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JOHN LA FAVE
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**DECLARATION OF CONDOMINIUM**

Return to: David Rice
205 W. Floyd St
Milwaukee, WI 53212

353-0549-6
Parcel Number

## DECLARATION OF CONDOMINIUM

THIS DECLARATION OF CONDOMINIUM (this "Declaration"), is made this 16 day of December, 2005, by David Rice (the "Declarant").

## ARTICLE I

## DECLARATION

Declarant hereby declares that it is the sole owner of the Land (as defined in Section 2.02), together with all improvements located thereon and all easements, rights, and appurtenances pertaining thereto (the "Property"), and further declares that the Property is hereby submitted to the condominium form of ownership as provided in Chapter 703, Wisconsin Statutes (the "Condominium Ownership Act").

## ARTICLE II

## NAME; DESCRIPTION OF PROPERTY

**2.01. Name.** The name of the condominium created by this Declaration (the "Condominium") is "Benchmark Condominiums."

**2.02. Legal Description.** The land comprising the Property (the "Land") is located in the City of Milwaukee, County of Milwaukee, State of Wisconsin, and is legally described on Exhibit A attached hereto and made a part hereof.

**2.03. Address.** The address of the Condominium is 203-205 W. Lloyd Street, Milwaukee, WI 53212.

## ARTICLE III

## DESCRIPTION OF UNITS

**3.01. Identification of Units.** The Condominium shall consist of two units (individually a "Unit" and collectively the "Units") located in the building ( the "Building") identified on the condominium plat attached hereto as Exhibit B and made a part hereof (the "Condominium Plat"). The Condominium Plat shows floor plans for each Unit showing the layout, boundaries, and dimensions of each Unit. The Units shall be identified as Units 203 and 205, as numbered on the Condominium Plat. Each owner of a Unit is referred to as a "Unit Owner." Where a Unit has been sold under a land contract, the purchaser (and not the vendor) shall be the Unit Owner.

**3.02. Boundaries of Units.** The boundaries of each Unit shall be as follows:

(a) **Upper Boundary.** The upper boundary of the Unit shall be the interior lower surface of the supporting members of the roof above the highest level of the living area, extended to an intersection with the perimetrical boundaries.

(b) **Lower Boundary.** The lower boundary of the Unit shall be the upper surface of the unfinished floor of the lowest level of the Unit consisting of the garage and basement extended to an intersection with the perimetrical boundaries.

(c) **Perimetrical Boundary.** The perimetrical boundaries of the Unit shall be vertical planes of the inside surface of the studs supporting the interior walls, in either case extending to intersections with each other and with the upper and lower boundaries.

**3.03. Description of Units.** It is intended that the surface of each plane described above (be it drywall, tiles, wallpaper, paneling, carpeting, or otherwise covered) is included as part of each defined Unit. The Unit shall include, without limitation, all improvements now of hereafter located within such boundaries, including:

(a) Windows, doors, and garage doors (with all opening, closing, and locking mechanisms and all hardware) that provide direct access to or within the Unit.

(b) Interior lights and light fixtures.

(c) Cabinets.

(d) Floor, wall, baseboard, or ceiling electrical outlets and switches and the junction boxes serving them.

(e) Telephone, fax, cable television, computer, Internet, stereo, or other sound systems, if any, including outlets, switches, hardware, and other appurtenances serving them.

(f) Plumbing fixtures, hot water heaters, fire sprinklers, if any, water softeners, if any, and the piping, valves, and other connecting and controlling mechanisms and devices lying between the fixture and water or sewage lines serving more than one (1) Unit.

(g) The heating, ventilating, and air conditioning system, including the furnaces, air conditioning equipment, the control mechanisms, all vents from the Unit to the exterior of the Condominium, including vents for furnaces, clothes dryer, range hood, all other exhaust fans, and such other vents appurtenant to each Unit, condensers and all connections thereto serving each Unit.

Specifically not included as part of a Unit are those structural components of each Building and any portion of the plumbing, electrical, or mechanical systems of the Building serving more than one (1) Unit or another Unit, even if located within the Unit. Any structural components, plumbing, electrical, mechanical, and public or private utility lines running through a Unit that serve more than one Unit or another Unit are Common Elements.

## ARTICLE IV

## COMMON ELEMENTS; LIMITED COMMON ELEMENTS

**4.01. Common Elements.** The common elements (the "Common Elements") include the following:

(a) The Land;

(b) The pedestrian walkways, situated on the Land;

(c) The foundations, columns, pilasters, girders, beams, front balconies, supports, main walls (which shall be defined as exterior walls and surfaces, structural walls, roof trusses, and roofs);

(d) That part of the fire sprinkler system, if any, and its associated piping and operating mechanisms serving more than one Unit;

(e) Any other portion of the improvements to the Land that is not part of a Unit as described above; and

**4.02. Limited Common Elements.** Certain Common Elements as described in this Section shall be reserved for the exclusive use of the Unit Owners of one or more but less than all of the Units. Such Common Elements shall be referred to collectively as "Limited Common Elements." The following Common Elements shall be reserved for the exclusive use of one or more Unit Owners as described herein:

(a) All sidewalks, access ways, steps, stoops, decks, and patios attached to, leading directly to or from, or adjacent to each Unit; and

(b) The parking spaces identified on the Condominium Plat as designated and reserved for any Unit.

**4.03. Conflict Between Unit Boundaries; Common Element Boundaries.**

(a) If any portion of the Common Elements shall encroach upon any Unit, or if any Unit shall encroach upon any other Unit or upon any portion of the Common Elements as a result of the duly authorized construction, reconstruction, or repair of a Building, or as a result of settling or shifting of a Building, then the existing physical boundaries of such Units or Common Elements shall be conclusively presumed to be the boundaries of such Units or Common Elements, regardless of the variations between the physical boundaries described in Sections 3.02 and 3.03 or elsewhere in this Declaration or shown on the Condominium Plat and the existing physical boundaries of any such Units or Common Elements.

(b) If any portion of the Common Elements shall encroach upon any Unit, or if any Unit shall encroach upon any other Unit or upon any portion of the Common Elements as a result of the duly authorized construction, reconstruction, or repair of a Building, or as a result of settling or shifting of a Building, then a valid easement for the encroachment and for its maintenance shall exist so long as such Building stands; provided, however, that if any such encroachment or easement materially impairs any Unit Owner's enjoyment of the Unit owned by such Unit Owner or of the Common Elements in the judgment of the board of directors of the Association (as defined below), such encroachment shall be removed or just compensation shall be provided to each injured Unit Owner within ninety (90) days of the discovery of the encroachment.

(c) Following any change in the location of the boundaries of the Units under this Section 4.03, the square footages of all affected Units or Common Elements shall continue to be determined by the square footages, if any, shown on the Condominium Plat for all purposes under this Declaration.

## ARTICLE V

## PERCENTAGE INTERESTS; VOTING

**5.01. Percentage Interests.** The undivided percentage interest in the Common Elements appurtenant to each Unit shall be a percentage equal to one divided by the total number of Units. Initially, each Unit's percentage shall be 50%.

**5.02. Conveyance, Lease, or Encumbrance of Percentage Interest.** Any deed, mortgage, lease, or other instrument purporting to convey, encumber, or lease any Unit shall be deemed to include the Unit Owner's undivided percentage interest in the Common Elements and in the insurance proceeds or condemnation awards even though such interest is not expressly described or referred to therein.

**5.03. Voting.** The vote of each Unit at meetings of the Association (as defined in Article VI) shall be equal to the percentage of interest in the Common Elements pertaining to such Unit.

**5.04. Multiple Owners.** If there are multiple owners of any Unit, their votes shall be counted in the manner provided in the Bylaws.

**5.05. Limitations on Voting Rights.** No Unit Owner shall be entitled to vote on any matter submitted to a vote of the Unit Owners until the Unit Owner's name and current mailing address, and the name and address of the Mortgagee of the Unit, if any, has been furnished to the secretary of the Association. The bylaws of the Association may contain a provision prohibiting any Unit Owner from

voting on any matter submitted to a vote of the Unit Owners if the Association has recorded a statement of condominium lien on the Unit and the amount necessary to release the lien has not been paid at the time of the voting.

## ARTICLE VI

## CONDOMINIUM ASSOCIATION

**6.01. General.** Following the conveyance of the first Unit to any person other than Declarant, all Unit Owners shall be entitled and required to be a member of an association of Unit Owners known as "Benchmark Condominium Association" (the "Association"), which shall be responsible for carrying out the purposes of this Declaration, including exclusive management and control of the Common Elements and facilities of the Condominium, which may include the appointment and delegation of duties and responsibilities hereunder to a committee or subcommittee commissioned by the Association for that purpose. The Association shall be an unincorporated association under the laws of the State of Wisconsin. The powers and duties of the Association shall include those set forth in the Association's articles of association (the "Articles") and bylaws (the "Bylaws"), the Condominium Ownership Act, this Declaration, the Wisconsin Statutes. All Unit Owners, tenants of Units, and all other persons and entities that in any manner use the Property or any part thereof shall abide by and be subject to all of the provisions of all rules and regulations of the Association (collectively, the "Rules and Regulations"), this Declaration, the Articles, and Bylaws. The Association shall have the exclusive right to promulgate, and to delegate the right to promulgate, the Rules and Regulations from time to time and shall distribute to each Unit Owner the updated version of such Rules and Regulations upon any amendment or modification to the Rules and Regulations. Any new rule or regulation or any revision to an existing rule and regulation shall become effective immediately upon distribution to the Unit Owners unless otherwise stated in such amendment or modification.

**6.02. Declarant Control.** Notwithstanding anything contained in this Declaration to the contrary, the Declarant shall totally govern the affairs of the Condominium and pay all expenses thereof until a Unit has been sold to any person other than the Declarant. The Declarant may exercise any rights granted to, or perform any obligations imposed upon, Declarant under this Declaration through its duly authorized agent. After a Unit has been sold to any person other than the Declarant, except as provided in Section 6.03, the Declarant shall have the right to appoint and remove the officers of the Association and to exercise any and all of the powers and responsibilities assigned to the Association and its officers by the Articles, Bylaws, the Condominium Ownership Act, this Declaration, and the Wisconsin unincorporated association law from the date the first Unit of this Condominium is conveyed by the Declarant to any person other than Declarant, until the earliest of: (a) ten (10) years from such date, unless the statute governing expansion of condominiums is amended to permit a longer period, in which event, such longer period shall apply; or (b) thirty (30) days after the conveyance of one hundred percent(100%) of the Common Element interest to purchasers, assuming that the Condominium has been fully expanded under Article VI; or (c) thirty (30) days after the Declarant's election to waive its right of control.

**6.03. Board of Directors.** The affairs of the Association shall be governed by a board of directors. Prior to the conveyance of one hundred percent (100%) of the Common Element interest of the Condominium to purchasers, the Association shall hold a meeting, and the Unit Owners other than the Declarant shall elect one director on the board of directors. For purposes of calculating the percentages set forth in Section 6.02 and this Section 6.03, the percentage of Common Element interest conveyed shall be calculated by dividing the number of Units conveyed by the maximum number of Units.

**6.04. Maintenance and Repairs.**

**(a) Common Elements.** The Association shall be responsible for the management and control of the Common Elements and Limited Common Elements and shall maintain the same in good, clean, and attractive order and repair. In addition, the Association shall be responsible for providing and maintaining all Limited Common Elements; for snow plowing all sidewalks, driveways, private streets, parking areas; and the maintenance, repair, and replacement of all outdoor amenities, including lawns, landscaping, sidewalks, bicycle paths, driveways, and parking areas.

**(b) Units.** Each Unit Owner shall be responsible for the maintenance, repair, and replacement of all other improvements constructed within the Unit (including the electrical, heating, and air conditioning systems serving such Unit, and including any ducts, vents, wires, cables, or conduits designed or used in connection with such electrical, heating, or air conditioning systems), except to the extent any repair cost is paid by the Association's insurance policy described in Section 8.01. Each Unit shall at all times be kept in good condition and repair. If any Unit or portion of a Unit for which a Unit Owner is responsible falls into disrepair so as to create a dangerous, unsafe, unsightly, or unattractive condition, or a condition that results in damage to the Common Elements, the Association, upon fifteen (15) days' prior written notice to the Unit Owners of such Unit, shall have the right to correct such condition or to restore the Unit to its condition existing prior to the disrepair, or the damage or destruction if such was the cause of the disrepair, and to enter into such Unit for the purpose of doing so, and the Unit Owners of such Unit shall promptly reimburse the Association for the cost thereof. All amounts due for such work shall be paid within ten (10) days after receipt of written demand therefor, or the amounts may, at the option of the Association, be levied against the Unit as a Special Assessment under Section 6.07.

**(c) Damage Caused by Unit Owners.** To the extent (i) any cleaning, maintenance, repair, or replacement of all or any part of any Common Elements or the Unit is required as a result of the negligent, reckless, or intentional act or omission of any Unit Owner, tenant, or occupant of a Unit, or (ii) any cleaning, maintenance, repair, replacement, or restoration of all or any part of any Common Element or the Unit is required as a result of an alteration to a Unit by any Unit Owner, tenant, or occupant of a Unit, or the removal of any such alteration (regardless of whether the alteration was approved by the Association or any committee thereof) or (iii) the Association is required to restore the Common Elements or the Unit following any alteration of a Common Element or Limited Common Element required by this Declaration, or the removal of any such alteration, the Unit Owner that committed the act or omission or that caused the alteration, or the Unit Owners of the Unit occupied by such tenant or occupant or responsible for such guest, contractor, agent, or invitee, shall pay the cost of such cleaning, maintenance, repair, replacement and restoration.

**6.05. Common Expenses.** Any and all expenses incurred by the Association in connection with the management of the Condominium, maintenance of the Common Elements and other areas described in Section 6.04, and administration of the Association shall be deemed to be common expenses (the "Common Expenses"), including, without limitation, expenses incurred for: landscaping and lawn care; snow shoveling and plowing; improvements to the Common Elements; common grounds security lighting; municipal utility services provided to the Common Elements; trash collection; and maintenance and management salaries and wages.

**6.06. General Assessments.** The Association shall levy monthly general assessments (the "General Assessments") against the Unit Owners for the purpose of maintaining a fund from which Common Expenses may be paid. The General Assessments against the Unit Owners shall be assessed in proportion to their percentage interests in the Common Elements, except that until occupancy permits

have been issued for all Units, the General Assessments for insurance premiums shall be levied evenly against all Units for which occupancy permits have been issued. General Assessments shall be due in advance on the first day of each month, or in such other manner as the Association may set forth in the Bylaws. Any General Assessment not paid when due shall bear interest until paid, as set forth in the Bylaws and, together with interest, collection costs, and reasonable attorney fees, shall constitute a lien on the Unit on which it is assessed if a statement of condominium lien is filed within two (2) years after the assessment becomes due as provided in the Condominium Ownership Act. During the period of Declarant control of the Association under Section 703.15(2)(c) of the Wisconsin Statutes, no General Assessments shall be assessed against any Unit owned by Declarant. During the period of Declarant control, however, the General Assessments payable by any Unit Owner other than Declarant shall not exceed the amount that Unit Owner would be charged if Declarant's Units were subject to full General Assessments, based on the annual operating budget then in effect. During the period of Declarant control, Declarant shall pay the deficit if the total General Assessments payable by Unit Owners other than Declarant do not cover total Common Expenses. Furthermore, if the Association has established a statutory reserve account under Section 703.163 of the Wisconsin Statutes, (a) no reserve fund assessments shall be levied against any Unit until a certificate of occupancy has been issued for that Unit, and (b) payment of any reserve fund assessments against any Unit owned by Declarant may be deferred until the earlier to occur of (i) the first conveyance of such Unit, or (ii) five years from the date exterior construction of the Building in which the Unit is located has been completed.

**6.07. Special Assessments.** The Association may, whenever necessary or appropriate, levy special assessments (the "Special Assessments") against the Unit Owners, or any of them, for deficiencies in the case of destruction or condemnation as set forth in Section 9.05 and Section 10.05; for defraying the cost of improvements to the Common Elements; for the collection of monies owed to the Association under any provision of this Declaration, including, without limitation, Section 6.04 and Article XIII, or for any other purpose for which the Association may determine a Special Assessment is necessary or appropriate for the improvement or benefit of the Condominium. Special Assessments shall be paid at such time and in such manner as the Association may determine. Any Special Assessment or installment not paid when due shall bear interest until paid, as set forth in the Bylaws and, together with the interest, collection costs, and reasonable attorney fees, shall constitute a lien on the Unit on which it is assessed if a statement of condominium lien is filed within two (2) years after the Special Assessment becomes due as provided in the Condominium Ownership Act.

**6.08. Common Surpluses.** If the surpluses of the Association (the "Common Surpluses") should be accumulated, other than surpluses in any construction fund as described in Section 9.06 and Section 10.06, such Common Surpluses may be credited against the Unit Owners' General Assessments in proportion to their respective percentage interests in the Common Elements or may be used for any other purpose as the Association may determine.

**6.09. Certificate of Status.** The Association shall, upon the written request of an owner, purchaser, or Mortgagee of a Unit (as defined below), issue a certificate of status of lien. Any such party may conclusively rely on the information set forth in such certificate.

**6.10. Management Services.** The Association shall have the right to enter into a management contract with a manager selected by the Association (the "Manager") under which services may be provided to the Unit Owners to create a community environment for the entire Condominium community. Such services may include, without limitation, provision of activity programs, community lounges, and housekeeping services. Certain of such services may be available only on a fee-for-services basis by agreement between the Manager and individual Unit Owners. All amounts payable by the Association to the Manager under the management contract shall be chargeable to the Owners as a Common Expense.

The management contract shall be subject to termination by the Association under Section 703.35 of the Wisconsin Statutes.

## ARTICLE VII

## ALTERATIONS AND USE RESTRICTIONS

### 7.01. Unit Alterations.

(a) A Unit Owner may make improvements and alterations within its Unit; provided, however, that such improvements or alterations shall not impair the structural soundness or integrity or lessen the structural support of any portion of the Condominium, and does not impair any easement. A Unit Owner may not change the dimensions of or the exterior appearance of a Unit or any portion of the Common Elements without obtaining the prior written permission of the Association, which permission may be denied in the sole discretion of the Association. Any approved improvement or alteration that changes the exterior dimensions of a Unit must be evidenced by recording a modification to this Declaration and the Condominium Plat before it shall be effective and must comply with the then applicable legal requirements for such amendment or addendum. Furthermore, any approved improvements or alterations must be accomplished in accordance with applicable laws and regulations, must not unreasonably interfere with the use and enjoyment of the other Units and the Common Elements, and must not be in violation of any underlying mortgage, land contract, or similar security interest.

(b) A Unit Owner acquiring an adjoining part of another Unit may remove all or any part of the intervening partition wall or create doorways or other apertures therein. This may be done even if the partition wall may, in whole or in part, be a Common Element, provided that those acts do not impair the structural integrity or lessen the support of any portion of the Condominium, do not reduce the value of the Condominium, and do not impair any easement. The creation of doorways or other apertures is not deemed an alteration of boundaries.

(c) If a Unit Owner acquires all of one or more adjoining Units, the Unit Owner's percentage interest in the Common Elements shall be equal to the number of Units so combined divided by the total number of Units, and as otherwise provided in Section 4.01 above.

### 7.02. Separation, Merger and Boundary Relocation.

Boundaries between Units may be relocated upon compliance with Section 703.13(6) of the Condominium Ownership Act and with the written consent of the Association. A Unit may be separated into two or more units only upon compliance with Section 703.13(7) of the Condominium Ownership Act and with the written consent of the Association. Furthermore, two or more Units may be merged into a single unit only upon compliance with Section 703.13(8) of the Condominium Ownership Act and with the written consent of the Association. No boundaries of any Units may be relocated, no Unit may be separated, and no Units may be merged hereunder without the consent of all Owners and Mortgagees having an interest in the Unit or Units affected. Any Unit Owner applying for a boundary relocation, Unit separation, or merger of Units shall provide to the Association for review complete plans and specifications for the relocation, separation, or merger, accompanied by a signed statement from a Wisconsin-licensed structural engineer or professional engineer specializing in structural engineering certifying that the alteration described by the plans and specifications will not impair the structural integrity or strength of the building. Furthermore, each Unit Owner applying for a boundary relocation, Unit separation or merger shall pay for the Association's cost of application review and documentation, including, without limitation, any and all engineering, surveying, and

legal fees incurred by the Association in considering such application and preparing any documentation, whether or not the application is ultimately approved. Where any boundary relocation, unit separation, or merger would require the approval of the municipality in which the Condominium is located, the applicant shall obtain such approval. The Association may recover any unpaid costs by imposing a Special Assessment against the applicant's Unit. Following any boundary relocation, Unit separation, or merger, the percentage interests in the Common Elements shall be reallocated as follows:

(A) In the case of a boundary relocation, the percentage interests that were formerly appurtenant to the Units whose boundaries are being adjusted shall be determined as follows: for each resulting Unit (the "Resulting Unit"), the percentage interests of the two Units whose boundary is being relocated shall be added together, and multiplied by a fraction, the numerator of which is the square footage of the Resulting Unit, and the denominator of which is the square footage of both Resulting Units. The product is the new percentage interest for the Resulting Unit. Furthermore, votes in the Association that were formerly appurtenant to the Units whose boundaries are being adjusted shall be determined in the same manner.

(B) In the case of a Unit separation, the percentage interests appurtenant to each resulting Unit (the "Resulting Unit") shall be determined as follows: for each Resulting Unit, the percentage interest in the original Unit from which the Resulting Unit is created (the "Original Unit") shall be multiplied by a fraction, the numerator of which is the total square footage of the Resulting Unit, and the denominator of which is the total square footage of all Resulting Units that were originally part of the Original Unit. The product shall be the new percentage interest for the Resulting Unit. Furthermore, votes in the Association that were formerly appurtenant to the Original Unit that are to be assigned to the Resulting Units shall be determined in the same manner.

(C) In the case of the merger of two or more Units, the percentage interests appurtenant to the resulting Unit shall be the combined percentages of the Units from which the resulting Unit was created. Furthermore, votes in the Association appurtenant to the resulting Unit shall be the combined votes of the Units from which the resulting Unit was created.

(D) An amendment to the Declaration or the plat pursuant to these procedures shall require only the signatures of the Association and the Unit Owners and Mortgagees of the affected Units.

**7.03. Use and Restrictions on Use of Unit.** Each Unit shall be used for single-family residential purposes and for no other purpose unless otherwise authorized by the Association prior to the commencement of such use. A Unit shall be deemed to be used for "single-family residential purposes" if it is occupied by no more than one family (defined to include persons related by birth, marriage, or legal adoption) plus no more than two unrelated persons. No business, whether or not for profit, including, without limitation, any day care center, animal boarding business, products distributorship, manufacturing facility, sales office, or professional practice, may be conducted from any Unit. The foregoing restrictions as to residence and use shall not, however, be construed in such a manner as to prohibit a Unit Owner from:

(a) maintaining his or her personal professional library in his or her Unit;

(b) keeping his or her personal business or professional records or accounts in his or her Unit;

(c) handling his or her personal or business records or accounts in his or her Unit; or

(d) handling his or her personal business or professional telephone calls or correspondence from his or her Unit.

Nothing in this Section 7.03 shall authorize the maintaining of an office at which customers or clients customarily call and the same is prohibited.

**7.04. Nuisances.** No nuisances shall be allowed upon the Property, nor any use or practice that is unlawful or interferes with the peaceful possession and proper use of the Condominium by the Unit Owners or that would cause an increase in the premiums for insurance required to be maintained by the Association under Section 8.01. All parts of the Condominium shall be kept in a clean and sanitary condition, and no fire or other hazard shall be allowed to exist. No Unit Owner shall permit any use of its Unit or of the Common Elements that increases the cost of insuring the Condominium.

**7.05. Lease of Units.** Each Unit or any part thereof may be rented by written lease, provided that

(a) The term of any such lease shall not be less than four (4) months;

(b) The Unit Owner has obtained the prior written approval of the Association to the proposed tenant and the terms of the proposed lease;

(c) The lease contains a statement obligating all tenants to abide by this Declaration, the Articles, the Bylaws, and the Rules and Regulations, providing that the lease is subject and subordinate to the same; and

(d) The lease provides that any default arising out of the tenant's failure to abide by the Declaration, the Articles, the Bylaws, and the Rules and Regulations shall be enforceable by the Association as a third-party beneficiary to the lease and that the Association shall have, in addition to all rights and remedies provided under the Declaration, the Articles, the Bylaws and the Rules and Regulations, the right to evict the tenant and/or terminate the lease should any such violation continue for a period of ten (10) days following delivery of written notice to the tenant specifying the violation.

The Association may withhold approval upon any reasonable basis, including, but not limited to: the failure of the lease terms to comply with all provisions of this Declaration, the Articles, the Bylaws, and the Rules and Regulations; the past failure of the tenant or its guests to abide by all provisions of this Declaration, the Articles, the Bylaws, and the Rules and Regulations; and the past use by the tenant or its invitees or guests of any part of the Condominium in a manner offensive or objectionable to the Association or other occupants of the Condominium by reason of noise, odors, vibrations, or nuisance.

During the term of any lease of all or any part of a Unit, each Unit Owner of such Unit shall remain liable for the compliance of the Unit, such Unit Owner and all tenants of the Unit with all provisions of this Declaration, the Bylaws and the Rules and Regulations of the Association, and shall be responsible for securing such compliance from the tenants of the Unit. The Association may require that a copy of each lease of all or any part of a Unit be filed with the Association. The restrictions against leasing contained in this Section 7.05 shall not apply to leases of the Units by the Declarant or leases of the Units to the Association.

**7.06. Signs.** No sign of any kind shall be displayed to the public view on any Unit without the written consent of the Association and, if Declarant owns at least one Unit, the Declarant. The Declarant reserves the right to erect signs, gates, or other entryway features surrounded with landscaping at the entrances to the Condominium and to erect appropriate signage for the sales of Units.

**7.07. Garbage and Refuse Disposal.** No Unit shall be used or maintained as a dumping ground for rubbish, trash, garbage, or waste. All clippings, rocks, or earth must be in containers.

**7.08. Storage.** Outdoor storage of disabled vehicles or personal property shall not be permitted. No firewood or wood pile shall be kept outside a structure unless it is neatly stacked and screened from street view. No vehicles shall be parked on any yard at any time.

**7.09. Pets.** Pets are permitted in accordance with the current applicable Rules and Regulations.

**7.10. Landscaping.** Unit Owners may not plant any decorative plants, vegetables, and shrubbery outside of their Unit without the prior written consent of the Association.

## ARTICLE VIII

## INSURANCE

**8.01. Fire and Extended Loss Insurance.** The board of directors of the Association shall obtain and maintain fire, casualty, and special form insurance coverage for the Common Elements, for the Unit as originally constructed as of the date the occupancy permit for the Unit was originally issued, and for the Association's service equipment, supplies and personal property. Each Unit Owner shall obtain and maintain fire, casualty, and special form insurance coverage for all improvements to the Unit made after issuance of the original certificate of occupancy and all improvements located therein for not less than the full replacement value thereof. Insurance coverage for the Common Elements shall be reviewed and adjusted by the board of directors of the Association from time to time to ensure that the required coverage is at all times provided. The insurance maintained by the Association shall be written on the Condominium's Common Elements in the name of the Association as insurance trustee for the individual Unit Owners in their respective percentage interests in the Common Elements, and may list each Unit Owner as an additional insured with respect to its Unit. The policy shall contain the standard mortgagee clause, which shall be endorsed to provide that any proceeds shall be paid to the Association, as insurance trustee, for the use and benefit of any Mortgagee as its interest may appear. All premiums for such insurance shall be Common Expenses. In the event of damage to or destruction of all or part of the Condominium insured hereunder, the proceeds of the insurance shall be paid to the Association, as insurance trustee, for the Unit Owners and the Mortgagees and distributed as provided in Article IX.

**8.02. Public Liability Insurance.** The board of directors of the Association shall obtain and maintain a comprehensive liability insurance policy insuring the Association, its officers, directors, and the Unit Owners against any liability arising out of the maintenance, repair, ownership, or use of the Common Elements. Liability coverage shall be for at least $1,000,000 per occurrence for personal injury and/or property damage or such higher limit as may be adopted from time to time by the Association. The insurance coverage shall be written on the Condominium in the name of the Association as insurance trustee for the Association, its directors and officers, and for the individual Unit Owners in their respective percentage interests in the Common Elements. Such insurance policy shall contain a "severability of interest" or cross-liability endorsement, which shall preclude the insurer from denying the claim of a Unit Owner because of the negligent acts of the Association or other Unit Owners. All

premiums for such insurance shall be Common Expenses. Each Unit Owner shall have the right to insure its own Unit for personal benefit.

**8.03. Fidelity Insurance.** Subsequent to the sale by Declarant of the first Unit, the Association shall require or maintain fidelity coverage against dishonest acts by any person responsible for handling the funds belonging to or administered by the Association. The Association shall be named insured and the insurance shall be in an amount of not less than fifty percent (50%) of the Association's annual operating expenses and reserves. All premiums for such insurance shall be Common Expenses.

**8.04. Mutual Waiver of Subrogation.** Nothing in this Declaration shall be construed so as to authorize or permit any insurer of the Association or a Unit Owner to be subrogated to any right of the Association or a Unit Owner arising under this Declaration. The Association and each Unit Owner hereby release each other to the extent of any perils to be insured against by either of such parties under the terms of this Declaration or the Bylaws, whether or not such insurance has actually been secured, and to the extent of their respective insurance coverage for any loss or damage caused by any such casualty, even if such incidents shall be brought about by the fault or negligence of either party for whose acts, omissions, or negligence the other party is responsible. All insurance policies to be provided under this Article by either the Association or a Unit Owner shall contain a provision that they are not invalidated by the foregoing waiver. Such waiver shall, however, cease to be effective if the existence thereof precludes either the Association or a Unit Owner from obtaining such policy.

**8.05. Standards for All Insurance Policies.** All insurance policies provided under this Article IX shall be written by companies duly qualified to do business in the State of Wisconsin, with a general policyholder's rating of at least "A" and a financial rating of at least Class VII, as rated in the latest edition of Best's Key Rating Guide, unless the board of directors of the Association determines by unanimous vote or unanimous written consent that any policy may be issued by a company having a different rating.

## ARTICLE IX

## RECONSTRUCTION, REPAIR, OR SALE IN THE EVENT OF DAMAGE OR DESTRUCTION

**9.01. Determination to Reconstruct or Repair.** If all or any part of the Common Elements become damaged or are destroyed by any cause, the damaged Common Elements shall be repaired or reconstructed even if the cost of such repair or reconstruction exceeds the available insurance proceeds by an amount of up to $5000.00 times the number of Units then making up the Condominium. Acceptance by a Unit Owner of a deed to a Unit shall be deemed to be consent to the authorization to the Association to so repair or reconstruct. If such authorization is challenged, whether through action taken at a meeting of Unit Owners or otherwise, the issue of whether to repair or reconstruct shall be put to a vote of all of the Unit Owners, and such repair or reconstruction shall be deemed approved if the votes appurtenant to any one Unit are cast in favor of such repair or reconstruction.

**9.02. Plans and Specifications.** Any reconstruction or repair shall, as far as is practicable, be made in accordance with the maps, plans, and specifications used in the original construction of the damaged Common Elements, unless (1) a majority of the first Mortgagees (one vote per mortgaged Unit) approve of the variance from such plans and specifications; and (2) the board of directors of the Association authorizes the variance in the case of reconstruction of or repair to the Common Elements. If a variance is authorized from the maps, plans, and specifications contained in the Condominium Plat or

this Declaration, an amendment shall be recorded by the Association setting forth such authorized variance.

**9.03. Responsibility for Repair.** In all cases after a casualty has occurred to the Common Elements, the Association has the responsibility of reconstruction and repair, and immediately shall obtain reliable and detailed estimates of the cost to rebuild or repair.

**9.04. Insurance Proceeds and Construction Fund.** Insurance proceeds held by the Association as trustee pursuant to Section 8.01 shall be disbursed by the Association for the repair or reconstruction of the damaged Common Elements. The Association shall have no responsibility to repair, reconstruct, or replace any Unit or any improvements located within a Unit. Unit Owners and Mortgagees shall not be entitled to receive payment of any portion of the insurance proceeds unless there is a surplus of insurance proceeds after the damaged Property has been completely restored or repaired as set forth in Section 10.06.

**9.05. Assessments For Deficiencies.** If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair by the Association, a Special Assessment shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such assessments on account of damage to Common Elements shall be in proportion to each Unit Owner's percentage interest in the Common Elements. All assessed funds shall be held and disbursed by the Association as trustee for the Unit Owners and Mortgagees involved.

**9.06. Surplus in Construction Funds.** All insurance proceeds and Special Assessments held by the Association as trustee for the purpose of rebuilding or reconstructing any damage to the Common Elements or any Property taken by eminent domain are referred to herein as "Construction Funds." It shall be presumed that the first moneys disbursed in payment of costs of reconstruction or repair are insurance proceeds. If there is a balance in the Construction Funds after payment of all costs of reconstruction or repair, such balance shall be divided among the Unit Owners according to their respective percentage interests in the Common Elements.

**9.07. Damage or Destruction of Unit.** Following any damage or destruction to any improvements located within any Unit, the Unit Owner shall repair and restore such Unit to its condition prior to the damage or destruction as soon as possible but in any case within two hundred seventy (270) days of the damage or destruction.

## ARTICLE X

## CONDEMNATION

**10.01. Allocation of Award.** Any damages for a taking of all or part of the Condominium shall be awarded as follows:

(a) Every Unit Owner shall be allocated the entire award for the taking of all or part of the respective Unit or any improvements located therein and for consequential damages to the Unit or improvements located therein.

(b) If no reconstruction is undertaken, any award for the taking of Common Elements shall be allocated to all Unit Owners in proportion to their respective percentage interest in the Common Elements.

**10.02. Determination to Reconstruct Common Elements.** Following the taking of all or part of the Common Elements, the Common Elements shall be restored or reconstructed.

**10.03. Plans and Specifications for Common Elements.** Any reconstruction shall, as far as is practicable, be made in accordance with the maps, plans and specifications used in the original construction of the taken Common Elements unless one hundred percent (100%) of the Unit Owners and a majority of the first Mortgagees (one vote per mortgaged Unit) shall authorize a variance from such plans and specifications. If a variance is authorized from the maps, plans, or specifications contained in the Condominium Plat or this Declaration, an amendment shall be recorded by the Association setting forth such authorized variances.

**10.04. Responsibility for Reconstruction.** In all cases after a taking of all or part of the Common Elements, the responsibility for restoration and reconstruction shall be that of the Association and it shall immediately obtain reliable and detailed estimates of the cost to rebuild.

**10.05. Assessments for Deficiencies.** If the condemnation award for the taking of the Common Elements is not sufficient to defray the costs of reconstruction by the Association, Special Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Special Assessments shall be in proportion to each Unit Owner's respective percentage interest in the Common Elements and shall constitute a Common Expense.

**10.06. Surplus in Construction Fund.** It shall be presumed that the first moneys disbursed in payment of costs of reconstruction or restoration shall be from the award for taking. If there is a surplus of Construction Funds after payment of all costs of construction, such balance shall be divided among all Unit Owners in proportion to their respective percentage interests in the Common Elements.

**10.07. Percentage Interests Following Taking.** Following the taking of all or any part of any Unit, the percentage interest in the Common Elements appurtenant to any Unit shall be equitably adjusted to reflect the respective relative values of the remaining Units (or portions thereof) to all of the Units, determined without regard to the value of any improvements located within the Units. The Association shall promptly prepare and record an amendment to the Declaration reflecting the new percentage interests appurtenant to the Units. Such amendment need be signed only by two officers of the Association.

## ARTICLE XI

## MORTGAGEES

**11.01. Notice.** Any holder of a recorded mortgage or any vendor under a recorded land contract encumbering a Unit (the "Mortgagee") that has so requested of the Association in a writing received by the Association's agent for service of process shall be entitled to receive notice of the following matters:

(a) The call of any meeting of the membership or the board of directors of the Association to be held for the purpose of considering any proposed amendment to this Declaration, the Articles, or the Bylaws.

(b) Any default under, any failure to comply with, or any violation of, any of the provisions of this Declaration, the Articles, or Bylaws or any rules and regulations.

(c) Any physical damage to the Common Elements in an amount exceeding Twenty Thousand Dollars ($20,000).

**11.02. Amendment of Provisions Affecting Mortgagees.** Notwithstanding the provisions of Article XII of this Declaration, neither Section 11.01 nor any Section of this Declaration requiring the approval of any Mortgagee to any action shall be amended unless all Mortgagees have given their prior written approval.

**11.03. Owners of Unmortgaged Units.** Whenever any provision contained in this Declaration requires the consent or approval (whether by vote or in writing) of a stated number or percentage of Mortgagees to any decision, each Unit Owner of any unmortgaged Unit shall be considered a "Mortgagee" as well as a "Unit Owner" for purposes of such provision.

**11.04. Condominium Liens.** Any Mortgagee who obtains title to a Unit under the remedies provided in the mortgage or land contract against the Unit or through foreclosure shall not be liable for more than six (6) months of the Unit's unpaid dues and assessments accrued before the date on which the holder acquired title.

## ARTICLE XII

## AMENDMENT

Except as otherwise provided by the Condominium Ownership Act, or as otherwise provided in this Declaration, this Declaration may be amended with the written consent of all Unit Owners. No Unit Owner's consent shall be effective without the consent of the first mortgagee of such Unit. So long as the Declarant owns any Unit, and so long as the Condominium is subject to expansion under Article VI, the consent in writing of the Declarant, its successors or assigns, shall also be required. No amendment shall alter or abrogate the rights of Declarant as contained in this Declaration. Copies of amendments shall be certified by the president and secretary of the Association in a form suitable for recording. A copy of the amendment shall be recorded with the Register of Deeds for Milwaukee County, and a copy of the amendment shall also be mailed or personally delivered to each Unit Owner at its address on file with the Association. Until the initial conveyance of all Units, this Declaration may be amended by the Declarant alone for purposes of clarification and correction of errors and omissions and for expansion of the Condominium as provided in Article VI.

## ARTICLE XIII

## REMEDIES

The Association shall have the sole right to enforce the provisions hereof or any of its orders by proceedings at law or in equity against any person or persons violating or attempting to violate any provision of this Declaration, either to restrain or cure the violation or to recover damages, or both, for a period which shall include thirty (30) days from the date of the filing with the Association of a petition by any person who shall be a Unit Owner subject to this Declaration on the date of the filing, petitioning the Association to redress the violation or attempted violation of any of the provisions of this Declaration by any other persons. Liability among multiple owners of a Unit shall be joint and several. Nothing herein shall be deemed to limit the rights of the City of Milwaukee or the County of Milwaukee to enforce any zoning codes, ordinances, regulations, or other requirements that may be identical or similar to the requirements of this Declaration. Such period of thirty (30) days shall be considered to be a period for the

consideration of the petition by the Association and if the Association denies or fails to act upon the petition to the satisfaction of the petitioner within the thirty (30) day period, thereafter petitioner shall have the right to enforce the provisions hereof (except for the collection of charges and assessments under Article VII), to the extent that he or she shall so have petitioned, by proceedings at law or in equity against any person or persons violating or attempting to violate the provisions of this Declaration, either to restrain the violation or to recover damages, or both, provided, however, that any such person shall be a Unit Owner and commence such proceedings against such other person or persons within a period of sixty (60) days from (i) the date of the Association's denial of such petition, or (ii) the passage of the aforementioned thirty (30) day period for consideration of the petition by the Association. The Association or the petitioning Unit Owner(s), as the case may be, shall have the right to recover court costs and reasonable attorney fees in any successful action brought against another Unit Owner to enforce, or recover damages for a violation of, this Declaration. Any damages collected by the Association shall be distributed, first, to pay for all costs of enforcement, and, secondly, to the owners of the Units damaged by the violation pro rata. Notwithstanding the foregoing, if any Unit Owner fails to comply with the terms and conditions of this Declaration, and such failure continues beyond any applicable cure period, the Association shall have the right to cure on behalf of the Unit Owner and such Unit Owner shall promptly reimburse the Association for the cost thereof within ten (10) days after receipt of written demand therefor. Alternatively, the Association may, at the option of the Association, levy such amounts against the Unit as a Special Assessment under Article VI. In addition to all other remedies available to the Association, the Association shall have the right to collect from any Unit Owner who is in violation beyond any applicable cure period of this Declaration, the Association's Articles or Bylaws, or any Rules and Regulations promulgated hereunder, a fine for each day such violation continues in such amount as is from time to time set forth in the Bylaws or Rules and Regulations.

## ARTICLE XIV

## GENERAL

**14.01. Utility Easements.** The Declarant hereby reserves for the Association acting by and in the discretion of its board of directors, the rights to grant to the City of Milwaukee and Milwaukee County or public or semi-public utility companies, easements and rights-of-way for the erection, construction, and maintenance of all poles, wires, pipes, and conduits for the transmission of electricity, gas, water, telephone, and for other purposes, for sewers, stormwater drains, gas mains, water pipes and mains, and similar services and for performing any public or quasi-public utility function that the board of directors may deem fit and proper for the improvement and benefit of the Condominium. Such easements and rights-of-way shall be confined, so far as possible in underground pipes or other conduits, with the necessary rights of ingress and egress and with the rights to do whatever may be necessary to carry out the purposes for which the easement is created.

**14.02. Right of Entry.** By acceptance of a Condominium Deed, each Unit Owner shall have granted a right of entry and access to its Unit to the Association to correct any condition originating in its Unit and threatening another Unit or the Common Elements, to install, alter, or repair mechanical or electrical services or other Common Elements in its Unit or elsewhere in the Condominium, and to maintain and repair Common Elements and other areas as described in Section 6.04. Such entry shall be made with prior notice to the Unit Owners, and shall be scheduled for a time reasonably convenient to the Unit Owners, except in the case of an emergency when injury or property damage will result in delayed entry. Such entry shall be done with as little inconvenience to the Unit Owners as practical, and any damage caused thereby shall be repaired by the Association and treated as a Common Expense, except as allocable to an individual Unit or Units for cause in the discretion of the board of directors.

**14.03. Notices.** All notices and other documents required to be given by this Declaration or by the Bylaws of the Association shall be sufficient if given to one (1) registered owner of a Unit regardless of the number of owners who have an interest therein. Notices and other documents to be served upon Declarant shall be given to the agent for service of process specified in Section 14.06. All owners shall provide the secretary of the Association with an address for the mailing or service of any notice or other documents and the secretary shall be deemed to have discharged his or her duty with respect to the giving of notice by mailing it or having it delivered personally to such address as is on file with him or her.

**14.04. Severability.** The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or unenforceability of the remaining portion of said provision or of any other provision hereof.

**14.05. Declarant Access During Construction of Improvements.** During any period of construction of Buildings and other improvements on the Property by the Declarant, the Declarant and its contractors, and subcontractors, and their respective agents and employees, shall have access to all Common Elements as may be required in connection with said construction and shall have easements for the installation and construction of Buildings, improvements, utilities, driveways, parking areas, landscaping, and other repairing or servicing of all or any part of the Condominium or the expanded Condominium.

**14.06. Resident Agent.** The name and address of the resident agent under Section 703.23 of the Wisconsin Statutes is David Rice, 800 E. Chambers St., Milwaukee, WI 53212. The resident agent may be changed by the Association in any manner permitted by law.

**14.07. Assignment of Declarant's Rights.** The rights, powers, and obligations of the party named as "Declarant" may be assigned by a written, recorded amendment to any other party who assumes such rights, powers and obligations. Upon the recording of any such amendment, such assignee shall become "Declarant" under this Declaration and shall succeed to all such rights, powers and obligations. Such amendment need be signed only by the assignor and assignee named therein.

**14.08. Conflicts.** If a conflict exists among any provisions of this Declaration, the Articles, the Bylaws, and the Rules and Regulations, the Declaration shall prevail over the Articles, Bylaws, and Rules and Regulations; the Articles shall prevail over the Bylaws and the Rules and Regulations; and the Bylaws shall prevail over the Rules and Regulations.

IN WITNESS WHEREOF, Declarant has caused this instrument to be signed this day 16 of December, 2005.

David Rice

STATE OF WISCONSIN )
) ss.
COUNTY OF MILWAUKEE )

Personally came before me this 16 day of December, 2005, David Rice, who acknowledged the foregoing document for the purposes recited therein.

Name: PATRICIA E Schutte
Notary Public, State of Wisconsin
My Commission: Expires May 1 2007

**CONSENT OF MORTGAGEE**

The undersigned, being the holder of a mortgage executed by David Rice, to the undersigned recorded in the office of the Register of Deeds of Milwaukee County, Wisconsin on _____, as Document No. ___, in Volume ___ of Records, Page ____, does hereby consent to all of the terms and conditions of the foregoing Declaration, and agrees that its interest in the Property shall be subject in all respects to the terms thereof.

Dated this 19th day of December, 2005.

By: _____
Name: Christopher J. Callen
Its: Sr. Vice President

STATE OF WISCONSIN )
) ss.
COUNTY OF MILWAUKEE )

Personally came before me this 19th day of December 2005, the Sr. VP of Bank Mutual, who acknowledged the foregoing document for the purposes recited therein on behalf of the same.

Name: Pamela S. Finucan
Notary Public, State of Wisconsin
My Commission: expires 1/11/08

This document drafted by
James R. Eby, Attorney at Law
4020 N. Wilson Dr.
Shorewood, WI 53211

EXHIBIT A

LEGAL DESCRIPTION

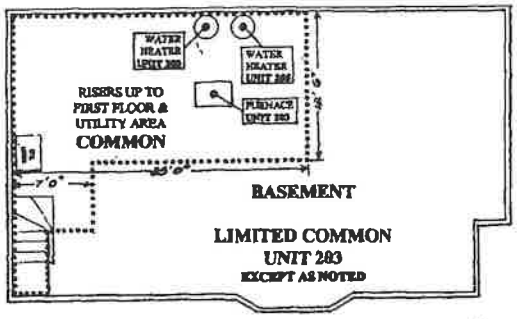
The East 48 feet of Lot 1 in Block 21 in Sherman's Addition, being a part of the Northeast 1/4 of Section 20, in Township 7 North, Range 21 East, in the City of Milwaukee, Milwaukee County, Wisconsin.

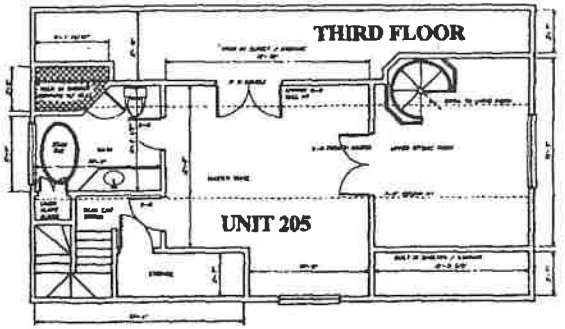
# BENCHMARK CONDOMINIUMS

## CITY OF MILWAUKEE, MILWAUKEE COUNTY WISCONSIN

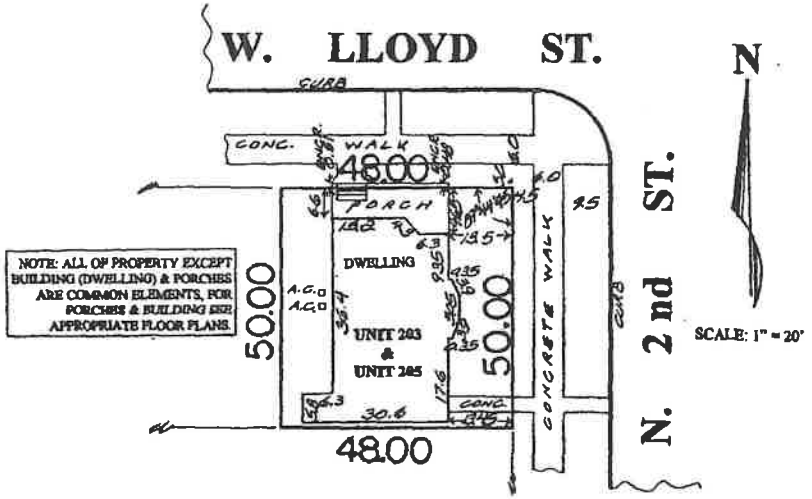
**LOCATION OF PROPERTY:** 203 - 205 West Lloyd Street, Milwaukee, Wisconsin

**DESCRIPTION OF PROPERTY:**
The East 48 feet of Lot 1 in Block 21 in SHERMAN'S ADDITION, being a part of the Northeast 1/4 of Section 20, in Township 7 North, Range 22 East, in the City of Milwaukee, Milwaukee County, Wisconsin.

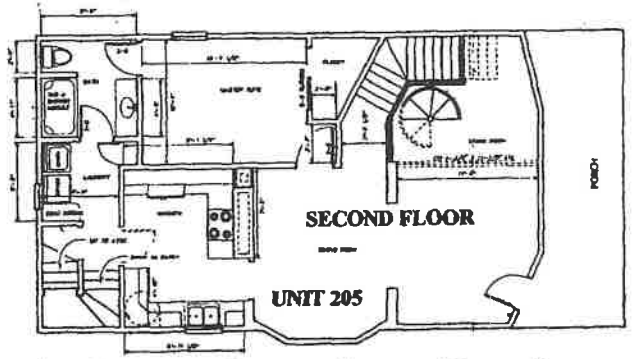


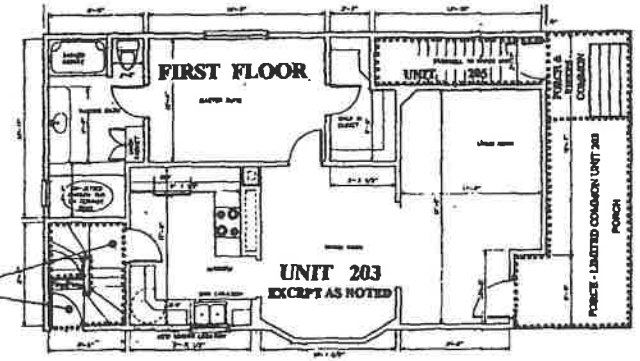




FLOOR PLAN SCALE
1/8" = 1'




NOTE: ALL OF PROPERTY EXCEPT BUILDING (DWELLING) & PORCHES ARE COMMON ELEMENTS, FOR PORCHES & BUILDING SEE APPROPRIATE FLOOR PLANS.




LANDING AT FIRST FLOOR LEVEL, RISERS DOWN TO BASEMENT & RISERS TO DOOR FOR SECOND FLOOR (UNIT 203) ARE COMMON ELEMENTS, RISERS ABOVE DOOR FOR SECOND FLOOR ARE UNIT 205

I, James E. Sulkowski, do hereby certify that I have surveyed the above described property and that this survey is a accurate representation of the exterior boundary lines and the location of the buildings and improvements upon said property.

This condominium plat is a correct representation of BENCHMARK CONDOMINIUMS and the identification and location of each unit and the common elements can be determined from the plat. The common elements are defined to be all of the condominium property except as noted in this plat. The undersigned surveyor makes no certification as to the accuracy or diagrammatic floor plans of the condominium building(s) and units contained in the plat or the approximate dimensions of floor area thereof.

WISCONSIN
JAMES E. SULKOWSKI
1866
GREENFIELD, WI
LAND SURVEYOR

8/10/05

PREPARED BY:
Metropolitan Survey Service
8617 West Coldspring Road
Greenfield, WI 53228
(414) 327-1400

SHEET 1 OF 1