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JORDAN SQUARE  
CONDOMINIUM DECLARATION

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AT 11:57 A.M.  
KATIE SIMPSON HOUSEHOLD RECORDER  
by [Signature] Deputy

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CONDOMINIUM DECLARATION

FOR

THE JORDAN SQUARE TOWNHOUSE CONDOMINIUMS

This Declaration is made on December 21<sup>st</sup>, 1984, by M & W DEVELOPMENT CO., INC., an Iowa corporation (the "Developer"). The terms used in this Declaration shall have the meanings set forth in Article 9.

PURPOSE

1. The Developer owns 7.68 acres of real estate (the "Land") located in the City of West Des Moines, Polk County, Iowa.
2. The Developer is constructing and plans to construct dwelling units upon the Land and additional adjacent real estate.
3. The Developer intends to submit the Land, additional adjacent real estate, and all buildings, structures, improvements, and fixtures thereon and all rights and privileges belonging or in any way pertaining thereto to a condominium regime pursuant to the Horizontal Property Act of the State of Iowa.
4. The Developer desires to establish for its benefit and for the mutual benefit of all future owners or occupants of the project or any part thereof, and intends that all future owners, occupants, mortgagees, and any other persons acquiring any interest in the Project shall hold such interest subject to, certain rights, easements, and privileges in, over, and upon the project and certain mutually beneficial restrictions, obligations, and liens with respect to the proper use, conduct, and maintenance thereof. All such rights, easements, privileges, and restrictions, obligations, and liens are in furtherance of a plan to promote and protect the cooperative aspects of residence in the Project and are established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the project.

1. THE PROJECT

1.1. In General. The project consists of two parts. Part 1 consists of 3.92 acres described in paragraph 1.2 and will include eight (8) Residential Buildings and 12 Garage Buildings. The eight Residential Buildings contain a total of 48 Units and the 8 Garage Buildings contain a total of 48 Garage Stalls. This Declaration applies only to Part One at this time. The Developers present plans are to construct six Residential Buildings containing a total of 36 Units and 10 Garage Buildings containing a total of 36 Garage Stalls in Part Two which shall consist of 3.76 acres.

1.2 Land. Part 1 contains real estate located North of Railroad Ave. and East of Grand Ave. in the City of West Des Moines, Iowa, and the legal description is attached as Exhibit A.

1.3. Phase. Part 1 consists of one phase, containing the Buildings of the type and with the Units and Garage Stalls indicated on the plat attached as Exhibit B.

1.4. Buildings. There will be two types of Buildings in the Project:

1. Residential Building: Each residential building is two stories in height over a full unfinished basement. The

foundation is poured concrete and the walls are wood framed with a brick veneer on the front first story of the building. The exterior walls of the other three sides of the first story and the entire second story are hardboard siding. The roofs are framed with plywood, felt, and asphalt shingles. The sidewalls are insulated with R-13 Fiberglass insulation and the second story ceilings have blown insulation with an R value of 32. The interior walls are drywall with an orange peel finish. Each residential building contains not less than five nor more than eight units, depending upon the topography of the land. The residential building locations for Part 1 and the number of units contained therein are shown on the Plat attached as Exhibit B.

b. Garage Building. Each garage building is a one story wood framed building with hardboard siding and a roof composed of plywood sheeting, felt, and asphalt shingles. The buildings have a 7' by 9' garage door for each garage stall. The number of garage stalls, each of which is approximately 10' X 20' in size, varies according to the number of stalls necessary to serve the needs of the residents of the adjacent residential buildings. The party wall dividing the garage stalls is a 2" X 4" construction grade lumber or better stud wall with plywood affixed to one side of said wall. The locations of the garage buildings for part 1 and the number of garage stalls contained therein are shown on the plat attached as Exhibit B.

#### 1.5 Units

a. There are two types of apartment units established in this Regime pursuant to the Iowa Horizontal Property Act. The first type is a "Unit" and is defined in Article 9.1(g) of this Declaration. While the term "Unit" has the same general meaning as the term "Apartment" under the Iowa Horizontal Property Act, when used in this Declaration the term "Unit" refers specifically to a set of rooms in a Residential Building intended for use as a residence. Each "Unit" has either two bedrooms or three, a living room, and a kitchen. The bedrooms for both two and three bedroom units are on the second story, the kitchen and living room are on the first story, and underneath the first story is a full unfinished basement. The three bedroom units have a full bath on the second story and a half bath off the kitchen. The two bedroom units have one bath on the second story and a linen closet. The floor plans for the two bedroom units are attached as Exhibit C and the floor plans for the three bedroom units are attached as Exhibit D.

b. The other type of apartment unit established in this Regime is a "Garage Stall" and is defined in Article 9.1(s) of this Declaration. A Garage Stall also fits within the general definition of "Apartment" under the Iowa Horizontal Property Act, but when the term "Garage Stall" is used in this Declaration it refers specifically to a room occupying part of a floor in a Garage Building and is intended for the lawful use of storage of an automobile for residents of Units in Residential Buildings.

c. An owner who purchases a Unit not only purchases the fee simple interest in the Unit but also takes a fractional interest in the undivided common elements and limited common elements as further and more particularly described herein. An owner who purchases a Garage Stall takes no fractional interest in the general or limited common elements whatever. Only "Unit Owners" as defined in Article 9.1(r) may own a Garage Stall and "Unit Owners" may own no more than two Garage Stalls for each Unit owned. The purpose of these restrictions is to insure that Garage Stalls are available to

Unit owners if desired insofar as practicable. An owner need not purchase a Garage Stall in order to purchase a Unit.

1.6. Submission to Act. The Developer holds the fee simple title to the Land and Part 1 of the Project, and, by recording this Declaration, the Developer submits the Land and Part 1 of the Project to the provisions of the Act.

## 2. COMMON ELEMENTS

2.1. Definition. "Common Elements" means all Part 1 of the Project except the Units and Garage Stalls, and includes, without limitation, those items defined as "general common elements" in the Act, including the following:

- a. The Land.
- b. All foundations, floors, bearing walls and columns, exterior walls of each Unit, Residential Building, Garage stall, and Garage Building, ceilings and roofs, stairways, and entrances and exits or communication ways, and in general all devices or installations existing for common use.
- c. The outside parking areas, yards, sidewalks, driveways, landscaping, and plantings, except as otherwise provided or stipulated.
- d. All compartments, installations, and service mains or entry boxes for central services such as power, light, gas, cold and hot water, sewer, and telephone.
- e. All other elements of the Project desirably or rationally of common use or necessary to the existence, upkeep, and safety of the condominium regime established by this Declaration.

2.2. Ownership of Common Elements. Each unit Owner shall own  $1/48$  of the Common Elements, subject to the provisions of Paragraph 2.3. The ownership interest in the Common Elements shall be an undivided interest, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective fractions of ownership. The ownership of each Unit shall not be conveyed separately from the fraction of ownership in the Common Elements corresponding to the Unit. The undivided fraction of ownership in the Common Elements corresponding to any Unit shall be deemed conveyed or encumbered with that Unit, even though the legal description in the instrument conveying or encumbering the Unit may refer only to the title to that Unit or may refer to an incorrect fraction for that Unit.

2.3. Final Adjustments by Developer. Subject to paragraph 10.3, the fractional interest of each Unit Owner in the Common Elements will be automatically adjusted if fewer than 48 Units are constructed in Part 1 of the Project or if the Project is extended to Part 2 pursuant to paragraph 1.1, as follows:

- a. Part 1. If all 48 Units in Part 1 are not constructed, the fractional interest of each Unit Owner will be increased from  $1/48$  to a fraction, the numerator of which is one and the denominator of which is the number of Units constructed in Part 1. This adjustment shall be made as provided in subparagraph (c) below.
- b. Part 2. If the Project is extended to all or part of Part 2, the fractional interest of each Unit Owner will be decreased. If 36 Units are constructed in Part 2 as presently contemplated, the effect of the extension will be to reduce the fractional interest from  $1/48$  to  $1/84$ . If fewer than 36 Units are constructed in Part 2, the effect of the extension will be to reduce the fractional interest from  $1/48$  to a fraction less than  $1/48$  but greater than  $1/84$ .

This adjustment shall be made as provided in subparagraph (c) below.

c. Written Statement: Upon completion of the Project but, in any event, not later than July 1, 1988, the Developer shall file of record a written statement reflecting the final adjustment of ownership interests in the Common Elements so that each Unit Owner shall own a fraction, the numerator of which is one and the denominator of which is the total number of Units constructed at that time. If the Developer fails to file such written statement by July 1, 1988, the Association shall do so. Such final adjustment by the Developer shall be conclusive and binding upon all Unit Owners, Mortgagees, and other parties who then have or thereafter acquire any interest in the Project.

d. Power of Attorney: In furtherance of the foregoing final adjustments, a power coupled with an interest is reserved to the Developer, its successors and assigns, as an attorney-in-fact to shift, increase, reduce, and reallocate the fractional ownership interests in the Common Elements set appurtenant to each Unit to the fractional interests set forth in such written statement recorded pursuant to paragraph 2.3 of the Condominium Declaration, as amended. Each deed, contract, Mortgage, or other instrument with respect to a Unit and the acceptance thereof shall be deemed to grant to, acknowledgement of, and consent to such power in the Developer and shall be deemed to reserve to the Developer the power to shift, reserve, reduce, and reallocate the fractional ownership interests in the Common Elements appurtenant to each Unit to the fractional interests set forth in such written statement.

e. Reservation of Rights: Each Unit Owner and his or her respective Mortgagees, grantees, judgment creditors, heirs, personal representatives, successors, and assigns, by the acceptance of a deed, contract, Mortgage, or other interest in or to any Unit, acknowledge, consent, and agree to such recorded written statement as follows:

(1) The fractional ownership interest in the Common Elements appurtenant to each Unit shall automatically be shifted, increased, reduced, and reallocated to the extent set forth in such recorded written statement, the amount upon the recording of such written statement, the amount by which such fractional interest appurtenant to a Unit is increased or reduced, as set forth in such written statement, shall thereby be deemed to be released and divested from such Unit Owner and reconveyed and reallocated among the other Unit Owners as set forth in such written statement.

(2) Each deed, contract, Mortgage or other instrument affecting a Unit shall be deemed given subject to the conditional limitation that the fractional ownership interest in the Common Elements appurtenant to each Unit shall, upon the recording of such written statement, be divested, reconveyed, increased, or reduced pro tanto to the fractional interest set forth in such written statement and vested among the other Unit Owners, Mortgagees, and others owning an interest in other Units in accordance with the terms and fractional interests set forth in such written statement.

(3) A right of revocation is reserved by the Developer to amend and reallocate the fractional ownership interests in the Common Elements appurtenant to each Unit.

(4) The fractional ownership interest in the Common Elements appurtenant to each Unit shall include any additional Common Elements later annexed thereto by an Extension of Condominium Declaration. Each deed, Contract, Mortgage, or other instrument affecting a Unit shall be deemed to include such additional Common Elements, and the ownership of any such Unit and the lien of any Mortgage shall automatically include and attach to such additional Common Elements upon such extension.

(5) Each Unit Owner shall have a perpetual easement appurtenant to his Unit for the use of any additional Common Elements annexed thereto and described in an Extension of Condominium Declaration for the purposes set forth therein, except as to any portion the use of which is limited by exclusive easements granted to the Unit Owners of specific Units as may be provided in any such extension or in this Condominium Declaration.

(6) The recording of a written statement increasing or reducing the fractional ownership interests in the Lien Common Elements shall not alter the amount of the Lien for expenses assessed to a Unit prior to such recording or the respective amounts previously assessed to or due from Unit Owners for common Expenses or other assessments.

(7) Each Unit Owner, by acceptance of the deed or contract to his or her Unit, agrees that this Condominium Declaration, as amended, is in accordance with the Act, and any changes increasing or reducing the fractional ownership interests in the Common Elements shall be deemed to be made by agreement of all Unit Owners.

(8) The Developer reserves the right to amend the Condominium Declaration in the manner set forth in this paragraph 2.3, and each Unit Owner agrees to execute and deliver such documents as may be reasonably necessary or desirable to cause the provisions of this paragraph to comply with the Act, as amended from time to time.

(9) The foregoing provisions of this paragraph contain and all deeds, contracts, and Mortgages of the Units and Common Elements shall contain clauses designed to accomplish a shifting and reallocation of the Common Elements. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting and reallocation of the Common Elements can be accomplished.

F. Voting Rights: Each Unit shall be entitled to one vote at all times, but the total number of votes in the Association shall be increased if the Project is extended to Part 2.

2.4. Use of the Common Elements. Each Unit Owner shall have the right to use the Common Elements (except the Limited Common Elements) in common with all other Unit Owners, as may be required for the purposes of access, ingress to, egress from, use, occupancy, and enjoyment of the respective Unit owned by such Unit Owner. The right to use the Common Elements shall extend not only to each Unit Owner, but also to his or her agents, servants, tenants, family members, customers, invitees, and licensees. However, each Unit Owner shall have the right to the exclusive use and possession of the Limited Common Elements serving such Unit alone or with adjoining Units.



a. Restrictions: The rights to use the Common Elements, including the Limited Common Elements, shall be subject to and governed by the provisions of the Act, Article 7 of this Declaration, and the By-Laws and rules and regulations of the Association.

b. Association's Authority: The Association shall have the authority to rent, lease, and grant concessions or easements with respect to parts of the Common Elements, subject to the provisions of this Declaration and the By-Laws. All income derived by the Association from leases, concessions, or other sources shall be held and used for the benefit of the members of the Association, pursuant to such rules, resolutions, or regulations as the Board may adopt or prescribe.

c. Lien: The Association may discharge any mechanic's lien or other encumbrance which, in the Board's opinion, constitutes or may constitute a lien against the project, the Common Elements, or any portion thereof rather than a lien against a particular Unit. If less than all the Unit Owners are responsible for any such liens, the responsible Unit Owners shall be jointly and severally liable for the amount necessary to discharge the lien and for all costs and expenses, including attorney's fees, incurred because of such lien.

d. Parking: Parking spaces in the outside parking areas shall be part of the Common Elements, may be allocated and re-allocated from time to time to the respective Unit Owners, and shall be used by such Unit Owners in such manner and subject to such rules and regulations as the Board may prescribe. Parking spaces not so used by Unit Owners may be rented or otherwise used in such manner as the Board may prescribe.

2.5. No Partition: The Common Elements and Units shall remain undivided and shall not be the object of an action for partition or division of the co-ownership thereof so long as suitable for a condominium regime, and, in any event, all mortgages must be paid in full or the prior written approval of all Mortgagees must be obtained prior to bringing an action for partition.

2.6. Limited Common Elements. "Limited Common Elements" means all Common Elements serving exclusively a single Unit or one or more adjoining Units as an inseparable appurtenance thereto, the enjoyment, benefit, or use of which is reserved to the lawful Occupants of such Unit or Units either in this Declaration, on the Plat, or by the Board. Limited Common Elements shall include, without limitation, conveyors, pipes, ducts, electrical wiring, and conduits located entirely within a Unit or adjoining Units and serving only such Unit or Units; such portions of the perimeter walls, floors and ceilings, doors, vestibules, windows, and entryways, and all associated fixtures and structures therein, as lie outside the Unit boundaries; the air conditioning Unit located outside each Unit; and the mail box assigned to each Unit.

2.7. Encroachments. If any portions of the Common Elements shall actually encroach upon any Unit, or if any Unit shall actually encroach upon any portions of the Common Elements, or if any Unit shall actually encroach upon another Unit, as the Common Elements and Units are shown by the Plat, there shall be deemed to be mutual easements in favor of the Owners of the Common Elements and the respective Unit Owners involved, to the extent of such encroachments, so long as the same shall exist.

### 3. MANAGEMENT OF PROJECT

3.1. . . . The Association. The Jordan Square Association is an Iowa nonprofit corporation, which shall be the governing body for all the Unit Owners for the maintenance, repair, replacement, administration, and operation of the Project, as provided in the Act, this Declaration, the Articles of Incorporation, and the By-Laws.

a. Board: The Board of Directors of the Association shall be elected and shall serve in accordance with the provisions of the By-Laws.

b. Fiscal Year: The fiscal year of the Association shall be determined by the Board and may be changed from time to time as the Board deems advisable. The Association shall not be deemed to be conducting a business of any kind.

c. Benefit: All activities undertaken by the Association shall be for the sole benefit of the Unit Owners, and all funds received by the Association shall be held and applied by it for the use and benefit of Unit Owners in accordance with the provisions of this Declaration and the By-Laws.

d. Members: Each Unit Owner shall be a member of the

Association so long as he or she is a Unit Owner, subject to provisions of the By-Laws. A Unit Owner's membership shall automatically terminate when he or she ceased to be a Unit Owner. Upon the conveyance or transfer of a Unit Owner's ownership interest to a new Unit Owner, the new Unit Owner shall simultaneously succeed to the former Unit Owner's membership in the Association.

3.2. . . . Management of Project: The Board shall have the authority to engage the services of an agent to maintain, repair, replace, administer, and operate the Project, or any part thereof, to the extent deemed advisable by the Board, subject to the provisions of paragraph 3.3. The term of a management agreement shall not exceed one year, and the agreement may be terminated by the Association for cause upon 30 days' written notice. The Board shall also have the authority (but shall not be obligated) to engage, supervise, and control such employees as the Board deems advisable to clean and maintain all or any part of the Units to the extent the Board deems it advisable to provide such services for all or any portion of the Unit Owners. The cost of such services shall be a Common Expense.

3.3. . . . Professional Management: If the Project is approved for mortgage financing by the Federal National Mortgage Association (FNMA), the Board shall hire experienced, professional management services, unless this requirement is waived by FNMA, and the prior written approval of the holders of all first Mortgages shall be required to effect a decision by the Association to terminate professional management and assume self-management.

3.4. . . . Units for Building Personnel: The Board shall have authority to lease, purchase, and mortgage one or more Units or other residential quarters for building personnel. All rental or debt service paid by the Association pursuant to any such lease agreement or Mortgage shall be a Common Expense. No such Unit or other residential quarters leased or purchased for building personnel shall constitute a part of the Common Elements.

3.5. . . . Use by Developer or Agent: During the period of sale by the Developer of any Units, the Developer and their agents, employees, contractors, and subcontractors, and their respective agents and employees, shall be entitled to access, ingress to, and egress from the Buildings and Project as may be required for purposes of sale of Units. While the Developer or its agent owns any of the Units, the Developer, its agents, and its employees

may use and show one or more of such Units as a model Unit or Units, may use one or more of such Units as a sales office, and may maintain customary signs in connection therewith.

3.6:....Non-Liability of Directors, Board, Officers, and Developer. Neither the Directors, the Board, or Officers of the Association nor the Developer shall be personally liable to the Unit Owners for any mistake of judgment or for any acts or omissions of any nature whatsoever as such Directors, the Board, officers, or Developer, except for any acts or omissions found by a court to constitute gross negligence or fraud. The Unit Owners shall indemnify and hold harmless each of the Directors, the Board, officers, and the Developer, and their respective heirs, executors, administrators, successors, and assigns in accordance with the provisions of the By-Laws.

3.7:....Board's Determination Binding. In the event of any dispute or disagreement between any Unit Owners relating to the project or any questions of interpretation or application of the provisions of the Declaration or By-Laws, the dispute or disagreement shall be submitted to the Board. The determination of the dispute or disagreement by the Board shall be binding on each and all Unit Owners, subject to the right of Unit Owners to seek other remedies provided by law after such determination by the Board.

#### 4:....COMMON EXPENSES

4.1:..Responsibilities. Each Unit Owner, including the Developer, shall pay his or her proportionate share of the Common Expenses. Except for its responsibilities as a Unit Owner, as provided herein, the Developer shall not have any responsibility for the maintenance, repair, or replacement of any part of the Common Elements after the date this Declaration is recorded. If such proportionate share of the Common Expenses for each Unit Owner shall be determined in the manner provided in the By-Laws, with the limitation, however, that the share of the Common Expenses attributable to the maintenance, repair, replacement, and expenses for operating (including utilities, if any) the Garage Buildings shall be segregated and assessed against the Unit Owners that own Garage Stalls according to the number of Stalls owned.

4.2:..Payment. Payment of Common Expenses, including any prepayment thereof required by contract for sale of a Unit, shall be in such amounts and at such times as determined in the manner provided in the By-Laws. No Unit Owner shall be exempt from payment of his or her proportionate share of the Common Expenses by waiver, non-use, or enjoyment of the Common Elements or Limited Common Elements or by abandonment of his or her Unit. If any Unit Owner shall fail or refuse to make any such payment of the Common Expenses when due, the amount thereof together with interest thereon at the maximum lawful rate in the State of Iowa, accruing from and after the date that the Common Expenses become due and payable, shall constitute a lien on the interest of such Unit Owner in the Project and his or her Unit, subject to the provisions of paragraph 6.3.

4.3:....Enforcement of Lien. The Board may bring an action at law against the Unit Owner personally obligated to pay the same for collection of his or her unpaid proportionate share of the Common Expenses or foreclose the lien against the Unit or Units owned by such Unit Owner, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each Unit Owner, by acceptance of a deed to or recording a contract for purchase of a Unit, expressly vests in the Board and its agents the right and power to bring all actions against such Unit Owner personally for the collection of such charges as a debt and to enforce the lien by all methods available for the enforcement of such liens. The lien shall be in favor of the Association and shall be for the common benefit

of all Unit Owners. The Board acting on behalf of the Unit Owners shall have the power to bid upon an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. The enforcement of the lien hereunder shall at all times be subject to the provisions of paragraph 6.3.

4.4. . . . Separate Real Estate Taxes: Taxes, assessments, and other charges of any taxing or assessing authority shall be separately assessed to each Unit Owner for his or her Unit including the assessment for the ownership of a Garage Stall or stalls, if any, and the corresponding percentage of ownership in the Common Elements, as provided in the Act. In the event that such taxes or assessments for any year are not separately assessed to each Unit Owner but are assessed on the project as a whole, each Unit Owner shall pay his or her proportionate share thereof in accordance with his or her respective percentage of ownership interest in the Common Elements, and such taxes or assessments shall be a Common Expense. Without limiting the authority of the Board, the Board shall have the authority to collect from the Unit Owners their proportionate share of taxes or assessments for any year in which taxes are assessed on the project as a whole.

4.5. . . . Insurance Policies: All insurance policies upon the project shall be purchased by the Association. The named insured shall be the Association individually and as agent for the Unit Owners, without naming them, and as agent for their Mortgagees. Provision shall be made for the issuance of Mortgage endorsements and memoranda of insurance to the Mortgagees. Such policies shall provide that payment by the insurer for losses shall be made to the Association or an insurance trustee designated by the Association, and all policies and their endorsements shall be deposited with the Association or such trustee. Unit Owners may obtain coverage at their own expense for their personal property and other risks. Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense. The Association is irrevocably appointed agent for each Unit Owner and for each Mortgagee to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon payment of claims.

4.6. . . . Insurance Coverage: The Association shall obtain the following insurance coverage:

a. Casualty. All Buildings and Improvements shall be insured in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs. All personal property included in the Common Elements shall be insured for its value, all as determined annually by the Board of Directors. Such coverage shall afford protection against:

(1) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement.

(2) Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location, and use as the Buildings, including but not limited to vandalism and malicious mischief.

b. Public Liability. Public liability insurance in such amounts and with such coverage as shall be required by the Board of Directors and with cross liability endorsement to cover liabilities of the Unit Owners jointly and severally and the Association.

c. Worker's Compensation. Worker's compensation insurance to meet the requirements of Iowa law.

d. Directors' and Officers' Insurance. The Board shall also have authority to and may obtain such insurance as it deems desirable, in such amounts, from such sources and in such forms as it deems desirable, insuring the Project, and each member of the Board and officer of the Association, and each member of any committee appointed pursuant to the By-Laws of the Association from liability arising from the fact that the person is or was a Director or officer of the Association or a member of such a committee. The premiums for such insurance shall be a Common Expense.

e. Other. Such other insurance as the Board of Directors shall determine from time to time.

4.7. Insurance Trustee; Shares of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the Unit Owners, and their Mortgagees as their interests may appear and shall provide that all proceeds covering property losses shall be paid to the Association as trustee, or to such other entity as may be designated as insurance trustee by the Board of Directors, which trustee is referred to in this Declaration as the Insurance Trustee. The Insurance Trustee shall not be liable for payment of premiums, the renewal or sufficiency of policies, or the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold the proceeds in trust for the purposes elsewhere stated in this Declaration and for the benefit of the Unit Owners and their Mortgagees in the following shares:

a. Common Elements. Proceeds on account of damage to Common Elements: an undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to the Unit, except that the proceeds on account of damage to the Garage Buildings shall be segregated and allocated to the Unit Owners who own Garage Stalls in the Building or Buildings for which proceeds are payable and according to the number of stalls owned.

b. Units. Proceeds on account of damage to Units shall be held in the following undivided shares:

(1) When the Residential Building is to be restored, for the Unit Owners of damaged Units in proportion to the costs of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.

(2) When the Building is not to be restored, an undivided share for each Unit Owner, such share being in the same proportion to the total proceeds for damaged Unit as the square feet in such Unit bear to the total square feet of damaged Units.

c. Mortgagees. If a Mortgage endorsement has been issued as to a Unit, the share of the Unit Owner shall be held in trust for the Mortgagee and the Unit Owner as their interests may appear; provided, however, that no Mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no Mortgagee shall have any right to apply or have applied to the reduction of a Mortgage debt any insurance proceeds except distributions of such proceeds made to the Unit Owner and Mortgagee pursuant to the provisions of this Declaration.

4.8. Distribution of Proceeds. Proceeds of insurance policies received by the Association or insurance trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

a. Expenses of Trust: All expenses of the insurance trustee shall be paid first or provision shall be made for such payment.

b. Reconstruction or Repair: If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost of such as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, remittances to Unit Owners and their Mortgagees being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

c. Failure to Reconstruct or Repair: If it is determined that the damage for which proceeds are paid shall not be reconstructed or repaired, the remaining proceeds to shall be distributed to the beneficial owners, remittances to Unit Owners and their Mortgagees being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

d. Certificate: In making distribution to Unit Owners and their Mortgagees, the insurance trustee may rely upon a certificate by officers of the Association as to the names of the Unit Owners and their respective shares of the distribution.

5. MAINTENANCE, RECONSTRUCTION, CONDEMNATION

5.1 Maintenance of Units: Responsibility for the maintenance of the Units and restrictions upon the alteration and improvement thereof, shall be as follows:

a. By Association: The Association shall maintain, repair, and replace at the Association's expense:

(1) All portions of a Unit, except interior surfaces, contributing to the support of the Residential Building, which portions shall include but not be limited to the outside walls of the Building and all fixtures on the exterior thereof, boundary walls of Units, floor joists and lounge and grooved plywood subflooring attached thereto, ceiling joists and trusses, concrete slabs including but not limited to the concrete basement floor, load bearing columns and load bearing walls.

(2) All conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services which are contained in the portions of a Unit maintained by the Association and all such facilities within which such items are contained.

(3) All incidental damage caused to a Unit by such work shall be promptly repaired at the expense of the Association.

b. By Unit Owners: The Unit Owner shall:

(1) Maintain, repair, and replace at his or her expense all portions of the Unit, except the portions to be maintained, repaired, and replaced by the Association, without disturbing the rights of other Unit Owners.

(2) Maintain, repair, and replace at his or her expense the air conditioning equipment serving the Unit, including any portion thereof which may be located outside the Unit, and all appliances, fixtures, and heating equipment located in his or her Unit.

(3) Not paint or otherwise decorate or change the appearance of any portion of the exterior of the Building.

(4) Promptly report to the Association any defect or need for repairs, the responsibility for the remedying of which is that of the Association.

c. Alteration and Improvements. Except as may otherwise be reserved to the Developer, neither a Unit Owner nor the Association shall make any alterations in the portions of a Unit or Building which are to be maintained by the Association, remove any portion thereof, make any additions thereto, or do anything which would jeopardize the safety or soundness of the Building, or impair any easement, without first obtaining approval in writing for owners of all Units in which such work is to be done and the approval of the Board of Directors. A copy of plans for all of such work prepared by an architect licensed to practice in this state shall be filed with the Association prior to starting of the work. Any Unit Owner may make alterations, additions, or improvements within his or her Unit (including minor alterations to the perimeter walls of the Unit caused by nails, screws, staples, and the like) without the prior written approval of the Board, but such Unit Owner shall be responsible for any damage to other Units, the Common Elements, the Project, or any part thereof, resulting from such alterations, additions, or improvements. This includes the right of any Unit Owner that owns a Garage Stall or Stalls to install a garage door opener after first giving notice in writing to the Board of Directors.

#### 5.2. Maintenance of Common Elements.

a. By Association. The maintenance and operation of the Common Elements shall be the responsibility and expense of the Association.

b. Alteration and Improvement. After the completion of the improvements included in the Common Elements which are contemplated by this Declaration, there shall be no alteration or further improvement of Common Elements without prior approval in writing of the record owners of the Units; provided, however, that any alteration or improvement of the Common Elements approved in writing by not less than 75 percent of the Unit Owners and which does not interfere with the rights of any Unit Owners without their consent, may be done if the Unit Owners who do not approve are relieved from the initial cost thereof. The share of any cost not so assessed shall be assessed to the other Unit Owners in the same ratio as their shares in the Common Elements bear to each other. There shall be no adjustment in the shares and rights of a Unit Owner in the Common Elements which are altered or further improved, whether or not the Unit Owner contributes to the cost thereof.

#### 5.3. Association's Rights.

a. Assessment. At the discretion of the Board, the maintenance of, repairs to, and replacements within the Limited Common Elements may be provided and assessed in whole or in part to Unit Owners benefited thereby, and further, at its discretion, the Board may direct Unit Owners who stand to be benefited by such maintenance of, repairs to, and replacement within the Limited Common Elements to arrange for such maintenance, repairs, and replacements in the name and for the account of such benefited Unit Owners, pay the cost thereof with their own funds, and procure and deliver to the Board such lien waivers and contractor's and subcontractor's

sworn statements as may be required to protect the project from all mechanics' or materialmen's lien claims that may arise therefrom.

b. Necessary Maintenance: In addition to the discretionary authority provided herein for maintenance of all or any portion of the Units, the Board shall have the authority to maintain and repair any Unit, if such maintenance or repair is reasonably necessary in the discretion of the Board to protect the Common Elements or preserve the appearance and value of the project, and the Unit Owner of the Unit has failed or refused to perform the maintenance or repair within a reasonable time after written notice of the necessity of the maintenance or repair delivered by the Board, and the Board shall levy a special assessment against the Unit of such Unit Owner for the cost of the necessary maintenance or repair.

c. Damage: If, due to the act or neglect of a Unit Owner, or his or her agent, servant, tenant, family member, invitee, licensee, or household pet, damage is caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repair, or replacements are required which would otherwise be a Common Expense, such Unit Owner shall pay for such damage or such maintenance, repair, and replacements, as may be determined by the Association; however, the provisions of this paragraph are subject to the waiver of subrogation rights with respect to casualty damage insured against under the policies of insurance maintained by the Board.

d. Access: The authorized representatives of the Association or Board, or the Managing Agent with approval of the Board, shall be entitled to reasonable access to the individual Units and Limited Common Elements as may be required in connection with the preservation of any individual Unit or Limited Common Elements in the event of an emergency, or in connection with maintenance of, repairs, or replacements within the Common Elements, Limited Common Elements, or any equipment, facilities, or fixtures affecting or serving other Units, Common Elements, and Limited Common Elements, or to make any alteration required by any governmental authority.

5.4...Decorating: Each Unit Owner, at his or her own expense, shall furnish and be responsible for all decorating within his or her own Unit and Limited Common Elements serving such Unit, as may be required from time to time, including painting, wall papering, washing, cleaning, panelling, ceramic tile, floor covering, draperies, window shades, curtains, lighting, and other furnishings and decorating. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors, and ceilings of his or her Unit, and such Unit Owner shall maintain the interior surfaces in good condition at his or her sole expense, as may be required from time to time. The maintenance and use of interior surfaces shall be subject to the rules and regulations of the Association, but each such Unit Owner shall have the right to decorate such interior surfaces from time to time as he or she may see fit and at his or her sole expense.

Decorating of the Common Elements (other than interior surfaces within the Units as above provided and other than limited Common Elements) and any redecorating of Units, to the extent such redecorating of Units is made necessary by damage to Units caused by maintenance, repair, or replacement of the Common Elements by the Association, shall be furnished by the Association as part of the Common Expenses. The interior surfaces of all windows forming part of a perimeter wall of a Unit shall be cleaned and washed at the expense of the Unit Owner of that Unit. No Unit Owner shall decorate the portions of his



or her Unit visible from outside such Unit in any manner which detracts from the appearance of the Building, and the determination of the Board on such matters shall be final.

5.5. . . . Determination to Reconstruct or Repair: If any part of the Project shall be damaged by casualty, whether it shall be reconstructed or repaired shall be determined in the following manner:

a. Common Element: If the damaged improvement is a Common Element, it shall be reconstructed or repaired unless within 30 days after the casualty 75% of the Unit Owners determine otherwise.

b. Units:

(1) Lesser Damage: If the damaged improvements constitute less than 80% of the Units, they shall be reconstructed or repaired unless within 30 days after the casualty 75% of the Unit Owners determine otherwise.

(2) Major Damage: If the damaged improvements constitute 80% or more of the Units, they will not be reconstructed or repaired and the condominium plan of ownership of the damaged Units will terminate without agreement upon payment of insurance proceeds as elsewhere provided, unless within 30 days after the casualty 75% of the Unit Owners determine that such reconstruction or repair shall occur.

(3) In a determination as to whether or not the damaged improvements constitute less than 80% of the Units in paragraphs (1) and (2) above, any damage to any Garage Buildings shall not be considered.

(4) In case of termination of all or part of the Act condominium plan of ownership, the provisions of the Act shall apply.

c. Certificate: An insurance trustee may rely upon a certificate by the Officers of the Association to determine whether the damaged property is to be reconstructed or repaired.

5.6. . . . Reconstruction or Repair:

a. Plans and Specifications: Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original Buildings, or, if not, according to plans and specifications approved by the Board of Directors and by not less than 75% of the Unit Owners of all damaged Units, which approval shall not be unreasonably withheld.

b. Responsibility: If the damage is only to those parts of one Unit for which the responsibility of maintenance and repair is that of the Unit Owner, the Unit Owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.

c. Estimates of Costs: Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

d. Assessments: If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction

and repair by the Association, or if at any time during reconstruction and repair or upon the completion of reconstruction and repair are insufficient, assessments shall be made against the Unit Owners in the case of damage to the Common Elements, except the Garage Buildings, in sufficient amounts to provide funds for the payment of such costs. In the case of damage to the Garage Buildings, any assessment made under this paragraph shall be made against only the Unit Owners that own Garage Stalls.

5.7. Condemnation; General. If all or part of the project is taken or threatened to be taken by condemnation, the Board and each Unit owner shall be entitled to participate in proceedings incident thereto at their respective expense. The expense of participation in such proceedings by the Board shall be a Common Expense. The Board may obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses, and other persons as the Board deems necessary or advisable to aid or advise it in matters relating to such proceedings. All damages or awards for any such taking shall be deposited with the Board, acting as trustee, and such damages or awards shall be applied or paid as provided herein.

5.8 Condemnation of Common Elements. If any action is brought to condemn a portion of the Common Elements, the Board shall have the sole authority to determine whether to defend or resist such action, to make any settlement with respect thereto, or to convey such property to the condemning authority in lieu of condemnation. After the damage or awards for such taking are determined, such damages or awards shall be paid to each Unit Owner in proportion to his or her ownership interest. The Board may call a meeting of the Association, at which meeting the members by a majority vote may decide whether to replace or restore insofar as possible the Common Elements so taken or damaged.

5.9 Payment of Awards and Damages. Any damage or awards paid to or for the account of any Unit Owner by the Board, acting as trustee, shall be applied first to the payment of any taxes or assessments by governmental authorities past due and unpaid with respect to that Unit; secondly, to amounts due under any Mortgages; thirdly, to the payment of any unpaid Common Expenses or special assessments charged to or made against the Unit; and finally to the Unit Owner.

#### 6. MORTGAGEE PROTECTIONS

6.1. Right to Mortgage. Each Unit Owner shall have the right, subject to these provisions, to grant separate Mortgages for his or her Unit together with the respective ownership interest in the Common Elements. No Unit Owner shall have the right or authority to make or create or cause to be made or created from the date hereof any Mortgage or other lien on or affecting the Project or any part thereof, except only to the extent of his or her own Unit, and the respective ownership interest in the Common Elements appurtenant thereto, and Garage Stall or Stalls, if any.

6.2. Written Approval. The prior written approval of all Mortgagees and the Administrator of the Veteran's Administration will be required for the following:

a. The abandonment or termination of the condominium status of the Project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of taking by condemnation or eminent domain.

b. Any amendment to this Declaration or to the By-Laws of the Association which would change the ownership interests

of the Unit Owners in the Project, except for the right of the Developer to amend the Declaration as set forth in paragraphs 1.1. and 2.3.

6.3:..Lien-Subordination: The Lien for Common Expenses payable by a Unit Owner shall be subordinate to the Lien of a prior recorded first Mortgage on the interest of such Unit Owner. This paragraph shall not be amended, changed, modified, or rescinded without the prior written consent of all Mortgages of record holding a lien against all or part of the Project.

6.4:..Mortgagee's Rights: Upon request, any Mortgagee will be entitled to: (a) inspect the books and records of the Association during normal business hours; (b) receive an annual financial statement of the Association within 90 days following the end of any fiscal year of the Project; and (c) receive written notice of all meetings of the Association and designate a representative to attend all such meetings.

6.5:..Insurance-Proceeds-Upon-Damage: In the event of substantial damage to or the destruction of any Unit or Garage Stall or any part of the Common Elements, the Mortgagee of a Unit will be entitled to timely written notice of such damage or destruction, and no provision of this Declaration or any other document establishing the Project will entitle the Unit Owner or other party to priority over such Mortgagee with respect to the distribution of any insurance proceeds.

6.6:..Condemnation: If any Unit or portion thereof or Garage Stall or any portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Mortgagee of a Unit will be entitled to timely written notice of any such proceeding or proposed acquisition, and no provision of this Declaration or any other document establishing the Project shall entitle the Unit Owner or other party to priority over such Mortgagee with respect to the distribution of the proceeds of any award or settlement.

6.7:..Rights-Of-First-Refusal: The right of a Unit Owner to sell, transfer, or otherwise convey the Owner's Unit and Garage Stall or Stalls, if any, will not be subject to any right of first refusal or any similar restriction in favor of the Association.

6.8:..Rights-Of-Mortgagees-Under-Foreclosure: Each Mortgagee who takes possession of a Unit and Garage Stall or Stalls by virtue of foreclosure of the Mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, will take the Unit free of any claims for unpaid assessments and charges against the Unit which accrue prior to the time such holder takes possession of the Unit, except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Units including the mortgaged Unit.

6.9:..Notice-to-Mortgagee: The holder of a first Mortgage shall be entitled to prompt written notice from the Association of any default in the performance of any obligation under this Declaration, the Articles of Incorporation, the By-Laws, or the rules and regulations of the Association, which default is not cured by the Unit Owner within 30 days.

7:..USE-AND-OCCUPANCY-RESTRICTIONS

7.1:..Use-of-Units: Subject to the provisions of this Declaration and the By-Laws, no part of the Project may be used for purposes other than as a single-family dwelling and the related common purposes for which the Project was designed. Each Unit or any two or more adjoining Units used together shall be used as a single-family dwelling or such other use permitted by

this Declaration and for no other purpose, except that a professional and quasi-professional person may use his or her Unit as an ancillary or secondary facility to an office established elsewhere. The foregoing restrictions as to residence shall not be construed to prohibit a Unit Owner from: (a) maintaining a personal professional library; (b) keeping personal business or professional records or accounts; or (c) handling personal business or professional telephone calls or correspondence. Such uses are expressly declared customarily incidental to the principal residential use and not in violation of these restrictions.

7.2: Use of Common Elements. The Common Elements shall be used only by the Unit Owners and their agents, servants, tenants, family members, customers, invitees, and licensees for access, ingress to, and egress from the perspective Units and for other purposes incidental to use of the Units; provided, however, areas designed for a specific use shall be used for the purposes approved by the Board. The use, maintenance, and operations of the Common Elements shall not be obstructed, damaged, or unreasonably interfered with by any Unit Owner and shall be subject to any lease, concession, or easement presently in existence or entered into by the Board at some future time, affecting any part or all of the Common Elements.

7.3: Specific Restrictions. Without limiting the generality of paragraphs 7.1 and 7.2, use of the Project by the Unit Owners shall be subject to the following restrictions:

a. Storage: Nothing shall be stored in the Common Elements without prior consent of the Board or as otherwise expressly provided in this Declaration.

b. Insurance: Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance for the Project without the prior written consent of the board. No Unit Owner shall permit anything to be done or kept in his or her Unit or Garage Stall or Stalls, if any, or in or on the Common Elements which will result in the cancellation of insurance on any Unit or any part of the Common Elements or which will be in violation of any law.

c. Waste: No waste shall be committed in or on the Common Elements.

d. Signs: Subject to the Developer's rights under paragraph 3.5 of this Declaration, no sign of any kind shall be displayed to the public view on or from any Unit or the Common Elements without the prior written consent of the Board or the written consent of the Managing Agent acting at the Board's direction.

e. Nuisance: No noxious or offensive activity shall be carried on in any Unit or on or in the Common Elements, and nothing shall be done therein which may or become an annoyance or nuisance to the other Unit Owners.

f. Common Elements: Except as otherwise expressly provided, nothing shall be altered or constructed in or removed from the common elements, except upon the written consent of the Board.

g. Structures: No structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuildings shall be permitted on the Project at any time, temporarily or permanently, except with the prior written consent of the Board; provided, however, that temporary structures may be erected for use in connection with the construction, repair, or rebuilding of the Buildings or any portion thereof.

h. Clothes Drying. Outdoors drying of clothes shall not be permitted.

i. Parking. Parking of vehicles in driveways and parking areas shall be subject to the rules and regulations of the Board. Each Unit Owner shall have the right to use a parking space for at least one automobile.

j. Planting; Fences. Except within individual Units, no planting, transplanting, or gardening shall be done, and no fences, hedges, or walls shall be erected or maintained upon the project, except as approved by the Board.

k. Vehicles. Motorcycles, motorbikes, motor scooters, or other similar vehicles shall not be operated within the Project except for the purpose of transportation directly from a parking space to a point outside the Project or from a point outside the Project directly to a parking space.

l. Leases. A Unit Owner may lease his or her Unit, subject to the following conditions: (1) the entire Unit must be leased; (2) the lease must be in writing; (3) the lease agreement must provide that its terms are subject to the provisions of this Declaration and the By-Laws and that failure by the tenant to comply with such provisions shall constitute a default under the lease; (4) the lease shall also contain an acknowledgement signed by the tenant that the tenant has received true copies of the Declaration and the By-Laws; (5) no Units may be leased for transient or hotel purposes, except by a lender in possession of a Unit following default in a first Mortgage, a foreclosure proceeding, or any deed or other arrangement in lieu of foreclosure; and (6) such reasonable rules and regulations as the Board may establish from time to time.

m. Animals. No animals shall be raised, bred, or kept in any Unit for any commercial purposes. Domestic household pets must be kept in strict accordance with rules and regulations adopted by the Board from time to time.

n. Improvements. Any future improvements made to the condominium regime shall be consistent with the initial improvements in terms of quality of construction.

7.4. Transfer of Limited Common Elements. The use of Limited Common Elements may be transferred between Unit Owners having rights thereto at their expense, provided that such transfer is made in compliance with the Act and this paragraph. Rights and obligations with respect to any of the Limited Common Elements shall not be affected, and no transfer thereof shall be effective, unless such transfer is in compliance with this paragraph. Each such transfer shall be made by an amendment to this Declaration executed by all Unit Owners who are parties to the transfer and their Mortgages and consented to by all other Unit Owners who have any right to use the Limited Common Elements affected thereby. Such amendment shall contain a certificate showing that a copy of the amendment has been delivered to and approved in writing by the Board and shall contain a statement from the Unit Owners involved in the transfer setting forth any reapportionment of their respective shares of ownership in the Common Elements resulting from the transfer, the aggregate sum of which shares shall not be changed by the transfer. If such Unit Owners cannot agree upon the reapportionment, the Board shall make such reapportionment. No such transfer shall be effective until the amendment is recorded. This paragraph shall not be amended, changed, or modified without the prior written consent of all Mortgagees.

## 8. REMEDIES

8.1. Rights of Association. In the event of any violation

of the provisions of the Act, this Declaration, the By-Laws, or rules and regulations of the Association by any Unit Owner (either by his or her own conduct or by the conduct of any other Occupant of the Unit) the Association, or its successors or assigns, or the Board, or its agent, shall have each and all of the rights and remedies which may be provided for in the Act, this Declaration, the By-Laws, or the rules and regulations, or which may be available at law or in equity, and may prosecute an action or other proceedings against such defaulting Unit Owner or others for enforcement of any lien and the appointment of a receiver for the Unit and Garage Stall or Stalls, if any, and ownership interest of such Unit Owner; for damages, injunction, or specific performance; for judgment for payment of money and collection thereof; for any combination of remedies; or for any other relief.

8.2. Lien: All expenses of the Board in connection with any such actions or proceedings, including court costs and attorney's fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the maximum lawful rate per annum until paid, shall be charged to and assessed against such defaulting Unit Owner and shall be added to and deemed part of his or her respective share of the Common Expenses. The Board shall have a lien for all such expenses, as well as for non-payment of the respective share of the Common Expenses, upon the Unit and Garage Stall or Stalls, if any, and ownership interest in the Common Elements of such defaulting Unit Owner, upon all his or her additions and improvements thereto, and upon all his or her personal property in his or her Unit or located elsewhere on the project; provided, however, that such lien shall be subordinate to the lien of a prior recorded first Mortgage on the interest of such Unit Owner, except for the amount of the proportionate share of the Common Expenses which become due and payable from and after the date on which the Mortgage takes possession of the Unit and Garage Stall or Stalls, if any, accepts a conveyance of any interest therein (other than as security), or files suit or commences other proceedings to foreclose its Mortgage and causes a receiver to be appointed. This paragraph shall not be amended, changed, modified, or rescinded without the prior consent of all Mortgagees.

8.3. Correction of Default: In the event of any such default by any Unit Owner, the Board and the manager or Managing Agent, if so authorized by the Board, shall have the authority to correct such default and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against such defaulting Unit Owner. Any and all such rights and remedies may be exercised at anytime from time to time, cumulatively or otherwise, by the Board.

8.4. Action by Board. The violation of any restrictions condition, rule or regulation adopted by the Board or the breach of any covenant or provision of this Declaration shall give the Board the right, in addition to any other rights provided in this Declaration: (a) to enter upon the Unit or Garage Stall or any portion of the project upon which or as to which such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Unit Owner, any structure, thing, or condition that may exist thereon contrary to the intent and meaning of the provisions hereof and the Board, its employees or agents, shall not be deemed guilty in any manner of trespass; (b) to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; (c) to take possession of such Unit Owner's interest in the property and to maintain an action for possession of such Unit and Garage Stall or Stalls in the manner provided bylaw; or (d) upon such notice as may be specified in the By-Laws, to suspend a member's voting rights and to restrict a member's use of the Common Elements and Limited Common Elements in such manner as the Board deems appropriate.

8.5:....Notice of Action at Law or in Equity. If any Unit Owner (either by his or her own conduct or by the conduct of any Occupant of his or her Unit) shall violate any provision of the Act, this Declaration, or the rules and regulations of the Association, and if such default or violation shall continue for ten days after written notice to the Unit Owner from the Board or shall occur repeatedly during any ten-day period after such written notice or request to cure such violation from the Board, the Board or an aggrieved Unit Owner may file against the defaulting Unit Owner an action at law for damages or an action in equity for a decree of mandatory injunction against the defaulting Unit Owner or Occupant.

#### 9:.... DEFINITIONS

9.1:....Definitions. The terms used in this Declaration shall have the following meanings, unless the text clearly requires another meaning:

- a. "Act means the Horizontal Property Act of the State of Iowa.
- b. "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of the Association attached as Exhibit E, as amended from time to time.
- c. "Association" means The Jordan Square Association, an Iowa nonprofit corporation.
- d. "Board: means the Board of Directors of the Association.
- e. "Building" means the structural improvements located on the Land, forming a part of the project and containing Units or Garage Stalls.
- f. "By-Laws" means the By-Laws of the Association, attached as Exhibit F, as amended from time to time.
- g. "Common Expenses" means and includes:
  - (1) All sums lawfully assessed against the common Elements by the Managing Agent or Board.
  - (2) All expenses of administration and management, maintenance, operation, repair, or replacement of and additions to the Common Elements.
  - (3) Expenses agreed upon as Common Expenses by the Unit Owners.
  - (4) Expenses declared to be Common Expenses by this Declaration or by the By-Laws.
- h. "Council of Co-Owners" means all the Unit Owners, which Council of Co-Owners has been incorporated as the Association.
- i. "Declaration" means this instrument by which Phase 1 of the Project is submitted to the provisions of the Act, as amended from time to time.
- j. "Developer" means M&W Development Co., Inc., an Iowa corporation, its successors and assigns, provided such successors or assigns are designated in writing by the Developer as successors or assigns of the rights of the Developer set forth in this Declaration.
- k. "Majority of the Unit Owners" means the owners of more than 50 percent of the undivided ownership of the Common

Elements. Any specific percentage of Unit Owners means that percentage of Unit Owners who in the aggregate own such specified percentage of the entire undivided ownership of the Common Elements.

l. "Mortgage" means a security interest, mortgage, or lien granted by a Unit Owner in, to, or against a Unit and Garage Stall or Stalls, if any, to secure payment of an indebtedness and duly recorded in the Polk County Recorder's office.

m. "Mortgagee" means a person who holds a Mortgage as security for payment of an indebtedness.

n. "Occupant" means a person or persons in possession of a Unit, regardless of whether the person is a Unit Owner.

o. "person" means a natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.

p. "plat" means the Building Location Plat attached as Exhibit B.

q. "Unit" means a substantially completed enclosed space consisting of one or more rooms occupying all or part of a floor or floors in a Building, which enclosed space is not owned in common with the Unit Owners of other Units. Each Unit is numbered as shown on the Plat, and the boundaries of each Unit shall be and are the interior surfaces of its perimeter walls, floors, and ceilings; and a Unit includes the portion of the Building so described, the air space so encompassed, except Common Elements. Any Unit may be jointly or commonly owned by more than one person. The term "Unit" shall have the same meaning as the term "Apartment" as used in the Act.

r. "Residential Building" means the structural improvements located on the Land, forming a part of the project, designed exclusively for residential use, and containing Units.

s. "Unit Owner" means the person or persons who individually or collectively own or are purchasing by recorded contract the aggregate fee simple title to a Unit and Garage Stall or Stalls and the undivided interest in the Common Elements appurtenant thereto but shall not include those having an interest in a Unit merely as security for the performance of an obligation. Unless specifically provided otherwise herein, the Developer shall be deemed a Unit Owner so long as it is the legal title holder of any substantially completed unit. The term "Unit Owner" shall have the same meaning as the term "Co-Owner" as used in the Act.

t. "Garage Stall" means the substantially completed enclosed space consisting of one room in a garage building, which enclosed space is not owned in common with the unit owners of other units. Each Garage Stall is numbered on the plat and the boundaries of said Garage Stall shall be and are the interior surfaces of its perimeter walls, floor, and the bottom side of the ceiling joists; and a garage stall includes the portion of the building so described, the air space so encompassed, except the common elements. Any Garage Stall may be jointly or commonly owned by more than one person, so long as they be "Unit Owners" as defined in paragraph "r" above, and ownership of the Garage Stall is held in the same way the Unit Owners own the Unit. The Unit Owner or owners who individually or collectively own or are purchasing by recorded contract the fee simple title to a Unit with a Garage Stall or Stalls have no additional



interest in the Common Elements of this Regime since the fractional or percentage interest in the general common elements and fractional or percentage interest in the limited common elements are appurtenant to each of the separate units as defined in paragraph "g" above.

u. "Garage Building" means the structural improvements located on the Land, forming a part of the project, containing Garage Stalls.

9.2...Other Definitions: The following terms shall have the meanings set out in the paragraphs of this Declaration following the terms:

- a. "Common Elements", paragraph 2.1.
- b. "Land", paragraph 1.2.
- c. "Limited Common Elements", paragraph 2.6.
- d. "Project", paragraph 1.1.

10...GENERAL PROVISIONS

10.1...Rights and Obligations: Each grantee of the Developer, by the acceptance of the deed of conveyance or contract of purchase from the Developer, accepts the same subject to all restrictions, conditions, covenants, reservations, liens, and charges, and the jurisdiction, rights, and powers created or reserved by this Declaration and the By-Laws. All rights, benefits, and privileges of every character imposed by this Declaration shall be covenants running with the Land, shall bind any person having at anytime any interest or estate in the Land, and shall inure to the benefit of such grantee or contract purchaser in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract of purchase.

10.2...Inspection; Waiver: Each purchaser of a Unit shall have full opportunity and shall be under a duty to inspect and examine the Unit to be purchased prior to closing of the transaction and agrees that the Unit and Garage Stall or Stalls, if any, are purchased as they actually and physically exist. By recording a deed or purchase contract, each purchaser of a Unit agrees that the square footage, size, and dimensions of each Unit and Garage Stall or Stalls, if any, and each area constituting any part of the Common Elements as set out in this Declaration or the Plat are based upon relative percentages and square footages which have been arbitrarily assigned and agreed upon solely for this purpose and do not necessarily reflect or represent the precise percentage of square footages of any specific portion of the project. The Developer does not warrant, guarantee, or represent that any Unit or any area constituting any part of the Common Elements contains precisely the area, square footage, or dimensions shown by the Plat. Each purchaser of a Unit expressly waives any claims or demand of any kind or nature against the Developer or any person whomsoever on account of dimensions actually and physically existing and the size, square footage, and dimensions shown on the Plat. In interpreting deeds, mortgages, deeds of trust, and other instruments for any purpose whatsoever, the existing physical boundaries regardless of conclusively presumed to be the boundaries regardless of settling, rising, or lateral movements of the Building and regardless of variances between boundaries shown on the Plat and the actual boundaries of the Building.

10.3...Amendments:

a. By Developer: The Developer reserves the right to amend this Declaration as follows:

(1) To extend the Declaration to all or part of Part 2 of the Project, such amendment to be limited to matters relating to such extension and merger of parts 1 and 2. The right to amend for this purpose shall expire on July 1, 1988.

(2) To adjust the fractional ownership of the common Elements as provided in paragraph 2.3.

b. In-General: Subject to subparagraph (a) above and except as otherwise provided in subparagraphs (c) and (d) below, the provisions of this Declaration may be amended, modified, or rescinded by a resolution setting forth such amendment, modification, or rescission and duly adopted by the affirmative vote of not less than two-thirds of the Unit Owners or by an instrument in writing setting forth such amendment, modification, or rescission and signed by not less than two-thirds of the Unit Owners and duly acknowledged before a notary public. All mortgagees shall be notified by certified mail of any such amendment, modification, or rescission, and an affidavit by the secretary of the Association certifying to such mailing shall be made a part of any instrument effecting such amendment, modification, or rescission.

c. Limitation: Subject to the provisions of paragraph 2.3 and subparagraph (a) above, the provisions of this Declaration shall not be materially amended, including but not limited to an amendment which would change the boundaries of any Unit, the undivided interest in the Common Elements appurtenant to any Unit, the number of votes in the Association allocated to any Unit, except by the affirmative vote of 75 percent of the Unit Owners and the prior written approval of the holders of all first Mortgages on Units.

d. Signatures: If the Act, this Declaration, or the By-Laws require the consent or agreement of all Unit Owners or of all Mortgagees, or both, for any action specified in the Act or in this Declaration, any instrument amending, modifying, or rescinding any provision of this Declaration with respect to such action shall be signed by all Unit Owners or all Mortgagees, or both, as the case may be, as required by the Act, this Declaration, or the By-Laws.

e. Recording: Any amendment, modification, or rescission of this Declaration pursuant to this paragraph or any other provision of this Declaration or of the Act shall be valid and effective only upon the recording thereof, together with an amended plat if required, in the Polk County Recorder's Office. This Declaration may not be amended, modified, or rescinded so as to conflict with the provisions of the Act.

10:4..Notices: Any written notice given pursuant to this Declaration shall be by personal service in the same manner as for an original notice or by registered or certified mail, return receipt requested, addressed to the person entitled thereto at such person's last known address. Notice by mail shall be deemed to be delivered when deposited in the United States mail properly addressed with postage prepaid.

10:5:..Severability: If a court of competent jurisdiction shall adjudge to be invalid any provision of this Declaration, such judgment shall not affect, impair, invalidate, or nullify any other provisions of this Declaration, but the affect thereof shall be confined to the person, place, and situation with respect of which such judgment is rendered.

10.6. Perpetuities and Restraints on Alienation. If any of the options, privileges, covenants, or rights created by this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, such provision shall continue only until 21 years after the death of the survivor of the now living descendants of the Governor of Iowa, Terry Branstad.

10.7. Indemnification of West Des Moines. The owners and/or the Association, its successors or assigns, agree to defend, indemnify, protect and save harmless the City of West Des Moines, Iowa, and its political subdivisions including any of its officers, employees or agents, from and against any and all liability, losses, damages, injury, cost, settlements, judgments, awards, claims or expenses or other things whatsoever, including attorney fees, costs or disbursements, arising out of or in connection with any act or acts of negligence, causes, omissions, fault, misconduct, claims, damages, suits or other actions developed, brought or asserted by any person, firm, corporation, entity or estate, or to any property of any person, firm, corporation, entity or estate, against the said City by reason of, in connection with, related to or growing out of directly or indirectly the duties and responsibilities which are imposed upon the owners of the Association, its successors and assigns, with respect to the obligations imposed under this Declaration or the final development plan as approved by the City Council or related to or growing out of directly or indirectly the maintaining, cleaning, growing out of directly or indirectly the reconstruction of any public out, grading, repairing, construction or reconstruction of any public drainage, swale, draw, ravine, ditch, watercourse, levy or dike located over, on, or across the land which is the subject matter of this Declaration. This Declaration shall not be amended so as to affect the provisions of this Section.

10.8. Animal Control Ordinance-Enforcement. The Animal Control Officer of the City of West Des Moines, in addition to any other rights conferred upon this officer by lawful ordinance, statute, or common law, shall have the right to enter over and on the common areas for the purpose of enforcement of the duly enacted Animal Control Ordinance of the City of West Des Moines. This Declaration shall not be amended so as to affect the provisions of this Section.

10.9. Alterations or Improvements for Public Roads or Other Public Purposes. In addition to common expenses authorized herein, the Board of Directors shall levy in any assessment year a special assessment for the purpose of defraying, in whole or in part, the cost of any special assessment obligation for public roads, public utilities or other public purposes which the City of West Des Moines may assess on any project even though the assessment boundaries may only cover a portion of the property falling within this Declaration. Any such special assessment shall be spread against the Association and/or all the unit owners each for their proportionate share. The Association may enter into a contract and waiver with the City of West Des Moines, Iowa, concerning any project involving a special assessment. If contract and waiver is used and adopted, the Association, on behalf of all unit owners and members of the Association, shall execute all documents required in connection with said contract and waiver in the form generally required by the City of West Des Moines, Iowa. The Board of Directors may execute such documents only after securing a vote of a majority of members in person or by proxy at a meeting duly called for this purpose. If the Declarant, for each unit owner within the property, the owner of any unit, and the Association and its successors and assigns enter into a contract and waiver agreement with the City of West Des Moines, they hereby waive, in connection with said assessment, all legal formalities of whatever kind and character required by the laws of the State of Iowa to be observed by municipalities in the construction of like improvements where expenses of said improvements are to be assessed against a project, district or area. All questions of jurisdiction, the amount of the assessment, and all other legal requirements, are hereby waived in favor of the City of West Des Moines, Iowa. The

method of collection of any assessment made pursuant to the provisions of this paragraph shall be the same as provided in this Declaration for the collection of common expenses from unit owners. This Declaration shall not be amended so as to affect the provisions of this Article.

10.10. Detention Basin and Drainageway Maintenance. It shall be the obligation of the Homeowners Association to preserve and maintain the private surface water drainage and detention basin easements within the subject property shown on the Plat of Jordan Square Plat 1 and located and adjoining and west of Holiday Circle and adjoining Railroad Avenue. The Homeowners Association agrees not to interfere with or impede the free passage of water in the drainageway and associated storm sewers or place earth fill, objects or structures within the detention basin which will lessen the detention capabilities of the area, and further, at the associations expense and in a manner acceptable to the City, keep the drainageway and detention area free of weeds, debris, obstructions, or objects or conditions which interfere with their performance. It is also agreed the homeowners association is responsible at the associations cost for the reconstruction or replacement in a manner acceptable to the City any failed storm sewer or structure which lies within the project and which is directly related to the performance of the drainageway and detention basin. This Declaration shall not be amended so as to affect the provisions of this Section.


10.11. Non-Waiver. Failure by any person to enforce at any time or for any period of time any of the provisions of this Declaration or to exercise any right or remedy shall not constitute a waiver of such provision, right, or remedy, and shall not prevent such person thereafter from enforcing all or any provisions of this Declaration and exercising any or all rights or remedies.

10.12. Interpretation. This Declaration shall be governed by and construed in accordance with the laws of the State of Iowa. The table of contents and captions of this Declaration are for convenience only and shall have no effect on its interpretation. Wherever used in this Declaration unless the context clearly indicates otherwise, the use of the singular shall include the plural and vice versa; and the use of any gender shall be applicable to any other gender.

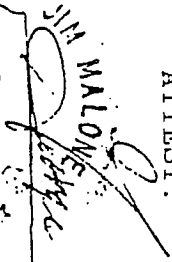
10.13. Exhibits. All exhibits to which reference is made are attached to this Declaration and incorporated by reference.

Executed at Des Moines, Iowa, on the date first stated above.

M & W DEVELOPMENT CO., INC.

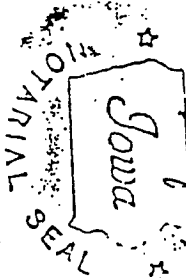
By   
Francis L. Whitehurst,  
President

ATTEST:

  
Jim Malone  
M. Wells

State of Iowa :  
County of Polk :  
Subscribed and sworn before this 19th day of  
December, 1984.

  
Notary Public



LEGAL DESCRIPTION

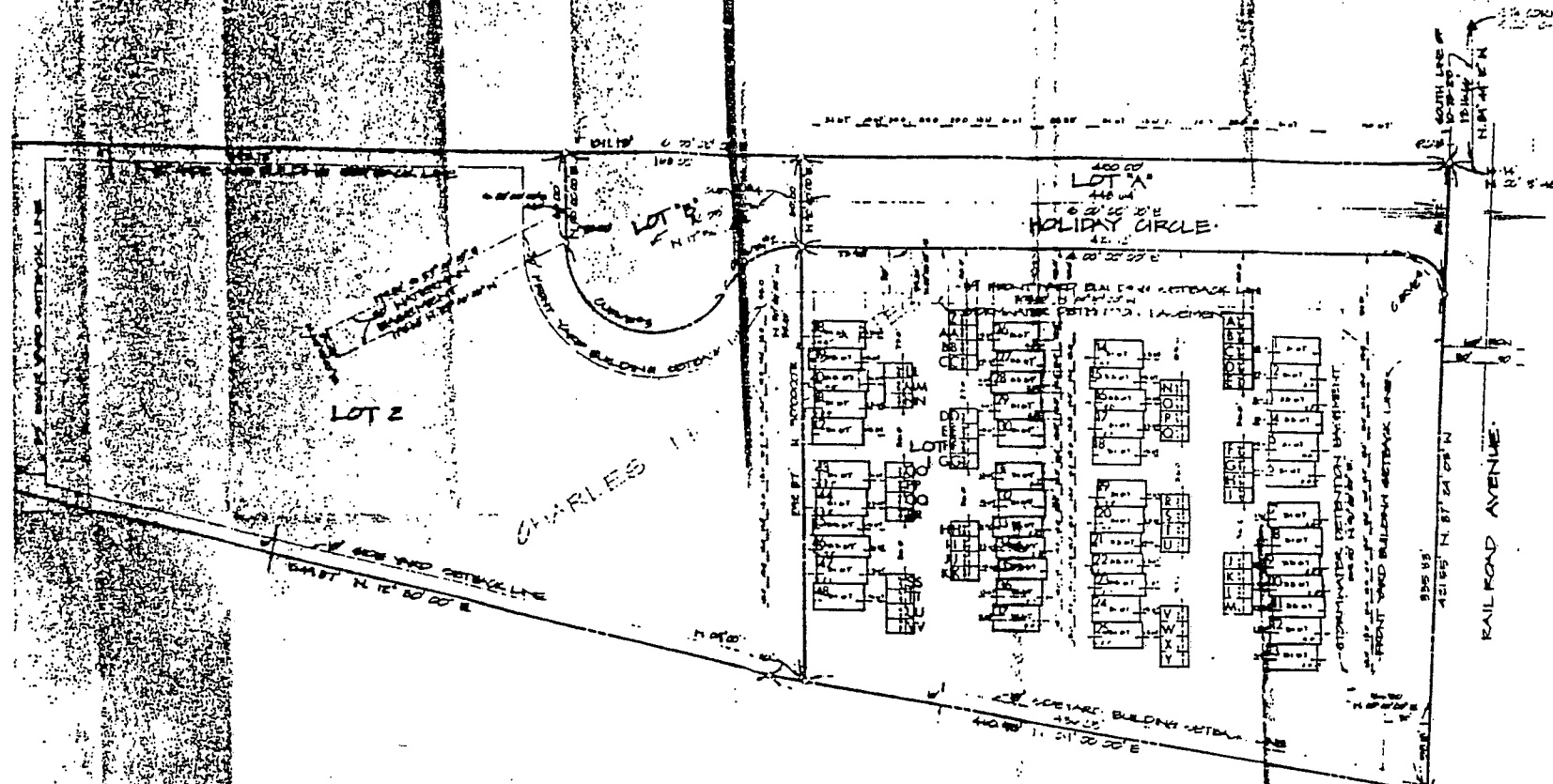
Part I

JORDAN SQUARE

That part of Lot 7 in the partition plat of Charles Nuttall Estate in the SW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of section 10 T. 78 N. R. 25 W. of the fifth P.M. lying East and North of highway except the North 138.7 feet of the West 295.8 feet measured on the North line more particularly described as follows:

Commencing at the SE corner of the SW $\frac{1}{4}$  of section 10 T. 78 N. R. 25 W. of the fifth P.M.; thence N. 89°44'12" W. along the South line of said SW $\frac{1}{4}$  for 1316.66 feet; thence N. 00°15'48" E. for 14.94 feet to a point on the North right-of-way line of Railroad Avenue and also being the point-of-beginning; thence N. 87°24'03" W. along said North line for 421.55 feet to a point; thence N. 90°00'00" E., 436.25 feet to a point; thence N. 90°00'00" E., 352.87 feet to a point on the East line of said Lot 7; thence S. 00°00'00" E., 450.00 feet along the East line of said Lot 7 to the point of beginning, and containing 3.920 acres, more or less, less street.

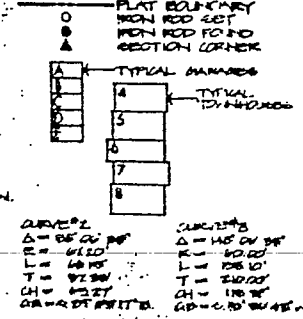
# FINAL PLAT JORDAN SQUARE



THREE RECORD MAPS: MAPS 1, 2, & 3  
17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

5412-515

### LEGEND



### LITERAL DESCRIPTION

THIS PART OF LOT 1 IN THE PARTITION PLAT OF CHARLES ST. INITIAL PART IN THE SW 1/4 OF THE SW 1/4 OF SECTION 10, T2N 38N R7E NORTH, RANGE 08 WEST OF THE FIFTH PR. LINE EAST AND NORTH OF HIGHWAY EXCEPT THE NORTH 130.7 FEET OF THE WEST 245.8 FEET MEASURED BY THE NORTH LINE MORE PARTICULARLY AS SHOWN AS FOLLOWS:

CONTAINING AT THE CORNER OF THE SW 1/4 OF SECTION 10, RANGING TO NORTH, RANGE 08 WEST OF FIFTH PR. LINE N 01° 44' 12" W ALONG THE SOUTH LINE OF SW 1/4 FOR 116.66 FEET, THENCE N 00° 05' 48" E 112.44 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF RAILROAD AVENUE AND ALSO BEING THE POINT OF BEGINNING, THENCE N 87° 04' 00" W 211.4 FEET NORTH LINE FOR 41.98 FEET TO A POINT, THENCE N 02° 00' 00" E, 40.93 FEET TO A POINT, THENCE N 12° 30' 00" E, 84.87 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 1, THENCE S 87° 05' 00" E, 130.20 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 1, THENCE S 00° 00' 00" E 113 FEET ALONG THE EAST LINE OF SAID LOT 1 TO THE POINT OF BEGINNING.

### CERTIFICATION

I HEREBY CERTIFY THAT THIS FINAL PLAT SURVEY, OR PART THEREOF, WAS MADE BY ME OR BY MY DIRECT EMPLOYEES, SUPERVISORS, AND THAT I AM A FULLY LICENSED LAND SURVEYOR IN THE STATE OF MISSISSIPPI.

BY: JERRY F. OLIVER, DWA # 1102 1944

I HEREBY CERTIFY THAT THIS PLAT CLOSURE WITHIN THE GRANULAR PRESCRIPTION IS IN ACCORDANCE WITH THE PRESCRIPTION OF LAW.

BY: JERRY F. OLIVER DATE: \_\_\_\_\_

CIVIL ENGINEERING CONSULTANTS, INC.  
2400 66TH ST. NO. 24, DES MOINES, IA

EXHIBIT "G", page 1

FLOOR PLAN OF TWO BEDROOM UNIT  
BASEMENT FLOOR

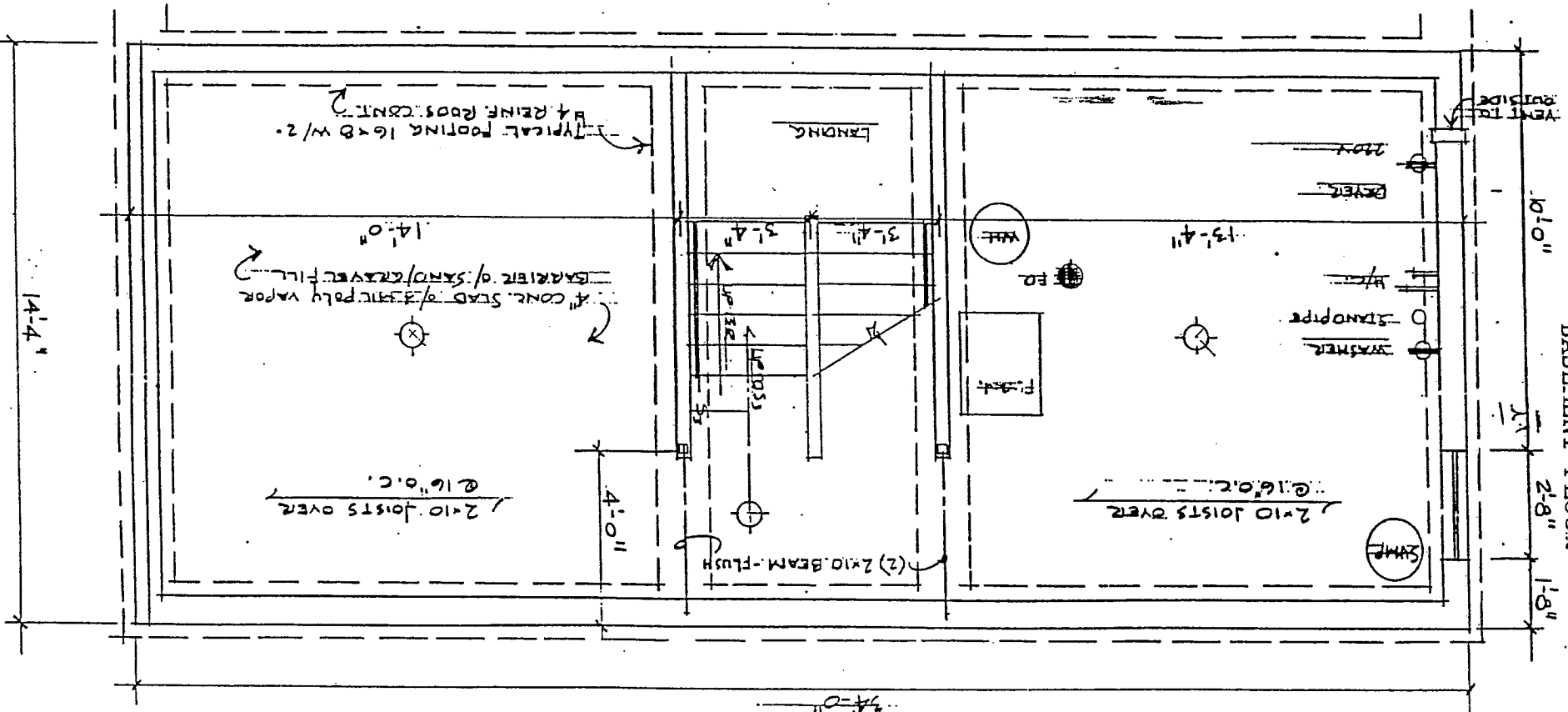


EXHIBIT C, page 2  
 FLOOR PLAN OF TWO BED-  
 ROOM UNIT - first floor

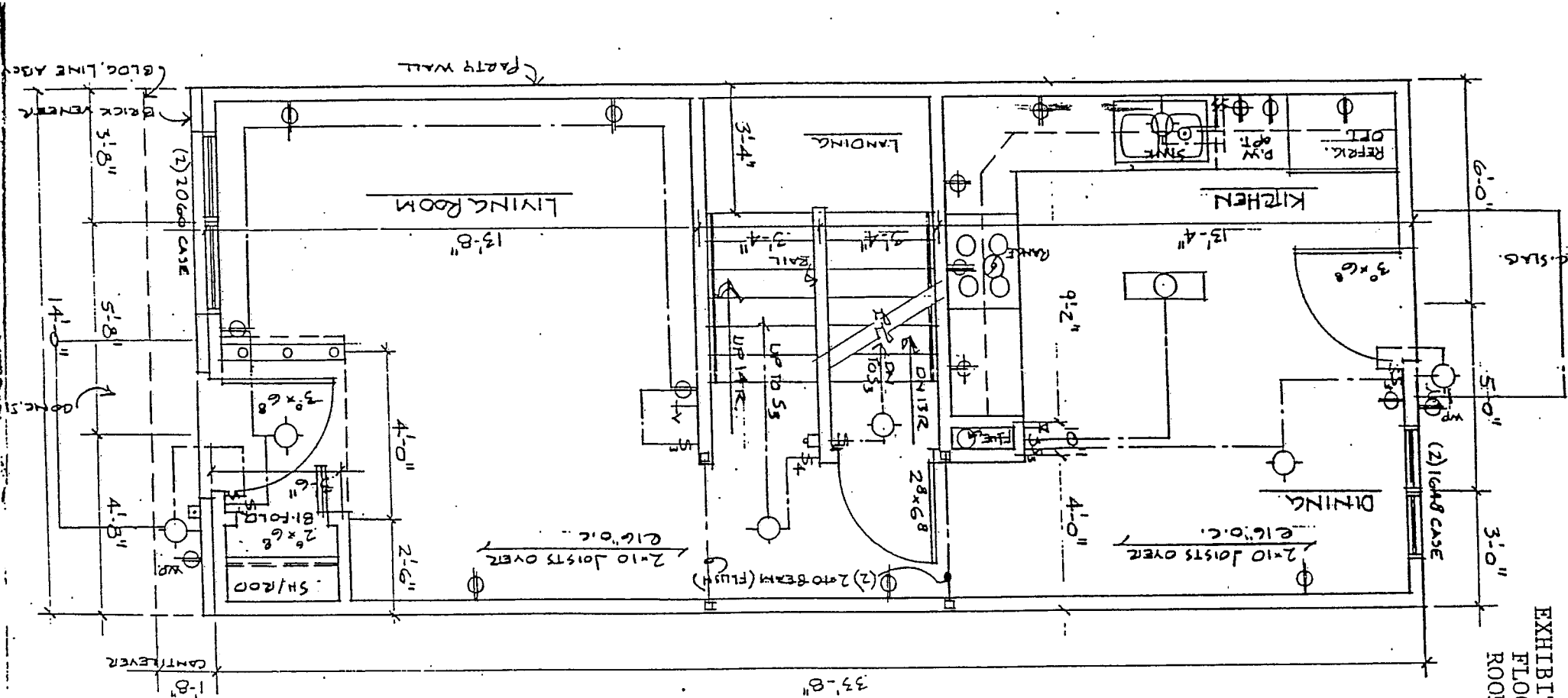




EXHIBIT C, page 3  
FLOOR PLAN OF TWO BED-  
ROOM UNIT-SECOND FLOOR

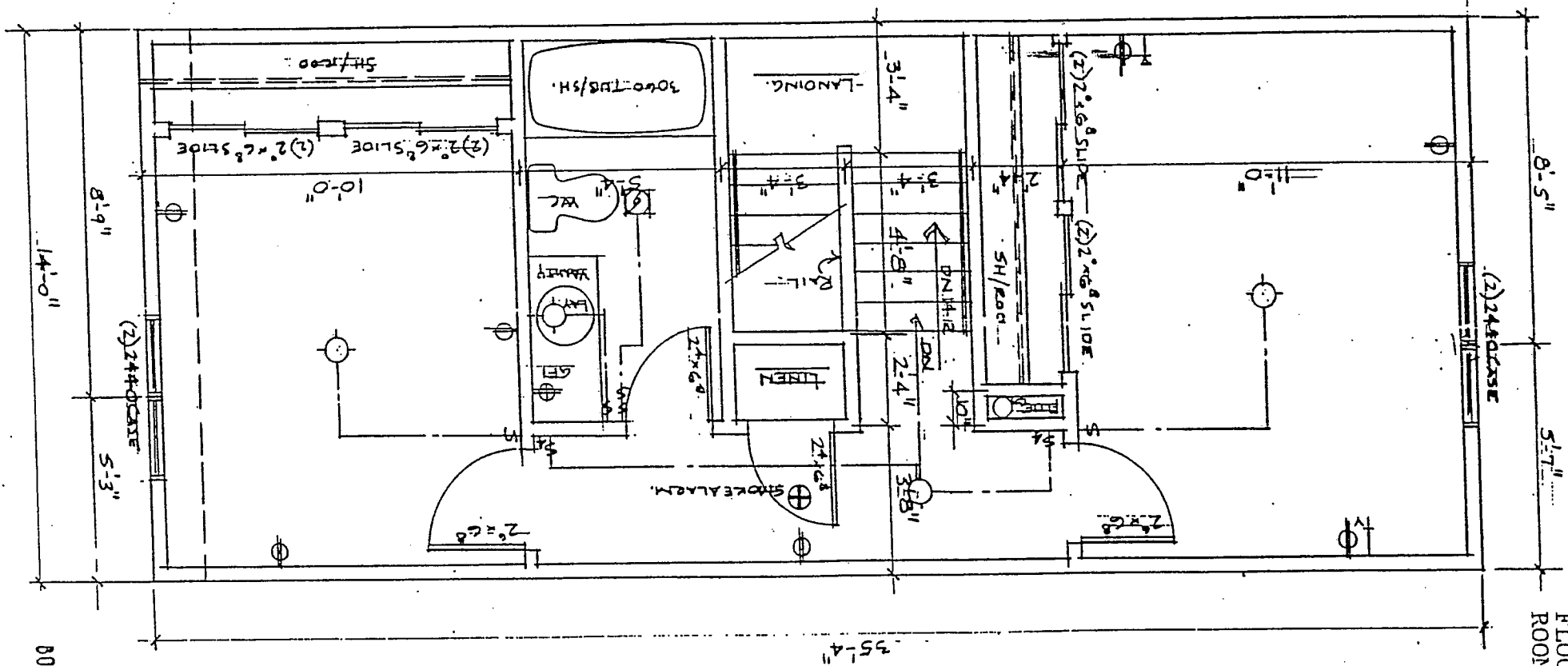


EXHIBIT D, page 1  
 FLOOR PLAN OF THREE BEDROOM UNIT  
 BASEMENT FLOOR

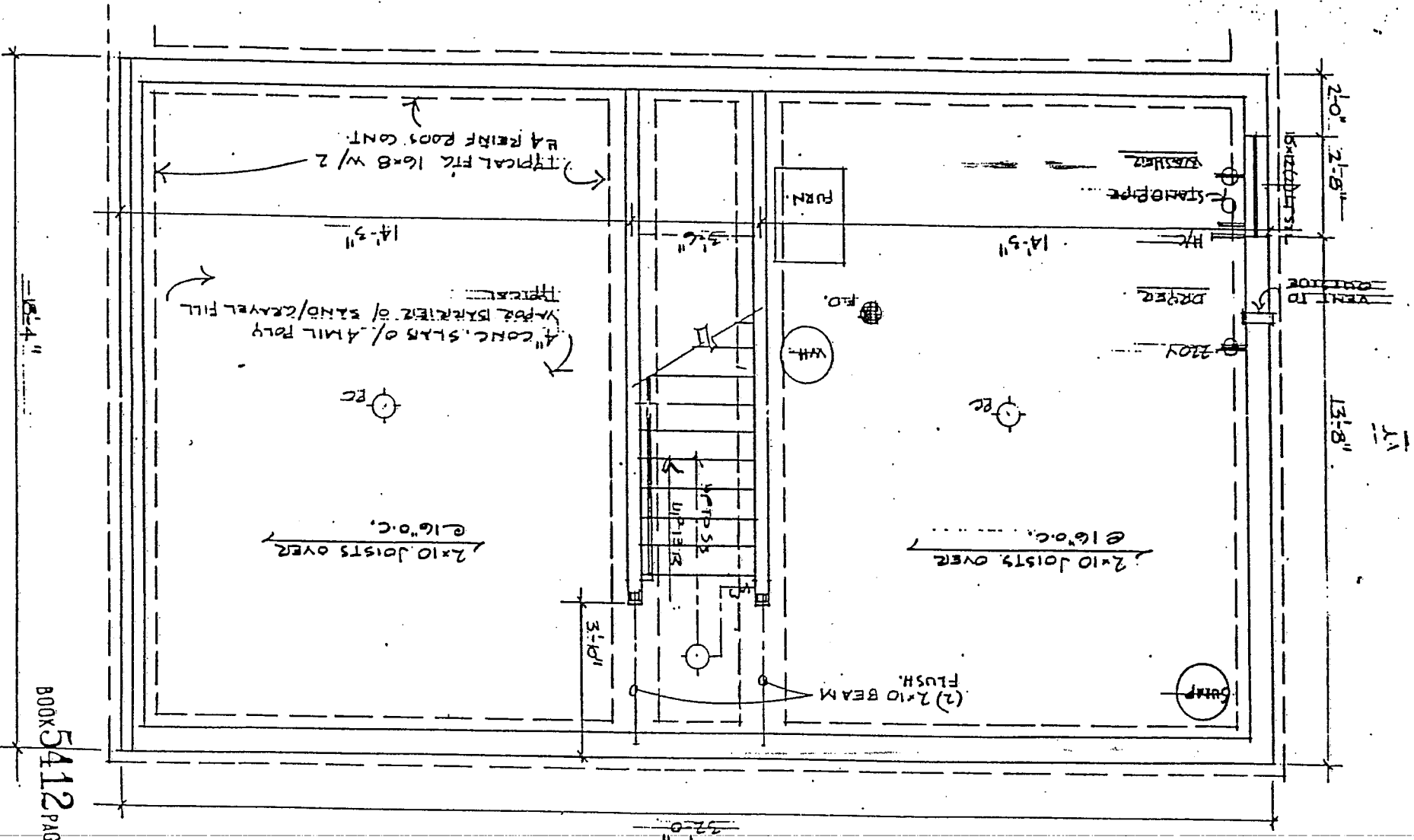
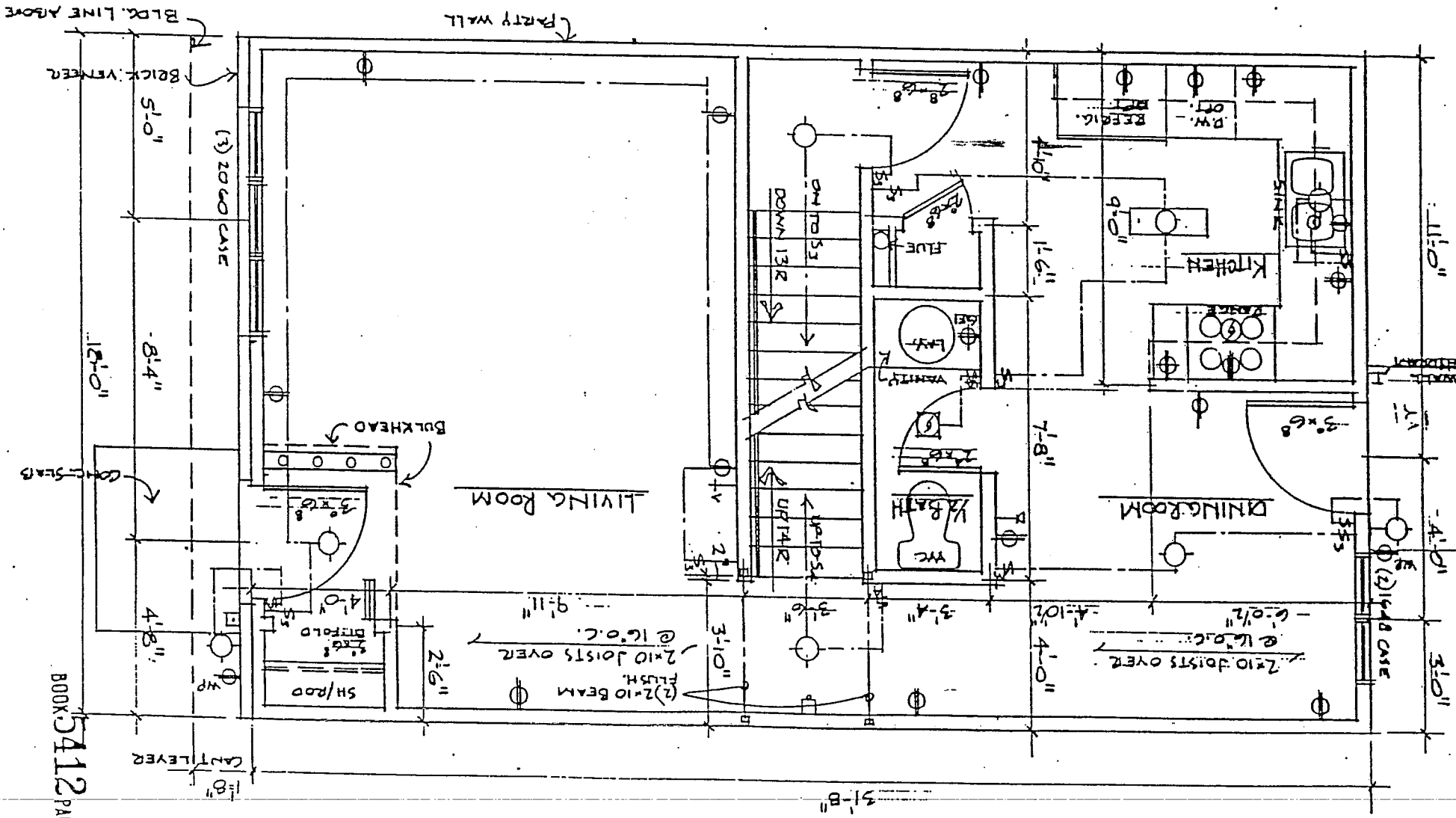


EXHIBIT D, page 2  
 FLOOR PLAN OF THREE BED-  
 ROOM UNIT - FIRST FLOOR



BOOK 5412 PAGE 520

EXHIBIT D, page 3  
 FLOOR PLAN OF THREE BED-  
 ROOM UNIT -  
 SECOND FLOOR

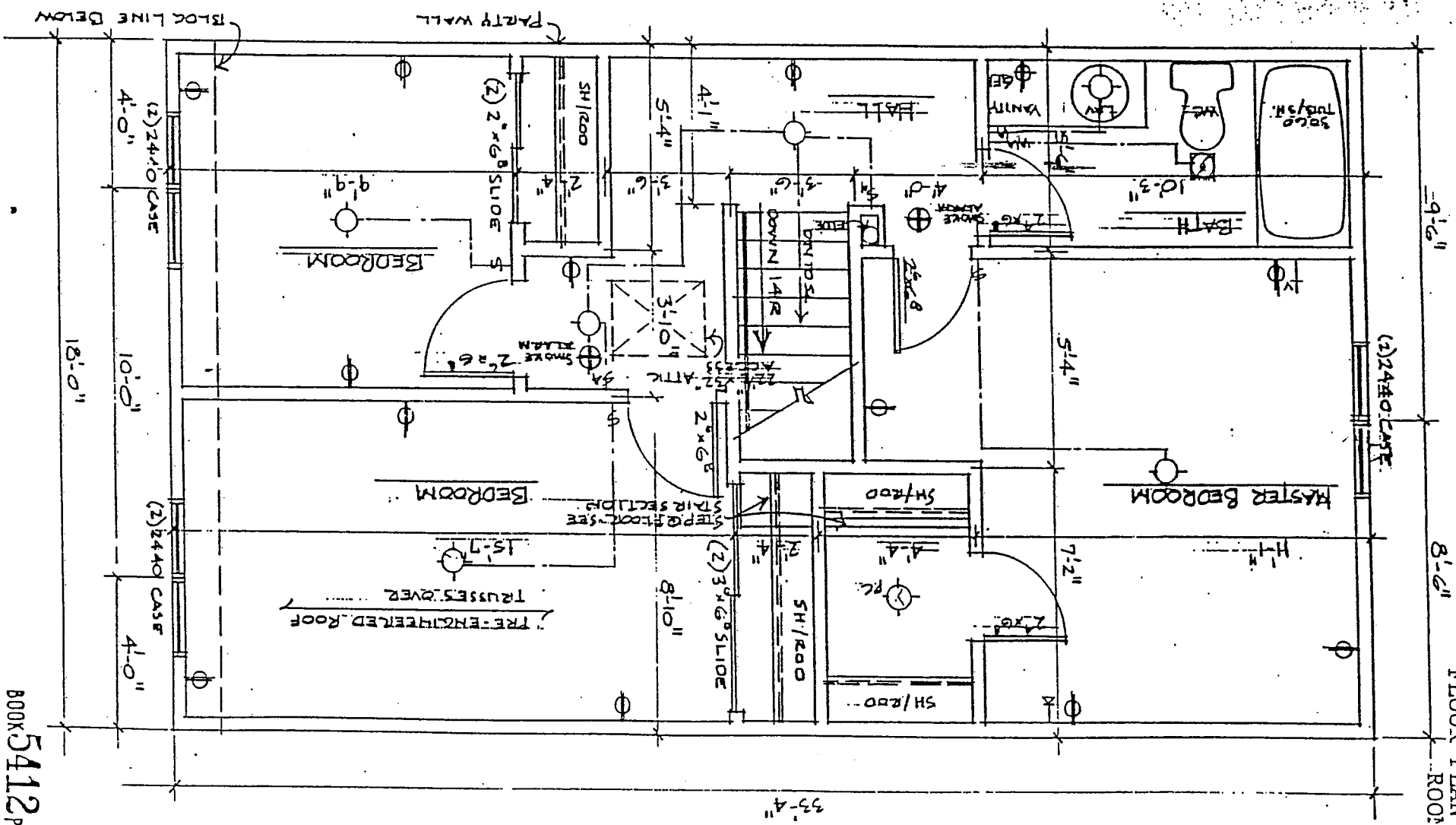


EXHIBIT E

ARTICLES OF INCORPORATION

OF

JORDAN SQUARE ASSOCIATION

The undersigned, acting as incorporator of a corporation under the Iowa Nonprofit Corporation Act, Iowa Code Chapter 504A (1983), adopts the following Articles of Incorporation for such Corporation:

ARTICLE 1.

Section 2.01. Name. The name of the Corporation is Jordan Square Association. The Corporation is referred to in these Articles of Incorporation as the "Association."

ARTICLE 2.

Section 2.01. Duration. The Association shall have perpetual duration.

ARTICLE 3.

Section 3.01. Purposes. The purpose for which the Association is organized is to manage, administer, enforce, and implement the maintenance and operation of Jordan Square, a residential project located in West Des Moines, Polk County, Iowa, and established pursuant to the Iowa Horizontal Property Act; to exercise and perform all the functions of a "Council of Co-owners" as that term is defined in said Act; and to perform all functions and do any and all things permitted or required by the Declaration establishing Jordan Square pursuant to the Act.

ARTICLE 4.

Section 4.01. Powers. The Association shall have unlimited power to engage in and to do any lawful act concerning any or all lawful purposes for which corporations may be organized under the Iowa Nonprofit Corporation Act.

ARTICLE 5.

Section 5.01. Registered Office and Agent. The address of the initial registered office of the Association is M & W Development Co., Inc., 2001 Grand Avenue, West Des Moines, Polk County, Iowa, and the name of its initial registered agent at such address is George M. Mills.

ARTICLE 6.

Section 6.01. Initial Board of Directors. Two Directors shall constitute the Initial Board of Directors. George M. Mills and Francis L. Whitehurst, 2001 Grand Avenue, West Des Moines, Iowa 50265, shall serve as Directors until the first annual

meeting or until their successors are elected or appointed and qualify.

Section 6.02. Number of Directors. The number of Directors shall be fixed by the By-Laws, except the initial Board of Directors. The By-Laws may fix the number of Directors either by stating the number or by providing that the number of directors shall be the number determined by the members from time to time as provided in the By-Laws.

Section 6.03. Removal of Directors. At any meeting of Directors, if the notice of the meeting includes a statement to the effect that the purpose or one of the purposes for which the meeting is called is to remove one or more named Directors, the Directors may remove any or all such named Directors, with or without cause, by the affirmative vote of two-thirds of the full number of Directors. In addition, the By-Laws may provide that the failure of a Director to attend a specified number of meetings of the Board of Directors, or other acts or omissions specified in the By-Laws, shall constitute resignation from the Board of Directors. The By-Laws may provide for exceptions, procedures, and additional provisions regarding the foregoing matters. Any vacancy or vacancies in the Board of Directors caused by any such removal may be filled as provided in the By-Laws.

#### ARTICLE 7

Section 7.01. Incorporators. The incorporator is M & W Development Co., Inc., 2001 Grand Avenue, West Des Moines, Iowa 50265.

#### ARTICLE 8

Section 8.01. Restrictions. All the purposes and powers stated in these Articles of Incorporation shall be subject to the following Restrictions:

a. The Association shall be operated exclusively for the purposes stated in Article 3.

b. The Association shall not be conducted for profit, and no part of its net earnings or assets shall inure to the benefit of any member, Director, officer, or other private individual.

c. No member, Director, or officer of the Association shall receive any dividend, distribution, or compensation from the Association, except reasonable compensation for personal services actually rendered and reasonable reimbursement for authorized expenditures actually incurred.

Section 8.02. Legislative and Political Activities. No substantial part of the activities of the Association shall be carrying on propaganda or otherwise attempting to influence

legislation, and the Association shall not participate in or intervene in (including the publishing or distribution of statements) any political campaigns on behalf of or in opposition to any candidate for public office.

Section 8.03. Disposition of Assets. The assets of the Association are dedicated to the purposes stated in Section 3.01. In the event of liquidation or dissolution of the Association, its assets shall be applied and distributed as provided by law. However, to the maximum extent permitted by law, such assets shall be distributed exclusively for purposes substantially similar to those stated in Section 3.01 and within the meaning of Section 5.01(c) of the Internal Revenue Code and applicable regulations. Such purposes shall be selected by the Board of Directors or by a court of competent jurisdiction if the Board of Directors fails to make such selection. In the event of liquidation or dissolution, such assets shall not be distributed to any corporation or any organization operated for profit.

Section 8.04. Exempt Property: Private property of members, Directors, officers, and employees of the Association shall not be liable for debts of the Association. This provision shall not be amended except with the unanimous vote of the members and Board of Directors.

ARTICLE 9.

Section 9.01. Amendments to Articles of Incorporation. These Articles of Incorporation may be amended by the affirmative vote of 80 percent of the members of the Association.

Signed on \_\_\_\_\_, 1983.

M & W DEVELOPMENT CO., INC.

By.....  
Francis L. Whitehurst, President

ATTEST:

.....  
George M. Mills, Secretary

STATE OF IOWA )  
 ) SS.  
COUNTY OF POLK )

On \_\_\_\_\_, 1983, before the undersigned Notary Public in and for the State of Iowa, personally appeared Francis W. Whitehurst, to me personally known; being duly sworn, he stated that he is the President of the corporation executing the foregoing instrument, that no seal has been procured by the corporation, and that the instrument was signed on behalf of the corporation by authority of its Board of Directors; and, as such officer, he acknowledged the execution of said act and deed of the corporation, voluntarily executed by it and by him.

Notary Public in and for the  
State of Iowa



JORDAN SQUARE ASSOCIATION

ARTICLE 1. OFFICERS AND PLACES OF BUSINESS

Section 1.01. Registered Office. The registered office of the Association required by the Iowa Nonprofit Corporation Act to be maintained in the State of Iowa may be, but need not be, the same as its principal place of business. The registered office may be changed from time to time by the Board of Directors as provided by law.

Section 1.02. Principal Place of Business. The principal place of business of the Association shall be located at the place, within or without the State of Iowa, fixed by (or pursuant to authority granted by) the Board of Directors from time to time.

Section 1.03. Other Places. The Association may conduct its business, carry on its operations, have offices, carry out any or all of its purposes, and exercise any or all of its powers any where in the world, within or without the State of Iowa.

ARTICLE 2. MEMBERS.

Section 2.01. Identity. The members of the Association shall consist of the respective Unit Owners of the property known as Jordan Square in West Des Moines, Iowa. The words "member" or "members" as used in these By-Laws mean and refer to "unit Owner" or "Unit Owners", as the case may be, as defined in the Condominium Declaration for Jordan Square. If a Unit Owner is an entity other than a natural person, it shall, within 30 days after recording of the deed or other document of title, designate in writing its representative. Membership shall be appurtenant to and shall not be separated from the ownership of any Unit.

Section 2.02. Succession. The membership of each Unit Owner shall terminate when he or she ceases to be a Unit Owner, and upon the sale, transfer, or other disposition of an ownership interest in the Project, his or her membership in the Association shall automatically be transferred to the new Unit Owner succeeding to such ownership interest. Upon the transfer of ownership of a Unit, however accomplished, the new Unit Owner acquiring or succeeding to such ownership shall provide the Secretary of the Association with a copy of the recorded deed or document of title and a copy of the mortgage, deed of trust, or lien thereon, if any, created in connection with such transfer of title, whereupon such new Unit Owner shall automatically become a member of the Association.

Section 2.03. Annual Meetings.

(a) First Annual Meeting. The first annual meeting of members of the Association shall be held on a date determined by the Board not less than 30 days nor more than 120 days after the date on which the Developer has consummated the sale of 80 percent of the Units contained in Parts 1 and 2 of Jordan Square but, if any event, not later than July 1, 1988. However, the Developer may call the first annual meeting of the members of the Association at any time prior to such date. Subject to the provisions of Section 3.02, the members shall elect Directors at the first annual meeting.

(b) Regular Annual Meetings. Subsequent to the first annual meeting, the regular annual meeting of the Association

shall be held each year for the purpose of electing Directors and for the transaction of such other business as may come before the meeting. The exact date, time, and place of the regular annual meeting shall be determined by the Board of Directors.

Section 2.04. Special Meetings. Special meetings of the members may be called, and a time and place fixed, by the President, any three Directors, or by ten percent of the members.

Section 2.05. Place of Meetings. Any meeting of the members may be held at any place within or without the State of Iowa. If no other place is fixed for a meeting of the members, the meeting place shall be the principal place of business of the Association in the State of Iowa.

Section 2.06. Notice. Notice of any meeting of members shall be given at least seven days prior thereto in the case of regular meetings and at least five days prior thereto in the case of special meetings by written notice delivered personally or mailed to each member. If mailed the notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his or her address as it appears on the records of the Association with postage prepaid.

Section 2.07. Voting. Each Unit shall be entitled to one vote in any election or on any issue upon which a vote is allowed or required. The Unit Owner shall cast the vote, and multiple owners shall act jointly in casting the vote. No fractional votes shall be permitted. If multiple Unit Owners are unable to agree as to how their vote shall be cast, they shall lose the right to vote on the matter in question. A Unit Owner's right to vote shall be automatically suspended for failure to pay when due the assessments levied in accordance with these By-Laws if the failure continues for ten days after written notice of delinquency.

Section 2.08. Voting Lists. At least three days before each meeting of members, a complete list of members entitled to vote at the meeting shall be prepared by the Secretary of the Association, listing the members in alphabetical order with the address of each member shown. This list shall be kept on file at the office of the Association and shall be subject to inspection by any member at any time during usual business hours. The list shall also be available at the time and place of the meeting and shall be subject to the inspection by any member during the meeting.

Section 2.09. Quorum. The presence at any meeting of members having 25 percent of the total vote shall constitute a quorum.

Section 2.10. Adjourned Meetings. Any meeting of the members may be adjourned from time to time and to any place, with notice to all members, by the affirmative vote of a majority of the members present at a meeting, even if less than a quorum (notwithstanding Sections 2.09 and 2.11). At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the original meeting with a quorum present. In the event a quorum is not present at an adjourned meeting, the members present, though less than a quorum, may give notice to all members of an adjourned meeting, and, at such adjourned meeting, ten percent of the members shall constitute a quorum.

Section 2.11. Vote Required for Action. Except as otherwise expressly provided by law, the Declaration, the Articles of Incorporation, or these By-Laws, the affirmative vote of a majority of the members present at a meeting at which a quorum is present shall be required and shall be sufficient to adopt any motion or resolution or take any action at any meeting

9 votes

21 votes

Of members. However, the following actions may be taken by the affirmative vote of a majority of the members present at a meeting, even if a quorum is not present (notwithstanding Section 2.09): election or appointment of a temporary chairman or temporary secretary for the meeting (if necessary), or adoption of any motion to adjourn or recess the meeting, or any proper amendment to any such motion.

Section 2.12. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and shall be filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance of the Unit by the Unit Owner.

Section 2.13. Rules and Order of Business. Except as otherwise expressly required by law, the Declaration, the Articles of Incorporation, or these By-Laws, meetings of members shall be conducted in accordance with Robert's Rules of Order, Revised (as further revised from time to time). Unless otherwise determined by the Board of Directors, the order of business at meetings of members, to the extent applicable, shall be as follows:

- (a) Roll call or other determination of attendance and a quorum.
- (b) Proof of notice of meeting.
- (c) Action on minutes of preceding meeting and any other unapproved minutes.
- (d) Election of Directors.
- (e) Unfinished business.
- (f) New business.
- (g) Adjournment.

Failure to comply with this Section shall not affect the validity of any action taken at any meeting unless specific and timely objection is made at the meeting and the person complaining sustains direct and material damage because of such failure.

#### ARTICLE 3. BOARD OF DIRECTORS

Section 3.01. General Powers. The business and affairs of the Association shall be managed by its Board of Directors. The Board of Directors may exercise all powers of the Association and may do all lawful acts and things not prohibited by the Declaration, the Articles of Incorporation, or these By-Laws. The Board shall have the powers and duties to:

- (a) Manage the business and affairs of the Association and the Project.
- (b) Elect and remove the officers of the Association as provided in these By-Laws.
- (c) Engage the services of an agent (the "Managing Agent") to maintain, repair, administer, and operate the Project or any part thereof for all the members upon such terms, for such compensation, and with such authority as the Board may determine.
- (d) Purchase and maintain as a Common Expense adequate insurance pursuant to the Declaration.
- (e) Formulate policies for the administration, management, and operation of the Project and the Common Elements.

(f) Adopt reasonable rules and regulations, with written notice thereof to all members, governing the administration, management, operation, and use of the Project and the Common Elements, and amend such rules and regulations from time to time.

(g) Provide for the maintenance, repair, and replacement of the Common Elements and payments therefor and approve payment vouchers or delegate such approval to the officers of the Managing Agent.

(h) Provide for the designation, hiring, and removal of employees and other personnel, including accountants and attorneys; engage or contract for the services of others; make purchases for the maintenance, repair, replacement, administration, management, and operation of the Project and the Common Elements; and delegate any such powers to the Managing Agent.

(i) Appoint committees of the Board and delegate to such committees the Board's authority to carry out certain duties of the Board.

(j) Determine the fiscal year of the Association and change the fiscal year from time to time as the Board deems advisable.

(k) Estimate the amount of the annual budget and provide the manner of assessing and collecting from the members their respective shares of such estimated expenses, as provided in these By-Laws.

(l) Borrow money on behalf of the Association in such amounts as may reasonably be required from time to time.

(m) Enter any lease or purchase agreement for the lease or purchase of premises suitable for use by a custodian, upon such terms as the Board may determine.

(n) Unless otherwise provided herein or in the Declaration, comply with the instructions of a majority of the members, as defined in the Declaration, as expressed in a resolution duly adopted at any annual or special meeting of members.

(o) Exercise all other powers and duties of the Council of Co-owners referred to in the Act and all powers and duties of a Board of Directors referred to in the Declaration, these By-Laws, and the Iowa Nonprofit Corporation Act.

Section 3.02. First Board. The Developer shall appoint one or more Directors who shall constitute the First Board, and the First Board shall manage the business and affairs of The Association until the first annual meeting of members. The Developer may appoint additional Directors to the First Board from time to time and may remove Directors from the First Board at any time by written notice. The Developer shall select 40 percent of the Directors elected at the first annual meeting of members. The provisions of this Section shall control over any conflicting provisions of these By-Laws.

Section 3.03. Number and Election. The number of Directors shall be the number determined by the Directors at each annual meeting of the Association, but not less than five nor more than fifteen. If such determination is not expressly made by resolution or motion at any annual meeting of the Association, the election of Directors at such meeting shall constitute a determination that the number of Directors shall be equal to the number of Directors elected at such meeting. If any annual meeting of the Association fails to make such determination and

does not elect Directors, the number of Directors shall be the same as the number of Directors determined at the most recent meeting of the Association at which the number of Directors was determined as provided in this Section.

At any special meeting of the Association the Directors may increase or decrease the number of Directors, but no such decrease shall shorten the term of any incumbent Director.

The Directors may leave one or more Directorships vacant. Any such vacancy may be filled as provided in Section 3.04.

Wherever used in these By-laws, the words "the number of Directors fixed by Section 3.03" mean the number of Directors determined from time to time in accordance with this Section, including any vacant Directorship.

Section 3.04. Terms of Directors.

(a) Each Director elected at the annual meeting of the Association shall serve for a term of three years and until the term of his or her successor begins, unless he or she is sooner removed or ceases to be a Director as provided in these By-laws. At the first annual meeting of the Association, one-third of the elected Directors shall be elected for a term of one year, one-third shall be elected for a term of two years, and one-third shall be elected for a term of three years; thereafter, one-third of the elected Directors shall be elected each year for terms of three years. No persons so elected shall serve more than two consecutive three-year terms.

(b) The terms of a Director elected to fill a vacancy shall be as provided in Section 3.05.

(c) Any Director may resign at any time by filing his or her written resignation with the President or Secretary. Resignation shall take effect immediately upon such filing, unless a later effective date is stated therein.

Section 3.05. Vacancies. Any vacancy occurring in the Board of Directors for any reason and any Directorship to be filled by reason of an increase in the number of Directors may be filled by the affirmative vote by a majority of the Directors then in office, even if less than a quorum. The Board of Directors shall have sole authority to determine whether a vacancy exists. A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

Section 3.06. Annual and Regular Meetings. The annual meeting of the Board of Directors shall be held within ten days following the annual meeting of members each year for the purpose of electing officers and for the transaction of such other business as may come before the meeting. The exact date, time, and place of the annual meeting shall be determined by the Board of Directors or the President.

Regular meetings of the Board of Directors may be held at the times (but at least every calendar quarter) and places fixed by (or pursuant to authority granted by) resolution or motion adopted by the Board of Directors from time to time, without notice other than such resolution or motion. However, unless both the time and place of such a regular meeting are fixed by the Board of Directors, notice of the meeting shall be given as provided in Section 3.10.

Section 3.07. Special Meetings. Special meetings of the Board of Directors may be called, and a time and place fixed, by the President, the Secretary, or any three Directors.

Section 3.08. Place of Board Meetings. Any meeting of the Board of Directors may be held at any place, within or without the State of Iowa. The place of each meeting of the Board of Directors shall be fixed as provided in these By-laws, or by a waiver or waivers of notice fixing the place of the meeting and signed by all Directors then in office. If no other place is fixed for a meeting of the Board of Directors, the meeting place shall be the principal place of business of the Association in the State of Iowa.

Section 3.09. Notice. Notice of any meeting of the Board of Directors shall be given at least 72 hours prior thereto in the case of regular meetings and at least 48 hours prior thereto in the case of special meetings by written notice delivered personally or mailed to each Director or by oral communication. If mailed the notice shall be deemed to be delivered when deposited in the United States mail addressed to the Director at his or her address as it appears on the records of the Association with postage prepaid.

Section 3.10. Quorum. Except as otherwise expressly provided by the Articles of Incorporation or these By-laws, a majority of the number of Directors fixed by Section 3.03 shall constitute a quorum at any meeting of the Board of Directors.

Section 3.11. Adjourned Board Meetings. Any meeting of the Board of Directors may be adjourned from time to time and to any place, without further notice, by the affirmative vote of a majority of the Directors present at the meeting, even if less than a Quorum (notwithstanding Section 3.11 and 3.13). At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the original meeting with a quorum present.

Section 3.12. Vote Required for Board Action. Except as otherwise expressly provided in these By-laws, the affirmative vote of a majority of the Directors present at a meeting at which a quorum is present shall be required and shall be sufficient to adopt any motion or resolution or take any action at any meeting of the Board of Directors.

However, the following actions may be taken by the affirmative vote of a majority of the Directors present at the meeting, even if a quorum is not present (notwithstanding Section 3.11): election or appointment of a temporary chairman or temporary secretary for the meeting (if necessary), or adoption of any motion to adjourn or recess the meeting or any proper amendment to any such motion.

Whenever the minutes of any meeting of the Board of Directors state that any motion or resolution was adopted or that any action was taken at the meeting, the minutes shall be prima facie evidence that the motion or resolution was duly adopted or that the action was duly taken by the required vote. The minutes need not state the number of Directors voting for and against the motion, resolution, or action.

Section 3.13. Directors' Voting Rights. Each Director (including without limitation, any Director who is also an officer of the Association and any Director presiding at a meeting) may vote on any question at any meeting of the Board of Directors, except as otherwise expressly provided in these By-laws.

Section 3.14. Organization. The President, or a Vice-President, as provided in these By-laws, shall preside at each meeting of the Board of Directors. If the President and each Vice-President are absent or decline to preside, the Board of Directors may elect or appoint an temporary chairman to preside at the meeting. The Secretary or an Assistant Secretary, as

provided in these By-laws, shall act as secretary of each meeting of the Board of Directors. If the Secretary and each Assistant Secretary are absent or decline to act, the Board of Directors may elect or appoint a temporary secretary for the meeting.

Section 3.15. Rules and Order of Business. The Board of Directors may adopt any rules, not inconsistent with applicable law or the Articles of Incorporation or these By-laws, which the Board of Directors deems advisable for the conduct of its meetings. Except as otherwise expressly required by law, the Declaration, the Articles of Incorporation, these By-laws, or such rules, meetings of the Board of Directors shall be conducted in accordance with Robert's Rules of Order, Revised (as further revised from time to time). Unless otherwise determined by the Board of Directors, the order of business at its first meeting held after each annual meeting of members, and at other meetings of the Board of Directors to the extent applicable, shall be:

- (1) Roll call or other determination of attendance and quorum.
- (2) Proof of notice of meeting.
- (3) Action upon minutes of preceding meeting and any other unapproved minutes.
- (4) Reports of officers and committees.
- (5) Election of officers.
- (6) Unfinished business.
- (7) New business.
- (8) Adjournment.

Failure to comply with this Section shall not affect the validity of any action taken at any meeting unless (a) specific and timely objection is made at the meeting and (b) the person complaining sustains direct and material damage because of such failure.

Section 3.16. Presumption of Assent. A Director of the Association who is present at a meeting of the Board of Directors (or a committee of Directors) at which action on any corporate matter is taken, shall be presumed to have assented to the action taken unless his or her dissent or abstention is entered in the minutes of the meeting or unless the Director files a written dissent or abstention with the person acting as secretary of the meeting before its adjournment or forwards the dissent or abstention by registered or certified mail to the Secretary of the Association immediately after adjournment of the meeting. The right to dissent or abstain from voting shall not apply to a Director who voted in favor of the action.

Section 3.17. Waiver of Notice by Directors. Whenever any notice is required to be given to any Director under any provision of law, the Declaration, the Articles of Incorporation, or these By-laws, a waiver thereof in writing signed by the Director or Directors entitled to the notice, whether signed before or after the time of the meeting or event of which notice is required, shall be equivalent to the giving of the notice. Neither the business to be transacted at, nor the purpose of, any meeting of the Board of Directors need be specified in any waiver of notice of the meeting.

The attendance of any Director at any meeting of the Board of Directors shall constitute a waiver by the Director of any notice of the meeting to which he or she would otherwise be entitled, and shall constitute consent by the Director to the time and place of the meeting and the transaction of all business which may come before the meeting.

However, a Director's attendance shall not constitute a waiver if the Director attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened and if he or she expressly states such objection promptly after the meeting begins.

Section 3.18. Informal Action by Directors. Any action required by law, the Declaration, the Articles of Incorporation, or these By-laws to be taken by vote of or at a meeting of the Board of Directors (or a committee of Directors), or any action which may or could be taken at a meeting of the Board of Directors (or a committee of Directors), may be taken without a meeting if a consent in writing setting forth the action taken is signed by all Directors then in office (or all members of the committee, as the case may be). Such consent shall have the same force and effect as a unanimous vote, and any officer may state or certify that the action was taken by a unanimous vote. The signing by each Director (or each member of the committee) of any one of several duplicate originals or copies of the written consent shall be sufficient. The written consent shall be filed with the Secretary as part of the minutes of the Association. The action shall be deemed to be taken on the date of the written consent as stated therein or on the date of filing with the Secretary, whichever of these two dates occurs first.

Section 3.19. Removal of Directors. In addition to the provisions of Section 6.03 of the Articles of Incorporation, any elected Director or Directors may be removed for any cause after notice and hearing or reasonable opportunity for hearing, by the affirmative vote of 60 percent of the full number of members at any regular or special meeting of the members.

Section 3.20. Compensation. A Director may be paid for his or her actual reasonable expenses in the performance of his or her duties. However, no Director shall receive compensation for attending meetings of the Board of Directors, unless expressly provided for in resolutions duly adopted by a majority of the members. However, nothing shall preclude any Director from serving the Association in any other capacity and receiving compensation therefor.

#### ARTICLE 4. OFFICERS

Section 4.01. Required and Optional Officers. The officers of the Association shall be a President, one or more Vice-presidents (the number to be determined by the Board of Directors from time to time), a Secretary, and a Treasurer. The Board of Directors may also elect or appoint one or more Assistant Secretaries, one or more Assistant Treasurers, and any other officers which the Board of Directors deems advisable.

Section 4.02. Election or Appointment of Officers. At its first meeting following the annual meeting, the Board of Directors shall elect the officers required by Section 4.01 and may elect or appoint any other officers and agents which the Board deems advisable. If in any year the election of officers does not take place at such meeting, the election shall be held as soon thereafter as is convenient. Any election may be conducted by written ballot, but need not be conducted by written ballot unless required by a rule or motion adopted by the Board of Directors.

Failure to hold one or more annual elections of officers shall not end the term of any officer, shall not cause any vacancy, and shall not affect the validity of any act of the Association or of any officer; and the term of each officer shall continue as provided in Section 4.03.



Section 4.03. Terms and Qualifications of Officers. The term of each officer shall begin at the time of his or her election, unless otherwise ordered by the Board of Directors. Unless sooner removed as provided in Section 4.04 or unless the office is abolished, each officer shall serve for a term ending at the time of the next election of officers referred to in the first two sentences of Section 4.02. However, any officer may resign at any time by delivering a written resignation to the president or Secretary of the Association. The resignation shall take effect immediately upon delivery, unless it states a later effective date.

Except for the President and Vice-Presidents, officers need not be Directors of the Association. Any two or more offices may be held by the same person.

Section 4.04. Removal of Officers. Any officer or agent of the Association may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 4.05. Vacancies. Any vacancy occurring in any office for any reason may be filled by the Board of Directors, or the Board of Directors may authorize any officer or committee to fill the vacancy.

An officer elected or appointed to fill a vacancy shall serve for a term as provided in Section 4.03. However, if an officer is elected or appointed to fill a vacancy caused by the resignation of an predecessor whose resignation has not yet become effective, the new officer's term shall begin when the predecessor's resignation becomes effective.

Section 4.06. Duties and Powers of Officers. Except as otherwise expressly provided by law or the Articles of Incorporation, the duties and powers of all officers and agents of the Association may be determined and defined from time to time by the Board of Directors.

Unless otherwise determined by the Board of Directors, the officers referred to in the following Sections shall have the duties and powers stated in the following Sections, in addition to all duties and powers prescribed by law, the Declaration, the Articles of Incorporation, or other provisions of these By-Laws. However, the Board of Directors at any time may change, add to, limit, transfer to another officer or agent, or abolish any or all of the duties and powers of any officer or agent of the Association (including, without limitation, the duties and powers stated in the following Sections and in other provisions of these By-Laws).

Any person who holds two or more offices at the same time may perform or exercise any or all duties and powers or either or both offices in either or both capacities.

Section 4.07. President. The president shall be the principal executive officer of the Corporation and, subject to the control of the Board of Directors, shall in general supervise and control all the business and affairs of the Association. He shall, when present, preside at all meetings of the Board of Directors. He shall have authority to sign, execute, and acknowledge on behalf of the Corporation, all deeds, mortgages, bonds, contracts, leases, reports, and all other documents or instruments necessary or proper to be executed in the course of the Association's regular business, or which shall be authorized by resolution of the Board of Directors; and, except as otherwise provided by law or the Board of Directors, he may authorize the

Vice-President or other officer or agent of the Association to sign, execute, and acknowledge such documents or instruments in his place. In general he shall perform all duties incident to the office of President and such other duties as may be prescribed from time to time by the Board of Directors.

Section 4.08. Vice Presidents. Subject to Section 4.06, in the absence of the President or in event of his or her death or inability to act, the Vice-President (if more than one, the Vice-presidents in the order designated by the Board of Directors or, in the absence of any designation, in the order in which their names appear in the minutes showing their election) shall perform the duties and exercise the powers of the President (including, without limitation, all duties and powers of the President under all provisions of the Articles of Incorporation and these By-laws, or prescribed by the Board of Directors, or arising in any other way). Each Vice-President shall also have any other duties and powers prescribed by the Board of Directors or the President.

Section 4.09. Secretary. Subject to Section 4.06, the Secretary shall:

- (a) when present, act as secretary of each meeting of members and of the Board of Directors;
- (b) keep minutes of all meetings of members and of the Board of Directors in minute books;
- (c) see that all notices are given and that records are made and filed as required by law and the Articles of Incorporation and these By-laws;
- (d) be the custodian of the Association's records;
- (e) have all the usual duties and powers of the Secretary of a corporation and any other duties and powers prescribed by the Board of Directors or the President.

Section 4.10. Treasurer. Subject to Section 4.06, the Treasurer shall:

- (a) have charge of all funds, securities, and evidences of indebtedness belonging to the Association;
- (b) receive and give receipts for money payable to the Association;
- (c) cause the Association's funds to be deposited in the name of and to the credit of the Association in depositories designated by or pursuant to authority granted by the Board of Directors;
- (d) cause the Association's funds to be disbursed when and as authorized;
- (e) see that correct and complete books and records of account are kept, in accordance with generally accepted accounting principles uniformly and consistently applied;
- (f) see that correct financial statements are prepared and presented to the Board of Directors from time to time, in accordance with generally accepted accounting principles uniformly and consistently applied; and
- (g) have all the usual duties and powers of the Treasurer of a corporation and any other duties and powers prescribed by the Board of Directors or the President.

Section 4.11. Assistant Secretaries. Subject to Section 4.06, in the absence of the Secretary or in event of his death or inability or refusal to act, the Assistant Secretary (if more than one, the Assistant Secretaries in the order designated by the Board of Directors or, in the absence of any designation, in the order in which their names appear in the minutes showing their election or appointment) shall perform the duties and exercise the appointment) shall perform the duties and exercise the powers of the Secretary. Each Assistant Secretary shall also have any other duties and powers prescribed by the Board of Directors, the President, or the Secretary.

Section 4.12. Assistant Treasurers. Subject to Section 4.06, in the absence of the Treasurer or in the event of his death or inability or refusal to act, the Assistant Treasurer (if more than one, the Assistant Treasurers in the order designated by the Board of Directors or, in the absence of any designation, in the order in which their names appear in the minutes showing their election or appointment) shall perform the duties and exercise the powers of the Treasurer. Each Assistant Treasurer shall also have any other duties and powers prescribed by the Board of Directors, the President, or the Treasurer.

Section 4.13. Compensation. An officer may be paid for his or her actual reasonable expenses in the performance of his or her duties. However, no officer shall receive compensation for attending meetings of the Board of Directors, unless expressly provided for in resolutions duly adopted at a members' meeting. However, nothing shall preclude any officer from serving the Association in any other capacity and receiving compensation therefor.

#### ARTICLE 5. COMMITTEES

Section 5.01. Executive Committee. The Board of Directors may elect or appoint an Executive Committee consisting of the President, a Vice-President, and one or more other members of the Board of Directors. Except as otherwise provided by law, the Executive Committee shall have and may exercise all the duties and powers of the Board of Directors in the interim between meetings of the Board of Directors. However, the Executive Committee shall have no duties or powers to elect or remove officers; adopt, alter, amend, or repeal By-laws; or full vacancies on the Board of Directors.

Any action taken by the Executive Committee shall be reported to the Board of Directors after such action is taken, and the Board of Directors shall ratify, modify, or disaffirm the acts of the Executive Committee.

Section 5.02. Nominating Committee. At least 30 days prior to the annual meeting of members, the President shall appoint, subject to approval of the Board of Directors, a Nominating Committee of at least three members. At least 15 days prior to the annual meeting, the Nominating Committee shall submit in writing to the members the names of nominees for each Directorship to be filled. Additional nominations may be made from the floor at the annual meeting.

Section 5.03. Architectural Control Committee. The Board of Directors shall also provide for the establishment of Architectural Control Committee of at least three members. The purpose of such committee shall be to advise the Board regarding proposed alterations to any Building or improvements on the subject property, and its members shall serve at the pleasure of the Board of Directors.

Section 5.04. Other Committees. The Board of Directors may provide for and appoint such additional committees as the Board deems necessary to achieve the purposes of the Association. The Board of Directors at any time may increase or decrease the number of members of, remove any member of, adopt rules and regulations for, change the functions of, or terminate the existence of any such committee.

#### ARTICLE 6...BUDGET AND ASSESSMENTS

Section 6.01. Annual Budget. The Board of Directors shall prepare or cause to be prepared for each fiscal year (a) an annual budget of estimated Common Expenses and (b) assessments to be levied against each Unit. The annual budget shall take into account the estimated Common Expenses and cash requirements for the year, including, without limitation, salaries, wages, payroll taxes, legal and accounting fees, working capital fund, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, insurance, fuel, power, and similar items. The annual budget shall also take into account any surplus or deficit from the current fiscal year and the estimated available cash from the lease, operation, or use of the Common Elements. The annual budget shall provide for a reserve for contingencies and a reserve for replacements in such amounts as may be determined by the Board. The Board shall cause to be set out as separate items any expenses or income attributable to the Garage Buildings. This shall include any and all expenses for the repair, maintenance, replacement, and operation (including utilities, if any, but not including costs for outside lighting of the parking area) of the Garage Buildings. The intent of this provision is to insure that only Unit Owners who own Garage Stalls must pay for their maintenance or share in any proceeds arising from their destruction.

Section 6.02. Adoption of Budget. The Board of Directors shall adopt an annual budget and shall levy assessments against each Unit and Garage Stall. After the annual budget and assessments are adopted by the Board, copies shall be distributed to each member at least 30 days prior to the beginning of the fiscal year to which the budget and assessments apply. The annual budget and the assessments shall become effective unless disapproved by a vote of a majority of the total members of the Association prior to the first day of the new fiscal year. In the event the membership disapproves the annual budget or assessments or the Board of Directors fails for any reason to adopt a budget or assessments for the succeeding fiscal year, the budget or assessments in effect for the current year shall be repeated for the succeeding fiscal year until such time as an annual budget and assessments are approved for such succeeding year.

Section 6.03. Assessments. The annual budget shall include assessments for each member, and each member shall pay on or before the first day of each month his or her assessment as follows:

- (a) General Assessment. Each member shall pay his or her proportionate share of the Common Expenses for each year as shown by the annual budget. Payment shall be in monthly installments of 1/12 of the member's proportionate share.
- (b) Director Expenses. The Board of Directors may, and shall in the case of costs attributable to the Garage Buildings, designate different categories of expenses and allocate specific categories to specific types of buildings, such as insurance and reserve for replacements. Such direct expenses shall be chargeable directly against the specific type of building, and the

payment of such direct expenses in addition to the general assessment for Common Expenses.

(c) Continuation. If the Board of Directors does not approve an annual budget or such budget is disapproved by the members, each member shall continue to pay each month 1/2 of the amount of his or her respective assessment as last determined.

Section 6.04. Proration. If the first or any succeeding fiscal year shall be less than a full year, assessments for each member shall be proportionate to the number of months and days in such fiscal year.

Section 6.05. Annual Report. Within 120 days after the end of each fiscal year or as soon thereafter as is practicable, the Board of Directors shall furnish to each member a statement for the preceding fiscal year, showing receipts and expenditures and such other information as the Board may determine.

Section 6.06. Supplemental Budget. If it shall appear to the Board of Directors at any time that the assessments, determined in accordance with the annual budget for the year, are or will be insufficient to cover the estimated Common Expenses for the remainder of such year, the Board may prepare and approve a supplemental budget covering the estimated deficiency for the remainder of such year. Copies of such supplemental budget shall be distributed to each member. The supplemental budget and the assessments made in the supplemental budget shall become effective unless disapproved by a vote of a majority of the total members of the Association within 15 days after copies are mailed to members.

Section 6.07. Liens. If any member fails or refused to pay the monthly assessment when due, the amount thereof, together with interest thereon at the maximum lawful rate in the State of Iowa from and after the date the assessment is due and payable, shall constitute a lien on the interest of such member as provided in the Declaration.

Section 6.08. Records and Statement of Account. The Board of Directors shall cause records required by the Act to be kept, including detailed and accurate records of the receipts and expenditures effecting the Common Elements and Limited Common Elements. Payment vouchers may be approved in such manner as the Board may determine. Upon written request and payment of a reasonable fee, the Board shall furnish to any member a statement of his or her account setting forth the amount of any unpaid assessments or other charges due and owing from such member, which statement of account shall be conclusive evidence of the amount of unpaid assessments or other charges due as of the date of such statement.

Section 6.09. Holding of Funds. All funds collected pursuant to the Declaration and these By-laws shall be held and expended for the purposes outlined in said documents, and, except for special assessments that may be levied against less than all the members and for such adjustments as may be required to reflect delinquent or prepaid assessments, shall be held for the benefit, use, and account of all members. Any person who handles funds of the Association shall be covered by an adequate fidelity bond, the premium for which may be a Common Expense.

Section 6.10. Reserve. The Board shall establish a reserve fund for replacement of common Elements, and the reserve fund shall be maintained by portions of the monthly installments of assessments. For the initial months of operation of the project, there shall be a working capital fund equal to at least two months' estimated Common Expense assessment for each unit.

ARTICLE 7... GENERAL PROVISIONS

Section 7.01. Seal. The Association shall have no seal unless otherwise ordered by the Board of Directors. The Board of Directors may decide at any time that the Association shall have a seal, and thereafter the Association shall have a seal until otherwise ordered by the Board of Directors.

Section 7.02. Fiscal Year. The fiscal year of the Association shall be determined by the Board of Directors from time to time.

Section 7.03. Execution of Documents and Instruments. All deeds and conveyances of real estate, mortgages of real estate, and leases of real estate (for an initial term of five years or more) to be executed by the Association shall be signed in the name of the Association by the President, or a Vice-President and signed or attested by the Secretary or an Assistant Secretary.

All other documents or instruments to be executed by the Association (including, without limitation, contracts, and agreements, bonds, reports, releases, promissory notes, and evidences of indebtedness; and deeds, conveyances, mortgages, and leases other than those referred to in the preceding sentence) shall be signed in the name of the Association by any one or more officers of the Association.

However, from time to time the Board of Directors or President may change, add to, limit, transfer to another officer or agent, or abolish the authority of any officer or officers to sign any or all documents or instruments, or may authorize the execution of any document or instrument by any person or persons. Such action may be either general or confined to specific instances.

Section 7.04. Borrowing. No money shall be borrowed on behalf of the Association and no evidence of indebtedness shall be issued in its name unless authorized by (or pursuant to authority granted by) the Board of Directors. Authorization may be either general or confined to specific instances.

Section 7.05. Checks and Drafts. All checks and drafts issued in the name of the Association shall be signed by the person or persons and in the manner authorized by (or pursuant to authority granted by) the Board of Directors.

Section 7.06. Indemnification. The Association may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, or suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he or she is or was a Director, officer, member, employee, or agent of the Association, or is or was serving at the request of the Association as a Director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or enterprise, against expenses (including attorneys fees), judgments, fines, and amounts paid in settlement with the action, suit, or proceeding, in the manner and to the extent provided in this section.

(a) Indemnification may be made in the manner and to the extent provided by Iowa law.

(b) Indemnification may be made if and to the extent that either the Board of Directors or independent legal counsel (in a written opinion) determines that the person to be indemnified acted in good faith and in the manner he or she believed to be in or not opposed to the best interests of the Association. The Board of Directors may make this determination (notwithstanding Section 3.11 and 3.13) by a vote or consent which includes either (1) the votes or consents of a majority of a quorum consisting of Directors who were not parties to the

action, suit, or proceeding, or (2) a unanimous vote or consent of all Directors who were not parties to the action, suit, or proceeding (whether or not constituting a quorum) if there is at least one such Director.

(c) Indemnification may be made in accordance with any agreement authorized by the Board of Directors before the commencement of the action, suit, or proceeding.

(d) Subsections (a), (b), and (c) of this Section provide independent and alternative methods of indemnification. Restrictions, prohibitions, and unfavorable presumptions contained in the law governing indemnification referred to in Subsection (a) shall not apply to indemnification under Subsection (b) or (c).

(e) Expenses incurred in defending any action, suit, or proceeding referred to in this Section may be paid by the Association in advance of the final disposition of the action, suit, or proceeding, upon authorization by any of the methods referred to in this Section and upon receipt of an undertaking by or on behalf of the person to be indemnified to repay such amount unless it is ultimately determined that he or she is entitled to be indemnified by the Association as provided in this Section.

(f) To the extent that a person referred to in this Section has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in this Section or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred in connection therewith.

(g) Any indemnification of a person may be both as to action in his or her official capacity and as to action in another capacity while holding such official capacity; shall continue as to a person who has ceased to be a Director, officer, member, employee, or agent; and shall inure to the benefit of the heirs, executors, and administrators of the person.

(h) The Association and the Board shall have the power and responsibility for raising, by special assessment or otherwise, any sums required to discharge the obligations under this Section; provided however, that the liability of any member shall be limited to such proportion of the total liability hereunder as the member's portion of the total liability hereunder as the member's fractional of interest in the Common Elements bears to the total interest of all the members in the Common Elements.

Section 7:07. Limitation of Liability. No Director or officer of the Association shall be liable to the Association for any act, omission, or negligence, except that he or she shall be liable for loss directly resulting from his or her willful or reckless misconduct. This Section is in addition to all other limitations of liability contained in applicable law, the Declaration, the Articles of Incorporation, or other provisions of these By-laws. The liability of Directors and officers shall be limited or removed to the maximum extent provided either by this Section or by other provisions of these By-laws or the Articles of Incorporation or by applicable law; and these By-laws shall be liberally construed to carry out this purpose.

Section 7:08. Authority to Carry Out Resolutions and Motions. Each resolution or motion adopted by the Board of Directors shall be deemed to include the following provision, unless the resolution or motion expressly negates this provision: "The officers of the Association are severally authorized on behalf of the Association to do all acts and things which may be necessary or convenient to carry out the intent of this resolution (motion), including, without limitation, the

authority to make, execute, seal, deliver, file, and perform all appropriate contracts, agreements, certificates, documents, and instruments."

The foregoing provision shall automatically be part of the resolution or motion even though not stated in the minutes; and any officer may state or certify that the foregoing provision is included in the resolution or motion.

Section 7.09...Effect of Partial Invalidity. If a court of competent jurisdiction judges to be invalid any clause, sentence, paragraph, section, or part of the Articles of Incorporation or these By-Laws, the judgment or decree shall not affect, impair, invalidate, or nullify the remainder of the Articles of Incorporation or these By-Laws; but the effect shall be confined to the clause, sentence, paragraph, section, or part adjudged to be invalid.

Section 7.10...Enforcement Proceedings. Except as provided in Section 2.07, the Board shall not impose a fine, suspend voting rights, or infringe upon any other rights of a member or occupant for violations of restrictions unless and until the following procedure is completed:

(a) Demand. Written demand to cease and desist an alleged violation shall be served upon the alleged violator specifying the alleged violation, the action required to abate the violation, and a time period not less than ten days during which the violation may be abated without further sanction, if such violation is a continuing one or a statement that any further violation of the same nature may result in the imposition of sanction after notice if the violation is not continuing.

(b) Notice. Within 12 months of such demand, if the violation continues past the period stated in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board shall serve the violator with written notice of a hearing to be held by the Board. The notice shall contain the nature of the alleged violation, the time and place of the hearing, which shall be not less than ten days from the giving of the notice, an invitation to attend the hearing and produce any statement, evidence, and witnesses on his or her behalf, and the proposed sanction to be imposed.

(c) Hearing. The hearing shall be held in executive session pursuant to the notice affording the Member a reasonable opportunity to be heard. Prior to the effectiveness of any sanction, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer or Director who delivered such notice. The notice requirement shall be deemed satisfied if a violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any. The member subject to the procedure and hearing set forth herein shall have the right to present evidence (the formal rules of evidence shall not apply to the hearing) and to be represented by counsel at his or her own expense.

Section 7.11...General Definitions. Wherever used in the Articles of Incorporation or in these By-Laws, unless the context or another provision of the Articles of Incorporation or these By-Laws clearly indicates otherwise:

(a) Any word or term defined in the Iowa Nonprofit Corporation Act or the Declaration shall have the same meaning in the Articles of Incorporation or in these By-Laws.



(b) The use of the singular includes the plural. The use of the plural includes the singular. These of any gender is applicable to any other gender.

(c) "Written" means written, typed, printed, duplicated, or reproduced by any process.

(d) "Adopt", "adopted", "adoption", "authorized", "authorized", "authorization", "approve", "approved", "approval", "ratify", "ratified", and "ratification" are interchangeable words each of which includes all of said words.

(e) Headings and reference in margins are included for convenience and shall not be construed to limit or restrict any provisions of the Articles of Incorporation or these By-Laws.

#### ARTICLE 8...AMENDMENTS TO BY-LAWS

Section 8.01...Reservation of Right to Amend...Retroactive Effect. The Association reserves the right from time to time to amend these By-Laws in the manner now or hereafter permitted by the Declaration, the Articles of Incorporation, and these By-Laws, whether or not the amendment constitutes or results in a fundamental change in the purposes or structure of the Association. The original By-Laws of the Association and each amendment to the By-Laws (unless otherwise expressly stated in the amendment or in the resolution adopting it) shall be effective retroactively to the beginning of the Association's existence and (to the maximum possible extent) shall apply to acts, transactions, and events occurring and rights and liabilities arising before adoption of the By-Laws of the amendment. The preceding sentence and the retroactive effect of the By-Laws and amendments shall not invalidate or impair any act or transaction which would otherwise be valid. Wherever used in these By-Laws with respect to the By-Laws, the word "amend", "amended", or "amendment" includes and applies to the amendment, alteration, or repeal of any or all provisions of the By-Laws or the adoption of new By-Laws.

Section 8.02...Procedure to Amend; Board Action. Subject to paragraph 6.2(b) of the Declaration, any amendment to these By-Laws may be adopted at any meeting of the Board of Directors by the affirmative vote of 75 percent of the number of Directors fixed by Section 3.03. Notice of any proposed amendment to the By-Laws and the time and place of the meeting at which the proposed amendment is to be considered shall be given to all members at least ten days prior to such meeting.

INST. NO. 035846  
POLK COUNTY, IOWA  
FILED FOR RECORD 25 FEB 27 1985  
Dwy

*Handwritten:* 5/18/85, 5/18/85, X, X

THE JORDAN SQUARE  
CONDOMINIUM DECLARATION  
AMENDMENT  
TO  
FEB 27 1985  
A.M.  
P.M.  
AT 12:11  
ALEXANDER INSPIRE, Recorder  
BY MICHAEL Dobby

WHEREAS, the Jordan Square Condominium Declaration was recorded on December 20, 1984, in Book 5412, Page 487 and following, in the

Book of Records in the Polk County Recorder's office; and

WHEREAS, by said Condominium Declaration the owners of the

real estate described below submitted certain property to the Iowa

Horizontal Property Regime; and

WHEREAS, the property submitted to said Horizontal Property

Regime as set out in Exhibit "A" of the aforesaid Condominium

Declaration was described in said Declaration as follows:

That part of Lot 7 in the partition plat of Charles Nuttall Estate in the SW 1/4 of section 10 T. 78 N. R. 25 W. of the fifth P.M. line East and North of highway except the North 139.7 feet of the West 295.8 feet measured on the North line more particularly described as follows:

Commencing at the SE corner of the SW 1/4 of section 10 T. 78 N. R. 25 W. of the fifth P.M.; thence N 89°44'12" W. along the south line of said SW 1/4 for 1316.68 feet; thence N. 09°15'48" E. for 14.94 feet to a point on the North right-of-way line of Railroad Avenue and also being the point-of-beginning; thence N. 97°24'03" W. along said North line for 421.55 feet to a point; thence E. 90°00'00" E., 436.25 feet to a point; thence E. 90°00'00" E., 152.87 feet to a point on the East line of said Lot 7; thence S. 00°00'00" E., 450.00 feet along the East line of said Lot 7 to the point of beginning, and containing 3.920 acres, more or less, less street.

and;

WHEREAS, the aforesaid property at the time of the submission

of the aforesaid Condominium Declaration had been legally platted

as Lot 1, Jordan Square Plat 1, an official plat now included

5181 151

J.C. 2/19/85

In and forming a part of this amendment is a copy of the aforesaid Declaration as submitted to the Recorder's office and by this statement is hereby incorporated into this statement entirely.

NOW, THEREFORE, the undersigned hereby certifies that the foregoing is a true and correct copy of the Declaration as submitted to the Recorder's office and by this statement is hereby incorporated into this statement entirely.

In its entirety heretofore submitted to the Recorder's office and by this statement is hereby incorporated into this statement entirely.

1. Exhibit "A" as attached to this statement is hereby incorporated into this statement entirely.

2. Exhibit "B" as attached to this statement is hereby incorporated into this statement entirely.

and following are the names of the persons who have signed the Declaration as set forth in Exhibit "A" and Exhibit "B":

1. Person whose name is set forth in Exhibit "A" and the following:

No. 035846  
OLK COUNTY, IOWA  
FILED FOR RECORD 250 *Chg*

FEB 27 1985 A.M.

1:44 P.M.

SHARPE INSURANCE RECORDS

1000 Hill County

Insurance was recorded

following, in the

owners of the

Project, in the

Project

Project

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Project

In and forming a part of the City of West Des Moines, Iowa; and  
WHEREAS, the developer desires to make certain amendments  
to the aforesaid Condominium Declaration; and

WHEREAS, the developer at the time of the submission of  
this amendment is also the sole owner of the entire property  
submitted to the Horizontal Property Regime and all units therein  
and by this statement also consents to this amendment in its  
entirety.

NOW, THEREFORE, the undersigned, as the owner of the property  
in its entirety hereby amends the aforesaid Condominium Declara-  
tion as follows:

1. Exhibit "A" is deleted in its entirety and Exhibit  
"A" as attached to this amendment is substituted  
in its entirety therefore.
2. Exhibit "B" as originally filed is amended by the  
deletion of Exhibit "B-1", as attached to this  
amendment. In every instance in the Condominium  
Declaration, as recorded in Book 5417, Page 497  
and following, where there is a reference to  
Exhibit "B", that reference by this amendment  
shall also include a reference to Exhibit "B-1".
3. Paragraph 2.6 is hereby deleted in its entirety  
and the following is substituted in its entirety  
therefore:

5481 455

st Des Moines, Iowa; and  
make certain amendments  
n; and  
Of the submission of  
f the entire property  
gime and all units therein  
this amendment in its

s the owner of the property  
said Condominium Declara-  
ncrecy and Exhibit  
ant is substituted

is amended by the  
referred to this  
in the Condominium  
Article, Page 407  
reference to  
this amendment  
or Exhibit "B-1".  
its entirety  
entirety

5781 155

- 2.6 Limited Common Element. "Limited Common Elements" means all Common Elements serving exclusively a single Unit or one or more adjoining Units as an inseparable appurtenance thereto, the enjoyment, benefit, or use of which is reserved to the lawful occupants of such Unit or Units either in this Declaration, on the Plat, or by the Board. Limited Common Elements shall include, without limitation, conveyors, pipes, ducts, electrical wiring, and conduits located entirely within a Unit or adjoining Units and serving only such Unit or Units; such portions of the perimeter walls, floors and ceilings, doors, decks, vestibules, windows, and entryways, and all associated fixtures and structures therein, as lie outside the Unit boundaries; the air conditioning Unit located outside each Unit; and the mail boxes assigned to each Unit.
4. The references in Section 1.5.b to "Article 9.1(s)" is hereby amended to refer to 9.1(f).
  5. The reference in Section 1.5.c, to "Article 9.1(f)" is hereby amended to refer to 9.1(s).

This amendment is dated this \_\_\_\_\_ day of \_\_\_\_\_, 1985.

W & W DEVELOPMENT CO., INC.  
George W. Mills, President

5781 156

EXHIBIT "A"

LEGAL DESCRIPTION

JORDAN SQUARE

Part I

Lot 1, Jordan Square Plat 1, an official plat now included in and forming a part of the City of West Des Moines, Iowa.

5431 457



AMENDMENT TO THE DECLARATION OF  
SUBMISSION OF PROPERTY TO HORIZONTAL  
PROPERTY REGIME ESTABLISHING A PLAN FOR  
CONDOMINIUM OWNERSHIP OF PREMISES AT  
JORDAN SQUARE, WEST DES MOINES, IOWA.

THIS Amendment to the Declaration of Submission of Property to the Horizontal Property Regime, is made and executed in West Des Moines, Iowa, the \_\_\_\_\_ day of \_\_\_\_\_, 198\_\_\_\_, by M & W Development Co., Inc., an Iowa corporation, hereinafter referred to as "Declarant" pursuant to the provisions of the Horizontal Property Act, Chapter 499B, Code of Iowa.

WITNESSETH:

WHEREAS, Declarant submitted a portion of certain real property by a Declaration of Submission of Property to Horizontal Property Regime which property is located adjacent to and immediately west of Holiday Park on Railroad Avenue, West Des Moines, Iowa, and is more particularly described therein, which Submission was filed for record in the office of the Polk County Recorder on December 21, 1984, at Book 5412, Page 487; and

WHEREAS, the Declaration provided for the submission of additional property by amendment to this Declaration at Paragraph 10.3(a) of the Declaration which is located at page 22 thereof; and

WHEREAS, the Declarant desires and intends by filing this amendment to the Declaration to submit an additional parcel of land lying adjacent to and north of the tract submitted to the Regime for Part I of the Declaration in accordance with the terms and conditions of that Declaration and in accordance with the provisions of the Horizontal Property Act as a condominium project.

NOW, THEREFORE, the Declarant does hereby publish and declare that all property described herein is held and shall be held and conveyed subject to the following covenants, conditions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and the division thereof into condominiums and shall be deemed to run with the land and shall be a burden and a benefit to Declarant, its successors and assigns and any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

1. Description of Land. The land hereby submitted to the regime is located in West Des Moines, Polk County, Iowa, and is legally described in Exhibit "A" attached hereto. The units completed or to be completed are shown and designated by number on Exhibit "B" attached hereto, and are hereby submitted to the regime. Exhibit "B" contains and such contents shall be governed for purposes of this Declaration and for purposes of meeting the requirements of Section 499B.4 of the 1985 Code of Iowa, as amended, the following:

a. The number identifying each unit from every other unit;

b. A legend showing the numerical designation of the units and letter designation of the garage stalls for the purpose of describing the unit and stall and the building which it occupies; and

c. The location of each unit and common elements to which each such unit has or will have access.

2. Description of Units. Annexed previous submission and a part hereof by reference are floor plans of each type of unit in the residential buildings for Part 2, their location, and a designation which are two-bedroom and which are three-bedroom units, and the location of the garage buildings and designation and location of garage stalls contained therein are shown on Exhibit "B" attached hereto and by this reference made a part of this amendment. The floor plans for the two-bedroom units are shown on Exhibit "C", and the floor plans for the three-bedroom units are shown on Exhibit "D" attached hereto. All descriptions of buildings in Part 1 contained in the Declaration shall apply to Part 2.

3. Incorporation of Declaration. Each and every provision of the original Declaration of Submission of Property to Horizontal Property Regime which was filed for record in the office of the Polk County Recorder on December 21, 1984, at Book 5412, Page 487 and amendment thereto are incorporated by reference into this amendment. All provisions of the Declaration, as amended, including the definitions, description of ownership interest, general common and limited common elements, Declarant's rights, management, maintenance, etc., are binding on the Declarant, the owners, and all successor parties in interest. The original Declaration provides for this amendment and its provisions are in full force and effect except as amended by record Amendments in accordance with their terms.



4. Percentage of Ownership Interests. In accordance with Paragraph 2.2 of the Declaration appurtenant to each unit shall be an undivided fractional interest in the common elements. In accordance with Paragraph 2.3(b), the fractional interest of each unit owner will decrease from 1/48th of the common elements to up to 1/84th of the common elements if all 36 units in Part 2 are completed as planned. Until all units are completed, the fractional interest in the common elements of each unit shall be determined by using a numerator of one and a denominator which shall be the number of units constructed and for which a certificate of occupancy has been issued by the City of West Des Moines. Not later than July 1, 1988, the Developer shall file a written statement reflecting the final adjustment of ownership interests in the common elements pursuant to Paragraph 2.3(c) of the Declaration.

5. Provisions Applicable to the City of West Des Moines. Each and every provision of the original Declaration relating to the City of West Des Moines is incorporated by reference into this Declaration and remains in full force and effect in accordance with its terms as set forth in the Declaration.

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

M & W DEVELOPMENT CO., INC.

By GEORGE M. MILLS, President

By FRANCIS L. WHITEHURST, Secretary

STATE OF IOWA, COUNTY OF POLK, ss:

On this          day of         , 198        , before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared GEORGE M. MILLS and FRANCIS L. WHITEHURST, to me personally known who, being by me duly sworn, did say that they are the President and Secretary, respectively, of said corporation executing the foregoing instrument, that no seal has been procured by said corporation; that said instrument was signed on behalf of said corporation by authority of its

Board of Directors; and that the said GEORGE M. MILLS and FRANCIS L. WHITEHURST, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

NOTARY PUBLIC IN AND FOR THE STATE OF  
IOWA

EXHIBIT "A"

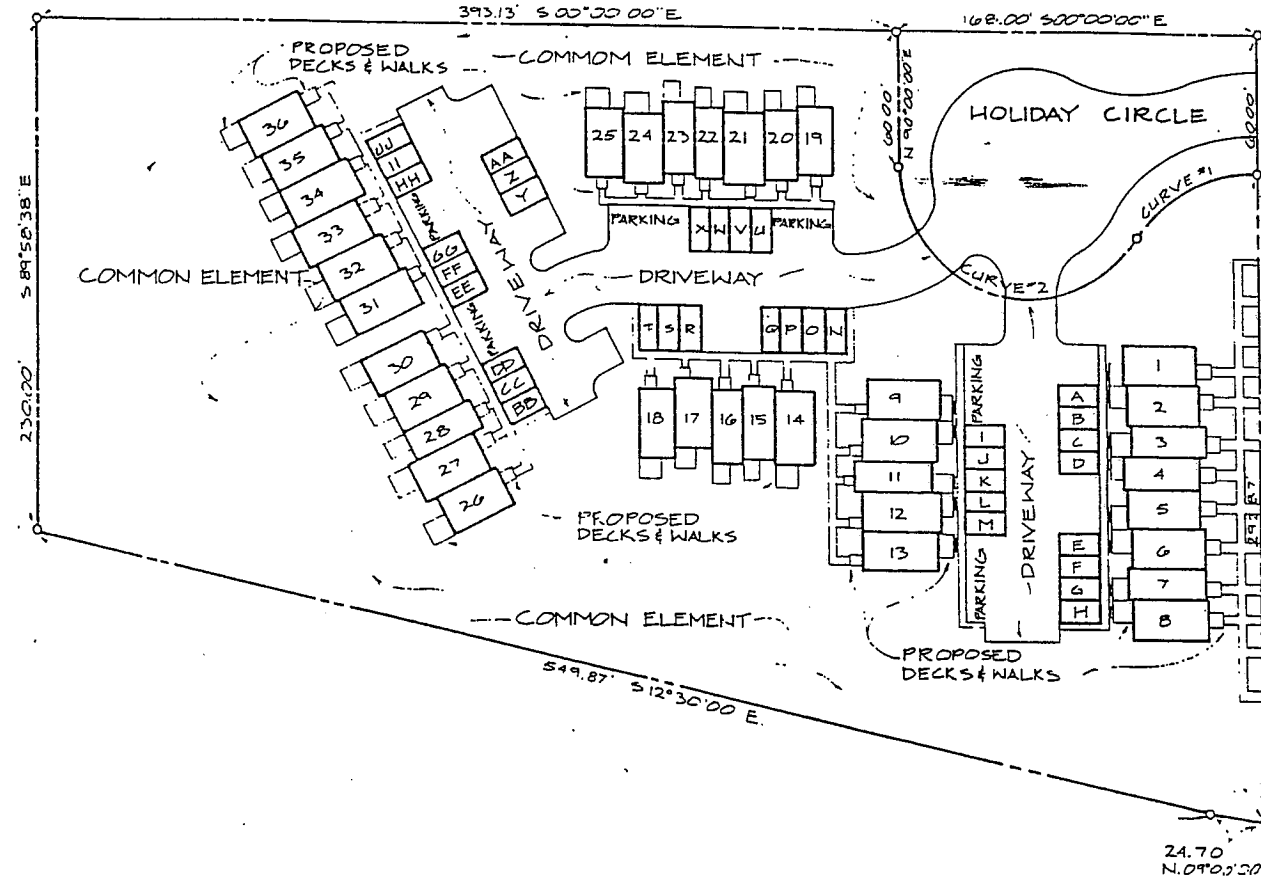
Legal Description

Part II

Jordan Square

Lot 1, JORDAN SQUARE, Plat 2,  
an Official Plat now included  
in and forming a part of the  
City of West Des Moines, Iowa.

EXHIBIT "B"



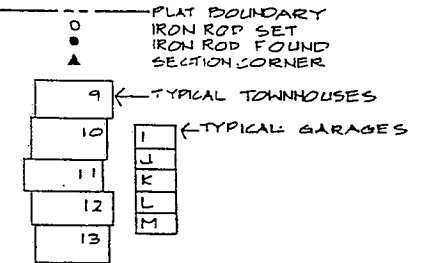
LEGAL DESCRIPTION

A HORIZONTAL PROPERTY REGIME (CONDOMINIUM) LOCATED UPON LOT 1, JORDAN SQUARE PLAT 2, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, IOWA; TOGETHER WITH THE UNDIVIDED FRACTIONAL OWNERSHIP INTERESTS IN THE GENERAL AND LIMITED COMMON ELEMENTS APPURTENANT TO SUCH UNITS AS SET FORTH IN DECLARATION OF CONDOMINIUM RECORDED IN BOOK 5412 PAGE 487, AND WITH ALL AND ALL OTHER INTERESTS APPURTENANT TO SUCH UNIT PURSUANT TO SUCH HORIZONTAL PROPERTY REGIME.

CURVE INFORMATION

CURVE #1	CURVE #2
Δ = 58° 06' 33"	Δ = 148° 06' 33"
R = 67.20'	R = 60.00'
L = 68.15'	L = 153.10'
T = 37.33'	T = 210.00'
CH = 65.27'	CH = 115.38'
CB = S 29° 03' 17" E	CB = S 15° 56' 43" W

LEGEND



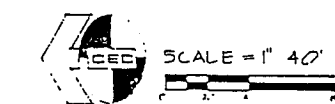
3-BEDROOM UNITS	2-BEDROOM UNITS	GARAGE STALLS
1 19 36	3	A 11 AA
2 21	7	B 12 BB
3 24	11	C 13 CC
4 25	15	D 14 DD
5 26	16	E 15 EE
6 27	20	F 16 FF
7 29	22	G 17 GG
8 30	23	H 18 HH
9 31	28	I 19 II
10 32		J 20 JJ
11 33		K 21 KK
12 34		L 22 LL
13 35		M 23 MM

CERTIFICATION

HEREBY CERTIFY THAT THIS PLAT, MAP, SURVEY, OR REPORT WAS MADE BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

*[Signature]* DATE: 7/10/85  
 JERRY P. OLVER, IOWA REG. NO. 7844

NORTH



REVISION 16-7-85-DA0

EXHIBIT "G", page 1

FLOOR PLAN OF TWO BEDROOM UNIT  
BASEMENT FLOOR

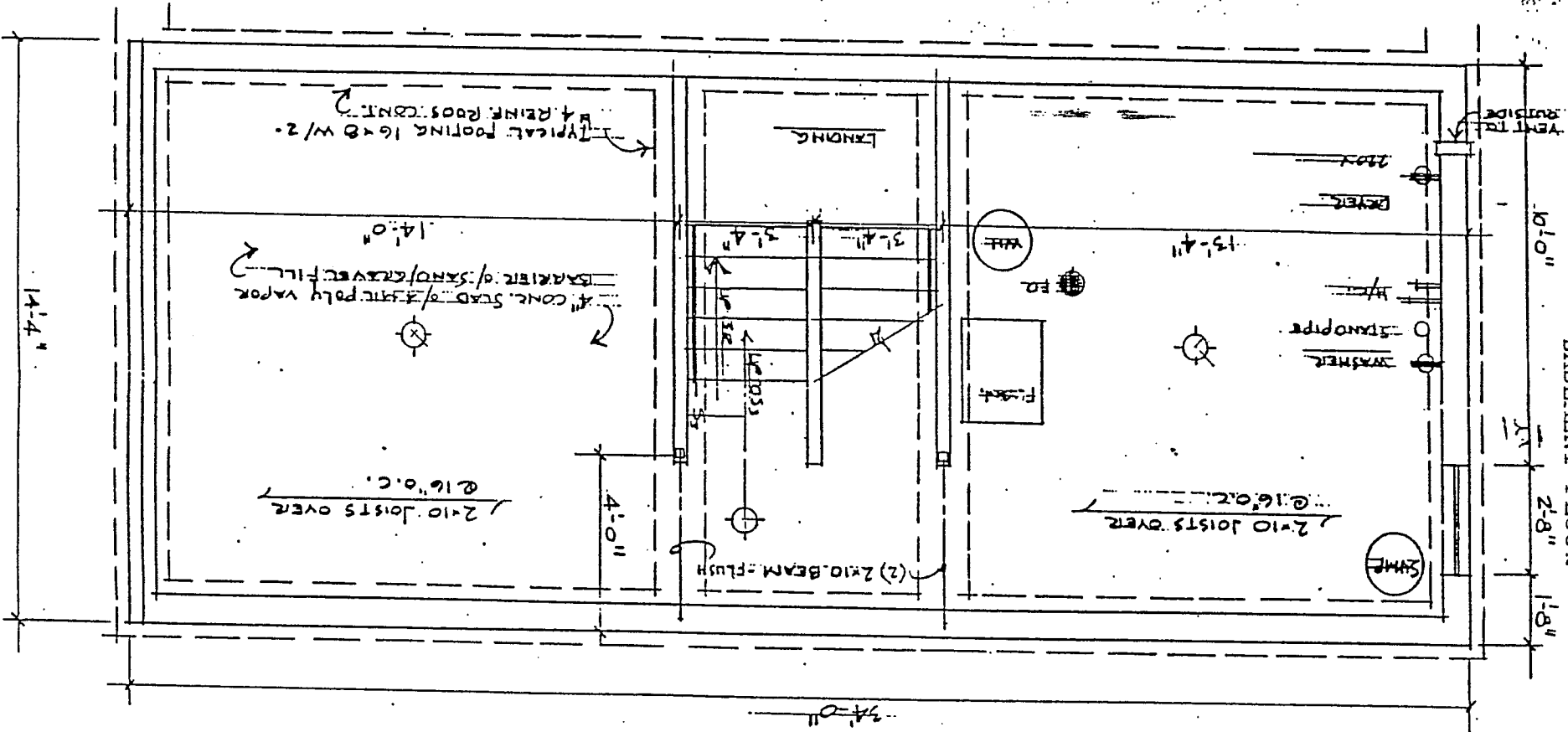
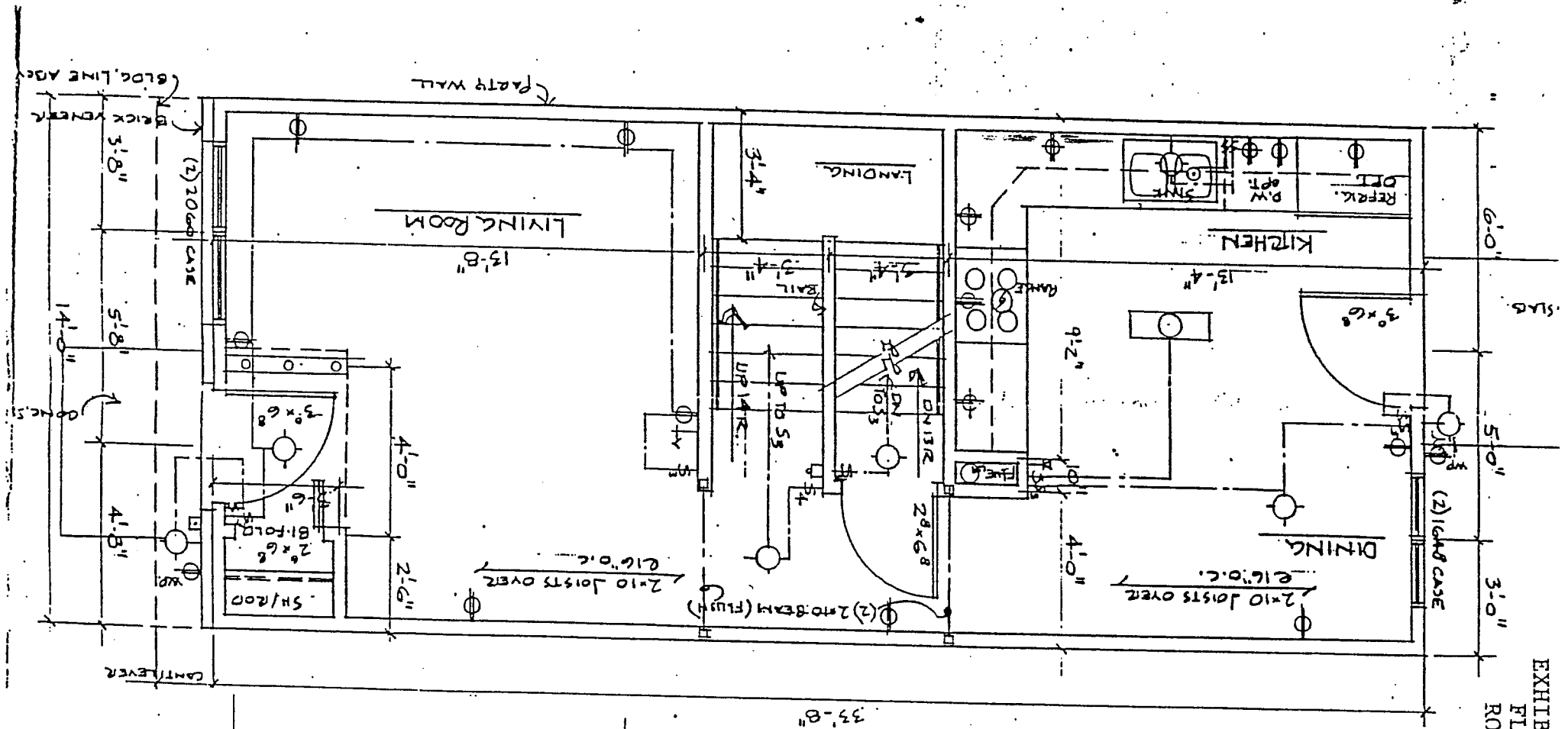


EXHIBIT C, page 2  
FLOOR PLAN OF TWO BED  
ROOM UNIT - first floor.



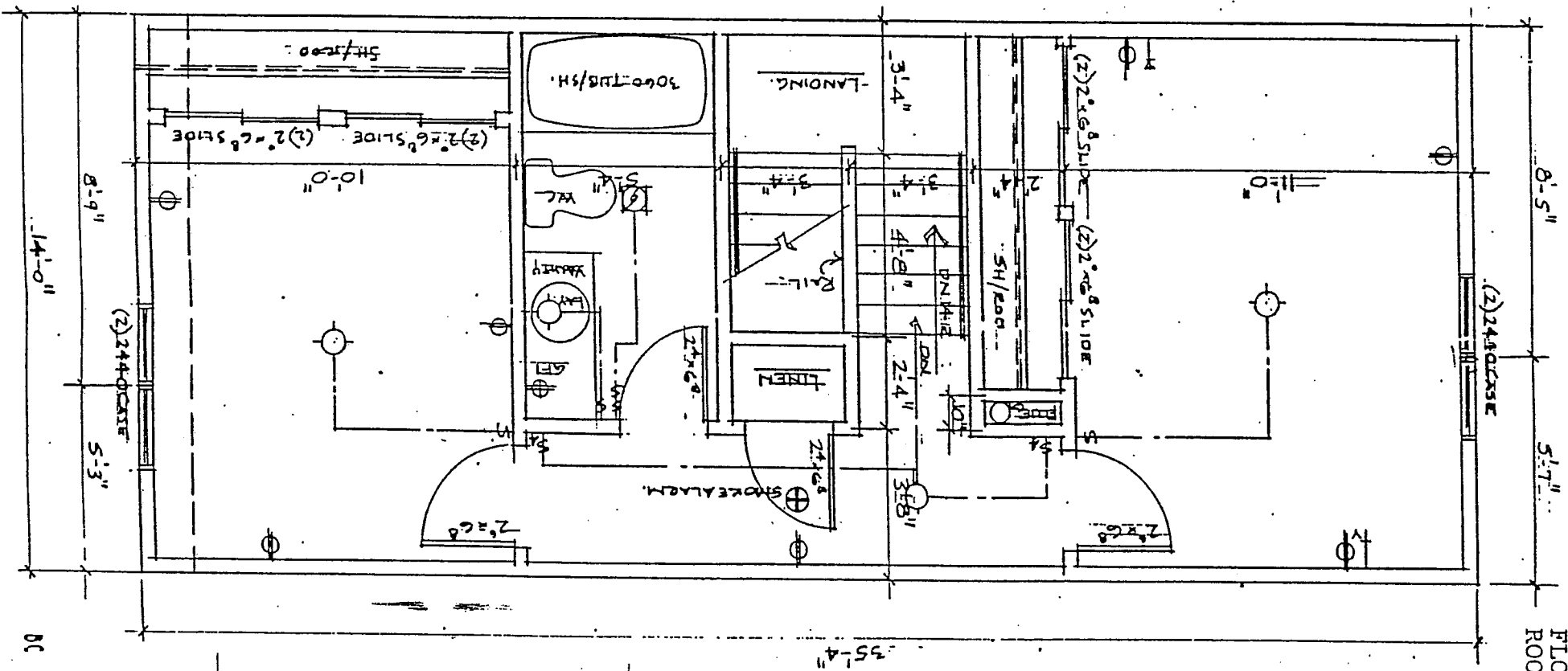


EXHIBIT C, page 3  
 FLOOR PLAN OF TWO BE-  
 ROOM UNIT-SECOND FLO.

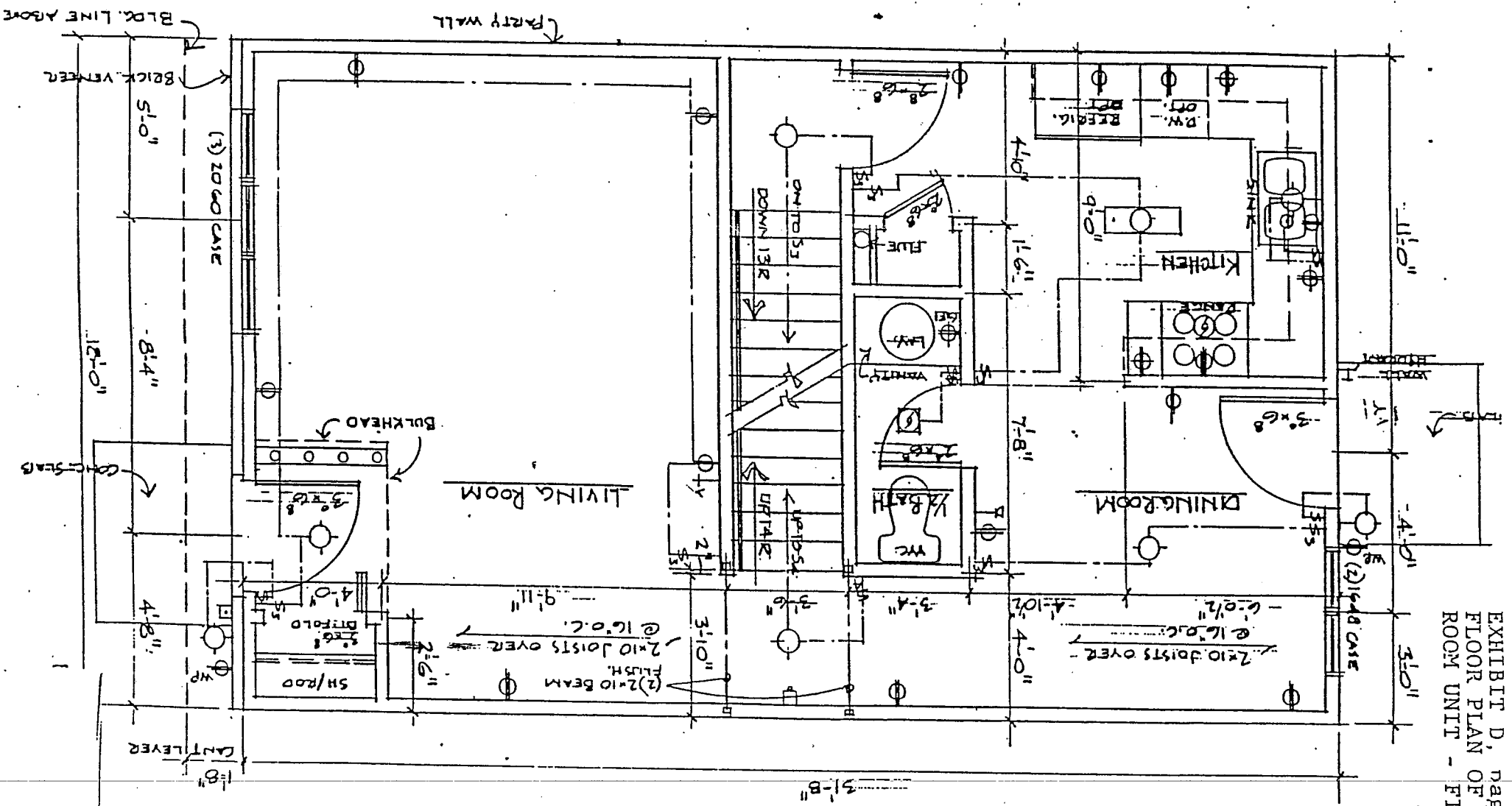
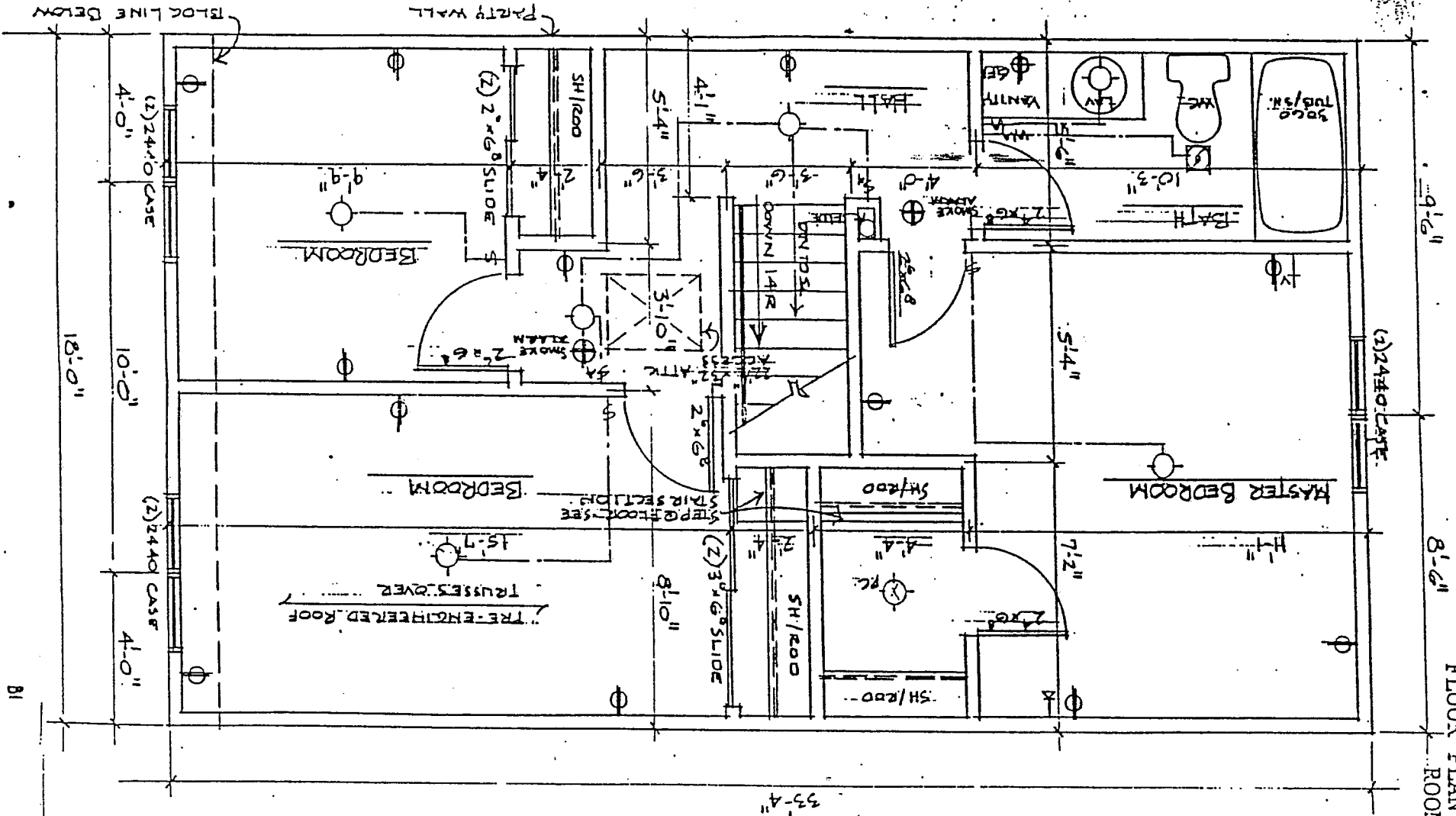


EXHIBIT D, page 2  
 FLOOR PLAN OF THREE BED-  
 ROOM UNIT - FIRST FLOOR



EXHIBIT D, page 3  
 FLOOR PLAN OF THREE BED-  
 ROOM UNIT -  
 SECOND FLOOR



B1

EXHIBIT D, page 1  
 FLOOR PLAN OF THREE BEDROOM UNIT  
 BASEMENT FLOOR

