

DECLARATION

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OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR
PICKARD SCHOOL SQUARE TOWNHOMES

THIS DECLARATION, made on the date hereinafter set forth by NOVOTNY BUILDERS, INC., a Nebraska Corporation, hereinafter referred to as "Declarant":

WITNESSETH:

WHEREAS, Declarant is the owner of the following described real property:

Lots 2, 3 and 4, Pickard School Square, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska, and

WHEREAS, the Declarant desires to create on the herein above described real property a residential community with private parking, improvements, open spaces, and other common facilities for the benefit of said community;

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said private parking, improvements, open spaces, and other common facilities; and to this end, desires to subject the above described Property to the covenants, restrictions, easements, charges and liens hereinabove set forth, each and all of which is and are for the benefit of said property and each owner thereof;

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated the Pickard School Square Townhomes Association, Inc., under the laws of the State of Nebraska, as a non-profit corporation, the purpose of which shall be to exercise the functions aforesaid;

WHEREAS, Declarant will convey the above-described lots, subject to certain protective covenants, conditions, restrictions, reservations, easements, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the lots described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said lots. These easements, covenants, restrictions, and conditions shall run with the real property and shall be binding upon all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to the Pickard School Square Townhomes Association, Inc., a Nebraska non-profit corporation, its successors, and assigns.

Section 2. "Common Expenses" shall mean and refer to expenses of the Association incurred in the maintenance and repair of the exterior of any Living Unit as hereinafter provided, the maintenance and repair of the driveway and parking areas, snow removal, care and maintenance of landscaping, lawn and yards, if any, open spaces and other common facilities, and the providing of insurance coverages upon the Living Units.

Section 3. "Declarant" shall mean and refer to Novotny Builders, Inc., its successors and assigns.

Section 4. "Living Unit" shall mean and refer to the townhouse dwelling situated upon a Lot, designated and intended for the use and occupancy as a residence by a single family.

Section 5. "Lot" shall mean and refer to any parcel of land shown upon any recorded map or plat of The Properties, upon which a Living Unit shall be built, or is proposed to be built. The Lots subject to this Declaration are shown and described on Exhibit "A" attached hereto and by this reference incorporated herein. Any Supplemental Declaration hereafter filed shall similarly reflect those Lots thereunder subject to this Declaration, or otherwise legally describe the real property to become subject to the Declaration.

Section 6. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 7. "Mortgage" means a mortgage or deed of trust and "mortgagee" means the holder of a mortgage or the beneficiary of a deed of trust.

Section 8. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to all or any part, parcel or portion of a Lot which is a part of The Properties, but excluding those having such interest merely as security for the performance of an obligation.

Section 9. "Common Easement Area" shall mean that part of a Lot upon which no Living Unit shall be built. The Common Easement Area is shown and described on Exhibit "A" attached hereto and by this reference incorporated herein. Any Supplemental Declaration hereafter filed shall similarly reflect the Common Easement Area applicable thereto.

Section 10. "The Properties" shall mean and refer to all such properties as are subject to this Declaration. The Properties shall initially consist of Lots 2, 3 and 4, Pickard School Square, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

ARTICLE II

PROPERTY SUBJECT TO DECLARATION

The Properties shall be held, transferred, sold, conveyed and occupied subject hereto. Declarant shall also have the right at any time within ten (10) years from the filing of this Declaration, to add, annex and subject additional land comprised

of all or any part or parts of the remainder of Pickard School Square, an Addition to the City of Omaha, Douglas County, Nebraska, to this Declaration by filing, in the Office of the Register of Deeds of Douglas County, a written instrument, duly executed and acknowledged by Declarant, to the effect that such additional land is being subjected hereto. Thereafter, the addition or annexation of additional land to be subject hereto shall require a written instrument signed by two-thirds (2/3) of the membership in the Association. Any real property thereby subjected to the Declaration shall, after said filing, be subject hereto and the owners thereof shall be subject to all the same duties, liabilities and rights hereunder as though said additional property had been originally a part of the real estate described in Article I hereof at the date of the filing of this Declaration.

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ARTICLE III.

MAINTENANCE

Section 1. Owner's Right and Obligation to Maintain and Repair. Except for those portions of the Properties which the Association is required to maintain and repair, each Owner shall, at his sole cost and expense, maintain and repair his Living Unit, keeping the same in good condition. In the event an Owner fails to maintain his Living Unit in a manner which the Board deems necessary to preserve the appearance and value of the Properties, the Board may notify Owner of the work required and request it be done within sixty (60) days from the giving of such notice. In the event that the Owner fails to carry out such maintenance within said period, the Board may cause such work to be done and may specially assess the cost thereof to such Owner and, following notice and hearing, create a lien against his Lot for the amount thereof.

60 days

Section 2. Entry for Repairs and Maintenance. The Board or its agents may enter any Living Unit or Lot when necessary in connection with any maintenance, landscaping or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused thereby shall be repaired by the Board at the expense of the Association. Except in case of any emergency, twenty-four (24) hour advance notice shall be given to the Owner or occupant.

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Section 3. Limitation on Management Agreements. If a majority of the first mortgagees shall so require in writing, the Board of Directors of the Association shall retain and pay for the services of a professional property manager for the Properties. No agreement for the management of the Properties shall be effective for a term beyond one year, renewable by agreement of the parties for successive one-year periods, and such management agreement shall be terminable for cause by the Board of Directors of the Association upon 30 days' written notice thereof.

ARTICLE IV

MEMBERSHIP

Declarant, and every Owner as defined in Article I, Section 8 under this Declaration shall be a member of the Association. No owner shall have more memberships than the number of Lots owned by such Owner. Memberships shall be appurtenant to and may not be separated from ownership of the Lots. Ownership of a Lot or Lots shall be the sole qualification for membership.

The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

ARTICLE V

VOTING RIGHTS

Members (Owners) shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote of such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.

ARTICLE VI

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, except those exempt under Sections 7 and 9 of this Article, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, hereby covenant and agree to pay to the Association: (1) interim assessments or charges; (2) annual assessments or charges; and (3) special assessments for capital improvements; all of such assessments to be established and collected as herein provided. The interim, annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. All subsequent purchasers shall take title to the Lot subject to said lien and shall be bound to inquire to the Association as to the amount of any unpaid assessments. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the latter.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, welfare, and recreation of the residents of The Properties and, in particular, interim and annual assessments shall be used for: exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements, specifically excluding, however, (i) windows and other glass surfaces and (ii) repairs and maintenance necessitated by the willful or negligent act of the Owner of the Lot or improvements needing such maintenance or repair or such Owner's family, guests or invitees; the maintenance and repair of the driveway and parking areas; snow removal; care and maintenance of landscaping, lawn and yards, if any, and the Common Easement Area; providing insurance coverages upon the Living Units, as herein set forth, and any other expenses deemed to be common by the Association. Interim and annual assessments, and annual assessment reserves, are not intended to be used for maintenance, repair or replacement of the Living Units or appurtenant structures or improvements except as expressly provided in this Section 2, nor for the construction, replacement or major repair of capital improvements.

Section 3. Interim Assessments. Until January 1, 1987, or until the first levy of annual assessments, whichever shall

first occur, unless increased as provided herein, an interim assessment of \$50.00 shall be due and payable on the first day of each calendar month by the respective Owners. The purchaser of a Living Unit on a Lot shall pay to the Association, on the date of closing, the pro-rata amount of the interim assessment due in the month of closing and the next full month's interim assessment. Thereafter, interim assessments shall become due and payable upon the first day of each calendar month. The provisions set forth in this Section 3 of Article VI shall not apply to Developer with respect to Lots owned by Developer subject to Developer paying each month the difference between the monthly interim assessments to be paid by Owners other than Developer and the total operating expenses for said month necessary to operate the Association. The Association may increase the interim assessment up to 15% per year without the consent of the Owners/Members.

Section 4. Annual Assessments. The first annual assessment shall be levied against each Lot and the Owner thereof on January 1, 1987, or any preceding January 1 if Developer has previously relinquished control of the Association. The annual assessment shall be divided as evenly into twelve (12) monthly payments as possible with the first payment to include the remainder after division. Annual assessments shall become due and payable upon the 1st of January and the 1st of each month thereafter during the calendar year. Annual assessments for each calendar year thereafter shall be levied and shall become due and payable in the same manner. Annual assessments to be levied against each Lot and the Owner thereof shall be one-sixth (1/6) of the total annual budget for the calendar year.

Section 5. Special Assessments for Capital Improvements. In addition to the interim and annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, ~~in whole or in part,~~ the cost of any ~~construction, reconstruction, repair or replacement~~ of a capital improvement ^{of permanent character} within a driveway, ingress and egress easements, or utility easement, including fixtures and personal property related thereto, provided that any such assessment shall have the assent ^{of the Association} of two-thirds of the votes of Owners who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Uniform Rate of Assessment and Collection. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis. All assessments shall be paid to the Treasurer of the Association.

Section 7. Date of Commencement of Interim and Annual Assessments: Due Dates. The interim and annual assessments provided for herein shall commence as to all Lots on the day of the conveyance of the Lot by Declarant, EXCEPT THAT SUCH ASSESSMENTS SHALL NOT BE APPLICABLE TO ANY LOT OWNED BY THE DECLARANT UNTIL JANUARY 1, 1987.

The Board of Directors shall adopt a budget for each calendar year which shall include the estimate of funds required to defray the expenses of the Association in the coming calendar (fiscal) year and provide funds for reserves as herein set forth.

The budget shall be adopted in November of each year for the coming calendar year and copies of the budget and proposed annual maintenance and reserve assessments shall be sent to each

Owner on or before December 31 preceding the year for which the budget is made. Budgets may be amended during a current year when necessary, but copies of the amended budget and proposed increase or decrease in assessments shall be sent to each Owner prior to the effective date of such increase or decrease. The foregoing requirement of preparation of a budget and the sending of same to Owner shall not apply to any budgeting for any period prior to January 1, 1987, unless Developer shall have previously relinquished control of the Association.

The Board of Directors shall fix the amount of annual assessment to be assessed against each Lot at least thirty (30) days prior to the commencement of the fiscal year of the Association, which shall coincide with the annual assessment period commencing on January 1 of each year and terminating on December 31 thereof. Written notice of the annual assessment shall be sent to each Owner subject thereto at least twenty (20) days prior to the due date of the assessment, or the first installment thereof, including the due dates and amounts thereof. The failure of the Board to so notify each Owner in advance shall not, however, relieve any Owner of the duty and obligation to pay such assessment or any installment thereof. The Board shall have the authority, in its discretion, to require that all Owners pay the annual assessment in one payment or in installments becoming due at such time or times during the assessment year and payable in such manner as determined by the Board. The annual assessments shall be and become a lien as of the date of the annual assessments.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Non-Payment of the Assessments: The Personal Obligation of the Owner; The Lien; Remedies of the Association. If any assessment chargeable to a Lot or any installment thereof is not paid on the date when due, then such assessment, together with interest thereon and cost of collection thereof as hereinafter provided, shall thereupon become a lien on such Lot superior to all other liens and encumbrances, except liens for taxes, special assessments and first mortgages.

Any delinquent assessment or installment thereof not paid within thirty (30) days after the due day shall bear interest from the due date at the highest rate of interest at which individuals may contract in Nebraska. In the event the unpaid assessment is an installment of an annual assessment, the Association may, after such thirty (30) day period and during the continuance of the default, declare all remaining installments of said annual assessment immediately due and payable, at its option. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, and a reasonable attorney's fee, together with the costs of the action. No owner may waive or otherwise escape the liability for the assessments provided for herein by non-use of any facility or abandonment of his Lot. The mortgagee of the subject property shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest

*Total assessments for
16451 4/13*

180/0

costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and rights of foreclosure to the mortgagee.

Section 9. Transfer of Lot by Sale or Foreclosure. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

The purchaser of a Lot, including any mortgagee, who obtains title to the same as a result of foreclosure of a first mortgage, his successors and assigns, shall not thereby become personally liable for the delinquent share of the Common Expenses or Assessments, but such delinquent share of Common Expenses or assessments shall be reallocated among all of the Lots in the Properties, including the Lot foreclosed upon.

Section 10. Exempt Property. Other than Lots exempt under the provisions of Section 7 of this Article, all Lots shall be subject to a uniform rate, except for Lots owned by or conveyed to, and accepted by, any political subdivision of the Federal, State or any local governments, and Lots owned by or conveyed to, and accepted by, the Association. Such Lots shall be exempt from assessment from and after the date of filing of any such conveyance with the Register of Deeds of Douglas County, Nebraska, and until the Lot is thereafter conveyed to a party or an entity not qualifying for exemption under this Section. Such Lots shall also be exempt from special assessments.

ARTICLE VII

COMMON SCHEME RESTRICTIONS

The following restrictions are imposed as a common scheme upon all Lots for the benefit of each other Lot and may be enforced by any Owner of a Lot or the Association.

(a) No Lot shall be used except for residential purposes.

(b) No noxious or offensive activity shall be carried on upon The Properties, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood.

(c) No structure of a temporary character, trailer, basement, tent, shack, barn or other out-building shall be erected upon, or used, on The Properties either temporarily or permanently.

(d) No unused building material, junk or rubbish shall be left exposed on The Properties except during actual building operations. No repair of automobiles or any other vehicle will be permitted outside of garages on The Properties at any time.

(e) No boat, camping trailer, auto-drawn trailer of any kind, mobile home, truck, motorcycle, grading

or excavating equipment or other heavy machinery or equipment, vehicle undergoing repair, or aircraft, shall be stored outside the garage or in any manner left exposed on The Properties at any time.

(f) Gardens are not permitted.

(g) No incinerator or trash burner shall be permitted on The Properties. No garbage or trash can or container or fuel tank shall be permitted to remain outside of any Living Unit, except after 8:00 p.m. the evening before the scheduled garbage pickup, provided said garbage or trash can or container is back inside the Living Unit by 6:00 p.m. the day of pickup. No garage door shall be permitted to remain open except when entry to and exit from the garage are required. No clothes line shall be permitted outside of any Living Unit at any time.

(h) No animals, livestock, fowl or poultry of any kind shall be raised, bred or kept on The Properties, except that dogs, cats, or other household pets maintained within the Living Unit may be kept, provided they are not kept, bred or maintained for any commercial purpose, and provided further that the total number of dogs and cats kept within the Living Unit or on the Lot shall not exceed two. It is intended specifically to prohibit any animals from being sheltered or tethered outside the Living Unit.

(i) No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on The Properties.

(j) No sign, billboard or other structure for advertising or the display of advertising material of any kind shall be erected, altered, placed or permitted to remain on The Properties; provided, however, that real estate for-sale signs of a size no greater than 4.5 square feet shall be permitted temporarily in the yards of Living Units which are being offered for sale; provided, further, however, that as long as Declarant has Lots or Living Units for sale, no for-sale signs shall be permitted on The Properties, except such for-sale or for-rent signs as Declarant shall, in its discretion, use.

See amendment #2 (k) No fences shall be permitted.

(l) No use shall be made of The Properties which will in any manner violate the statutes, rules or regulations of any governmental authority having jurisdiction over The Properties.

(m) No Living Unit shall be rented or leased for transient or hotel purposes (viv., rental for any period less than thirty (30) days, or any rental if occupants are provided customary hotel services). Subject to the foregoing restrictions, each Owner shall have the absolute right to lease his Living Unit, provided that the lease is in writing and is in all respects subject to the covenants, conditions, restrictions, limitations and uses provided in this Declaration and the ByLaws.

(n) The use of The Properties shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

ARTICLE VIII

INSURANCE

Insurance shall be obtained and maintained and the proceeds thereof disposed of by the Association as follows:

Section 1. Coverage. The Association shall obtain and maintain in effect for the improvements upon The Properties, one or more policies of insurance against the perils of fire, lightning, malicious mischief and vandalism with extended coverage in amounts equivalent to the full replacement costs of The Properties and the improvements thereon (Living Units), to provide for the restoration thereof to tenantable condition in the event of damage (but not including furniture, furnishings, or other personal property supplied or installed by Unit Owners), without deduction for depreciation. The policy or policies shall be written in the name of and the proceeds thereof shall be payable to, the Association, for each of the Unit Owners and the respective mortgagees of the Unit Owners. All proceeds of any such insurance shall be used to restore the improvements on The Properties to their condition prior to any loss. The Association shall obtain and maintain in effect public liability insurance in such limits as determined by the Board of Directors covering The Properties with the Association, Board, its employees and agents, and Owners, as insureds. The Association shall also obtain and maintain workmen's compensation coverage and such other coverage as determined by the Board. Insurance premiums shall be deemed a common expense. Each Unit Owner may obtain additional insurance at his expense provided that all policies shall contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Board of Directors shall not be affected or diminished by reason of such additional insurance carried by a Unit Owner.

Section 2. Valuation and Coverage Amount. Prior to obtaining any policy of physical damage insurance or any renewal thereof, the Board of Directors shall obtain an appraisal from a casualty company or otherwise of the full replacement of the improvements on The Properties, without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be effective pursuant to this Article.

Section 3. Rebuilding and Repair Upon Casualty. If any of The Properties are damaged by fire or other casualty, insurance proceeds payable to the Association shall be used to rebuild or repair such damage substantially in accordance with the original plans and specifications therefor. Custom-built items added by Owners to their Living Units shall be rebuilt or replaced at the expense of Owners or their insurers. Any excess insurance proceeds shall be deposited to the general funds of the Association.

In the event the proceeds of the Association's insurance policy are insufficient to rebuild or repair The Properties, the Association may use funds from its account or if necessary from levying a Special Assessment on all Owners to restore or rebuild The Properties.

In the event The Properties are totally or substantially damaged or destroyed, mortgagees shall receive timely written notice thereof. The repair, reconstruction or disposition of the property and insurance proceeds shall be as provided by an agreement approved by Owners representing at least seventy-five percent (75%) of the basic value of The Properties, subject to the rights of mortgagees, provided, however, that the Project shall be rebuilt unless Owners representing at least seventy-five percent (75%) of the basic value vote not to rebuild.

Section 4. Liability of Board. The Board of Directors shall not be liable to any party upon the amount of insurance coverage obtained in settlement of the insurance claim nor the application of the insurance proceeds, except in the event of loss arising from its gross negligence or willful misconduct.

ARTICLE IX

EASEMENTS

The Properties are, and shall perpetually be, unless any thereof is terminated, subject to all and each of the following easements for common use, construction, maintenance, support, repair, recreational and other access, private and public sewer and utility line construction and service and ingress and egress easements.

Section 1. Utility Easement. Declarant hereby grants to itself and to each Member of the Association, Northwestern Bell Telephone Company, Metropolitan Utilities District, Omaha Public Power District, and their respective assigns and successors, a perpetual easement, together with rights of egress and ingress, and other access thereto, for purposes of construction, installing, maintaining, operating, renewing, or repairing their respective private sewer, telephone, gas, water, electric, public sewer, cable television, or other utility conduits, lines, or other facilities in and under each Lot, as confined to non-interference with any structural elements of any Living Unit. Each such Grantee, by acceptance or use of this easement right, shall be deemed to agree to restore the surface of the soil of any improvement thereon for any purposes hereunder to the original contour and condition thereof as near as possible and to repair or replace the surface of any lawns, streets, parking areas, driveways or Living Units which may have been disturbed for any purpose hereunder as near as possible to its original condition. Such restoration, repair or replacement shall be performed as soon as may be reasonably possible to do so.

Section 2. Ingress and Egress, Driveway and Pedestrian Easements. Declarant hereby reserves and grants to itself, and to members of the Association, their successors and assigns, a perpetual easement, together with rights of egress, ingress, and other access thereto, on and over each Lot for the purposes of constructing, maintaining, repairing and reconstructing roadways, driveways and sidewalks over, under, and upon each Lot, as confined to non-interference with any structural elements of any Living Unit and for the further purpose of pedestrian traffic. Declarant hereby reserves and grants for itself and each of the Association, each Owner, contract purchaser and lessee (while in possession of any Living Unit in The Properties) their families, guests, employees, agents and invitees, an easement for access, ingress, egress, use and enjoyment upon and over each such roadway, driveway and sidewalk on each Lot;

provided, however, such use does not interfere with an Owner's use and enjoyment of his Living Unit.

Section 3. Easements for Encroachments. If any portion of The Properties encroaches upon a Lot or Living Unit or if any Living Unit encroaches upon The Properties as a result of construction, repair, shifting, settlement or movement of any portion of The Properties, a valid easement for the encroachment and for the maintenance of the same shall exist so long as such encroachment exists.

Section 4. Common Easement Area. Declarant hereby reserves and grants to itself, the Association, and to members of the Association, their successors and assigns, a perpetual easement, together with rights of egress, ingress, and other access thereto, on and over the Common Easement Area for the purposes of constructing, maintaining, repairing and replacing lawns, shrubs, trees and planting areas. Declarant hereby reserves and grants for itself and each of the Association, each Owner, contract purchaser and lessee (while in possession of any Living Unit in The Properties) their families, guests, employees, agents and invitees, an easement for access, ingress, egress, use and enjoyment upon and over the Common Easement Area on each Lot; provided, however, such use does not interfere with an Owner's use and enjoyment of his Living Unit.

ARTICLE X

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as part of the original construction of the Living Units upon The Properties and placed on the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply, thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use thereof in proportion to said use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore the same and if another Owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof as in Section 2 hereof, without prejudice, however, to the right of any Owners to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all the arbitrators shall be final and conclusive of the question involved. The expenses incurred by a party in the preparation and presentation of his case shall be borne by that party. Costs of the arbitration proceeding shall be divided equally between the parties. The procedure for selection of arbitrators and the hearing of issues in dispute shall be governed by rules and regulations enacted by the Board of Directors, or, in the absence of rules and regulations as to such procedure, the Board of Directors itself shall arbitrate the issues.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind The Properties, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded.

Section 2. Amendments. Subject to the provisions of Section 3 of this Article XI, the covenants and restrictions of this Declaration may be amended by the Declarant corporation, partnership, or entity designated in writing by the Declarant, in order to meet the requirements of any governmental agency or financial institution, until January 1, 1987, or such earlier time as the Declarant has conveyed fee simple title to four (4) of the Lots; provided, however, that the consent of all Lot Owners shall be required for any amendment of this Declaration effecting a change in (i) the boundaries of any Lot, (ii) the number of votes in the Association appertaining to any Lot, or (iii) the fundamental purposes to which any Lot are restricted; and provided, further, that the consent of at least eighty percent (80%) of the Lot Owners shall be required to terminate or abandon the common benefits conferred upon The Properties by this Declaration, except as provided in Article VIII, Section 3. Thereafter this Declaration may be amended by an instrument signed by the Owners of not less than two-thirds (2/3) of the Lots covered by this Declaration except as provided in Section 3 of this Article XI. Written notice of any proposed amendment and a meeting to be called for such purpose must be sent at least thirty (30) days but not more than ninety (90) days prior to such proposed meeting, by the Board of Directors of the Association. The notice will contain the full text of the proposed amendment and the date, time and place of the meeting. Any such amendment so adopted and executed must be properly recorded.

Section 3. Mortgage Protection Clause. No breach of any of the covenants, conditions and restrictions herein shall render invalid the lien of any first mortgage (meaning a mortgage with first priority over any other mortgage) on any Lot made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

Without the prior written approval of one hundred percent (100%) of the mortgagees, based upon one (1) vote for each mortgage or deed of trust owned, neither this Declaration nor By-laws of the Association shall be amended so as to:

- a. Change the shares of assessments charged to any Lot;
- b. Terminate or abandon the common benefits conferred upon The Properties by this Declaration except as provided in Article VIII, Section 3;
- c. Allow partition or subdivision of any Lot without the prior written approval of the first mortgagee of such Lot;
- d. Change the interest of any Lot in the allocation of distributions of hazard insurance proceeds or condemnation awards;
- e. Permit the use of hazard insurance proceeds for losses or damages to any portion of The Properties to be used for other than the repair, replacement or reconstruction thereof, except as provided by law, or to be deposited to the general funds of the Association;
- f. Change the provisions of the Declaration and By-Laws so as to give any Owner or other party, priority over any rights of mortgagees pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards or losses to or taking of the Lots or The Properties.
- h. Materially change the Declaration or By-Laws or permit termination of professional management of the Project if professional management is required by Article III, Section 3 hereof.

Notwithstanding any language contained in this Declaration to the contrary, no Owner and no other party shall have priority over any rights of mortgagees pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of the Lots or any part of The Properties.

Institutional lenders who are first mortgagees shall have the right (a) to examine the books and records of the Association during normal business hours; (b) upon written request to receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year thereof; and (c) upon written request to receive written notice of meetings of the Association and be permitted to designate a representative to attend such meetings.

Section 4. Condemnation. In the event of an award for the taking of any Lot by eminent domain, the Owner of such Lot shall be entitled to receive the award for such taking and after acceptance thereof, he and his mortgagee shall be divested of all interest in The Properties if such Owner shall vacate his Living Unit as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Properties, or take other action. The remaining portion of The Properties shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Properties. In the event of a taking by eminent domain of any part of The Properties, the Association will participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Lots

are not valued separately by the condemning authority or by the Court. In the event of inverse condemnation, any award received shall be allocated fairly and proportionately among the Owners of Living Units involved. The Association shall give careful consideration to the allocation of percentage interests in The Properties in determining how to divide proceeds of the condemnation. In the event any Owner disagrees with the proposed allocation, he may have the matter submitted to arbitration under the rules of the American Arbitration Association. In the event of eminent domain proceedings against The Properties or any portion thereof, Institutional Lenders who are first mortgagees shall be given timely written notice thereof.

Section 5. Notices. Any notice required to be sent to any Member, Owner or Mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing; provided, that it shall be the sole responsibility of each contract purchaser and mortgagee to notify the Association in writing of its interest in a Lot or Living Unit prior to the responsibility arising in the Association to notify said contract purchaser or mortgagee as required under any of the provisions herein established. In the absence of such notice, the Association shall be free from any liability or responsibility to such party or parties arising by reason of performing its duties hereunder.

Section 6. Compliance with Declaration. Each owner shall comply with the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, and the Rules and Regulations, decisions and resolutions of the Association as the same may be lawfully adopted and amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or injunctive relief, or both, and for reimbursement of all attorney's fees incurred in connection therewith, which action shall be maintainable by the Board of Directors on behalf of the Owners, or by an aggrieved Owner or by the Association.

Section 7. Severability. Invalidation of any one of these covenants or restrictions by judgment or Court Order shall in no way affect any other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 13 day of June, 1984.

NOVOTNY BUILDERS, INC.

By: Anton L. Novotny
President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 13 day of June, 1984, by ANTON L. NOVOTNY, President of Novotny Builders, Inc., a Nebraska corporation.

Irving B. Epstein
Notary Public



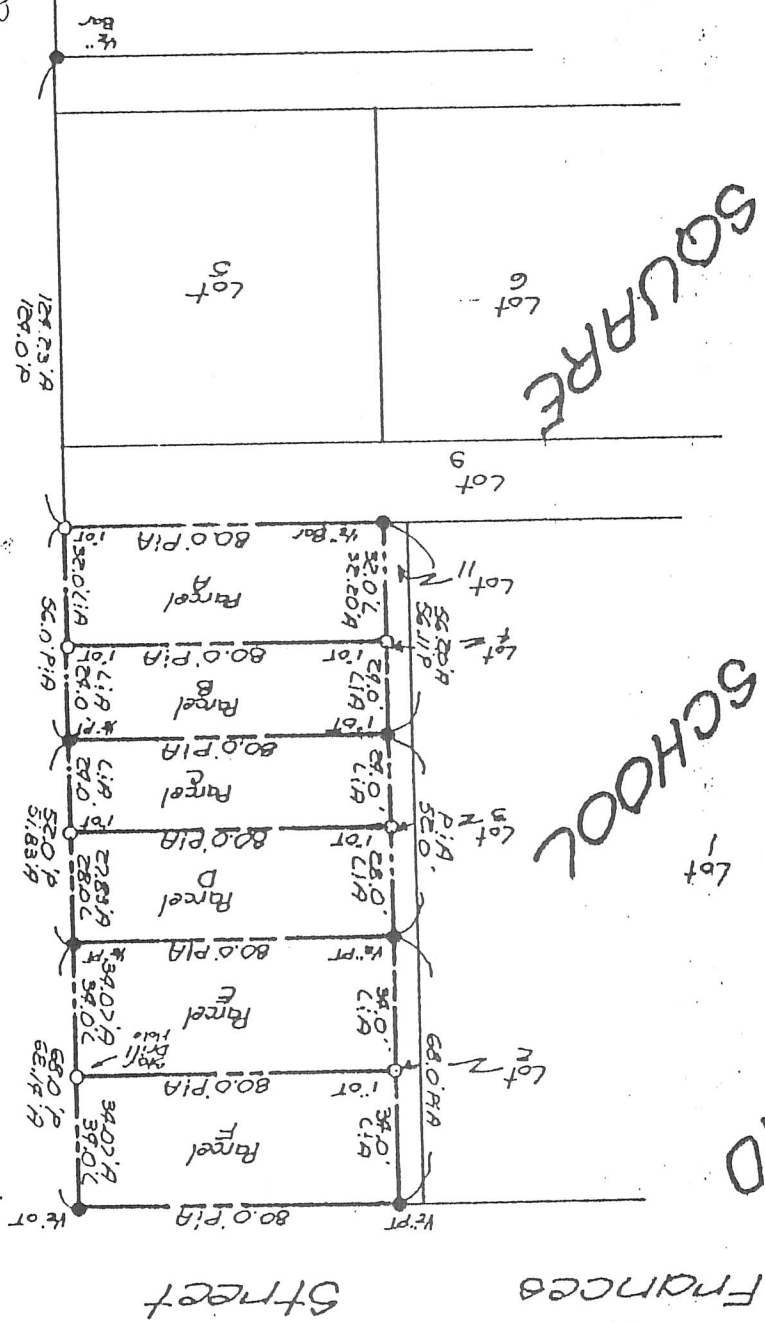
I hereby certify that this plat, map, survey or report was made by me or under my direct personal supervision and that I am a duly Registered Land Surveyor under the laws of the State of Nebraska.

Legal Description
 Those parts of Lots 2, 3, and 4, PICKARD SCHOOL SQUARE, an addition to the City of Omaha, Douglas County, Nebraska.

(See attached sheet for additional Legal Descriptions.)

Plat to scale showing tract surveyed with all pertinent points.

LAND SURVEYOR'S CERTIFICATE

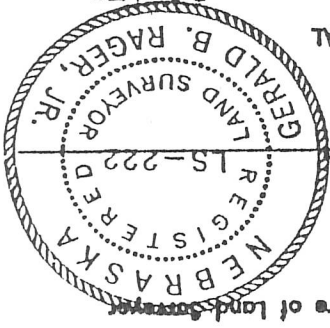


- O - CORNERS SET
- - CORNERS FOUND
- A - ACTUAL DIMENSIONS
- P - PLAT DIMENSIONS
- L - Legal Dimensions
- PT - Pinch Top
- OT - Open Top

Signature of Land Surveyor

Gerald B. Rager, Jr.

SEAL



Job Number 84-1520

DATE RECEIVED

Date: 6-12-84

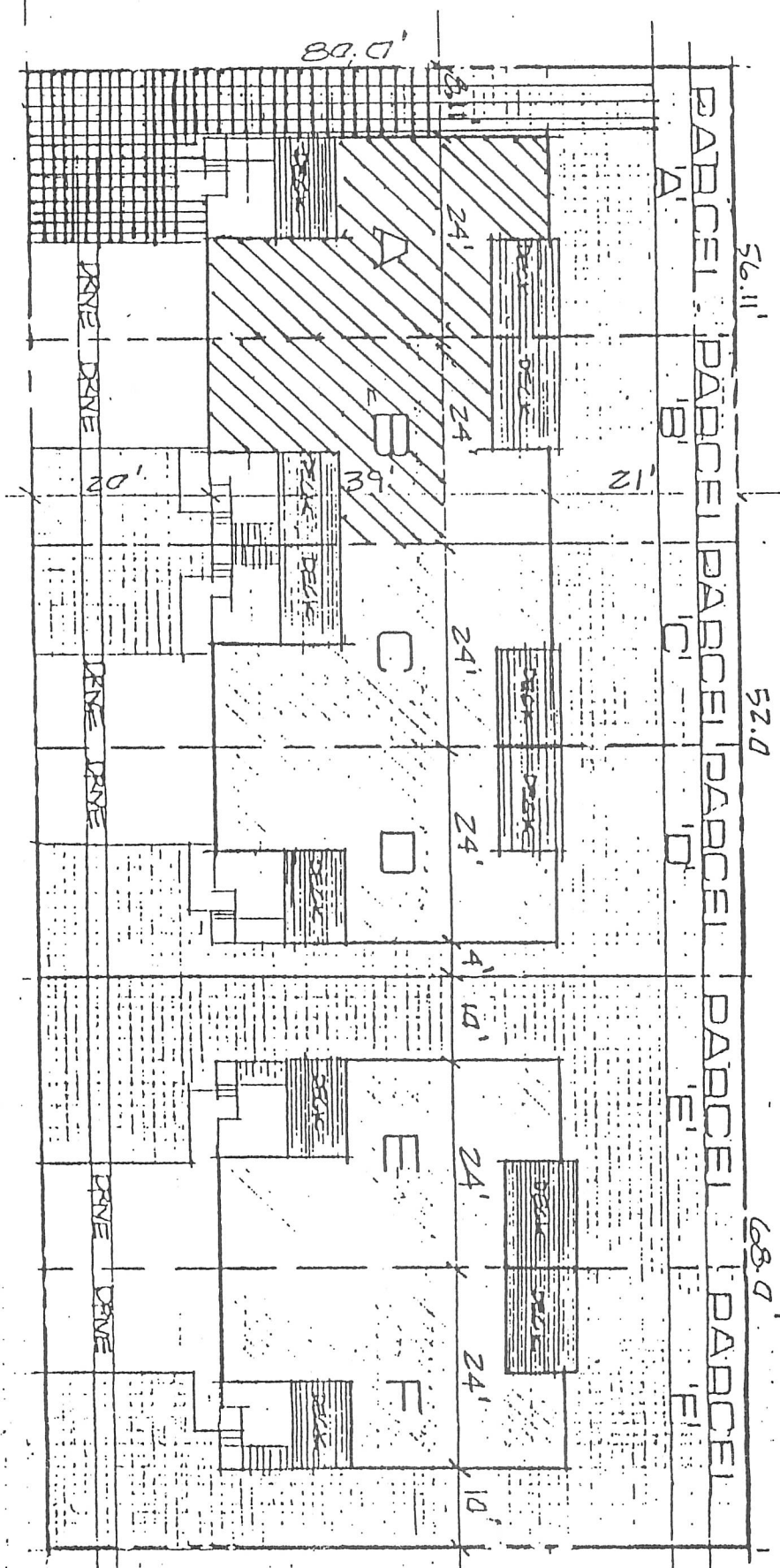
OFFICIAL ADDRESS

BLDG. PERMIT NO.

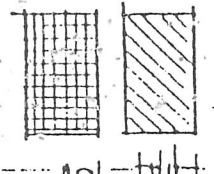
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Jamp, Rybarson & Associates, Inc.
 architects, engineers, planners
 9220 West Dodge Road
 Omaha, Nebraska 68114
 402-387-3008
 308-388-4077
 Grand Island, Nebraska 68801

LOT 4 LOT 3 LOT 2



LEGEND:



TYPICAL DRIVE DRIVE, DECK, PORCH
 OPEN AREAS COMPONENT AREA

62ND STREET

LEGAL

LOT-2,3,4

PICKARD SCHOOL SQUARE
 AN ADDITION TO THE
 CITY OF OMAHA, IOWA
 COUNTY, NEBRASKA

LEGAL DESCRIPTION PARCEL A:

Lot 4, except the North 24 feet thereof, PICKARD SCHOOL SQUARE, an addition to the City of Omaha, Douglas County, Nebraska.

LEGAL DESCRIPTION PARCEL B:

The North 24 feet of Lot 4, PICKARD SCHOOL SQUARE, an addition to the City of Omaha, Douglas County, Nebraska:

LEGAL DESCRIPTION PARCEL C:

The South 24 feet of Lot 3, PICKARD SCHOOL SQUARE, an addition to the City of Omaha, Douglas County, Nebraska.

LEGAL DESCRIPTION PARCEL D:

Lot 3, except the South 24 feet thereof, PICKARD SCHOOL SQUARE, an addition to the City of Omaha, Douglas County, Nebraska.

LEGAL DESCRIPTION PARCEL E:

The South 1/2 of Lot 2, PICKARD SCHOOL SQUARE, an addition to the City of Omaha, Douglas County, Nebraska.

LEGAL DESCRIPTION PARCEL F:

The North 1/2 of Lot 2, PICKARD SCHOOL SQUARE, an addition to the City of Omaha, Douglas County, Nebraska.