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**HERRIN LOFTS**  
**DECLARATION OF CONDOMINIUM**

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**HERRIN LOFTS**  
**DECLARATION OF CONDOMINIUM**

January 17, 2007

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 COUNTY CLERK  
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HERRIN LOFTS DECLARATION OF CONDOMINIUM

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HERRIN LOFTS DECLARATION OF CONDOMINIUM

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## HERRIN LOFTS

### DECLARATION OF CONDOMINIUM

HERRIN LOFTS, L.P., a Texas limited partnership, being the owner of that tract of land more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes and the improvements thereon, and desiring to submit such land and improvements pursuant to the Texas Uniform Condominium Act for the purpose of establishing the condominium regime known as HERRIN LOFTS, does hereby adopt, establish, promulgate and impress this Declaration of Condominium (this "Declaration") upon such land and improvements.

THE BUILDING IN WHICH THE CONDOMINIUM REGIME IS DECLARED IS AN EXISTING BUILDING, BELIEVED TO HAVE BEEN BUILT IN THE 1920'S, AND NOT PREVIOUSLY USED FOR RESIDENTIAL PURPOSES. THE BUILDING HAS BEEN RENOVATED FOR RESIDENTIAL USE. THE RENOVATION REQUIRED ACCOMMODATION TO THE BUILDING STRUCTURE AND, AS A RESULT, EACH OWNER, WHILE ACQUIRING A PIECE OF HOUSTON HISTORY, MUST ACCEPT THE LIMITATIONS INHERENT WITH SUCH RENOVATION.

#### Article 1. Definitions

Section 1.1. **Definition of Terms.** When used in this Declaration, the words set out below have the following meanings:

- a. **Act.** The Uniform Condominium Act, Title 7, Chapter 82 of the Texas Property Code, and its successor, including amendments thereto, which permits the creation of condominium regimes and provides the basic rules for their operation, together with all amendments thereto to the extent such amendments affect this Declaration or anything covered hereby.
- b. **Association.** The Association (also referred to herein as the "Owners Association" or the "Homeowners Association"), organized pursuant to the Act, whose present legal name is Herrin Lofts Condominium Homeowners Association, a Texas non-profit corporation, incorporated on August 3, 2006, and any successor thereto, whether or not identified by the same or similar name and any entity that operates or functions as the unit owners' association under the Act regardless of name or legal status of the entity, the members of which shall be Owners of the Units during the period of their respective ownerships, and the successors and assigns of such Owners.

replacements or additions to any of the foregoing. The hallways, stairs, elevators, gardens and those portions of the Land and other Common Elements intended to be used for passage or temporary occupancy by persons outside of a particular unit are also sometimes referred to herein as the "Common Elements."

g. **Common Expense Charge.** The assessment made and levied by the Board against each Owner and Unit for administration, management and operation of the Condominium and the Condominium Regime and for repairs, maintenance, additions, alterations, reconstruction and operation of all or any Common Elements (including reserves) and other expenses provided by the terms of this Declaration to be paid by the Association, in accordance with the provisions hereof.

h. **Common Expense Fund.** The accumulated Common Expense Charges and other amounts collected or received by the Association.

i. **Condominium.** The Land, the Building and all other improvements located or to be located on the Land and all other rights appurtenant to the Land, the Building and all other improvements located or to be located on the Land, with portions designated for separate ownership or occupancy, the "Units" as defined herein, and the remainder of the real property designated for common ownership or occupancy, the "Common Elements," as defined herein, solely by the owners of the Units.

j. **Condominium Regime.** The legal rights and duties of Ownership, use and administration created by the terms of the Act and all amendments thereto (to the extent that such amendments are applicable to this Declaration and the Condominium), this Declaration, and the By-Laws and Rules and Regulations promulgated thereunder.

k. **Custom Design Criteria.** The Custom Design Criteria, as same may be amended or modified from time to time in accordance with this Declaration, promulgated by the Board, are those standards and specifications of the Units for custom modifications made to the Units from time to time by Owners.

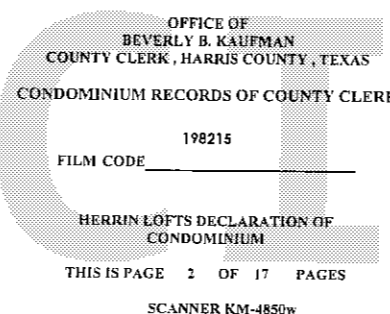
l. **Declarant.** Herrin Lofts, L.P., a Texas limited partnership, or its successors and assigns that have been designated as such pursuant to a written instrument filed subsequent to this Declaration, duly executed by Herrin Lofts, L.P. and recorded in the Office of the County Clerk of Harris County, Texas.

c. **Board or Board of Directors.** The Board of Directors of the Association whether such Board be appointed by Declarant or elected by the Association in accordance with the provisions of this Declaration or the By-Laws, as applicable.

d. **Building.** The structure (including any parking structure) located at 2205 McKinney Street, Houston, Texas 77002, including the Units described in Exhibit "B". The definition of the Building does not include any part of a party wall that is owned by any entity other than the Declarant at the time of this Declaration. The structure consists of five floors with the parking on the first and second floors and the residential units on the third, fourth and fifth floors, the Courtyard on the third floor and Storage Spaces on all five floors. The Building residential units include sixteen (16) Units on the third floor, numbered as Units 301 through 316; eighteen (18) Units on the fourth floor, numbered as Units 401 through 418; and, eighteen (18) Units on the fifth floor, numbered as Units 501 through 518.

e. **By-Laws.** The By-Laws adopted by the Board of Directors of the Association as amended or modified from time to time.

f. **Common Elements.** The Common Elements means all portions of the Condominium other than the Units, including general and limited common elements, designated for common ownership or occupancy solely by the owners of the Units. Common Elements shall be and include all of the Land and the Building except the Units as defined herein and shall include, without limiting the generality of the foregoing, all improvements located or to be located on the Land; foundations; supporting columns; girders, beams, slabs, supports; load-bearing walls; shear walls; exterior glass; dividing walls between two or more Units or between Units and Common Elements; roofs; halls; lobbies; walkways; stairs, stairways; fire escapes; entrances and exits of the Building; grounds; gardens; areas used for storage of janitorial supplies, maintenance equipment and materials cable television lines, converters, conduit and facilities; electrical lines and cables up to and including the point of entry into the breaker boxes of a Unit, plumbing fixtures, pipes and lines installed in the walls of the Building or of a Unit that do not exclusively service a particular Unit; installations of all central service, that do not exclusively service a particular Unit, including power, light, water, chilled and heated water lines, heating, air conditioning (including "air handlers" and fan coil units not located within or providing exclusive service to a Unit) and waste collection facilities; tanks; pumps; motors; fans; compressors; ducts; driveways, and in general all apparatus and installations of the Association existing for the common use or necessary or convenient to the operation, maintenance and use of the Land the Building and all other improvements located or to be located on the Land as a condominium including the Common Elements; and all repairs and



m. **Declaration.** This Condominium Declaration recorded in the Office of the County Clerk of Harris County, Texas, that created the Condominium, and any recorded amendments thereto.

n. **Easement.** A right to use a particular part of the Common Elements for the purposes for which they were designed and in compliance with the terms of this Declaration, the By-Laws and the Rules and Regulations. An easement is also a right to use a particular part of the Common Elements by a third party including such right granted prior to or contemporaneous with the declaration.

o. **General Common Elements.** All Common Elements that are not specifically designated as Limited Common Elements.

p. **Land.** The real property more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes and the plat or survey thereof attached hereto. The Land is also referred to herein as the "Property."

q. **Limited Common Elements.** Those portions of the Common Elements reserved for the exclusive use of the Owners of certain Units to the exclusion of the Owners of all other Units, specifically any balconies or patios adjoining a Unit and not shared in common with other Units and including any portion of the Common Elements assigned by Declarant for the exclusive use of particular Owners as described in Exhibit "C" attached hereto. When used elsewhere in this Declaration, the term "Common Elements" includes the Limited Common Elements unless otherwise expressly indicated.

r. **Managing Agent.** The person, firm or entity that may be selected by the Board in accordance with the provisions hereof for the purpose of performing any duties, powers or functions of the Board in connection with the administration, management and operation of the Condominium. If the Managing Agent provides any notice required by or authorized by this Declaration, the By-Laws and/or the Board, such notice shall be deemed to be provided by the Association.

s. **Mortgage.** A security interest, mortgage, deed of trust or lien granted by an Owner and covering a Unit to secure the repayment of a loan made to an Owner, duly filed for record in the Office of the County Clerk of Harris County, Texas.

t. **Mortgagee.** The person or entity who holds a first lien Mortgage as a security for the payment of a debt and who has provided the Board with written notice that such person or entity desires to have voting rights on matters required the vote of Mortgagees pursuant to this Declaration. Whenever the

Association is required to obtain the agreement, approval, or consent, of any Mortgagee, such agreement, approval or consent, shall be deemed to have been given if the Association provides written notice stating the subject matter of the agreement, approval, or consent requested, by certified mail, return receipt requested at the address provided by the Mortgagee to the Association and the Mortgagee does not respond within thirty (30) days after such Mortgagee receives such notice.

u. **Owner.** Any person or persons, firm, corporation or other entity that owns, of record, a Unit, or legal interest therein, including the Declarant, but the term "Owner" as to a particular Unit shall not include a Mortgagee of that Unit or any other person having an interest in a Unit solely as security for an obligation.

v. **Parking Space or Parking Spaces.** The spaces (or, where appropriate, one of the spaces) for the parking of vehicles within the Building as shown on the attached Exhibit "C."

w. **Percentage Ownership Interests.** The undivided interests in and to the Common Elements associated with and appurtenant to each Unit as set forth on Exhibit "D" attached hereto and made a part hereof for all purposes.

x. **Replacement Reserve Fund.** The fund established pursuant to Article IV hereof for maintenance, repairs and replacements to the Condominium.

y. **Rules and Regulations.** The rules and regulations adopted by the Association concerning the management and administration of the Condominium and the use of the Common Elements and the enforcement of the terms and provisions of this Declaration and the rules and regulations governing the Condominium in order to assure to all Owners the pleasures and benefits of ownership of a Unit and use of the Common Elements. The initial Rules and Regulations shall be promulgated by Declarant and shall be subject to being amended by Declarant or the Board after notice of such amendment has been given to the Owners.

z. **Special Assessment.** Any assessment, approved by the Association as hereinafter set forth, over and above the Common Expense Charge deemed by the Board to be necessary for the preservation, repair, maintenance, management and administration of the Condominium.

aa. **Storage Spaces.** The rooms or spaces for storage for the Units within the Building as shown on the attached Exhibit "C."

to assigning Parking Spaces, including refraining from assigning Parking Spaces to any Unit or Owner and/or assigning specific Parking Space (s) and Storage Space (s) to any Unit (s). Any Parking Space and/or Storage Unit not assigned by Declarant shall be part of the General Common Elements. Declarant may reserve any specific Parking Space(s) and Storage Space(s) to any Unit as a Unit is sold. Declarant may also assign any specific Parking Space(s) and Storage Space(s) to any Units prior to sale by Declarant. Declarant may limit any such assignment to the period of time that the specific Owner of a Unit owns that Unit and such assignment shall cease upon the sale or other transfer of the Unit by the Owner to whom the Parking Space was assigned. Parking Spaces may not be reassigned by Declarant after assignment, if assigned. Parking Spaces shall be used only for parking of automobiles and motorcycles, and shall not be used for the parking or storage of recreational vehicles, bicycles, boats or trailers. Storage Spaces shall be used only for the storage of personal items and in accordance with the restrictions set forth in the Rules and Regulations. Hazardous substances or items that would increase the cost of insurance (whether such items are for insurance premium purposes considered alone or in conjunction with other similar items) covering the Condominium shall not be stored in any Storage Space. Storage Spaces shall be perpetually appurtenant to the Unit to which they are assigned. Any conveyance of any Unit shall be deemed to convey also such Storage Spaces even though made without specifically or particularly referring to the same.

## Article 2. General Provisions

### Section 2.1. Use Restrictions.

a. Units shall be used only for residential purposes. For the purpose of this provision, a Unit shall be deemed to be used for residential purposes when it is used to house persons and their belongings, without regard to whether the persons are Owners of the Unit or occupy the Unit pursuant to a rental, leasing or other arrangement. The use of a Unit for the maintenance of a personal library or for the keeping of personal business or professional records or accounts or for the handling of personal, business or professional telephone calls or correspondence when used in conjunction with the residential occupancy of a Unit shall not be deemed to be in violation of this provision; but regular consultation with clients or other commercial activities in a Unit are prohibited.

b. No noxious or offensive activities of any sort shall be permitted, nor shall anything be done in any Unit or in or about any Common Element that shall be or may become an annoyance or nuisance to or unreasonably interfere with the other Owners, nor shall any loud or disturbing noises be emitted from any Unit in such a manner as to be an annoyance or objectionable to another Owner. By

bb. **Transfer Fee.** The fee due and payable to the Association when the title or other interest in a Unit (other than leasehold or security interest) is transferred from one entity to another.

cc. **Units** - The condominium units designated on Exhibit "B" attached hereto, the boundaries of which shall be the interior surfaces of the perimeter walls, perimeter floors, ceilings, windows and window frames, doors and door frames that provide access to and egress from Common Areas, and which shall include the portions of the Building and the air space within such boundaries, excepting Common Elements. The term Units includes the area interior to any balcony or patio immediately adjacent to any Unit and to which access to such space is only from that specific Unit and not directly from any other Unit and such space within such balcony or patio is not included in Common Elements but in Unit itself. The term Units shall have the same meaning as the terms "Unit" and "Apartment" as used in the Texas Uniform Condominium Act. Included within the boundaries of each Unit, without limitation, shall be any finishing material applied or affixed to the interior surfaces of the interior walls, floors or ceilings (such as, but without limitation, paint, wallpaper, wall or floor coverings and carpet); interior walls and doors separating rooms within a Unit and all utility pipes, lines, systems, fixtures or appliances servicing only that Unit (whether or not within the boundaries of that Unit) including, without limitations, hot water heaters, chilled and heated water pipes, air handlers, fan coil units and all visible and exposed plumbing fixtures, lines and pipes within the boundaries of a Unit. The square footage of any Unit includes the square footage of the balcony or patio of that Unit.

### Section 1.2. Definition of Rights and Responsibilities.

a. Each Owner shall have exclusive ownership of its respective Unit and shall have the common right to share, with all other Owners, in the use of the Common Elements in accordance with the purpose for which they are intended and the provisions hereof, without hindering or encroaching upon the lawful rights of other Owners.

b. Where the term "Owner" is used in the granting of licenses, easements or rights to use Units, Common Elements or Limited Common Elements, such Owner's guests, tenants, servants, employees, invitees, and family members of such Owner residing with such Owner, shall also be entitled to the rights, easements or licenses so granted.

Section 1.3. **Parking Spaces and Storage Spaces.** Certain Parking Spaces and Storage Spaces, if assigned as herein provided, shall be Limited Common Elements for the exclusive use of the Owners of the Units. Declarant reserves all rights with respect

way of example only, the following activities may constitute a nuisance if resulting from any activity within a Unit:

- (1) use which emits dusts, sweepings, dirt or cinders, discharges liquids, solid waste or other matter in a manner that may adversely affect the health, safety, comfort of any occupant, or intended use of any Unit in the Building.
- (2) the escape or discharge of any fumes, odors, gases, vapors, steam, acids or other substances which are detrimental to the health, safety or welfare of any person, unreasonably interferes with other Owners, or is harmful to any property or vegetation within the Condominium;
- (3) the radiation or discharge of intense glare or heat, atomic, electromagnetic, microwave, ultrasonic, laser or other radiation; or
- (4) any vibration, noise, sound or disturbance which unreasonably interferes with the quiet use and enjoyment of any other Unit because of its intermittence, beep, frequency, strength, shrillness or volume.

c. Notwithstanding any other provisions of this Article, the Declarant may make such use of the Common Elements and Units as is reasonably necessary to facilitate and complete the improvements to the Land, construction of the Building, the operation of Declarant's sales efforts and the showing of the Condominium and any unsold units therein (including, without limitation, maintaining model units, a sales office, a design center for selection of allowance items, providing space for the closing of sales transactions covering other unsold Units owned by Declarant and the placing of "For Sale" or "For Lease" signs or other advertising material in or about such unsold Units). The provisions of this subsection shall not prohibit the use by the Association of all Common Elements in any reasonable manner necessary in connection with the operation and maintenance of the Condominium. In addition to the foregoing, the Association has the right to grant permits, licenses and easements over the Common Elements for utilities, roads and other purposes necessary for the proper operation of the Condominium and the Condominium Regime.

d. Nothing shall be done in or kept in or on any Unit, or Common Element that will increase the rate of insurance on the Condominium or any other Unit over that applicable to buildings of a type similar to the Building, or result in uninsurability of the Condominium or any part thereof, or the cancellation, suspension, modification or reduction of insurance in or on or covering the

Condominium or any part thereof. If, by reason of the occupancy or use of any Unit or Common Elements by any Owner in contravention of the restrictions set forth in this Section, the rate of insurance on all or any portion of the Condominium shall be increased, such Owner shall immediately cease any such use of the Unit and shall be personally liable to the Association for such increase caused thereby and such sum shall be paid to the Association upon presentation to such Owner by the Association of a statement thereof.

e. No Owner shall install, attach or hang or allow to be installed, attached or hung any equipment or wiring or electrical installations, television or radio transmitting or receiving antennas, air-conditioning units or any other equipment, item, or writing on, in or across any portion of any Common Elements or through any wall, floor, ceiling, window or door that is a Common Element, except as approved by the Board. All radios, televisions, electrical equipment or appliances of any kind or nature and the wiring therefor installed or used in a Unit shall fully comply with all rules, regulations or requirements of all state and local public authorities having jurisdiction.

f. Except as expressly reserved by Declarant at Section 2.1.c, no Owner shall advertise in any form or manner in the Common Elements or in a Unit which advertisement is visible from the exterior of any Unit, including without limitation, "For Sale" or "For Lease" signs.

**Section 2.2. Decorations, Maintenance and Repair of the Units and Common Elements.** Provided the same do not violate the Custom Design Criteria, any Owner shall have the right to decorate and redecorate the Owner's Unit and may make any non-structural improvements or non-structural alterations within the Owner's Unit (but not to Common Elements) and shall have the right to paint, repaint, tile, wax, paper, or otherwise furnish or decorate any interior surfaces of walls, partitions, ceilings and floors within the Unit. Each Owner shall, at its own cost and expense, maintain the Owner's Unit and the entirety of all windows or other glass surrounding the Unit (whether or not considered to be a Common Element) and the Storage Space, as the case may be, appurtenant to such Owner's Unit, in good condition and repair. Except as provided herein, the Association shall maintain all Common Elements, including Limited Common Elements, the cost of which shall be an expense for which a Common Expense Charge may be assessed and levied (except to the extent that repair to Common Elements is caused by the negligence or misuse of a particular Owner; in which event, such Owner shall be liable to the Association for the cost of such repair, and such Common Expense Charge shall be due and payable upon presentation to such Owner by the Association of a statement thereof). Additional and notwithstanding anything contained herein to the contrary, each Owner shall maintain, repair or replace, as necessary, all windows and glass doors of such Owner's Unit at such Owner's sole cost and expense.

upon which the Board makes its decisions shall materially change. Amendment or modification of the Custom Design Criteria shall be in the sole control and at the sole discretion of the Board from time to time. No amendment of the Custom Design Criteria, however, shall be retroactive or shall be applicable to any modification, alteration or decoration of a Unit made upon the approval of the Board or made or undertaken in good faith based upon the Custom Design Criteria in effect immediately prior to the date of enactment of such amendment and in progress at the date the amendment is voted on.

c. Unless and until changed by a two-thirds (2/3rds) vote of the Board, all windows must be covered with two-inch (2") blinds from American Concepts (or an equivalent brand approved by the Board prior to installation thereof) that are maple in color and constructed of either real wood or faux wood material. Such window covering is not provided by Declarant upon initial sale of a Unit and must be installed by the Owner of a Unit no later than one year from the date of the sale of the Unit by Declarant. If an Owner fails to provide the window covering required herein, the Board may contract for the purchase and installation of such complying blinds and shall have the right of access for the installation of such blinds by the installer. Any cost and expense incurred by the Board in purchasing and installing the blinds required herein and enforcing this provision shall be assessed against the Owner of the Unit in which the blinds are installed and recoverable as any assessment under this Declaration.

**Section 2.6. Assumption of Responsibility of Obligations for Maintenance of Sidewalks and Landscaping.** The Homeowners Association is responsible for, and shall assume and upon such assumption pay for, as a portion of the operating expenses of the Homeowners Association, the performance and obligations of the entities referred to as "Owner" and "Developer" in that certain Reimbursement Agreement ("Reimbursement Agreement") between the Reinvestment Zone Number Fifteen, City of Houston, Texas (referred to therein as the "Zone"), the East Downtown Redevelopment Authority (referred to therein as the "Authority"), 2205 McKinney LLC (referred to therein as "Owner") and Herrin Lofts LP (referred to therein as "Developer"). The obligations and covenants assumed include the maintenance of sidewalks and landscaping installed by Herrin Lofts LP and the assumption of indemnity agreements. The assumption of all the obligations and covenants of Owner and Developer under the Reimbursement Agreement shall occur upon the sale of fifty percent (50%) of the Units. The assumption of the obligations and covenants shall not entitle the Homeowners Association to any of the reimbursement to which 2205 McKinney LLC may be entitled under the Reimbursement Agreement.

**Section 2.3. Alterations to Common Elements.** No Owner shall do any act or permit any act to be done in, on or to any Unit, or any portion of the Common Elements that will impair the structural integrity, weaken the support or otherwise adversely affect the Building or any Common Elements. Decorative wall items such as lights, shelves and artwork maybe affixed to or installed on the walls of any Unit that are not Common Elements without prior approval of the Association provided such affixation or installation is done in a good and workmanlike manner. No Owner shall make any alterations to any of the Common Elements (including walls, windows and doors that are Common Elements) nor install, attach, paste or nail any article thereto without the prior approval of the Association. No Owner shall place, affix, permit or install any items, including, without limitation, decorative items, such as lights, shelves, artwork, plants, furniture, accessories, rugs, carpets or any other items of whatever nature in any Common Element without the prior approval of the Association.

**Section 2.4. Additional Provisions.** The Association, by provisions of its By-Laws or by Rules and Regulations enacted pursuant to the provisions hereof, may provide such additional rules and regulations for use of the Common Elements and Limited Common Elements, and the Units as are necessary or desirable in the judgment of the Association for the operation of the Condominium provided such Rules and Regulations and By-Laws are not in conflict with the provisions of this Declaration.

**Section 2.5. Custom Design Criteria.**

a. In addition to any other provisions hereof relating to the alteration, maintenance, decoration or repair of any Unit, each Owner shall comply with the standards set by the Custom Design Criteria in effect at the time any alterations or modifications are made to such Owner's Unit or such Owner otherwise decorates the Owner's Unit. The object of the Custom Design Criteria is to insure the design integrity of the Building and to the standards for the alteration, maintenance, decoration or repair of any Unit by any Owner after construction or rehabilitation, as the case may be by the Declarant of the Building. The Custom Design Criteria are not intended to control the construction of the basic building improvements by the Declarant. The Board shall promulgate the Custom Design Criteria and shall have the sole right to enforce same with respect to Units.

b. Except as provided for in Section 2.5(c), approval by the Board of any modification, alteration or decoration of a Unit shall be conclusive as to compliance with the standards set by the Custom Design Criteria unless the representations made to the Board by the Owners of such Unit with respect to such modifications, alteration or decoration are incorrect or unless the facts

**Section 2.7. Adoption of Certain Resolutions and Delivery of Certain Certifications.**

a. The Board of Directors of the Homeowners Association shall adopt a resolution stating that the Homeowners Association has accepted and assumed the covenants and obligations of the Owner and Developer under the Reimbursement Agreement.

b. The Board of Directors of the Homeowners Association shall deliver to the Authority and the Zone a certificate, signed by the president and secretary of the Homeowners Association, certifying that the Board of Directors of the Homeowners Association has adopted of a resolution by the board of directors of the Homeowners Association stating that the Homeowners Association has accepted and assumed the covenants and obligations of Owner and Developer under this Agreement.

c. The assumption by the Homeowners Association of the obligations under the Reimbursement Agreement shall not entitle the Homeowners Association to any portion of the Reimbursement to be paid to Developer under the Reimbursement Agreement. The Developer shall retain all rights to any such Reimbursement.

d. The delegation to and assumption by the Homeowners Association of the obligations of the entities designated as Owner and Developer under the Reimbursement Agreement shall release such entities from all of their obligations under the Reimbursement Agreement and the Homeowners Association shall be solely responsible therefor.

**Section 2.8. Accessibility.** Notwithstanding any other provision herein concerning Common Elements, both General and Limited, the Declarant and/or the Board may redesignate, redesign or modify such Common Elements necessary to provide accessibility as may be reasonably accommodated and as required by any law or governmental regulation.

**Section 2.9. Other Use.** The Declarant and/or the Board may authorized the use of space on the first two floors of the Building, the floors used for parking, for such use as may benefit the Association so long as adequate parking is provided for the Owners. Such use could include granting permission to a business located on land adjacent to the Land for the limited use of unassigned parking spaces for the benefit of patrons, guests, or invitees of such adjacent business.

**Section 2.10. Restricted Use of Balconies and Patios.** Although the balcony space and the patio space is included in the definition of each Unit, the use

thereof may be restricted for aesthetic and structural reasons by the Board. The Board of Directors shall have authority to establish and enforce criteria specifically relating to the aesthetics, alteration, maintenance, decoration or repair of the balcony area and the patio area of each Unit so long as such criteria are uniform for all balconies and uniform for all patios. Each Owner shall comply with such restrictions, standards, rules and regulations set by the Board as they may be determined or modified or altered from time to time. The object of the standards, rules and regulations concerning the balconies and the patios is to insure the design integrity of the Building and to the comply with the standards for the alteration, maintenance, decoration or repair of any Unit. These provisions concerning balconies and patios are not intended to control the construction of the basic building improvements by the Declarant. The Board shall promulgate the standards, rules and regulations concerning balconies and patios and shall have the sole right to enforce same with respect to Units and the failure to comply shall be enforceable by the Board in the same manner as other provisions herein.

**Section 2.11. Certain Issues Regarding Parking Floors and Courtyard.** The Parking Spaces are located on the first and second floor of the Building. The Building also contains an open portion that is a General Common Element known as the Courtyard located on the third floor of the Building. Those portions of the Building are partially open or completely open and will have occasional water dripping from various sources, including precipitation, the fountain and other sources, and standing on the floors thereof. Neither the Board nor the builder (including Declarant, and Declarant's affiliated entities) shall be required to take any action concerning dripping or standing water in such areas.

**Section 2.12. Certain Issues regarding Bricks and Brick Dust.** The Building was constructed with brick and much of the brick has been left exposed. Older bricks, such as those in the Building, dust may be the source of dust. It is not possible, without sealing, to stop or eliminate such dust and part of the design of the Project is to keep such brick walls exposed and unsealed for aesthetic reasons. The Board and/or the builder (including Declarant, and Declarant's affiliated entities) shall not be required to take any action of any kind concerning such bricks and brick dust and each Owner, or guest or invitee of each Owner, assumes any risk related thereto.

### Article 3. Association of Co-Owners

#### Section 3.1. Authority to Manage

a. The affairs of the Condominium and Condominium Regime shall be administered by the Association. The Association shall have all rights, powers and duties of an Association," as that term is used in the Texas Uniform Condominium Act. The Association shall have the right, power and obligation

entitled to rely on any such designation until written notice revoking such designation is received by the Board. In the event that a Unit is owned by more than one member of the Association and no single member is designated to vote on behalf of the members having an ownership interest in such Unit, then none of such members shall be allowed to vote. All members of the Association may attend meetings of the Association and all voting members may exercise their vote at such meetings either in person or by proxy. The Declarant may exercise the voting rights with respect to Units owned by it.

#### Section 3.4. Meetings of the Members.

a. The first meeting of the members of the Association shall be held when called by the Appointed Board upon no less than ten (10) and no more than fifty (50) days prior written notice to the members. Such meeting may be held at any time, but must not be held later than four months after seventy-five percent (75%) of all Units have been sold by the Declarant. The First Elected Board shall be elected at the first meeting of the members of the Association.

b. Thereafter, annual and special meetings of the members of the Association shall be held at such place and time and such date as shall be specified in the By-Laws.

c. At the annual meeting of members of the Association, the Board shall present an audit of the Common Expense Fund, itemizing receipts and disbursements for the preceding calendar year and the allocation thereof to each Owner. Within thirty (30) days after the annual meeting of members, copies of the statements presented at the annual meeting of members by the Board shall be delivered to all Owners.

**Section 3.5. Election and Meetings of the Board of Directors.** The Board of Directors shall be elected and shall meet in the manner set forth in the By-Laws.

**Section 3.6. Administration of the Condominium.** The Association, acting through its Board of Directors, its officers or other duly authorized management representatives (including, without limitation, a Managing Agent), shall manage the business and affairs of the Condominium and maintain the Common Elements, and shall, without limitation, have the powers of collection and enforcement set forth herein; and, for the benefit all of the Owners in the Condominium shall provide, perform, cause to be performed, maintained, acquired, contracted and paid for out of the Common Expense Fund the cost thereof, including, without limitation, the following:

a. Utility services used in or for the Common Elements and, if not separately metered or charged, other utility services for the Units. Electricity,

to provide for the management, maintenance, and care of the Condominium and Condominium Regime as provided herein, in the By-laws and in the Rules and Regulations. The business and affairs of the Association shall be managed by its Board of Directors. The Declarant shall determine the number of Directors and appoint, dismiss and reappoint all of the members of the Association Board of Directors to ensure the stability of the Association and the administer the Association's and the Condominium's until the first meeting of members of the Association is held in accordance with the provisions of this section and a board of directors elected. The Board of Directors elected at the first meeting of members of the Association is herein called the "First Elected Board." The Board appointed by Declarant pursuant to the provisions of this Section is herein referred to as the "Appointed Board."

b. The Appointed Board may engage the Declarant or any entity, whether or not affiliated with Declarant, as the managing agent (the "Managing Agent") to perform the day to day functions of the Association and to provide for the Maintenance, repair, replacement, administration and operation of the Condominium and Condominium Regime under a contract terminable by either party upon no more than sixty (60) days prior written notice without penalty. Such contract shall provide for payment to the Managing Agent of a management fee substantially the same as the fees contracted for by managers of buildings (whether rental or condominium) in Houston, Texas. the members of the Board shall not be liable for any acts or omissions of the Managing Agent.

**Section 3.2. Membership in the Association.** Each Owner (and only an Owner) shall be a member of the Association so long as such person or entity shall be an Owner, and such membership shall automatically terminate when such Ownership ceases. Upon the transfer of ownership of a Unit (however achieved, including, without limitation, by foreclosure of a Mortgage or a deed in lieu thereof), the new Owner succeeding to such ownership shall likewise succeed to membership in the Association. The Condominium may issue certificates evidencing membership therein.

**Section 3.3. Voting of Members.** There shall be one vote in the affairs and management of the Association for each Unit, weighted in proportion to the Percentage Ownership Interest of such Unit in the Common Elements as set forth in Exhibit "D" attached hereto and made a part hereof for all purposes. The total voting power of the Association shall be the sum of the votes of all of the Units. In the event that a Unit is owned by more than one member of the Association, the members shall exercise their right to vote in such manner as they may among themselves determine, but in no event shall more than one vote be cast for each Unit. Such Owners shall appoint one of them as the member who shall be entitled to exercise the vote of that Unit at any meeting of the Association. Such designation shall be made in writing to the Board and shall be revocable at any time by actual written notice to the Board. The Board shall be

water and sewer services used by or consumed by the Units, cable television systems, telephone and other utility services separately metered or charged (including, without limitation, charges for chilled and heated water as allocated to such Unit by the Board for use of chilled or heated water in excess of the amount contemplated for such Unit under the Common Expense Charge) shall be paid for by the Owner of the Unit served by such utility services. Unless water is separately metered or submetered subsequent to this Declaration, the water consumed for both Common Elements and the Units, including use by the Association and every Owner, shall be part of the Common Expense Charge. The Board shall comply with any applicable law concerning metering and submetering, as the case may be, including the keeping of records and the availability of such records for inspection. The Association may charge such fees for utilities only as permitted by law.

b. The insurance required by Section 5.1 hereof and such other policies of casualty liability and/or other insurance covering persons, property and risks as are determined by the Board to be in the best interest of the Condominium.

c. The services of a Managing Agent and such other persons as the Board shall from time to time, determine are necessary or proper to the management, operation and maintenance of the Condominium.

d. All supplies, tools, and equipment reasonably required for use by the Managing Agent or the Board in the management, operation, maintenance, cleaning and enjoyment of the Condominiums.

e. The cleaning, maintenance, repairing, reconstruction and replacement of the Common Elements as the Board shall determine is necessary unless otherwise provided in this Declaration.

f. The services of gardeners, security guards, and such other persons utilized in the operation of the Condominium in the manner determined by the Board.

g. The removal of all trash, garbage and rubbish from the central garbage receptacle or receptacles of the Building; including the employment of the services of a garbage collection company or agency, public or private.

h. Costs of bookkeeping of the accounts of the Association and the annual audit provided for herein; costs of legal, accounting and other professional services engaged by the Board premiums of fidelity bonds, taxes or assessments of whatever type assessed or imposed against any of the Common Elements.

- i. All other costs of management, operation and maintenance of the Condominium.

The Board shall not, without the prior authorization of the members of the Association at a meeting of the members, contract to pay or pay for any one item of capital addition or improvement (other than replacement of existing Common Elements that in the aggregate as to all capital additions or improvements made in any one year constitute less than substantially all of the Common Elements) having an aggregate cost exceeding an amount equal to ten percent (10%) of the amount of the then applicable annual budget referred to in Section 4.3. Nothing herein shall authorize the Board to furnish to any person services primarily for the benefit of or a convenience of any Owner or Owners or any occupant or occupants of any Unit other than services customarily available to all Owners and occupants of Units. The Board shall have the exclusive right and obligation to contract for all goods, services and insurance in connection with the administration of the Condominium, payment for which is to be made from the Common Expense Fund.

**Section 3.7. Accounting and Audit.** The Board of Directors shall keep or cause to be kept books of detailed account of the receipts and expenditures affecting the Condominium and its administration and specifying the maintenance and repair expenses of the Common Elements and any other expenses incurred by or on behalf of the Condominium or the Association. Both the books of accounts and all vouchers accrediting and supporting the entries made therein shall be available for examination at the office of the Association by all Owners at convenient hours on working days and the Board of Directors shall cause to be established and announced for general knowledge the days and hours within which such books shall be available for inspection. All such books and records shall be kept in accordance with good accounting procedures, consistently applied, and may be reviewed at least once a year by a certified public accountant. All filings of income tax returns and other filings required of the Association by applicable law shall be prepared and filed or caused to be prepared and filed by the Board. The fiscal year of the Association shall be the calendar year unless another period is established by resolution of the Board. In addition to the foregoing, the Board shall maintain copies of the Declaration, the Articles of Incorporation of the Association and the By-Laws for inspection by Owners, tenants, insurance carriers of the Owner and guarantors of first Mortgages on Units.

**Section 3.8. Right of Entry.** The Board, or its duly authorized representative (including any then acting Managing Agent), shall have the right and authority to enter any Unit, Parking Space or Storage Space for the purposes of:

- a. Making necessary repairs to Common Elements;

**Section 3.10. Disputes.** In addition to its other powers conferred by law or here under, the Board shall be empowered to create procedures for resolving disputes between Owners and the Board or the Association, including appointment of committees to consider and recommend resolutions or to resolve any such dispute.

**Section 3.11. Board Action in Good Faith.** Any action or omission by the Board taken in good faith shall not subject the Board to any liability to the Association, its members or other party.

#### Article 4. Common Expense Fund; Assessments; Collection

**Section 4.1. Common Expense Charges.** Except as provided in Section 4.2 hereof, all Owners are bound to contribute to the Common Expense Fund the Common Expense Charge in proportion to their Percentage Ownership Interests. The Common Expense Charge and Special Assessments shall be assessed in accordance with the provision hereinafter set forth. Additionally, each Owner shall pay, upon demand, for any services rendered to such Owner by the Association or arising as the obligation of such Owner to the Association.

**Section 4.2. Payment of Common Expense Charges by Declarant.** Subject to the provisions of this Section 4.2, the Declarant shall pay to the Association, until election of the First Elected Board as provided in Section 3.4(a) above, in lieu of any Common Expense Charge or Special Assessment with respect to all Units that the Declarant continues to own, an amount, if any, by which the "Actual Operating Expenses" (as hereinafter defined) incurred for any fiscal year (or portion thereof) of the Association ending prior to such election of the First Elected Board, exceeds the aggregate of the Common Expense Charges (less any portion thereof that is deposited in the Replacement Reserve Fund) payable during such period by other Owners of Units. The assessment of the Common Expense Charges shall commence no later than 60 days after Declarant sells a Unit. All Owners, including Declarant, shall pay a Common Expense Charge after Declarant sells its first Unit; however, Declarant's obligation to pay the Common Expense Charge for any unsold and unoccupied Units shall be limited to the extent necessary that the Actual Operating Expenses exceed the Common Expense Charges assessed against the Owners of the Units that have been sold by Declarant. If the amounts collected as Common Expense Charges from Owners other than the Declarant (less any portion thereof that is deposited in the Replacement Reserve Fund) exceed such Actual Operating Expenses for such period, then, within a reasonable time after the expiration of such period, an amount equal to such excess shall be refunded to the Owners who shall have paid such Common Expense Charges, in proportion to their respective contributions. For the purposes of this provision, the term "Actual Operating Expenses" shall mean those expense reasonably necessary for the normal maintenance and operation of the Condominium and shall not include (i)

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- b. Performing necessary maintenance to the Common Elements (including, without limitation, cable television facilities), for which the Association is responsible;

- c. Abating any nuisance or any dangerous, unauthorized, prohibited or unlawful activity being conducted or maintained in such Unit or any appurtenance thereto;

- d. Protecting the property rights and welfare of other Owners;

- e. Installing any window covering required by this Declaration or any other Custom Design Criteria require herein or approved by the Board; and

- f. Enforcing the provisions of this Declaration, the By-Laws or the Rules and Regulations promulgated thereunder.

Except in the event of any emergency or, when the periodic cleaning and maintenance of the perimeter windows and walls of the Building have been scheduled, such right of entry shall be exercised only in the presence of the Owner or other occupant of the Unit that is entered and in the presence of the Managing Agent or its agent. In all events, such right of entry shall be exercised in such manner as to avoid any unreasonable or unnecessary interference with the possession, use or enjoyment of the Unit by the Owner or occupant thereof and shall, whenever possible, be preceded by reasonable notice to the Owner or occupant thereof. In the event that any damage to the property of any Owner is caused by negligence of the Association or its authorized representative in connection with the exercise of any such right of entry, such damage shall be repaired at the expense of the Association, and the Board is authorized to expend money from the Common Expense Fund therefor. The rights of entry herein granted to the Association or its duly authorized representative shall be accomplished by and exercised subject to such methods and procedures as may be set forth in the Rules and Regulations.

**Section 3.9. Notices.** Any notice permitted or required to be given to a member of the Board or to an Owner may be delivered personally, by mail or by placing such notice in the mail distribution facility of each Owner if such facilities are present in the Building wherein such Owner's Unit is located. If delivery is made by mail, it shall be deemed to have been delivered when deposited in the U.S. Mail postage prepaid, addressed to an Owner at the Owner's Unit or to such other address as the Owner may have given in writing to the Association for the purpose of service of notices. Any address for purposes of notice maybe changed from time to time by notice in writing to the Association at least thirty days before such address shall be effective.

capital expenditures (determined in accordance with generally accepted accounting principles) (ii) any amount paid into the Replacement Reserve Fund, or (iii) prepaid items, inventory items or similar expenses to the extent attributable to periods after such fiscal year (or part thereof). After election of the First Elected Board, the Common Expense Charge to be paid by each Owner (including the Declarant) shall be determined as provided in this Article IV. The Declarant, by notice in writing to the Association, may waive the benefits of the first sentence of this the event of this section and in the event of such waiver, shall thereafter be bound to contribute to the Common Expense Fund the Common Expense Charges and Special Assessments in proportion to the Percentage Ownership Interest attributable to the Units owned by the Declarant.

**Section 4.3. Budgets, Establishment of Common Expense Charges and Special Assessments.** Until the commencement of the first full fiscal year after the first meeting of the members of the Association is held, the Appointed Board shall have the right and obligation to establish the annual budgets for each fiscal year projecting all expenses for the forthcoming year that may be required for the proper operation, management and maintenance of the Condominium and Condominium Regime. Such budget, and all successive budgets, shall contain a reasonable allowance for contingencies and shall establish a reserve fund (the "Replacement Reserve Fund") for maintenance, repairs and replacements to Common Elements, including those that must be replaced on a periodic basis.

- a. Commencing with the first full fiscal year after the first meeting of the members of the Association is held, the Board of Directors of the Association shall establish an annual budget in advance for each calendar year and such budget shall project all expenses for the forthcoming year that may be required for the proper operation, management and maintenance of the Condominium and the Condominium Regime, including a reasonable allowance for contingencies and a reasonable addition to the Replacement Reserve Fund. The Common Expense Charge for such year shall be established by the Board after adoption of such annual budget by the Board of Directors of the Association. Copies of each such budget and the Common Expense Charge for each particular Unit for such year shall be, delivered to each Owner on or before the first of the applicable fiscal year by such reasonable means as the Board of Directors may provide. If the Board of Directors at any time determines that the Common Expense Charges so levied are or may prove to be insufficient to pay the costs of operation, management, or maintenance of the Condominium for such fiscal year or in the event of casualty losses, condemnation losses or other events (including non-payment of Common Expense Charges by some Owners) that require that additional funds be supplied for the management, maintenance or operation of the Condominium, the Board of Directors shall have the authority, in its discretion, at any time or from time to time to increase such Common

Expense Charges or to levy such Special Assessment as it shall deem necessary for that purpose. Except as otherwise specifically provided in the By-Laws and Section 7.3(d) of this Declaration, such Special Assessment shall not be levied, however, without the prior approval of Owners having at least a majority of the votes in the Association, unless a greater number of votes is required by law applicable to the Condominium.

b. The failure or delay of the Board to prepare any annual budget or to deliver copies of such budgets to each Owner shall not constitute a waiver or release in any manner of any Owner's obligation to pay Common Expense Charges whenever the same shall be determined, and in the event of any delay or failure to establish any annual budget each Owner shall continue to pay the Common Expense Charges, monthly, at the rate established for the previous period until a new annual budget is established.

c. The Replacement Reserve Fund shall contain an amount determined by the Board, but shall not be less than an amount equal to 2 months of estimated Common Expense Charges for each Unit, unless within the previous budget year, a portion of the Replacement Reserve Fund was used for capital expenditures; in which case, the amount required for the Replacement Reserve Fund shall be restored within the current budget year. Any amounts paid into the Replacement Reserve Fund shall not be considered as advance payments of Common Expense Charges. The Replacement Reserve Fund shall be maintained by Declarant and transferred to the Association when the first meeting of the members of the Association is held. As Units are sold by the Declarant, Declarant shall be entitled to collect and retain, out of funds collected at closing, payment of the Replacement Reserve Fund attributable to each Unit or a reimbursement for funds it previously paid into the Replacement Reserve Fund for the such Units' share of the Replacement Reserve Fund. Declarant shall not use the Replacement Reserve Fund to defray any of its own expenses, reserve contributions or construction costs or to make up any budget deficits before the first meeting of the members of the Association.

**Section 4.4. Payment of Common Expense Charges Special Assessment and Other Sums.** The Common Expense Charge shall be allocated among those Owners obligated by this Declaration to pay the same according to their respective Percentage Ownership Interest. Common Expense Charges shall be due and payable monthly in advance on the first of each calendar month (or such other day as the Board may designate by written notice to all Owners) during the year for which such Common Expense Charge has been assessed. Special Assessments and other sums for which an Owner may be liable here under (including, without limitation, sums due under Section 2.2 hereof, charges for chilled and heated water allocated to a Unit by the Board and other sums incurred by the Association at the request of or on behalf of an Owner)

obligation of such defaulting Owner. The voting rights of any Owner in default in the payment of the Common Expense Charges, any Special Assessment or other charge owing hereunder for which an Owner is liable may be revoked by action of the Board of Directors for the period during which such default exists.

b. Notice of the lien referred to in the preceding paragraph may be given by the recordation in the Official Public Records of Real Property of Harris County, Texas of an affidavit, duly executed, sworn to and acknowledged by an officer of the Association, setting forth the amount owed, the name of the Owner (or Owners) of such Unit according to the books and records of the Association, and the legal description of such Unit, or in such other manner as may be specified by the Texas Uniform Condominium Act.

c. Each Owner, by acceptance of a deed to a Unit, hereby expressly recognizes the existence of such lien as being prior to its ownership of such Unit and hereby vests in the Board or its agents the right and power to bring all actions against such Owner (or Owners) personally for the collection of such unpaid Common Expenses Charges, Special Assessments, and other sums due hereunder as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, both judicially and by non judicial foreclosure pursuant to Section 51.002 of the Texas Property Code (as same may be amended or revised from time to time hereafter) and in addition to and in connection therewith, by acceptance of the deed to a Unit, each Owner by acceptance of such deed expressly GRANTS, BARGAINS, SELLS AND CONVEYS to the President of the Association from time to time serving, as trustee (and to any substitute or successor trustee as hereinafter provided for) such owner's Unit, and all rights appurtenant thereto, for the purpose of securing the aforesaid Common Expense Charges, Special Assessments, and other sums due here under remaining unpaid hereunder by such Owner from time to time. The trustee herein designated may be changed any time and from time to time by execution of an instrument in writing signed by the President or Vice President of the Association and attested to by the Secretary of the Association and filed in the Official Public Records of Real Property of Harris County, Texas. In the event of the election by the Board to foreclose the lien herein provided for nonpayment of sums secured to be paid by such lien, then, it shall be the duty of the trustee, or his successor, as here in above provided, at the request of the Board (which request shall be presumed) to enforce this trust and to sell such Unit, and all rights appurtenant thereto, at the door of the County Courthouse of Harris County, Texas on the first Tuesday in any month between the hours of 10:00 a.m. and 4:00 p.m. to the highest bidder for cash at public vendue after the trustee and the Board, respectively, shall have given notices of the proposed sale in the manner hereinafter set forth and to make the conveyance to purchaser or purchasers, with general warranty of title to such

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shall be payable on or before ten (10) days after the date on which an invoice has been sent to an Owner. Payment of Common Expenses Charges, Special Assessments and other sums due hereunder shall be in default if such Common Expenses Charges, Special Assessments and other sums or any part thereof, are not paid to the Association on or before ten (10) days from the due date for such payment. Common Expenses Charges, Special Assessments and other sums due hereunder in default shall bear interest at the highest non-usurious contract rate permitted by applicable Texas or federal law, whichever from time to time permits the higher lawful rate, from and after the date of delinquency until paid, due credit being given for all charges or fees therefore contracted for, charged or received that shall be deemed to be interest under applicable law. The Board shall also have the right, in its discretion, by appropriate resolution of the Board, to establish late fees or delinquency charges, in an amount determined by the Board from time to time, to be imposed in addition to the interest to which such delinquent. Common Expense Charges, Special Assessments and other sums due hereunder are subject. Each Owner (whether one or more persons) shall be personally liable for the payment of all Common Expense Charges, Special Assessments and other sums due hereunder, interest and late fees (or delinquency charges) that may be levied against such Owner and the Owner's Unit pursuant to the provisions hereof.

#### Section 4.5. Enforcement.

a. In order to secure the payment of the Common Expense Charges and Special Assessments levied hereunder and other sums due hereunder (including interest, late fees or delinquency charges), a vendor's lien and superior title shall be and is hereby reserved in and to each Unit and assigned to the Association, without recourse, which lien shall be enforceable as hereinafter set forth by the Association, the Board on behalf of the Association, or any Owner on behalf of the Association. The liens described in this Section 4.5 and the superior title herein reserved shall be subordinate and inferior to any Mortgage for the purchase or improvement of any Unit and any renewal, extension, rearrangement or refinancing thereof. Notwithstanding the forgoing, until such lien is partially released by Regions Bank. As to a particular Unit, the note and lien, and any renewal, extension, rearrangement or refinancing thereof, executed by HERRIN LOFTS, L.P. and currently owned and held by Regions Bank against the entirety of the Condominium shall be and remain unsubordinated and superior to the liens for Common Expense Charges and Special Assessments identified, reserved and assigned in this Section 4.5. The collection of such Common Expense Charges, Special Assessment's and other sums due hereunder may, in addition to any other applicable method at law or in equity, be enforced by suit for a money judgment and in the event of such suit, the expense incurred in collecting such delinquent amounts, including interest, costs and attorney's fees shall be chargeable to and be a personal

purchaser or purchasers binding upon the Owner (the Owners) of such Unit and its heirs, executors, administrators and successors. The trustee shall give notice of such proposed sale by posting a written notice of the time, place and terms of the sale for at least twenty-one (21) consecutive days preceding the date of sale at the Courthouse door of Harris County, Texas, filing a copy of such notice in the Official Public Records of Real Property of Harris County, Texas, in addition, the Board shall serve written notice at least twenty-one (21) days preceding the date of sale or the proposed sale be certified mail on each of such Owner or Owners according to the records of the Association. Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such Owner or Owners at the most recent address as shown by the records of the Association, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect the such service was completed shall be prima facie evidence of the fact of such service.

d. At any foreclosure, judicial or non judicial, the Association shall be entitled to bid up to the amount of the sum secured by its lien, together with costs and attorney's fees, and to apply as a cash credit against its bid all sums due to the Association covered by the lien foreclosed. From and after any such foreclosure the occupants of such Unit shall be required to pay a reasonable rent for the use of such Unit, and such occupancy shall constitute a tenancy-at-sufferance, and the purchaser at such foreclosure sale shall be entitled to the appointment of a receiver to collect such rents and, further, shall be entitled to sue for recovery of possession of the Unit by forcible detainer without further notice.

e. It is the intent of the provisions of this Section to comply with the provisions of, Section 51.002 of the Texas Property Code, relating to non judicial sales by power of sale and, in the event of the amendment of said Section 51.002 thereafter, which amendment is applicable hereto, the President of the Association, acting without joinder of any other owner or Mortgagee or other person may, by amendment to this Declaration filed in the Official Public Records of Real Property of Harris County Texas, amend the provisions hereof so as to comply with said amendments to section 51.002.

f. It is expressly agreed that the Common Expense Charge assessed against any Unit shall be the personal obligation of the Owner of such Unit from the time Common Expense Charge becomes due. Upon written request to the Association starting both the name and address of the party making the request and the number and address of the Unit on which the request is made, the Association will provide to a Mortgagee, insurance carrier or guarantor of a Mortgage of a Unit, the following information:

- (1) Any condemnation or casualty loss that affect either a material portion of the Condominium or the Unit subject to the request;
- (2) Whether the Owner of the Unit is more than 60 days delinquent in the payment of the Common Expense Charge or other charges owed by the Owner to the Association;
- (3) Whether any insurance policy required to be maintained by the Association has lapsed, been canceled or been materially modified; and
- (4) Proposed action, if any, of the Association that requires the consent of a specific percentage of eligible Mortgagees.

The written requests to Association on any particular Unit shall be limited to three (3) times in any calendar year.

**Section 4.6. Common Expense Fund.** The Common Expense Charges collected shall be paid into the Common Expense Fund to be held and used for the benefit, directly or indirectly, of the Condominium; and such Common Expense Fund may be expended by the Board for the purposes set forth herein, including, without limitation, providing for the enforcement of the provisions of this instrument, the By-Laws of the Association and Rules and Regulations promulgated thereunder, for the maintenance, operation, repair, benefit and welfare of the Common Elements, and generally for doing those things necessary or desirable in the opinion of the Board to maintain or improve the Condominium. The use of the Common Expense Fund for any of these purposes, except as provided herein, is permissive and not mandatory, and the decision of the Board with respect thereto shall be final, as long as made in good faith.

**Section 4.7. Transfer Fee.** A Transfer Fee shall be collected by the Association before changing the record of ownership of any Unit. The amount of the Transfer Fee shall be set by the Board or, until the election of the First Elected Board, by the Declarant. Until otherwise changed or modified, the Transfer Fee shall be equal to twice the monthly Common Expense Charge for the Unit involved. The Transfer Fee is due and payable at the time of the sale or other transfer of title or other interest in a Unit (other than leasehold or security interest). The Transfer Fee may be paid by either the transferor or transferee, but, until collected by the Association; both the transferor and transferee shall be jointly and severally liable therefor. The Association shall have the authority to enforce the payment and collection of the Transfer Fee in the same manner as for the Common Expense Charge.

- d. Such worker's compensation insurance as may be necessary to comply with applicable laws.
- e. Employer's liability insurance in such amount as the Board may deem desirable.
- f. Fidelity bonds indemnifying the Association, the Board and the Owners from loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or of any other person handling the funds of the Association in such an amount as the Board may deem desirable.
- g. Liability insurance insuring the Board and officers of the Association against any claims, losses, liabilities, damages, or causes of action arising out of or in connection with or resulting from any act or omission in their representative capacities.
- h. Such other insurance in such reasonable amounts as the Board shall deem desirable.

**Section 5.2. Payment of Insurance Premiums for Association.** The premiums for all insurance acquired on behalf of the Association or the Owners pursuant to the provisions hereof shall be borne by the Common Expense Fund. All insurance provided for in this Section shall be effected under valid and enforceable policies issued by issuers of recognized responsibility authorized to do business in the State of Texas. Policies of insurance of the character described in Subsections (a), (b) and (c) of Section 5.1 shall name as insured the Association and each Owner as their interests may appear; shall contain standard mortgagee clause endorsements in favor of the Mortgagee or Mortgagees of each Unit, if any, as their respective interests may appear; shall be without contribution with regard to any other such policies of insurance carried individually by any Owner, whether such other insurance covers the Unit owned by such Owner and/or the additions and improvements made by such Owner to its respective Unit; shall provide that such policy shall not be terminated for non-payment or for any other without at least thirty (30) days prior written notice to the Association and at least ten (10) days prior written notice to the Mortgagee of each Unit. If possible, and if approved by the Board, all policies of insurance of the character described in Subsection (a) of Section 5.1 shall contain an endorsement extending coverage to include the payment of Common Expense Charges with respect to Units damaged during the period of reconstruction thereof. Any loss covered by such insurance policies shall be adjusted and settled by the affected insurers with the Board acting on behalf of, and as trustee for, the Owners, and the proceeds of such insurance shall be paid to the Board as trustee for the Owners and their Mortgagees, as their interests may appear.

**Section 5.1. General Provisions.** The Board of Directors of the Association shall have authority to and shall obtain insurance for the Condominium as follows:

- a. Insurance on the Building, including the Units as defined in Section 1.1.v., and including interior surfaces (but not including wall coverings and floor coverings) and coverings of the perimeter floors, ceilings, window frames, doors and door frames that provide access to and egress from the Common Elements (except as set forth in Section 5.2 below) and the Common Elements, against loss or damage by fire and loss or damage by all risks now or hereafter embraced by the so-called all-risk fire and extended coverage policy and any other extended coverage policy, policies, or endorsement thereto, designed for insuring condominium regimes in the State of Texas (with vandalism and malicious mischief endorsements) in amounts sufficient to prevent the Association or the Owners from becoming a co-insurer within the terms of the applicable policies, but in any event in an amount not less than the full insurable replacement cost thereof and which policy shall contain a replacement cost endorsement. The "full insurable replacement cost" of the Building, including the Units and the Common Elements shall be determined from time to time but not less often than once in a twelve-month period by the Board and the Board shall have the authority to obtain and pay for an appraisal by a person or organization selected by the Board in making such determination. The cost of any and all such appraisals shall be borne by the Common Expense Fund.
- b. Insurance on the Building against all loss or damage from explosion of boilers, heating apparatus, pressure vessels and pressure pipes installed in, on or about the Building, without co-insurance clause, so long as available, in such amount as the Board may deem desirable.
- c. Comprehensive public liability and property damage insurance (including "umbrella" or "excess" coverage) against claims for personal injury or death or property damage suffered by the public or any Owner, the family, agent, employee or invitee of any Owner, occurring in, on or about the Common Elements or upon, in or about driveways, roadways, walkways and passageways, on or adjoining the Condominium, which public liability and property damage insurance shall be in a minimum amount of \$1,000,000 combined single limit, or such greater amounts as the Board shall deem desirable. Such liability and property damage insurance policy shall contain a cross-liability endorsement wherein the rights of named insured under the policy or policies shall not prejudice its, his, her or their action or actions against another named insured.

**Section 5.3. Individual Insurance.** Each Owner shall be responsible for insurance on the contents of its Unit and the appliances on all parts of the Unit that are not Common Elements, and on all personal property or fixtures therein, including cabinets, appliances, wall coverings and floor coverings to the extent not covered by the policies of casualty insurance obtained by the Association for the benefit of all the Owners as above provided. Any betterment's and/or improvements installed in any Unit by any Owner which does or may disproportionately increase the premium charged for the insurance provided under Section 5.1 a over the premium attributable to other similar items of the other Owners may be excluded from the coverage afforded under Section 5.1(a). Any betterment's, improvements or other items excluded from coverage under the insurance afforded under Section 5.1(a), shall be the sole responsibility of the Owner of the affected Unit. Owners may carry individual policies of liability insurance insuring against the liability of such Owners, at their own cost and expense. In the case of a partial destruction of the Condominium or one or more Units within the Condominium, the Board shall have the absolute discretion as to the manner and extent to which insurance proceeds are utilized to repair and/or replace the damaged or destroyed Units and Common Elements.

**Section 5.4. Subrogation.** Each Owner and the Association hereby agree to and hereby waive all present and future rights of subrogation and rights of recovery against the Declarant that they may be entitled to under any property insurance policies described in this Declaration.

## Article 6. Fire or Casualty; Rebuilding

### Section 6.1. Determination of Loss.

- a. In the event of a fire or other casualty causing damage or destruction to the Building, the Board shall, within thirty (30) days thereafter, determine whether such loss comprises the whole or more than two-thirds (2/3rds) of the Building (above the foundations). Unless otherwise provided by law applicable to the Condominium, such determination shall be made by determining whether the cost of necessary repair or reconstruction would exceed two-thirds (2/3rds) of the cost of reconstructing the Building as they existed prior to such fire or other casualty. In the event of fire or other casualty damage that does not comprise more than two-thirds (2/3rds) of the Building (above the foundations), unless otherwise unanimously agreed to by the Owners, the Building shall be repaired and reconstructed substantially in accordance with the original plans and specifications for the Building and in accordance with the provisions hereof.
- b. In the event that fire or other casualty damage comprises the whole or more than two-thirds (2/3 rds ) of the Building (above the foundation), unless



thereafter otherwise unanimously agreed by the Owners, all proceeds of insurance policies carried by the Association and all accrued and collected Common Expense Charges (after deducting any unpaid Common Expense Charges for which such Owner may be liable) shall be delivered to the Owners or their Mortgagees, as their interests may appear, in proportion to the Percentage Ownership Interests of each Owner and the Condominium Regime established by this Declaration shall terminate. Upon such termination, the Units and Common Elements shall be deemed to be regrouped and merged into a single estate owned in undivided interests by all Owners as tenants-in-common in the Percentage Ownership Interest previously owned by each Owner in the Common Elements. In such case, unless otherwise unanimously agreed on by all Owners, the Board, as soon as reasonably possible and as agent for all Owners, shall sell the Condominium, in its then condition, free from the effect of this Declaration, on terms satisfactory to the Board and the net proceeds of such sale shall thereupon be distributed to the Owners or their Mortgagees, as their interests may appear, in the Percentage Ownership Interest previously owned by each Owner in the Common Elements. If the Board fails to consummate a sale pursuant to the preceding sentence within twenty-four (24) months after the destruction or damage occurs, then the Board shall (or if the Board does not, any Owner or to Mortgagee may) record a sworn statement setting forth such facts and reciting that under the provisions of this Declaration the prohibition against judicial partition provided for in Section 10.2 below has terminated and that judicial partition of the property may be obtained pursuant to the laws of the State of Texas.

**Section 6.2. Rebuilding.** In the event that it is determined that the Building shall be repaired and/or reconstructed, then all proceeds of insurance policies with respect to such fire or casualty, carried by the Association, shall be paid to a bank (selected by the Board), as trustee, insured by the Federal Deposit Insurance Company (or its successors) and located in Harris County, Texas, to be held in trust for the benefit of the Owners and their Mortgagees as their respective interests may appear. The Board shall thereupon contract on behalf of all Owners to repair or rebuild the damaged portion of all Units, subject to the limitation set forth in Section 6.3, the Building, and all other Common Elements in accordance with the original plans and specifications therefor and the funds held in the trust by such depository bank shall be used for this purpose and disbursed by the Board in accordance with the terms of the contract of repair and rebuilding. In the event such proceeds are insufficient to cover the cost of reconstruction, the reconstruction costs in excess of the insurance proceeds available for that purpose shall be paid by all the Owners, pro rata in accordance with each Owner's Percentage Ownership Interest in the Common Elements.

**Section 6.3. Repair of Units.** Following any such fire or other casualty where there is not termination of the Condominium Regime as provided above, each owner

**Section 7.3. Taking of Units.** In the event that such eminent domain proceeding results in the taking of or damage to one or more, but less than two-thirds (2/3 rds) of the total number of Units, then the damages and awards for such taking shall be determined for each Unit and the following shall apply:

a. The Board shall determine which of the Units damaged by such taking may be made tenantable for the purposes set forth in this Declaration, taking into account the nature of the Condominium and the reduced size of each Unit so damaged.

b. The Board shall determine whether it is reasonably practicable to operate the remaining Units of the Condominium, including those damaged Units that may be made tenantable, as a condominium in the manner provided in this Declaration.

c. In the event that the Board determines that it is not reasonably practicable to operate the undamaged Units and the damaged Units that can be made tenantable as a condominium, then the Condominium shall be deemed to be regrouped and merged into a single estate owned jointly in undivided interests by all Owners, as tenants-in common, the Percentage Ownership Interests previously owned by each Owner in the Common Elements. In such case, unless otherwise unanimously agreed upon by all Owners, the Board, as soon as reasonably possible and as agent for all Owners, shall sell the Condominium, in its then condition, free from the effect of this Declaration, on terms satisfactory to the Board and the net proceeds of such sale shall thereupon be distributed to the Owners or their Mortgagees, as their interests may appear, in proportion to the Percentage Ownership Interest previously owned by each Owner in the Common Elements. If the Board fails to consummate a sale pursuant to the preceding sentence within twenty-four (24) months after the taking occurs, then the Board shall (or if the Board does not, any Owner or Mortgagee may) record a sworn statement setting forth such facts and reciting that under the provisions of this Declaration the prohibition against judicial partition provided for in Section 10.2 below has terminated and that judicial partition of the property may be obtained pursuant to the laws of the State of Texas.

d. In the event that the Board determines that it will be reasonably practicable to operate the undamaged Units and the damaged Units that can be made tenantable as a condominium, then the damages and awards made with respect to each Unit that has been determined to be capable of being made tenantable shall be applied to repair and reconstruct such Unit so that it is made tenantable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Owners of those Units

shall be responsible for the reconstruction, repair, and replacement of all personal property and other property not a Common Element in or part of the Owner's Unit, including, but not limited to, the floor coverings, wall coverings, furniture, furnishings, decorative light fixtures and appliances located therein, to the extent each Owner wishes said reconstruction, repair, and replacement to be accomplished, the Association shall have no responsibility for any of same.

## Article 7. Eminent Domain

**Section 7.1. General Provisions.** If all or any part of the Condominium is taken or threatened to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), the Board and each Owner shall be entitled to participate in proceedings incident thereto at their respective expense. The Board shall give notice of the existence of such proceeding to all Owners and to all Mortgagees known to the Board to have an interest in any Unit. The expense of participation in such proceedings by the Board shall be borne by the Common Expense Fund. The Board is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Board, 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, acting as trustee, and such damages or awards shall be applied or paid as provided herein.

**Section 7.2. Taking of Common Elements.** In the event that an action in eminent domain is brought to condemn a portion of the Common Elements (together with or apart from any Unit), then as to such portion of the Common Elements which is subject to such action the Board, in addition to the general powers set out herein, shall have the sole authority to determine whether to defend or resist any such proceedings, to make any settlement with respect thereto, or to convey such property to the condemning authority in lieu of such condemnation proceeding. 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 each Owner's interest therein. After the damages or awards for such taking are determined, such damages or awards shall be paid to each Owner in proportion to its Percentage Ownership interest in the Common Elements. The Board may, if it deems advisable, call a meeting of the Owners, at which meeting the Owners, by a majority vote, shall decide whether to replace or restore as far as possible the Common Elements so taken or damaged. In the event it is determined that such Common Elements should be replaced or restored by obtaining other land or building additional structures, this Declaration in accordance with the provisions of Section 9.1 herein shall be duly amended by instrument executed by the Board of Directors on behalf of the Owners.

that may not be made tenantable. The award made with respect to each such Unit shall be paid to the Owner of such Unit or its Mortgagee or Mortgagees, as their interests may appear, and the remaining portion of such Units, if any, shall become a part of the Common Elements and repair and use of such Unit shall be determined by the Board. Upon the payment of such award for the account of such Owner as provided herein, such Unit shall no longer be a part of the Condominium and the Percentage Ownership Interests in the Common Elements appurtenant to each remaining Unit that shall continue as part of the Condominium shall be equitably adjusted to distribute the Ownership of the undivided interests in the Common Elements among the reduced number of Owners.

e. If the entire Condominium is taken, or two-thirds (2/3 rds) or more of the Units are taken or by such taking, all damages and awards shall be paid to the accounts of the Owners of the Units, as provided herein, in proportion to their Percentage Ownership Interests in the Common Elements and the Condominium Regime shall terminate upon such payment. Upon such termination, the Units and the Common Elements shall be deemed to be regrouped and merged into a single estate owned in undivided interest by all Owners as tenants-in common in the Percentage Ownership Interest previously owned by each Owner in the Common Elements. In such case, unless otherwise unanimously agreed upon by all Owners, the Board, as soon as reasonably possible and as agent for all Owners, shall sell the Condominium, in its then condition, free from the effect of this Declaration, on terms satisfactory to the Board and the net proceeds of such sale shall thereupon be distributed to the Owners or their Mortgagees, as their interests may appear, in proportion to the Percentage Ownership Interest previously owned by each Owner in the Common Elements. If the Board fails to consummate a sale pursuant to the preceding sentence within twenty-four (24) months after the taking occurs, then the Board shall (or if the Board does not, any Owner or Mortgagee may) record a sworn statement setting forth such facts and reciting that under the provisions of this Declaration the prohibition against judicial partition provided for in Section 10.2 below has terminated and that judicial partition of the property may be obtained pursuant to the laws of the State of Texas.

**Section 7.4. Payment of Awards and Damages.** Any damages or awards provided in this Article to be paid to or for the account of any Owner by the Board, acting as trustee, shall be applied first to the payment of any taxes or assessments by governmental authorities owing with respect to that Unit; secondly, to amounts due under any Mortgage; thirdly, to the payment of any Common Expense Charges or Special Assessments or other sums due and owing hereunder charged to or made against the Unit and unpaid; and finally, to the Owner of such Unit.

## Article 8. Renovation; Termination

Section 8.1. **Decision to Renovate.** When it has been determined by the vote of Owners representing an aggregate Percentage Ownership Interest of eighty percent (80%) or more of the Condominium and by vote of Mortgagees of Units representing at least fifty-one percent (51%) of the votes of the Percentage Ownership Interest appurtenant to such Units that all or substantially all of the Common Elements can and should be renewed, reconstructed, renovated or replaced (other than as may be called for under Articles VI and VII), the expenses thereof shall be borne by the Common Expense Fund and a Special Assessment may be assessed therefor; provided, that any Owner not agreeing to such renewal, reconstruction, renovation or replacement may give written notice to the Board within ten (10) days following such decision to renew, reconstruct, renovate or replace that such Owner shall sell the Owner's Unit to the Association, for a cash price equal to the fair market value thereof. If such Owner and the Board, acting as agent of and on behalf of the Association, can agree on the fair market value therefor, then such sale shall be consummated within thirty (30) days after Owner and the Board agree upon such value. If such Owner and Board are unable to upon the price thereof, the date when either party notifies the other that either is unable to agree, with the other as to such price or terms shall be the "Commencement Date," from which all periods of time mentioned in this Section 8.1 shall be measured. Within ten (10) days from the Commencement Date, the Owner and the Board shall designate in writing (and give notice of such designation to the other party) the appraiser selected by each such party who shall be a member of the Houston Board of Realtors (or successor entity) and shall have been active in the sale of condominium units similar to those in the Building in the Houston, Harris County, Texas, area for a period of at least five (5) days prior thereto. If either party fails to make such designation within the aforesaid ten (10) day period, then the appraiser already designated by one of the parties shall, within five (5) days after the expiration of such ten (10) day period, appoint another appraiser, who shall likewise be a member of the Houston Board of Realtors (or successor entity) and shall have been active in the sale of condominium units for a period of not less than five (5) years prior thereto. If the two appraisers designated by the Owner and the Board (or selected pursuant to the provisions of the preceding sentence) are unable to agree upon the price of such Unit within ten (10) days from the date of their designation or selection, then they shall appoint a third appraiser, being subject to the same qualifications as herein set forth for the first two (2) appraisers. If the two (2) appraisers are unable to agree upon a third appraiser within fifteen (15) days from the date that such first two (2) appraisers are appointed (or selected pursuant to the preceding provisions hereof, if one party fails) to designate an appraiser, then either Owner or the Board, on behalf of both, may request such appointment of the third appraiser by the Senior Judge of the United State District court for the Southern District of Texas, Houston Division acting in his individual capacity. In the event of the failure, refusal or inability of any appraiser so appointed to act, a new appraiser shall be appointed in his stead, which appointment

shall be made in the same manner as hereinbefore provided for the appointment of such appraiser so failing, refusing or so unable to act. Each party shall pay the fees and expenses of the original appraiser (and any successor) appointed by (or on behalf of, if such party fails to designate an appraiser) such party; the fees and expenses of the third appraiser, and all other expenses, if any, shall be borne equally by the Owner and the Board (which expenses borne by the Board, as aforesaid, shall be paid out of the Common Expense Fund). A decision joined in by two (2) of the three (3) appraisers shall be the decision of the appraisers. If no two (2) appraisers agree, then the average of the two (2) closest in mathematical determinations shall constitute the decision of the appraisers. After reaching a decision, the appraisers shall give written notice thereof to the Owner and the Board, whereupon the sale of such Unit shall be consummated at such price within fifteen (15) days thereafter.

Section 8.2. **Determination of Obsolescence and Decision to Sell.** Upon the written agreement of Owners having a Percentage Ownership Interest of at least eighty percent (80%) and the Mortgagees of Units representing at least sixty-seven (67%) of the votes of the Percentage Ownership Interest appurtenant to such Units, the Common Elements shall be declared obsolete and the entire Condominium shall be sold. In such instance, the Board shall forthwith file and recorded with the County Clerk of Harris County, Texas, a notice setting forth such fact or facts, and after the filing of such notice, the entire Condominium shall forthwith be sold by the Board as attorney in fact of all Owners, free and clear of the provisions contained in this Declaration, and upon such sale the Condominium Regime shall be terminated. The net sales proceeds shall be apportioned between the Owners on the basis of each Owner's Percentage Ownership Interest in the Common Elements, such apportioned proceeds shall be paid into separate accounts, each such account representing one Unit. Each such account shall be in the name of the Association, and shall be further identified by the number of the unit and the name of the Owner. From each separate account, the Board, as attorney-in-fact, shall use and disburse the total amount (of each) of such funds, without contribution from one fund to another and such proceeds shall be disbursed first to the payment of any taxes or assessments by governmental authorities owing with respect to that Unit; secondly, to amounts due under any Mortgage; thirdly, to the payment of any Common Expense Charges or Special Assessments or other sums due and owing here under charged to or made against the Unit or Owner thereof and unpaid; and finally, to the Owner of such Unit.

Section 8.3. **Termination of Legal Status of Condominium Regime.** The legal status of the Condominium Regime may be terminated upon the agreement of Owners having a Percentage Ownership Interest of at least eighty percent (80%) and Mortgagees of Units representing at least sixty-seven percent (67%) of the votes of the Percentage Ownership Interest appurtenant to such Units. In such instance, the Board shall follow the same notice and sales procedure set forth above in Section 8.2 when the Common Elements have been declared obsolete.

## Article 9. Amendment of Declaration, By-Laws, Rules and Regulations and Conflicts Between Provisions

Section 9.1. **Amendment of Declaration.** Except as otherwise provided by law and elsewhere in this Declaration (specifically Sections 8.1, 8.2 and 8.3), the provisions of this Declaration may be amended by an instrument duly recorded and approved by Owners having a Percentage Ownership Interest of at least sixty-seven percent (67%) and by the Mortgagees of Units representing a Percentage Ownership Interest appurtenant to Units of at least fifty-one percent (51%). Any amendment to this Declaration shall become effective only upon the recordation in the Condominium Records of Harris County, Texas of a written amendment signed by the duly authorized officers of the Association, attesting to the proper adoption of such amendment and containing the text thereof. Notwithstanding any provision in this Declaration, no amendment of this Declaration may alter or destroy a Unit or a Limited Common Element without the consent of the Owners affected by such amendment.

Section 9.2. **Amendment of By-Laws.** The By-Laws of the Association, adopted pursuant to the provisions of this Declaration, may be amended from time to time at any regular or special meeting by the affirmative vote of members having fifty-one percent (51%) of the voting power of the Association provided notice of said proposed amendment is contained in the notice of any such meeting.

Section 9.3. **Amendments of Rules and Regulations.** The Rules and Regulations may be amended from time to time by the Board. Each Owner, by accepting conveyance of a Unit agrees to comply with and abide by the Rules and Regulations as the same may be amended from time to time.

Section 9.4. **Conflict Between Provisions.** In the event of any conflict among the terms and provisions of this Declaration, the Articles of Incorporation of the Association, the By-Laws, the Rules and Regulations or applicable law, or between any of them, the By-Laws shall control over the Rules and Regulations; the Articles of Incorporation shall control over both the By-Laws and the Rules and Regulations; this Declaration shall control over the Articles of Incorporation, the By-Laws and the Rules and Regulations; and applicable law shall control over all of the foregoing.

## Article 10. Miscellaneous

Section 10.1. **Estoppel Certificate.** Any Mortgagee and any prospective purchaser of a Unit shall be entitled upon written request therefor to a statement from the Board (or any party appointed by the Board) setting forth the amount of any unpaid Common Expense Charges, Special Assessments or other sums due and owing here under against the Unit or the Owner thereof not paid by the Owner of a Unit in

which such prospective purchaser or Mortgagee has an interest. Any prospective purchaser shall not be liable for nor shall the Unit conveyed be subject to the lien provided in this Declaration for any unpaid Common Expense Charges or Special Assessments made by the Board against the particular Unit involved or other sums due and owing here under against the Unit or the Owner thereof in excess of the amount set forth in such statement. Any such purchaser shall, however, be liable for any Special Assessments, Common Expense Charges, and any other sums owing hereunder against such Unit or the Owner thereof becoming due after the date of any such statement and shall be subject to the liens securing same as provided in this Declaration.

Section 10.2. **No Partition.** Except as may be otherwise specifically provided in this Declaration, the Common Elements shall remain undivided and shall not be subject to an action for partition or division of the co-ownership thereof so long as the Condominium is maintained as a Condominium Regime in accordance with the provisions hereof, and, in any event, all Mortgages secured by an interest in the Common Elements must be paid in full prior to bringing any action for partition or the consent of all holders of such Mortgages must be obtained; provided, however, that if any Unit shall be owned by two (2) or more Owners as tenants-in-common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition of such Unit as between such co-tenants.

## Section 10.3. Alterations of Boundaries of Units.

a. If one person, firm or entity (including Declarant) is the Owner of all or part of two (2) Units that are adjoining, whether adjoining vertically (above and below each other) or horizontally (on the same floor of a Building) or if two Owners of adjoining Units so agree, then such Owner or Owners shall have the right (subject to all applicable building codes and ordinances and with the consent of its [their] Mortgagee[s] and upon obtaining written approval by the Board of plans and specifications therefor and the approval of appropriate amendment of this Condominium Declaration at a regular or special meeting of an aggregate number of members having not less than sixty-seven percent (67%) of the total voting power of the Association) to remove all or any part of any intervening partition or floor or to create doorways or other openings in such partition or floor, notwithstanding the fact that such partition or floor may in whole or in part be a Common Element, so long as no portion of any load bearing wall or load bearing column or structural slab is weakened or removed and no portion of any Common Element other than that partition or floor is damaged, destroyed or endangered. Likewise, in the event an Owner (including Declarant) shall own two (2) Units (or if the Owners of two (2) such Units so agree) such Owner or Owners shall have the right (subject to all applicable building codes and ordinances and with the consent of its (or their) Mortgagee [s] and upon

obtaining written approval of the Board of plans and specifications therefor and the approval of appropriate amendment of this Declaration at a regular or special meeting of an aggregate number of members having not less than sixty-seven percent (67%) of the total voting power of the Association) to install doorway openings in the wall separating such Units at such location as shall be appropriate to permit such Owner or Owners to utilize both such Units as one Unit. All of such work shall be performed at the sole cost and expense of the Owner or Owners involved and shall be subject to reasonable rules and procedures relating thereto as may be established by the Board. In any of such events, the Owner or Owners involved may relocate the boundaries between adjoining Units by causing an appropriate instrument of amendment to this Declaration and the exhibits hereto to be prepared and executed by such Owners which instrument, in order to be binding, shall be joined in by the President of the Association and filed for record in the office of the County Clerk of Harris County, Texas. The instrument of amendment (i) shall show the boundaries between those Units that are being relocated, (ii) shall recite the occurrence of any conveyancing between the Owners of such adjacent Units, and (iii) shall specify any reasonable reallocation as agreed upon between the Owners of the Units involved of the aggregate Percentage Ownership Interests in the Common Elements pertaining to those Units. Such plats and floor plans as may be necessary to show the altered boundaries between the Units involved shall be certified as to their accuracy by a registered architect or engineer.

b. At any time prior to election of the First Elected Board, the Declarant shall have the right, at its option and sole cost and expense, without the consent of the Owners or the representative or representatives of any Mortgagee, to (i) make alterations, additions or improvements in, to and upon Units owned by the Declarant (hereinafter called "Declarant-Owned Units"), whether structural or non-structural, interior or exterior, ordinary or extraordinary; (ii) change the layout or number of rooms in any Declarant-owned Unit; (iii) change the size and/or number of Declarant-owned Units (including those resulting from such subdivision or otherwise) into one or more Units, combining separate Declarant-owned Units (including those resulting from such subdivision or otherwise) into one or more Units, altering the boundary walls between any Declarant-owned Units, or otherwise; and (iv) reapportion among the Declarant-owned Units affected by such change in size or number pursuant to the preceding clause (iii) their appurtenant interest in the Common Elements; provided, however, any such alteration, combination or improvement which (1) changes the size and/or number of Declarant-owned Units; (2) alters the boundary walls between any Declarant-owned Units; or (3) reapportions among the Declarant-owned Units affected by such change in size or number pursuant to the preceding clause (ii) their appurtenant interest in the Common Elements shall not be effected unless an aggregate number of members having not less than sixty-seven percent (67%)

Section 10.7. **Easements.**

a. Prior to the election of the First Elected Board in accordance with Section 3.4(a) above, the Declarant shall have the right to grant to utility companies and other entities, such easements, right of way, and other rights as may be reasonably necessary to service the Condominium and establish, operate or maintain the same as a viable condominium regime, without the consent or joinder of any other Owners or any Mortgagee. After the election of the First Elected Board in accordance with section 3.4(a), the Association, acting through its Board of Directors, shall have the right to grant permits, licenses and easements over the Common Elements for utilities, roads and other purposes necessary for the proper operation of the Condominium and the Condominium Regime. Additionally, in the event that the Condominium improvements are constructed, reconstructed, repaired, shift, settle or in some other way move in a manner resulting either in the Common Elements encroaching on any Unit or in any Unit encroaching on the Common Elements or on another Unit, the Owner or Owners affected shall have a valid easement with respect to such encroachment and the continued maintenance of such improvements for a period of as long as such encroachment exists.

b. Each owner is hereby granted an Easement in common with each other Owner for ingress and egress through all Common Elements, subject to this Declaration and the Rules and Regulations promulgated from time to time by the Association. such Easement shall be used jointly and in common with the other Owners and tenants of any Owners, each Mortgagee, and the agents, employees, customers and invitees of each Owner, tenant of each Owner and each such Mortgage. Nothing contained herein shall be construed to create any rights of any nature in the public, nor shall any portion of the Common Elements be deemed to be dedicated for public use.

c. Prior to this Declaration, Declarant has entered into that certain Party Wall Agreement with Caspian Enterprises, Inc., dated November 1, 2006, filed in the Official Public Records of Real Property of Harris County, Texas, under Clerk's File Number 20060182355, Film Code Number 033-28-0522, wherein the Land is burdened with certain obligations and constraints as therein stated, including limitations on the use of the Party Wall and access to the Land by Caspian Enterprises, Inc., and its successors and assigns.

d. Prior to this Declaration, Declarant has entered into that certain Grant of Easement with Caspian Enterprises, Inc., dated November 1, 2006, filed in the Official Public Records of Real Property of Harris County, Texas, under Clerk's File Number 20060182354, Film Code Number 033-28-0516, wherein the Land is burdened with certain obligations and constraints as therein stated,

of the total voting power of the Association shall approve at a regular or special meeting any amendments to this Declaration necessary to reflect such change or improvements, provided further, that the Percentage Ownership Interest in the Common Elements of the Unit (other than Declarant-owned Units) shall not be changed by reason thereof unless the Owners and Mortgagees, if any, of such Units shall consent thereto and, provided further, that the Declarant shall comply with all laws applicable to the Condominium and shall agree to hold all other Owners harmless from any liability arising therefrom. The Declarant shall also have the authority, at its sole option, cost and expense, to make improvements to the Common Elements without the prior consent of the Board, other Owners or the representative or representatives of holders of any Mortgage; provided, however, no improvement necessitating amendment of this Declaration shall be made unless an aggregate number of members having not less than sixty-seven percent (67%) of the total voting power of the Association shall approve such improvement and amendment at a regular or special meeting. No Owner shall ever be assessed for any such changes or improvements done by the Declarant pursuant to this provision. In the event of any such alteration, combination or improvement, the Declarant, at its sole cost and expense, shall file any amendments to this Declaration necessary to reflect such change or improvement.

Section 10.4. **Correction of Errors.** Declarant reserves, and shall have the continuing right until election of the First Elected Board to amend this Declaration or the By-Laws for the purpose of clarifying or resolving any ambiguities or conflicts herein, or correcting any misstatements, errors or omissions herein, provided, however, no such amendment of this Declaration shall be effected without obtaining at a regular or special meeting the approval of an aggregate number of members having not less than sixty-seven percent (67%) of the total voting power of the Association, and provided further that no such amendment shall change the stated numbers of Units nor the Percentage Ownership Interest in the Common Elements attributable thereto (except as set forth in Section 10.3).

Section 10.5. **Enforcement.** The Board or any Owner shall have the right to enforce, by any proceedings at law or in equity, all terms and provisions hereof. Failure by the Board or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed to be a waiver of the right to enforce such covenant or restriction thereafter.

Section 10.6. **Severability.** The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

the Official Public Records of Real Property of Harris County, Texas, under Clerk's File Number 20060182354, Film Code Number 033-28-0516, wherein the Land is burdened with certain obligations and constraints as therein stated, including access to the Land by Caspian Enterprises, Inc., and its successors and assigns.

e. The east wall of the Building was constructed such that the east face of that wall is on the east property line of the Building. At the time of this Declaration, there is no guaranteed access to the east face of the east wall of the Building or to the strip of land lying to the east of the Building and adjacent to the Land even though it may appear that such strip of land is accessible. The lack of or limit to access, if any, to the east face of the east wall may affect the repair and maintenance thereof. Declarant makes no warranty concerning such access, however, if Declarant should, subsequent hereto, obtain such access, Declarant shall have the authority to amend or modify this Declaration to include such provisions or rights.

Section 10.8. **Declarant's Right to Lease or Rent Units.** The Declarant shall have the right to rent or lease Units owned by the Declarant to such parties and upon such terms and conditions as the Declarant may elect. All tenants or lessees of the Declarant shall have access to the Condominium and the Common Elements in the same manner as the Owners, and shall be bound by the terms of this Declaration, the By-Laws and the Rules and Regulations.

Section 10.9. **No Amendment Without the Prior Consent of Declarant.** The provision of Sections 2.1(d), 10.3, 10.4 and 10.8 may not be added to, amended or deleted without the prior written consent of the Declarant.

Section 10.10. **No Warranty.** Other than any warranty of title, this Declaration does not constitute a warranty by Declarant concerning the Building or the Units and each Owner shall be limited to the warranty, if any, provided by Declarant when the Unit is sold by Declarant.

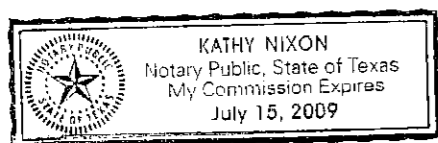
[SIGNATURE ON NEXT PAGE]

IN WITNESS WHEREOF, Declarant, as the owner of 100% of the Units and the only member of the Association, and the officers of the Association, adopt and attest to the proper adoption of this instrument as required by the Texas Uniform Condominium Act on this the 26 day of January, 2007.

DECLARANT: HERRIN LOFTS, L.P., a Texas limited partnership  
By: 2205 MCKINNEY LLC, a Texas limited liability company, general partner  
By: Patrick Ezzell, Manager

THE STATE OF TEXAS §  
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 26<sup>th</sup> day of January, 2007, by Patrick Ezzell, Manager of 2205 MCKINNEY, LLC, a Texas limited liability company general partner of HERRIN LOFTS, L.P., a Texas limited partnership, for and on behalf of said limited partnership.



Kathy Nixon  
NOTARY PUBLIC STATE OF TEXAS

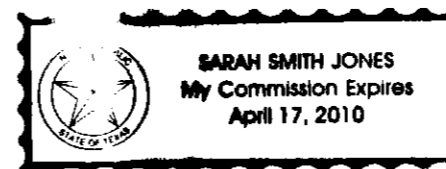
CONSENT TO DECLARATION

The undersigned, being the holder of the Mortgage for all Units described in the foregoing Declaration of Condominium, hereby consents to the Declaration of Condominium as required by the Texas Uniform Condominium Act.

REGIONS BANK  
By: [Signature]  
Name: Jason W. [Signature]  
Title: SVP

THE STATE OF TEXAS §  
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 9<sup>TH</sup> day of FEB, 2007, by of Regions Bank, for and on behalf of said bank.



[Signature]  
NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT "A"

LEGAL DESCRIPTION

THAT certain property described in the Correction General Warranty Deed, filed November 11, 2006, in the Official Public Records of Real Property of Harris County, Texas, under Clerk's File Number 20060182352, Film Code Number 033-28-0496, wherein the Grantor is CASPIAN ENTERPRISES, INC., a Texas corporation, and the Grantee is HERRIN LOFTS, LP, a Texas limited partnership, and more particularly described as follows:

A 0.4615 acre tract of land, being all of Lots 6, 7, 8, and part of Lots 9 and 10, Block 202, in the City of Houston, SOUTH SIDE OF BUFFALO BAYOU, a subdivision in Harris County, Texas, and being more particularly described in Exhibit "A-1," attached hereto and incorporated herein and as shown on the survey or plat thereof attached hereto as Exhibit "A-2".

OFFICE OF  
BEVERLY B. KAUFMAN  
COUNTY CLERK, HARRIS COUNTY, TEXAS  
CONDOMINIUM RECORDS OF COUNTY CLERK  
FILM CODE 198225  
HERRIN LOFTS DECLARATION OF  
CONDOMINIUM  
THIS IS PAGE 12 OF 17 PAGES  
SCANNER KM-4850w

EXHIBIT "A-1"

BEING A 0.4615 ACRE (20,104 SQUARE FEET) TRACT OF LAND, BEING ALL OF LOTS 6, 7, 8, AND PART OF LOTS 9 AND 10, BLOCK 202, IN THE CITY OF HOUSTON, SOUTH SIDE OF BUFFALO BAYOU, HARRIS COUNTY, TEXAS, AND BEING A PART OF THAT CERTAIN TRACT OF LAND RECORDED IN VOLUME 7963, PAGE 60 OF THE DEED RECORDS OF HARRIS COUNTY, TEXAS, SAID 04615 SAID ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 12D NAIL FOUND AT THE INTERSECTION OF THE SOUTH-WESTERLY RIGHT-OF-WAY LINE OF HUTCHINS STREET (80 FEET WIDE) AND THE NORTHEASTERLY RIGHT-OF-WAY LINE OF MCKINNEY AVENUE (80 FEET WIDE), BEING THE MOST WESTERLY CORNER OF SAID LOT 6;

THENCE NORTH 35 DEGREES 00 MINUTES 00 SECONDS EAST, ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE OF HUTCHINS STREET, A DISTANCE OF 189.18 FEET TO A 5/8 INCH IRON ROD SET FOR CORNER;

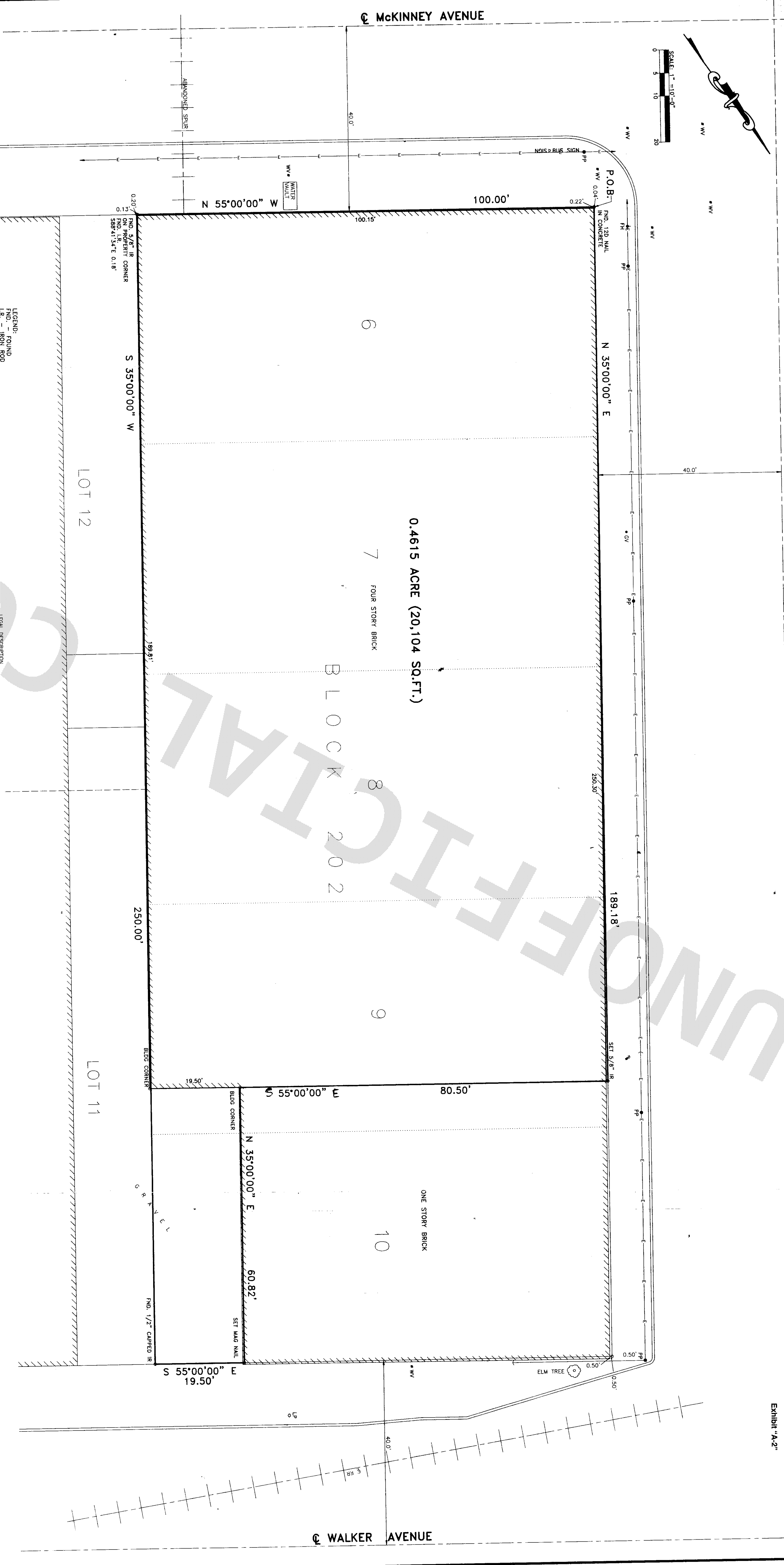
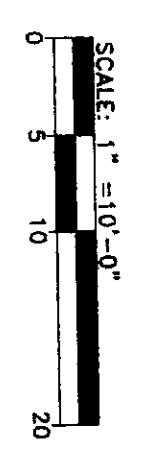
THENCE SOUTH 55 DEGREES 00 MINUTES 00 SECONDS EAST, A DISTANCE OF 80.50 FEET TO A BUILDING CORNER FOR AN INTERIOR CORNER OF THE HEREIN DESCRIBED TRACT OF LAND;

THENCE NORTH 35 DEGREES 00 MINUTES 00 SECONDS EAST, A DISTANCE OF 60.82 FEET TO A MAG NAIL SET IN THE NORTHEAST LINE OF SAID LOT 10, SAID POINT BEING IN THE SOUTHWEST RIGHT-OF-WAY LINE OF WALKER AVENUE;

THENCE SOUTH 55 DEGREES 00 MINUTES 00 SECONDS EAST, ALONG THE COMMON LINE OF SAID LOT 10 AND WALKER AVENUE RIGHT-OF-WAY LINE, FOR A DISTANCE OF 19.50 FEET TO A 1/2 INCH IRON ROD FOUND AT THE NORTHWEST CORNER OF LOT 11;

THENCE SOUTH 35 DEGREES 00 MINUTES 00 SECONDS WEST, ALONG THE COMMON LINE OF LOTS 11 AND 12, AND LOTS 6, 7, 8, 9 AND 10 OF SAID BLOCK 202, A DISTANCE OF 250.00 FEET TO A 5/8 INCH IRON ROD FOUND FOR CORNER IN SAID NORTHEAST RIGHT-OF-WAY LINE OF MCKINNEY AVENUE;

THENCE NORTH 55 DEGREES 00 MINUTES 00 SECONDS WEST, ALONG SAID NORTHEAST RIGHT-OF-WAY LINE OF MCKINNEY AVENUE, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.4615 ACRE (20,104 SQUARE FEET) OF LAND.



- NOTES:
1. ALL BEARINGS AND STREET RIGHT OF WAYS ARE BASED ON RECORDED PLAT.
  2. SURVEYOR DID NOT VISIT PROPERTY. SURVEY BASED ON LEGAL DESCRIPTION.
  3. WORKING IN THIS SURVEY IS INTENDED TO EXPRESS AN OPINION REGARDING OWNERSHIP OR TITLE.
  4. THE WORD 'CENNY' IS UNDERSTOOD TO BE AN EXPRESSION OF PROFESSIONAL INFORMATION AND BELIEF, WHICH IS BASED ON HIS BEST KNOWLEDGE.
  5. SURVEY IS CERTIFIED FOR THIS TRANSACTION ONLY.
  6. THIS SURVEY IS BEING PROVIDED AS BEING CREATED EXPRESS OR IMPLIED TO COPY. THE SURVEY EXCEPT AS IS NECESSARY IN CONNECTION WITH THIS SURVEY WAS PERFORMED WITHOUT BUILDING LINES MAY HAVE BEEN GRANTED WHICH ARE NOT TO BE DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH. THIS SURVEY DONE WITHOUT BENEFIT OF OR CONSTRUCTION COMMENCES.

- LEGEND:
- FND. - FOUND
  - IR. - IRON ROD
  - PP - POWER POLE
  - MH - MANHOLE
  - CB - CATCH BASIN
  - LV - LIGHT VALVE
  - WH - WATER HYDRANT
  - WM - WATER METER
  - WV - WATER VALVE
  - RM - RAILROAD

LEGAL DESCRIPTION

BRING A 0.4615 ACRE (20,104 SQUARE FEET) TRACT OF LAND BEING ALL OF LOTS 6, 7, 8, AND 9 AND PART OF LOT 10, BLOCK 202, IN THE HARPER SOUTH SIDE OF BUFFALO BAUO, HARRIS COUNTY, TEXAS, AND BEING A PART OF THAT CERTAIN TRACT OF LAND RECORDED IN VOLUME 7863, PAGE 60 OF THE DEED RECORDS OF HARRIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2\"/>

I, hereby certify that this survey was made on the ground and completed on this 4th day of May, 2006 and that I am a duly qualified and licensed professional land surveyor in the State of Texas, and that I am duly sworn and bonded in accordance with the current Texas Statute of Professional Surveyors. I have read the specifications for this survey and I have complied with the same. I have also read the plat and I have found it to be correct and in accordance with the specifications. I have also read the plat and I have found it to be correct and in accordance with the specifications. I have also read the plat and I have found it to be correct and in accordance with the specifications.

**FLOOD NOTE:**

PROPERTY IS NOT IN THE 100 YEAR FLOOD ZONE, IN ZONE X ACCORDING TO F.L.R.M. MAP NO. 480728E 0895V DATE 11-6-95. BY SHOWING FLOODING ONLY, WE DO NOT ASSUME RESPONSIBILITY FOR EXACT DETERMINATION.

**SURVEY OF**

A 0.4615 ACRE (20,104 SQUARE FEET) TRACT OF LAND, BEING ALL OF LOTS 6, 7, 8, AND 9 AND PART OF LOT 10, BLOCK 202, IN THE HARPER SOUTH SIDE OF BUFFALO BAUO, HARRIS COUNTY, TEXAS, AND BEING A PART OF THAT CERTAIN TRACT OF LAND RECORDED IN VOLUME 7863, PAGE 60 OF THE DEED RECORDS OF HARRIS COUNTY, TEXAS.

ADDRESS: 2205 MCKINNEY AVENUE

SITE: HARPER WAREHOUSE AND STORAGE

JOB NO: 639-06

DATE: 05-04-06

SCALE: 1" = 10'

SHEET 1 OF 1

**SOUTH TEXAS SURVEYING ASSOCIATES, INC.**

11281 Richmond Ave., Bldg. J, Suite 101, Houston, Texas 77082

(281) 556-6918 FAX (281) 556-9331

REGISTERED PROFESSIONAL LAND SURVEYORS

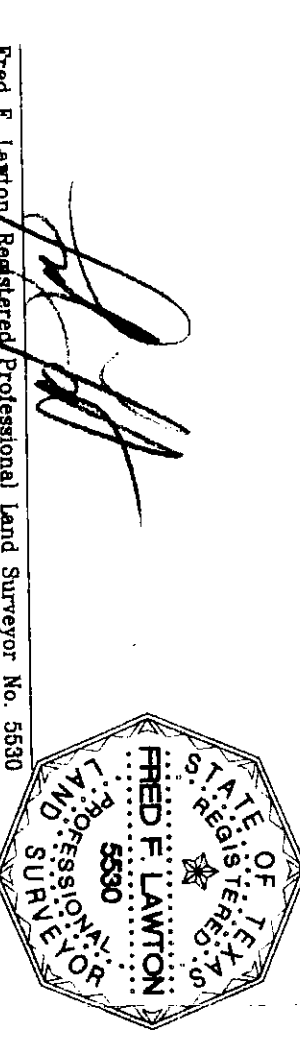


EXHIBIT "B"

DESCRIPTION OF UNITS

Unit Numbers 301 through 316, Unit Numbers 401 through 418, Unit Numbers 501 through 518 are listed on Exhibit "B-1," attached hereto and incorporated herein by reference for all purposes. Unit Numbers 301 through 316 are delineated and pictorially represented on Exhibit "B-2," Unit Numbers 401 through 418 are delineated and pictorially represented on Exhibit "B-3" and Unit Numbers 501 through 518 are delineated and pictorially represented on Exhibit "B-4," attached hereto and incorporated hereby reference for all purposes.

The area of each Unit includes the area of that Unit's balcony or patio space.

Exhibit "B-1"

DESCRIPTION OF UNITS

NOTE: The area of each unit includes the area of that unit's balcony or patio

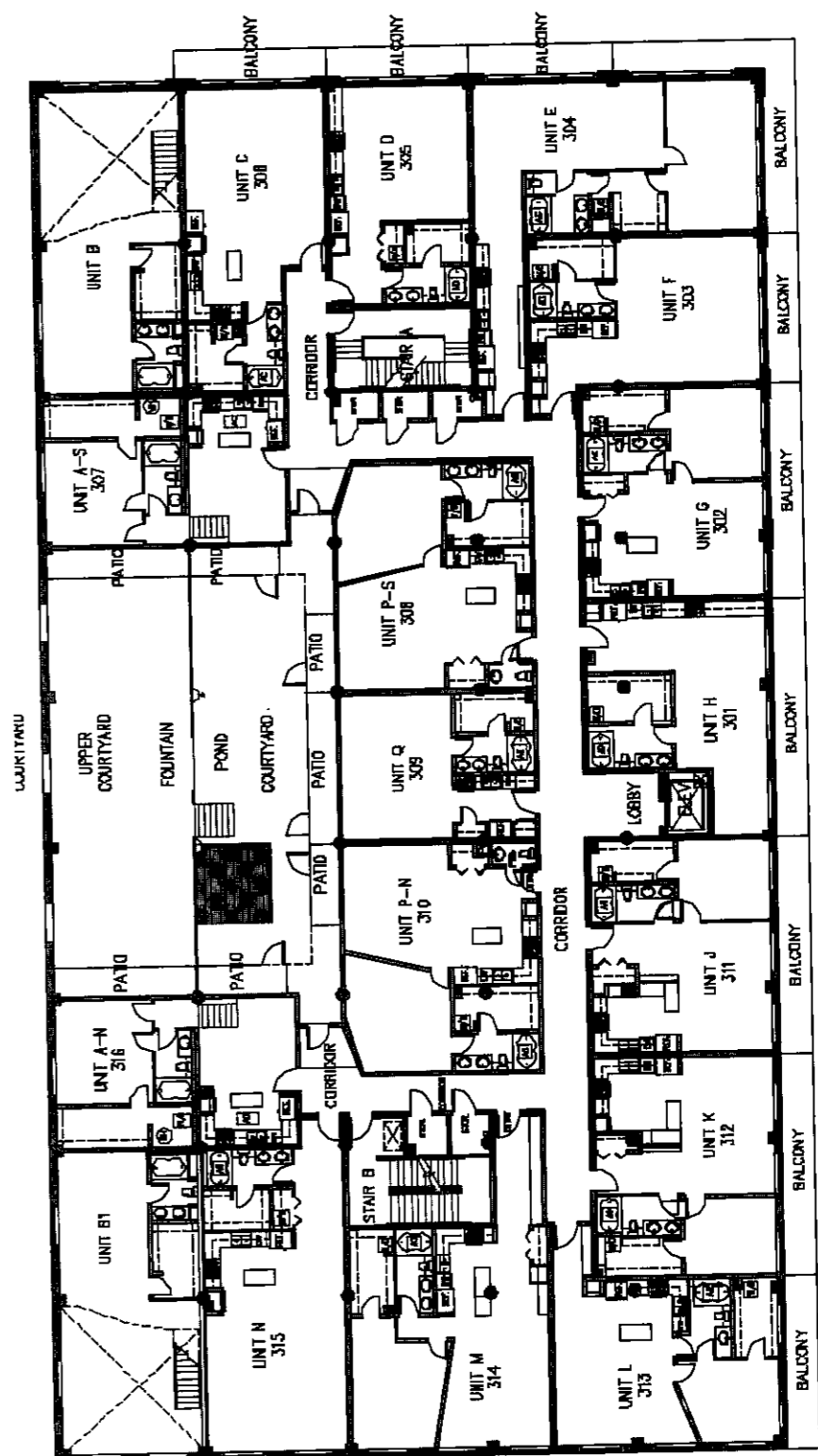
Unit Number	Unit Square Footage
301	774
302	881
303	789
304	1339
305	694
306	822
307	836
308	858
309	642
310	858
311	894
312	923
313	905
314	985
315	870
316	836
401	774
402	881
403	789
404	1339
405	694
406	742
407	1445
408	892
409	940
410	642
411	940
412	894
413	923
414	1049
415	1097
416	812
417	1445
418	893
501	774
502	881
503	789
504	1339
505	751
506	742

UNOFFICIAL COPY

Exhibit "B-2"

Herrin Lofts Units 301 through 316

Unit Number	Unit Square Footage
507	1045
508	892
509	940
510	642
511	940
512	894
513	923
514	1049
515	1097
516	812
517	1045
518	892
<b>TOTAL PROJECT UNIT SQUARE FOOTAGE</b>	<b>47,544</b>



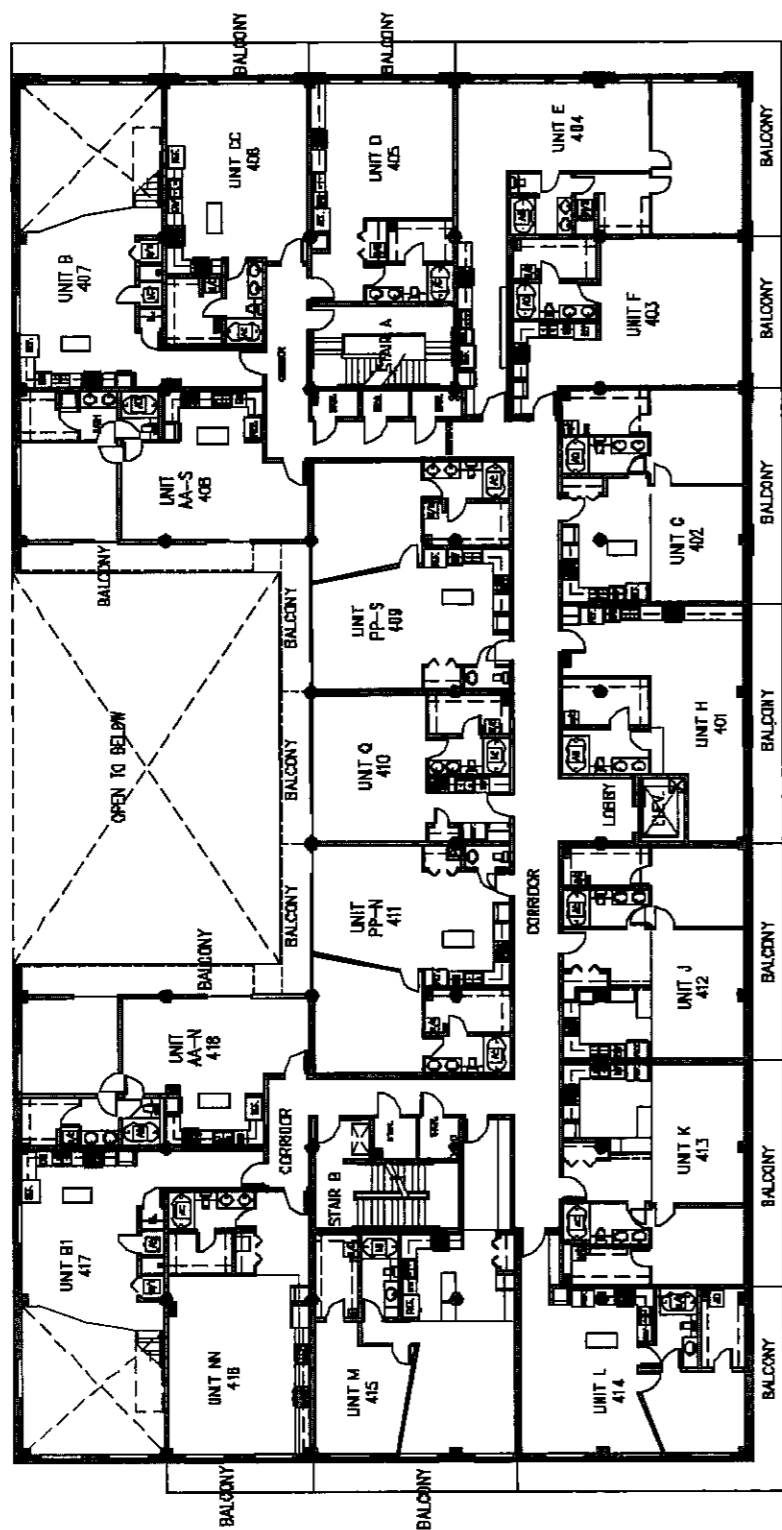
OFFICE OF  
BEVERLY B. KAUFMAN  
COUNTY CLERK, HARRIS COUNTY, TEXAS  
CONDOMINIUM RECORDS OF COUNTY CLERK

198227

FILM CODE \_\_\_\_\_

HERRIN LOFTS DECLARATION OF  
CONDOMINIUM  
THIS IS PAGE 14 OF 17 PAGES  
SCANNER KM-4850w

Herrin Lofts Units 401 through 418



Herrin Lofts Units 501 through 518

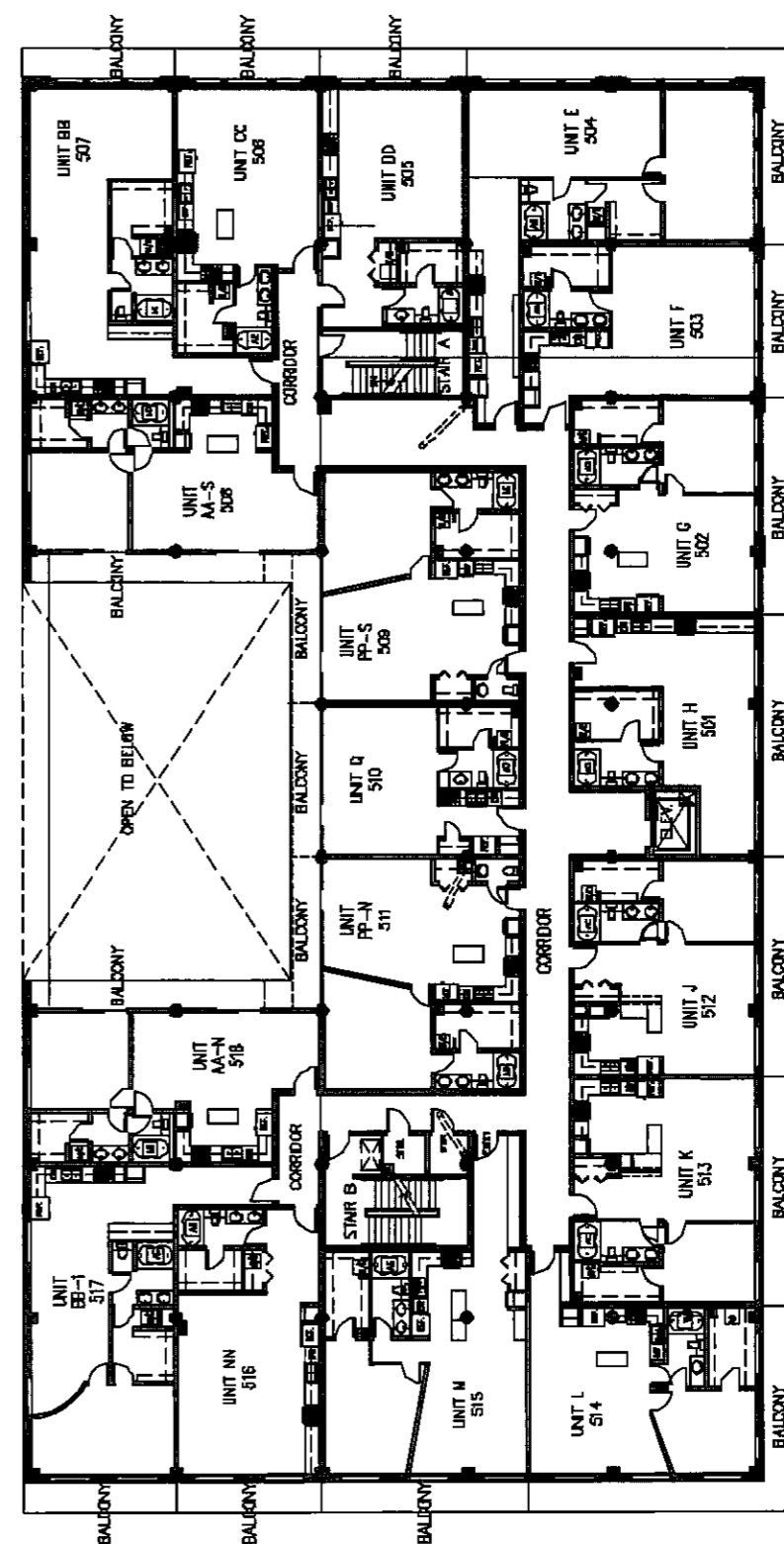


EXHIBIT "C"

DESIGNATED PARKING SPACES AND STORAGE SPACES

Parking Spaces are identified and defined by Numbers One (1) through Seventy (70) and H1 and H2, as listed on Exhibit C-1. The Storage Rooms or Spaces are identified by Numbers and Letters, with the number indicating the floor of the Building on which the Storage Space is located, as listed on Exhibit C-2. The Parking Spaces are all delineated, demonstrated and pictorially represented on Exhibit C-3 and Exhibit C-4 and the Storage Spaces are delineated, demonstrated and pictorially represented on Exhibits C-3, C-4, and B-2, all of which are attached hereto and incorporated herein for all purposes. These lists include all Parking Spaces and Storage Spaces, however, only those Parking Spaces and Storage Rooms specifically assigned pursuant to the Declaration are Limited Common Elements.

OFFICE OF  
BEVERLY B. KAUFMAN  
COUNTY CLERK, HARRIS COUNTY, TEXAS  
CONDOMINIUM RECORDS OF COUNTY CLERK  
198228  
FILM CODE  
HERRIN LOFTS DECLARATION OF  
CONDOMINIUM  
THIS IS PAGE 15 OF 17 PAGES  
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Exhibit "C-1"

Parking Spaces

Space	1	Space	37
Space	2	Space	38
Space	3	Space	39
Space	4	Space	40
Space	5	Space	41
Space	6	Space	42
Space	7	Space	43
Space	8	Space	44
Space	9	Space	45
Space	10	Space	46
Space	11	Space	47
Space	12	Space	48
		Space	49
Space	13	Space	50
Space	14	Space	51
Space	15	Space	52
Space	16	Space	53
Space	17	Space	54
Space	18	Space	55
Space	19	Space	56
Space	20	Space	57
Space	21	Space	58
Space	22	Space	59
Space	23	Space	60
Space	24	Space	61
Space	25	Space	62
Space	26	Space	63
Space	27	Space	64
Space	28	Space	65
Space	29	Space	66
Space	30	Space	67
Space	31	Space	68
Space	32	Space	69
Space	33	Space	70
Space	34	Space	H1
Space	35	Space	H2
Space	36		

Exhibit "C-2"

Storage Rooms

Room	1 A
Room	1 B
Room	1 C
Room	1 D
Room	1 E
Room	2 A
Room	2 B
Room	2 C
Room	2 D
Room	2 E
Room	2 F
Room	2 G
Room	2 H
Room	2 I
Room	2 J
Room	2 K
Room	2 L
Room	3 A
Room	3 B
Room	3 C
Room	3 D
Room	3 E
Room	3 F
Room	3 G
Room	4 A
Room	4 B
Room	4 C
Room	4 D
Room	4 E
Room	4 F
Room	4 G
Room	5 A
Room	5 B
Room	5 C
Room	5 D
Room	5 E
Room	5 F
Room	5 G

OFFICE OF  
BEVERLY B. KAUFMAN  
COUNTY CLERK, HARRIS COUNTY, TEXAS  
CONDOMINIUM RECORDS OF COUNTY CLERK

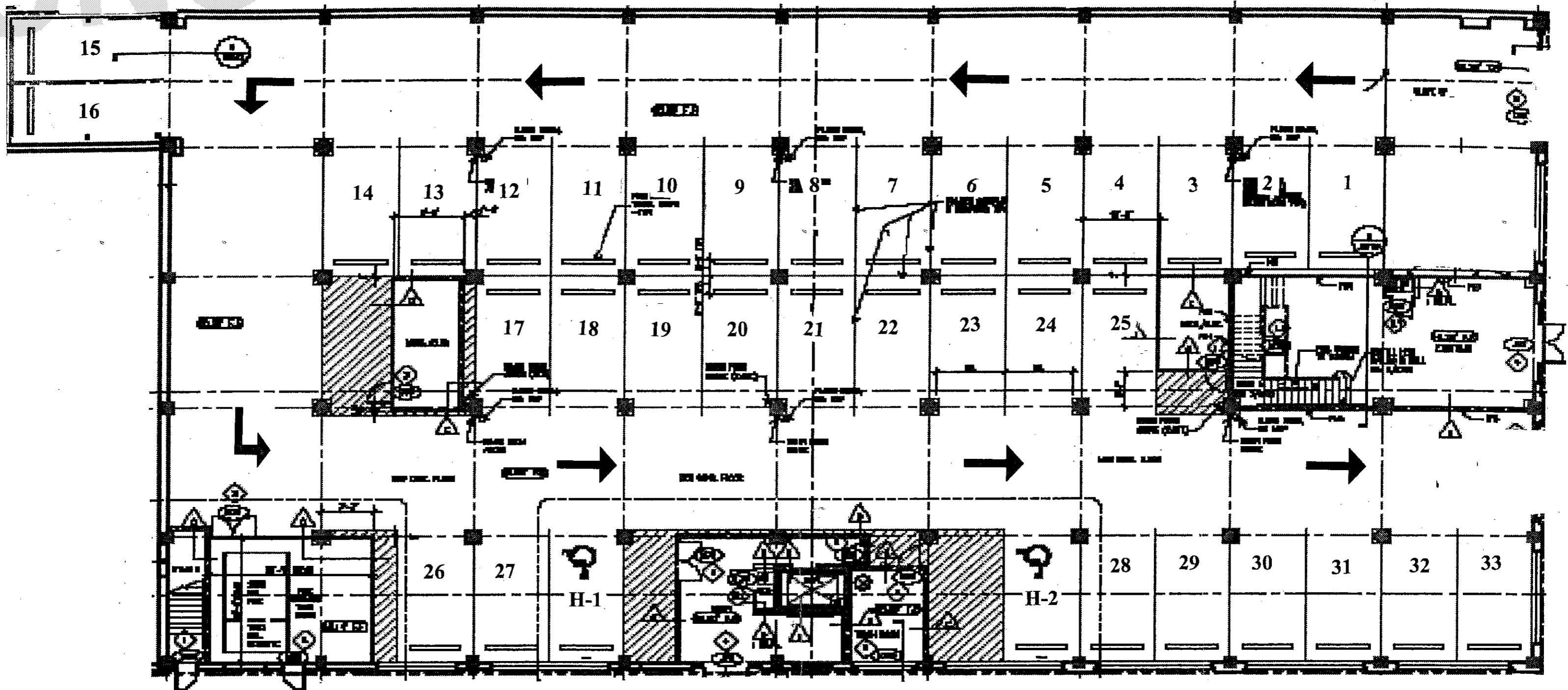
FILM CODE 198229

HERRIN LOFTS DECLARATION OF  
CONDOMINIUM  
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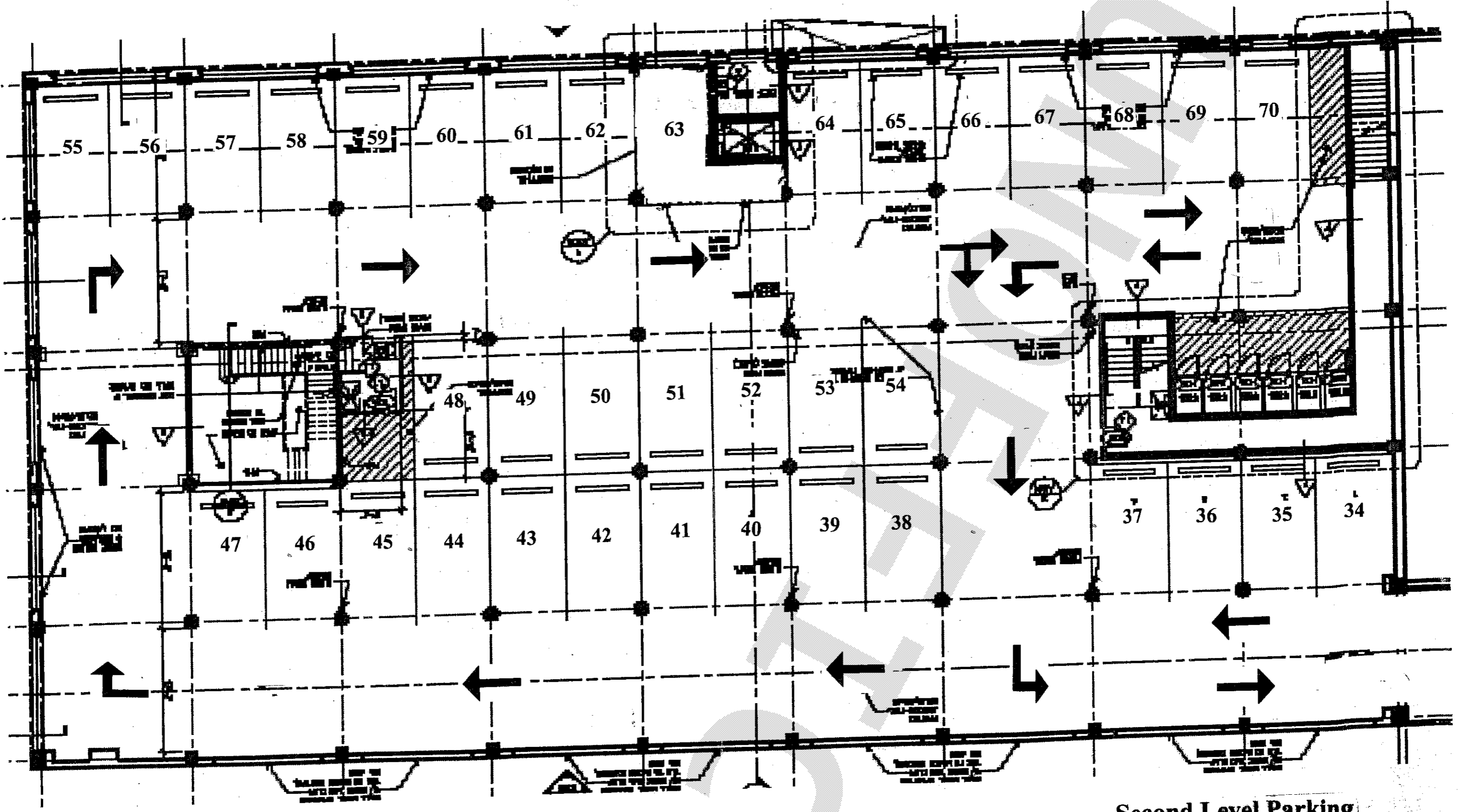
Exhibit "C-3"

Herrin Lofts First Level - Parking



First Level Parking





Second Level Parking

EXHIBIT "D"  
PERCENTAGE OF OWNERSHIP INTEREST

The percentage of Ownership of each Unit is defined on Exhibit "D-1," attached hereto and incorporated hereby reference for all purposes.

OFFICE OF  
BEVERLY B. KAUFMAN  
COUNTY CLERK, HARRIS COUNTY, TEXAS  
CONDOMINIUM RECORDS OF COUNTY CLERK  
198230  
FILM CODE \_\_\_\_\_

HERRIN LOFTS DECLARATION OF  
CONDOMINIUM  
THIS IS PAGE 17 OF 17 PAGES  
SCANNER KM-4850\*

ANY PROVISION HEREIN WHICH RESTRICTS  
THE SALE, RENTAL, OR USE OF THE  
DESCRIBED REAL PROPERTY BECAUSE OF  
COLOR OR RACE IS INVALID AND  
UNENFORCEABLE UNDER FEDERAL LAW.

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL  
PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW  
THE STATE OF TEXAS  
COUNTY OF HARRIS }  
I hereby certify that this instrument was FILED in File Number  
Sequence on the date and at the time stamped hereon by me; and was  
duly RECORDED, in the Official Public Records of Real Property of  
Harris County, Texas on



*Feb. 12, 2007*  
*Beverly B. Kaufman*  
COUNTY CLERK  
HARRIS COUNTY TEXAS

**RECORDER'S MEMORANDUM:**  
At the time of recordation, this instrument was found  
to be inadequate for the best photographic  
reproduction because of illegibility, carbon or photo  
copy, discolored paper, etc. All blackouts, additions  
and changes were present at the time the instrument  
was filed and recorded.

Exhibit "D-1"

PERCENTAGE OF OWNERSHIP INTEREST

Unit Number	Unit SF	Percentage Ownership Interest of Unit
301	774	1.63%
302	881	1.85%
303	789	1.66%
304	1339	2.82%
305	694	1.46%
306	822	1.73%
307	836	1.76%
308	858	1.80%
309	642	1.35%
310	858	1.80%
311	894	1.88%
312	923	1.94%
313	905	1.90%
314	985	2.07%
315	870	1.83%
316	836	1.76%
401	774	1.63%
402	881	1.85%
403	789	1.66%
404	1339	2.82%
405	694	1.46%
406	742	1.56%
407	1445	3.04%
408	892	1.88%
409	940	1.98%
410	642	1.35%
411	940	1.98%
412	894	1.88%
413	923	1.94%
414	1049	2.21%
415	1097	2.31%
416	812	1.71%
417	1445	3.04%
418	893	1.88%
501	774	1.63%
502	881	1.85%
503	789	1.66%
504	1339	2.82%
505	751	1.58%
506	742	1.56%
507	1045	2.20%
508	892	1.88%
509	940	1.98%
510	642	1.35%
511	940	1.98%
512	894	1.88%
513	923	1.94%
514	1049	2.21%
515	1097	2.31%
516	812	1.71%
517	1045	2.20%
518	892	1.88%
	<b>47,544</b>	<b>100.00%</b>

**BY-LAWS  
OF  
HERRIN LOFTS CONDOMINIUM HOMEOWNERS  
ASSOCIATION**

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**BY-LAW'S  
OF  
HERRIN LOFTS CONDOMINIUM HOMEOWNERS  
ASSOCIATION**

The name of this corporation is HERRIN LOFTS CONDOMINIUM HOMEOWNERS ASSOCIATION (the "Corporation"). The Corporation is a nonprofit corporation organized pursuant to Chapter 22, Texas Business Organizations Code, and the Texas Uniform Condominium Act.

**ARTICLE 1**

**PURPOSE AND PARTIES**

1.1 **Purpose.** The purpose for which the Corporation is formed is to govern the condominium regime known as the Herrin Lofts ("Project"), situated in the County of Harris Texas, which property is described in that certain Declaration of Condominium filed in the Condominium Records of Harris County, Texas on February 11, 2007, under Clerk's File No. 2007-0088441, Film Code No. 198214, ("Declaration"), and which property has been submitted as a condominium regime created under the Texas Uniform Condominium Act by the recording of the Declaration and the Exhibits thereto.

1.2 **Definitions and Terms.** All definitions and terms contained in the Declaration shall apply hereto and are incorporated herein by reference.

1.3 **Personal Application.** All present or future Owners, tenants, future tenants of any Unit or any other person who might use in any manner the facilities of the Project are subject to the provisions and any regulations set forth in these Bylaws. The mere acquisition, lease or rental of any Unit or the mere act of occupancy of a Unit will signify that these Bylaws are accepted, approved, ratified and will be complied with by the purchaser, tenant or occupant.

**ARTICLE 2**

**MEMBERS**

2.1 Membership. Except as otherwise provided in the Certificate of Formation, the Declaration or these Bylaws (collectively the "Project Documents"), ownership of a Unit is required in order to qualify for membership in the Corporation. Any person or entity, on becoming an Owner of a Unit, shall automatically become a member of the Corporation ("Member") and be subject to these Bylaws. Membership shall terminate without any formal Corporation action whenever that person ceases to own a Unit, but termination shall not relieve or release any such former Owner from any liability or obligation incurred under or in any way connected with the Corporation during the period of ownership and membership in the Corporation or impair any rights or remedies which the Owners have, either through the Board of Directors of the Corporation or directly against such former Owner and Member arising out of or in any way connected with ownership and membership and the covenants and obligation incident thereto.

2.2 Proof of Membership. The rights of membership shall not be exercised by any person until satisfactory proof has been furnished to the Secretary that the person is qualified as a Member. For those persons who do not purchase a Unit from Declarant, such proof shall be proof of ownership of a Unit as required in Section 9.2. For all others such proof may consist of a true and correct copy of a duly executed and acknowledged deed or title insurance policy evidencing ownership of a Unit in the Project or such other proof as may be required by the Board of Directors.

2.3 Additional Qualifications. The sole qualification for membership shall be ownership of a Unit in the Project. No initiation fees, costs or dues shall be assessed against any person as a condition of membership except such assessments, levies and charges as are specifically authorized under the Certificate of Formation, the Declaration or these Bylaws.

2.4 Certificates of Membership. The Board of Directors may provide for the issuance of certificates evidencing membership which shall be in such form as may be determined by the Board and as may be required by the Texas Business Organizations Code. All certificates evidencing membership shall be consecutively numbered. The name and address of each Member and the date of issuance of the certificate shall be entered on the records of the Corporation and maintained by the Secretary at the principal office of the Corporation.

2.5 Member Voting Rights. As provided in the Declaration, each Unit shall have one vote in the affairs and management of the Corporation, weighted in proportion to the Percentage Ownership Interest of such Unit as specified

in the Declaration. In no event shall a Unit have more than one vote. Members shall be entitled to cast votes as provided in the Declaration and in these Bylaws. Any corporation, trust, partnership or other unincorporated entity or other joint ownership (including community property interests) which is an Owner of a Unit (whether one or more) shall similarly designate, in writing and provided to the Secretary at or before such meeting, an appropriate person to exercise the voting rights attributable to the Unit of such Owner. Only those persons who are Owners, or the properly designated person of a corporation, trust, partnership or other unincorporated entity which is the Owner, on the date preceding the date notice of a meeting is given can vote at that meeting, and as provided in Section 6.3, an Owner who is then in default in the payment of a Common Expense Charge or Special Assessment may not vote.

2.6 Majority of Owners. As used in these Bylaws the term "majority of Owners" shall mean those Owners holding 51% of the votes in accordance with the Percentage Ownership Interests assigned in the Declaration.

2.7 Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of at least a majority of Owners shall constitute a quorum.

2.8 Proxies. At any meeting of the Members, an Owner may vote in person or by a written proxy which has been signed by the Owner and has been filed with the Secretary prior to or at the meeting at which it is used. Any proxy shall be revocable and shall automatically cease (i) at any time prior to its exercise by written notice similarly filed; (ii) on conveyance by the Owner or the Owner's Unit; or (iii) on receipt of notice by the Secretary of the death or judicially declared incompetence of such Owner. No proxy shall be valid for more than eleven (11) months from its execution date.

2.9 Action by Members Without Meeting. Any action required or permitted to be taken at any meeting of the Members may be taken without a meeting if all the Members consent to the action in writing and the written consents are filed with the records of the Corporation. In that event, the written consents shall be treated for all purposes as a vote at a meeting. Directors and officers may be elected by vote taken through the mail if the Board of Directors so elects.

2.10 Required Vote. The vote of the majority of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum is present shall be the act of the meeting of the Members, unless the vote of a greater number is required by statute or by the Project Documents.



2.11 Preparation and Inspection of List of Voting Members.

(a) After setting a record date for the notice of a meeting, the Secretary or such other person designated by the Board of Directors, shall prepare an alphabetical list of the names of all its voting Members. The list must identify:

- (1) the Members who are entitled to notice and the Members who are not entitled to notice of the meeting;
- (2) the address of each voting Member; and
- (3) the number of votes each voting Member is entitled to cast at the meeting.

(b) Not later than the second business day after the date notice is given of a meeting for which a list was prepared in accordance with Subsection (a), and continuing through the meeting, the list of voting Members must be available at the Corporation's principal office or at a reasonable place in the municipality in which the meeting will be held, as identified in the notice of the meeting, for inspection by Members entitled to vote at the meeting for the purpose of communication with other Members concerning the meeting.

(c) A voting Member or voting Member's agent or attorney is entitled on written demand to inspect and, at the Member's expense and subject to Section 22.351, Texas Business Organizations Code, copy the list at a reasonable time during the period the list is available for inspection.

(d) The Corporation shall make the list of voting Members available at the meeting. A voting Member or voting Member's agent or attorney is entitled to inspect the list at any time during the meeting or an adjournment of the meeting.

### ARTICLE 3

#### ADMINISTRATION

3.1 Corporation Responsibilities. The Corporation shall have the general responsibility of administering the Project. Except as otherwise provided as the powers and duties of the Board or as requiring a greater number of votes of the Owners, decisions and resolutions for the Corporation shall require

approval by a majority of Owners at a meeting of the Members at which a quorum is present in person or by proxy.

3.2 Place of Meeting of Members. The annual and all special meetings of the Members shall be held at the Project's office or at such other place as the Board may designate in the notice of that meeting. All meetings of the Members shall be held in Houston, Harris County, Texas.

3.3 Annual Meetings of Members. The annual meeting of the Members of the Corporation shall be held on the 2nd Thursday of January of each year at 6:00 p.m., with the first meeting to occur within the time period identified in the Declaration. Provided, however, the Board may designate such other time and date of the annual meeting in the notice of the meeting as the Board shall deem appropriate. If the day for the annual meeting of the Members is a legal holiday, the meeting shall be held at the same hour on the first day following which is not a legal holiday (excluding Saturday and Sunday). The Board of Directors shall be elected, the budget discussed, audit presented and other business stated in the notice of the meeting may be transacted at the meeting. Notice of the first meeting of Members shall be given by the Board in accordance with Section 3.5 of these Bylaws.

3.4 Special Meetings of Members. Special meetings of the Members shall be called by the Board of Directors, President or upon receipt of a petition signed by Members having not less than twenty-five percent (25%) of the total number of votes of all Members (except as otherwise limited by Section 3.3 of these Bylaws). Notice of a special meeting shall be given in accordance with Section 3.5 of these Bylaws. Only the business stated in the notice of a special meeting may be transacted at that meeting.

3.5 Notice of Meetings of Members; Waiver of Notice. The Secretary shall give written notice of each annual meeting and of each special meeting to each Owner of record not less than ten (10) days nor more than fifty (50) days prior to the date of the meeting, which notice shall state the purpose of the meeting and the time and place where it is to be held. Whenever notice of a meeting of the Members is required to be given, a written waiver, executed by a Member before or after the meeting and filed with the Secretary, shall be deemed equivalent to notice. Attendance at a meeting shall constitute a waiver of notice of that meeting.

3.6 Adjournment of Meetings of Members. If any meeting of the Members cannot be held because of the absence of a quorum, a majority of the voting interest of the Members who are present at such meeting may adjourn the meeting to a later time.

3.7 Order of Business. The order of business at all annual meetings of the Members shall be as follows:

- (a) Roll call and certifying proxies;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Reading of minutes of preceding meeting;
- (d) Reports of officer;
- (e) Reports of committees;
- (f) Election of Directors;
- (g) Old business; and
- (h) New business.

## ARTICLE 4

### BOARD OF DIRECTORS

4.1 Number and Qualification. The affairs of the Corporation shall be governed by a Board of Directors composed of three (3) persons, all of whom must be Members of the Corporation. If a Unit is owned by a corporation, trust, partnership or other entity, a person designated by that entity may serve as a Board Member, committee Member or officer of the Corporation. Provided, however, that the Members of the initial Board of Directors need not be Members of the Corporation.

4.2 Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Corporation and may do all such acts and things as are not by law or by the Project Documents directed to be exercised and done by the Owners. All of the powers and duties of the Board shall be exercised by the initial Board of Directors named in the Certificate of Formation (and their successor and assigns, including the Appointed Board) until the first meeting of the Members of the Corporation and the election of the First Elected Board. The Appointed Board shall have the power and authority, to the maximum extent permitted by the Declaration and by applicable law, to administer the affairs of the Corporation and to take any action.

4.3 Other Duties. In addition to the foregoing, the powers and duties of the Board include without limitation, the powers and duties to:

- (a) Operate, clean, care for, maintain, repair and replace the Common Elements, and purchase materials and equipment and employ personnel (including, without limitation, gardeners, parking attendants, doormen and security guards) or contract for the services necessary or desirable for these purposes. These operations shall include, without limitation, the furnishing of such common services as the Board may from time to time determine are necessary or economically desirable.
- (b) Approve and adopt the annual budget and determine Common Expense Charges and Special Assessments.
- (c) Approve and adopt and amend Rules and Regulations, not inconsistent with the Declaration, covering the operation and use of the Project.
- (d) Open and maintain bank accounts in the name of the Corporation and to designate the signatories on the accounts. After the first meeting of the Members and the election of the First Elected Board, all accounts of the Corporation shall require the signature of at least two (2) individuals.
- (e) Manage, control and otherwise deal with the Common Elements, including the power to grant easements and to temporarily interrupt the normal operation of common services in order to facilitate performance of any maintenance or repair or the making of additions, alterations or improvements authorized by the Board.
- (f) Protect the title to the Common Elements.
- (g) Insure and keep insured all of the insurable common Elements of the Project in an amount equal to their maximum replacement value as provided in the Declaration. Maximum replacement value shall be determined prior to the renewal of any insurance policy or the purchase of a new policy or as the Board shall otherwise determine. Further, to obtain and maintain comprehensive public liability insurance as provided in the Declaration. To insure and keep insured all of the fixtures equipment and personal property acquired by the Corporation for the benefit of the Corporation and the Owners and their Mortgagees. The limits and coverage shall be reviewed at

intervals of not less than one year and adjusted, if necessary, to provide such coverage and protection as the Corporation may deem prudent, Workers compensation insurance shall at all times be carried to the extent required to comply with any applicable law with respect to the employees, if any, of the Corporation Each Owner may obtain additional insurance at his own expense for his benefit. Insurance coverage on the furnishings and other items of personal property belonging to an Owner and casualty and public liability insurance coverage within each Unit are specifically made the responsibility of each Owner.

(h) Enforce by any legal or equitable remedies available all obligations of each Owner to the Corporation.

The costs incurred in the exercise of the rights, powers and duties of the Board shall be paid out of the Common Expense Fund. The Board shall not be required to exercise any right power or duty unless in the Board's opinion there are sufficient funds in the Common Expense Fund for that purpose, or which will be available through Common Expense Charges or Special Assessments made in accordance with the Declaration. Nothing herein shall authorize the Board to furnish to any Owner services primarily for his benefit or convenience or for the benefit of any occupant or occupants of any Unit, other than services customarily provided to other Owners or occupants of Units.

4.4 Managing Agent. The Board may engage a Managing Agent pursuant to the Declaration under a written contract signed by a representative of the Board of Directors upon such terms and for such fee as the Board determines to be reasonable and in the best interest of the Corporation.

4.5 Election and Term of Office. The Declarant named in the Declaration shall appoint, dismiss and reappoint all of the of members of the Board of Directors until the first meeting of Members of the Corporation is held in accordance with the provisions of the Declaration and at such meeting a board of directors elected. The Board appointed by Declarant pursuant to the provisions of the Declaration is referred to as the "Appointed Board." The Board of Directors elected at the first meeting of Members of the Corporation is herein called the "First Elected Board."

The First Elected Board elected pursuant to the Declaration shall consist of 3 Directors, one of which Directors shall be elected for a term of one year and two of which Directors shall be elected for a term of 2 years. At each annual meeting thereafter, the positions of each Director whose

term is expiring at such annual meeting shall be filled by a Director elected for a term of 2 years. Each Director shall be elected either by a separate vote or by a vote of a slate of Directors, as the Members shall determine, whereby the nominee receiving the highest number of votes shall be elected. Cumulative voting shall not be permitted and the election of Directors shall take place whether or not a quorum is present at the annual meeting.

4.6 Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Corporation shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum, and each person so elected shall be a Director until a successor is elected at expiration of the term of the Director whose vacancy is being Filled.

4.7 Removal of Directors. At any regular or special meeting of Members duly called and at which a quorum is present, any one or more of the Directors may be removed with or without cause by a majority of Owners present in person or by proxy and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Owners shall be given an opportunity to be heard at the meeting.

4.8 First Meeting of Each Newly Elected Board. The first meeting of a newly elected Board shall be held within ten (10) days of election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected and no notice shall be necessary to the newly elected Directors in order to legally constitute such meeting, provided a majority of the whole Board shall be present.

4.9 Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least one (1) such meeting shall be held during each fiscal year. Notice of regular meetings of the Board shall be given to each Director, personally, by mail, telephone or telegraph, at least three (3) days prior to the day named for such meeting.

4.10 Special Meetings. Special meetings of the Board maybe called by the President on three (3) days notice to each Director, given personally, by mail, telephone or telegraph, which notice shall state the time, place (as herein above provided) and purpose of the meeting Special meetings of the Board shall be called by the President or Secretary in like manner and on like notice on the written request of at least a majority of Directors.

4.11 Waiver of Notice. Before or at any meeting of the Board of Directors; any Directors may in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

4.12 Board of Directors' Quorum. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

4.13 Action Without Meeting of Board. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if all the Directors consent to the action in writing and the written consents are filed with the records of the proceedings of the Board. In that event, the consents shall be treated for all purposes as a vote at a meeting.

4.14 Open Meetings. Subject to the Board's right to conduct an executive session on matters the Board deems appropriate, regular and special meetings of the Board shall be open to all Members; provided, however, that Members who are not on the Board may not participate in any deliberation or discussion unless expressly so authorized by the vote of the majority of a quorum of the Board.

4.15 Executive Session. The Board may, with the approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote on personnel matters or matters involving litigation in which the Corporation is or has reason to believe it may become involved. The nature of any and all business to be considered in executive session shall first be announced without discussion in open session. The Appointed Board may adjourn a meeting and reconvene in executive session to discuss and vote on any matter that, by a majority of a quorum, the Appointed Board considers to be confidential.

4.16 Compensation of Directors. Except as approved by the Board of Directors prior to the meeting of the First Elected Board or by the Members, no Director shall receive compensation for acting as a Director, but shall be

entitled to reimbursement from the Corporation, chargeable as a Common Expense, for reasonable out-of-pocket disbursements made by the Director in the performance of the Director's duties. However no Director shall be obligated to make any such disbursements.

4.17 Liability of Board to Owners. No Director shall be liable to any Owner for either a mistake of judgment or negligence of any other Director, the Managing Agent or any person to whom rights, powers or duties have been appropriately delegated under the Declaration, or otherwise be liable to any Owner, except for actual fraud, gross negligence or criminal theft. Such rights as provided in this Section shall not be deemed exclusive of any other rights to which such person may be entitled by law or under the Project Documents.

4.18 Fidelity Bonds. The Board of Directors shall require that all officers and employees of the Corporation handling or responsible for Corporation funds shall furnish adequate fidelity bonds (or alternatively, the Corporation shall be responsible in furnishing such bonds). The premiums on such bonds shall be paid by the Corporation.

4.19 Place of Meeting of Directors. The meetings of the Appointed Board may be held at such place as may be designated by the Appointed Board or the President. All meetings of the Board of Directors including and after the meeting of the First Elected Board shall be held at the Project's office or at such other place in Houston, Harris County, Texas, as the Board may designate in the notice of that meeting. The meeting of the First Elected Board shall be open to attendance by Members of the Corporation. All meetings of the Board from and after the meeting of the First Elected Board shall be open to attendance by Members of the Corporation.

## ARTICLE 5

### OFFICERS

5.1 Designation. The principal officers of the Corporation shall be a President, a Vice President, a Secretary, and a Treasurer, all of whom shall be elected by the Board of Directors. The Directors may appoint an assistant treasurer, an assistant secretary and such other officers, assistant officers and agents as the Board of Directors may deem necessary or advisable. Any offices may be filled by the same person, except that the President and Secretary must be different persons.



5.2 Election of Officers. The officers of the Corporation shall be elected annually by the Board of Directors at the first meeting of each new Board and shall hold office at the pleasure of the Board.

5.3 Removal and Resignation, of Officers. Upon an affirmative vote of a majority of the Board of Directors, any officer may be removed, either with or without cause, and his successors elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect at the date of such notice or at any later time specified therein.

5.4 President. The President shall be the chief executive officer of the Corporation. He shall preside at all meetings of the Corporation and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of president of an association of home owners, including, but not limited to, the power to appoint committees from among the Owners from time to time or as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Corporation.

5.5 Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other Member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

5.6 Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Members; the Secretary shall have charge of such books and papers as the Board of Directors may direct and shall, in general, perform all the duties incident to the office of Secretary.

5.7 Treasurer. The Treasurer shall have responsibility for Corporation funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Corporation. He shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Corporation in such depositories as may from time to time be designated by the Board of Directors.

5.8 Compensation of Officers. Except as approved by the Board of Directors, no officer shall receive compensation for acting as an officer, but shall be entitled to reimbursement from the Corporation, chargeable as a Common Expense, for reasonable out-of-pocket disbursements made by the Officer in the performance of the Officer's duties. However, no officer shall be obligated to make any such disbursements.

5.9 Execution of Documents. Except as otherwise designated by the Board, the persons who shall be authorized to execute any and all contracts, documents, instruments of conveyance or encumbrances, including promissory notes, shall be (i) both the President (or any Vice President) and Secretary (or any assistant Secretary) of the Corporation or (ii) at least two (2) Directors of the Board.

5.10 Liability of Officers to Owners. No Officer shall be liable to any Owner, acting in his or her capacity as Officer, except for actual fraud, gross negligence or criminal theft. Such rights as provided in this Section shall not be deemed exclusive of any other rights to which such person may be entitled by law or under the Project Documents.

## ARTICLE 6

### OBLIGATIONS OF THE OWNERS

6.1 Monthly Assessments. Common Expense Charges and Special Assessments shall be due monthly in advance on the first day of each month. The Board shall have the right to assess late charges, in an amount determined by the Board, and interest as allowed by the Declaration. After monthly Common Expense Charges and Special Assessments have been set by the Board in accordance with the Declaration, the Board shall prepare and deliver or mail to each Owner an individual statement of the Owner's monthly Common Expense Charges and Special Assessments; thereafter, monthly statements shall be prepared and delivered or mailed only in the event of a change in the monthly Common Expense Charges or Special Assessments or the levying of a Special Assessment. The omission or failure to repair the Common Elements for any period shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same.

6.2 Special Assessments. In addition to the regular monthly Common Expense Charges the Board may levy in any one (1) year one (1) or more Special Assessments applicable to that year (or portion thereof), all as provided in the Declaration.

6.3 Voting. A Member shall be deemed in good standing and entitled to vote at any annual or special meeting of the Members, within the meaning of these Bylaws, if, and only if, the Member shall have fully paid all Common Expense Charges and Special Assessment made or levied against such Member and the Unit owned by such Member.

6.4 Owner's Personal Obligation for Payment of Assessments. The amount of total Common Expense Charges and Special Assessments against each Unit shall be the personal and individual debt of the Owner thereof. The Board of Directors shall have the responsibility to take prompt action to collect any unpaid Common Expense Charges and Special Assessments in accordance with the terms of the Declaration. So long as the Declarant owns one (1) or more of the Units, Declarant shall be subject to the provisions of the Declaration and these Bylaws.

6.5 Vendor's Lien. The obligations of each Owner to pay Common Expense Charges or Special Assessments shall be secured by a vendor's lien as described in the Declaration or said deed.

6.6 Notice of Lien or Suit. An Owner shall give notice to the Corporation of every lien or encumbrance upon the Owner's Unit, other than for taxes and Common Expenses Charges or Special Assessments, and notice of every suit or other proceeding which may affect the title to the Owner's Unit, and that notice shall be given within five (5) days after the Owners has knowledge thereof.

6.7 Owner's Maintenance and Repair.

(a) Maintenance and repair shall be according to the Declaration. An Owner shall maintain and keep in repair the interior of the Owner's own Unit, including the fixtures thereof. An Owner shall do no act or omit to do any act that will impair the structural soundness or integrity of the building.

(b) An Owner shall be obligated to reimburse the Corporation promptly upon receipt of its statement for any expenditures incurred by it in repairing or replacing any Common Element damaged by the Owner's negligence or by the negligence of the Owner's tenants, agents or guests.

6.8 Mechanic's Lien. Each Owner agrees to indemnify and to hold each of the other Owners harmless from any and all mechanic's lien claims filed against other Units and the appurtenance Common Elements for labor,

materials, services or other products incorporated in the Owner's Unit as provided in the Declaration.

6.9 General.

(a) Each Owner shall comply strictly with the provision of the Declaration and these Bylaws and amendments thereto.

(b) Each Owner shall always endeavor to observe and promote the cooperative purposes for the accomplishment of which this Project was submitted to a condominium regime.

6.10 Use of Common Elements and Limited Common Elements. Each Owners may use the Common Elements and Limited Common Elements in accordance with the purpose for which they were intended, as provided in the Declaration, without hindering or encroaching the lawful rights of the other Owners.

6.11 Right of Entry.

(a) An Owner shall grant the right of entry to the Managing Agent or to any other person authorized by the Corporation in case of an emergency originating in or threatening the Owner's Unit, whether the Owner is present at the time or not.

(b) An Owner shall permit other Owners, or their representatives, to enter the Owner's Unit for the purpose of performing installations, alterations or repairs to the mechanical, electrical or utility services which, if not performed, would affect the use of another Unit or Units; provided that requests for entry are made in advance and that such entry is at a time convenient to the Owner. In case of an emergency such right of entry shall be immediate.

6.12 Rules and Regulations. Each Owner shall comply with all rules and regulations applicable to the Corporation and the use of the condominium property.

## ARTICLE 7

### CONTRACTS AND INDEMNIFICATION

7.1 Contracts with Interested Parties. Any officer, Director or Managing Agent who is a Director, officer or employee of, or in any other manner

affiliated with, any individual, group, association, partnership, corporation, joint venture or other organization (collectively "Affiliated Entities") which transacts any business with the Corporation, Board or Managing Agent (in those capacities) shall not be disqualified by reason of that affiliation from participating with respect to the authorization, execution, delivery or performance of any contract between the Corporation and the Affiliated Entity, provided that such person's affiliation is disclosed in writing to the Board before the Board's authorization of any such contract and provided further that the Board determines that the contract is on terms which are competitive with services available from similarly qualified persons or firms. Any business between the Declarant (including Affiliated Entities of Declarant) and the Corporation shall be deemed permissible without determination of competitiveness thereof or the disclosure thereof in writing.

7.2 No Personal Liability. The Board of Directors, officers or the Managing Agent shall enter contracts or other commitments as agents for the Corporation without personal liability for any such contract or commitment (except such liability as may be ascribed to them in their capacity as Owners); provided, however, that such exclusion of personal liability shall apply to the Managing Agent only so long as it is acting within the scope of authority, and the liability of any Owner on such contract or commitment shall be limited to such proportionate share of the total liability thereof that the Percentage Ownership Interest of each Owner bears to the aggregate Percentage Ownership Interests of all of the Owners as set forth in the Declaration.

7.3 Indemnification. No Director of the Corporation shall be liable to any person, business entity or other enterprise for any action (other than actual fraud, gross negligence or criminal theft) taken pursuant to the Declaration of the Corporation, and the acceptance by any part of a deed to any Unit in the Project shall constitute such party's covenant and agreement that such liabilities shall not exist. The Corporation shall further indemnify any Director, officer, agent or employee, or former Director, officer, agent or employee of the Corporation, or any person who may have served at its request, as a Director, officer partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against expenses actually and necessarily incurred by such person and any amount paid in satisfaction of judgments in connection with any action, suit or proceedings whether civil or criminal in nature, in which such person is made a party by reason of being or having been such a Director, officer or employee (whether or not a Director, officer,

agent or employee at the time such costs, or expenses are incurred by or imposed upon such person), except in relation to matters as to which such person shall be adjudged in such action, suit or proceeding, to be liable for gross negligence or willful misconduct in performance of such person's duty. The Corporation may also reimburse to any Director, officer or employee, the reasonable cost of settlement of any such action, suit or proceeding, if it shall be found by a majority of the committee of the Directors not involved in the matter in controversy, whether or not a quorum, that it was to the interest of the Corporation that such settlement be made and that such Director, officer or employee was not guilty of gross negligence or willful misconduct. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights to which such Director, officer agent or employee may be entitled by law or under any Bylaw, agreement, vote of Members, or otherwise. Any sums paid or agreed to be paid by the Corporation with respect to any such indemnification shall be a Common Expense.

## ARTICLE 8

### BOOKS AND RECORDS

8.1 Maintenance. Complete and correct records of account and minutes of proceedings of meetings of Members, Directors, and committees shall be kept at the Project office. A record containing the names and addresses of all Members entitled to vote shall be kept at the registered office or principal place of business of the Corporation.

8.2 Inspection. The Project Documents shall be available for inspection and copying as provided in the Declaration.

## ARTICLE 9

### GENERAL PROVISIONS

9.1 Amendment. These Bylaws shall be amended as provided by Section 9.2 of the Declaration which provides, as of the date of the adoption of these Bylaws, that these Bylaws may be amended from time to time at any regular or special meeting by the affirmative vote of Members having fifty-one percent (51%) of the voting power of the Corporation provided notice of said proposed amendment is contained in the notice of any such meeting. The notice to amend the Bylaws must contain the specific wording of the proposed amendment.

9.2 Proof of Ownership. Except for those Owners who purchase a Unit from Declarant, any person, on becoming an Owner of a Unit, shall furnish to the Managing Agent or Board of Directors a true and correct copy of the original or a certified copy of the recorded instrument vesting that person with an interest or Ownership in the Unit, which copy shall remain in the files of the Corporation. A Member shall not be deemed to be in good standing nor shall the Member be entitled to vote at any annual or special meeting of Members unless this requirement is first met. Provided, however, the Corporation shall have no obligation to confirm that this requirement has been met nor shall any vote be invalid if such requirement has not been met.

9.3 Registration of Mailing Address. The Owner or several Owners of an individual Unit shall have one and the same registered mailing address to be used by the Corporation for mailing of monthly statements, notices, demands and all other communications and such registered address shall be the only mailing address of a person or persons to be used by the Corporation. The registered address of an Owner shall be deemed to be the mailing address of the Unit owned by that Owner unless a different registered address is furnished by that Owner to the Managing Agent or Board of Directors within fifteen (15) days after transfer of title, or after a change of address; such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized by law to represent the interest of the Owner of that Unit.

9.4 Mortgages. An Owner who mortgages his Unit shall notify the Corporation, giving the name and address of the Mortgagee. The Corporation shall maintain such information in a book entitled "Mortgagees of Condominium Units." The Corporation shall at the request of a Mortgagee of a Unit report any unpaid Common Expense Charges or Special Assessments due from the Owner of that Unit.

9.5 Compliance. These Bylaws are set forth to comply with the requirements of the Texas Uniform Condominium Act and the Texas Nonprofit Corporation Act.

9.6 Nonprofit Corporation. The Corporation is not organized for profit. Except as provided in the Declaration, no Member, member of the Board or person from whom the Corporation may receive any property or funds shall receive or shall he lawfully entitled to receive any pecuniary profit from the operation thereof, and in no event, shall any part of the funds or assets of the Corporation be paid as salary or compensation to, or distributed to, or inure to the benefit of any member of the Board except as provided herein;

provided, however, that any member of the Board may, from time to time, be reimbursed for his actual and reasonable expenses incurred in connection with the administration of the affairs of the Corporation.

9.7 Abatement and Emolument of Violations by Owners. The violation of any rule or regulations promulgated by the Board, or the breach of any Bylaw or any provision of the Declaration shall give the Corporation the right, in addition to any other rights set forth therein; (i) to enter the Unit in which, or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any person, structures, things or condition that may exist therein contrary to the intent and meaning of the provisions thereof, and the Corporation or administrator shall not be deemed guilty in any manner of trespass, and to expel, remove and put out same, using such force as may be necessary without being liable to prosecution or in damages; and (ii) to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

9.8 Invalid Provision; Severability. If any part of these Bylaws shall be held invalid or inoperative for any reason, the remaining parts, so far as possible and reasonable, shall be valid and operative, and effect shall be given to the intent manifested in the portion held invalid or inoperative.

9.9 Table of Contents; Headings. The table of contents and headings used in these Bylaws have been inserted for administrative convenience only and do not constitute matter to be construed in interpretation of these Bylaws.

9.10 Conflict Between Declaration and Bylaws. If there is a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with the Texas Uniform Condominium Act.

9.11 Meetings by Remote Communications Technology. Subject to the provisions of the Texas Business Organizations Code, and the Certificate of Formation of the Corporation, a meeting of the Members of the Corporation, the Board of Directors, or any committee designated by the Board of Directors may be held by means of a remote electronic communications system, including videoconferencing technology or the Internet, only if:

- (1) each person entitled to participate in the meeting consents to the meeting being held by means of that system; and



(2) the system provides access to the meeting in a manner or using a method by which each person participating in the meeting can communicate concurrently with each other participant.

ADOPTED THIS 21<sup>ST</sup> DAY OF FEBRUARY, 2007, BY THE INITIAL BOARD OF DIRECTORS NAMED IN THE CERTIFICATE OF FORMATION.

**HERRIN LOFTS CONDOMINIUM  
HOMEOWNERS ASSOCIATION**

By: \_\_\_\_\_  
Mir Azizi, President

**THE STATE OF TEXAS     §  
                                  §  
COUNTY OF HARRIS     §**

This instrument was acknowledged before me on the \_\_\_\_ day of February, 2007, by MIR AZIZI, President of Herrin Lofts Condominium Homeowners Association, a Texas non-profit corporation, for and on behalf of said corporation.

\_\_\_\_\_  
**NOTARY PUBLIC STATE OF TEXAS**

# HERRIN LOFTS CONDOMINIUM

## RULES AND REGULATIONS

### PREAMBLE / INTRODUCTION

These Rules and Regulations ("Rules") have been adopted by the Board of Directors ("Board") of Herrin Lofts Condominium Association (the "Association") pursuant to the authority of and are subject to the Herrin Lofts Condominium Declaration ("Declaration"), the Bylaws of the Association ("Bylaws") and the Texas Condominium Act (Chapter 82 of the Texas Property Code; specifically Section 82.102).

### ACTIVITIES

**Activities should be conducted in such a manner as to not interfere with the rights, comforts or convenience of others.**

- Written permission must be obtained from the Association before any parties are held in the common areas.
- Residents are solely responsible for the conduct of their guests.
- Residents are responsible to keep the property free of litter and to clean up after any social gathering.
- Residents are liable and may be assessed for any damage, mutilation or defacing of the Association's property caused by the resident, his or her children and/or damage caused by the resident's guests or by guests of their children.
- Residents are liable and may be assessed for any damage, mutilation or defacing of the Association's property caused by the resident's tenant, tenant's children and/or damage caused by tenant's guests or by guests of the tenant's children.
- Residents should curtail loud noise after 10:00 p.m.
- Visitors may use the common area facilities if accompanied by a resident.

- Residents cannot play in the parking or driveway areas.
- Sidewalk sales are prohibited.
- Soliciting on the property is prohibited.
- Possession and or use of any weapons - firearms, air guns, BB guns, knives, slingshots, bow and arrows, etc. is prohibited on the property.
- Per City and County ordinances, fireworks are strictly prohibited.
- Storage of kerosene, gasoline or any flammable or explosive agent is prohibited.
- All units are to be utilized for single-family residence purpose only.
- Sunbathing is permitted in the common areas.
- All residents are responsible to provide the management office with their telephone numbers and emergency contact information. Residents who move from the property or have tenants who move from the property are responsible to provide the management office with a forwarding address.

## ALTERATIONS

**Prior written approval from the Association is required before any structural or plumbing alteration can made to the interior or exterior of unit. Failure to obtain such approval may result in the removal of the alteration and/or restoration of the unit to it's original condition at the owner's expense.**

**Alterations include, but are not limited to the following :**

- Exterior doors and windows, window or balcony screens, light fixtures, patio covers, trellises, awnings, burglar bars, and satellite dishes.
- With written Association approval, exterior window may be replaced with a window that swings from Showcase Windows or other Association approved window. Resident is responsible for water tight professional installation.

- Interior alterations consist of removing walls or altering any structural changes including electrical wires and plumbing within the unit.
- Once approved, only licensed contractors shall make interior and exterior alterations. Residents are responsible to inform their contractors to remove debris from the property. Contractors are prohibited from discarding material in the Association receptacles.
- Residents are prohibited from installing or causing to be installed any wiring for cable line, electrical or telephone installation, or for any other purposes such as television or radio antenna on the exterior of any building. This rule includes wiring or cable strung on the walls of any building, out the window of any unit, or on the roof of any building, except as expressly approved in writing by the Association.

## **BALCONIES AND PATIOS**

**Residents are responsible for keeping their patios or balconies clean and free of excessive debris.**

- Items placed on the balcony of a unit with a balcony or the patio of a unit with a patio must not affect or interfere with or compromise the structural soundness or integrity of the balcony or patio, as applicable, including any railing or walls.
- Residents are not permitted to store bicycles in the hallways, at the front entrances of a unit, on the balconies or patios of the unit or at the entrances to the buildings.
- Residents are not permitted to store health equipment, tools, interior types of furniture, appliances, pool toys and cleaning items in the hallways or on their balconies or patios.
- Hanging clothes, sheets, towels, etc. on the balconies or patios or in the hallways is not permitted.
- Residents must receive written permission before installing any curtains,

blinds, screens or any other type of covering on their balconies or patios other than what is designated in the Condo Documents.

- Residents will be required to remove any type of installation ( including shades, etc.) visible from the exterior of the unit that has not been maintained or for which the resident has not received written approval from the Association.
- Fake flowers or plants that are faded must be removed.
- Outdoor grilling or barbecuing on the balconies or patios or in the hallways is strictly prohibited as per City of Houston Fire Code.
- Residents should use appropriate outdoor furniture on their patios or balconies. Indoor, upholstered type furniture is prohibited.
- Residents are responsible to maintain special locks, doorbells and security signs that they have installed or caused to be installed.
- Management has the right to enter any patio or balcony without prior notice in case of an emergency.
- Housing of pets on patios is prohibited.

## **BURGLAR BARS**

**Written permission must be obtained from the Association before a resident can install burglar bars on the windows or doors of his or her unit.**

- Burglar bars, installed on the inside of the unit, must be painted white or off-white.
- Burglar bars installed on the outside of the doors and/or windows must correspond with the existing ironwork on the property. The Association will provide the name and paint color.

## PARKING

**If a resident has an assigned parking space, the resident must use only that parking space. It is the resident's responsibility to keep their parking space, storage area, garbage bin and trash receptacle clean and free of excessive debris.**

- Residents have the right to contact a bonded towing company to remove any unauthorized vehicle parked in the resident's designated parking space.
- Cars, trucks or motorcycles are the only types of vehicles that can be parked in the assigned spaces.
- Residents are prohibited from parking any type of trailer or commercial vehicle on the property.
- Any inoperable vehicle with expired stickers or license plates will be towed.
- Go-carts and 4-wheelers are prohibited on the property.
- Residents can not store vehicles in their parking space or on the property.
- Bicycles may not be stored in the parking area. Bicycles must be stored in the designated area.
- Residents are responsible to obtain locks for their storage rooms.
- Car washing is permitted in the parking common area.
- No major vehicle repairs are permitted in the common area.
- Residents can not leave furniture, boxes, pots, bags of soil or mulch, plants or any other item in their parking area.

## CHILDREN

**Parents are responsible and will be assessed for any damage, mutilation or defacing of Association property caused by their children and /or guests of their children.**

- Juveniles under the age of 17 are subject to the Harris County Juvenile Curfew Order Juvenile curfew hours: Midnight to 6 a.m. seven days a week.
- Ball playing such as baseball, football, golf and soccer is prohibited on the property.
- Playing in the driveways or streets is prohibited.

## DUMPSTERS

**The dumpsters are for the use of residents only. Contractors and subcontractors are prohibited from using the trash receptacles. It is strictly prohibited to discard air-conditioning condenser unit, appliances and furniture in the common areas.**

- Moving and other type boxes should be collapsed before placing in the trash receptacles.
- Residents should make arrangements to have air-conditioning condenser units, refrigerators and other appliances removed at the time of a new installation.

## ENTRANCES

**Residents are required to keep the entrance to their unit clean and free of debris.**

- All stair landings and entrances to the units must be kept free of objects such as bicycles, clothing, toys, pool floats and pool toys, discarded trash, etc.
- Hanging clothes, towels or other articles on the patio, stairs or railings is prohibited.
- A single decorative bench or chair is permitted at an entrance if the size, appearance and construction is suitable for the location. The bench or chair must be removed if it interferes with the walkway or is in violation of City Fire Code.
- Statues, birdbaths, feeders and "yard art" are not permitted in the common

areas or in the front of a unit. These items must be kept on the resident's patio or balcony subject, however to other applicable Rules.

- Potted plants and hanging baskets may be placed in a reasonable and appropriate quantity and size for the area.
- Empty plant containers must be removed.
- Plant containers must be made of material suitable for outdoor use such as clay and /or wood in earth tone colors or wrought iron.
- Dead and neglected plants must be removed or they will be removed.
- No carpeting of any kind is permitted on the front entrance without written approval.
- "Yard Art" is not permitted in the front of the units.

## **FLAGS**

**Ornamental, seasonal flags, banners, pennants and windsocks are prohibited in the front or back of the unit.**

A flag of the sovereign country is the only type of flag to be displayed during appropriate occasions and in accordance with flag etiquette –

- A flag should not be used as a drapery or for any decoration in general.
- A flag should only be displayed from sunrise to sunset unless illuminated at night.
- A flag should not be draped over a balcony or patio or left out in the elements.



## HOLIDAY DECORATIONS

**Holiday decorations may be displayed no sooner than a week before the holiday and must be removed a week after the holiday.**

Because both the secular and religious celebration of Christmas extends for a longer period of time, Christmas decorations may be displayed three weeks before Christmas and must be removed no later than one day following New Years Day.

- Displays can not be placed on the roof of any building.
- Residents must not attach anything to the siding in the front or back of the unit. Violations will result in the owner being liable for the damages. The Association will replace the damaged siding and all costs will be assessed to the unit owner.
- Residents are responsible for the proper disposal of their decorations including Christmas trees. Do not leave the discarded trees in the common areas. The trees can be placed outside on trash pickup day or taken off the property to a tree recycling company.

## LANDSCAPING

**Any planting on the "limited common" areas (balconies and patios) should be done so that there shall be no possible damage to the balcony or patio structure, slab, foundation and/or intrusion into the adjoining balcony or patio areas.**

- Residents cannot plant anything or place a plant in the common areas of the property. If a resident plants in the common area, the plants will be removed without warning.
- Residents must obtain written permission before planting any permanent planting in the common area.

## MOVING

It is required that owners provide management with forwarding addresses,

**telephone numbers and emergency numbers.**

Furniture may be moved up to the units as follows:

Through the double doors and stairs on McKinney Street.

Through the stairs closest to Walker Street from the second level of the garage.

In order to move furniture into a unit using the elevator; the resident must do the following:

- A Get pads from the management and cover the elevator.
  - B Move furniture and/or boxes in through the steel double doors in the garage.
  - C Not allowed to use the wood front doors on Hutchins Street as an access point.
- Resident's are responsible to make sure their moving van does not block the street or entrance way.
  - Residents will be responsible for any property damaged caused by the moving van.
  - Movers can not park on the grass at any time.

## **OUTDOOR GRILLING**

**Outdoor grilling is prohibited on patios or balconies within 10 feet of the combustible walls or roofs or other combustible material as per the uniform fire code 1102.5.2.2. It is permissible to use electric grills.**

## **PARKING**

**The Homeowners Association has the authority to order removal without warning and at the owner's expense the following:**

- Any vehicle parked in a designated handicap space and that vehicle does not display a proper required indication of legal permission to park in such designated space.

- Any vehicle parked in a guests parking area more than 3 days without being moved.
- Any vehicle left unattended in any common area for more than 30 days.
- Any inoperable vehicle displaying an expired inspection sticker or license plate.
- Any vehicle parked in driveways or alleyways, which have been designated as fire lanes other than designated carport spaces.
- Any vehicle parked behind vehicles in the designated carport spaces.
- Any unattended vehicle left in the alleyways or streets in such manner as to impede the passage of traffic or to impair property access to parking areas.
- Any motor vehicle undergoing major repairs.

Houston City Ordinance prohibits any person from parking a trailer, semi-trailer or house trailer in excess of two (2) hours.

Houston City Ordinance prohibits parking, commercial vehicles on streets between the hours of 2 a.m. and 6 a.m.

If a homeowner has a designated parking space, that homeowner can cause an unauthorized vehicle to be removed from his or her designated parking space upon the condition that the same is removed by an insured towing company. It is suggested the owner use the towing company posted at the entrance of the property. If your vehicle or your guest's vehicle has been towed, the towing telephone numbers are listed on the signs posted at each entrance.

Any vehicle in violation of these Rules may be stickered, wheel-locked, towed pursuant to the Texas Towing Statute, or otherwise removed from the property by the Association at the expense of the vehicle's owner. In addition or in lieu of the foregoing, the Association shall be entitled to take any available legal action (including seeking mandatory injunctive relief) in the event of any violation of these rules. The Association expressly disclaims any liability for damage to vehicles on which the Association exercises the remedies for Rules violations.

## PETS

**A homeowner is granted Conditional Permission to keep or maintain pets.** Pet (s) shall be conditionally permitted in accordance with the provisions of this section. Provided that all of the following rules are met and maintained at all times, each resident shall be permitted, on a conditional basis, to keep or maintain pet(s) in compliance with the following rules (conditional permission). If any of the following rules are violated, the conditional permission to keep or maintain any pet shall be subject to being revoked by the Board in the Board's sole and absolute discretion.

**Restrictions as to pet(s).** The following rules shall apply to all residents and their pet(s). Violation of any of the following rules may be the basis for revocation of the conditional permission to keep such pet (s).

- No animal shall be kept except normal and customary household pets (i.e. dogs, cats, fish, birds, etc.). Reptile, exotic species or endangered species, are prohibited.
- As to dogs and cats, there shall be allowed only two (2) dogs and two (2) cats per unit.
- Upon request by the Association, all residents shall provide the Association with a list of the household pets kept or maintained in their unit (i.e. number, species, breed, etc.).
- No pets may be kept or bred for commercial purposes.
- No pets shall be kenneled or tethered unattended for any period of time on any balcony, patios, or any part of the limited or general common elements of the property.
- **ALL PETS MUST BE KEPT ON A LEASH OR CONTAINED AND MAINTAINED UNDER THE CONTROL OF THEIR OWNER WHILE ON THE COMMON GROUNDS. THERE SHALL BE NO EXCEPTIONS.** (the City of Houston leash law mandates this).
- No pet shall be allowed to run loose within the property. Animals, being transported from a unit to an automobile or another unit must be on a leash, securely carvered, or carried within a pet carrier.

- No savage or dangerous animal shall be kept.
- Each resident who maintains a pet shall be responsible to pick up and dispose of any defecation by such pet on the property.
- Residents are not permitted to bathe or groom dogs and/or cats outside in the common area.
- Cats are not allowed to roam on or about the property. Cat traps may be set out periodically and any stray cat caught in such a trap will be turned over to the City of Houston Department of Animal Registration and Care (or its then existing equivalent).
- Residents who keep or maintain pet (s) in accordance with these rules must be responsible pet owners and not allow their pet (s) to unreasonably interfere with the rights of other residents.
- All pet (s) shall have such care and restraint so or not to be obnoxious or offensive on account of noise, odor, or unsanitary condition.
- All pets for which the City of Houston requires a license shall have and keep current the appropriate license and shall be annually inoculated for rabies.
- There will be a \$200.00 non-refundable pet deposit for each animal.

**Violations of Rules, Revocation of Conditionally Permission.** In the event that any resident violates any of the foregoing rules, or fails or refuses to maintain and care for his /her /their pets, or allows their pets to unreasonably interfere with the rights of the other residents, or such pets are determined to be offensive on account of noise, odor, or pose a threat to other residents, the Board, in its sole discretion, shall have the right to evocate the permission to keep any pet in violation of the rules of these provisions, and the resident shall be obligated to promptly remove and relocate any such animal determined by the Board to be in violation of these provisions. The Association shall have the right to pursue all available legal remedies to cause the owner /resident to remove any such pet; including without limitation, a mandatory injunction.

**Any resident who causes any animal to be brought or kept upon the premises of the condominium property shall indemnify and hold harmless the Association for any loss, damage, cost or liability which the Association may sustain as a result of the**

presence of such animal on the premises.

## PLUMBING

Licensed professionals shall perform all plumbing repairs.

- Unless the situation is an emergency, residents must give management at least two days notice if they plan on scheduling a plumber to make repairs to their unit. If there is an emergency plumbing problem, the resident will immediately report such emergency to management.
- The water **will not** be turned off if pre-scheduled repairs have not been made and coordinated with the homeowner's office.
- Plumbing repairs, that may require turning the water off, are NOT permitted on the weekends unless there is an extreme emergency.

## RIGHT OF ENTRY

Owners or tenants, by owning or occupying a unit, grant the right of entry to the managing agents or any other person authorized by the Association in case of any emergency originating in or threatening his unit or other units, whether the owner is present or not.

In case of emergency, right of entry will be immediate.

Residents will permit representatives hired by the Association to perform installations, alterations or repairs to the mechanical or electrical services, provided the request are made in advance.

Tenants will grant the right of entry for non-emergency repairs and alterations the Owner and/or management deems necessary with advance notice.

## SATELLITE DISHES

Guidelines for the installation of satellite dishes may be obtained at the Association management office.

- Satellite dishes must be installed in accordance with the Association guidelines.
- Failure to comply with the "guidelines" could result in removal of the dish.

## SIGNS

Residents shall not post any sign, window decal, advertisement or poster of any kind on the property which may be visible from the exterior of a unit.

## TRASH

- Trash receptacles are to be kept their designated area.
- All garbage must be placed in secured garbage bags.
- Do not place loose garbage in the trash receptacles.
- Residents are responsible to put trash in the trash receptacles.

## WINDOWS

Residents are responsible for maintaining the windows of their unit. The Association is responsible for their window frame only.

- All windows should be kept clean and in good repair.
- It is requested that residents try to use white or off-white blinds or white liners on windows facing the outside of the unit.

- Broken blinds must immediately be removed or replaced.
- Do not hang blankets, flags, sheets or cardboard, etc. on the inside of the windows.
- Residents must obtain written Board approval before installing new windows.
- Broken windows must be promptly replaced.
- Broken or torn screens must be removed or replaced.
- Residents shall not post any sign, window decal, advertisement or poster of any kind on the property or which may be visible from the exterior of the unit.

### RULE ENFORCEMENT POLICY

The rules and regulations will be strictly enforced. Any violation and /or infraction of these rules and regulations or of the Bylaws or a provision of the Declaration will result in an assessment being charged to your account. The **Association Board of Directors** sets the rules enforcement policy as follows:

The unit owner will be sent a **First Notice** upon inspection of a said violation requiring immediate cure of same. If the matter is not cured immediately, the unit owner will be sent a second notice.

The **Second Notice** will advise the unit owner that he or she has the right to request a hearing before the Board of Directors. Said request for a hearing must be received in writing within 30 days from the date of the Second Notice letter. The Notice will also advise the owner that an assessment ranging from \$25.00 to \$200.00 will be imposed if the violation is not cured. If the violation is not cured within 30 days, the unit owner will be sent a Third Notice.

The **Third Notice** will impose a violation assessment in the amount of \$50.00 for each infraction of the Association Rules or Bylaws or provision of the Declaration.

The **Fourth Notice** will impose a violation assessment in the amount of \$100.00 for each infraction of the Association Rules or Bylaws or provision of the Declaration.



The **Fifth Notice** and each notice thereafter will impose a violation assessment in the amount of \$200.00 for each infraction of the Association Rules or By laws or provision of the Declaration.

Should the violation not be cured after processing the Fifth Notice, the Unit and Violation will be discussed among the members of the Board at a Board of Directors Meeting in order to determine the next step to be taken in enforcement of Association Rules or Bylaws or provision of the Declaration.

If said violation is not cured upon imposing the initial fine, the Association will follow through with any remedy available to have the violation corrected, this will include, but not be limited to, employing an attorney to file a lawsuit against the unit owner.

Payment for all costs incurred will become the responsibility of the unit owner.

This policy may change from time to time as deemed necessary by the Herrin Lofts Condominium Association Board of Directors.

\_\_\_\_\_  
Tenant Signature

\_\_\_\_\_  
Unit #

\_\_\_\_\_  
Date

Form 202

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



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### Certificate of Formation Nonprofit Corporation

#### Article 1 - Corporate Name

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

**Herrin Lofts Condominium Homeowners Association**

The name must not be the same as, deceptively similar to that of an existing corporate, limited liability company, or limited partnership name on file with the secretary of state. A preliminary check for the "name availability" is recommended.

#### 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:

**Mir Azizi**

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

Street Address:

**101 Crawford**

**Suite 100 Houston TX 77002**

#### Article 3 - Management (Complete items A or B)

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: **Mir Azizi**

Title: **Director**

Address: **101 Crawford Suite 100 Houston TX, USA 77002**

Director 2: **Suzanne Skie-Azizi**

Title: **Director**

Address: **101 Crawford Suite 100 Houston TX, USA 77002**

Director 3: **Patrick Ezzell**

Title: **Director**

Address: **101 Crawford Suite 100 Houston TX, USA 77002**

#### Article 4 - Organization Structure (You must select either A or B below)

A. The corporation will have members.

B. The corporation will not have members.

#### Article 5 - Purpose

The corporation is organized for the following purpose or purposes:

**See the attached addendum.**

#### Supplemental Provisions / Information

**See the attached addendum**

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

addendum to certificate of formation.pdf  
signed letter of consent.pdf

**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.

**Spencer H. Gardner**      **2777 Allen Parkway, Suite 1000, Houston, TX 77019**

**Execution**

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

**Spencer H. Gardner**

Signature of organizer.

FILING OFFICE COPY

**HERRIN LOFTS L.P.**

August 1, 2006

Corporations Section  
Statutory Filings Division  
Office of the Secretary of State  
1019 Brazos  
Austin, Texas 78701

Re: Permission to use name

This letter is consent given by Herrin Lofts L.P. to use the name "Herrin Lofts Condominium Homeowners Association." I understand that this consent letter is being submitted with the Certificate of Formation of Herrin Lofts Condominium Homeowners Association for its formation as a domestic non-profit corporation.

Thank you for your cooperation in this matter.

Sincerely,

HERRIN LOFTS L.P.  
By 2205 McKinney LLC, its General Partner



Mir Azizi, Manager  
2205 McKinney LLC

**ADDENDUM TO CERTIFICATE OF FORMATION  
OF  
HERRIN LOFTS CONDOMINIUM HOMEOWNERS ASSOCIATION**

**ARTICLE 3 - MANAGEMENT**

The following supplements Article 3:

To the extent permitted by statute, the directors shall have the authority to amend the bylaws of the Association.

**ARTICLE 4 - MEMBERS**

The following are supplemental provisions to Article 4:

Each Owner, as that term is defined in the Declaration, shall be a member of the Association, and each Owner shall be entitled to such voting rights as are set forth in the Declaration. The qualifications, class, voting and other rights and privileges of the members, and the liability of the members for assessments, dues, fees and the like, and the collection thereof, shall be as set forth in the Declaration.

The ownership interest of each Owner shall be uncertificated. The information required by the Texas Business Organizations Code to be given to the Owner shall be in the manner set forth in the governing documents or as otherwise provided by the directors of the Association.

**ARTICLE 5 - PURPOSES**

The following are supplemental provisions to Article 5:

The Association is organized to be operated exclusively for carrying on a homeowners association, as that term is defined by Section 528(c) of the Internal Revenue Code of 1987, as amended. The Association is formed to provide for the acquisition, construction, management, maintenance, and care of Association property as described in the Herrin Lofts Declaration of Condominium filed for record in the office of the County Clerk of Harris County, Texas (the "Declaration") and any additions thereto as may be brought within the jurisdiction of the Association, in accordance with the terms and conditions of the Declaration to exercise the duties and prerogatives of the Association as set forth in the Declaration, and to promote the health, safety, and welfare of members of the Association.

The Association shall possess and may exercise all of the rights, powers and privileges which a non-profit corporation organized under the Texas Business Organizations Code, or by any other law of the State of Texas, may now or hereafter have or exercise, together with all powers necessary or convenient to the conduct, promotion, or attainment of the activities or purposes of the

Association. The rights, powers and privileges of the Association include, but are not limited to:

fixing, levying, collecting and enforcing payment by any lawful means, all charges or assessments of the Association as provided in the Declaration;

payment of all expenses in connection with the rights, powers and privileges of the Association and all expenses incident to the conduct of the business of the Association, including all licenses, taxes, or governmental charges levied or imposed against the property of the Association;

maintenance of the sidewalks and landscaping installed as part of development or in relation to the development of the property, including, but not limited to, maintenance of live trees, shrubbery, seasonal landscaping, trash receptacles, brick pavers and sidewalks, benches, irrigation and electrical systems, and irrigation of such landscaping;

assumption of obligations related to the development of the property pursuant to agreements with the City of Houston, Reinvestment Zone Number Fifteen, City of Houston, Texas, and/or the East Downtown Redevelopment Authority;

borrowing money and mortgaging, pledging, encumbering or hypothecating any or all of the real or personal property of the Association as security for the money borrowed or debts incurred; and

exercising any right, power and/or privilege set forth in the Declaration.

#### ARTICLE 6 - DISTRIBUTION OF ASSETS UPON DISSOLUTION OR LIQUIDATION

In the event of the liquidation or dissolution of the Association, whether voluntary or involuntary (other than incident to a merger or consolidation), in accordance with the provisions of the Texas Business Organizations Code applicable to non-profit corporations, the balance of all money or other property received by the Association from any source, after the payment of all debts and obligations of the Association, shall be used or distributed to (a) any non-profit corporation, association, trust, or other organization devoted to the purposes for which this Association was created; or (b) to the members of the Association at the time of dissolution, pro rata according to the respective members' percentage ownership of the condominium common property, to the extent permitted by Section 501(c)(4); or, (c) to one or more purposes permitted within the meaning of section 501(c)(4) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

#### ARTICLE 7 - CERTAIN PROHIBITIONS

No part of the property or net earnings of the Association shall inure (other than by acquiring,

constructing, or providing management, maintenance, and care of association property, and other than by a rebate of excess membership dues, fees, or assessments) to the benefit of any private member or individual, except that the Association shall be authorized and empowered to pay reasonable compensation for services actually rendered and to make payments and distributions in furtherance of the purposes of the Association set forth herein, but only to the extent permitted by the bylaws of the Association and the Declaration. Notwithstanding any other provision of these articles, the Association shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of the Association.

The Association shall not pay dividends or other corporate income to its members, directors, or officers or otherwise accrue distributable profits or permit the realization of private gain. This prohibition shall not apply to acquiring, constructing, or providing management, maintenance, and care of the property of the Association, or the rebate of excess membership dues, fees, or assessments to the members of the Association.

Notwithstanding any other provision of this Certificate of Formation, the Association shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt from taxation under Section 501(c)(4) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended.

The Association shall have no powers other than those authorized by the governing documents of the Association and by the provisions applicable to non-profit entities under the Texas Business Organizations Code.

#### ARTICLE 8 - NO DIRECTOR OR OFFICER LIABILITY; INDEMNIFICATION

A director or officer or committee member of the Association shall not be personally liable to the Association or its members or the Owners or any person claiming by or through any member for damages for any act or omission in his or her capacity as a director or officer, except to the extent otherwise expressly required by a statute of the State of Texas. Any repeal or modification of this Article shall be prospective only, and shall not adversely affect any limitation of the personal liability of a director of the Association existing at the time of the repeal or modification. Except as expressly provided by a statute of the State of Texas, a director or officer shall not be liable for the debts, obligations or liabilities of the Association, including a judgment, decree or order of a court.

The Association shall, to the maximum extent permitted by law, indemnify a person who was, is or is threatened to be named as a defendant or respondent in litigation or other proceeding because the person is or was a director, or officer of the Association. The Association may indemnify other persons as provided by the bylaws of the Association. The terms and conditions of indemnification shall be set forth in the bylaws.

#### ARTICLE 9 - ACTIONS WITHOUT MEETINGS

Any action required or permitted to be taken at a meeting of the Owners or Directors of the Association may be taken without a meeting and without prior notice thereof and without a vote if a written consent, setting forth the action so taken, shall be signed by Owners or Directors, as appropriate, entitled to vote thereon having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all Owners or Directors, as the case may be, entitled to vote on the action were present and voted. Such action shall be taken in accordance with any applicable provisions of the Business Organizations Code and the bylaws of the Association.