

**CONDOMINIUM DECLARATION OF  
HAWTHORNE LUXURY CONDOMINIUMS - PHASE I**

This Condominium Declaration is made and established to be effective as of April 1, 2020, by Declarant.

**RECITALS:**

- A. Declarant is the fee simple owner of the Property.
- B. Declarant desires to create a Condominium pursuant to the provisions of the Act.
- C. Declarant intends hereby to establish a plan for the individual ownership of estates in real property consisting of Units and the appurtenant undivided interests in the Common Elements.

NOW, THEREFORE, Declarant does hereby submit the Property to the provisions of the Act and Condominium established hereby, and does hereby publish and declare that the following terms, provisions, covenants, conditions, easements, restrictions, reservations, uses, limitations and obligations are hereby established and shall be deemed to run with the Land and shall be a burden and benefit to Declarant, the Association, the Owners and their respective heirs, legal representatives, successors and assigns:

**1. Definitions**

**1.1 Terms Defined.** As used in this Declaration, the following terms shall have the meanings set forth below:

“Access Easement” A perpetual, irrevocable and non-exclusive easement and right of access and entry on, over and across each Unit as may reasonably be necessary for: (i) the maintenance, repair or replacement of any of the Common Elements thereon or accessible therefrom; (ii) the making of emergency repairs therein necessary to prevent damage to the Common Elements or to any Unit; (iii) the evacuation of all or any part of the Property in the event of an emergency; and (iv) such other reasonable purposes as are deemed by the Association to be necessary for the performance of the obligations of the Association as described herein and in the Bylaws.

“Act” The Uniform Condominium Act, Texas Property Code, Chapter 82, Section 82.001 et seq, as amended from time to time.

“Allocated Interests” The undivided interests in the Common Elements and the Common Expenses allocated to each Unit, as reflected on Exhibit C.

“Assessments” Monthly Assessments and Special Assessments, together with dues, fees, charges, interest, late fees, fines, collection costs, attorneys' fees, and any other amount due to the Association by an Owner or levied against a Unit by the Association.

“Association” Hawthorne Luxury Condominium Association, Inc., a Texas nonprofit corporation, organized under the Act and created for the purposes and possessing the rights, powers and authority set forth herein and in the Certificate.

“Board of Directors” The board of directors of the Association named in the Certificate, and their successors as duly elected and qualified from time to time.

**"Budget"** A budget prepared by the Association and delivered to all Owners that includes, among other things, the anticipated Common Expenses for the ensuing year and a statement setting forth each Owner's monthly share thereof.

**"Building"** Any structure located on the Land, including all elements thereof, but excluding those elements otherwise within the definition of a Unit.

**"Bylaws"** The bylaws of the Association adopted by the Board of Directors, and attached hereto as Exhibit D, as amended from time to time.

**"Center Wall Measurement Method"** means the method of measurement of a Unit using the following boundary designations: (a) vertical boundary lines between Units and between a Unit and a Common Element hallway are the centerline of the wall between such Units, or the centerline of the wall between such Unit and the Common Element hallway, respectively, thereby including within each Unit all studs, lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and any other materials constituting any part of the wall assembly located on that Unit's side of the centerline; (b) vertical boundary between a Unit and the exterior wall of the building is the interior face of the exterior curtain wall glass, and the vertical boundary between a Unit and the concrete core is the greater of 6" of such core or such lesser amount if the core is less than 12" in which case the vertical boundary between a Unit and the concrete core is 1/2 of the width of such concrete core, thereby including within the Unit all studs, lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and any other materials constituting any part of the finished surface of the wall or core; and (c) horizontal boundary lines of the Units are from the top of the unfinished surface of the floor to the bottom of the ceiling joist, including within the Unit all carpets, carpet pads, wood or tile flooring or subflooring on the floors and all lath, furring, wallboard, plasterboard, plaster, paint, and any other materials constituting any part of the ceiling (or false ceiling).

**"Certificate"** The certificate of formation of the Association filed with the Secretary of State of Texas and attached hereto as Exhibit E.

**"Common Elements"** All portions of the Condominium, including both the General Common Elements and the Limited Common Elements, but excluding the Units.

**"Common Elements Easement"** A perpetual, irrevocable and non-exclusive easement over the General Common Elements for ingress to and egress from each Unit together with the non-exclusive right to access, use and enjoy the Limited Common Elements appurtenant to such Owner's Unit (subject to the rights of other Owners to use and enjoy such Limited Common Elements if appurtenant to more than one Unit).

**"Common Expenses"** All costs and expenses, including Working Capital Contributions, reserves, or financial liabilities of the Association that are incurred pursuant to the provisions of the Declaration, the Bylaws or a resolution duly adopted by the Board of Directors or the Owners.

**"Condominium"** The form of real property established by this Declaration with respect to the Property, in which portions of the Property are designated for individual ownership or occupancy and the remainder of the Property is designated for common ownership or occupancy solely by the owners of such remainder, and containing a maximum of eight Residential Units.

**"Condominium Information Statement"** means the condominium information statement prepared by Declarant in accordance with the provisions of the Act.

“County” Dallas County, Texas.

“Declarant” Herschel Hawthorne, LLC, a Texas limited liability company, whose address for notice is 400 S. Record Street, 16<sup>th</sup> Floor, Dallas, Texas 75202, and any assignee of Declarant evidenced by a written instrument filed for record in the Official Public Records of the County, assigning the rights, powers, privileges and prerogatives of Declarant hereunder.

“Declarant Control” means the period commencing on the date of the Declaration and continuing until the date that is one hundred twenty (120) days after the date that deeds to not less than 75% of the combined square footage of the Units that may be created have been recorded in the Official Public Records of the County.

“Declaration” This Condominium Declaration for Hawthorne Luxury Condominiums Condominium and all recorded amendments thereto, which shall be recorded in the Official Public Records of the County.

“Development Rights” means a right or combination of rights to: (i) add real property to the Condominium; (ii) create Units, General Common Elements or Limited Common Elements within the Condominium; (iii) subdivide Units, combine Units, or convert Units into Common Elements; or (iv) withdraw real property from the Condominium. The Development Rights so reserved may be exercised by Declarant to the extent and only if permitted by the Act and at all times while Declarant owns any Unit or other real property interest in the Condominium, or for such lesser time as may be permitted by the Act.

“Easements” collectively, the Access Easement, the Common Elements Easement, the Parking Easement, the Support Easement, the Utility Easement, and the Vertical Access Easement and those easements described in Section 3 of this Declaration.

“Exceptions to Title” those exceptions to title as shown on Exhibit G.

“General Common Elements” All portions of the Common Elements that are not Limited Common Elements, including those more particularly described in Subsection 2.2(k) of this Declaration.

“Governing Documents” This Declaration, the Certificate, the Bylaws, and the Regulations.

“Governmental Impositions” All real estate and personal property taxes, charges, assessments, standby fees, excises and levies, and any interest, costs or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which at any time prior to or after the execution hereof, may be assessed, levied or imposed upon the Condominium or any Unit by any governmental agency or quasi-governmental agency.

“Individual Assessments” means the assessments levied by the Board of Directors against one or more but less than all Owners pursuant to Subsection 6.3 of this Declaration.

**“Insurance Proceeds”** Any and all proceeds that any Owner or the Association is entitled to receive from an insurance company as a result of a casualty or loss in connection with any Unit or the Common Elements, respectively.

**“Improvements”** The Building, pavement, fencing, landscaping, recreational facilities, plumbing, electrical and telephone lines and computer cables and man-made objects of every type, existing or in the future placed on the Land including all cable television, telephone, cellular telephone, internet and other utility or communication installations or equipment.

**“Land”** That certain real property located in the County and more particularly described in Exhibit A attached to this Declaration, together with all and singular the rights and appurtenances pertaining thereto.

**“Legal Requirements”** Any and all present and future judicial, statutes, rulings, rules, regulations, permits, certificates or ordinances of any federal, state or municipal authority in any way applicable to any Owner, any Unit or the Property, including all applicable restrictive covenants, zoning ordinances, subdivision and building codes, flood disaster laws and applicable architectural barrier, health and environmental laws and regulations.

**“Lien Indebtedness”** Any bona fide indebtedness, which is the result of an arm's length negotiation, that is secured by a lien or encumbrance upon a Unit or any part thereof incurred by Declarant or any Owner, including any indebtedness extended in connection with the purchase, development, finish-out, construction, remodeling or rehabilitation of any Unit.

**“Limited Common Elements”** Those portions of the Common Elements that are allocated by this Declaration and the Map for the exclusive use of any Unit, as more particularly described in Subsection 2.2(d) of this Declaration.

**“Maintenance Standard”** Maintenance in good repair and in an attractive and clean condition, including the operation, upkeep, repair and restoration necessary to maintain the Condominium or Units, as applicable, in a condition reasonably suitable for its intended purpose.

**“Manager”** Any experienced and professional manager or management company with whom the Association contracts for the day-to-day management of the Property and/or the administration of the Association and the Condominium.

**“Map”** the plats and plans described on Exhibit B, attached hereto and made a part hereof.

**“Monthly Assessment”** The monthly assessment established pursuant to Subsection 6.1 of this Declaration by the Board of Directors to pay Common Expenses when due.

**“Mortgagee”** Any Person, which is the holder or insurer of Lien Indebtedness, and which has provided the Association with written notice of its name, address and description of the Owner's Unit upon which it holds the Lien Indebtedness. Any required percentage of Mortgagees in this Declaration shall mean and refer to such percentage of the total of all outstanding Lien Indebtedness held by such Mortgagees and not the number of such Mortgagees.

**“Owner”** Any Person (including Declarant) owning fee title to a Unit, but does not include any Person having an interest in a Unit solely as security or an obligation.

**“Paint to Paint Measurement Method”** means the method of measurement of a Unit whereby the vertical boundary lines are measured from the interior painted surfaces of the walls that encompass the Unit's interior living space and the horizontal boundary lines of the Units are measured from the interior painted surface of the ceiling to the interior concrete surface of the floor and consist solely of the volumetric air space between the walls, ceiling and floor.

**“Parking Area”** The guest parking area of the Condominium as shown on the Map (exclusive of the Parking Spaces of the Residential Units) used for the parking of automobiles by the guests of Owners, Tenants and other occupants.

**“Parking Easement”** means a perpetual, irrevocable and non-exclusive easement covering the Parking Area, as shown on the Map, for the purposes of maintenance, repair and security of and relating to such area.

**“Parking Space”** means a physical portion of the Condominium (the garages) used exclusively for parking of automobiles by an Owner (collectively, the “Parking Spaces”)

**“Past Due Rate”** The maximum lawful rate of interest under Texas law or, if there is not a maximum lawful rate, the rate of 18% per annum.

**“Person”** Any individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association and any fiduciary acting in such capacity on behalf of any of the foregoing.

**“Phase I”** The Building located at 4220 Hawthorne Avenue, Dallas, Texas 75219.

**“Phase II”** The Building located at 4222 Hawthorne Avenue, Dallas, Texas 75219.

**“Property”** The Land and the Improvements.

**“Regulations”** The rules and regulations of the Association adopted by the Board of Directors and relating to the appearance, use and occupancy of the Property, including exterior appearance, use and occupancy of the Units and Common Elements, as amended from time to time.

**“Rents”** Any and all rental or other income received by any Owner in connection with the leasing of its Unit.

**“Residential Units”** The eight Units designated for residential purposes (each being a “Residential Unit”), as more particularly described in Subsection 2.2 (c) of this Declaration, and as shown on the Map.

**“Special Assessments”** Assessments established by the Board of Directors under the provisions of Subsection 6.2 and Section 7 of this Declaration from time to time.

**“Special Declarant Rights”** means rights reserved for the benefit of Declarant to: (i) complete Improvements shown on the Map; (ii) exercise any Development Right; (iii) make the Condominium a part of a larger condominium of planned community; (iv) maintain signs advertising the Units of the Condominium; (v) use Easements through any Common Elements for the purpose of making improvements within the Condominium or the Property; (vi) appoint

or remove any officer or board member of the Association during any period of Declarant Control; or (vii) exercise the rights and powers enumerated in Subsection 3.3.

“Structure” All foundations, footings, columns, flat slabs, sheer walls, girders, support beams, post tension cables or rods, including any and all other structural members that support, uphold or are a part of the Building, as shown on the Map. A structure shall be deemed a single Structure hereunder, even though divided into separate Units.

“Support Easement” A perpetual, irrevocable and non-exclusive easement for support of all foundations, footing, columns, girders, support beams and any and all other structural members that support, uphold or are a part of any Building.

“Systems” All fixtures, equipment, pipes, lines, wires, computer cables, conduits, circuits, junction boxes, hangers, pull boxes, terminal points, electronic devices, air compressors, air handlers, chillers and other systems used in the production, heating, cooling, and/or transmission of air, water, gas, electricity, communications, wastewater, sewage, and audio and video signals.

“Taking” The taking or threat of taking of all or a portion of the Property for any public or quasi-public use, by eminent domain proceedings or otherwise, by a governmental agency or quasi-governmental agency or by an action in the nature of eminent domain (whether permanent or temporary) or the sale or other transfer of the Property in lieu thereof.

“Tenant” Any Person having the right to occupy a Unit or a portion of a Unit pursuant to a lease granted by an Owner.

“Unit” A physical portion of the Condominium that is designated for separate ownership or occupancy (the boundaries of which are depicted on the Map) with the unrestricted right of ingress thereto and egress therefrom, and which includes: (i) all Systems that exclusively serve such Unit though such Systems may exist outside the boundaries of such Unit, (ii) the finish materials, fixtures and appliances contained in the Unit, but excludes (x) any of the structural components of the Building in which such Unit is located and (y) Systems that serve more than one Unit, all as subject to and further described in Section 82.052 of the Act, and (iii) an undivided interest, appurtenant to the Unit, in and to the Common Elements, and (iv) the Parking Space that is part of each the Residential Unit.

“Utility Easement” means a perpetual and irrevocable easement for supplying utility service to any part of the Condominium.

“Vertical Access Easement” means a perpetual and irrevocable easement for access to the Condominium through the stairways located within the Building to use and enjoy the stairways.

“Working Capital Contribution” means an amount equal to two months of dues paid by an Owner in purchasing a Unit is to be contributed by each Owner (other than Declarant) into a fund maintained by the Association as provided in Subsection 9.3 of this Declaration. In the event of a resale of a Unit by an Owner other than the Declarant, this shall be equal to one month’s dues.

**1.2 Number and Gender.** Whenever the context requires, references in this Declaration to the singular number shall include the plural, and, likewise, the plural number shall include the singular, and words denoting gender shall include the masculine, feminine, and neuter.

## 2. General Provisions

### 2.1 Creation of Units; Map.

(a) Units. The Property is hereby divided into fee simple estates composed of separately designated Units, and such Units' undivided interest in and to the Common Elements. Each Unit, together with such Unit's undivided interest in the Common Elements, is for all purposes a separate parcel of and estate in real property. The separate parcels of and estates in real property designated hereby shall be created on the date of filing of this Declaration in the Official Public Records of Dallas County, and shall continue until this Declaration is revoked or terminated in the manner herein provided.

(b) Map. The Map sets forth, inter alia, the following: (1) a general description and diagrammatic plan of the Condominium; (2) the location and dimension of all real property subject to Declarant's Development Rights; (3) all Improvements, including each Unit showing its Building location and number, and, by identifying Unit number as applicable, the Limited Common Elements appurtenant thereto; and (4) such other information as is desirable or required pursuant to Section 82.054 of the Act, including a certification as to compliance with Section 82.059 of the Act. The dimensions set forth on the Map as to each Unit were measured using vertical boundary lines described in the Paint to Paint Measurement Method. **DECLARANT SHALL NOT BE LIABLE TO ANY OWNER AS A RESULT OF ANY DISCREPANCIES IN ACTUAL UNIT MEASUREMENT FROM THOSE SET FORTH ON THE MAP, AND EACH OWNER, BY ACCEPTING A DEED TO A UNIT, WAIVES ANY SUCH CLAIM OR CAUSE OF ACTION AGAINST DECLARANT.**

**2.2 Description of Units.** Subject to the reservations and Easements created by Declarant in this Declaration, the units shall include the following:

- (a) Intentionally deleted.
- (b) Intentionally deleted.
- (c) Residential Units. The Residential Units are comprised of Units 4220-101, 4220-102, 4220-103, 4220-104, 4222-101, 4222-102, 4222-103 and 4222-104 as shown on the Map.
- (d) Residential Units Limited Common Elements.

(1) The Limited Common Elements appurtenant to Units 4220-101, 4220-102, 4220-103, 4220-104 of Phase I and Units 4222-101, 4222-102, 4222-103 and 4222-104 of Phase II shall include all Systems serving the Residential Units exclusively, all entrances, walls, floors, ceilings, hallways, balconies, exterior doors and windows that serve Unit exclusively and all covered areas as described on the Map.

- (e) Intentionally deleted.
- (f) Intentionally deleted.
- (g) Intentionally deleted.
- (h) Intentionally deleted.
- (i) Intentionally deleted.

(j) Intentionally deleted.

(k) **General Common Elements.** The General Common Elements shall include the Land, Structure, the roof, the sidewalks, landscaping, driveways, the Parking Area and all other walls, floors, ceilings, hallways and Systems that serve all Units, to the extent any such items are not otherwise designated as a Limited Common Element for any Unit or part of any Unit.

(l) **Declarant's Intention.** The detailed descriptions of the Units, the Limited Common Elements, and the General Common Elements provided in this Subsection 2.2 represent the general intention of Declarant. However, in the event of a discrepancy between the above descriptions and the Map, the Map shall control.

**2.3 Allocation of Interests in Common Elements.** The undivided interest of the Owners in and to the Common Elements shall be allocated based on the percentages set forth in the definition of "Allocated Interests" in Subsection 1.1, and was determined by dividing the area of each Unit measured in square feet using the vertical boundary lines described in the Center Wall Measurement Method by the total area of all Units measured in square feet using the vertical boundary lines as described in the Center Wall Measurement Method and shall be the Allocated Interests shown opposite the Unit numbers in Exhibit C. The Common Elements shall remain undivided.

**2.4 Inseparability of Units; No Partition.** Each Unit shall be inseparable, and shall be acquired, owned, conveyed, transferred, and encumbered only as an entirety. In no event shall a Unit held by more than one Owner be subject to physical partition and no Owner or Owners shall bring or be entitled to maintain an action for the partition or division of a Unit or the Common Elements. Any purported conveyance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the Common Elements without the Unit to which such Common Elements are allocated is void *ab initio*.

**2.5 Permissible Relationships; Description.**

(a) **Ownership of Unit.** A Unit may be acquired and held by more than one Person in any form of ownership recognized by the laws of the State of Texas.

(b) **Description of Unit.** Any contract or other instrument relating to the acquisition, ownership, conveyance, transfer, lease or encumbrance of a Unit shall legally describe such Unit by its identifying Unit designation followed by the words "Hawthorne Luxury Condominiums, located in the City of Dallas, Dallas County, Texas" with further reference to the recording data for this Declaration (including the Map and any amendments to the Declaration). Each such description shall be good and sufficient for all purposes to acquire, own, convey, transfer, lease, encumber or otherwise deal with such Unit, and any such description shall be construed to include all incidents of ownership relating to a Unit.

**2.6 Mortgage of a Unit.** Any Owner shall be entitled from time to time to mortgage or encumber such Owner's Unit by creating a lien covering such Unit under the provisions of a deed of trust, but any lien created thereby shall be subject to the terms and provisions of this Declaration, and any mortgagee or other lienholder that acquires the Owner's Unit through judicial foreclosure, public sale or any other means shall be subject to the terms and provisions of this Declaration, except as specifically provided to the contrary herein.

**3. Uses, Reservations and Restrictions**

**3.1 Permitted Uses.**

(a) **Residential Units.** The Residential Units shall be used or occupied solely for residential purposes and related uses; provided, however, that this restriction will not prohibit a Tenant or a Residential Unit Owner, from using such Tenant's apartment or such Residential Unit Owner's Unit for personal business or professional purposes so long as such use is in compliance with this Declaration, the Regulations, and all Legal Requirements.

(b) Intentionally deleted.

(c) **Leasing of Units.** Units may be leased in accordance with the Regulations, as may be amended by the Board of Directors from time to time. No portion of the Residential Units shall be leased for commercial purposes. No Residential Unit Owner may lease less than an entire Residential Unit. A copy of each lease shall be submitted to the Association promptly following execution (provided that the financial terms of a lease may be redacted from the copy submitted to the Association).

(d) **Parking Area** shall be used exclusively for parking purposes.

**3.2 Architectural Control.** Each Unit shall also be subject to limitations on use, occupancy, signage, architectural standards and such other matters as shall be determined by the Board of Directors and as set forth in the Regulations, which shall at all times be consistent and in compliance with applicable zoning and Legal Requirements.

**3.3 Reservations by Declarant.** To the extent and only if permitted by the Act, and at all times while Declarant owns any Unit or any other real property interest in the Condominium or for such lesser time as may be permitted by the act, Declarant reserves, as a part of the Special Declarant Rights, the following rights: (i) to make and record corrections to the Map to conform the same to the actual location of the improvements, the actual size and location of the Units and/or the proper designation of the elements of the Improvements as Units, General Common Elements or Limited Common Elements, including, without limitation, the right to record changes to the Map appropriate to reflect the exercise by Declarant of any Development Right; (ii) to establish, vacate, relocate and use the Easements as set forth in this Declaration; provide, however, that no modification of any easement shall have the effect of altering or destroying a Unit or a Limited Common Element unless consented to by the Owner of such Unit or by the Owner to whose Unit such Limited Common Element is appurtenant, as well as by the Mortgagee of any such Unit; (iii) to include, in any instrument initially conveying a Unit, such additional reservations, exceptions and exclusions as it may deem consistent with and in the best interests of the Owners and the Association; (iv) to have and use an easement over, under and across any and all of the Common Elements to the extent that same may be necessary or useful in constructing, repairing or completing the Units and Common Elements or as may be reasonably necessary for the exercise of any Special Declarant Rights or the performance of any obligations of the Declarant; and, (v) to exercise any Development Rights.

**3.4 Compliance with the Governing Documents.** The Owners, by accepting or possessing title to a Unit and any Tenant having the right to occupy any portion of a Unit pursuant to a lease granted by any Owner, shall automatically be deemed to have agreed to strictly comply with the provisions of the Governing Documents and all Legal Requirements. A failure or refusal to so comply with the provisions of any such instrument, after written notice, shall be grounds for imposition of fines by the Association after due process and an action to recover damages or sums due, with interest thereon at the Past Due Rate, or for injunctive relief, or both, and for reimbursement of all attorneys' fees incurred in connection therewith, which action shall be maintainable by the Board of Directors or the Manager, if any, in the name of the Association on behalf of all of the owners or, in a proper case, by an aggrieved Owner. In addition, an Owner's voting rights in the Association and Owner's or Owner's lessee's right to use and enjoy the General Common Elements or receive services may by written notice be suspended by the Association during the period of such noncompliance.

**3.5 Parking.** The Parking Area shall be subject to the reasonable procedures and regulations adopted for the same from time to time by the Association. The Parking Area shall be used for automobile parking

purposes and those uses appurtenant to parking purposes by the Owners and their respective Tenants, guests, invitees and employees.

### **3.6 Easements.**

(a) Declarant hereby reserves the Parking Easement, Access Easement and Utility Easement for the benefit of all Units, Owners, the Association and its agents, employees and representatives, including the Manager and the Manager's agents and employees as the case may be, and reserves the Support Easement and Vertical Access Easement for the benefit of the Association and each Unit and Owner. Each Owner shall by virtue of this Declaration, accept the deed to such Unit subject to the Parking Easement, Access Easement and the Utility Easement and further subject to the Support Easement and Vertical Access Easement as may be applicable. Declarant hereby reserves for the benefit of each Owner, the Common Elements Easement and declares that by virtue of this Declaration the Common Elements shall be subject to the Common Elements Easement. Each Owner shall provide the Association with a key to its Unit which may be used in such Owner's absence for Access Easement purposes. Declarant may, in addition to the rights to relocate set forth in this Subsection 3.6, record an easement agreement or easement relocation agreement in the Official Public Records of the County, specifically locating or relocating the Utility Easement subsequent to the recordation of this Declaration, and the Owner of each Unit, by acceptance of the deed to a Unit, hereby grants Declarant during the period of Declarant Control and to the Association thereafter an irrevocable power of attorney, coupled with an interest, with full power and authority to relocate the Utility Easement.

(b) Declarant hereby reserves for both the Declarant, prior to the termination of Declarant Control, and the Association, after the termination of Declarant Control, the right to grant easements for purpose of utilities over any and all of the Common Elements.

(c) The Association may dispense chemicals for the extermination of insects and pests within the Units and Common Elements. In the event that the Association chooses to provide such pest control, the Association and its duly authorized contractors, representatives and agents shall have an easement to enter Units for the purpose of dispensing chemicals for the exterminating of insects and pests within the Units and Common Elements. Neither the Association nor the Declarant shall be liable for any illness, damage, or injury caused by the dispensing of these chemicals for this purpose.

**3.7 Encroachments.** If, as a result of the original construction, reconstruction, repair, shifting, settlement or other circumstance, any portion of the Common Elements encroaches upon any Unit, an irrevocable and perpetual easement for such encroachment and for the maintenance of the same is hereby granted and conveyed to the Association by the Declarant. If, as a result of the original construction, reconstruction, repair, shifting, settlement or other circumstance, any portion of any Unit encroaches upon the Common Elements, or upon the other Unit, an irrevocable and perpetual easement for such encroachment and for the maintenance of the same is hereby granted to the Owner of the encroaching Unit. Such encroachments and easements shall not be considered or determined to be encumbrances either upon a Unit or upon the Common Elements.

**3.8 Roof.** The roof of the Building is a General Common Element of the Condominium. No Owner shall lease or license any portion of the roof for the purpose of installing any equipment that does not serve primarily the Building (for example, leases to cellular phone service providers are prohibited). No Owner shall have the right to use any portion of the roof (for example, to install a satellite dish) unless such use is approved in writing by the Declarant or the Association in advance.

**3.9 Signage Obligations.** No Owner of a Residential Unit may install signs on the Building.

#### **4. Matters Regarding the Association.**

**4.1 General.** The Association has been incorporated as a nonprofit corporation under the Texas Nonprofit Corporation Act. In addition to the powers conferred on the Association under the Governing Documents, the Association may take all actions authorized by Section 82.102 of the Act. Any and all actions taken by the Association pursuant to the Governing Documents are binding on all Owners.

**4.2 Allocation of Votes in the Association.** All Owners shall automatically be members of the Association and entitled to vote, as follows: The Owner (whether one or more) of each Residential Unit shall be entitled to cast one vote. Any matter described as requiring approval by a stated percentage or majority of Owners shall mean a stated percentage or a majority of the vote of the Owners. In the event of a tie, the Board of Directors shall have the authority to cast the deciding vote.

**4.3 Board of Directors.** The Board of Directors shall be initially established by Declarant as set forth in the Bylaws and shall consist of individuals who need not be Owners. Each member of the Board of Directors shall be entitled to one vote each and each vote shall be of equal weight and shall be cast in accordance with the provisions of the Bylaws and the Certificate of the Association.

**4.4 Right of Action by Owners.** Owners, acting collectively or individually, shall have the right to maintain actions against the Association or any other Owner for its failure to comply with the provisions hereof or to perform its duties and responsibilities hereunder.

#### **5. Maintenance, Alterations, Insurance, Taxes and Utilities.**

##### **5.1 Maintenance.**

(a) Each Owner shall be responsible for and shall maintain and repair, at the Owner's sole cost and expense in accordance with the Maintenance Standard, such Owner's Unit including, and without limitation, all Systems that serve only or are a part of the Unit, fixtures and appliances therein contained, and all doors and windows and the replacement thereof (including but not limited to hardware and glass). The Association shall be responsible for all structural repairs and repair and maintenance of the Parking Area. No Owner shall be required to directly pay the cost and expense of structural repairs to the Unit, the Parking Area, or to the Common Elements unless necessitated by the willful or negligent misuse therefor by the Owner, the occupants or the invitees of such Unit, in which event such costs and expenses shall constitute the sole obligation of the Owner whose occupants and/or invitees were guilty of such willful or negligent misuse. Any maintenance and repair work to a Unit done by or on behalf of the Owner shall be done in a good and workmanlike manner using materials of equal or better quality than the material removed and shall be done in such a manner as not to impair the structural soundness or integrity or to alter the exterior appearance of any Building or Unit. In the event an Owner fails to discharge the Owner's maintenance obligations hereunder, the Association shall be entitled (but not obligated) to cause such work to be done, and the cost and expense thereof shall be and constitute a lien upon such a Unit which lien may be enforced in the same method as is provided for the enforcement of Assessment liens pursuant to the provisions of Subsection 6.5 of this Declaration. Damage to the interior of any Unit resulting from such maintenance, repair and replacement activities by the Association, whether by reason of any emergency or otherwise, shall constitute a Common Expense and be payable by the Association; provided, however, that if such maintenance, repairs or replacement are the result of the misuse or negligence of any Owner, or its guests or invitees, then such Owner shall be responsible and liable for all such damage.

(b) Except as provided in (a) above, all Common Elements (exception only those portions of the Systems that serve only or are a part of an individual Unit) shall be maintained by the Association in accordance with the Maintenance Standard, in good condition and repair, the cost and expense of which shall constitute a Common Expense and be payable by the Association. The Association shall establish and maintain an adequate reserve fund for such purposes, to be funded by Monthly Assessments rather than by Special Assessment. Nothing herein shall be deemed or construed as relieving any Owner from liability or

responsibility for damage to the Common Elements caused by the negligence or misconduct of Owner or Owner's occupants or invitees. Notwithstanding the foregoing, the Association shall have no obligation to maintain alterations, additions or improvements made by an Owner to a Limited Common Element appurtenant to such Unit. No Owner may make such alterations, additions or improvements to Limited Common Elements without the prior written consent of the Association in accordance with Subsection 5.2 hereof.

(c) The Association shall not be liable for injury or damage to any Person or property caused by the elements or by the Owner of any Unit, or any other Person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to any Owner, Tenant or other occupant of any Unit, or any guest or family of same, for loss or damage, by theft or otherwise, of any property, which may be stored in or upon any Common Elements. The Association shall not be liable to any Owner, Tenant, or other occupant for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Subsection where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities.

(d) In the event a dispute shall arise among Owners as to the proper party to bear a maintenance cost or expense, the Board of Directors shall be entitled to resolve such dispute; provided, however, that nothing herein shall be deemed or construed as limiting an Owner's right to have the provisions of this Subsection interpreted by a court of competent jurisdiction; provided further, however, that any such cost or expense so disputed shall be paid in accordance with the determination of the Board of Directors pending final judgment in any such legal proceedings.

**5.2 Alterations.** No Owner shall be entitled to alter, add to or improve the Unit, or the Limited Common Elements appurtenant thereto, in a manner as will or might reasonably be expected to affect the structural soundness or integrity or the exterior appearance of any of the improvements, any System that services more than one Unit, or any warranty in favor of the Association, without the prior written consent of the Association and being in compliance with all Regulations established by the Association. No Owner may alter the size or location of any Parking Space without the prior written consent of the Association. Further, no Owner shall be entitled to make any alteration, addition or improvement to a Limited Common Element appurtenant to more than the Unit unless (i) the prior written approval of all Owners having an interest in such Limited Common Element is obtained, and (ii) the plans and specifications for such alteration, addition or improvement to the Limited Common Element have been approved in writing by the Board of Directors. Once alterations, additions and improvements have been made to a Limited Common Element pursuant to plans and specifications approved in writing by the Board of Directors, neither the Association, the Board of Directors nor any Owner shall have the right to cause such alterations, additions or improvements to be removed or altered without the written consent of the Owner or Owners of the Unit or Units to which such Limited Common Element is appurtenant. Any alterations, additions and improvements made pursuant to this Subsection shall be made at the individual cost and expense of the Owner making such alteration, addition, or improvement. Each Owner, by acceptance or possession of a title to a Unit, indemnifies and holds harmless Declarant, the Association, Board of Directors, Manager, and their respective officers, employees, representatives, agents and successors from and against any and all claims, demands, judgments, losses, damages, liability, and costs and expenses, including reasonable attorneys' fees, directly or indirectly arising from or attributable to the review and approval of any alteration pursuant to this Subsection 5.2.

**5.3 Mechanic's Liens; Indemnification.** No labor performed or materials furnished and incorporated in a Unit with the consent or at the request of an Owner or an Owner's agents or representatives, shall be the basis for the filing of a lien against the Unit of any other Owner not expressly consenting to or requesting the same, or against the Common Elements. Each Owner shall indemnify and hold harmless each

of the other Owners and the Association from and against all liabilities and obligations arising from the claim of any lien against the Unit of such other Owners or the Common Elements. All contracts for labor, services, and/or materials with respect any of the Units shall be in compliance with the provisions hereof.

#### **5.4 Insurance.**

(a) Commencing upon the first conveyance of any Unit to an Owner other than the Declarant, the Association shall obtain and maintain, as a Common Expense, insurance coverage required pursuant to Section 82.111 of the Act and such additional coverage as the Association deems appropriate.

(b) Insurance policies shall provide that:

(1) each Owner is an insured person under such policies with respect to liability arising out of the Owner's ownership of an undivided interest in the Common Elements or membership in the Association;

(2) insurance trust agreements will be recognized;

(3) any right of subrogation of the issuer against individual Owners is waived;

(4) the coverage of the policy is not prejudiced by any act or omission of an individual Owner to the extent that such act or omission is not within the collective control of all Owners;

(5) such policy is primary insurance if at the time of a loss under the policy any Owner has other insurance covering the same property covered by the policy;

(6) no action or omission by any Owner unless validly exercised on behalf of the Association, will void the policy or be a condition to recovery under the policy;

(7) the policy may not lapse, be cancelled, or have renewal refused, or be materially modified, except after 30 days prior to the written notice to the Association and the Manager, if any, and 15 days' prior written notice to each Mortgagee listed as such in such insurance policy, except in the case of non-payment of premium in which case 10 days written notice of cancellation shall be given to the Association, the Manager, if any, and each listed Mortgagee.

(c) The Manager, if any, shall be reflected as additional insured on any general liability insurance policy carried by the Association.

(d) The Board of Directors shall have the express authority, on behalf of the Association, to name as insured an authorized representative, including any trustee (or successor thereto) with whom the Association has entered into any insurance trust agreement, which authorized representative shall have exclusive authority to negotiate losses under any policy providing the property or liability insurance required to be provided herein.

(e) By acceptance of a deed to a Unit, each Owner shall be deemed to have irrevocably appointed the Association (which appointment shall be deemed a power coupled with an interest), together with any insurance trustee, successor trustee or authorized representative designated by the Association, as such Owner's attorney-in-fact for the purpose of purchasing and maintaining the insurance required hereunder as well as for submission of and adjustment of any claim for loss, the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to accomplish such purpose. The Association or

such trustee, successor trustee or authorized representative must receive, hold or otherwise properly dispose of any proceeds of insurance in trust for the Owners and the Mortgagees as their interests may appear based on the fair market value of the interests damaged or destroyed. Any proceeds paid under such policy shall be disbursed first for the repair- or restoration of any damaged Common Elements and Units, and no Owner or Mortgagee or other lienholder shall receive payment of any portion of such proceeds unless a surplus remains after the Condominium has either been completely restored or the Condominium has been terminated.

(f) The Association shall be entitled to obtain and maintain such additional insurance coverages hereunder as the Board of Directors may deem necessary or appropriate including, without limitation, insurance covering all alterations, additions, betterments and improvements to Owners' Units, liability insurance for all officers, directors, trustees and employees of the Association. The premiums for all insurance coverages maintained by the Association pursuant to this Section shall constitute a Common Expense and be payable by the Association.

(g) Each Owner shall be obligated to obtain and maintain, at such Owner's sole cost and expense, a standard Texas insurance policy for betterments and improvements covering structural components related to such Owner's Unit to the extent not covered by insurance maintained by the Association and each Owner shall be required to furnish a copy of such insurance to the Association. If an Owner shall fail to provide evidence of such insurance, the Association may purchase such insurance on behalf of the Owner and assess the cost to the Owner as an Individual Assessment. Each Owner shall be responsible for obtaining and maintaining at such Owner's sole cost and expense such other insurance covering alterations, additions, betterments and improvements to such Unit and all other personal property located at the Unit or constituting a part thereof and shall furnish the Association with a copy of such insurance. An Owner shall be responsible for obtaining and maintaining at such Owner's sole cost and expense such liability insurance as may be appropriate. Nothing herein shall be deemed or construed as prohibiting an Owner, at such Owner's sole cost and expense, from obtaining and maintaining such further and supplementary insurance coverages as such Owner may deem necessary or appropriate.

**5.5 Taxes.** Each Owner shall be responsible for and shall pay when due all taxes, assessments and other governmental impositions lawfully levied or assessed with respect to such Owner's Unit. Any taxes, assessments or other governmental impositions lawfully levied or assessed with respect to the Property not separately billed to the Owners shall constitute a Common Expense and be payable by the Association.

**5.6 Utilities.** Each Owner shall be responsible for and shall pay all water and wastewater usage, audio or visual communications, electricity, gas, and internet connectivity charges relating to such services used or consumed at or with respect to the occupancy of the Unit. Any such charges not separately metered or sub-metered and charges relating to such services used in connection with the use and maintenance of the Common Elements, shall constitute a Common Expense and be payable by the Association.

## **6. Assessments**

### **6.1 Monthly Assessments; Budget**

(a) The Association shall possess the right, power, authority and obligation to establish a regular Monthly Assessment sufficient in the judgment of the Board of Directors to pay all Common Expenses when due. No consent or approval of the Owners shall be required for the establishment of the Monthly Assessments. Such Monthly Assessments so established shall be payable by the Owners on the first day of each calendar month, and shall be applied to the payment of charges for which the Association is responsible, including, without limitation, charges relating to maintenance and repair of elements of the Property not the responsibility of the Owners, care of the Common Elements, any common area expenses under any recorded declarations or easement agreements encumbering the Property, casualty, public liability and other insurance coverages required or permitted to be maintained by the Association, governmental impositions not separately levied and assessed, utilities relating to the Common Elements or not separately metered,

professional services, such as management, accounting and legal, and such other costs and expenses as may reasonably relate to the property maintenance, care, operation and management of the Property, and the administration of the Association and the Condominium established hereby, including an adequate reserve fund for the periodic maintenance, repair and replacement of the Common Elements

(b) Prior to the commencement of each fiscal year of the Association, the Board of Directors shall prepare and deliver to all of the Owners a Budget setting forth the anticipated Common Expenses for the ensuing year. Such Budget shall be in sufficient detail so as to inform all Owners of the nature and extent of the Common Expenses anticipated to be incurred and shall be accompanied by a statement setting forth each Owner's monthly share thereof and the date as of which such Monthly Assessment commences to be payable. No further communication shall be necessary to establish the amount of each Owner's obligation regarding the Monthly Assessment payable hereunder, and the failure of the Board of Directors to timely deliver the Budget provided for herein shall in no event excuse or relieve any Owner from the payment of the Monthly Assessments contemplated hereby. Any Budget prepared and delivered to the Owners as hereby contemplated may be amended as and to the extent reasonably necessary and the amount of each Owner's Monthly Assessment changed to correspond therewith. If the proposed Budget for a fiscal year increases more than ten percent (10%) above the Budget for the preceding fiscal year, such Budget must be approved by a majority of the Owners except as described in Subsection 6 (e), below. Any funds collected by the Association pursuant to the Budget and not expended in any fiscal year shall be applied to reduce Monthly Assessments otherwise payable by Owners in the next fiscal year.

(c) If the Budget increases by more than ten percent as a result of an uncontrollable expense, the increase shall be allowed regardless of whether it is approved by the Board of Directors or all of the Owners. For purposes of this Declaration, an "uncontrollable expense" is an expense payable to a third party, the rates of which are not controlled by or reasonably capable of being controlled by, the Association or any Owner, such as taxes, insurance, and utilities. Further, if circumstances make additional or different security measures a necessary or desirable addition to or increase in the Budget, the cost of the additional

(d) Security or the increased cost thereof shall also be an uncontrollable expense so long as such cost reflects a fair market price for the services rendered.

(e) Notwithstanding Subsections 6.1 (a) and (c) above or any other provision of this Declaration to the contrary, it is acknowledged and agreed by the Owners that the initial Budget has been prepared and agreed to by a majority of the Owners at a point in time when the parties have limited operating history for the Property. There will be a transition period of approximately 24 months from the time the first Unit is conveyed by Declarant. During this transition period and until such time as 50% percent of the Residential Units have been conveyed by the Declarant (the "Base Period"), the ten percent caps described in Subsections 6.1(b) above shall not apply, it being the intention of the Owners to take into account actual operating expense increases and adjustments of every kind. After the Base Period, the Budget will be established for the year following the Base Period, using the Base Period numbers adjusted as reasonably required to take into account expected operating expenses increases and adjustments. Further, if an expense of the Base Period makes it reasonably clear that any line item should be re-allocated among the Owners, then the Owners shall in good faith determine the extent to which a reallocation is appropriate.

**6.2 Special Assessments.** In addition to the Monthly Assessments contemplated by Subsection 6.1, the Association shall possess the right, power and authority to establish Special Assessments to pay non-recurring Common Expenses relating to the proper maintenance, care, alteration, improvement, operation and management of the Property, and the administration of the Association and the Condominium established hereby Except as contemplated by Section 7, no consent or approval of the Owners shall be required for the establishment of a Special Assessment as contemplated by this Subsection, except for any Special Assessment relating to the alteration or improvement of any element of the Property or an expenditure in excess of \$10,000 per item or \$20,000 in the aggregate in any year, which in each case must be approved by

an affirmative vote of a majority of Owners.

**6.3 Individual Assessments.** In addition to the Monthly Assessments and Special Assessments contemplated in Subsection 6.1 and Subsection 6.2, the Association shall possess the right, power and authority to establish or levy Individual Assessments in accordance with the provisions of this Declaration against an individual Owner of a Unit for charges properly borne solely by one or more but less than all Owners, such as (without limitation) charges for additional services, damages, fines or fees, Unit insurance, or insurance deductible payments. Individual Assessments shall be the personal obligation of the Owner against whom the Individual Assessment is assessed and shall constitute a lien against the Unit in the same manner and with the same consequences as the Monthly Assessment and any duly authorized Special Assessment.

**6.4 Obligation to Pay Assessments.** Each Owner shall be personally obligated to pay their respective Assessments duly established pursuant to this Section 6 and Section 7. Unpaid Assessments due as of the date of the conveyance or transfer of a Unit shall not constitute a personal obligation of the new Owner (other than such new Owner's pro rata share of any reallocation thereof); however, the former Owner shall continue to be personally liable for such unpaid Assessment. No Owner shall be entitled to exemption from liability for the Owner's obligation to pay such Assessments by waiver of the use and enjoyment of the Common Elements, by an abandonment of the Owner's Unit or by any other action whatsoever. Any Assessment not paid within fifteen days of the date due shall bear interest at the Past Due Rate, and after written notice of the delinquency and an opportunity to cure within five additional days thereof is provided to the Owner, the Assessment shall be recoverable by the Association, together with interest as aforesaid and all costs and expenses of collection, including reasonable attorneys' fees, by suit in a court of competent jurisdiction sitting in the County. It shall be the responsibility of the Board of Directors to collect any such delinquent Assessment, the existence of which shall be made known by written notice delivered to the defaulting Owner and, where requested, the Owner's Mortgagee.

**6.5 Lien to Secure Payment of Assessments.** Declarant hereby reserves and assigns to the Association a lien, pursuant to the provisions of Section 82.113 of the Act, against each Owner's Unit, the Rents, if any, payable to any Unit Owner and Insurance Proceeds to which a Unit Owner may be entitled, to secure the payment of all Assessments, which lien shall be and constitute a lien and encumbrance in favor of the Association, upon such Owner's Unit, the Rents, and any insurance Proceeds. The liens established herein shall be prior and superior to all other liens and encumbrances subsequently created upon such Owner's Unit, Rents and Insurance Proceeds, regardless of how created, evidenced or perfected, other than the lien securing the payment of Lien Indebtedness (provided such lien was recorded prior to the date on which the Assessment became delinquent) and the liens for unpaid taxes, assessments and other governmental impositions. The liens and encumbrances created herein may be enforced by any means available at law or in equity, including a non-judicial foreclosure sale of the Unit of a defaulting Owner. Any such sale (including notice thereof) shall comply with the applicable requirements, at the time of the sale, of Section 51.002 of the Property Code or, if and to the extent such statute is not then in force, with the applicable requirements, at the time of the sale, of the successor statute or statutes, if any, governing sales of Texas real property under powers of sale conferred by deeds of trust or other contract liens. Each Unit Owner, by acquisition of such Owner's Unit grants to the Association a power of sale in connection with the Association's liens. By written resolution, the Board of Directors may appoint, from time to time, an officer, agent, trustee or attorney of the Association to exercise the power of sale on behalf of the Association. The Association may bid for and purchase the Owner's Unit, as a Common Expense, at any such foreclosure sale. The foreclosure by a Mortgagee of any Owner's Unit in order to satisfy Lien Indebtedness will extinguish the subordinate lien for any Assessments which became payable prior to the date of such foreclosure sale, provided that in no event shall a defaulting Owner be relieved from liability incurred for past Assessments.

**6.6 Commencement of Obligation to Pay Assessments.** Each Owner shall be obligated to commence payment of all Assessments against their respective Unit on the date this Declaration is recorded in the Official Public Records of the County, or the date such Owner takes title to a Unit, whichever is later.

If such date is other than the first day of a month, then such Owner shall be obligated to pay only a prorated share of the Assessment against such Owner's Unit based on the number of days during such month that the Owner will hold title to the Owner's Unit.

**6.7 Notice of Default.** If the Owner of a Unit defaults in the Owner's monetary obligations to the Association, the Association may notify the other lien holders of the default and the Association's intent to foreclose its lien.

**6.8 Alternative Actions.** Nothing contained in this Declaration shall prohibit the Association from taking a deed in lieu of foreclosure or from filing suit to recover a money judgment for sums that may be secured by the lien.

**6.9 Statement of Common Expenses and Access to Records.** The Association shall promptly provide any Owner, contract purchaser, or Mortgagee so requesting the same in writing with a written statement of all unpaid Assessments for Common Expenses due with respect to such Unit. The Board of Directors may impose a reasonable charge for the preparation of such statement to the extent permitted by the Act. The Association shall make available during normal business hours for inspection, upon request by Owners, Mortgagees, Tenants, prospective purchasers, and any of their authorized agents, current copies of the books, records, and financial statements of the Association (including, if such is prepared, the most recent annual audited financial statement available). Any Owner or Mortgagee may have an audited statement of the Association prepared at its own expense.

## 7. Loss and Obsolescence.

### 7.1 Loss or Damage.

The following provisions shall govern in the event the Improvements, or any part thereof, are damaged or destroyed by fire or other casualty:

(a) **Notice to Mortgagees.** Prompt written notice of any such substantial damage or destruction shall be given to all Mortgagees.

(b) **Restoration and Repair.** Pursuant to Section 82.111(i) of the Act, the Association shall promptly proceed with the full restoration and repair of such damage or destruction unless (i) the Condominium is terminated, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (iii) Owners holding not less than 67% of the Allocated Interests (including each Owner of a Unit or assigned Limited Common Element that will not be rebuilt or repaired) vote not to rebuild.

(c) **Special Assessment.** The amount by which such restoration and repair costs exceed collectible Insurance Proceeds shall be and constitute a Special Assessment payable by the Owners within 30 days of the date notice of such Special Assessment is delivered by the Association.

(d) **Excess Proceeds.** Any excess Insurance Proceeds remaining after such restoration and repair, or any insurance or sales proceeds available absent such restoration and repair, shall be received and held in trust by the Association in separate accounts for each Owner according to the Allocated Interests of the Owners, and be applied, without contribution from one such account to another, as follows:

(1) first. to the payment of any taxes and special assessment liens or other governmental impositions in favor of any assessing entity having authority with respect to such Owner's Unit;

- (2) second, to the payment of the balance of the Lien Indebtedness of such Owner;
- (3) third, to the payment of any delinquent Assessment with respect to such Owner's Unit; and,
- (4) the balance, if any, to such Owner or such other parties as shall be entitled thereto.

## **7.2 Damaged Units.**

The following provisions shall govern if any Unit or any part thereof, is damaged or destroyed by fire or other casualty ("Damaged Unit"):

(a) Notice to Mortgagees. Prompt written notice of any such substantial damage or destruction shall be given to the Mortgagees of the Damaged Unit.

(b) Restoration and Repair. The Owner of the Damaged Unit shall promptly proceed with the full restoration and repair of such damage or destruction and shall pay all costs of such restoring, repairing, replacing or rebuilding in excess of the net proceeds of the collectible Insurance Proceeds unless: (i) the Condominium is terminated; (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (iii) Owners holding not less than 67% of the Allocated Interests vote not to rebuild.

## **7.3 Matters Relating to Restoration and Repairs.**

Any restoration and repair work undertaken by the Association pursuant to Subsection 7.1 shall be performed in a good and workmanlike manner with a view to restoring the Improvements to a condition similar to that existing prior to such damage or destruction, provided, however, that in no event shall the Association be responsible for restoring, repairing or replacing any improvements to a Unit made by any Owner, or the contents located in such Owner's Unit. All such restoration and repair work whether done by the Association or any Owner, shall be effected in a manner so as to observe all vertical and horizontal Unit boundaries existing prior to such damage or destruction.

## **7.4 Obsolescence of Common Elements.**

If the Owners holding not less than 67% of the Allocated Interests shall vote, at a meeting of the Association duly called for purposes of considering same, that the Common Elements, or any part thereof, (including any Systems that serve only, or are a part of, individual Units), are obsolete, the Association shall promptly proceed with the necessary replacements and improvements thereto pursuant to a budget established for such purpose, and the cost thereof shall be and constitute a Special Assessment payable by each Owners within 30 days of the date notice of such Special Assessment is delivered to them by the Association.

## **7.5 Obsolescence of the Property.**

If the Owners holding not less than 80% of the Allocated Interests shall determine, at a meeting of the Association duly called for purposes of considering same, that the Property is obsolete, the Association, after first obtaining the written consent of 51% of Mortgagees, shall promptly proceed with the sale thereof in its entirety. Any proceeds from such sale shall be received, held and applied for and on account of the Owners as provided in Subsection 7 (b).

## **7.6 Association as Attorney-in-Fact.**

Each Owner, by possession or acceptance of title to a Unit, hereby irrevocably makes, constitutes

and appoints the Association, and each and every of its successors in interest hereunder, as their true and lawful attorney-in-fact, for and in such Owner's name, place and stead, upon the damage or destruction of the Property, or any part thereof, or upon any determination by the Owners made pursuant to this Section 1, to take any and all actions, and to execute and deliver any and all instruments, as the Board of Directors may, in its sole and absolute discretion, deem necessary or advisable to effect the intents and purposes of this Section 7, hereby gives and grants unto the Association full power and authority to do and perform all and every act whatsoever requisite or necessary to be done in and about the Property as fully, to all intents and purposes, as any Owner might or could do, hereby ratifying and confirming whatsoever the Association may do by virtue hereof. The Association is hereby authorized in the name and on behalf of all Owners, to do and perform all actions necessary or appropriate to effect the intent and purposes of this Section 7 as aforesaid, including, without limitation, the power and authority to make and settle claims under any insurance policies maintained by the Association, contract for and with respect to restoration and repair work, contract for and with respect to replacements and improvements to the Common Elements (to the extent authorized as contemplated by Subsection 7.4 of this Declaration), to contract for and with respect to a sale of the Property (to the extent contemplated by Subsection 7.5 of this Declaration), and to execute and deliver all instruments necessary or incidental to any such actions.

## **8. Condemnation**

### **8.1 General Provisions**

If all or any part of the Property is the subject of a Taking, the Board of Directors and each Owner shall be entitled to participate in proceedings incident thereto at their respective expense. The Board of Directors shall give such notice as it receives of the existence of such proceeding to all Owners and to all Mortgagees. The expense of participation in such proceedings by the Board of Directors shall be a Common Expense. The Board of Directors is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Board of Directors in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings. All damages or awards for any such Taking shall be deposited with the Board of Directors, acting as trustee, and in any case such damages or awards shall be applied or paid as herein provided. Any restoration or repair of the Property following a partial Taking shall be performed in accordance with the provisions of this Declaration and shall follow, as nearly as possible, the original plans and specifications for the Property, unless otherwise approved by 51% of Mortgagees.

### **8.2 Taking of One Unit**

If one Owner's Unit (or a substantial part thereof such that ownership, operation, or occupancy of the remaining portion of the Unit in accordance with the originally intended use of the Unit is impossible or undesirable), is the subject of a Taking, and such Owner shall vacate and abandon the Owner's Unit by virtue of such Taking, the Owner and any Mortgagee of such Owner shall be entitled to the award for such Taking, including the award for the value of such Owner's interest in the Common Elements, whether or not such Common Element interest is acquired, and after payment thereof, such Owner and Owner's Mortgagee shall be divested of all interest in the Property. The condemned Unit's entire Allocated Interest shall be automatically reallocated to the remaining Units in proportion to the respective Allocated Interest of those Units before the Taking. If any portion of any Owner's Unit is the subject of a Taking, such that ownership, operation, or occupancy of the remaining portion of the Unit may be continued in accordance with the originally intended use of the Unit, the Owner may not vacate the remaining portion of the Unit. In such case, the Owner shall be entitled to the award for such Taking, and the Allocated Interest of the condemned Unit shall be reduced in proportion to the reduction in the size of the Unit. The portion of the Allocated Interest divested from the partially-acquired Unit shall be automatically reallocated to that Unit and the other Units in proportion to the respective Allocated Interests of the Units before the Taking, with the partially-acquired Unit participating in the reallocation on the basis of its reduced Allocated Interest. If any repair or rebuilding of the remaining portions of the Property is required as a result of such Taking, the remaining Owners shall

determine by affirmative vote or written consent of the remaining Owners owning a majority of the re-allocated Allocated Interest either to rebuild or repair the Property or to take such other action as such remaining Owners may deem appropriate. If no repair or rebuilding shall be required, or if none be undertaken, the remaining portion of the Property shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such Taking. The Declaration shall in all circumstances be amended to reflect the re-allocated Allocated Interests following the condemnation.

### **8.3 Taking of Common Elements.**

If an action is brought to effect a Taking of the Common Elements together with or apart from any Unit, the Board of Directors, in addition to the general powers set out herein, shall have sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect thereto, or to convey such property to the condemning authority in lieu of such condemnation proceeding unless the action involves a material portion of the Common Elements in which case the agreement of a majority of the Owners shall be required. With respect to any Taking of Common Elements only, all damages and awards shall be determined for such Taking as a whole and not for any Owner's interest therein. After the damages or awards for such Taking are determined, such damages or awards shall be held by the Board of Directors, acting as trustee for each Owner, or Owner's Mortgagee or Mortgagees, as their interests shall appear, in proportion to such Owner's percentage interest in the Common Elements, except that the portion of any such award attributable to the condemnation of a Limited Common Element shall be allocated among the Owners of the Units served by such Limited Common Elements, as such Owner's interests existed in the Limited Common Elements condemned. The Board of Directors may, if it deems advisable, call a meeting of the Owners, at which meeting the Owners, by the vote of a majority of the Owners, shall decide whether to replace or restore as far as possible the Common Elements taken or damaged. If it is determined that such Common Elements should be replaced or restored by obtaining other land or building additional structures, this Declaration and the Map attached hereto shall be duly amended by instrument executed by the Board of Directors on behalf of the Owners and duly recorded.

### **8.4 Taking of All Units.**

If a Taking occurs that results in the Taking of all Units comprising less than two-thirds of the total square footage of the Land, then the damage and awards for such Taking shall be determined for each Unit and the following shall apply:

(a) The Board of Directors shall determine which of the Units damaged by such Taking may be operational or habitable for the purposes set forth in the Declaration, taking into account the nature of the Property and the reduced size of each Unit so damaged.

(b) The Board of Directors shall determine whether it is reasonably practicable to operate the remaining portions of the Units as a mixed use condominium project in the manner provided in this Declaration.

(c) If the Board of Directors determines, with the consent of 51% of the Mortgagees, that it is not reasonably practicable to operate the remaining portions of the Units which can be made operational or habitable as a mixed use condominium project, then the Property shall be deemed to be regrouped and merged into a single estate owned jointly in the undivided interest by all Owners, as tenants-in-common, in the percentage of the Allocated interest of each Owner.

(d) If the Board of Directors determines that it will be reasonably practicable to operate the portions of the Units which can be made operational or habitable as a condominium project, then the damages and awards made with respect to each Unit shall be applied to repair and reconstruct the Units or portions thereof so that they are made operational or habitable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Owners in accordance with their Allocated Interests.

If the amount of the award exceeds the cost of such work, the excess portion of the award made with respect to each such Unit shall be paid to the Owners of such Units or their Mortgagees, as their interest may appear. The remaining portion of any Unit which cannot be made operational or habitable, if any, shall become a part of the Common Elements and repair and use of such portion shall be determined by the Board of Directors.

### **8.5 Taking of Entire Property.**

If the entire Property is taken or damaged by such Taking, the proceeds received in relation to all damages and awards shall be held for the accounts of all Owners, and their respective Mortgagees, as their interests shall appear, as provided herein, in proportion to their Allocated Interests, and this Condominium shall terminate upon payment of such proceeds to the Owners and their respective Mortgagees.

### **8.6 Payment of Awards and Damages.**

Any damages or awards provided in this Section to be paid to or for the account of any Owner by the Board of Directors, acting as trustee, shall be applied first to the payment of any taxes or assessments by governmental authorities past due and unpaid with respect to that Unit; secondly, to amounts due under any mortgage instruments duly perfected; thirdly, to the payment of any Assessments charged to or made against the Unit and unpaid; and finally to the Owner.

## **9. Development Period**

**9.1 Initial Directors.** The Board of Directors shall be initially established by Declarant as set forth in the Bylaws.

### **9.2 Period of Declarant Control.**

(a) Except as is provided below, Declarant shall have the right to appoint and remove members of the Board of Directors during the period of Declarant Control. If Declarant voluntarily surrenders control prior to the termination of the period of Declarant Control, Declarant may require that specified actions of the Board of Directors be subject to Declarant approval until the expiration of the period of Declarant Control.

(b) Not later than 120 days after Declarant has conveyed to Owners other than Declarant title to 75% of the Units that may be created in the Condominium, an election shall be held by the Association, pursuant to the Bylaws, for the election of not less than 1/3 of the members of the Board of Directors by Unit Owners other than Declarant.

(c) At least 30 days prior to the termination of the period of Declarant Control, the Association shall elect a Board pursuant to the Bylaws, the terms of such directors to commence as of the date on which the period of Declarant Control terminates.

**9.3 Working Capital Contribution.** Each Owner shall, at the time such Owner purchases a Unit from Declarant or from a subsequent Owner of a Unit, contribute an amount to the Association equal to the Working Capital Contribution. Such amount shall be a contribution of working capital to the Association and shall not be considered as an advance payment of the Monthly Assessments.

## **10. Miscellaneous**

### **10.1 Revocation or Termination of Declaration.**

This Declaration may be revoked or the Condominium established hereby may be terminated,

but only by an instrument in writing, duly approved, executed and acknowledged by those Owners holding not less than 80% of the Allocated Interests and not less than 51% vote of the Mortgagees or if the entire Property is Taken. Any such instrument of revocation or termination shall be duly filed of record in the County. If the Property is to be sold upon termination, the agreement effecting such termination shall also set forth the terms of such sale and comply with the provisions of Section 82.068(c) of the Act.

#### **10.2 Amendment to Declaration.**

This Declaration may be amended at a meeting of the Owners at which the amendment is approved by all Owners and by the vote of not less than 51% of the Mortgagees. Such amendment shall be evidenced by a written instrument executed and acknowledged by an officer of the Association on behalf of the Owners and by the consenting Mortgagees and filed of record in the County. Any such amendment so effected shall be binding upon all of the Owners and the Mortgagees.

#### **10.3 Partial Invalidity.**

In the event any provision of the Governing Documents shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall in no way impair or affect the validity or enforceability of the remainder of such instruments.

#### **10.4 Conflicts.**

If any of the provisions of the Governing Documents shall be in conflict with the provisions of the Act or the Texas Nonprofit Corporation Act or the Texas Business Corporation Act, the provisions of such statutes shall control. If a conflict exists between the provisions of the Governing Documents; the documents shall control in the following order:

1. This Declaration,
2. The Certificate;
3. The Bylaws, and
4. The Regulations.

#### **10.5 Captions and Exhibits.**

Captions used in the various sections of this Declaration are for convenience only, and they are not intended to modify or affect the meaning of any of the substantive provisions hereof. All exhibits are incorporated in and made a part of this Declaration for all purposes. The exhibits attached to this Declaration are:

- Exhibit A - Legal Description of Land
- Exhibit B - Map
- Exhibit C - Allocated Interests
- Exhibit D- Bylaws of the Association
- Exhibit E - Certificate of Formation for the Association
- Exhibit F - Original Tax Certificate
- Exhibit G - Title Exceptions

#### **10.6 Usury.**

It is expressly stipulated and agreed to be the intent of the Declarant that at all times the terms of this Declaration, the Bylaws and the Regulations shall comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable under any provision of this Declaration, the Bylaws, or the Regulations. If the applicable law is ever judicially interpreted so as to render usurious any amount contracted for, charged, taken, reserved or received pursuant to this Declaration, the Bylaws, the Regulations or any other communication or writing by or between the Association and the Owners related to the matters set forth in this Declaration, the Bylaws, or the Regulations or any other communication or writing by or between the Association and the Owners related to the matters set forth in this Declaration, the Bylaws, or the Regulations, then it is the express intent of Declarant that all amounts charged in excess of the maximum rate allowed by Texas law shall be automatically canceled, *ab initio*, and all amounts in excess of the maximum rate allowed by Texas law theretofore collected shall be refunded, and the provisions of this Declaration, Bylaws, or the Regulation shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law. Owners hereby agree that as a condition precedent to any claim seeking usury penalties against the Association or any billing Owner, any Owner will provide written notice to the Association or any billing Owner, advising the Association or any billing Owner in reasonable detail of the nature and amount of the violation, and the Association or any billing Owner shall have sixty days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to the Owner or crediting such excess interest against the obligation then owing by such Owner to the Association or any billing Owner.

**10.7 Use of Number and Gender.**

Whenever used herein, and unless the context shall otherwise provide, the singular number shall include the plural, the plural number shall include the singular, and the use of any gender shall include all genders.

**10.8 Governing Law.**

THE GOVERNING DOCUMENTS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY ACTION BROUGHT IN CONNECTION WITH THE CONDOMINIUM SHALL BE IN DALLAS COUNTY, TEXAS.

**10.9 Estoppel Certificates.**

Each Owners, from time to time, but no more often than three times per calendar year, shall have the right to require the Association to deliver to the requesting Owner a written statement addressed to the requesting Owner and its Mortgagee or purchaser of its Unit, as applicable, without payment of any fee or reimbursement of any cost certifying:

(a) that this Declaration is unmodified and in full force and effect (or, if modified, that this Declaration as so modified is in full force and effect);

(b) that this Declaration attached to the certificate is a true and correct copy of this Declaration and all amendments hereto;

(c) that, to the knowledge of the certifying party, the requesting party is not in default of any of its obligations under this Declaration (or if the certifying party knows the requesting party to be in default, specifying the defaults and any remaining cure period, if any);

- (d) that the certifying party holds no then existing liens against the requesting party's Unit;
- (e) the date through which all Assessments have been paid by the requesting Owner; and
- (f) such other matters as are reasonably requested by the requesting Owner.

#### 10.10 Non-Liability of Association and Declarant for Security.

Without limitation of any other provision of this Declaration, each Owner (by acceptance or possession of title to a Unit) and their Tenants and family (by occupancy and possession of the Unit), guests and invitees, covenant and agree with respect to any and all security services, systems and facilities provided directly or indirectly by the Association as follows:

(a) Security is the sole responsibility of local law enforcement agencies and individual Owners, their Tenants, and their respective guests and invitees. It is acknowledged that the Association has no obligation whatsoever to provide security. Security services, systems and facilities shall be provided at the sole discretion of the Board of Directors. The provision of any security services, systems and facilities at any time shall in no way prevent the Board from thereafter electing to discontinue or temporarily or permanently remove such security service, systems and facilities or any part thereof.

(b) Any third party providers of security services (including those providing maintenance and repair of security systems and facilities) shall be independent contractors, the acts or omissions of which shall not be imputed to the Association or its officers, directors, committee members, agents or employees.

(c) Providing of any security services, systems and facilities shall never be construed as an undertaking by the Association to provide personal security or as a guarantee or warranty that the presence of any security service, system or facilities will in any way increase personal safety or prevent personal injury or property damage due to negligence, criminal conduct or any other cause.

**(d) EACH OWNER, BY ACCEPTANCE OF A DEED TO A UNIT, SHALL BE DEEMED TO HAVE WAIVED, ON BEHALF OF SUCH OWNER AND SUCH OWNER'S TENANTS, AND THEIR RESPECTIVE FAMILY MEMBERS, GUESTS AND INVITEES, ANY AND ALL CLAIMS, NOW OR HEREAFTER ARISING AGAINST THE DECLARANT AND THE ASSOCIATION AND THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE MEMBERS, AGENTS AND EMPLOYEES ARISING OUT OF OR RELATING TO ANY INJURIES, LOSS OR DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION ANY INJURY OR DAMAGES CAUSED BY THEFT, BURGLARY, TRESPASS, ASSAULT, VANDALISM OR ANY OTHER CRIME, TO ANY PERSON OR PROPERTY ARISING, DIRECTLY OR INDIRECTLY, FROM THE PROVIDING OR FAILURE TO PROVIDE ANY SECURITY SERVICES, SYSTEMS AND FACILITIES, OR THE DISCONTINUATION, DISRUPTION, DEFECT, MALFUNCTION, OPERATION, REPAIR, REPLACEMENT OR USE OF ANY SECURITY SERVICES, SYSTEMS AND FACILITIES, WHETHER CAUSED OR ALLEGEDLY CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE DECLARANT OR THE ASSOCIATION, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE MEMBERS, AGENTS, CONTRACTORS OR EMPLOYEES.**

(e) To the extent the release in this Section is not deemed effective *as to* any Tenant, or any family member, guest or invitee of an Owner or Tenant of a Unit, the Owner of each Unit (by acceptance of a deed to a Unit), hereby indemnifies and agrees to defend and hold harmless the Declarant and the Association, and their respective officers, directors, committee members, agents, and employees from and against any and all claims, actions, suits, judgments, damages, costs and expenses

(including attorney fees and court costs) arising from bodily injury (including, without limitation, mental anguish, emotional distress and death) and/or loss or damage to property suffered or incurred by any such Tenant of such Unit, or any family member, guest or invitee of the Owner or Tenant of such Unit, as a result of criminal activity within or in the vicinity of the Condominium, WHETHER CAUSED OR ALLEGEDLY CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE DECLARANT, THE ASSOCIATION OR THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE MEMBERS, AGENTS, CONTRACTORS OR EMPLOYEES.

(f) Any obligation or liability of the Association which is borne by the Association because of an Owner not abiding by such waiver, release and indemnity obligations under this Subsection 10.10 shall be assessed by the Association as an Individual Assessment against the Owner and the Unit of the Owner who failed to perform such obligation giving rise to such liability. Nothing herein shall make any Owner liable to the Association or any other Owner for any bodily injury and/or loss or damage to property of the Tenant, family member, guest or invitee of any other Owner.

**10.11 Waiver.** No failure of the Declarant or the Association to exercise any right or power under this Declaration, the Bylaws or the Regulations or to insist upon strict compliance therewith and no custom or practice not strictly in accordance with the terms of the Declaration, Bylaws or Regulations shall constitute a waiver of the right to thereafter demand strict compliance with the terms of the Declaration, Bylaws and Regulations.

**10.12 Additional Disclosures.** Declarant makes the following additional disclosures relating to the Unit and the Condominium:

(a) The Condominium is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved or widened in the future.

(b) The views and natural light from an Owner's Unit can change over time due to, among other things, additional development and the addition or removal of landscaping.

(c) No representations are made regarding the uses or zoning of adjacent property, or that the present uses of adjacent property may not change in the future.

(d) No representations are made regarding which schools may now or hereafter serve the Condominium.

(e) Any Unit Owner who is concerned about any representations regarding the Map should do its own investigation as to the dimensions, measurements and square footage of its Unit.

(f) Owners should expect that Assessments can and will increase over time due in part to inflation and increases in the cost of certain items beyond the control of the Association, such as the cost of insurance premiums.

(g) It is acknowledged that there may be conditions outside of the Condominium which an Owner or Tenant finds objectionable and that it shall be the sole responsibility of the Owners and Tenants to become acquainted with the neighborhood conditions which could affect their enjoyment of the Unit.

(h) Concrete surfaces in the Building are subject to cracking due to (1) water penetration, (2) expansion and contraction of the concrete with temperature changes, (3)

building settlement, or other causes.

(i) Condensation may appear on the interior portion of windows and glass surfaces and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows, glass and framing. If left unattended and not properly maintained by Owners and occupants, the condensation may result in staining, damage to surrounding seals, caulk, paint, wood work and sheetrock, and potentially, mildew and/or mold.

(j) No representations are made that the Systems in a Unit, including, by way of example only, heating and air conditioning and electrical systems, will operate or perform at the level or standard equal to or greater than the minimum specifications of the manufacturer of such Systems.

(k) Water may pond or puddle on various portions of the Common Elements, including without limitation, the Parking Area.

(l) EACH OWNER, BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE OF THEIR UNIT, HEREBY ACKNOWLEDGES AND AGREES THAT SOUND AND IMPACT NOISE TRANSMISSION IN A MULTI-TENANT BUILDING SUCH AS THE CONDOMINIUM IS VERY DIFFICULT TO CONTROL AND THAT NOISES FROM ADJOINING OR NEARBY UNITS AND/OR MECHANICAL EQUIPMENT CAN AND WILL BE HEARD IN UNITS. DECLARANT DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE LEVEL OF SOUND OR IMPACT NOISE TRANSMISSION BETWEEN AND AMONG UNITS AND THE OTHER PORTIONS OF THE CONDOMINIUM, AND EACH OWNER HEREBY WAIVES AND EXPRESSLY RELEASES, TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, ANY SUCH WARRANTY AND CLAIM FOR LOSS OR DAMAGES RESULTING FROM SOUND OR IMPACT NOISE TRANSMISSION.

(m) UNITS MAY INCLUDE ONE OR MORE COLUMNS RUNNING THROUGH THE INTERIOR AIRSPACE OF THE UNIT. EACH OWNER SHOULD CONFIRM THAT THE LOCATION OF ANY COLUMNS IN THE UNIT BEING PURCHASED WILL NOT INTERFERE WITH THE OWNER'S INTENDED OCCUPANCY AND USE OF THE UNIT.

(n) Rainwater and refuse may accumulate on various portions of the Building's roof system and possibly cause water intrusion and water penetrations and should be anticipated by the Owners and occupants.

## **11. Mortgage Protections**

### **11.1 Notice to Mortgagees.**

All Mortgagees shall be entitled to receive the following notices in writing from the Association or any Owner exercising rights granted to it under this Declaration, which notice shall be sent promptly following the occurrence of the applicable event:

(a) Notice of any proposed action which requires the consent of Mortgagees, which notice shall be given not less than thirty days prior to the desired effective date of such action;

(b) Notice of default by the Owner or grantor of a Lien Indebtedness on a Unit (the beneficial interest in which is held by that Mortgagee) in the performance of such Owner's or grantor's obligations, or delinquency in the payment of Assessments or charges owed by such Owner, which remains uncured for a period of thirty days;

(c) Notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond required to be maintained hereunder by the Association or by any Owner;

(d) Notice of any damage or destruction to or condemnation of any portion of the Condominium that affects either a material portion of the Property or the Unit securing a Mortgagee's Lien Indebtedness, which notice shall be given promptly upon the Association's obtaining knowledge of such damage or destruction; and

(e) Sixty days' notice prior to the Association instituting any foreclosure action on any Unit

### **11.2 Cure Rights.**

Any Mortgagee shall have the right, but not the obligation, at any time prior to the termination of this Declaration, and without payment of any penalty, to do any act or thing required of such Mortgagee's borrower; and to do any act or thing which may be necessary or proper to be done in the performance and observance of the agreements, covenants and conditions hereof. All payments so made and in things so done and performed by any Mortgagee shall be effective to prevent a default under this Declaration as the same would have been if made, done and performed by the Owner instead of by said Mortgagee. Any event of default under this Declaration that in the nature thereof cannot be remedied by Mortgagee shall be deemed to be remedied if (i) within thirty days after receiving written notice from the non-defaulting party setting forth the nature of such event of default, or prior thereto, the Mortgagee shall have acquired the property owned by the defaulting party (the "Acquired Property") or shall have commenced foreclosure or other appropriate proceedings in the nature thereof; (ii) the Mortgagee diligently prosecutes any such proceedings to completion; (iii) the Mortgagee shall have fully cured any default in the payment of any monetary obligations owed the non-defaulting party hereunder within such thirty day period and shall thereafter continue to perform faithfully all such non-monetary obligations which do not require possession of the acquired Property; and (iv) after gaining possession of the Acquired Property following a foreclosure or deed in lieu thereof, the Mortgagee performs all other obligations of the defaulting party hereunder as and when the same are due.

### **11.3 No Invalidity of Mortgage Lien.**

No violation of this Declaration by, or enforcement of this Declaration against, any party shall impair, defeat or render invalid the lien or any mortgage.

### **11.4 Cooperation with Mortgagee.**

The Association shall cooperate reasonably with any requesting party in regard to the satisfaction of requests or requirements by a Mortgagee; provided, however, such cooperation shall be at the sole cost and expense of the requesting party, and provided, further, that no party shall be deemed obligated to accede to any request or requirement that materially and adversely affects its rights under this Declaration.

### **11.5 Unpaid Assessments.**

Each Mortgagee holding a mortgage encumbering any Unit, which Mortgagee obtains title to such Unit pursuant to judicial foreclosure or the powers provided in such mortgage, shall take title to such Unit

free and clear of any claims for unpaid assessments or charges against such Unit that accrued prior to the time such Mortgagee acquires title to such Unit.

**11.6 Books and Records.**

All Mortgagees, upon written request, shall have the right to:

(a) examine the books and records of the Association, including current copies of the Declaration, Regulations, and financial statements, during normal business hours;

(b) require the Association to submit an annual audited financial statement for the preceding fiscal year within 120 days of the end of the Association's fiscal year, if one is available, or have one prepared at the expense of the requesting entity if such statement is not otherwise prepared by the Association;

(c) receive written notice of all meetings of the Owners; and

(d) designate in writing a representative to attend all such meetings.

**11.7 Material Changes.**

All Mortgagees, upon written request, shall be given thirty days' written notice prior to the effective date of (i) any proposed material amendment to this Declaration or the Map; (ii) any termination of an agreement for professional management of the Property following any decision of the Owners to assume self-management of the Property, and (iii) any proposed termination of the Condominium.

**11.8 Priority of Rights.**

No provision of the Declaration shall be construed or applied to give any Owner priority over any right of any Mortgagee in the case proceeds or awards are not applied to restoration but are distributed to Owners in the case of a casualty loss, or condemnation of, a Unit and/or Common Element.

**EXECUTED** to be **EFFECTIVE** on the date first written above.

**DECLARANT:**

**HERSCHEL HAWTHORNE, LLC**  
a Texas limited liability company

By: \_\_\_\_\_

Printed Name: Alex Perry

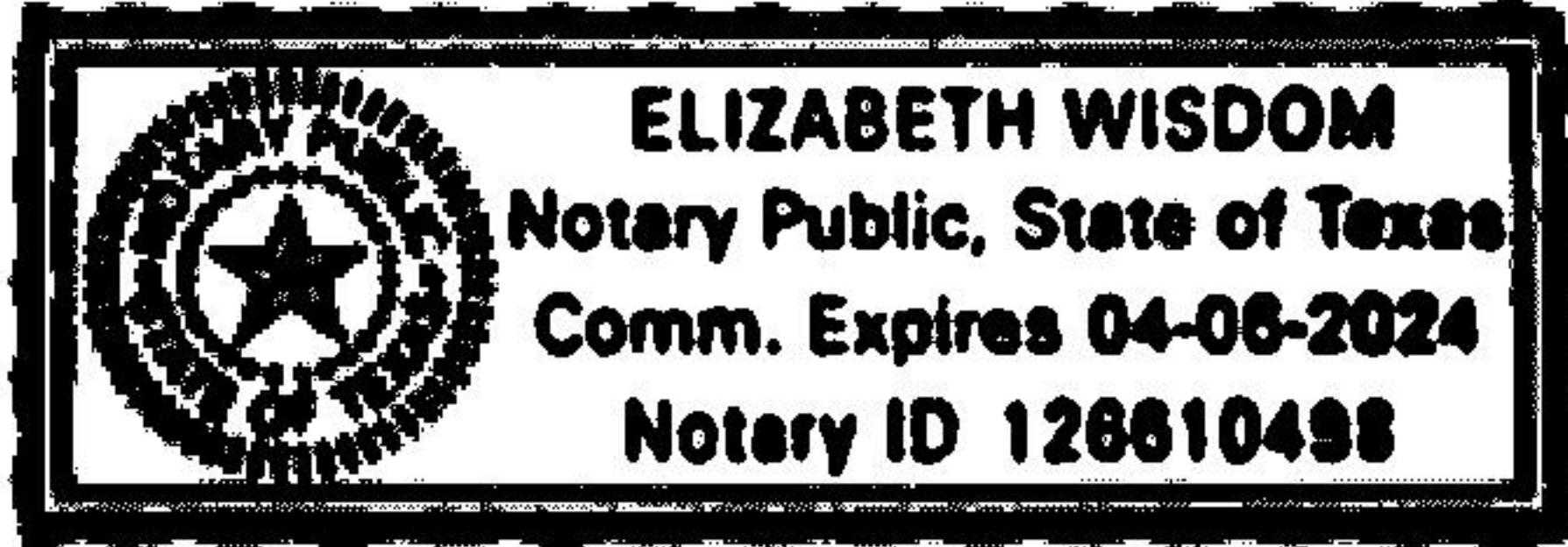
Title: Manager


STATE OF TEXAS

§  
§  
§

COUNTY OF DALLAS

This instrument was acknowledged before me on the 20<sup>th</sup> day of April, 2020, by Alex Perry, Manager of Herschel Hawthorne, LLC, a Texas Limited Liability Company, on behalf of the Company.



  
\_\_\_\_\_  
Notary Public, State of Texas

Unofficial Copy

EXHIBIT A  
LEGAL DESCRIPTION

**Being Lot 18, Block 18/2030 of UNIVERSITY PLACE ADDITION, An Addition to the City of Dallas, Dallas County, Texas, According to the Plat thereof recorded in Volume 1, Page 37, Plat Records, Dallas County, Texas.**

Unofficial Copy

EXHIBIT B  
HAWTHORNE LUXURY CONDOMINIUMS DECLARATION-PHASE I

Map

Unofficial Copy

# Hawthorne Townhomes

## 4220 Hawthorne Ave.

### Dallas, Texas

**ARCHITECT:**  
 IKEMIRE ARCHITECTS  
 16660 DALLAS PARKWAY, SUITE #2900  
 DALLAS, TEXAS 75287  
 PHONE: (972) 248-2486

**BUILDER:**  
 HUDSON CONSTRUCTION GROUP  
 4268 LOWERS LANE, DALLAS TX 75209  
 PHONE: (214) 448-4941

**SHEET INDEX**  
 4220 HAWTHORNE AVE

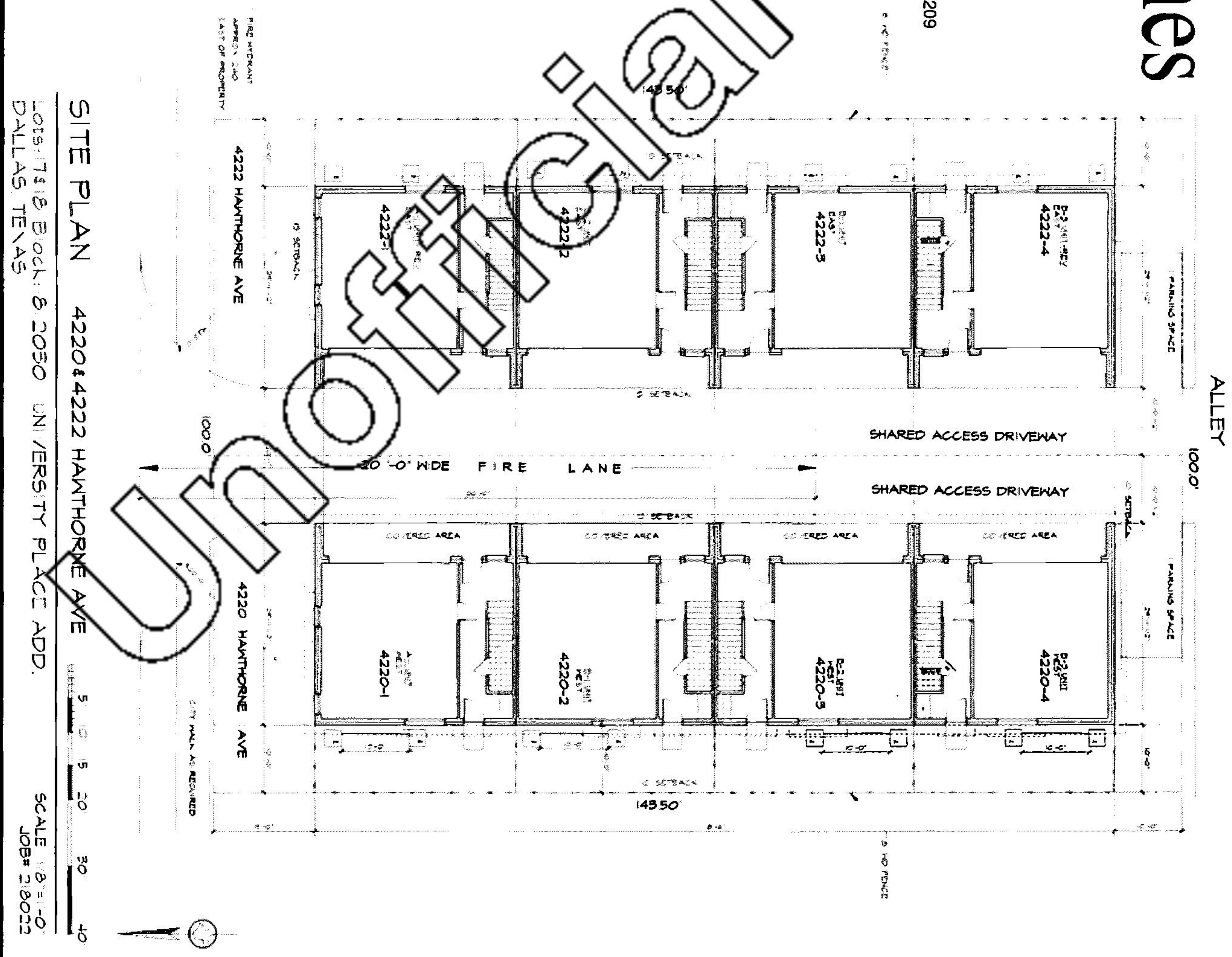
SP	Cover Sheet & Architectural Site Plan
A1	A-1- One Bedroom Floor Plans
A2	B-1 2 Bedroom Floor Plans
A3	B-2 2 Bedroom Floor Plans
A4	B-3 2 Bedroom Floor Plans
A5	West Building Plan First Floor
A6	West Building Plan Second Floor
A7	West Building Plan Third Floor
A8	West Building Roof Plan
A9	West Building Right Elevation
A10	West Building Rear & Front Elevs.
A11	West Building Left Elevation
A12	Window & Door Schedule & Details
A13	Wall Sections & Details
A14	Sections & Details
A15	Details
A16	Details

TOTAL SITE AREA	14,550 SF
TOTAL ROOTED AREA	11,000 SF
TOTAL COVERAGE	5,948 SF
TOTAL NON-ROOTED AREA	3,550 SF
TOTAL IMPERVIOUS COVERAGE	5,948 SF

REQUIREMENTS:  
 1. 2 STORY APARTMENT UNITS  
 2. HOOD RANGE CONSTRUCTION  
 3. OCCUPANT TYPE: RESIDENTIAL  
 4. NON-SYMBOLIC  
 5. 2.5' CLEARANCE TREES ON SITE

PARKING ANALYSIS:  
 1. REQUIRED PARKING: 2.5 SPACES PER UNIT  
 2. REQUIRED GUEST PARKING: 10% OF TOTAL UNIT COUNT  
 3. 2.5' CLEARANCE TREES ON SITE

NO AIRCRAFT OR HVAC LOCATED IN GARAGE



**SITE PLAN** 4220 & 4222 HAWTHORNE AVE  
 LOT 17 & 18 BLOCK 8 2050 UNIVERSITY PLACE ADD.  
 DALLAS TEXAS

SCALE 1/8"=1'-0"  
 JOB# 218022

**SP**  
 1 of 28  
 JOB # 218022

**IKEMIRE ARCHITECTS L.L.C.**  
 ARCHITECTURE PLANNING INTERIORS  
 16660 DALLAS PKWY. SUITE 2900 DALLAS, TX 972-248-2486 FAX 972-248-1557



**Hawthorne Townhomes**  
 4 UNIT DUPLEX  
 HUDSON CONSTRUCTION  
 LOT 17 BLOCK 8/2050 UNIVERSITY PLACE ADD. 4220 HAWTHORNE AVE  
 DALLAS, TEXAS 75209

DATE 5/16/14  
 REVISIONS:  
 11/18/13  
 11/18/13  
 6/20/14  
 6/23/14

**EXHIBIT C  
ALLOCATED INTERESTS**

<b>UNIT#</b>	<b>Square Footage</b>	<b>Allocated Interest</b>
4220-101	1950	12.607%
4220-102	1919	12.406%
4220-103	1919	12.406%
4220-104	1946	12.581%
4222-101	1950	12.607%
4222-102	1919	12.406%
4222-103	1919	12.406%
4222-104	1946	12.581%
<b>Total Square Footage</b>	<b>15,468</b>	<b>100.00%</b>

Unofficial Copy

## EXHIBIT D

### BYLAWS OF Hawthorne Luxury Condominium Association, Inc.

#### 1. Offices, Definitions

- 1.1 Registered Office and Agent.** The initial registered office of Hawthorne Luxury Condominium Association, Inc. (the "Association") is 400 S. Record Street, 16<sup>th</sup> FL, Dallas, Texas 75202. The initial registered agent of the Association is Alex Perry, whose office address is 3329 N. Haskill Avenue, Dallas, Texas 75204.
- 1.2 Other Offices.** The Association may also have offices at such other places within or without the State of Texas as the Board of Directors may from time to time determine or the business of the Association may require.
- 1.3 Incorporation of Declaration.** The Association will take all steps necessary to carry out the provisions of the Condominium Declaration of Hawthorne Luxury Condominiums Condominium (the *Declaration*). The Declaration is hereby incorporated into and made a part of these Bylaws. Declarant has full power to exercise control over the Association as set forth in the Declaration, until such time as transfer of authority to the Association by Declarant, Herschel Hawthorne, LLC, is finalized. Any capitalized terms not defined in these Bylaws have the meaning given in the Declaration.
- 1.4 Membership in Association.** Each Owner is a member of the Association ("Member") and have the voting rights as provided in Section 4.2 of the Declaration.

#### 2. Meeting of Members

- 2.1 General Meetings.** All meetings of the Members for the election of directors will be held at the office of the Association in Texas, or at such other place, within or without the State of Texas as may be specified in the notice of the meeting or in a duly executed waiver of notice thereof. Meetings of Members for any other purpose may be held at such time and place, within or without the State of Texas as stated in the notice of the meeting or in a duly executed waiver of notice thereof.
- 2.2 Annual Meeting.** An annual meeting of the Members will be held on the third Tuesday of January of each year, at the hour of 7:00 o'clock p.m.; provided, however, that should said day fall upon a legal holiday, then at the same time on the next business day thereafter. At such meeting, directors will be elected, reports of the affairs of the Association will be considered, and any other business may be transacted which is within the power of the Members.
- 2.3 Member List.** At least ten days before each meeting of the Members, a complete list of the Members entitled to vote at each meeting, arranged in alphabetical order, with the residence of each and the number of votes held by each, will be prepared by the Secretary. Such list will be kept on file at the Registered Office of the Association for a period of ten days before the meeting and will be subject to inspection by any Member at any time during usual business hours. Such list will be produced and kept open at the time and place of the meeting during the whole time thereof, and will be subject to the inspection of any Member who may be present.

- 2.4 Call for Special Meetings.** Special meetings of the Members for any purpose or purposes, unless otherwise prescribed by statute, the Certificate, or these Bylaws, may be called by the President, the majority of the Board of Directors or the holders of not less than one-half of all the votes. Business transacted at any special meeting will be confined to the subjects stated in the notice of the meeting.
- 2.5 Notice.** Written or printed notice stating the place, date and time of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, will be delivered not less than 15 or more than 30 days before the date of the meeting, either personally or by mail by or at the direction of the President, the Secretary, or the officer or person calling the meeting, to each Member of record entitled to vote at the meeting.

### 3. Directors

- 3.1 Powers.** The business and affairs of the Association will be managed by its Board of Directors who may exercise all the powers of the Association and may do all lawful acts and things which are not by statute, The Declaration, the Certificate or these Bylaws directed or required to be exercised or done by the Members.
- 3.2 Number and Election.** The Board of Directors will consist of no less than three and no more than five directors. The initial Board of Directors members are named in the Certificate for the Association. Declarant may name additional directors, rename directors, and appoint replacement directors so long as it owns 25% of the combined square footage of the Units in the Condominium; provided, however, not later than 120 days after Declarant has conveyed to Owners other than Declarant title to 50% of the square footage of the Units in the Condominium, at least one of the members of the Board of Directors will be elected at a special meeting of the Members. When Declarant owns less than 25% of the combined square footage of the Units in the Condominium, the directors will be elected at the annual meeting of the Members, except as hereinafter provided, and each director elected will hold office until his successor has been elected and qualified.
- 3.3 Term of Office.** Directors will be elected for a term of two years.
- 3.4 Removal; Filling Vacancies.** Any director may be removed, with or without cause, at any special meeting of the Members by the affirmative vote of a majority of the Members present in person or by proxy at such meeting and entitled to vote for the election of such director, if notice of intention to act upon such matter was given in the notice calling the meeting. If any vacancies occur in the Board of Directors, for any reason, a majority of the directors then in office, though less than a quorum, may choose a successor or successors. Each successor director so chosen will be elected for the unexpired term of the predecessor in office.
- 3.5 Prohibition of Cumulative Voting.** Directors will be elected by plurality vote. Cumulative voting will not be permitted.
- 3.6 Location of Meetings.** The directors of the Association may hold their meetings, both regular and special, either within or without the State of Texas.
- 3.7 Annual Meetings.** The first meeting of each newly elected Board of Directors will be held without further notice immediately following the annual meeting of Members, and at the same place, unless changed by unanimous consent of the directors then elected and serving.
- 3.8 Regular Meetings.** Regular meetings of the Board of Directors will be held semi-annually or more frequently if called by the President or by a majority of the Board of Directors members at such time and place as determined by the Board of Directors.

- 3.9 Special Meetings.** Special meetings of the Board of Directors may be called by the President or Secretary on two days' notice to each director, either personally or by mail or by telegram; special meetings shall be called by the President or Secretary in like manner and on like notice on the written request of a majority of directors. Except as otherwise expressly provided by statute, the Certificate or these Bylaws, neither the business to be transacted, nor the purpose of any special meeting need be specified in a notice or waiver of notice.
- 3.10 Quorum.** At all meetings of the Board of Directors, the presence of three of the directors is necessary and sufficient to constitute a quorum for the transaction of business and the act of three of the directors present at any meeting at which there is a quorum will be the act of the Board of Directors, except as may be otherwise specifically provided by statute, the Declaration, the Certificate or these Bylaws. If a quorum shall not be present at any meeting of Directors, the Director(s) present thereat may adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum shall be present.

#### 4. Notices

- 4.1 Formalities of Notices.** Whenever under the provisions of the statutes, the Certificate or these Bylaws, notice is required to be given to any director or Member, and no provision is made as to how such notice should be given, the notice should be delivered by either personal notice or notice in writing, by mail (regular otherwise), postage prepaid, addressed to such director or Member at such address as appears on the books of the Association. Any notice required or permitted to be given by mail will be deemed to be given at the time it is deposited in the United States Mail.
- 4.2 Waiver of Notices.** Whenever any notice is required to be given to any Member or director of the Association under the provisions of the statutes, the Certificate or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated in such notice, will be deemed equivalent to the giving of such notice. Signing the minutes of any meeting will be deemed a waiver of all formalities with respect to such meeting.

#### 5. Officers

- 5.1 Miscellaneous Provisions.** The officers of the Association will be elected by the Directors and include a President, a Secretary and a Treasurer. Any two or more offices may be held by the same person, except that the offices of President and Secretary and President and Treasurer may not be held by the same persons. Any such officer will have the powers and duties usually associated with such office, subject to limitations or extension by the Board of Directors.
- 5.2 Other Agents.** The Board of Directors may appoint such other officers and agents as it deems necessary, who will be appointed for such terms and will exercise such powers and perform such duties as determined from time to time by the Board of Directors.
- 5.3 Duties.** The duties of the officers are as follows:

- a. President.** The President will preside at all meetings of the Board of Directors; will see that orders and resolutions of the Board of Directors are carried out; sign all contracts, mortgages, tax returns, and other written instruments; co-sign all checks (except those on a monthly recurring nature previously approved by the Board of Directors), and promissory notes; appoint committee chairmen and Members of committees with the concurrence of the Board of Directors together with the Secretary, prepare, execute and certify amendments to the Declaration; and carry out such other duties as may be assigned by the Board of Directors or the policies adopted by the Board of Directors.
- b. Secretary.** The Secretary will perform or cause to be performed the following secretarial activities: record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Members; keep the corporate seal and

affix it on all papers requiring said seal; serve notice of meetings of the Board of Directors and Members; keep the appropriate current records showing the ownership of Units and membership of the Association, together with their addresses; together with the President, prepare, execute and certify amendments to the Declaration; and perform such other duties as required by the Board of Directors or the policies as adopted by the Board of Directors.

- c. **Treasurer.** The Treasurer will perform or cause to be performed the following financial activities: receive and deposit in appropriate bank accounts all monies of the Association and disburse such funds as directed by a resolution of the Board of Directors; co-sign all checks; cause an annual audit of the Association books to be made at the completion of each fiscal year; prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting and deliver a copy of the budget and Assessments adopted by the Board of Directors to each Member. The Treasurer will perform such other duties as required by the Board of Directors or the policies as adopted by the Board of Directors.

5.4 **Salaries.** All officers and directors of the Association shall serve without compensation. However, expenses may be reimbursed for unusual activities carried out on behalf of the Association. Any officer may receive compensation for services rendered to the Association in other than his official capacity.

5.5 **Tenure; Removal; Vacancies.** Each officer of the Association shall hold office for a term of one year or until his successor is chosen and qualified in his stead or until death, resignation or removal from office. Any officer or agent elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the whole Board of Directors, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. If the office of any officer becomes vacant, for any reason, the vacancy may be filled by the Board of Directors.

5.6 **Officers.** The initial officers of the Association are set forth below, and each shall serve for a term of one year or until his successor is chosen and qualified in his stead or until death, resignation or removal from office:

Alex Berry - President

Kate Clapper- Treasurer

Sone Cavazos- Secretary

## 6. General Provisions

6.1 **Fiscal Year.** The fiscal year of the Association is the calendar year.

6.2 **Seal.** There will be no necessity for a corporate seal, but if there should be one, such seal shall have inscribed thereon the name of the Association and the word "TEXAS". Such seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

6.3 **Indemnification.** The Association will indemnify any Director, officer or employee or former Director, officer or employee of the Association, against expenses actually and necessarily incurred by him and any amount paid in satisfaction of judgments in connection with any action, suit or proceeding, whether civil or criminal in nature, in which he is made a party by reason or being or having been such a director, officer or employee (whether or not a director, officer or employee at the time such costs or expenses are incurred by or imposed upon him) except in relation to matters as to which he is found liable for gross negligence or willful misconduct in the performance of duty. The Association will pay or cause to be paid to any director, officer or employee the reasonable costs of settlement of any such action, suit or proceeding. Such right

of indemnification will not be deemed exclusive of any other rights to which such director, officer or employee may be entitled by law or under any bylaw, agreement, vote of Members or otherwise.

**6.4 Financial Records.** The Association will (i) keep detailed financial records that comply with generally accepted accounting principles and that are sufficiently detailed to enable the Association to prepare a resale certificate in accordance with Section 82.157 of the Texas Property Code and enable the Association to prepare condominium information sheets in accordance with Section 82.152 of the Texas Property Code; (ii) keep voting records, proxies, and correspondence relations to amendment to the Declaration; and (iii) keep minutes of meeting of the Association and the Board of Directors. The Association shall also obtain an annual independent audit of the records of the Association, and shall make that available to all Owners.

**6.5 Conveyance of Units in the Condominium.** Within 30 days of acquisition, any new Owner in the Condominium will provide the following to the Association:

- a. Owner's mailing address and telephone number;
- b. Contact information for any lienholder and the loan number;
- c. Contact information for any tenant leasing space in the Unit; and
- d. Contact information for any property manager of the Unit.

## 7. Amendments

These Bylaws may be altered or amended by a vote of Members voting in person or by proxy at a duly called regular or special membership meeting at which a quorum is present.

*Signature Page Follows*

The Board of Directors of the Association has adopted these Bylaws as the initial bylaws of Hawthorne Luxury Condominium Association, Inc., a Texas non-profit corporation, to be effective as of the 20 day of May, 2020.

  
\_\_\_\_\_  
Alex Perry, Director

  
\_\_\_\_\_  
Kate Clapper, Director

  
\_\_\_\_\_  
Sone Cavazos, Director

Unofficial Copy

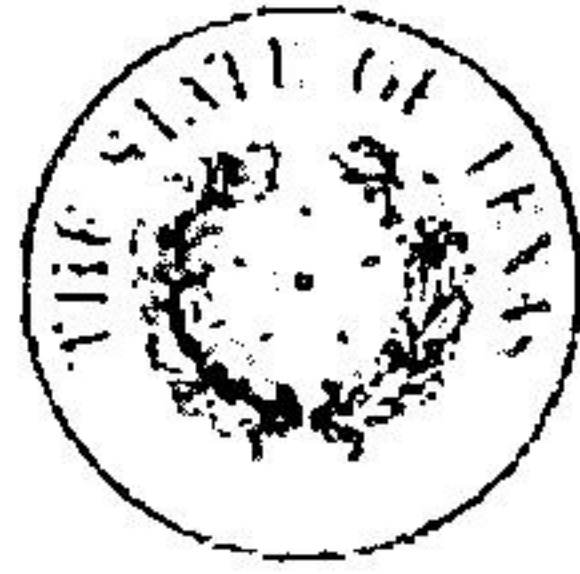
EXHIBIT E

CERTIFICATE OF FORMATION  
OF  
HAWTHORNE LUXURY CONDOMINIUM ASSOCIATION, INC.

Unofficial Copy

**Form 202**

Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
FAX: 512/463-5709



Filed in the Office of the  
Secretary of State of Texas  
Filing #: 803533562 01/30/2020  
Document #: 942095410004  
Image Generated Electronically  
for Web Filing

Filing Fee: \$25

**Certificate of Formation  
Nonprofit Corporation**

**Article 1 - Corporate Name**

The filing entity formed is a nonprofit corporation. The name of the entity is :

**Hawthorne Luxury Condominium Association, Inc.**

**Article 2 – Registered Agent and Registered Office**

A. The initial registered agent is an organization (cannot be corporation named above) by the name of:

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

Name:

**Alex Perry**

C. The business address of the registered agent and the registered office address is:

Street Address:

**3329 N. Haskill Avenue Dallas TX 75204**

**Consent of Registered Agent**

A. A copy of the consent of registered agent is attached.

OR

B. The consent of the registered agent is maintained by the entity.

**Article 3 - Management**

A. Management of the affairs of the corporation is to be vested solely in the members of the corporation.

OR

B. Management of the affairs of the corporation is to be vested in its board of directors. The number of directors, which must be a minimum of three, that constitutes the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting or until their successors are elected and qualified are set forth below.

Director 1: **Alex Perry**

Title: **Director**

Address: **3329 N. Haskill Avenue Dallas TX, USA 75204**

Director 2: **Sone Cavazos**

Title: **Director**

Address: **400 S. Record Street Ste 1600 Dallas TX, USA 75202**

Director 3: **Kate Clapper**

Title: **Director**

Address: **400 S. Record Street Ste 1600 Dallas TX, USA 75202**

**Article 4 - Organization Structure**

A. The corporation will have members.

or

B. The corporation will not have members.

**Article 5 - Purpose**

The corporation is organized for the following purpose or purposes:

**To exercise all of the powers and privileges and perform the duties, obligations and purposes of the Association as set forth in the Condominium Declarations of Hawthorne Luxury Condominiums, copies of which are recorded in the Official**

**Public Records of Dallas County, Texas.**

**Supplemental Provisions / Information**

[The attached addendum, if any, is incorporated herein by reference.]

**Effectiveness of Filing**

A. This document becomes effective when the document is filed by the secretary of state.

**OR**

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

**Organizer**

The name and address of the organizer are set forth below.

**Brett Field**      **8350 North Central Expy #1225, Dallas, Texas 75206**

**Execution**

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

**Brett Field**

Signature of organizer.

**FILING OFFICE COPY**

Unofficial Copy

EXHIBIT F

ORIGINAL TAX CERTIFICATES

[follow this page]

Unofficial Copy



EXHIBIT G  
TITLE EXCEPTIONS

Unofficial Copy

**COMMITMENT FOR TITLE INSURANCE T-7**

**ISSUED BY**

**FIDELITY NATIONAL TITLE INSURANCE COMPANY**

**SCHEDULE B**

**EXCEPTIONS FROM COVERAGE**

In addition to the Exclusions and Conditions and Stipulations, your Policy will not cover loss, costs, attorney's fees, and expenses resulting from:

1. The following restrictive covenants of record itemized below (We must either insert specific recording data or delete this exception):

**Item 1, Schedule B is hereby deleted.**

2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements. **Company has approved the current land title survey and upon request, and payment of any promulgated premium, this item will be amended in the policy(ies) to be issued to read: 'shortages in area'.**
3. Homestead or community property or survivorship rights, if any of any spouse of any insured. (Applies to the Owner's Policy only.)
4. Any titles or rights asserted by anyone, including, but not limited to, persons, the public, corporations, governments or other entities,
  - a. to tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs or oceans, or
  - b. to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or
  - c. to filled-in lands, or artificial islands, or
  - d. to statutory water rights, including riparian rights, or
  - e. to the area extending from the line of mean low tide to the line of vegetation, or the rights of access to that area or easement along and across that area.(Applies to the Owner's Policy only.)
5. Standby fees, taxes and assessments by any taxing authority for the year **2016**, and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year. (If Texas Short Form Residential Loan Policy of Title Insurance (T-2R) is issued, that policy will substitute "which become due and payable subsequent to Date of Policy" in lieu of "for the year 2016 and subsequent years.")
6. The terms and conditions of the documents creating your interest in the land.
7. Materials furnished or labor performed in connection with planned construction before signing and delivering the lien document described in Schedule A, if the land is part of the homestead of the owner. (Applies to the Loan Title Policy Binder on Interim Construction Loan only, and may be deleted if satisfactory evidence is furnished to us before a binder is issued.)
8. Liens and leases that affect the title to the land, but that are subordinate to the lien of the insured mortgage. (Applies to Loan Policy (T-2) only.)
9. The Exceptions from Coverage and Express Insurance in Schedule B of the Texas Short Form Residential Loan Policy of Title Insurance (T-2R). (Applies to Texas Short Form Residential Loan Policy of Title Insurance (T-2R) only.) Separate exceptions 1 through 8 of this Schedule B do not apply to the Texas Short Form Residential Loan Policy of Title Insurance

(T-2R).

10. The following matters and all terms of the documents creating or offering evidence of the matters (We must insert matters or delete this exception.):

- a. **Rights of parties in possession.**
- b. **All leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals, together with all rights, privileges, and immunities relating thereto, appearing in the Public Records whether listed in Schedule B or not. There may be leases, grants, exceptions or reservations of mineral interest that are not listed.**
- c. **Any rights, interests, or claims which may exist or arise by reason of the following matters disclosed by survey,**

**Job No.: 1610516**

**Dated: 6/7/16**

**Prepared by: Thomas William Mauk, RPLS # 5119**

**Matters shown:**

- 1) **Any claim or liability related to the fence being inside or outside of the east or west side of the property line.**
- 2) **Overhead Electric Service Line as shown on the survey.**

Unofficial Copy

**COMMITMENT FOR TITLE INSURANCE T-7**

**ISSUED BY**

***FIDELITY NATIONAL TITLE INSURANCE COMPANY***

**SCHEDULE C**

Your Policy will not cover loss, costs, attorneys' fees, and expenses resulting from the following requirements that will appear as Exceptions in Schedule B of the Policy, unless you dispose of these matters to our satisfaction, before the date the Policy is issued:

1. Documents creating your title or interest must be approved by us and must be signed, notarized and filed for record.
2. Satisfactory evidence must be provided that:
  - a. no person occupying the land claims any interest in that land against the persons named in paragraph 3 of Schedule A,
  - b. all standby fees, taxes, assessments and charges against the property have been paid,
  - c. all improvements or repairs to the property are completed and accepted by the owner, and that all contractors, sub-contractors, laborers and suppliers have been fully paid, and that no mechanics, laborer's or materialmen's liens have attached to the property,
  - d. there is legal right of access to and from the land,
  - e. (on a Loan Policy only) restrictions have not been and will not be violated that affect the validity and priority of the insured mortgage.
3. You must pay the seller or borrower the agreed amount for your property or interest.
4. Any defect, lien or other matter that may affect title to the land or interest insured, that arises or is filed after the effective date of this Commitment.
5. **Prior approval from Regional Underwriting must be obtained if the subject transaction involves the proposed issuance of (i) an Owner's Policy to a person or entity who purchased the subject property at a foreclosure sale, or (ii) a Loan Policy insuring a lien granted by such person or entity on the subject property.**
6. **Please be advised that our search did not disclose any open Deeds of Trust of record. If you should have knowledge of any outstanding obligation, please contact the Title Department immediately for further review prior to closing.**
7. **We find various Liens and Judgments that are of record against persons with similar or the same name as that of the vestee(s) shown herein. In order to complete this report, the Company requires a Statement of Information to be provided for the following vestee(s), which may allow and assist in the elimination of some or all of the said liens and judgments. After review of the requested Statement of Information, the Company reserves the right to add additional items or make further requirements prior to the issuance of any Policy of Title Insurance.**

Vestee(s): Frances Jones

**NOTE: The Statement of Information is necessary to complete the search and examination of title under this order. Any title search includes matters that are indexed by name only, and having a completed Statement of Information assists the Company in the elimination of certain matters which appear to involve the parties but in fact affect another party with the same or similar name. Be assured that the Statement of Information is essential and will be kept strictly confidential to this file.**

8. In order to complete this report, the Company requires a Statement of Information to be completed by the

following party(s),

Party(s): Frances Jones NUMEROUS BANKRUPTCIES

The Company reserves the right to add additional items or make further requirements after review of the requested Statement of Information.

NOTE: The Statement of Information is necessary to complete the search and examination of title under this order. Any title search includes matters that are indexed by name only, and having a completed Statement of Information assists the Company in the elimination of certain matters which appear to involve the parties but in fact affect another party with the same or similar name. Be assured that the Statement of Information is essential and will be kept strictly confidential to this file.

9. The Company must be furnished with a marital affidavit from each record owner from the date of his/her acquisition of subject property to the present time. The spouse of each record owner must join in any conveyance of subject property.

10. The following note is for informational purposes only:

The following deed(s) affecting said land were recorded within twenty-four (24) months of the date of this report:

None found of record.

The last Deed found of record affecting the Land was recorded September 29, 2003 at Volume 2003193, Page 5018, Real Property Records, Dallas County, Texas, wherein the grantee acquired the subject property.

11. Except in an exempt transaction, the Company must be furnished with seller's social security number or tax identification number and all other information necessary to complete IRS Form 1099B.

Countersigned  
Legacy Texas Title Co.

By \_\_\_\_\_  
Authorized Signature

Filed and Recorded  
Official Public Records  
John F. Warren, County Clerk  
Dallas County, TEXAS  
05/26/2020 01:32:53 PM  
\$218.00  
202000130069

