

## DECLARATION

The undersigned Declarant creates a Condominium in the manner established by the Nebraska Condominium Act.

1. NAMES: The name of the Condominium is Fieldstone Place, a Condominium. The name of the Association is Fieldstone Place Condominium Association, a nonprofit corporation.
2. DESCRIPTION: The Condominium is situated in Lancaster County on the following described real estate:

Lot 2, Fieldstone Center 4<sup>th</sup> Addition, Lincoln, Lancaster County, Nebraska

3. NUMBER OF UNITS: The units ("Units") will include "Living Units" and "Garage Units". The anticipated number of Living Units to be created initially is seventy, however, this number may be increased by the exercise of special declarant rights. The anticipated number of Garage Units to be created initially is seventy-four, however, this number may be increased by the exercise of special declarant rights.
4. UNIT DESCRIPTION AND BOUNDARIES: The Living Units are located within various 4-plex, 6-plex and 8-plex buildings and the Garage Units are located within garage buildings as shown on the attached Exhibit "A" ("Plat and Plan"). The location and boundaries of each Unit, including the Unit's identifying number, are shown on Exhibit "A". The boundaries are the unfinished surface of the walls, fireplace openings up to the flue in a closed position, the unfinished surface of the floor, the unfinished surface of the ceiling, and the extension of those surfaces where the unit includes unenclosed space.
5. COMMON ELEMENTS: The common elements are all portions of the Condominium other than the Units. The common elements include, but are not limited to:
  - a. All rights and easements in and to the commons and common areas as defined in the Second Amended and Restated Restrictive Covenants filed of record in the office of the Register of Deeds, Lancaster County, Nebraska on July 20, 2005 as Instrument No. 2005-040949.
  - b. All private utilities serving the Units;
  - c. All private drives, roadway signs, parking, storage areas and the clubhouse serving the Units.

The limited common elements, other than as shown on Exhibit "A," are:

- d. If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the boundaries of a Unit, any portion serving only that Unit is a limited common element allocated to that Unit, and any portion serving more than one Unit or any portion of the common elements is a part of the common elements.
- e. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are limited common elements allocated to that Unit.
- f. The roof, siding, and foundation and all other parts of the garage buildings in which the Garage Units are located, not part of a Garage Unit and not otherwise allocated to a Unit or Units pursuant to paragraph 5.d or 5.e above ("Garage Limited Commons"), are limited common elements allocated to the Garage Units.

6. SPECIAL DECLARANT RIGHTS: The Declarant may add real estate to the Condominium, at any time, without the consent of the Unit owners. Additions shall be made by the recordation of an amendment to this Declaration, and the allocated interests shown on Exhibit "B" shall be reallocated. The expense of the preparation of the amendment, reallocation of allocated interests, and recording fees shall be borne by the Declarant.

The Declarant may use any Unit owned or leased by the Declarant as a model, sales office, or management office.

7. ALLOCATED INTERESTS: The allocated interests in the common elements are shown on Exhibit "B." The formula used to establish the allocated interests for the Living Units is based on the number of Living Units, with each Living Unit's allocated interest equal to the quotient of the dividing one by the total number of Living Units. The formula to be used to establish the allocated interests, after any Living Units are added to or withdrawn from the Condominium, will be the same. The allocated interest in the Garage Limited Commons is shown on Exhibit "B". The formula used to establish the allocated interests is based on the number of Garage Units with each Garage Unit's allocated interest equal to the quotient of dividing one by the total number of Garage Units.
8. CONVEYANCES: Any Unit may be conveyed or encumbered subject to the provisions of this Declaration. The Garage Units can only be leased or conveyed to a party owning or having an ownership interest in a Living unit.
9. SUBDIVISION: With the written approval of the Executive Board, Units may be combined or divided and incorporated within the boundaries of one or more other Units. However, no division of any Unit shall increase the total number of Units. Upon approval, the Executive Board shall record an Amendment to this Declaration, and the allocated interests shown on Exhibit "B" shall be reallocated. The expense of preparation of the Amendment, reallocation of the allocated interests, and recording fees shall be assessed against the Units affected.
10. MAINTENANCE AND IMPROVEMENT OF THE UNITS: Each Unit shall be maintained by the Unit owner. Each Unit owner shall promptly report to the Executive Board any need for repairs for which the Association is responsible. Notwithstanding the general provisions for maintenance, the Executive Board may establish specific maintenance responsibilities, which shall be uniform as to all Units.

A Unit owner may make any improvements or alterations to the Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium. A Unit owner may not alter or change the common elements, or the exterior appearance of a Unit, without the written approval of the Association.

11. USE OF UNITS: No Unit shall be used other than for residential purposes.
12. NUISANCE: No noxious or offensive activity shall be permitted on or in any Unit, common element or limited common element nor shall any action or activity be permitted which is an annoyance or nuisance or which endangers the health or unreasonably disturbs the quiet of the occupants of any Units.
13. PETS: No animals of any kind shall be kept in any Unit for any commercial purpose. The Executive Board may establish rules governing pets which may be kept in any Unit, including prohibition of all pets or removal of any pet which becomes an annoyance to other Unit owners.  

Pets shall not be permitted upon the common elements unless leashed and accompanied by an adult. Each Unit owner shall indemnify the Association, all other Unit owners and the Declarant against any liability arising from maintaining a pet.
14. CLUBHOUSE AND PARKING: The portion of the common elements identified on Exhibit "A" as the clubhouse and the parking areas may be used by the Unit owners in accordance with

rules established by the Executive Board. The Executive Board may adopt rules regarding the use of the parking areas and the clubhouse and may assign exclusive use of certain parking spaces and may assess fees for the use of the clubhouse.

15. RECREATIONAL VEHICLES: No recreational vehicle shall be parked or stored upon any portion of the common elements or limited common elements except within a Garage Unit.
16. EASEMENT FOR SUPPORT: Each Unit and common element shall have an easement for lateral and subjacent support from every other Unit and common element.
17. ADVERTISING: No advertising signs, billboards, or other advertising devices shall be permitted on the Units or common elements, except for signs advertising a unit for sale or lease. However, the Declarant reserves the right to maintain on the common elements such advertising signs as may comply with applicable governmental regulations.

The reservation of rights in this paragraph shall be applicable to any real estate added to the Condominium. The rights reserved under this paragraph shall terminate at such time as the Declarant has conveyed all Units to Unit owners other than the Declarant.

18. ASSOCIATION: The Association has been incorporated in Nebraska to provide for the management of the Condominium. The Association shall be governed by the decisions and resolutions of its Board of Directors as provided in the Association Articles of Incorporation and By-laws. For purposes of this Declaration, the term "Executive Board" shall refer to and be the same as the Association Board of Directors.
19. MEMBERSHIP: Every person or entity who is an owner of a Living Unit shall be a member of the Association. Any person who holds an interest in a Living Unit merely as a security for an obligation shall not be a member.
20. DECLARANT CONTROL: Except as otherwise specifically provided in this paragraph, Declarant shall control the Association and may appoint and remove the officers and members of the Executive Board until the earlier of:
  - a. Sixty days after conveyance of 90 percent of the Units which may be created to Unit owners other than a Declarant; or
  - b. Two years after Declarant has ceased to offer Units for sale in the ordinary course of business.

Not later than 60 days after conveyance of 25 percent of the Units which may be created to Unit owners other than a Declarant, at least one member and not less than 25 percent of the members of the Executive Board shall be elected exclusively by Unit owners other than the Declarant. Not later than 60 days after conveyance of 50 percent of the Units which may be created to Unit owners other than a Declarant, not less than 33 1/3 percent of the members of the Executive Board shall be elected exclusively by Unit owners other than the Declarant.

Not later than the termination of the period of Declarant control, the unit owners shall elect an Executive Board of at least three members, at least a majority of whom shall be Unit owners. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon election.

One vote may be cast, for the election of members of the Executive Board, for each Living unit.

21. MAINTENANCE OF COMMON ELEMENTS: The Association shall maintain all common elements and limited common elements and shall have the right to enter any Unit at reasonable times to perform maintenance. The Association shall provide yard care, snow removal and common trash hauling service for its members.
22. EXTERIOR SURFACES: The Association may maintain any exterior surface within the boundaries of any Unit, consistent with other comparable exterior surfaces, and shall have

the right to enter the Unit at reasonable times to perform maintenance. The cost of maintenance performed by the Association shall be added to the next assessment against the Unit.

23. INSURANCE: The Association shall insure the Condominium and the Association against risk, including tort liability, in the manner set forth in the Bylaws. A Unit owner may obtain insurance, for the unit owner's account and benefit, covering the Unit and contents. Each policy shall be issued in the name of the Association for the benefit of Unit owners in proportion to the allocated interests shown on Exhibit "B." The limits of coverage shall be established by resolution of the Executive Board. Premiums for such insurance shall be a common expense.
24. DAMAGE: Any damage to the Condominium caused by fire or other casualty shall be promptly repaired by the Association in the manner set forth in the Bylaws, unless (1) the Condominium is terminated, (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) 80 percent of the Unit owners, including the Unit owner of every Unit which will not be rebuilt and every Unit to which a limited common element is assigned which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire Condominium is not repaired or replaced, (1) the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the Condominium, (2) the insurance proceeds attributable to units and limited common elements which are not rebuilt must be distributed to the owners of those Units and the owners of the units to which those limited common elements were assigned, or the lienholders, as their interests may appear, and (3) the remainder of the proceeds must be distributed to all the Unit owners or lienholders, as their interests may appear, in proportion to the allocated interests of all the Units. If the Unit owners vote to rebuild any Unit, that Unit's allocated interest is automatically reallocated, and the Association shall record an amendment to this Declaration reflecting the reallocation.
25. LIABILITY: Any tort liability arising from the use of common elements shall be a common expense. Any deficiency in insurance coverage of such liability shall be borne by all Unit owners in proportion to the allocated interests shown on Exhibit "B."
26. CONDEMNATION: If any part of the common elements is condemned for public use, the award shall be payable to the Association. Actual damage to physical improvements shall be repaired and the fund created by the award shall be administered as insurance proceeds in the manner set forth in the Bylaws.
27. USE OF COMMON ELEMENTS: The Association and each Unit owner shall have the right to use the common elements, other than limited common elements, and shall have an easement over the common elements for that use.  
  
The Association, and each Unit owner of a Unit to which a limited common element is assigned, shall have the right to use such limited common elements and shall have an easement over such limited common element for that use.
28. EASEMENT OVER COMMON ELEMENTS: The Executive Board may grant easements, leases, licenses and concessions over the common elements for the installation and maintenance of utilities and for such other purposes as the board deems to be in the best interests of the Condominium.
29. COMMON EXPENSES AND LIEN: The members shall pay annual and special assessments for the common expenses. The cost of the operation, repair and maintenance of the common elements shall be an expense of all of the Living Unit owners. The cost of the operation, repair and maintenance of the limited common elements shall be an expense of only the Unit owners to which the limited common elements are allocated. Annual and special assessments shall be in proportion to allocated interests shown on Exhibit "B." Each

member's assessment shall be determined on an annual basis for each fiscal year, prorating fractional years and any changes in allocated interests. An estimate of the Association's costs for administration, operation, maintenance, repair and improvement of the common elements and limited common elements shall be made annually and each member shall pay one-twelfth of the members allocated share of such estimated costs per month in advance. The Executive Board may provide a discount to members paying annually in advance. At the end of each fiscal year, a statement of the total year's operating costs may be presented to the members of the Association and the members shall pay their allocated share of any excess of such actual costs over the estimated costs to the Association within (30) days of the statement. Any over payments shall be credited to the next year's assessment. During the period of Declarant Control, as provided in paragraph 20, the annual assessment and monthly payment shall be as reasonably determined by Declarant. No payment or assessment shall be due from any Unit owned by Declarant during the period of Declarant Control, but any operating deficiency for the Association shall be paid by Declarant.

- a. Budgets: The Association, upon request by a majority of the members, shall prepare, approve and make available to each member a pro forma operating statement or budget containing: (1) estimated revenue and expenses on an accrual basis; (2) the amount of the total cash reserves of the Association currently available for replacement or major repair of the common and limited common elements and for contingencies; (3) an itemized estimate of the remaining life of, and the methods of funding to defray repair, replacement or additions to, major components of the common and limited common elements; and (4) a general statement setting forth the procedures used by the Association in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the common and limited common elements.
- b. Additional Charges: In addition to any amounts due or any other relief or remedy obtained against a member who is delinquent in the payment of any assessment, each member agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Association may incur or levy in the process of collecting from each member monies due and delinquent. All Additional Charges shall be included in any judgment in any action brought to enforce collection of delinquent assessments. Additional Charges shall include, but not be limited to, the following:
  - i. Attorney's Fees: Reasonable attorney's fees and costs incurred in the event an attorney(s) is employed to collect any assessment or sum due, whether by suit or otherwise;
  - ii. Late Charges: A late charge in an amount to be fixed by the Association to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due or within any "grace period. The late charge shall not exceed ten percent (10%) of the delinquent assessment or ten dollars (\$10), whichever is greater;
  - iii. Costs of Suit: Costs of suit and court costs incurred as allowed by the court;
  - iv. Filing Fees: Costs of filing notice of lien in the Office of the Register of Deeds;
  - v. Interest: Interest on all assessments at the rate of 18% per annum, commencing thirty (30) days after the assessment becomes due; and
  - vi. Other: Any other costs that the Association may incur in the process of collecting delinquent assessments.
- c. Lien. Each assessment shall be the personal obligation of the member who is the Unit owner of the Unit assessed at the time of the assessment and when shown of record shall be a lien upon the Unit assessed.



The foregoing instrument was acknowledged before me this **6th** day of **December** 2005, by  
Jerry E. Boyce, President of Boyce Construction, Inc.

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Notary Public

GENERAL NOTARY – State of Nebraska  
RANDY R. EWING  
My Comm. Exp. Dec. 12, 2006

PIERSON, FITCHETT, HUNZEKER, BLAKE & KATT  
1045 LINCOLN MALL, SUITE 200