate, except as restricted by the provisions of paragraph 17 hereof. Such payment shall not be considered an advance payment of regular assessments or relieve an Owner from making the regular monthly payment of the monthly Common Expense Assessments or other assessments as the same come due. While Declarant is in control of the Association, it cannot use any of the working capital funds of the Association to defray Declarant's expenses or reserve contributions, or non-Association construction costs, or to make up any non-Association budget deficits. For the purpose of this paragraph 21, "sale" means the conveyance of an ownership interest of more than 51% of ownership, coupled with a present possessory interest, excluding any such transfers between and among Persons already having some ownership and possessory interest in a common Unit.

22. **Additions, Alterations, and Improvements – General and Limited Common Elements.**

The Association may make such capital additions, alterations, or improvements of or to the General Common Elements during any fiscal year as may be provided for or contemplated

pursuant to the Budget for such year approved in accordance with paragraph 20.c above. Further, if the Board determines that any alterations, additions, or replacements of or to any General Common Elements are required in excess of the amounts provided for or contemplated pursuant to the current year's Budget, such expenditure may be approved as a Special Assessment if approved in accordance with the procedures set forth in paragraph 20.f above. Such procedures, however, shall not apply to expenditures for repair or replacement upon any damage, destruction, or condemnation governed by paragraphs 29 or 30.

23. **Insurance.**

a. **Required Coverage.** Commencing not later than the date of the first conveyance of a Unit to a person other than Declarant, the Association shall obtain and maintain at all times, to the extent available upon commercially reasonable terms, policies of insurance, written with companies licensed to do business in Iowa having a "B" general policy holder's rating or a financial performance index of "6" or better in the Best's Key Rating Guide, or an "A" or better rating from Demotech, Inc. (or equivalent rating agency), covering the risks set forth below, or if said ratings are no longer available, a comparable rating from a comparable rating agency. The types of coverages to be obtained, risks to be covered, and policy provisions shall at a minimum comply with the requirements of the Agencies, and further shall provide to the extent available upon commercially reasonable terms for the following:

- (1) **Casualty.** Property insurance on broad form covered causes of loss, under extended coverage and all risk endorsements. Said insurance shall insure the General Common Elements and all real or personal property owned by the Association (including all of the fixtures in the Units which were initially installed or conveyed by the Declarant, but not including improvements or fixtures installed by an Owner or any furnishings, including carpeting and other floor coverings, wall coverings, draperies, oven, range, refrigerator, disposal, light fixtures and other items of personal property belonging to an Owner), together with all service equipment contained therein in an amount equal to the full replacement value at the time the insurance is purchased and at each renewal date, without deduction for depreciation. Such policy shall include an agreed amount endorsement, an inflation guard endorsement and building ordinance or law enforcement endorsement, to the extent same are available on commercially reasonable terms. All policies shall contain a standard non-contributory mortgage clause in favor of each First Mortgagee, which shall provide that the insurance proceeds shall be payable to the Association for the use and benefit of the Owners and the First Mortgagees, as their interests may appear. Such policy shall provide for a maximum deductible amount equal to the lesser of Ten Thousand Dollars (\$10,000.00) as adjusted by the Index or one percent (1.0%) of the policy face amount.
- (2) **Liability.** Commercial general liability and property damage insurance covering all of the General Common Elements, real and personal property owned or leased by the Association, and public ways in and about the Project in such limits as the Board of Managing Agent may from time-to-time determine, but not in an amount less than One Million Dollars (\$1,000,000.00) per injury, per person, per occurrence, and with umbrella liability limits of Two Million Dollars (\$2,000,000.00) per occurrence, covering all claims for bodily injury or property damage. Coverage shall include, without limitation, legal liability of the insureds

for property damage, bodily injuries, and death of persons in connection with the operation, maintenance, or use of the General Common Elements, legal liability arising out of lawsuits related to employment or independent contractor contracts of the Association, and operation of automobiles on behalf of the Association. Such liability insurance shall name the Owners, the members of the Board of Directors, the Managing Agent and the Declarant, and their respective employees, agents, and all persons acting as agents as additional insureds.

- (3) **Boilers.** If there are steam boilers in operation on the Project, there must be in force boiler explosion insurance providing for coverage of not less than Fifty Thousand Dollars (\$50,000.00) per accident per location.
- (4) **Worker's Compensation.** Worker's Compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association, in the amounts and in the forms now or hereafter required by law.
- (5) **Fidelity Bond.** Fidelity coverage against dishonesty of employees, the Managing Agent, and any other Person receiving, controlling, or disbursing funds of other Association, and against destruction or disappearance of money or securities, and forgery. Said policy shall also contain endorsements covering any persons who serve the Association without compensation. The fidelity insurance coverage must at least equal the maximum amount of funds that will be in the custody of the Association or the Managing Agent at any time while the policy is in force, but in no event in an amount less than that required by any of the Agencies. Each policy shall include a waiver by the issuer of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions.
- (6) **Flood.** If the Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the Project in an amount which is the lesser of the maximum amount of insurance available under the National Flood Insurance Act of 1968 or the aggregate of the unpaid principal balances of the First Mortgages on the Condominium Units comprising the Project.
- (7) **Others.** The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Project, including insurance against loss or damage to plate or other glass and to any real or personal property of the Association.

b. **Policies and Procedures.**

- (1) **Deductibles; Requirements.** Except as provided in paragraph 23.a above, insurance obtained by the Association may contain such deductible provisions as the Board may deem appropriate. If the insurance described is not available upon commercially reasonable terms, or if any policy of insurance is cancelled or expires without a replacement policy therefor having been obtained by it, the Association shall promptly cause notice of that fact to be delivered to all Owners. The Association may carry any other type of insurance it considers appropriate,

in amounts it deems appropriate, to insure the interests of the Association or the Project.

- (2) **Procedures for Claims.** The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters relating to claims. Provided Declarant reimburses the Association for any additional premium payable on account thereof, insurance obtained by the Association shall, to the extent reasonably possible, name Declarant as an additional insured and shall contain a waiver of rights of subrogation as against Declarant.
- c. **General Provisions Required.** All policies of insurance, to the extent obtainable, shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner, and shall provide that such policies may not be cancelled or modified, and that the insurer may not refuse to renew the same, without at least thirty (30) days' prior written notice thereof to all of the Owners, First Mortgagees, the Association, and any other parties entitled to notice thereof under applicable law. Certificates of insurance shall be issued to each Owner and Mortgagee upon request. Duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered at least ten (10) days prior to expiration of the then-current policies to all First Mortgagees requesting the same. All casualty insurance shall be carried in blanket form naming the Association as the insured, as attorney-in-fact for all of the Owners and First Mortgagees, as their interests may appear, which policy or policies shall identify the interest of each Owner (by the Owner's name and Unit number designation) and First Mortgagee.
- d. **Required Valuations.** Prior to obtaining any policy of casualty insurance or renewal thereof pursuant to the provisions of subparagraph 23.a(1) above, the Board or Managing Agent shall obtain an opinion from one or more qualified consultants knowledgeable in determining replacement cost, who shall reasonably estimate the full replacement value of the entire Project, without deduction for depreciation, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions of subparagraph 23.a(1) above. Such determination of full replacement value shall be made annually, and each First Mortgagee, upon request, shall be furnished with a copy thereof within thirty (30) days after receipt of such written appraisals. Such amounts of insurance shall be updated annually in accordance with the currently determined full replacement value.
- e. **Owner Policies.** Insurance policies issued to the Association do not eliminate the need for Unit Owners to obtain insurance for their own benefit. Individual Owners may carry such other insurance for their own benefit and at their own expense as they may deem appropriate, provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by any Owner. Insurance coverage on improvements and fixtures installed by an Owner and on furnishings, including carpeting and other floor coverings, draperies, oven, range, refrigerator, wallpaper, disposal, light fixtures and other items of personal property belonging to an Owner, and public liability coverage within each Unit (including Parking Units) shall be the sole and direct responsibility of the Owner thereof, and the Board of Directors, the Association, Declarant, and/or the Managing Agent shall have no responsibility therefor. Similarly, Owners shall be responsible for insuring any automobiles, motorcycles, or other vehicles, any bicycles, any parts and contents of any of the foregoing and any other personal

property, which are parked or stored in any Parking Units, the handicapped parking space, or elsewhere within the Common Elements, and the Board of Directors, the Association, Declarant, and/or the Managing Agent shall have no responsibility therefor.

- f. **Owner's Actions.** All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only with respect to the interest of any particular Owner that is guilty of a willful act or omission, or non-compliance with any provision of such policy, including payment of the insurance premium applicable to that Owner's interest. Furthermore, if a particular Owner permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of a policy would otherwise invalidate or suspend the entire policy, the insurance under any such policy attributable to the interests of all other insured Owners, First Mortgagees, and other Persons who are named insureds and who are not guilty of any such act or omission shall not be invalidated or suspended and shall remain in full force and effect.

24. **Lien for Non-Payment of Assessments.**

a. **Lien.**

- (1) All due and unpaid Assessments chargeable to any Owner, including Special and Reimbursement Assessments, and all fines, late charges, penalties, or interest assessed but unpaid in accordance with this Declaration or by the Bylaws, and all costs and expenses, including reasonable attorneys' fees, incurred in collecting such amounts, shall constitute a lien on such Owner's Unit with the priority granted to a condominium assessment lien pursuant to Section 499B.17 of the Act.
- (2) To evidence such lien the Board of Directors or Managing Agent may (but shall not be obligated to) prepare a written notice setting forth the amount of such unpaid indebtedness, the amount of late charges and accrued interest, the name of the Owner of the Condominium Unit and a description of the Condominium Unit. If prepared, such notice shall be signed by one of the members of the Board of Directors or by the Managing Agent, and shall be recorded in the Records. Such lien for Assessments shall attach upon the failure of payment of the Assessment on the date it became due. The Board of Directors or Managing Agent may (but shall not be obligated to) provide a copy of any such notice to the Mortgagee having an interest in the Unit upon which the lien is imposed.

b. **Enforcement of Lien.** Such lien may be enforced at the election of the Association by:

- (1) Foreclosure of the lien against the defaulting Owner's Condominium Unit by the Association in like manner as a mortgage on real estate, upon the recording of a notice or claim thereof. During the period of such foreclosure action, the Owner shall also be required to pay to the Association when due all Assessments for the Condominium Unit. The Managing Agent, the Board of Directors, and other Owners shall have the power to bid on the Condominium Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same;
- (2) Such other action or proceeding as may be available at law or in equity, all remedies being cumulative and none being deemed exclusive of others;

- (3) In any proceedings under this paragraph 24 or under paragraph 25 below, the Owner shall be required to pay, and the Owner's obligations shall be deemed to include, all costs, expenses, and reasonable attorneys' fees incurred in connection with collecting such Assessments. The Association shall be entitled to the appointment of a receiver during the pendency of any action brought under this paragraph 24 or under paragraph 25 below to collect all sums alleged to be due from the Owner prior to or during the pending action.
- c. **Encumbrancer's Rights.** Any lienholder of a Condominium Unit may pay, but shall not be required to pay, any unpaid Assessments payable with respect to such Condominium Unit, and upon such payment the lienholder shall have an additional lien on such Condominium Unit for the amounts paid of the same lien priority as the lienholder's original lien in the manner of a protective disbursement. Except as expressly provided under the Act, any First Mortgagee who acquires a Condominium Unit by foreclosure or by a deed in lieu thereof shall acquire title to such Condominium Unit free and clear of any lien for unpaid Assessments arising prior thereto, and shall only be responsible for Assessments arising after the date upon which such First Mortgagee receives a deed to the Condominium Unit or takes possession thereof, whichever first occurs. All amounts not recovered by the Association under this paragraph 24.c shall remain a personal or individual obligation of the prior Owner of such Unit.
- d. **Homestead Exemption.** Each Owner by accepting a conveyance of their Unit shall be deemed to have agreed that the Association's lien on such Unit for Assessments as hereinbefore described shall be superior to any homestead exemption provided by applicable law, and each Owner shall further be deemed to have agreed that the acceptance of a deed or other instrument of conveyance for any Condominium Unit within the Project shall signify such grantee's waiver of the homestead exemption that might otherwise exist under law.
- e. **Release of Lien.** Any recorded lien for Assessments may be released by recording a Release of Lien executed by a member of the Board of Directors or by the Managing Agent on behalf of the Association.

25. **Owners' Obligations for Payment of Assessments.**

The amount of the Assessments assessed against each Condominium Unit, plus all fines, late charges, penalties, interest, costs, and expenses, including reasonable attorneys' fees, shall be the personal and individual debt of the Owner or Owners of such Unit at the time the Assessment is made or the other costs are incurred. In the case of multiple Owners, such liability shall be joint and several. Suit to recover a money judgment for unpaid Assessments, fines, late charges, penalties, interest, costs, and expenses, including attorney's fees, shall be maintainable without foreclosing or waiving the lien securing the same. No Owner shall be exempt from liability for contribution toward the Assessments due by waiver of the use or enjoyment of any of the General Common Elements and/or amenities, or by abandonment of the Unit.

26. **Liability for Common Expenses Upon Transfer of Condominium Unit is Joint.**

- a. **Ascertainability of Unpaid Assessments; Financial Statements.** Upon written request for a statement of account by an Owner, Mortgagee, prospective Mortgagee, or prospective grantee of a Unit, or by a holder of a security interest in a Unit, or by a Person authorized in writing to make such request, or the attorney for any of the

foregoing, the Association or the Managing Agent shall deliver in accordance with the Act a copy of the most recent financial statement of the Association, if any, and a written statement of (i) the amount of any unpaid Assessments, including but not limited to any Special or Reimbursement Assessments, (ii) the amount of the current levied Assessments, (iii) the dates that Assessments are due, (iv) the amount of any advance payments made, (v) the amount of any prepaid items such as insurance premiums and reserves therefor, and (vi) deficiencies in reserve accounts. Such statements shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Any such statement shall be delivered within fourteen (14) days after the receipt of the request and shall be binding on the Association, the Board of Directors, and all Unit Owners. If no such statement is furnished upon request of an Owner or Mortgagee, or other authorized party, made by personal delivery or by certified mail, first-class postage prepaid, return receipt requested, then the Association shall have no right to assert a lien upon the Unit for unpaid Assessments which were due as of the date of the request.

- b. **Grantee Liability.** The grantee of a Condominium Unit, except a First Mortgagee who acquires a Condominium Unit by foreclosure or a deed in lieu of foreclosure, shall be jointly and severally liable with the grantor for all unpaid Assessments against the latter up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

27. **Mortgaging a Condominium Unit – Priority.**

Any Owner shall have the right from time-to-time to mortgage or encumber the Owner's Condominium Unit by deed of trust, mortgage, or other security instrument. The Owner of a Condominium Unit may encumber such Unit with a Mortgage or Mortgages junior to the lien of the First Mortgage (collectively, the "Junior Mortgage") on the following conditions: (a) any such Junior Mortgage shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for Assessments, and other obligations created by this Declaration; and (b) the Mortgagee under any Junior Mortgage shall release, for the purpose of restoration of any improvements upon the encumbered Condominium Unit, all of its right, title, and interest in and to the proceeds under all insurance policies upon said Condominium Unit which were effected or obtained by the Association. Such release shall be furnished forthwith by the holder of the Junior Mortgage upon written request of the Managing Agent or the Association, and if not furnished may be executed by the Association as attorney-in-fact for such holder of a Junior Mortgage.

28. **Restrictive Covenants and Obligations.**

- a. **No Imperiling of Insurance.** No Owner and no Owner's Guest(s) shall do anything or cause anything to be kept in or on the Project which might: (i) result in an increase in the premiums of insurance obtained for the Project unless the Owner pays the full amount of such increase upon demand of the Association; or (ii) cause cancellation of such insurance.
- b. **No Violation of Law.** No Owner and no Owner's Guest(s) shall do anything or keep anything in or on the Project which would be in violation of any statute, rule, ordinance, regulation, permit, or other requirement of any governmental body.
- c. **No Noxious, Offensive, Hazardous, or Annoying Activities.** No noxious or offensive activity shall be carried on upon any part of the Project, nor shall anything be done or

placed on or in any part of the Project that is or may become a nuisance or cause embarrassment, disturbance, or annoyance to others. No activity shall be conducted on any part of the Project and no improvements shall be made or constructed on any part of the Project that are or might be unsafe or hazardous to any Person or property. No sound shall be emitted from any part of the Project that is unreasonably loud or annoying. No odor shall be emitted from any part of the Project that is noxious or offensive to others. No light shall be emitted from any part of the Project that is unreasonably bright, causes unreasonable glare, or flashes in an annoying or obtrusive manner.

- d. **No Unsightliness.** No unsightliness or waste shall be permitted on or in any part of the Project. Without limiting the generality of the foregoing, no Owner shall keep or store anything (except in designated storage areas) on or in any of the General Common Elements outside their Unit. No Owner shall hang, erect, affix, or place anything upon any of the General Common Elements outside their Unit (except for decorative items located within the Unit or as may be authorized by the Board), and no Owner shall place anything on or in window or doors of Units which would or might create an unsightly appearance or create an unsafe condition. No Owner shall place any signage or decorations in or about their Parking Unit except with the prior and continuing approval of the Board.
- e. **Restriction on Animals.** Except as otherwise provided in this paragraph, no animals, livestock, reptiles, or birds shall be kept on any part of the Project. Domesticated dogs weighing less than twenty-five (25) pounds, other than Pit bulls, Rottweilers and those other types of dogs that are commonly known to be of a violent nature, as well as cats, birds, or fish may be kept in a Unit, provided that under no circumstances shall more than two animals be kept in any Unit and further subject to all governmental animal ordinances and laws and subject to any Rules and Regulations promulgated by the Association. The Association may further restrict the types of animals that may be kept on any part of the Project by means of Rules and Regulations promulgated pursuant to paragraph 19.i above. The Association may also authorize additional types of animals by means of Rules and Regulations promulgated pursuant to paragraph 19.i above. In no event, however, may any Owner keep animals on any part of the Project for any commercial purposes. An Owner is responsible for any damage caused by the Owner's animal(s) and shall be obligated to clean up after such animal(s) on and about the Project. No animals shall be allowed to remain tied or chained to any balconies, patios, or other parts of the Project, and any such animal(s) so tied or chained may be removed by the Association or its agents.
- f. **Restriction on Signs.** Except as provided in paragraph 13.d above, and except as hereafter provided, no signs or advertising devices of any nature shall be erected or maintained on any part of the Project without the prior written consent of the Board. The foregoing restrictions shall not apply to the Declarant during the Development Rights Period. The Board shall permit and maintain at least one sign of reasonable size and suitable design to identify the Project and the Condominium Units therein. During the Development Rights Period, no modifications or additions to the signage criteria shall have any force or effect unless approved in writing by Declarant. Further, no modifications or additions to the signage criteria may be enforced to the extent that such enforcement would require the removal or alteration of any signage that complied with all applicable requirements at the time the sign was installed.

- g. **No Violation of Rules.** No Owner and no Owner's Guest(s) shall violate any of the Rules and Regulations adopted from time-to-time by the Association, whether relating to the use of Units, the use of General Common Elements, or otherwise. The Board may impose a reasonable fine on any Owner for each violation by such Owner and/or such Owner's Guest(s) after at least ten days' prior written notice of the intent to impose such fine and an opportunity to be heard.
- h. **Owner Caused Damages.** If any loss or damage shall be caused to any Person or property, including the Project or any Unit therein, due to the act or neglect of any Owner or such Owner's Guest(s), such Owner shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the Association and the carrier of the insurance has waived its rights of subrogation against such Owner. The amount of any uninsured loss or damage may be collected by the Association from such Owner as an assessment against such Owner, by legal proceedings or otherwise, and such amount (including reasonable attorneys' fees) shall be secured by a lien on the Condominium Unit of such Owner as provided herein for Assessments.
- i. **Leasing of a Condominium Unit.** The Owner of a Unit shall have the right to lease such Owner's Condominium Unit under the following conditions:
- (1) No Owner may lease less than an entire Unit;
 - (2) All leases shall be in writing;
 - (3) All leases shall provide that the term of the lease and the lessee's occupancy of the Unit shall be subject in all respects to the provisions of this Declaration and to the provisions of the Articles, Bylaws, and Rules and Regulations. It must be provided in the lease that any failure by the lessee to comply with the Declaration, Articles, Bylaws, and Rules and Regulations shall be a default under the lease. Any Owner who leases a Unit shall, within ten days after the execution of such lease, forward a copy of the same to the Board or the Managing Agent;
 - (4) The right to lease a Unit shall be and remain subject to the provisions of paragraph 19.1 of this Declaration and, accordingly, any Owner intending to enter into a lease of a Unit shall provide the Association with notice at least five (5) business days prior to signing a lease. Such notice shall contain the full name of each proposed occupant; the proposed commencement date and lease term; and the social security account number of each adult occupant and/or the tax identification number of any occupying entity. The notice must be signed by each proposed adult occupant and/or on behalf of each occupying entity certifying to the accuracy of all information in the notice and authorizing a search of background records and credit records. If the rights of the Association pursuant to said paragraph 19.1 of this Declaration are not initiated as therein provided within the notice period, approval of the proposed lease shall be presumed.
- j. **Vehicle Restrictions.** No trailer, camper, mobile home, commercial vehicle, truck (other than a standard size pickup truck or van), boat, or similar equipment shall be permitted to remain upon any area within the Project, including without limitation any Parking Unit(s), other than temporarily (which is defined as a period of less than two calendar days and less than four total days in any calendar month). Storage of any personal

property not equipped with wheels may be prohibited by the Rules and Regulations. Commercial vehicles shall not be deemed to include sedans, standard size pickup trucks, or vans that are used for both business and personal use. Vehicles displaying a business name or advertising, other than the customary indication of the manufacturer and/or dealer of the vehicle, shall be deemed to be commercial vehicles. No vehicle may be parked or stored in any Parking Unit that cannot fit within the boundaries of such Parking Unit. No vehicles may be operated on the Project which are unreasonably noisy or which emit an unreasonable amount of smoke or other emissions. No off-road unlicensed motor vehicles may be operated upon the Project. No maintenance, repair, rebuilding, dismantling, painting, or servicing of any kind of motor vehicle shall take place anywhere within the Project, including without limitation within any parking space. This restriction shall not be deemed to prohibit bucket-washing or polishing of vehicles. In addition to any other remedies it may have for any such violation, the Association shall be entitled to tow or cause to be towed, and/or may impound or cause to be impounded, any item of property or vehicle that is operated, parked, or stored in violation of the restrictions set forth in this Declaration, the Bylaws, or any applicable provision of the Rules and Regulations. The Association may also obtain injunctive relief without requirement of bond. The costs and expenses incurred in connection with any such remedial activity shall be assessed against the applicable Owner as an Assessment or Reimbursement Assessment.

- k. **Parking of Vehicles.** In addition to the foregoing restrictions, parking of any and all automobiles, motorcycles, or similar vehicles and of any bicycles in the Parking Units shall be subject to such reasonable Rules and Regulations as the Association may promulgate. Further, the Association shall have the right to regulate and establish reasonable Rules and Regulations relating to the use and operation of the portions of the Parking Lot consisting of General Common Elements. All Persons authorized to use any Parking Unit, having the right to use the Parking Lot, shall have a non-exclusive access easement over and upon the General Common Elements as may be necessary for access between their respective Parking Unit and the Unit that they rightfully occupy as well as any road, street, or walkway adjacent to the Project.
- l. **Final Determination.** Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this paragraph 28 shall be made by the Board of Directors and shall be final.

29. **Association at Attorney-in-Fact – Damage and Destruction – Obsolescence.**

This Declaration makes mandatory the irrevocable appointment of an attorney-in-fact to deal with the Project upon the occasion of its damage, destruction, repair, reconstruction, or obsolescence. Title to any Condominium Unit is declared and expressly made subject to the following terms and conditions, and acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute appointment of the attorney-in-fact as herein provided. All of the Owners and holders of any interest in the Project irrevocably constitute and appoint the Association as their attorney-in-fact, in their name, place and stead, to act for the purpose of dealing with the Project upon any occasion of its damage, destruction, repair, reconstruction, or obsolescence as hereinafter provided. As attorney-in-fact, the Association, by its duly authorized officers, shall have full and complete authority, right, and power to vote for and on behalf of each Owner to authorize it to determine the proper course of action as provided herein and in the Act, EXCEPT with respect to the circumstances described in subparagraphs c, d, e, and f below. Without limiting the foregoing, the Association shall have full and complete authority, right, and power to negotiate,

settle, make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvement(s) as used in the succeeding paragraphs means restoring the improvement(s) to substantially the same condition in which they existed prior to the damage, with each Unit and the General Common Elements having substantially the same vertical and horizontal boundaries as before. In no event shall any such reconstruction make the Commercial Unit less viable than prior to such damage or destruction. Except as otherwise herein provided, the proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration, reconstruction, or replacement unless the Owners and the First Mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter. Assessments for Common Expenses shall not be abated during the period of insurance adjustment, or during the course of the repair, restoration, and reconstruction.

- a. **Less Than Two-Thirds Destroyed; Fully Insured.** Upon damage or destruction to the Project to the extent of not more than sixty-six and two-thirds percent (66-2/3%) of the total replacement cost thereof, not including land, due to fire or other casualty, the insurance proceeds, if sufficient to reconstruct the improvement(s), shall be applied by the Association, as attorney-in-fact, to such repair and reconstruction, which shall be completed promptly. The Association shall have full authority, right, and power, as attorney-in-fact, to enter into contracts and otherwise to cause the repair and reconstruction of the improvement(s) to be accomplished using insurance proceeds for same.
- b. **Less Than Two-Thirds Destroyed; Not Fully Insured.** If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is to the extent of not more than sixty-six and two-thirds percent (66-2/3%) of the total replacement cost of the Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of an Assessment to be made against all of the Owners and their Condominium Units. Such deficiency Assessment shall be a Common Expense, shall not require the consent or approval of the Owners, shall be made pro rata according to each Owner's Allocated Interest and shall be due and payable within 30 days after written notice thereof. The Association shall have full authority, right, and power, as attorney-in-fact, to cause the repair or reconstruction of the improvements using all of the insurance proceeds and such Assessment. The Assessment provided for herein shall be a debt of each Owner and a lien on such Owner's Condominium Unit, and may be enforced and collected as otherwise provided for collection of Assessments. In addition, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such Assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association, as attorney-in-fact. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order:
 - (1) for payment of taxes and special assessment liens in favor of any assessing authority;
 - (2) for payment of any unpaid Assessments having priority over a First Mortgage pursuant to the Act;

- (3) for payment of the balance of the lien of any First Mortgage;
 - (4) for payment of unpaid Assessments;
 - (5) for payment of Junior Mortgages and encumbrances in the order of and to the extent of their priority; and
 - (6) the balance remaining, if any, shall be paid to the Owner.
- c. **More Than Two-Thirds Destroyed; No Reconstruction Plan.** If the Project is damaged or destroyed to the extent of more than sixty-six and two-thirds percent (66-2/3%) of the total replacement cost thereof, not including land, and if the Owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the General Common Elements do not voluntarily, within 30 days thereafter, make provisions for reconstruction, which plan must have the approval or consent of at least seventy-five percent (75%) of the First Mortgagees (based upon one vote for each Unit encumbered), the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's duly authorized officers, the entire remaining Project shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Condominium Survey, the Articles, and the Bylaws. The insurance settlement proceeds and sale proceeds shall be collected by the Association and such proceeds shall be divided by the Association according to each Owner's Allocated Interests, and such divided proceeds shall be paid into separate accounts, each such account representing one of the Condominium Units. Each such account shall be in the name of the Association, and shall be further identified by the Condominium Unit designation and the name of the Owner and any Mortgagee thereof. The total funds in each account shall be used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraphs b (1) through (6) of this paragraph. The provisions contained in this paragraph shall not hinder the protection given to a First Mortgagee under a mortgagee endorsement.
- d. **More than Two-Thirds Destroyed; Reconstruction Plan.** If the Project is destroyed or damaged to the extent of more than sixty-six and two-thirds percent (66-2/3%) of the total replacement cost thereof, not including land, and if the Owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the General Common Elements adopt, within 30 days thereafter a plan for reconstruction, which plan must have the approval or consent of at least seventy-five percent (75%) of the First Mortgagees (based upon one vote for each Unit encumbered), then all of the Owners shall be bound by the terms and other provisions of such plan. The Association shall have the right to use, in accordance with such plan, all proceeds of insurance relating to such destruction or damage, as well as the proceeds of any necessary assessment to be made against all of the Owners and their Condominium Units. Any assessment made in connection with such plan shall be a Common Expense and shall be made pro-rata according to each Owner's Allocated Interest and shall be due and payable as provided by the terms of such plan, but not sooner than 30 days after written notice thereof. The Association shall have full authority, right, and power, as attorney-in-fact, to cause the repair or restoration of the improvements, using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the Assessment. The Assessment provided for herein shall be a debt of each Owner and a lien on that Owner's

Condominium Unit and may be enforced and collected as provided herein for Assessments. In addition, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such Assessment within the time provided, and if not so paid the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraphs b (1) through (6) of this paragraph.

- e. **Project Obsolete; Renewal Plan.** The Owners representing an aggregate ownership interest of eighty-five percent (85%), or more of the Allocated Interests may agree that the Condominium Units are obsolete and adopt a plan for the renewal and reconstruction of the Project, which plan shall have the approval or consent of at least eighty-five percent (85%) of the First Mortgagees (based upon one vote for each Unit encumbered). If a plan for the renewal or reconstruction of the Project is adopted, notice of such plan shall be recorded, and the expenses thereof shall be payable as a Special Assessment by all of the Owners pro-rata according to each Owner's percentage interest in the General Common Elements. Any Owner not a party to such a plan for renewal or reconstruction may give written notice to the Association within 15 days after the adoption of such plan that such Owner's Condominium Unit shall be purchased by the Association for the fair market value thereof. The Association shall then have 15 days within which to cancel such plan. If such plan is not cancelled, the Condominium Unit(s) of such Owner(s) shall be purchased by the Association according to the following procedures. If any such Owner and the Association can agree on the fair market value thereof, then the sale of such Owner's Condominium Unit shall be consummated within 30 days thereafter. If the parties are unable to agree, the date when either party notifies the other of the inability to agree shall be the "commencement date" from which all periods of time mentioned in this paragraph shall be measured. Within ten days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party) an independent appraiser. If one party fails to make such a nomination, the appraiser nominated by the other party shall, within five days after such failure, appoint and associate with another independent appraiser. If the two appraisers designated by the parties, or selected pursuant to this paragraph in the event of the default of one party, are unable to agree upon the fair market value of the Unit prior to the expiration of ten days following the appointment of the second appraiser, they shall, within five days thereafter, appoint another independent appraiser to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire within such five-day period, then each appraiser previously appointed shall nominate two independent appraisers, and from the names of the four persons so nominated one shall be drawn by lot by any judge of any court of record in Iowa, and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within ten days after the failure of the two appraisers to agree, which, in any event, shall not be later than 30 days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their disagreement, then the decision of the umpire, shall be final and binding. The purchase price will be the fair market value as so determined, or the amount of any bona fide first Mortgage secured by the Unit, whichever is greater. The expenses and fees of such appraisers shall be borne equally by the Association and the Owner. The sale shall be consummated within 30 days thereafter, and the Association, as attorney-in-fact, shall disburse the proceeds of such sale as is provided in subparagraphs b (1) through (6) of this paragraph.

- f. **Project Obsolete; No Renewal Plan.** The Owners representing an aggregate ownership interest of eighty-five percent (85%) or more of the Allocated Interests may agree that the Condominium Units are obsolete and that the same should be sold. Such agreement must have the approval or consent of at least eighty-five percent (85%) of the First Mortgagees (based upon one vote for each Unit encumbered). In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by a duly authorized officer of the Association, the entire Project shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Condominium Survey, the Articles, and the Bylaws. The sales proceeds shall be apportioned between the Owners on the basis of each Owner's Allocated Interest and such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium Unit. Each account shall be in the name of the Association, and shall be further identified by the Condominium Unit designation and the name of the Owner and any Mortgagee thereof. The Association, as attorney-in-fact, shall use and disburse the total amount of each of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in subparagraphs b (1) through (6) of this paragraph.

30. **Condemnation.**

- a. **Consequences of Condemnation.** If at any time or times during the continuance of condominium ownership pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance of any such proceeding, the provisions of this paragraph 30 shall apply.
- b. **Proceeds.** All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the Association for the use and benefit of the Owners and the Mortgagees, as their interests may appear.
- c. **Complete Taking.** If the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of any such proceeding, condominium ownership pursuant to this Declaration shall terminate. The Condemnation Award shall be apportioned among the Owners in proportion to their respective Allocated Interest, provided that if a standard different from the value of the Project as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree, or otherwise, then in determining such share the same standard shall be employed to the extent it is relevant and applicable.
- d. **Partial Taking.** If less than the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of any such proceeding, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner. As soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award among compensation, damages, and other proceeds, and shall apportion the amounts so allocated among the Owners as follows: (i) the total amount allocated to taking of, or injury to, the General Common Elements separate and distinct from any of the Units shall be apportioned among the remaining Owners in proportion to their respective Allocated Interest; (ii) the total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken or condemned in proportion to their respective Allocated Interest; (iii) the respective amounts allocated to the taking of, or injury to, a particular Unit and/or improvements an Owner had made

within the Owner's Unit shall be apportioned to the particular Condominium Unit involved; and (iv) the amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Condemnation Award is already established in the negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Any distribution of the Condemnation Award made to any Owners pursuant to this paragraph shall be made payable jointly to such Owners respectively and their Mortgagees.

- e. **Distribution.** The Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable, provided that in the event of a complete taking such distribution shall be made in the same manner as is provided in paragraph 29.b(1)-(6).
- f. **Mortgagee Notice.** The Association shall give timely notice to each First Mortgagee of the commencement of any condemnation or eminent domain proceedings and shall notify said First Mortgagees in the event of an initiated taking of all or any part of the General Common Elements, if the value of the General Common Elements subject to threatened taking exceeds \$10,000.00.
- g. **Reorganization.** If a partial taking results in the taking of a complete Unit, the Owner thereof automatically shall cease to be a member of the Association, and such Owner's interest in the General Common Elements shall thereupon terminate, and the Association, as attorney-in-fact for such Owner, may take whatever action is necessary and execute such documents as are necessary to reflect such termination. Thereafter the Association shall reallocate the ownership and assessment ratios determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception, and shall submit such reallocation to the Owners and Mortgagees of the remaining Condominium Units and, as their attorney-in-fact, shall record a corresponding amendment to this Declaration.

31. **Amendment and Termination of Declaration.**

- a. **Duration of Declaration.** All of the provisions contained in this Declaration shall continue and remain in full force and effect until condominium ownership of the Project and this Declaration are terminated, revoked, or amended as hereinafter provided.
- b. **Amendment and Termination.**
 - (1) Except as otherwise expressly provided by this Declaration or the Act, any provision contained in this Declaration may be amended, or additional provisions may be added to this Declaration, only by a vote or written agreement of the Owners, as shown by the Records, representing an aggregate ownership interest of sixty-seven percent (67%), or more, of the Allocated Interests. Without limiting the generality of the foregoing, such vote or written agreement of the Owners shall be required for any of the Amendments referenced in paragraph 32.a below. Further, so long as Declarant continues to own five (5) or more Residential or Commercial Units that it is holding for lease or sale, no rights of Declarant contained in this Declaration may be amended or modified without the

consent of Declarant, including specifically this sentence. The consent(s) of any Junior Mortgagees shall not be required under the provisions of this paragraph.

- (2) Notwithstanding anything in subparagraph (1) above to the contrary, if Declarant determines that any amendments to this Declaration or any amendments to the Articles or Bylaws shall be necessary: (a) in order for existing or future Mortgages to be acceptable to any Agencies; (b) in order to clarify any apparently conflicting provisions; (c) to correct any mistakes or errors of a clerical nature resulting from typographical or similar errors; or (d) to correct technical errors for clarification, Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of any Owners or Mortgagees. At least ten (10) days prior to the effective date of any such Declarant-dictated amendment to this Declaration, Declarant shall notify all First Mortgagees of record of such amendment. Each such Declarant-dictated amendment shall be made, if at all, prior to the expiration of the Development Rights Period.
 - (3) Notwithstanding anything in subparagraph (1) to the contrary, no consent or agreement of Owners or Mortgagees generally shall be required in order to allow: (a) Declarant to exercise its Development Rights provided it complies with the applicable provisions as set forth in this Declaration; or (b) the Owners to exercise their respective rights under paragraph 4.
 - (4) All amendments to this Declaration must be prepared and recorded in the Records.
 - (5) The Condominium Regime and Declaration can be terminated as provided in the Act.
- c. **Effect of Provisions of Declaration.** Each provision of this Declaration, and any agreement, promise, covenant, and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right, or interest to effectuate any provision of this Declaration, shall:
- (1) Be deemed incorporated in each deed or other instrument by which any right, title, or interest in the Project or in any Condominium Unit is granted, devised, or conveyed, whether or not set forth or referenced in such deed or instrument;
 - (2) By virtue of acceptance of any right, title, or interest in the Project or in any Condominium Unit by an Owner, be deemed accepted, ratified, adopted, and declared as a personal covenant, shall be binding on such Owner and such Owner's heirs, personal representatives, successors, and assigns and shall be deemed a personal covenant to, with, and for the benefit of the Association but not to, with, or for the benefit of any other Owner;
 - (3) Be deemed a real covenant by Declarant, for itself, its successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to the Project and each Condominium Unit and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of the Project and each Condominium Unit; and

- (4) Be deemed a covenant, obligation, and restriction burdening and encumbering the title to the Project and each Condominium Unit in favor of the Association.

32. **Rights of First Mortgagees.**

For purposes of this paragraph 32, Mortgagees requesting notice from the Association shall be referred to as "Eligible Mortgagees." In order to qualify as a proper request for notice and, therefore, to qualify as an "Eligible Mortgagee", the request must include the name and contact information of an officer or agent with full authority to act on behalf of the Mortgagee and to consent or withhold consent to amendments or other actions requiring input from Eligible Mortgagees. The name and contact information must be kept current within ten (10) days of any change in order for the request for notice to remain effective. Subject to paragraphs 4 and 31.b and the rights of Declarant provided for in this Declaration, but notwithstanding any other provisions in this Declaration to the contrary:

- a. **Amendments of Condominium Instruments.** No material amendments shall be made to the Declaration, Articles, or Bylaws of the Association (collectively, the "Condominium Instruments"), and no material action by the Association will be taken, without prior written notice of such amendment or action to all Eligible Mortgagees, and without the approval of Eligible Mortgagees representing at least fifty-one percent (51%) of the votes of the Units that are subject to Mortgages held by Eligible Mortgagees. The following actions or changes to any of the provisions governing the following in the Condominium Instruments shall be considered "material" for purposes of this paragraph 32.a: (i) changing voting rights; (ii) increases in regular Assessments for Common Expenses that raise the previously assessed amount by more than 25%; (iii) changes in the provisions governing Assessment liens or the priority of Assessment liens; (iv) elimination of reserves for maintenance, repair, and replacement of General Common Elements, or changes in the provision for contributions to reserves upon the sale of a Unit; (v) changes in assigned responsibility for maintenance and repairs; (vi) reallocation of interests in the General Common Elements or rights to their use except as allowed in paragraphs 3.1 and 4; (vii) redefinition of any Unit boundaries except as allowed in paragraphs 3.1 and 4; (viii) convertibility of Units into General Common Elements or Limited Common Elements or vice versa except as allowed in paragraphs 3.1 and 4; (ix) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project; (x) changes in the requirements for hazard or fidelity insurance; (xi) imposition of any restrictions on the leasing of Units; (xii) imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit; (xiii) a decision by the Association to establish self-management when professional management has previously been required by this Declaration or by any Eligible Mortgagee; (xiv) restoration or repair of the Project or Building (after damage or partial condemnation) in a manner other than that specified in the Condominium Instruments; (xv) any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or (xvi) any provisions that expressly benefit First Mortgagees. Any addition, deletion, or amendment shall not be considered material if it is for the purpose of correcting technical errors, of clarification only, or to comply with the requirements of any of the Agencies. If an Eligible Mortgagee fails to submit a response to any written proposal for any such material amendment or action within 30 days after notice of the proposal is given by certified or registered mail, return receipt requested, such Mortgagee's approval shall conclusively be deemed to have been given.

- b. **Inspection; Notices of Meetings.** Any First Mortgagee shall be entitled to inspect the Condominium Instruments, books, records, and financial statements relating to the Project during normal business hours, and upon written request shall be entitled to: (i) receive an audited financial statement of the Association for the preceding fiscal year of the Association; and (ii) written notice of all meetings of the Association, as well as the right to designate a representative to attend all such meetings.
- c. **Other Notices.** The Association shall provide timely written notice to any Eligible Mortgagee of: (i) any condemnation or casualty loss that affects either a material portion of the Project or the Unit securing its Mortgage; (ii) any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Unit on which it holds the Mortgage; (iii) a lapse, cancellation, or material modification or any insurance policy or fidelity bond maintained by the Association which is not replaced by a policy satisfying the requirements of this Declaration prior to the effective date of such lapse, cancellation, or modification; and (iv) any proposed action that requires the consent of a specified percentage of the First Mortgagees. No provision in the Condominium Instruments shall be construed to give a Unit Owner or any other party priority over the rights of any First Mortgagee of a Unit with respect to distribution by the Association of insurance proceeds or a condemnation award for losses to or a taking of Units and/or General Common Elements.

The provisions of this paragraph 32 are in addition to any other rights of Mortgagees herein contained or provided under law. If any other paragraph of this Declaration requires the approval of a higher percentage of the First Mortgagees than are required by this paragraph 32, the percentage required by such other paragraph shall control.

33. **Protection of Encumbrancer.**

Subject to the provisions of paragraph 27, no violation or breach of or failure to comply with any provision of this Declaration, and no action to enforce any such provision, shall affect, defeat, render invalid, or impair the lien of any First Mortgage or any other lien on any Condominium Unit taken in good faith and for value and perfected by recording in the Records, prior to the time of the recording of an instrument setting forth the following: (a) a description of the Condominium Unit; (b) the name(s) of the Owner(s) of fee simple title to the Condominium Unit; and (c) notice of such violation, breach, or failure to comply or action to enforce, affect, defeat, render invalid, or impair either the title or interest of the holder of any such First Mortgage or other lien or the title or interest acquired by any purchaser upon foreclosure of any such First Mortgage or other lien. Any such purchaser on foreclosure shall take subject to this Declaration; provided, however, that violation or breach of, or failure to comply with, any provisions of this Declaration which occurred prior to the vesting of fee simple title in such purchaser shall not be deemed breaches or violations hereof or failures to comply herewith with respect to such purchaser, or such purchaser's heirs, personal representatives, successors or assigns.

34. **Miscellaneous.**

- a. **Supplemental to Law.** The provisions of this Declaration shall be in addition and supplemental to the Act and to all other provisions of law.
- b. **Numbers and Genders.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

- c. **Registration by Owner of Mailing Address.** Each Owner shall register a mailing address with the Association. All notices or demands intended to be sent to or served upon an Owner shall be delivered personally or sent by first class mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. If an Owner of a Residential Unit or Commercial Unit fails to register a mailing address, such Owner's mailing address shall be deemed to be the mailing address of such Unit. If an Owner of a Parking Unit fails to register a mailing address, such Owner's mailing address shall be deemed to be (i) the address registered for such Owner with respect to the Residential or Commercial Unit owned, or (ii) in other cases the address for such Owner as shown on the deed conveying such Owner's Parking Unit(s) or, if no such address is provided, notices may be delivered by posting on any wall, pillar, or post adjacent to or in the vicinity of such Owner's Parking Unit. All notices, demands, or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, in care of the Registered Agent of the Association according to the records of the Iowa Secretary of State, Attention: President, until such address is changed by a notice of a different address that is given by notice to Owners and Eligible Mortgagees.
- d. **Successors and Assigns.** This Declaration shall be binding upon and shall inure to the benefit of Declarant, the Association, and each Owner, and the heirs, personal representatives, successors, and assigns of each of them, except as otherwise expressly provided herein.
- e. **Severability.** All provisions of this Declaration are severable. Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration. If the invalidity or unenforceability of any such provision is because of its scope or breadth then any court of competent jurisdiction shall have the power to reform the provision such that it will be valid and enforceable to the fullest scope and breadth permitted by law.
- f. **Captions.** The captions and headings in this Declaration are primarily for convenience only.
- g. **No Waiver.** Failure to enforce any provision of this Declaration shall not operate as a waiver of any such provision or of any other provision(s) of this Declaration no matter how many violations or breaches occur.
- h. **Sales and Construction Facilities and Activities of Declarant.**
- (1) **Construction and Marketing Activities.** Notwithstanding any provision to the contrary contained herein, during the period of any renovation, construction, and sale of the Condominium Units in the Project by Declarant (but until no later than the expiration of the Development Rights Period), Declarant, its agents, employees, and contractors shall be permitted to maintain upon such portion of the Project as Declarant may choose such facilities and to conduct such activities as, in the sole discretion of Declarant, may be reasonably required or convenient for or incidental to the renovation, construction, sale, or rental of the Condominium Units. Such facilities may include, without limitation, a business office; construction management office; storage areas; construction storage areas; signs, model Units; sales office; construction office; parking areas; and

temporary lighting and parking facilities for all prospective tenants or purchasers of Units, and for all contractors and laborers. In addition, Declarant, its agents, employees, and contractors shall have the right of ingress and egress over any and all Units and all of the General Common Elements as in Declarant's discretion may be necessary with regard to the foregoing. Further, Declarant, its agents, employees, and contractors shall have the right of ingress and egress in and through all Units owned by Declarant and all of the General Common Elements during the period of the renovation, construction, and/or sale of the Units for the purpose of any required or desired refurbishment, construction, maintenance, or repair of such Units, the Building, Common Elements, or any part thereof.

- (2) **Sales, Leasing and Management Activities.** Notwithstanding any provision to the contrary contained herein, for so long as Declarant owns any Units in the Project (but until no later than the expiration of the Development Rights Period), Declarant may use such Units owned by it within the Project as a sales office or otherwise for the marketing of the Condominium Units, and/or as a management office and/or a leasing office for the Project, and/or as model Units for the marketing of the Project. Declarant reserves the right from time-to-time to relocate any or all of such offices and/or activities between and among those designated areas and Units owned by Declarant.
- i. **Conflict.** In the event of a conflict between the provisions of the Declaration the Bylaws, the Declaration shall prevail except to the extent the Declaration is inconsistent with the Act. In the event of a conflict between provisions relating to the exercise of Development Rights by Declarant and provisions relating to Owners, including specifically restrictions on rights of Owners, provisions relating to the exercise of Development Rights shall prevail notwithstanding that Declarant is also an Owner of one or more Units.
- j. **Act and Paragraph References.** All references to particular sections of the Act shall be to the corresponding section of Chapter 499B of the Iowa Code. Unless the context otherwise clearly indicates, references in this Declaration to particular paragraphs or subparagraphs shall refer to the corresponding provision of this Declaration.
- k. **Arbitration.** Any claim, controversy, or dispute over the imposition, amount or any other aspect of a Reimbursement Assessment, or over such other matters as the Association and the affected party may mutually agree, shall be resolved by binding arbitration in accordance with Chapter 679A, Code of Iowa, as amended. Any such arbitration proceeding may be required by any aggrieved person upon written notice to the Association. The parties to such dispute shall agree upon a single arbitrator, who shall be an experienced operator or manager of condominium projects. If the parties are unable to agree upon an arbitrator within 15 days after the Association's receipt of the previously mentioned written notice, the presiding judge of the District Court for the County of Polk, upon application by a party to the dispute, shall appoint an arbitrator with the qualifications set forth above. Judgment upon the determination of the arbitrator shall be entered and enforced by the District Court for the County of Polk, and any such judgment shall be final and conclusive. Any and all discovery in conjunction with such arbitration shall be conducted in accordance with the discovery provisions of Chapter 679A, Code of Iowa, as amended.

- l. **Assignment of Development Rights.** Declarant shall have the unrestricted right to assign from time-to-time any one or more of the Development Rights.
- m. **Adaptability of Units for the Handicapped.** Residential Units can be made handicapped accessible in accordance with the state and city building codes. Any modification(s) for handicapped accessibility or adaptability must be approved in advance by the Association and shall be completed at the expense of the Unit Owner whose Unit is modified, free of liens and encumbrance, in conformity with all applicable codes and ordinances, and in a good and workmanlike manner.
- n. **Automatic Adjustment of Threshold Numbers.** Financial numbers stated in the Declaration or Bylaws may be adjusted from time-to-time by an amendment as therein provided or, lacking such amendment, will be adjusted automatically every five (5) years based on the Index.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 26 day of August, 2008.

e5w, L.L.C.,
an Iowa limited liability company

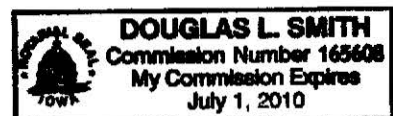
By: Tom Howard
Tom Howard
Its: Manager

STATE OF IOWA)
)SS:
COUNTY OF POLK)

This instrument was acknowledged before me on this 26 day of August, 2008, by Tom Howard, as the Manager of e5w, L.L.C.

Douglas L. Smith
Notary Public in the State of Iowa

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MORTGAGEE'S STATEMENT

Valley Bank, hereby consents to the recording of the foregoing Declaration of Submission to Horizontal Property Regime of e5w, a Condominium, and subordinates the lien of its Mortgage, recorded June 4, 2007, in Book 12221 at Page 570, in the real property records of Polk County, Iowa, to said Declaration and the effect thereof.

Valley Bank
By: Scott Amende, SVP
By: DHansen, Reg Pres.

STATE OF IOWA)
)SS:
COUNTY OF POLK)

The foregoing was acknowledged before me this 28th day of August, 2008, by Scott Amende and Dennis H Hansen as SVP and Regional Pres, respectively, of Valley Bank.

Debra A Austin
Notary Public



EXHIBIT 1
Legal Description

Lots 5 and 6 in Block D, Griffiths Addition to East Fort Des Moines, an Official Plat, City of Des Moines, Polk County, Iowa.

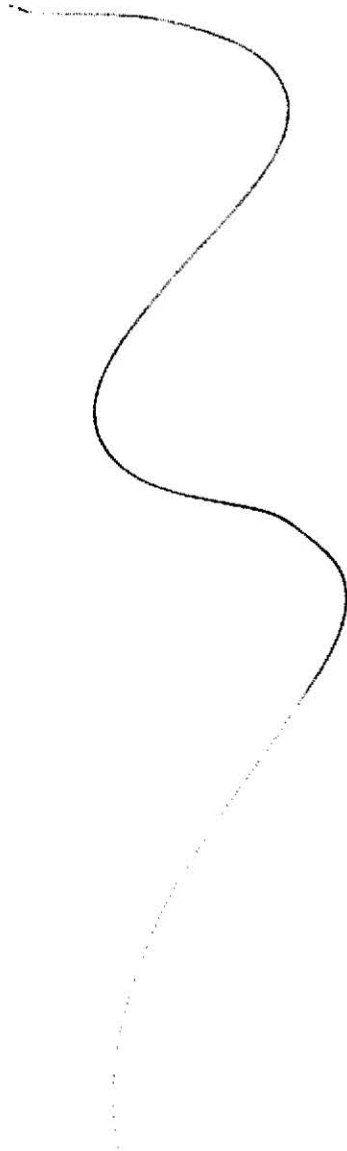


EXHIBIT 2

BYLAWS OF **e5w CONDOMINIUM OWNERS ASSOCIATION, INC.**

ARTICLE I

Name, Object, Purpose and Plan of Ownership

1. These are the Bylaws of e5w Condominium Owners Association, Inc. (the "**Association**"), a corporation organized pursuant to Chapter 504 of the Code of Iowa for the purpose of performing the functions described in the Declaration of Submission to Horizontal Property Regime of e5w appearing in the records of the Recorder of Polk County, Iowa (the "**Declaration**") and to provide an entity to operate and maintain certain General Common Elements situated in Polk County, Iowa, as that term is defined in the Declaration for and on behalf of the Owners of certain real property situated in Polk County, Iowa, described on **Exhibit 1** to the Declaration, and such other additional property as may be later submitted to the terms of the Declaration.
2. **All Persons Subject.** All present or future Owners, Guests, tenants, and other Persons that might use the facilities of the Project in any manner are subject to the regulations set forth in these Bylaws. The acquisition or rental of any of the Units, the act of Occupancy of any of said Units, or the Use of any of the facilities of the Project will signify that these Bylaws are accepted, ratified, and will be complied with. The terms "Occupancy", "Use", or any form thereof, as used herein with respect to any Unit or the General Common Elements, shall be synonymous, and a Person shall be deemed to Occupy or Use any Unit or the General Common Elements, as the case may be, if they have any right to Occupy or Use the same, regardless of whether such right is ever exercised.
3. **Definitions.** For convenience of reference, terms utilized herein shall conform to those defined terms used in the articles of Incorporation (the "**Articles**") of the Association and in the Declaration, unless otherwise noted.

ARTICLE II

Membership, Voting and Quorum

1. **Membership.** Except as is otherwise provided in the Articles or these Bylaws, membership in this Association is limited to Owners of Condominium Units in the Project or, following termination of the Project, all former Owners entitled to distribution of proceeds under the Act or this Declaration and their respective heirs, personal representatives, successors, or assigns. Any person on becoming an Owner of a Condominium Unit shall automatically become a member of the Association ("**Member**") in accordance with the Declaration and shall be subject to these Bylaws. The Owner of a Unit shall hold and share such membership in the same proportionate interest and by the same type of tenancy in which title to the Condominium Unit is held. If the fee simple title to a Condominium Unit is held by more than one Person, each such Person shall be a

Member. Each membership is appurtenant to the Condominium Unit of each Owner thereof and shall terminate without any formal Association action whenever such person ceases to have an ownership interest in a Condominium Unit and shall automatically pass with fee simple title to the Condominium Unit, but such termination shall not relieve or release such former Owner from any liability or obligation incurred under or in any way connected with this Association during the period of such ownership and membership in the Association, or impair any rights or remedies which the Owners have, either through the Board of Directors of the Association (the "Board") or directly, against such former Owner arising out of or in any way connected with the ownership of a Condominium Unit or membership in the Association, and the covenants and obligations incident thereto.

2. **Voting.** Each Owner satisfying the requirements of Article X, Section 1 below shall be entitled to vote on all matters that are subject to a vote by the Owners in accordance with the following:
 - (a) On all voting matters the size of each Owner's vote shall be determined by reference to the Allocated Interests as shown on **Exhibit 4** to the Declaration;
 - (b) No split vote may be cast;
 - (c) No cumulative voting is permitted;
 - (d) No votes allocated to any Condominium Unit(s) owned by the Association may be cast;
 - (e) The Mortgagee of any Unit may attend any general or special meeting but shall have no vote unless granted by written proxy or as otherwise expressly provided in the Declaration or these Bylaws;
 - (f) Notwithstanding the provisions of subsection (e) herein, for any material action, prior written notice must be provided to, and approval of any amendments obtained from, the Eligible Mortgagees, as set forth in the Declaration.
3. **Quorum.** Except as otherwise provided in the Declaration, the Articles, or these Bylaws, the presence in person or by proxy at the beginning of the meeting of Owners holding twenty percent (20%) of the votes entitled to be cast shall constitute a quorum for any action. If a quorum is present, the affirmative vote of the votes represented and voting, which affirmative votes also constitute a majority of the required quorum, shall be the act of the Owners, including the election of Directors, the ordinary transaction of business at the meeting, and the adoption of decisions that are binding on all Owners. For purposes of the foregoing, each Owner's vote shall be computed with reference to such Owner's Allocated Interests.

4. **Proxies.** Votes may be cast in person or by proxy. Proxies must be filed with the Secretary of the Association prior to the start of each meeting. To be effective, all proxies must be in writing and duly executed by the Owner. A proxy is void if it is not dated or purports to be revocable without notice. An Owner may not revoke a proxy except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy terminates eleven (11) months after the date of its execution.
5. **No Suspension of Voting Rights.** The Board may not suspend the voting rights of an Owner due to breach by such Owner of any provision of the Declaration or Bylaws.

ARTICLE III Administration

1. **Transfer of Declarant Control.** The Declarant retains control of the Association as provided and limited by the Declaration.
2. **Place of Meeting.** Meetings of the Association shall be held at the Project, or at such other place within the City of Des Moines as the Board may determine.
3. **Annual Meetings.** Upon expiration of the Phase I Period, the Board shall establish a date for the first annual meeting of the Association (the "First Annual Meeting"). The First Annual Meeting shall be held no later than fifteen (15) days after the expiration of the Phase I Period and shall be on a weekday other than Monday or Friday. Thereafter, the annual meeting of the Association shall be held on the same day each year at such time as the Board may determine. Except as may otherwise be provided in Article IV hereof, at such meetings there shall be elected, by ballot of the Owners, a Board of Directors, in accordance with the requirements of Article IV of these Bylaws. The Owners may also transact such other business of the Association as may properly come before them.
4. **Special Meeting.** The President may call a special meeting of the Owners upon his/her own initiative, or as directed by resolution signed by a majority of the Board, or upon receipt of a petition signed by Owners having five percent (5%) of the votes of the Association. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. Only those matters that are within the purpose described in the meeting notice may be considered at a special meeting of the Owners. Any such meetings shall be held at such place and time as the President determines within thirty (30) days after receipt by the President of such resolution or petition. The minimum length of time between special meetings of the Association shall be thirty (30) days.
5. **Notice of Meetings.** Not less than ten nor more than sixty days in advance of any meeting, the Secretary shall cause notice of such meeting to be hand delivered or sent

prepaid by first class or registered mail to the mailing address of each Owner or to any other mailing address designated in writing by such Owner, except that if a Unit is owned by two or more individuals, such notice shall be delivered or sent to the Representative of the said Owners at the mailing address of the Unit, as provided in Section 2 of Article X. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any changes to the Budget, and any proposal to remove an Officer or Director. The delivery or mailing of a notice in the manner provided in this section shall be considered notice served, and a certificate of the Secretary that notice was duly given shall be prima facie evidence thereof. Notice may be waived in writing at any time before, at, or after the meeting.

6. **Adjourned Meetings.** If any meeting of Owners cannot be organized because a quorum is not in attendance, the Owners who are present and entitled to vote, either in person or by proxy, may adjourn the meeting without notice other than an announcement at said meeting, from time-to-time, until a quorum is obtained.
7. **Order of Business.** The order of business at all meetings of the Owners shall be set by the Board, but shall include provision for new business.
8. **Action by Owners Without a Meeting.** Any action required or permitted by law to be taken at a meeting of the Owners may be taken without a meeting if a consent in writing, setting out the action so taken, shall be signed by at least eighty (80) percent of the Owners entitled to vote with respect to the subject matter of the action. Written notice of Owner approval must be given to all Owners who have not signed the written consent. If written notice is required, Owner approval shall be effective ten (10) days after such written notice is given. A written consent may be revoked by a writing to that effect received by the Association prior to the receipt by the Association of unrevoked written consents sufficient in number to take the corporate action.
9. **Meeting Procedure.** At the beginning of each meeting, the Secretary shall render and certify the roll showing a list of all the Owners entitled to vote at such meeting, the Allocated Interests of each and the name of the Person entitled to cast each Owner's vote by virtue of any proxy then in effect. Conduct of each meeting shall be governed generally by the provisions of Robert's Rules of Order, Revised.

ARTICLE IV **Board of Directors**

1. **Number and Qualification.** The number and qualifications of members of the Board shall be as set forth in the Declaration.
2. **Powers and Duties.** The Board shall have the powers and duties necessary for the administration of the affairs of the Association and for the operation and maintenance of the Project as a commercial and residential condominium property. Such powers and duties of the Board shall include, but shall not be limited to, the following, all of which shall be done for and on behalf of the Owners:
 - (a) To elect and remove officers of the Association;
 - (b) To formulate policies for the administration, management, and operation of the Project;
 - (c) To administer and enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations, and all other provisions set forth in the Declaration, these Bylaws, and in all other easement, covenant, or restriction pertaining to the Project;
 - (d) To establish, make, and enforce compliance with such Rules and Regulations as may be necessary for the operation, rental, use, and occupancy of all of the Units and the Project, and to amend the same from time-to-time. A copy of such Rules and Regulations shall be delivered or mailed to each Owner upon the adoption thereof. Any such Rules and Regulations may also be made, modified, or abolished by the Owners.
 - (e) To incur such costs and expenses as may be necessary for the maintenance, replacement, or repair of the General Common Elements and all items of personal property in or about the General Common Elements or otherwise owned by the Association;
 - (f) To maintain insurance as required or permitted by the Declaration in furtherance of which power the Board may, but shall not be required to, obtain Directors' and Officers' Liability Insurance;
 - (g) To prepare a Budget for the Association at least annually, in accordance with the provisions of the Declaration, in order to determine the amount of the Assessments payable by the Owners;
 - (h) To prepare annual financial statements of the accounts of the Association, to be reviewed by a public accountant, and to make available for inspection by each Owner a copy of the reviewed financial statements within 120 days after the end of each fiscal year.

- (i) To establish and collect Assessments from Owners as provided in the Declaration;
- (j) To protect and defend in the name of the Association any part or all of the Project from loss and damage by suit or otherwise;
- (k) To borrow funds in order to pay for any expenditure or outlay required pursuant to the authority granted by the provisions of the Declaration and these Bylaws, and to execute all such instruments evidencing such indebtedness as the Board may deem necessary and to give security therefor;
- (l) To enter into contracts to carry out its duties and powers;
- (m) To establish a bank account or accounts which are required or may be deemed advisable;
- (n) Without the prior approval of Owners being required, to make repairs, additions, alterations, and improvements to the General Common Elements consistent with managing the Project in a manner consistent with the general quality of the Project and otherwise to such standard as the Board deems appropriate, and to hire such personnel as are necessary to accomplish the foregoing;
- (o) To employ for the Association, as the Board in its discretion shall determine, a Managing Agent who shall have and exercise those duties and powers granted to it by the Board but not those powers which the Board, by law, may not delegate; provided, the Board shall not be released of its responsibilities under the Declaration notwithstanding such delegation to a Managing Agent. Any such management agreement shall comply with the Declaration;
- (p) To provide for the designation, hiring, and removal of employees and other personnel, including accountants and attorneys, and to engage or contract for the services of others;
- (q) To appoint committees of the Board;
- (r) To determine the fiscal year of the Association;
- (s) Unless otherwise provided in these Bylaws or the Declaration, to comply with the duly adopted actions of Owners; and
- (t) In general, to carry on the administration of the Association and to do all of those things necessary and reasonable in order to carry out the governing and the operation of the Project.

3. **No Waiver of Rights.** The omission or failure of the Association, the Board, or any Owner to enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations, or other provisions of the Declaration, the Bylaws, or the Rules and Regulations, shall not constitute or be deemed a waiver, modification, or release thereof, and the Board or the Managing Agent shall have the right to enforce the same thereafter.
4. **Election and Term of Office.** Members of the Board shall be appointed and elected as set forth in the Declaration. Except as otherwise so provided, nominations for all directorships shall be taken before voting. Only one vote shall be taken, and those nominees receiving the most number of votes shall be elected so as to fill the number of directorships. Directors elected by the Owners shall be elected in the following manner. Following the expiration of the Phase I Period and until the expiration of the Phase III Period, all Directors elected by the Owners shall serve for terms of one year, unless re-elected to serve additional terms thereafter. At the first meeting of the Association following the expiration of the Phase III Period, the Owners shall elect six (6) Directors, three of whom shall be elected for two-year terms and three of whom shall be elected for one-year terms, thus establishing two-year and one-year positions on the Board. All Directors appointed by Declarant shall hold office for a period of one (1) year unless otherwise removed pursuant to the provisions hereof. Except as is otherwise provided by these Bylaws, the Directors shall hold office until their successors have been elected and hold their first meeting. At the expiration of the initial term of office of each Director elected by the Owners after the expiration of the Phase III Period, his or her successor shall be elected to serve a like term as the predecessor.
5. **Vacancies.** Except for Directors appointed by Declarant, vacancies in the Board caused by any reason other than the removal of a Director by a vote of the Owners shall be filled by vote of the majority of the remaining Directors. Each Director so elected shall be a Director until his successor is elected at the next annual meeting of the Association at which an election may be held under these Bylaws. Vacancies created by removal of a Director by a vote of the Owners pursuant to Section 6 of this Article IV shall be filled simultaneously by a vote of the Owners.
6. **Removal of Directors.** Except for Directors appointed by Declarant, at any regular or special meeting, duly called, any one or more of the Directors may be removed with or without cause by a vote of the Owners only if the number of votes cast to remove the Director would be sufficient to elect the Director at a meeting to elect Directors, and a successor may then be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Owners shall be given an opportunity to be heard at the meeting, prior to voting thereon. During the period that Declarant is authorized to appoint members of the Board, the Declarant may remove from the Board, in its sole and absolute discretion, any Director that it previously appointed, and may replace such Director with an individual appointed by it.

7. **Organization Meeting.** The first meeting of a newly elected Board following each annual or special meeting of the Owners shall be held within thirty (30) days thereafter at such place in Des Moines, Iowa as shall be fixed by the Directors at the meeting, at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order to convene such meeting, provided a majority of the whole Board shall be present.
8. **Regular Meetings.** Regular meetings of the Board may be held at such time and place in Des Moines, Iowa as shall be determined from time-to-time by a majority of the Directors, but at least two such meetings shall be held during each calendar year.
9. **Special Meetings.** Special meetings of the Board may be called by the President, or by resolution signed by any two of the Directors on two (2) days notice to each Director, given personally or by mail, telephone, or fax, which notice shall state the time and place of the meeting. Any special meeting of the Board may be held by conference telephone call at the discretion of the President, provided that all Directors participating in the special meeting are able to hear each other, and participation in any such telephonic meeting shall constitute presence in person at the meeting.
10. **Action of Directors without a Meeting.** Any action required or permitted by law to be taken at a meeting of Directors may be taken without a meeting if a consent in writing, setting out the action so taken, shall be signed by all of the Directors. A Director's consent may be withdrawn by a revocation signed by the Director and delivered to the Association prior to the delivery to the Association of unrevoked written consents signed by all of the Directors.
11. **Waiver of Notice.** Before, at, or after any meeting of the Board, any Director may, in writing, waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.
12. **Board of Directors' Quorum.** At all meetings of the Board a majority of the Board shall constitute a quorum, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board. If at any meeting of the Board a quorum is not present, the majority of those present may adjourn the meeting from time-to-time. At any such reconvened meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice, provided that a quorum is present at the reconvened meeting.
13. **Presiding Officer.** The presiding officer of a meeting of the Directors shall be the President, and in his/her absence, the Vice President. In the absence of the President and

Vice President, the majority of the Directors may designate one of their number to preside.

14. **Compensation.** Directors shall receive no compensation in connection with the performance of their duties, but may be reimbursed for reasonable out-of-pocket expenses incurred by them in the performance of their duties.
15. **Rights of Eligible Mortgagees.** Notwithstanding any of the other provisions of this Article IV, no material action shall be taken by the Board on behalf of the Association unless prior written notice has been provided to, and approval obtained from, the Eligible Mortgagees as set forth in the Declaration.

ARTICLE V

Officers

1. **Designation.** The Officers of the Association shall be a President, one or more Vice Presidents, a Secretary and a Treasurer, all of whom shall be elected by the Board, and such assistant officers as the Board shall elect from time-to-time. Such Officers, except assistant officers, shall be members of the Board. Until the first meeting of the Owners of the Association, the Officers need not be Owners of Units in the Project.
2. **Election of Officers.** The Officers of the Association shall be elected annually by the Board at the organizational meeting of each new Board, and shall hold office at the pleasure of the Board. One person may hold more than one office, but the offices of President and Secretary shall not be held by the same person. Any vacancies in any offices of the Association shall be filled by the Board.
3. **Removal of Officers.** Upon an affirmative vote of a majority of the members of the Board, any Officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.
4. **President.** The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Association and of the Board. The President shall have all of the general powers and duties which are usually vested in the office of president of an association.
5. **Vice President.** A Vice President shall have all the powers and authority and perform all the functions and duties of the President, in the absence of the President, or the President's inability for any reason to exercise such powers and function or perform such duties.

6. **Secretary.** The Secretary shall keep all the minutes of the meetings of the Board and the minutes of all meetings of the Association, shall have the responsibility for authenticating records of the Association, and shall have charge of such books and papers as the Board may direct, including but not limited to, the Declaration, the Condominium Survey, Articles, Bylaws and Rules and Regulations, and of all amendments to any of said documents. Current copies of the foregoing shall be available for inspection by any Director at all times and by any Owner or prospective purchaser of a Unit upon advance arrangements during normal business hours. The Secretary shall compile and keep up to date at the principal office of the Association a complete list of the Owners and their addresses as shown on the records of the Association. Such list shall also show opposite each Owner's name the number or other appropriate designation of the Unit owned by such Owner. Such list shall be open to inspection by Owners and other Persons lawfully entitled to inspect the same at reasonable times during regular business hours. The records referred to in this subsection may be maintained by the Managing Agent. The Secretary shall, in general, perform all other duties incident to the office of Secretary as directed by the Board. Assistant Secretaries, if any, shall have the same duties and powers, subject to the supervision of the Secretary.
7. **Treasurer.** The Treasurer shall have the responsibility for Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging, to the Association; provided, however, that when a Managing Agent has been delegated the responsibility of collecting and disbursing funds, the Treasurer's responsibility shall be to review the accounts of the Managing Agent not less often than semi-annually. Assistant Treasurers, if any, shall have the same duties and powers as the Treasurer, subject to the supervision of the Treasurer.
8. **Directives.** All Officers shall follow all directives of the Board and, unless earlier removed from office, shall serve until a successor is duly selected.

ARTICLE VI

Committees

1. **Establishment of Committees.** Committees may be appointed in such a manner and shall have such authority as may be designated by a resolution adopted by a majority of the Board. In addition, pursuant to the Declaration, one or more such committees may be established for the purposes of architectural review and/or covenant enforcement. Such committees shall include at least two Directors and may include one or more paid professionals who are not Owners of the Association. Any member of any committee may be removed by the Person or Persons who appointed such member pursuant to the Board resolution authorizing such appointment whenever, in the judgment of such Person(s), the best interests of the Association will be served by such removal.

2. **Term of Office.** Each member of any committee shall continue as such until the next organizational meeting of a newly elected Board and until such member's successor is appointed unless the committee shall be sooner terminated, or unless such member shall resign or be removed from such committee, or unless such member shall cease to satisfy any qualifications adopted by the Board for members of the committee.
3. **Chairperson.** One member of each committee shall be appointed Chairperson by the Committee.
4. **Vacancies.** Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.
5. **Quorum.** Unless otherwise provided in the resolution of the Board designating a committee, a majority of the committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.
6. **Rules.** Any committee may adopt rules for its own governance not inconsistent with these Bylaws or with any Rules and Regulations adopted by the Board.

ARTICLE VII

Contracts, Checks, Deposits, and Funds

1. **Contracts.** The Board may authorize any Officer or Officers, agent or agents of the Association, in addition to the Officers so authorized by these Bylaws, to enter into any contract, approve payment vouchers, or execute and deliver any instrument in the name of and on behalf of the Association and such authority may be general or confined to specific instances. Contracts or other commitments shall be made in the name of the Association by either of the Board, Officers, or the Managing Agent (with the authority of the Board). No Director or Officer shall have any personal responsibility for the performance of any such contract or commitment, except in such Person's capacity as an Owner.
2. **Checks, Drafts, Etc.** All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Association, shall be signed by such Officer or Officers, agent or agents of the Association and in such manner as shall from time-to-time be determined by resolution of the Board. In the absence of such determination by the Board, such instruments shall be signed by the Treasurer and countersigned by the President of the Association.

3. **Deposits.** All funds of the Association shall be deposited from time-to-time to the credit of the Association in such banks, trust companies, or other depositories as the Board may select.
4. **Requirements for Handling of Funds.** If the Association delegates the powers of the Board or officers relating to collection, deposit, transfer or disbursement of Association funds to other Persons or to a Managing Agent, then:
 - (a) Such other Person or Managing Agent shall maintain fidelity insurance in an amount determined in accordance with the Declaration;
 - (b) Such other Person or Managing Agent shall agree to maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by them, and shall agree to maintain all reserve accounts of each association so managed separate from operational accounts of the Association; and
 - (c) The Association shall require that an annual accounting for Association funds and a financial statement shall be prepared and presented to the Association by the Managing Agent, a public accountant, or a certified public accountant.

ARTICLE VIII

Amendments

Prior to the First Annual Meeting, these Bylaws may be amended, repealed, or new Bylaws adopted by the initial Board of Directors. These Bylaws may be amended by Owners owning a majority of the votes, based upon the Allocated Interests, as set forth in **Exhibit 4** to the Declaration, present at a duly constituted meeting of the Owners for such purpose, provided that for any material amendments, prior written notice must be provided to, and approval of any amendments obtained from, the Eligible Mortgagees, as set forth in the Declaration. No such amendment, however, shall conflict with or minimize the intended effect of the provisions of the Articles or the Declaration. The President, a Vice President or the Secretary may prepare, execute and certify any amendment to these Bylaws.

ARTICLE IX

Amendments to Declaration

Amendments to the Declaration shall be prepared, executed, recorded and certified on behalf of the Association by an Officer designated by resolution of the Board for that purpose or, in the absence of any such designation, by the President. The powers of the Owners and the Declarant and the vote required to approve amendments to the Declaration shall be as set forth in the Declaration.

ARTICLE X
Evidence of Ownership; Registration of Representative
and Mailing Address; Designation of Voting Representative

1. **Proof of Ownership.** Except for those Owners who initially purchase a Unit, any Person on becoming an Owner of a Unit shall furnish to the Managing Agent or Board of Directors a copy of the recorded instrument vesting that Person with an interest or ownership in the Unit, which copy shall remain in the files of the Association. An Owner shall not be entitled to vote at any regular or special meeting of Owners nor shall he be deemed to be in good standing until this requirement is first met.
2. **Registration of Representative and Mailing Address.** Each Owner shall register his mailing address with the Secretary or the Managing Agent of the Association, except that if a Unit is owned by two (2) or more Persons, all Owners of the Unit must jointly designate and register with the Association one of the said Owners as representative to receive any notices on behalf of all Owners of the Unit (the "Representative") and must jointly register a single mailing address for the Unit with the Association. Such Representative, by agreeing to such designation, assumes all responsibility for promptly conveying any notices with respect to the Unit or the Association to all other Owners of that Unit and neither the Association nor any Officer, Director, or employee thereof shall be liable for any failure of such Representative to convey said notices promptly to all Owners of the Unit. Each Owner's registration of a mailing address shall be in writing, and shall be delivered to the Association within fifteen (15) days after transfer of title to the Owner's Unit or after a change of address. Such registration shall be signed by all of the Owners of the Unit or by such Persons as are authorized by law to represent the interest of all of the Owners thereof. If an Owner of a Residential or Commercial Unit fails to register an address as previously provided, such Owner's mailing address shall be deemed to be the mailing address of the Residential Unit or Commercial Unit owned by the Owner, and if said Owner owns both a Residential Unit and a Commercial Unit, the mailing address shall be deemed to be the mailing address of the Residential Unit owned by the Owner. If an Owner of a Parking Unit fails to register an address as previously provided, such Owner's mailing address shall be deemed to be the address determined pursuant to the preceding sentences. All statements, notices, demands and all other communications shall be sent to the Owner or any Representative of an Owner at such address, and such address shall be the only mailing address of a Person or Persons to be used by the Association.
3. **Designation of Voting Representation. Power of Attorney.** If a Unit is owned by one Person, his right to vote shall be established by the record title thereto. If a Unit is owned by two (2) or more individuals, the votes allocable to such Unit shall be cast as one collective vote, as the Owners of such Unit agree (failing such agreement, the Owners shall be deemed to have abstained). If only one of the multiple owners of a Unit is

present at a meeting of the Association, such Owner is entitled to cast all votes allocated to that Unit. If title to a Unit is held by a corporation, partnership, association, or other legal entity, or any combination thereof, then such entity shall appoint one of its constituent Persons as a proxy and with power of attorney to exercise the rights and obligations of membership in the Association. Any proxy to be exercised hereunder shall be filed with the Board prior to the time the proxy is to be exercised, and no such proxy shall be recognized until and unless the proxy holder presents evidence reasonably sufficient to the Board that such proxy holder is the Person named in the proxy and that the proxy is valid. Votes cast and/or actions taken in matters relating to the Association by one Owner or the designated Representative of multiple Owners shall bind the other Owners of the same Unit, unless actual knowledge of any objection thereto exists at or prior to such vote or action.

4. **Good Standing.** The requirements contained in this Article X shall be satisfied before an Owner of a Unit shall be deemed an Owner in good standing and entitled to vote at any annual or special meeting of Owners. Failure of any Owner to satisfy the requirements contained in this Article X shall not affect any obligation of such Owner under the Condominium Instruments or the Rules and Regulations.

ARTICLE XI

Obligations of the Owners

1. General.

- (a) Each Owner shall comply strictly with the provisions of the recorded Declaration, the Articles, these Bylaws and the Rules and Regulations, and with all amendments and supplements to any of the foregoing.
- (b) Each Owner shall always endeavor to observe and promote the cooperative purposes for which this Project was established.

2. Rules and Regulations.

- (a) Each Owner shall comply strictly with the initial Rules and Regulations, which shall be effective until amended or supplemented by the Board.
- (b) Subject to the procedures set forth in the Declaration, the Board reserves the power to establish, make, and enforce compliance with such additional Rules and Regulations as may be necessary for the operation, use, and occupancy of the Project, with the right to amend the same from time-to-time by resolution duly proposed and approved at any Board of Directors meeting. Copies of such Rules and Regulations shall be furnished to each Owner prior to the date when the same shall become effective. Notwithstanding any contrary provision of this Article

XI, all Rules and Regulations must be consistent with the Declaration, the Articles, the Bylaws and the Act, as any of them may be amended or supplemented from time-to-time.

ARTICLE XII

Abatement and Enjoinment of Violations by Owners

The violation of any of the Rules and Regulations adopted by the Board, or the breach of any provision of the Bylaws or the Declaration, shall give the Board or the Managing Agent the right to enter a Unit and abate such violation, using such force as may be necessary in so doing, without being liable to prosecution or damages therefor, and the Board or Managing Agent shall not be deemed guilty in any manner of trespass in so doing, and the Board or Managing Agent shall also have the right to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach. The Association may alter or demolish items of construction in connection with the use of summary abatement or similar means to enforce restrictions against a Condominium Unit or its use only pursuant to judicial process. No failure by the Association to insist upon the strict performance of any term or provision contained in these Bylaws shall constitute a waiver of any such term or provision unless such waiver is made in writing by the Association. Any waiver of a breach of a term or provision of these Bylaws shall not prevent a subsequent act which would have originally constituted a violation under these Bylaws from having the effect of a violation or prevent the Association from exercising all of its rights and remedies hereunder.

ARTICLE XIII

Association – Not for Profit

The Association is not organized for profit. No Owner, Director, or Officer shall receive any compensation for services rendered in effecting one or more purposes of the Association; provided, however, that any Owner, Director, or Officer may, from time-to-time, be reimbursed for actual and reasonable expenses incurred in connection with the administration of the affairs of the Association. The provisions herein are not applicable to the Managing Agent, who shall perform the manager's duties and functions according to written agreement for the compensation stated therein.

ARTICLE XIV

Construction; Rule Against Perpetuities

Nothing hereinabove contained shall in any way be construed as altering, amending, or modifying the Declaration or the Articles. The Declaration, the Articles and these Bylaws shall always be construed to further the harmonious, beneficial, cooperative, and proper use and operation of the Project. If there is any inconsistency or conflict between these Bylaws and the

Articles, the Articles shall control. If there is any inconsistency or conflict between these Bylaws and the Declaration, the Declaration shall control. No provision or restriction in these Bylaws otherwise void by reason of application of the rule against perpetuities of Section 558.68 of the Code of Iowa shall continue for a period longer than the life of the last to survive of the Owners and their children and grandchildren in being at the time of the initial recording of the Declaration and twenty-one (21) years thereafter.

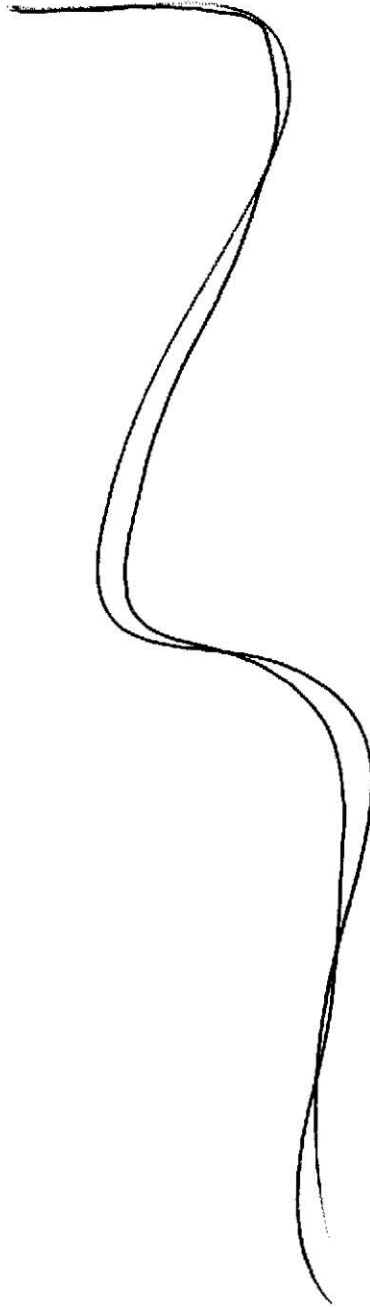
ARTICLE XV

Approval

These Bylaws were adopted as the Bylaws of the Association by resolution of its Board.

F:\JHodge\WP\Howard Entities\le5w\Bylaws-rev1.doc

EXHIBIT 3
Condominium Survey



Vicinity Map

The map shows a grid of streets. The horizontal streets are labeled from top to bottom: 2ND AVE, N RIVER ST, E LOCUST ST, E 15TH ST, E 16TH ST, E 17TH ST, E 18TH ST, E 19TH ST, E 20TH ST, E 21ST ST, E 22ND ST, E 23RD ST, E 24TH ST, E 25TH ST, E 26TH ST, E 27TH ST, E 28TH ST, E 29TH ST, E 30TH ST, E 31ST ST, E 32ND ST, E 33RD ST, E 34TH ST, E 35TH ST, E 36TH ST, E 37TH ST, E 38TH ST, E 39TH ST, E 40TH ST, E 41ST ST, E 42ND ST, E 43RD ST, E 44TH ST, E 45TH ST, E 46TH ST, E 47TH ST, E 48TH ST, E 49TH ST, E 50TH ST, E 51ST ST, E 52ND ST, E 53RD ST, E 54TH ST, E 55TH ST, E 56TH ST, E 57TH ST, E 58TH ST, E 59TH ST, E 60TH ST, E 61ST ST, E 62ND ST, E 63RD ST, E 64TH ST, E 65TH ST, E 66TH ST, E 67TH ST, E 68TH ST, E 69TH ST, E 70TH ST, E 71ST ST, E 72ND ST, E 73RD ST, E 74TH ST, E 75TH ST, E 76TH ST, E 77TH ST, E 78TH ST, E 79TH ST, E 80TH ST, E 81ST ST, E 82ND ST, E 83RD ST, E 84TH ST, E 85TH ST, E 86TH ST, E 87TH ST, E 88TH ST, E 89TH ST, E 90TH ST, E 91ST ST, E 92ND ST, E 93RD ST, E 94TH ST, E 95TH ST, E 96TH ST, E 97TH ST, E 98TH ST, E 99TH ST, E 100TH ST. The vertical streets are labeled from left to right: 2ND AVE, N RIVER ST, E LOCUST ST, E 15TH ST, E 16TH ST, E 17TH ST, E 18TH ST, E 19TH ST, E 20TH ST, E 21ST ST, E 22ND ST, E 23RD ST, E 24TH ST, E 25TH ST, E 26TH ST, E 27TH ST, E 28TH ST, E 29TH ST, E 30TH ST, E 31ST ST, E 32ND ST, E 33RD ST, E 34TH ST, E 35TH ST, E 36TH ST, E 37TH ST, E 38TH ST, E 39TH ST, E 40TH ST, E 41ST ST, E 42ND ST, E 43RD ST, E 44TH ST, E 45TH ST, E 46TH ST, E 47TH ST, E 48TH ST, E 49TH ST, E 50TH ST, E 51ST ST, E 52ND ST, E 53RD ST, E 54TH ST, E 55TH ST, E 56TH ST, E 57TH ST, E 58TH ST, E 59TH ST, E 60TH ST, E 61ST ST, E 62ND ST, E 63RD ST, E 64TH ST, E 65TH ST, E 66TH ST, E 67TH ST, E 68TH ST, E 69TH ST, E 70TH ST, E 71ST ST, E 72ND ST, E 73RD ST, E 74TH ST, E 75TH ST, E 76TH ST, E 77TH ST, E 78TH ST, E 79TH ST, E 80TH ST, E 81ST ST, E 82ND ST, E 83RD ST, E 84TH ST, E 85TH ST, E 86TH ST, E 87TH ST, E 88TH ST, E 89TH ST, E 90TH ST, E 91ST ST, E 92ND ST, E 93RD ST, E 94TH ST, E 95TH ST, E 96TH ST, E 97TH ST, E 98TH ST, E 99TH ST, E 100TH ST. A black square marks the intersection of E Locust St and E 15th St. A north arrow is in the top right corner.



Drawing List

1 of 8	COVER SHEET	05/27/08
2 of 8	SITE PLAN	00/00/00
3 of 8	FIRST FLOOR	05/27/08
4 of 8	SECOND FLOOR	05/27/08
5 of 8	THIRD LEVEL PLAN	05/27/08
6 of 8	FOURTH LEVEL PLAN	05/27/08
7 of 8	FIFTH LEVEL PLAN	05/27/08
8 of 8	ROOF PLAN	05/27/08

Date issued:

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1" = 60'-0"
03 JULY 2008
COVER SHEET
1 of 8
2005-24

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1/16" = 1'-0"

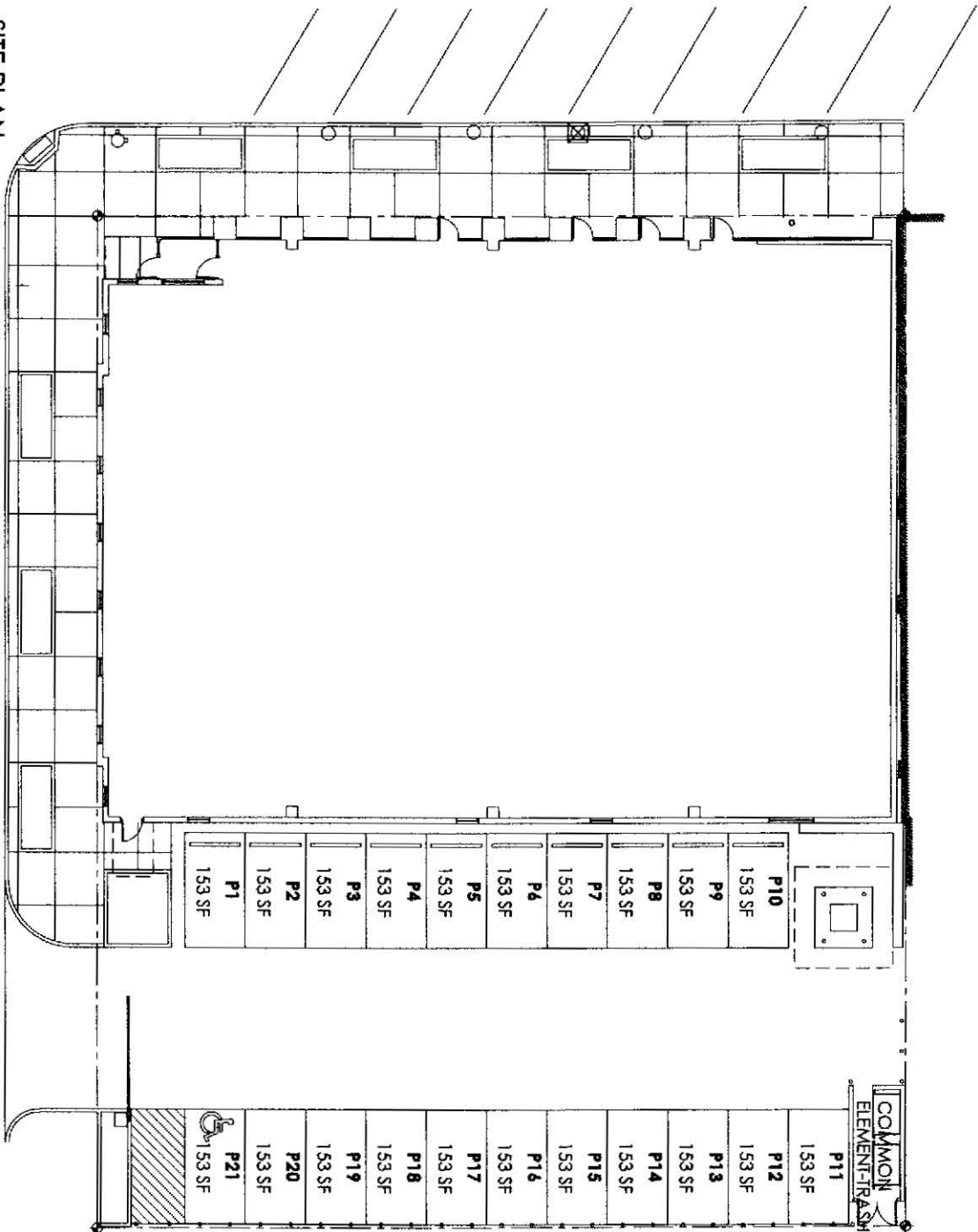
03 JULY 2008

SITE PLAN

2 of 8

2005-24

1
SITE PLAN
2 of 8
SCALE: 1/16" = 1'-0"



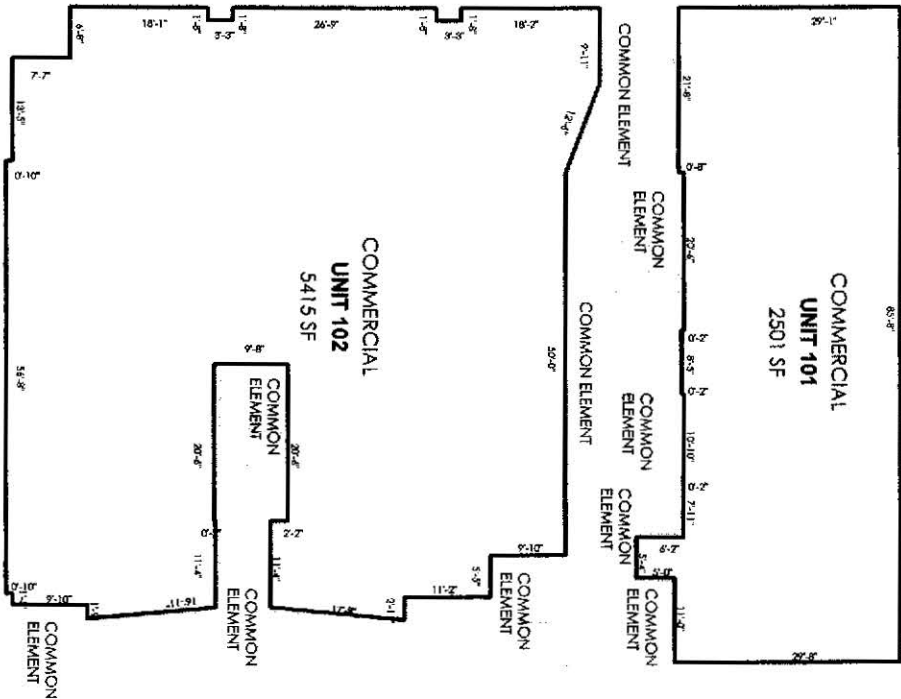
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1/16" = 1'-0"
03 JULY 2008
SITE PLAN
2 of 8
2005-24

1
3 of 8
FIRST LEVEL PLAN
SCALE: 1/16" = 1'-0"



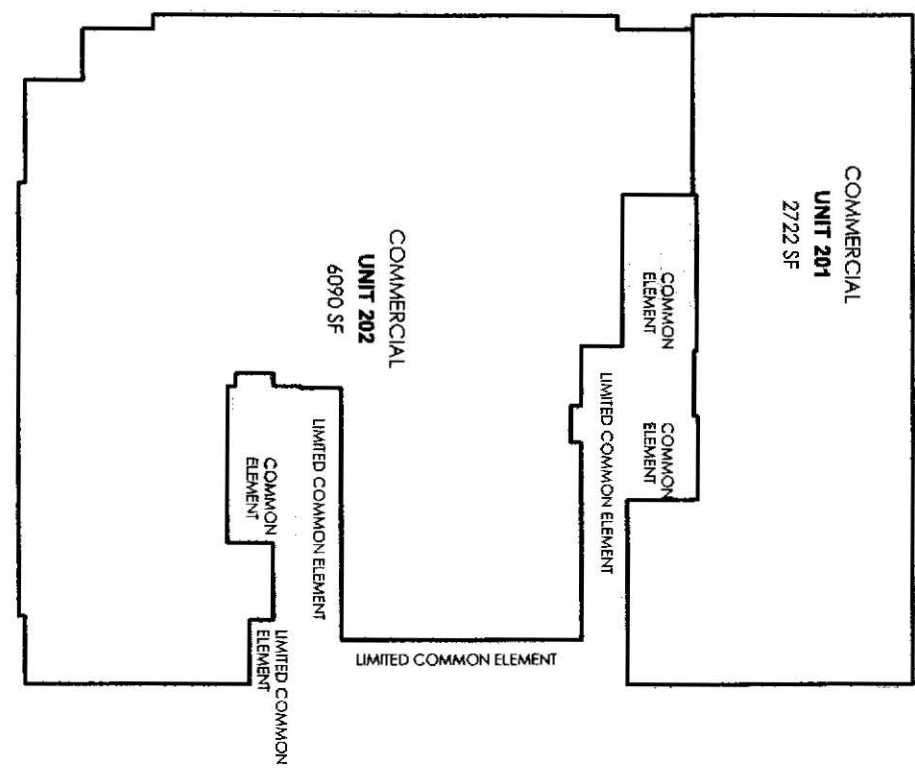
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1/16" = 1'-0" 03 JULY 2008
FIRST FLOOR
2005-24 3 of 8

1
4 of 8
SECOND LEVEL PLAN
SCALE: 1/16" = 1'-0"



NOTE:
LIMITED COMMON ELEMENT
UNITS 201, 202

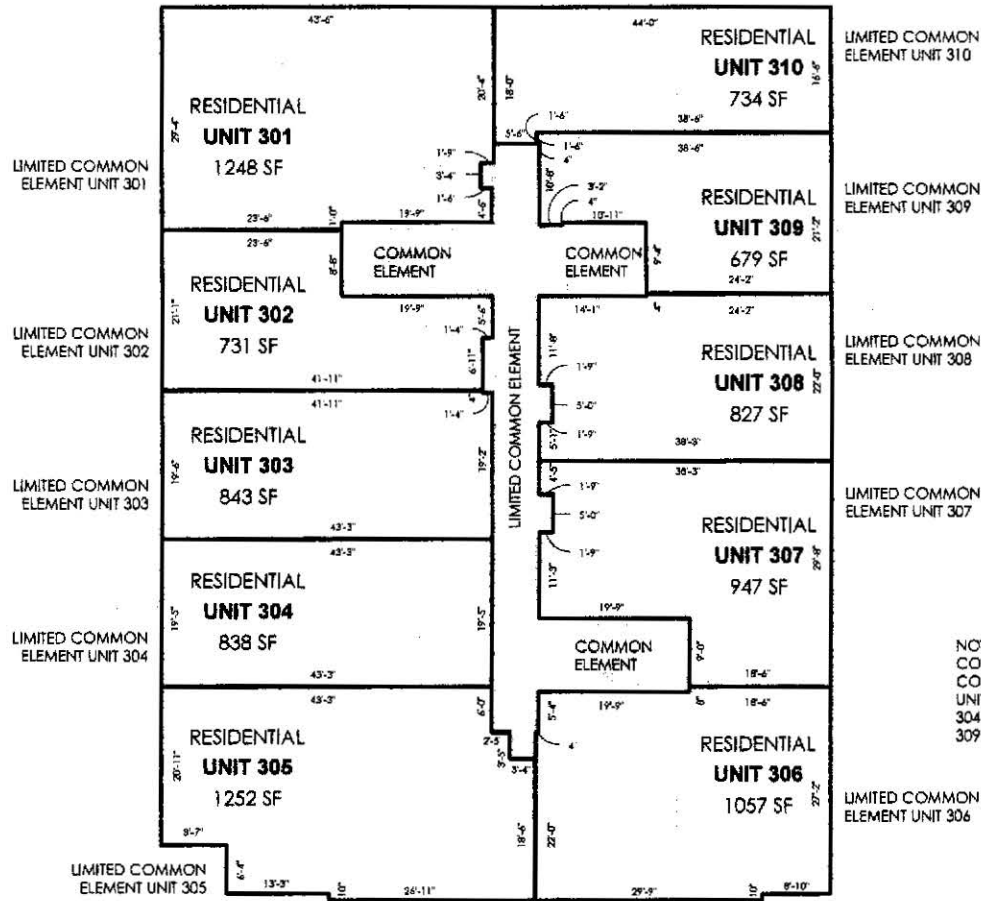
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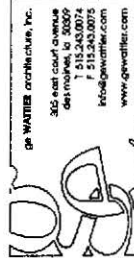
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1/16" = 1'-0" 03 JULY 2008
SECOND FLOOR
2005-24 4 of 8

1 THIRD LEVEL PLAN
5 of 8 SCALE: 1/16" = 1'-0"



NOTE:
CORRIDOR LIMITED
COMMON ELEMENT
UNITS 301, 302, 303,
304, 305, 306, 307, 308,
309, 310

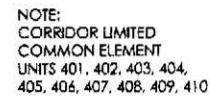


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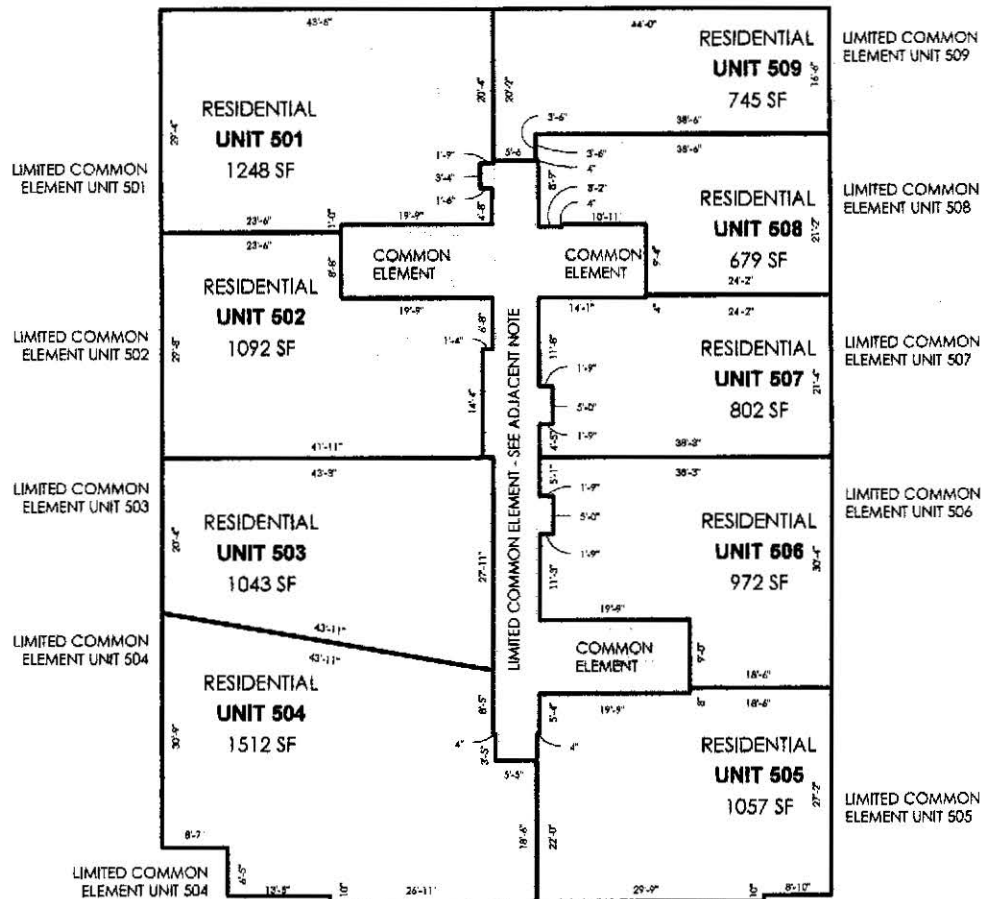
1/16" = 1'-0"
03 JULY 2008
THIRD LEVEL PLAN
5 of 8
2005-24



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East 5th Street & Walnut Street
Des Moines, Iowa 50309

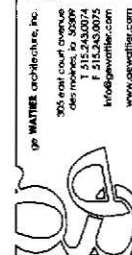
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1/16" = 1'-0"
03 JULY 2008
FOURTH LEVEL PLAN
2005-24
6 of 8



NOTE:
CORRIDOR LIMITED
COMMON ELEMENT
UNITS 501, 502, 503, 504,
505, 506, 507, 508, 509

1
7 of 8
FIFTH LEVEL PLAN
SCALE: 1/16" = 1'-0"



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Des Moines, Iowa 50309

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1/16" = 1'-0"
03 JULY 2008
FIFTH LEVEL PLAN
7 of 8
2005-24

EXHIBIT 4
Allocated Interests

Unit	Square Feet	Percentage Ownership
P1	153	0.32%
P2	153	0.32%
P3	153	0.32%
P4	153	0.32%
P5	153	0.32%
P6	153	0.32%
P7	153	0.32%
P8	153	0.32%
P9	153	0.32%
P10	153	0.32%
P11	153	0.32%
P12	153	0.32%
P13	153	0.32%
P14	153	0.32%
P15	153	0.32%
P16	153	0.32%
P17	153	0.32%
P18	153	0.32%
P19	153	0.32%
P20	153	0.32%
P21	153	0.32%
101	2,501	5.28%
102	5,415	11.42%
201	2,722	5.74%
202	6,090	12.85%
301	1,248	2.63%
302	731	1.54%
303	843	1.78%
304	838	1.77%
305	1,252	2.64%
306	1,057	2.23%
307	947	2.00%
308	827	1.74%
309	679	1.43%
310	734	1.55%
401	1,248	2.63%
402	731	1.54%
403	843	1.78%
404	838	1.77%
405	1,252	2.64%
406	1,057	2.23%
407	947	2.00%
408	827	1.74%
409	679	1.43%
410	734	1.55%
501	1,248	2.63%
502	1,092	2.30%
503	1,043	2.20%
504	1,512	3.19%
505	1,057	2.23%
506	972	2.05%

EXHIBIT 4
Allocated Interests

Unit	Square Feet	Percentage Ownership
507	802	1.69%
508	679	1.43%
509	745	1.57%
Totals:	47,403	100.00%