

**DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS
AND DEDICATION, AND OF CONDOMINIUM OWNERSHIP
FOR
HOBBS TAYLOR LOFTS**

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
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FOR
HOBBS TAYLOR LOFTS

THIS DECLARATION is made this _____ day of _____, 2004 (the "**Effective Date**"), by 8th & New Hampshire, L.L.C., a Kansas limited liability company (referred to in this Declaration as "**Declarant**").

RECITALS

1. Declarant is the owner of real estate located in Lawrence, Douglas County, Kansas, and described as Lot 2, in The Winter Block Addition, an addition to the City of Lawrence, as shown by the recorded plat thereof, in Douglas County, Kansas (referred to as the "**Real Estate**").

2. Declarant intends to construct a multi-story building (the "**Building**") on the Real Estate and to submit the Real Estate, together with the Building, to the provisions of the Kansas Apartment Ownership Act for condominium ownership.

3. Declarant intends that the upper floors (third, fourth and fifth floors, if any) of the Building (the "**Residential Condominiums**") shall be submitted to the Act for residential condominium ownership, and the ground level (first) floor and second floor of the Building shall be submitted to the Act for business, retail and office condominium ownership (the "**Commercial Condominiums**"), and that the Residential Condominiums and the Commercial Condominiums shall be subject to certain covenants, conditions, restrictions, easements, charges and liens as contained in this Declaration for the benefit of Declarant and Declarant's successors, grantees and assigns, and to protect the value and desirability of the Real Estate.

4. Hobbs Taylor Lofts Association, Inc. has been or will be incorporated under the laws of the State of Kansas as a not-for-profit corporation for the purpose of exercising the functions of an owners' association for the benefit of the Real Estate.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that the Real Estate referred to and described is and shall be submitted to the provisions of the Kansas Apartment Ownership Act for condominium ownership, and further Declarant declares that the Real Estate is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens described in this Declaration, for the purpose of (i) enhancing and protecting the value, desirability and attractiveness of the Real Estate, (ii) encouraging and assisting the orderly development of the Real Estate, (iii) increasing the public benefit to be derived from the Real Estate, (iv) preserving the amenities and for the maintenance of the same located on the Real Estate, (v) promoting the efficient development of the Real Estate, and (vi) protecting the owners, lessees and sublessees of property against incompatible uses of surrounding property, and (vii) promoting safety to life, health and property in the area. These easements, covenants, restrictions and conditions shall run with the Real Estate and shall be binding upon all parties having or acquiring any right, title or interest in the Real Estate, or any part thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

The words or terms used in this Declaration shall have defined meanings, as follows:

1. **"Board or Board of Directors"** shall mean and refer to the Board of Directors of the Condominium Association as more particularly defined in the Bylaws of the Condominium Association.
2. **"Building"** shall mean and refer to a multiple unit Building or Buildings comprising a part of the Property.
3. **"Bylaws"** shall mean and refer to the Bylaws promulgated by the Condominium Association under this Declaration and the Kansas Apartment Ownership Act.
4. **"Commercial Unit"** shall be the separate condominium units of the Hobbs Taylor Lofts located on the first and second floors of the Building, and described on the Drawings, and is a parcel of real property including and containing one or more rooms occupying one or more floors or a part or parts thereof, intended for independent use for retail, office, business or commercial purposes, and with a direct exit to a public street or highway or to a common area or areas leading to a public street or highway. The Commercial Units shall be described at CU-2N, which includes the approximate North Half of the second floor, CU-2S, which includes the approximate South half of the second floor, CU-1N, which includes the approximate North half of the first floor and CU-1S, which includes the approximate South half of the first floor, all as shown on the Drawings.
5. **"Common Area and Facilities" or "Common Areas"** shall mean that part of the Real Estate and all improvements located thereon for the common use and enjoyment of all the Owners and shall include all those areas which are for the use of all Owners, business invitees, and guests of Owners. Specifically included are: grounds surrounding the Buildings, driveways, parking areas, the land on which the Buildings are located, paths, sidewalks and walkways, any portion of the parking areas or lots not specifically allocated to a particular unit or as defined as a limited common area, any portions of the Buildings designated on the floor plans as common to all Owners, including, without limitation, the entryway lobby, lobbies, hallways, public restrooms, stairways and elevators, electrical, gas, telephone, water and sewer lines and connections serving all of the Owners, landscaping, plants and other materials and improvements separate from and outside of the Buildings, and other areas necessary for the safety, maintenance and existence of the Hobbs Taylor Lofts in which each Owner shall have his designated percentage of interest, as set forth in Section 2 of Article VI below.
6. **"Common Expenses"** shall mean and refer to the actual costs incurred by the Condominium Association in conducting activities in connection with the Condominium Property for which the Condominium Association is responsible pursuant to the terms of this Declaration. Common Expenses shall include, but not be strictly limited to, the following:
 - a. The cost of maintenance, management, operation, repair, and replacement of all Common Areas and Facilities within the Community which are owned, maintained and/or operated by the Condominium Association;
 - b. Unpaid Assessments that are considered by the Board of Directors as uncollectible against the Owner responsible for such assessments;

c. The cost of management and administration of the Condominium Association including, but not limited to, compensation paid by the Condominium Association to managers, accountants, attorneys, other professionals and employees;

d. The cost of utilities (including but not limited to water; electricity, gas, sewer, trash pick-up and disposal which are provided directly to the Condominium Association and not individually metered or assessed to a Unit), landscaping maintenance, and other services which generally benefit and enhance the value and desirability of the Condominium Property and which are provided by the Condominium Association;

e. The cost of any insurance maintained by the Condominium Association;

f. Reasonable reserves for contingencies, replacements, and other proper purposes as deemed appropriate by the Condominium Association;

g. The cost of bonding any person handling the funds of the Condominium Association;

h. Taxes paid by the Condominium Association;

i. Costs incurred by committees established by the Board of Directors; and

j. The costs of any other item or items to be provided or performed by the Condominium Association pursuant to this Declaration or its Articles or Bylaws, or in furtherance of the purposes of the Condominium Association or in the discharge of any duties or powers of the Condominium Association.

7. **"Condominium Association"** shall mean and refer to Hobbs Taylor Lofts Association, Inc., a Kansas not-for-profit corporation.

8. **"Condominium Property"** means the Real Estate and all improvements thereon, all easements, rights, and appurtenances belonging thereto, and all articles of personal property existing thereon for the common use of the Owners.

9. **"Declaration"** shall mean and refer to this document and all parts attached hereto or incorporated by reference.

10. **"Default Rate of Interest"** shall mean and refer to an annual rate of interest equal to the prime rate published by the Wall Street Journal from time to time as the **"Prime Rate"** (with interest hereunder adjusted as and when said Prime Rate is adjusted) plus 4% per annum, but never less than 12% per annum (so that if during any periods while interest is accruing said Prime Rate plus 4% per annum is less than 12% per annum, interest shall accrue during said periods at 12% per annum). Notwithstanding anything herein to the contrary, if, during any period, the highest lawful rate of interest which may be paid by the Owner required to pay the Default Rate of Interest under this Declaration, despite the provisions hereof, is less than the rate provided above, the interest payable by such Owner during said period shall be the highest lawful rate. If the Wall Street Journal should cease publishing a Prime Rate as described above, the Condominium Association may compute interest hereunder upon the publicly announced prime rate of any bank doing business in Douglas County, Kansas. If banks should cease announcing prime rates, the Condominium Association may elect to use 12% as the Default Rate of Interest, or may specify the rate, in lieu of said

Prime Rate, for purposes of the computation hereunder which the Condominium Association would reasonably have to pay to borrow money at the time.

11. **"Drawings"** shall mean and refer to the Plat and those Drawings attached as Exhibit A, and made a part of this Declaration by reference.

12. **"Kansas Apartment Ownership Act"** (the **"Act"** or **"Condominium Act"**) means the Kansas Apartment Ownership Act K.S.A. 58-3101 et seq., as amended or supplemented from time to time.

13. **"Limited Common Areas and Facilities"** or **"L.C.A."** shall mean that part of the Condominium Property and all improvements located thereon owned by the Condominium Association for the use of fewer than all of the Owners, invitees, and guests of the Owners, to the exclusion of other such Owners, business invitees, and guests as shown in the Drawings. As to any given Owner or Owners, limited common areas shall mean the common areas which are located within or affixed to his Unit, and which are for the use of the Owners, invitees, and guests of that Unit in which the areas are located or situated on the Condominium Property. Specifically included are: flues, chimneys, ducts, cables, conduits, public utility lines, water, sewer, electrical, gas, cable television lines, any irrigation system placed on the Property for landscape maintenance, hot and cold water pipes (all such utility pipes and lines are limited common areas where they service only one or two Units; where they service all Units, they shall be general common areas), bathrooms, balconies, entrances, stoops, furnaces, patios, shutters, awnings, window boxes, doorsteps, porches, decks, designated parking spaces, boilers, hot water tanks, and fixtures, or other portions of the Building servicing only a particular Unit or less than all of the Units. The percentage of the separate Unit's interest in the L.C.A. shall be computed by dividing one (1) by the number of Units that have use of the L.C.A. Notwithstanding the foregoing to the contrary, that part of the parking area shown on the Drawings as a drive-through banking facility (the **"Drive-through"**) shall be a L.C.A. solely for the Unit known as Unit 110. For the purposes of replacement, repair, and maintenance, other than normal cleaning, all Limited Common Areas and Facilities shall be deemed to be Common Areas and Facilities, notwithstanding their restricted use for the benefit of designated Units and/or adjacent Units, and the expenses of such replacement, repair and/or maintenance shall be deemed to be Common Expenses.

14. **"Lot"** shall mean and refer to the subdivision of the Real Estate in accordance with the Lawrence-Douglas County Subdivision Regulations.

15. **"Manager"** shall mean and refer to the manager, the Board of Directors, management corporation, or any other person or group of persons retained or appointed by the Condominium Association for the purpose of conducting the day-to-day operations of the Hobbs Taylor Lofts.

16. **"Owner"** shall mean and refer to the person or persons owning a fee simple absolute, or one who is a co-owner in any real estate tenancy relationship that is recognized under the laws of the State of Kansas, in one or more Units of the Hobbs Taylor Lofts.

17. **"Person(s)"** shall mean and refer to a natural individual(s), corporation, partnership, limited liability company, trustee, or other legal entity capable of holding title to real property.

18. **"Plat"** shall mean and refer to the Plat of Survey for Hobbs Taylor Lofts recorded concurrently with the recording of this Declaration in the Office of the Register of Deeds of Douglas County, Kansas.

19. **"Residential Unit"** shall be the separate condominium units of the Hobbs Taylor Lofts located on the third, fourth, or fifth floors of the Building, and described on the Drawings as Units 3A, 3B, 3C, 3D, 3E, 3F, 3G,

3H, 3I, 3J, 3K, 3L, 3M, 4A, 4B, 4C, 4D, 4E, 4F, 4G, 4H, 4I, 4J, 4K, 4L, 4M, 5A, 5B, 5C, 5D, 5E and 5F, and is a parcel of real property including and containing one or more rooms occupying one or more floors or a part or parts thereof, intended for independent use for residential purposes, and with a direct exit to a public street or highway or to a common area or areas leading to a public street or highway.

20. "Unit(s)" shall mean and refer to the Residential Units and Commercial Units collectively.

21. "Unit Designation" shall mean and refer to the combination of letters, numbers, or words which identifies the designated Units, as shown on the Drawings.

22. **Other Definitions.** Other terms may be defined in specific provisions contained in this Declaration and shall have the meaning assigned in such definition.

ARTICLE II

CONDOMINIUM PROPERTY

1. **Description of Units.** The Condominium Property will consist of one (1) mixed-use Building containing the Units as shown on the Drawings, which show the site plan of Hobbs Taylor Lofts, the location of the Building, the floor plans and elevations for each of the Units, the area of each, and the dimensions and designation for each Unit. The Units are identified by Unit numbers, as shown on Exhibit C and on the Drawings, and the legal description of each Unit is designated by Unit number as shown on Exhibit C and on the Drawings.

2. **Condominium Property.** The Condominium Property is hereby divided into two (2) separately designated and legally described freehold estates, herein described and referred to as the "Common Areas and Facilities," and the "Units." The Unit designations, the dimensions, architectural style, approximate area, the location and layout of each Unit, and the immediate Common Area and Facility or L.C.A. to which each Unit has access are shown on the Drawings. The layout, location, designation and dimensions of the Common Areas and Facilities and the L.C.A.'s are also shown on the Drawings.

3. **Units.** Each Unit and the appurtenant undivided interest in the Common Areas and Facilities of the Condominium Property shall together comprise one condominium Unit, shall be inseparable, and may be conveyed, leased, rented, devised or encumbered as a condominium Unit. Each of the Units hereinbefore declared and established as a freehold estate shall consist of all the space bounded by the undecorated surfaces of the perimeter walls, floors and ceilings of each such Unit, including the vestibules and balconies, as designated on the Drawings, projected, if necessary, by any partitions or roof rafters to constitute a complete enclosure of space; provided that, wherever such undecorated surfaces or the area immediately adjoining such surfaces consist of lath, wallboard, sheetrock, plasterboard, plaster, concrete, or wooden flooring (collectively, "**Undecorated Surfaces**"), all of such Undecorated Surfaces contiguous to such surface shall be included within the Unit but excepting the space occupied thereby lying outside the perimeters of the Unit. The dimensions, layouts and descriptions of each such Unit are shown on the Drawings and the Units include without limitation:

a. The decorated surfaces, including paint, lacquer, varnish, wallpaper, tile, paneling, and any other finishing materials applied to said perimeter walls, floors and ceilings, and also the aforesaid finishing materials applied to the interior walls, floors and ceilings;

b. All windows, screens and doors, inclusive of the frames, sashes and jambs in the interior and perimeter walls, and the space occupied thereby;

c. The space within all fixtures located within the bounds of a Unit and the space occupied by the fixtures themselves;

d. All unenclosed space, if any, within or occupied by structural parts of the Building which may project into the Unit, as defined above, from the unfinished perimeter floor level to the unfinished perimeter ceiling level and including, by way of illustration but not by way of limitation, the space between the shelves of built-in bookcases, if any, and the space within the built-in cabinets, if any; and

e. All space between interior walls, floors and ceilings, including the space occupied by structural and component parts of the Building and by utility pipes, wires, ducts and conduits.

But, excepting therefrom all of the following items located within the bounds of the Unit, as defined above:

f. The structural and component parts of all interior walls, floors and ceilings, except the decorated surfaces thereof;

g. All structural portions of the Building lying within the bounds of the Unit, as above defined; and

h. All plumbing, electric, heating, cooling, ventilating and other utility or service lines, pipes, ducts, wires, plugs, outlets, conduits, and valves lying within the bounds of a Unit as above defined, but which also service other Units within the Condominium Property.

Each Unit fronts directly upon and has access to Common Areas and Facilities leading to a public street or highway.

4. **Parking Areas.** The Common Area includes parking areas for automobiles of the Owners, their employees, invitees, guests, and families, except that the Drive-through, as shown in the Drawings, shall be a L.C.A. These areas are shown on the Drawings. The parking areas, except for the Drive-through, may be changed at any time and from time to time by Declarant or by the Condominium Association. Those spaces not designated as L.C.A.'s will be Common Areas for the use and benefit of all Units. Thereafter, subsequent use and assignment of parking space shall be pursuant to regulation of the Condominium Association; provided that no change in designation of parking space shall be made for the benefit of an Owner which discriminates against another Owner without the latter's consent, unless otherwise specifically set forth in this Declaration.

5. **Exclusive Ownership.** Each Owner or Owners shall be entitled to the exclusive ownership and possession of such Owner's Unit, subject to the provisions of this Declaration. Such Owners may use the general and limited common areas in accordance with the purposes for which they are intended and as they may otherwise agree between themselves, so long as they do not hinder or encroach upon the lawful rights of other Owners.

ARTICLE III

CONDOMINIUM ASSOCIATION

1. **Membership.** As more fully set forth in Article XIII, an Owner of a Unit in the Hobbs Taylor Lofts shall automatically, upon becoming the Owner of said Unit, be a member of the Condominium Association. Such

membership shall terminate upon the sale or other disposition by such member of his ownership interest, at which time the new Owner of such Unit shall automatically become a member of the Condominium Association. No tenant or occupant of a Residential Unit, if such tenant or occupant is not an Owner, shall be a member; except that a tenant of a Commercial Unit may be, but shall not be required to be, a member of the Condominium Association so long as (i) such tenant has possession of the Commercial Unit; (ii) the rental agreement between the Owner of such Commercial Unit and its tenant shall designate such tenant as the member in the place of such Owner for the time the tenant has possession of the Commercial Unit, or such shorter time as may be agreed by the Owner and such Owner's tenant; (iii) the tenant agrees to assume all responsibilities and obligations of the Owner as set forth in this Declaration; (iv) the tenant agrees to be bound by the terms of this Declaration as if the tenant were the Owner of such Commercial Unit; and (v) the Owner notifies the Condominium Association of the designation of such Owner's tenant as a member. Upon the designation of a tenant of a Commercial Unit as a member of the Association, such tenant shall take the place of the Owner in the Condominium Association and such tenant shall be entitled to all voting rights of such Owner and shall have all obligations of an Owner as set forth in this Declaration, including, without limitation, obligations for the payment of a share of the Common Expenses and any assessments due on such Commercial Unit; provided, however, that notwithstanding the designation of a tenant as a member of the Association by an Owner of a Commercial Unit, the Owner of such Commercial Unit shall be responsible for all of the obligations of an Owner under this Declaration and shall be jointly and severally liable with such tenant for the payment of all amounts due by an Owner under this Declaration, including, without limitation, the payment of such Owner's share of the Common Expenses and all assessments levied against such Commercial Unit and/or against such tenant's leasehold interest, and the Condominium Association may place a lien on such Commercial Unit and/or on such tenant's leasehold interest, for all unpaid amounts due under this Declaration and foreclose on such Commercial Unit as set forth in this Declaration.

2. **Bylaws.** The administration of the Condominium Property and the Condominium Association shall be governed by the Bylaws, a true copy of which is attached to this Declaration as Exhibit B and, by reference, made a part of this Declaration. No modification of or amendment to the Bylaws shall be valid unless set forth in an amendment to this Declaration and such amendment is duly recorded.

3. **Duties.** From the proceeds of fees and charges received pursuant to this Declaration, the Condominium Association shall have the following duties:

a. Improve, maintain and repair the Common Areas and Facilities and replace items therein when necessary, including, without limitation, the following: the parking areas; entryway lights, signs and structures; water mains, utility lines, and sanitary and storm sewers, except to the extent such repair and maintenance shall be provided or furnished by the City of Lawrence, Kansas, or public utility companies; and detention basin and drainage ways necessary for the flow of surface waters.

b. Maintain the lawns and landscaping located on the Common Area and Facilities.

c. Remove snow and ice from the parking areas and sidewalks.

d. Pave, construct, curb, repair, oil, maintain, repave and reconstruct the parking areas located on or across the Common Areas and Facilities, except for the Drive-through, and such easements or other areas as it may from time to time acquire, and control traffic in whatever manner it reasonably deems appropriate on the parking areas which is not otherwise subject to exclusive traffic control by governmental authorities.

e. Provide such lighting and safety and directional signs as it deems advisable along the parking areas located in the Common Area and Facilities to the extent not provided by governmental authorities.

f. Pay all real estate taxes levied against the Common Area and Facilities, except to the extent such real estate taxes are assessed against and levied upon each Owner's respective percentage of ownership in the Common Areas and Facilities.

g. Comply, on behalf of the Owners, with the obligations in one certain parking agreement dated March 25, 1997, and recorded on April 28, 1997, in Book 577, beginning at Page 233, in the Office of the Register of Deeds of Douglas County, Kansas, as may be amended from time to time (the "**Parking Agreement**"), and with one certain Operation and Easement Agreement dated April 10, 1997, and recorded on April 28, 1997, in Book 577, beginning at Page 243, in the Office of the Register of Deeds of Douglas County, Kansas, as may be amended from time to time (the "**OEA**"), and the costs thereof shall be a Common Expense of the Condominium Association.

h. Obtain and provide public liability, casualty, and such other insurance deemed necessary by the Board of Directors for the Common Areas and Facilities and the Units as more specifically set forth in Article X of this Declaration.

i. Make, amend, and enforce rules and regulations covering the Common Area and Facilities, from time to time, that the Board of Directors considers to be necessary for the enjoyment by the Owners of the Common Area and Facilities and for the preservation of the quality and appearance of the Condominium Property.

j. Do and perform such other things as may from time to time be necessary to maintain the quality and appearance of the Hobbs Taylor Lofts.

The frequency and materials to be used in the performance of all such routine repair, maintenance and care shall be in the sole discretion of the Board of Directors of the Condominium Association and shall not be subject to the control of any Owner. In the event that the need for non-routine maintenance, repair or care or for extraordinary services to any part of the Real Estate shall be caused by or through the willful act or negligence of an Owner, the Owner's employees, agents, guests or invitees, or notwithstanding anything in this Declaration to the contrary, if the maintenance, repair or care of a Limited Common Area servicing only one (1) Unit is performed by the Association, the cost of such maintenance, repair or care, may be added to and become an additional fee or charge, in addition to the fee or charge to which such Owner's Unit is subject, if any, and shall be paid by such Owner within thirty (30) days after written demand therefor from the Board of Directors of the Condominium Association, and shall be enforceable and secured by a lien as in the case of all other fees or charges.

4. **Powers.** The Condominium Association, through its Board of Directors, shall have the power to:

a. Fix, levy and collect fees, charges, or assessments whether regular or special, as Common Expenses or otherwise, and impose liens for the purpose of performing its duties under this Declaration.

b. Collect from the Owners and pay as Common Expenses real estate taxes levied against the Common Area and Facilities, except to the extent such real estate taxes are assessed against and levied upon each Owner's respective percentage of ownership in the Common Areas and Facilities.

c. Make and enforce reasonable rules and regulations governing the use of the Common Area and Facilities, and the maintenance of the Real Estate and Building in Hobbs Taylor Lofts, which rules and regulations shall be consistent with the rights and duties established by this Declaration. The Board of Directors shall, in addition, have the power to levy sanctions against an Owner for violation of this Declaration, the Bylaws or any rules and regulations promulgated by the Condominium Association, which sanctions may include reasonable monetary fines and suspension of the right to vote; provided, however, that if an Owner serves written notice to the Board of Directors of the Owner's appeal of such sanction or fine within thirty (30) days following the Condominium Association's delivery of notice of such sanction or fine to the Owner, the sanction or fine may not be imposed on the Owner until the Owner has been heard by the Board of Directors with respect to the reason for the imposition or fine and thereafter the Board of Directors, by a majority vote, agrees to the imposition of such sanction or fine. The Board of Directors shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. In addition, the Condominium Association, through the Board of Directors may, by contract or other agreement, enforce city ordinances or permit the City of Lawrence to enforce ordinances on the Real Estate for the benefit of the Condominium Association and the Owners.

d. Perform, carry out and exercise any and all other powers, functions, measures and tasks deemed necessary by the Condominium Association for the convenience, benefit and enjoyment of the Owners, and to fix, levy and collect any fees and charges necessary to pay the cost of any of the foregoing.

e. Employ a management company or a manager, at a reasonable rate of compensation established by the Condominium Association, to perform such duties and services as the Condominium Association shall authorize, including, but not limited to, the duties listed in paragraph 3 of this Article III. No management contract or agreement shall, however, be for a period longer than three (3) years from the date of execution, and all such management contracts or agreements shall contain a provision allowing termination thereof by the Condominium Association at any time, with or without cause, on sixty (60) days prior written notice to the manager or management company.

5. **Implementation of Powers and Duties.** The Condominium Association shall carry out its duties and exercise its powers pursuant to the following provisions:

a. **Limitation Upon Liability of the Condominium Association.** Notwithstanding the duty of the Condominium Association to maintain and repair parts of the Condominium Property, the Condominium Association shall not be liable to any Owner or the Owner's employees, agents, invitees, guests or tenants, or family, for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the Condominium Property to be maintained and repaired by the Condominium Association as required by this Declaration.

b. **Restraint Upon Assignment of Shares in Assets.** The share of an Owner in the funds and assets of the Condominium Association cannot be assigned, hypothecated or transferred in any manner, except as an appurtenance to the Owner's Unit.

c. **Approval or Disapproval of Matters.** Whenever the decision of an Owner is required upon any matter, whether or not the subject of a Condominium Association meeting, such decision shall be expressed by the same person who would cast the vote of such Owner if in a Condominium Association meeting, unless the joinder of record Owners is specifically required by this Declaration.

d. **Books of Receipts and Expenditures.** The Board of Directors shall keep detailed accurate records, in chronological order, of receipts and expenditures affecting the Common Area and Facilities and the operations under this Declaration, and such record shall specify and itemize the maintenance and repair expenses of the Association and any other expenses incurred. Such records and any vouchers authorizing payments shall be available for examination by Owners at convenient weekday hours.

e. **Legal Action.** The Condominium Association shall have the right and authority, but not the obligation, for and on behalf of the Owners to initiate or defend any legal action or claim arising out of their ownership of Units, this Declaration, or otherwise, and to negotiate any settlement thereof as a special assessment that may be levied upon the Owner or Owners against whom such legal action or claim shall have been asserted.

f. **Committees.** The Board of Directors of the Condominium Association may establish committees for such purposes as it shall deem advisable, and may appoint an executive committee consisting of not more than three (3) board members to act for and on behalf of the Board of Directors between meetings of the Board of Directors. The Board of Directors is specifically authorized to establish a "**Residential Committee**" and a "**Commercial Committee**." The Residential Committee and the Commercial Committee may be authorized to perform such actions as authorized by the Board of Directors, which for the Residential Committee may include, without limitation, governing the Residential Units and adopting reasonable rules and regulations relating only to the Residential Units, and which for the Commercial Committee may include, without limitation, governing the Commercial Units and adopting reasonable rules and regulations relating only to the Commercial Units. Notwithstanding the foregoing, the Board of Directors shall retain control and authority over all the Units and over such Residential Committee and the Commercial Committee and all such rules and regulations promulgated by such Committees.

g. **Borrow Money.** The Board of Directors shall have the right to borrow money to meet requirements from time to time for working capital, Common Expenses and emergencies; however, no single loan shall exceed fifteen percent (15%) of the Condominium Association's annual budget, loans at any time outstanding shall not exceed seventy-five percent (75%) of the Condominium Association's annual budget in the aggregate, and no loan shall be entered into having a maturity date in excess of five (5) years. Any loan or loans in excess of such limits or for a longer maturity shall be made only with the affirmative vote in person or by proxy of at least eighty percent (80%) of the votes at an annual or special meeting of the members.

6. **Voting.** On all matters, unless excluded by this Declaration, to be decided by the Condominium Association, each Owner shall have voting rights as set forth in this Declaration. Except as otherwise provided in this Declaration, an Owner of a Unit, upon becoming an Owner, shall be a member of the Condominium Association and remain a member for the period of his ownership. Except as otherwise provided in the Act, this Declaration or the Bylaws, a majority of the aggregate interest present at any meeting or by proxy shall be sufficient to act on matters brought before the Condominium Association. Meetings of the Condominium Association shall only be conducted when a quorum is present, as defined in the Condominium Association Bylaws.

7. **Failure to Comply.** Each Owner shall comply strictly with the provisions of this Declaration, the Bylaws of the Condominium Association, and the rules, regulations, decisions and resolutions of the Condominium Association and its committees adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for sanctions, an action to recover sums due, for damages or injunctive relief or both, and for reimbursement of all costs, including attorneys' fees incurred in connection therewith.

8. **Payment of Assessments.** All assessments shall be due on the first (1st) day of each month following the meeting at which time assessments are levied by the Condominium Association, and may be payable in one annual payment or in monthly installments, at the option of the Owner. The amount of the Common Expenses assessed against each Unit shall be the personal and individual debt of the Owner thereof. No Owner may exempt himself from liability for this contribution toward the Common Expenses by waiver of the use of enjoyment of any of the Common Area and Facilities or by abandonment of his Unit. All assessments which are not paid within ten (10) days from the date they are due and payable become delinquent and are subject to interest at the Default Rate of Interest and penalty charges. The Condominium Association or Manager shall have the responsibility of taking prompt action to collect any unpaid assessment which becomes delinquent.

9. **Lien of Association.** The Condominium Association shall have a lien upon the estate or interest of any Owner in his Unit for the payment of the portion of the Common Expenses chargeable against the Unit that remains unpaid for ten (10) days after the portion has become due and payable. The lien is effective at such time as the unpaid amounts become delinquent and shall thereupon be a continuing lien on the Unit of the non-paying Owner, and the Condominium Association may, but shall not be required to, file a statement (a "**Lien Statement**") in the office of the Register of Deeds of Douglas County, Kansas, setting forth the amount due and the lien in favor of the Condominium Association. The Lien Statement shall contain a description of the Unit, the name or names of the record Owner or Owners thereof, and the amount of the unpaid portion of the Common Expenses and the monthly or other periodic payment obligation of the Owner for future assessments. The Lien Statement and the lien shall be valid as to the unpaid assessments described in the Lien Statement and assessments that shall thereafter remain unpaid for ten (10) or more days after they are due and payable. In addition to the rights of the Condominium Association as provided in this Section, any payment owed by an Owner that remains unpaid for ten (10) days after it has become due and payable shall accrue interest thereafter at the Default Rate of Interest, together with all expenses, including attorneys' fees incurred by the Board of Directors in any proceeding brought to collect such unpaid portion of the Common Expenses or to prepare, record and/or enforce the Lien Statement and/or the lien. The lien against any Unit shall continue for a period of five (5) years from the date a Lien Statement is recorded in the Office of the Register of Deeds of Douglas County, Kansas, or if a Lien Statement is not so recorded, then from the date of delinquency and no longer unless a foreclosure action shall have been filed. In the event such action is filed within five (5) years from the date the Lien Statement is recorded, or if not recorded, within five (5) years from the date of delinquency, the lien shall continue until termination of the action and until sale of the Unit under the execution of judgment establishing the same.

10. **Priority of Condominium Association's Lien.** The lien provided for in Section 9 of this Article is prior to any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of bona fide first mortgages that have been filed for record before the lien of the Condominium Association came into existence, and may be foreclosed in the same manner as a mortgage on real property in an action brought by the Condominium Association after authorization from the Board of Directors.

11. **Non-Liability of Judicial Sale Purchaser for Past Due Common Expenses.** Where the mortgagee of a first mortgage of record or other purchaser of a Unit acquires title to the Unit as a result of a judicial sale resulting from litigation to which the Condominium Association has been made a party, such acquirer of title, his successors and assigns, shall not be liable for the share of the Common Expenses or other assessments levied by the Condominium Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be a Common Expense collectable from all of the Units, including that of such acquirer, his successors or assigns.

12. **Liability for Assessments Upon Voluntary Conveyance.** In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor and such

Unit for the grantor's share of the Common Expenses of the Condominium Association up to the time of the grant of conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee therefor; provided, however, that any such grantee shall be entitled to a statement from the Manager, the Condominium Association, or the Board of Directors setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth. As used in this Section 12, "grantor" shall include a decedent's estate, and "grantee" shall include a devisee or intestate heir of such decedent.

13. **Dispute as to Common Expenses.** Any Owner who believes that the portion of Common Expenses chargeable to his Unit, for which a Lien Statement has been filed by the Condominium Association, has been improperly charged against him or his Unit may commence an action in the District Court of Douglas County, Kansas, seeking discharge of all or any portion of such lien.

14. **Levying Assessments.** The Condominium Association shall levy assessments upon the Owners in the following manner and for the following reasons:

a. Assessments shall be made as a part of the regular business of the Condominium Association at any regular or special meeting thereof as provided in the Bylaws of the Condominium Association. Notice of the assessment, amount thereof, and the purpose for which it is made whether regular or special, including an annual budget for expenditures and operation, shall be served on all Owners affected by delivering a copy of the same to the Owner personally or by mailing a copy of the notice to the Owners at their addresses of record at least ten (10) days following the date for such meeting.

b. Assessments shall be made for the repair, replacement, general maintenance, management and administration of Common Areas and Facilities, Limited Common Areas and Facilities, fees, costs and expenses of the Manager, taxes for Common Area and Facilities and Limited Common Areas and Facilities, if any, and for the Owners' percentage share of any special improvement district assessments. Assessments shall be based upon and computed by using the percentage of interest that each Owner has as set forth in Section 2 of Article VI.

c. Assessments may also be made for any purpose contemplated by this Declaration.

d. The Condominium Association may levy, in any fiscal year thereof, an "improvement assessment" applicable only for that year, for the purpose of defraying, in whole or in part, the costs of any action or undertaking on behalf of the Condominium Association in connection with any construction or replacement of a capital improvement thereto; provided, however, such expenses shall only apply to the extent the same is not covered by insurance carried by the Condominium Association. Without the vote of a majority of its members, the Condominium Association shall not impose an improvement assessment in an amount which in any one year exceeds five percent (5%) of the estimated current annual regular assessment. Any reserves collected and held by the Condominium Association for the future shall not be included in determining the foregoing limitation on any annual improvement assessment.

e. Common Expenses and profits, if any, of the Units may be distributed at the discretion of the Board of Directors, among and charged to, the Owners according to the percentage of undivided interest as set forth in Section 2 of Article VI.

f. At the time the Condominium Association holds its first meeting, a reserve account shall be set up to which the Initiation Fee shall be deposited. The "Initiation Fee" shall be an assessment paid by

each Owner at the time such Owner receives title to such Owner's Unit in an amount equal to two times the monthly assessment fee for the year in which it is assessed. The Initiation Fee shall be in addition to all other assessments due by the Owners as set forth in this Declaration.

g. No Owner may exempt himself from liability for his contribution toward the Common Expenses of the Condominium Association by waiver of the use or enjoyment of any of the Common Areas and Facilities, Limited Common Areas and Facilities, or by the abandonment of his Unit.

15. **Indemnification.** To the fullest extent permitted by law, every director and every officer of the Condominium Association and Declarant (including every shareholder, officer, director, and employee of Declarant) (to the extent a claim may be brought against Declarant by reason of its appointment, removal, or control over members of the Condominium Association Board of Directors) shall be indemnified by the Condominium Association, and every other person serving as an employee, or direct agent of the Condominium Association (other than a third party agent, including, without limitation, a person or entity acting as manager of the Condominium Association) or on behalf of the Condominium Association as a member of a committee or otherwise, may, in the discretion of the Board of Directors, be indemnified by the Condominium Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him or her in connection with any proceeding or any settlement thereof to which he or she may be a party, or in which he or she may become involved, by reason of his or her being or having served in such capacity on behalf of the Condominium Association (or in the case of Declarant by reason of having appointed, removed, or controlled, or failed to control members of the Condominium Association Board of Directors) whether or not he or she is a director or an officer, or serving in such other specified capacity at the time such expenses are incurred; provided, however, that prior to agreeing to any such indemnification, the Condominium Association Board of Directors shall determine, in good faith, that such officer, or director, or other person, or Declarant, did not act, fail to act, or refuse to act willfully, or with gross negligence, or fraudulent or criminal intent in the performance of his or her duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such persons may be entitled at law or otherwise. Appropriate insurance may be obtained by the Condominium Association pursuant to this Declaration to cover any liability exposure created by virtue of the foregoing indemnification.

16. **Non-Liability of Officials.** To the fullest extent permitted by law, neither the Condominium Association President, any directors or officers of the Condominium Association, nor any other members of committees of the Condominium Association shall be liable to any Condominium Association Member or any Owner, occupant, tenant or other person for any damage, loss, or prejudice suffered or claimed on account of any decision, course of action, inaction, omission, error, negligence, or the like made in good faith and which the President, any director, any officer or any member such committees reasonably believed to be within the scope of his or her duties.

ARTICLE IV

USE RESTRICTIONS

1. **Relating Exclusively to Commercial Units.**

a. **General.** Commercial Units within Hobbs Taylor Lofts shall be utilized only for general retail businesses and offices that comply with zoning laws and regulations in effect and any restrictions of record, including, without limitation, the Parking Agreement and the OEA, and which are compatible with the purpose of this Declaration.

b. **Signs.** Each Owner of a Commercial Unit shall have the right to maintain such signs on the interior of such Owner's Unit as it desires, whether such signs are visible from the exterior. As permitted by applicable governmental laws, regulations and ordinances as amended from time to time, and subject to the control of the Board of Directors, each Owner shall have the right to erect, maintain and replace signs on the Common Areas and Facilities, including, without limitation, the exterior of the Building, only with the prior approval of the Board of Directors. Notwithstanding anything herein to the contrary, no portable or temporary signs shall be permitted, nor shall any neon, laser, intermittent or flashing signs be permitted. Signs shall not be located on the roofs or canopies of any Buildings or structures, and banners, pennants, spinners and streamers shall not be permitted on the Real Estate, without the prior written consent of the Board of Directors.

c. **Leasing.** No Commercial Unit Owner shall be entitled to rent a Commercial Unit if the Owner is delinquent in the payment of any assessment required by this Declaration. All leases or rental agreements for a Commercial Unit shall contain a provision to the effect that the rights of the tenant to use and occupy the Commercial Unit shall be subject and subordinate in all respects to the provisions of this Declaration, the Bylaws, and to the rules and regulations of the Condominium Association.

2. **Relating Exclusively to Residential Units.**

a. **General.** Residential Units within Hobbs Taylor Lofts shall be utilized only for residential uses that comply with zoning laws and regulations in effect and which are compatible with the purpose of this Declaration.

b. **Signs.** No sign of any kind shall be displayed to the public view on any part of the Common Areas and Facilities, including, without limitation, the Building, by the Owners of the Residential Units, except one (1) sign of not more than five (5) square feet advertising the Residential Unit thereon for sale or rent. No professional or commercial signs of any type or form shall be allowed on any part of the Building except as specifically set forth in this Declaration.

c. **Leasing.** No Residential Unit shall be rented for transient purposes, or, without the prior written approval of the Board of Directors, to more than three (3) persons who are not related by blood or marriage. No Residential Unit Owner shall be entitled to rent a Residential Unit if the Owner is delinquent in the payment of any assessment required by this Declaration. The Board of Directors may require any lease or rental agreement pertaining to a Residential Unit be approved by the Board of Directors prior to any lessee or tenant taking occupancy thereunder. All leases or rental agreements shall contain a provision to the effect that the rights of the tenant to use and occupy the Residential Unit shall be subject and subordinate in all respects to the provisions of this Declaration, the Bylaws, and to the rules and regulations of the Condominium Association.

3. **Relating to all Units.**

a. **Limitation.** No noxious or offensive trades, services or activities shall be conducted in any Unit nor shall anything be done thereon by any Owner, such Owner's family, employees, agents, visitors, licensees, lessees and pets which may be or become an annoyance, nuisance, security risk, or safety hazard to an Owner, tenant or occupant of any other Unit within Hobbs Taylor Lofts by reason of unsightliness or the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, solid waste, hazardous waste, smoke or noise.

- b. **Outside Storage.** No materials, supplies, equipment, finished or semi-finished products or articles of any nature shall be stored or permitted to remain on any part of the Real Estate outside of a Building except in yard storage areas which are approved in advance by the Board of Directors. Waste and rubbish storage facilities shall be properly screened and shall not be installed, constructed or utilized without prior written approval of the Board of Directors.
- c. **Utility Connections.** All utility connections, including all electrical and telephone connections, and installation of wires to the Building shall be made underground from the nearest available power source. No transformer, gas, electric or other meter of any kind or other similar apparatus shall be located on any power pole nor hung on the outside of the Building, but the same shall be placed on or below the ground surface and where placed on the surface, shall be adequately screened. All such installations shall be subject to prior written approval of the Board of Directors.
- d. **Screening.** Placement of any objects such as air conditioning units or exhaust fans shall not be installed on the Building or in windows of the Building, and any such air condition units or exhaust fans installed on the roof of the Building or other permanent structure shall be effectively screened from view and shall be subject to the prior approval of the Board of Directors.
- e. **Temporary Structures and Outbuildings.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be placed or used on any part of the Real Estate at any time, either temporarily or permanently, other than during the construction period of Building and other permanent structures, without the prior approval of the Board of Directors.
- f. **Oil and Mining Operations and Oil Tanks.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any part of the Real Estate, nor shall oil wells, tunnels, mineral excavation or shafts be permitted upon or in any part of the Real Estate. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any part of the Real Estate. No tank for storage of fuel may be maintained above the surface of the ground on any part of the Real Estate.
- g. **Exterior Lighting.** No exterior light fixtures shall be placed on the Building or on the exterior of the Building except as originally installed, by the Condominium Association, or as may be permitted or approved by the Board of Directors.
- h. **Antennas and Satellites.** No exterior antenna, satellite receiver system, or any other non-cable signal receiving system may be erected or installed without the prior written consent of the Board of Directors. Satellite dish antennas larger than 24-inches in diameter shall not be permitted except in extraordinary circumstances, and all antennas and satellite receiver systems shall be subject to the reasonable rules and regulations adopted from time to time by the Board of Directors.
- i. **Clothes Lines.** No clothes lines, clothes racks or clothes hangers shall be constructed, used, or installed except within a completely enclosed area of a Unit.
- j. **Livestock and Poultry.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept in any Unit or the Building, except that dogs, cats, or other household pets, subject to the rules and regulations of the Condominium Association which may completely prohibit any animals, may be kept provided that they are not kept, bred, or maintained for any commercial purposes.

- k. **Garbage and Refuse Disposal.** No part of the Common Area shall be used or maintained as dumping ground for rubbish, except for areas specifically designated by the Condominium Association as trash receptacles. Trash, garbage or other waste shall not be kept except in sanitary containers established by the Condominium Association. All equipment and containers for the storage or disposal of such material shall be kept in a clean and sanitary condition.
- l. **Vehicle Repair.** No repair, rebuilding, or maintenance of any vehicle shall be permitted on the Common Areas and Facilities, including, without limitation, in any parking areas. This restriction shall include, but is not limited to, automobiles, trucks, campers, trailers, motorcycles, and boats.
- m. **Commercial Vehicles, Campers, Camper Trailers, and Recreational Vehicles.** No trucks (other than pick-up trucks), commercial-type vehicles, busses, trailers, mobile homes, boats, or boat trailers, campers, camper trailers or other recreational vehicles, racks, equipment, or machinery shall be stored or parked on any part of the Common Areas and Facilities, including, without limitation, in the parking areas, except that commercial-type vehicles may use the parking area for a limited time while engaged in delivery to or from a Unit.
- n. **Basketball Goals.** No basketball goal shall be attached to any part of the Building or placed on any part of the Common Areas and Facilities and parking area, including, without limitation, any free standing basketball goals (i.e., attached on separate poles), whether such free standing basketball goals are permanent, removable or roll-aways, except as may be permitted by the Board of Directors.
- o. **Parking in the Parking Areas and Authority to Tow.** Parking of all trucks, cars, motorcycles, and other vehicles shall only be allowed in designated parking areas, and no truck, car, motorcycle or other vehicle not in daily use shall be parked, located, or otherwise maintained on any part of the Common Areas and Facilities, including, without limitation in any parking areas. Any violation of this Section 3, specifically, including, without limitation, Subsections 3.l., 3.m. and 3.o., may result in any such vehicle being towed, without notice, by the Condominium Association at the cost and expense of the Owner of such vehicle.
- p. **Restriction.** No structures or other improvements shall be constructed, erected, placed, altered, repaired, maintained or permitted on any part of the Real Estate except as shown in the Drawings or which have been approved in writing by the Board of Directors. No Owner may paint or otherwise decorate or change the appearance of any exterior portion of the Building. Notwithstanding the foregoing, each Owner shall have the exclusive right to paint, repaint, tile, wax, paper, panel, carpet, brick or otherwise maintain, refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his own Unit, and the interior thereof, so long as such Owner does not affect the structural integrity of the Building in which his Unit is located.
- q. **Variances.** The Board of Directors, in its sole discretion, may grant a variance (or variances) of any of the restrictions set forth in this Article if the Board of Directors determines that such variance is consistent with the purposes of this Declaration, will not have an adverse material affect on the value of any other Unit within Hobbs Taylor Lofts, and is reasonably necessary in order to develop any Unit.

ARTICLE V

EASEMENTS

In addition to any other easements specifically created or reserved, the following non-exclusive, perpetual easements are hereby created or reserved:

1. **Encroachments.** In the event that, by reason of the construction, reconstruction, settlement or shifting of the Building, any part of the Common Areas and Facilities presently encroaches or shall hereafter encroach upon any part of a Unit and/or L.C.A. appertaining thereto, or any part of a Unit and/or L.C.A. presently encroaches or shall hereafter encroach upon any part of the Common Areas and Facilities or any other Unit and/or L.C.A. appertaining thereto, or if by reason of the design or construction of the utility systems, any main pipes, ducts or conduits serving more than one Unit presently encroaches or shall hereafter encroach upon any part of any Unit and/or an L.C.A. appertaining thereto, valid easements for the existence and maintenance of such encroachment and for the use of such adjoining space are hereby established and shall exist for the benefit of such Unit and the Common Areas and Facilities, as the case may be, so long as all or any part of the Building containing such Unit shall remain standing, provided, however, that in no event shall a valid easement for any encroachment be created in favor of the Owner or in favor of the Common Areas and Facilities if such encroachment occurred due to the willful conduct of such Owner.
2. **Easement to the Condominium Association to Perform its Duties.** An easement is hereby reserved in favor of the Condominium Association, the Manager, and their respective agents, successors and assigns, permitting them to enter into or upon any Unit from time to time during reasonable hours, with at least twenty-four (24) hours notice, except for emergencies, which may be without notice, for the purpose of performing their powers and duties as described in this Declaration, the Condominium Association's Articles of Incorporation and/or Bylaws, including, without limitation, maintenance, repair or replacement of any of the Common Areas and Facilities in such Units or accessible from such Units. Unless the Units are on a master key system, the Owners shall provide to the Board of Directors a copy of a key to such Owner's Unit to allow the Condominium Association access to such Unit as contemplated by this Section. The rights established in this paragraph shall be exercised in a reasonable manner.
3. **Easements Through Walls Within Units.** Easements are hereby declared and granted for the benefit of the Condominium Association, the Manager, and their respective agents, successors and assigns, to install, lay, maintain, repair and replace any pipes, wires, ducts, conduits, television cables and equipment, public utility lines or structural components running through the walls of the Units, whether or not such walls lie in whole or in part within the Unit boundaries.
4. **Easements of Enjoyment.** Every Owner and his family, guests and invitees shall have a right and easement of enjoyment in, over and upon the Common Areas and Facilities and an unrestricted right of access to and from his Unit, which rights and easements shall be appurtenant to and shall pass with the title to that Unit, subject to the right of the Condominium Association to make reasonable rules and regulations concerning the use and management of the Common Areas and Facilities and L.C.A.'s, provided that no such rule or regulation shall limit or prohibit the right of ingress and egress to a Unit, or any part thereof, or to the parking areas. Any Owner may delegate to the occupants of that Owner's Unit his right of enjoyment to the Common Areas and Facilities and to ingress and egress. No other Owner or Owners' occupants, invitees, assigns, renters or guests shall block or deny access, ingress or egress to the parking area or any other Common Area. Further easements are hereby declared and created for the benefit of all Owners, occupants, renters, and their invitees and guests to park automobiles in the parking areas in the Common Areas and Facilities, if any, subject to the reasonable rules and regulations promulgated by the Condominium Association.

5. **Easements to Public Highways and Parking Encroachment.** Easements are hereby declared and created on and over the paved parking areas, for the benefit of the Owners, occupants and their guests for access to and from the public streets and highways surrounding the Real Estate and for parking of vehicles on such areas subject to the restrictions of this Declaration and any rules and regulations of the Condominium Association. Except as expressly provided herein, no Owner, occupant or their guests shall block the parking areas or in any other way deny another Owner, occupant or their guests access to or from said public streets or highways.

6. **Easements Run with the Land.** All easements and rights herein established shall run with the land, and shall inure to the benefit of and be binding upon all Owners, and their heirs, successors, grantees, and assigns, whether or not such easements are mentioned or described in any deed of conveyance.

7. **General.** The easements and grants provided herein shall in no way affect any other recorded grant of easement.

ARTICLE VI

OWNERSHIP AND VOTING

1. **Ownership of Common Areas and Facilities.** The Common Areas and Facilities of the Condominium Association comprise, in the aggregate, a single freehold estate, and shall be owned by the Owners as tenants in common, and shall remain undivided. No action for partition of any part of the Common Areas and Facilities and/or Limited Common Areas and Facilities shall be maintainable, except upon the written consent of all Owners, nor may any Owner otherwise waive or release any rights in the Common Areas and Facilities and/or Limited Common Areas and Facilities; provided, however, that if any ownership interest is owned by two or more co-owners as tenants in common or as joint tenants, nothing herein contained shall be deemed to prohibit a voluntary or judicial partition of such ownership interest as between such co-owners.

2. **Owner's Interest in the Condominium Association.** The interest of each Unit in the Common Areas and Facilities, the Condominium Association for voting purposes, for the distribution of common profits of the Condominium Association, for the assessment and payment of Common Expenses of the Condominium Association, and for all other purposes of the Condominium Association shall be "par values," as defined in the Act, based upon one (1) point (or vote) for each individual Residential Unit and eleven (11) points for each Commercial Unit, for a combined total of seventy-six (76) points (or votes). When more than one person holds an interest in any individual Unit, the vote for such Unit shall be exercised as they among themselves determine. In no event shall more than one vote be cast with respect to any individual Residential Unit nor shall more than eleven (11) votes be cast with respect to any individual Commercial Unit, so that each Residential Unit shall have a 1/76th or a 0.01316 interest, and each Commercial Unit shall have a 1/11th or a 0.14474 interest in the Condominium Association and the Common Areas and Facilities, as more fully set forth in Exhibit C attached to this Declaration and, by reference, made a part of this Declaration.

ARTICLE VII

DECLARANT'S RIGHTS

1. **Right to Change.** Declarant reserves the right to change the interior design and arrangement of all Units, and alter the boundaries between Units, so long as the Declarant owns the Units so altered. No such change shall increase the number of Units or alter the boundary of the Common Areas and Facilities or L.C.A. without an amendment of this Declaration.

2. **Easement Establishment.** During the Marketing Phase, as defined in this Article VII, Declarant reserves the right to establish easements, reservations, exceptions and exclusions consistent with the Hobbs Taylor Lofts project.

3. **Power to Act.** Until the Condominium Association is established, Declarant shall act in all instances where action of the Condominium Association, its Board of Directors or its officers are authorized or required by law, the Declaration, or the Bylaws of the Condominium Association.

4. **Declarant's Control of the Condominium Association.** Notwithstanding anything in this Declaration to the contrary, Declarant shall maintain absolute and exclusive control over the Condominium Association, including appointment and removal of the President and all other officers of the Condominium Association, and all directors of the Condominium Association's Board of Directors, during Declarant's "**Marketing Phase**" of the Hobbs Taylor Lofts project. The Marketing Phase of the Hobbs Taylor Lofts project, for purposes of the Declaration, shall be conclusively deemed to be the period between the recording of this Declaration and the earlier of (i) the date that ninety (90%) of all Residential Units have been sold to third parties, or (ii) the date that is seven (7) years from the date this Declaration was recorded in the Office of the Register of Deeds of Douglas County, Kansas. Until the expiration of the Marketing Phase, only Declarant will be entitled to cast any votes with respect to the election and removal of Association officers or directors, or any other matter requiring the vote or approval of the Condominium Association members. Declarant may (but shall not be required to), at any time, voluntarily relinquish all or any part of Declarant's control and rights under this section.

ARTICLE VIII

AMENDMENT

1. **Condominium Association and Declaration.** Except as set forth in Section 4 of this Article, Amendments to this Declaration and the Bylaws of the Condominium Association, including, without limitation, any changes, modifications, deletions of existing provisions, and additions of new covenants and provisions (collectively, "**Amendment or Amendments**") shall be made in the following manner: At any regular or special meeting of the Board of Directors, such Amendment may be proposed as a resolution by any Owner, any member of the Board or Manager. Upon adoption of the resolution by a majority vote of those present at such Board meeting, the Amendment shall be made a subject for consideration at a special meeting or at the next succeeding regular meeting of the Condominium Association with notice thereof, together with a copy of the Amendment, to be furnished to each Owner no later than thirty (30) days in advance of such meeting. At such meeting, in which a quorum is present, the Amendment shall be approved upon receiving the favorable vote of at least a majority of the votes present at such meeting except where a higher percentage is required by this Declaration. In all events, except Amendments by the Declarant set forth in this Article, the Amendment when adopted shall either (i) be executed by all the members who approved of such Amendment, or (ii) bear the signature of the President of the Condominium Association and shall be attested by the Secretary, who shall state whether the Amendment was properly adopted, and shall be acknowledged by them as officers of the Condominium Association. Amendments once properly adopted shall be effective upon recording of the Amendment with the Office of the Register of Deeds of Douglas County, Kansas.

2. **Effect of Amendment.** It is specifically covenanted and agreed that any Amendment to this Declaration and/or the Bylaws properly adopted will be completely effective to Amend any and all of the easements, covenants, conditions and restrictions contained herein which may be affected and any or all clauses of this Declaration and/or the Bylaws, unless otherwise specifically provided in the Section being amended or the Amendment itself.

3. **Required Approvals.** Notwithstanding any provision of this Article VIII to the contrary, until expiration of the Marketing Phase, neither this Declaration nor the Bylaws may be amended by the Condominium Association members pursuant to this Article VIII without the written consent of Declarant, which may be withheld for any reason.

4. **Declarant's Right to Amend.** Notwithstanding any other provision of this Article VIII to the contrary, until expiration of the Marketing Phase, Declarant reserves the right to Amend this Declaration without the approval of the Board of Directors, the Condominium Association members or any Owner or other Person; provided, however, that no such Amendment shall have the effect of changing the size or arrangement of an Owner's Unit without the consent of the Owner. In any Amendments made by Declarant, Declarant shall be the only Person required to execute such Amendment.

ARTICLE IX

CHANGES, REPAIRS AND LIENS

1. **Alterations of Units.** The interior plan of a Unit may be changed by the Owners of such Unit. The boundaries between Units may be changed only by the Owners of the Units affected; provided, however, that if the exterior doors on the Units are on a master key system, the Owners shall not change the locks to the exterior doors without the prior written consent of the Board of Directors. No Units may be subdivided without the prior written consent of all other Owners. No change in the boundaries of Units shall encroach upon the boundaries of the Common Area and Facilities. Boundary walls must be equal in quality of design and construction to the existing boundary walls. A change in the boundaries between Units shall be set forth in an Amendment to this Declaration. In addition to compliance with the foregoing, such Amendment must further set forth and contain plans for the Units concerned showing the Units after the change in boundaries, which plans shall be drawn by an architect licensed to practice in Kansas, and attached to the Amendment as exhibits, together with the certificate of architect or engineer required by the Act. Such an Amendment shall be signed and acknowledged by the Owners of the Units concerned, as well as those Owners with an interest in any Common Areas and Facilities affected. The Amendment shall also be approved by the Board of Directors of the Condominium Association, Declarant, if required by this Declaration, and signed and acknowledged by all lienholders and mortgagees of the Units concerned.

2. **Maintenance by the Owners.**

a. **Maintenance of the Interior of the Units.** It shall be the obligation of each Owner to maintain in good condition and repair the interior of such Owner's Unit, together with such other portions of his Unit for which the Association shall not have the duty to maintain, repair and replace, and all of the equipment, such as, but not limited to, interior plumbing fixtures (except sewer lines), interior electrical and lighting equipment, including wall receptacles, interior gas and water equipment, interior heat and air conditioning ducts, interior electrical lines, ventilation equipment, and air conditioning coil and blower, even though located partially within and partially outside the interior of the Unit, kitchen and bathroom equipment and appliances, and all doors, windows, screens, and storm windows, if any. Notwithstanding the foregoing, the Association shall have the right, but not the obligation, to perform the maintenance and repair of any portion of the Unit, including, without limitation, the windows, doors, screens, and storm windows, and to pass the cost of such maintenance or repair to the Owner of such Unit which may be added to and become an additional fee or charge, in addition to the fee or charge to which such Owner's Unit is subject, if any, and shall be paid by such Owner within thirty (30) days after written demand therefor from the Board of Directors of the Condominium Association, and shall be enforceable and secured by a lien as in the case of all other fees or charges. For the purposes hereof, the term "interior" shall mean all parts of the Unit lying within the boundaries of a Unit as set forth and delimited in Article II, paragraph 4 of this Declaration. Any flues, ducts, conduits, wires, pipes, or other apparatus or any portion or part thereof lying partially within and partially outside of the interior of a Unit and which serve only that Unit shall be deemed to be within the interior of

the Unit and shall be maintained by the Owner of such Unit. Any flues, ducts, conduits, wires, pipes, or other apparatus or any portion or part thereof lying partially within and partially outside of the interior of any Unit and which serve more than one Unit shall be deemed to be the outside of the interior of the Unit and shall be maintained by the Condominium Association as a part of the Common Area and Facilities. No Unit Owner shall paint or otherwise decorate or change the appearance of any portion of the exterior of his Unit or do any work which would jeopardize the soundness or safety of the Unit and/or the Condominium Property, reduce the value thereof, or impair any easement or hereditament without in every such case first obtaining the consent of the Board of Directors.

b. **Cooperation with the Condominium Association.** An Owner shall promptly report to the Condominium Association any defect or need for maintenance, repairs or replacements for which the Condominium Association is responsible. Each Owner shall have the further duty to cooperate with the Condominium Association in the performance of its obligations under this Declaration and to exercise reasonable efforts to prevent the Common Areas and Facilities from accumulating debris, litter, or other unsightly objects.

c. **Owner's Failure to Maintain.** If an Owner fails to reasonably perform the Owner's maintenance responsibilities, the Condominium Association may perform such maintenance and assess the Owner for the reasonable cost thereof as an additional fee or charge, in addition to the fees or charges to which such Owner's Unit is subject, if any. Such cost shall be paid by or on behalf of such Owner within thirty (30) days after written demand therefor from the Board of Directors of the Condominium Association, and shall be enforceable and secured by a lien as in the case of all other fees or charges. If, however, such maintenance shall not be required in an emergency situation, the Condominium Association shall afford the Owner reasonable notice and an opportunity to rectify the improper maintenance of the Owner's Unit prior to the Condominium Association's entry thereon to perform such maintenance.

3. **Maintenance by the Condominium Association.** The Condominium Association shall be responsible (i) to maintain, paint, repair, and replace, and for the operation of, the Common Areas and Facilities and Limited Common Areas and Facilities, including, without limitation, the parking areas, the Building, other than the interior of a Unit as more set forth in paragraph 2 of this Article IX, landscaping, drainage and lighting facilities; (ii) to remove snow and ice from the parking areas, sidewalks and driveways, (iv) to perform all of the obligations of an owner under the parking agreement and under the Operation and Easement Agreement, as may have been amended, as described in paragraph 3 of Article III of this Declaration; and (iii) to provide such other maintenance not delegated to the Owners under this Declaration, the costs and expenses for all of which shall be a Common Expense. The making of any additions, alterations or improvements and providing the necessary work of maintenance, repair and replacement to the Common Areas and Facilities shall be carried out as provided in this Declaration and in the Bylaws of the Condominium Association. No Owner may exempt himself from liability for his contribution toward the Common Expenses and for improvements, alterations and additions properly authorized to the Common Areas and Facilities by waiver of the use or enjoyment of the Common Areas and Facilities or by abandonment of his Unit.

4. **Liens for Alterations.** Labor performed and materials furnished and incorporated into a Unit or Building with the consent of or at the request of the Owner, his agent, his contractor or subcontractor, shall be the basis for the filing of a lien against the Unit of the Owner consenting to or requesting the same. Each Owner shall indemnify and hold harmless each of the other Owners and the Condominium Association from and against all liability arising from the claim of any lien against the Unit, or any other Owner or against the Common Areas and Facilities or L.C.A. for construction performed or for labor, materials, services or other products incorporated in the Owner's Unit at such Owner's request.

ARTICLE X

INSURANCE

1. **Fire and Extended Coverage Insurance.** The Board of Directors of the Condominium Association shall be required to obtain and maintain casualty insurance, insuring all Condominium Property and improvements against loss by fire, lightning, windstorm or other casualty in an amount equal to the full replacement value of the Common Areas and Facilities and the Units (i.e., one hundred percent (100%) of replacement costs exclusive of land, foundation and excavation), including all personal property, fixtures, and equipment included in the Common Areas and Facilities, with an "agreed amount" endorsement without deduction or allowance for depreciation, and the insurer shall waive any "increase of hazard" provision of its policy and any "apportionment of loss" provision of its policy in the event there is any other insurance insuring the same risk. Notwithstanding the foregoing, all personal property, equipment and furnishings of the Owners shall be excluded from such insurance. The insurance coverage shall be written in the name of, and the proceeds of such insurance shall be payable to, the Board of Directors of the Condominium Association, as trustee for each of the Owners and their first mortgagees, as their interests may appear. The Board of Directors shall have full power to adjust all insurance losses by suit or otherwise and payment accepted by the Board of Directors under this Declaration shall constitute a discharge to the insurer. All premiums for such insurance shall be a Common Expense. Such insurance policies shall be in a form acceptable to the Board of Directors of the Condominium Association.

2. **Repair or Reconstruction After Fire or Other Casualty.**

a. If, in the event of damage to or destruction of the Condominium Property, or any part thereof, as a result of fire or other casualty, the proceeds of any policy or policies of insurance insuring against such loss or damage and payable by reason thereof, shall be substantially sufficient in the opinion of the Board of Directors to pay the cost of repair or restoration, then the Board of Directors shall arrange for the prompt repair and restoration of the Condominium Property (including any damaged Units, but not including any equipment, fixtures, furnishings or personal property of the Unit Owners as described in the following paragraph), and the Board of Directors shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. Any actual cost of such repair and restoration to the Common Areas and Facilities in excess of the insurance proceeds shall constitute a Common Expense and the Board of Directors may assess all the Unit Owners for such excess cost as part of the Common Expenses.

b. Each Owner shall be responsible for the reconstruction, repair or replacement of all personal property located within the interior of his Unit to the extent not covered by the insurance carried by the Board of Directors and including, without limitation, the furniture, furnishings, fixtures, equipment, and all appliances located therein irrespective of whether such appliances are "built-in" to the Unit. Each Owner shall also be responsible for the costs not otherwise covered by insurance carried by the Condominium Association of any reconstruction, repair, or replacement of any portion of the Condominium Property necessitated by his negligence or misuse, or the negligence or misuse by his family, guests, tenants, agents, servants, employees or contractors. In the event damage to all or any part of the interior of a Unit is not covered by insurance held by the Condominium Association for the benefit of such Owner, then such Owner shall reconstruct or repair his Unit to a condition such Unit shall have existed prior to any such damage or casualty and such Owner shall begin reconstruction or repair of his Unit within sixty (60) days after the date of such damage, subject to the right of the Condominium Association to supervise, approve, or disapprove such reconstruction or repair during the course thereof.

c. In the event the Condominium Property or the improvements thereon so damaged or destroyed is not insured against the peril causing the loss or damage, or the insurance proceeds shall not be

substantially sufficient in the opinion of the Board of Directors to pay the cost of repair or restoration, the President or Secretary of the Association shall within sixty (60) days following such damage or destruction, call a special meeting of all Owners. If, at such meeting, the Owners having at least seventy percent (70%) of the total percentage vote of all the Owners shall decide by written ballot not to restore, repair and replace the damaged or destroyed portions of the Condominium Properties, such portions of the Condominium Property shall not be rebuilt, and the Board of Directors, as insurance trustee, shall pay the insurance proceeds to the Owners whose Units would otherwise have been rebuilt, reconstructed, or repaired, as their interest in such insurance proceeds may appear; provided, however, that if any portion of such insurance proceeds are payable as the result of damage or destruction to the Common Areas and Facilities, such proceeds shall be retained by the Condominium Association for the benefit of the Owners. If all of the Condominium Property shall be damaged and the Owners vote not to repair, reconstruct or replace the Condominium Property, the Condominium shall be terminated in the manner prescribed in K.S.A. 58-3126, unless otherwise provided by law.

d. Any reconstruction or repair shall be substantially in accordance with the Drawings and any plans and specifications for the original Building, or if none are then existing, then according to plans and specifications approved by the Board of Directors of the Association.

3. **Insurance Rating.** All policies shall be written with a company or companies licensed to do business in the State of Kansas holding a rating of AAA in Best's Insurance Guide, or some other equivalent insurance guide reference directory.

4. **Owner's Right to Obtain Coverage.** Each Owner shall be responsible for obtaining and maintaining, at such Owner's sole cost and expense, fire and all risks insurance coverage on the interior of such Owner's Unit as described in Article II, including, but not by limitation, coverage for the furniture, furnishings, fixtures, rugs and carpets other than wall-to-wall carpeting, and all appliances located within the Unit, irrespective of whether such appliances are "built-in" to such Unit. The Board of Directors may require certificates of such insurance to be submitted annually to the Condominium Association.

5. **Liability Insurance.**

a. The Owners of the Commercial Units shall keep in force, at their sole cost and expense during such time as such Owner owns its Unit, or any part thereof, public liability insurance with respect to the Commercial Unit owned by such Owner, in companies and in form reasonably acceptable to the Condominium Association with a minimum combined single limit of \$2,000,000.00 per Commercial Unit owned by such Owner on account of bodily injuries to, or death of more than one person, as a result of any one occurrence or disaster, and property damage insurance with minimum limits of \$1,000,000.00 per Commercial Unit owned by such Owner, or such other amounts satisfactory to the Board of Directors in its sole and absolute discretion. The Commercial Unit Owners' employees shall not be excluded from coverage under such insurance notwithstanding their coverage under workers' compensation insurance. The Owners shall cause such policy or policies to name or contain an endorsement naming the Condominium Association as an additional insured thereunder. The Board of Directors may require certificates of such insurance to be submitted annually to the Condominium Association. The Owners of the Commercial Units shall be entitled to delegate the responsibility to maintain liability insurance as required by this paragraph to such Owner's tenant to the same extent and subject to the same requirements of Section 1 of Article III of this Declaration; provided, however, that such delegation shall not relieve such Owner from the responsibility of ensuring that liability insurance as required by this paragraph is obtained and maintained by such tenant.

b. If a Commercial Unit Owner shall not comply with the provisions of subsection 5.a., the Condominium Association may, at its option, cause such insurance to be issued and, in such event, the amount

of the premiums for such insurance shall be assessed against such Commercial Unit Owner, which assessment shall be paid promptly upon demand by the Condominium Association and the Condominium Association shall have a lien against such Commercial Unit for such unpaid amounts and may enforce its lien as provided in this Declaration. In the event the Condominium Association obtains insurance for a Commercial Unit Owner, each such Commercial Unit Owner irrevocably designates the Condominium Association, as attorney-in-fact, for the purpose of purchasing and maintaining such insurance as is required by this Declaration, including the collection and appropriate distribution of the proceeds thereof, the negotiation of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to accomplish such purpose. Notwithstanding any provisions of this Declaration relating to liability insurance, there may be named as an insured, on behalf of the Condominium Association, the Condominium Association's authorized representative, including any trustee with whom the Condominium Association may enter into any insurance trust agreement, or any successor to any such trustee, who shall have exclusive authority to negotiate losses under any policy providing such property or liability, and to perform such other functions as are necessary to accomplish such purpose.

c. The Owners of the Commercial Units hereby covenant and agree to indemnify, protect, and save harmless the Condominium Association, and its directors, officers, agents, employees, successors and assigns, of and from any and all claims, demands, and liabilities (including, without limitation, attorneys' fees) for any loss, damage, injury or other casualty to property owned, or in the possession of others, other than the Commercial Unit Owners, and to persons, whether third persons, or employees of such Owners, caused by, or growing out of, or having connection with, the Commercial Unit Owners' and their tenants' conduct of their respective businesses, or use and occupancy of the Commercial Units, except that the Commercial Unit Owners' obligations under this paragraph shall not extend to demands, claims, or liabilities caused by the intentional or grossly negligent acts of the Condominium Association or the other Owners.

d. The Condominium Association may obtain and maintain a policy of comprehensive public liability insurance covering all of the Common Areas with a limit of \$5,000,000.00 per occurrence, or in such other amounts determined by the Condominium Association, in its sole and absolute discretion, for personal injury or death and/or property damage. The scope of such coverage shall include all other coverage in the kinds and amounts customarily acquired or required for projects similar in construction, location, and use, including, without limitation, liability for non-owned and hired automobiles, liability for property of others, liability arising in connection with the operation, maintenance, or use of the Common Areas, liability assumed by contract or contractual liability, and liability arising out of any employment contracts of the Condominium Association.

6. **Fidelity Bond Coverage.** The Condominium Association may, in its sole and absolute discretion, obtain fidelity bond coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees, or volunteers responsible for handling funds belonging to or administered by the Condominium Association. If funds of the Condominium Association are handled by a management agent, then fidelity bond coverage shall also be obtained for the officers, employers, or agents thereof handling, or responsible for, Condominium Association funds. The fidelity bond, or insurance, must name the Condominium Association as the named insured and shall be written to provide protection in an amount not less than the lesser of: (i) one-half times the Condominium Association's estimated annual operating expenses and reserves; (ii) a sum equal to three months of the Condominium Association's aggregate regular assessments plus reserves; or (iii) the estimated maximum amount of funds, including reserves, in the custody of the Condominium Association (and its management agent) at any one time. In connection with such coverage, an appropriate endorsement shall be added to the policy to cover any person who serves without compensation if the policy would not otherwise cover volunteers.

7. **Workers' Compensation.** The Condominium Association shall obtain and maintain a workers' compensation policy covering the Condominium Association to the extent required by law.

8. **Directors and Officers Insurance.** The Condominium Association may, in its sole and absolute discretion, obtain and maintain a policy of "directors and officers" liability insurance covering the Condominium Association in an amount determined by the Condominium Association.

9. **Waiver of Subrogation.** Any insurance obtained by the Condominium Association or an Owner shall contain a waiver of subrogation by the insurer as to claims against the Condominium Association, the Condominium Association's Board of Directors, and all the Owners, and/or their respective agents, employees, tenants and guests.

10. **Copies to Mortgagees.** One copy of each insurance policy and of all endorsements thereon shall be furnished by the Condominium Association to each mortgagee of any Unit on written request.

11. **Other Insurance.** Such other insurance as the Board of Directors of the Condominium Association shall determine from time to time to be desirable or as may be required by the Federal and State laws.

ARTICLE XI

CONDEMNATION

1. **General.** Whenever all or any part of the Common Areas and Facilities shall be taken by an authority having the power of condemnation or eminent domain (a "**taking**"), each Owner shall be entitled to notice thereof. Each Owner hereby designates and appoints the Condominium Association and duly authorized agents of the Condominium Association, as such Owner's exclusive agent to handle, negotiate, settle and conduct all matters, proceedings and litigation incident to such taking, and the Condominium Association shall have the power and authority to do so. Any award made for such taking shall be payable to the Condominium Association. Unless otherwise provided by law at the time of such taking, any award made therefor shall be disbursed by the Condominium Association as hereinafter provided in this Article XI. Any restoration or repair of the Real Estate after a partial condemnation shall be substantially in accordance with this Declaration and the Drawings.

2. **Common Areas and Facilities.** If a taking takes only Common Areas and Facilities and not a Unit, the Condominium Association shall be deemed to have determined to repair, restore and, if reasonably feasible and desirable, replace any Common Areas and Facilities taken, remaining and/or damaged in accordance with plans prepared at the instance of the Condominium Association unless Owners having at least seventy percent (70%) of the total percentage vote of all the Owners shall decide by vote, at a meeting of the Condominium Association called for that purpose and held within sixty (60) days after the taking, not to restore, repair and replace. The Board of Directors shall make arrangements for any restoration, repair and/or replacement in accordance with the plans prepared by the Condominium Association. The Condominium Association shall disburse the proceeds of such award to the contractors engaged in such repair; subject, however, to the determination of any court of competent jurisdiction that a disproportionate distribution be made, and subject, further, to the right hereby reserved to the Board of Directors to hire a real estate appraiser to recommend (or recommend against) a disbursement of the award (after payment of all costs incident to the repair, restoration and/or replacement and all expenses of the appraiser) to Owners or any one or more of them in amounts disproportionate to damages sustained by the Owners or any one or more of them. If the appraiser should recommend a disproportionate distribution, he shall state the manner in which he believes the distribution should be made. The Board of Directors shall use reasonable judgment in deciding whether to hire an appraiser to make such recommendation shall be given (in the manner of giving notices to Owners) to all Owners shall not make any distribution of the award within twenty (20) days following the delivery of copies of the recommendation to the Owners nor within any period of time thereafter that the recommendation may be subject to or is being arbitrated. Within twenty (20) days after a copy of the recommendation has been mailed (or otherwise delivered) to the Owners, any Owner may give written notice to the Condominium Association that the Owner objects to the recommendation.

Any objection shall be submitted to and settled by arbitration in accordance with the Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The proper parties before the arbitration shall be the Owners who have given notice of their objections to the recommendation and the Condominium Association or its authorized agent, who shall act on behalf of all non-objecting Owners.

If an objection is not submitted to arbitration as herein provided within thirty (30) days after written notice of the objection was given to the Condominium Association, then any Owner who shall have given notice of objection shall be deemed to have withdrawn his objection and the Condominium Association shall distribute the award in accordance with the recommendation.

3. **Lots and Units.** If all or any part of the Units are taken by condemnation or the exercise of the power of eminent domain, as above described, the Owners shall be free to assert their respective claims against the condemning authority, including any claims for severance damage, and to have the proceeds which are properly allocable to the respective Unit taken or condemned. In any such condemnation proceeding, where Units are taken, the respective Owner of the Unit taken shall have the right to assert against the condemning authority his claim for his loss, or his percentage interest in the Common Areas and Facilities.

ARTICLE XII

REMOVAL FROM CONDOMINIUM OWNERSHIP

1. **Removal.** Except as otherwise provided in this Declaration, Condominium ownership of the Condominium Property may be terminated and the Condominium Property, in whole or in part, removed from the provisions of the Condominium Act, upon the unanimous vote of the Owners of the Condominium Association and the approval of the holders of mortgages and liens on the Units so affected. In the event of such election, all liens and encumbrances, except taxes and assessments not then due and payable, upon all or any part of the Condominium Property so affected, shall be paid, released, or discharged, and a certificate setting forth that such election was made shall be filed with the Register of Deeds of Douglas County, Kansas. Such certificate shall certify therein under oath that all liens and encumbrances, except taxes and assessments not then due and payable, upon all or any part of the L.C.A. have been paid, released, or discharged and shall also be signed by the Owners, each of whom shall certify therein under oath that all such liens and encumbrances on the Owner's Unit or Units have been paid, released or discharged.

2. **Effect of Removal.** Upon the removal of the Condominium Property from the provisions of the Condominium Act, all easements, covenants and other rights, benefits, privileges, impositions and obligations applicable only to the Condominium Property declared herein to run with the land or any ownership interest or interest therein shall terminate and be of no further force or effect. The easements, covenants and other rights, benefits, privileges, impositions and obligations applicable to the Real Estate generally shall remain in full force and effect unless termination thereof has been approved by a majority of all Owners.

ARTICLE XIII

CHANGE OF MEMBERSHIP IN CONDOMINIUM ASSOCIATION

In addition to a change of membership provided elsewhere in this Declaration, change of membership in the Condominium Association shall be established by recording a deed or other instrument in the Office of the Register of Deeds of Douglas County, Kansas, establishing a record title to a Unit and the delivery to the Condominium Association of a copy of such instrument. The Owner designated by such instrument shall thereby become a member of the Condominium Association, and the membership of the prior Owner shall thereby be terminated. In the event a Unit shall be sold pursuant to a contract by the terms of which the record title to the Unit shall not pass until full

payment of the purchase price has been made by the contract purchaser, an Affidavit of Equitable Interest setting forth the name of the contract purchaser and a description of the Unit sold shall be made by both the contract seller and the contract purchaser, and recorded in the Office of the Register of Deeds of Douglas County, Kansas. A copy of such Affidavit of Equitable Interest shall be provided to the Condominium Association, together with the address of the contract seller to which notices required by this Declaration or the Bylaws shall be mailed. The contract purchaser as named in such Affidavit of Equitable Interest shall thereupon be considered the Owner of the Unit described therein for all purposes of this Declaration, the Bylaws, and Rules and Regulations of the Condominium Association, and, by entering into such purchase contract, agrees to assume all obligations imposed upon the Owner of such Unit as are imposed by this Declaration, the Bylaws, and Rules and Regulations of the Condominium Association. In no event, however, shall the contract seller be released from any obligation as the Owner of the Unit described in such Affidavit until a deed conveying fee simple title to the Unit to the contract purchaser shall have been recorded in the Office of the Register of Deeds of Douglas County, Kansas, and a copy of such deed delivered to the Condominium Association. In lieu of recording a deed with the Register of Deeds, a final order entered by a court of competent jurisdiction transferring ownership of a Unit shall transfer such title, provided a certified copy of such final order is delivered to the Condominium Association. If title to a Unit shall be transferred by a transfer-on-death deed, the death of the Owner shall transfer such title as set forth in such deed, provided a certified copy of the death certificate, or other evidence of death as may be required by the Condominium Association, shall be delivered to the Condominium Association.

ARTICLE XIV

MISCELLANEOUS

1. **Remedies.** All remedies provided in this Declaration and Bylaws shall not be exclusive of any other remedies which may now be, or are hereafter, available to the parties hereto as provided for by law.
2. **Interpretation.** The provisions of this Declaration and of the Bylaws to be promulgated and recorded herewith, shall be liberally construed to effectuate the purposes of this Declaration and the Bylaws and to create certain Units subject to and under the provisions of the Act.
3. **Right of Access.** The Condominium Association shall have the irrevocable right, to be exercised by its Manager or Board of Directors, to have access to each of its respective Units from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas and Facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Areas and Facilities or to any other Unit. Damage to the interior or any part of the Unit resulting from maintenance, repair, emergency repair or replacement of any of the Common Areas and Facilities, or as a result of an emergency repair within another Unit at the instance of the Condominium Association, shall be designated Common Expenses by the Condominium Association and assessed in accordance with such designation.
4. **Covenants Running with Land.** Each grantee of Declarant, and all subsequent grantees, by the acceptance of a deed of conveyance in respect to any ownership interest in any part of the Real Estate, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration and the bylaws, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such Owner in like manner as though the provisions of the Declaration and the Bylaws were recited and stipulated at length in each and every deed of conveyance.

5. **Waiver.** No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur.
6. **Severability.** The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration or the Bylaws, or of any part of the same, shall not impair or effect of the rest of this Declaration.
7. **Term.** This Declaration, every provision hereof and every covenant, condition, restriction and reservation contained herein shall continue in full force and effect for a period of twenty (20) years from the date hereof and shall thereafter be renewed automatically from year to year, unless terminated by the Owners as provided in this Declaration.
8. **Non-Liability of Declarant.** Neither Declarant nor its members, officers, employees, agents, Board of Directors, successors or assigns, shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authorities granted or delegated to it by or pursuant to this Declaration, or by the Bylaws attached hereto as Exhibit B, in Declarant's (or its representative's) capacity as developer, contractor, owner, manager, or seller of the Real Estate, whether or not such claim (i) shall be asserted by any Owner, Occupant, the Condominium Association, or any Person or entity claiming through any of them; or (ii) shall be on account of injury to person or damage to or loss of property, wherever located and however caused; or (iii) shall arise ex contractu or (except in the case of negligence) ex delicto. Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of, the Real Estate or any part thereof being or becoming out of repair or containing any patent or latent defects, or by reason of any act or neglect of any Owner, Occupant, the Condominium Association, and their respective members, directors, officers, agents, employees, guest and invitees, or by reason of any neighboring property or personal property located on or about the Real Estate, or by reason of the failure or malfunction or disrepair of any utility services (heat, air conditioning, electricity, gas, water, sewage, etc.).
9. **Service of Process.** The name and address of the person to receive service of process for Hobbs Taylor Lofts until another designation is filed of record shall be Roger N. Harris, 3200 Haskell Avenue, Suite 140, Lawrence, Kansas 66046.
10. **Costs of Attorneys' Fees.** In any proceeding arising because of an alleged failure of an Owner to comply with the terms of this Declaration, the Bylaws, or the Rules and Regulations adopted pursuant thereto, as they may be amended from time to time, the Condominium Association shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be awarded by the court.
11. **Negligence of an Owner.** An Owner shall be liable for the expense of any maintenance, repair, or replacement to or of the Common Areas and Facilities or any Unit rendered necessary by such Owner's act, neglect, or carelessness, or by that of any member of his household, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Condominium Association. An Owner shall pay the Condominium Association the amount of any increase in its insurance premiums occasioned by the Owner's use, misuse, possession or abandonment of a Unit or its appurtenances, or of the Common Areas and Facilities.
12. **Headings.** The heading to each Article and to each Section hereof is inserted only as a matter of convenience and for reference and in no way defines, limits or describes the scope or intent of this Declaration nor in any way affects this Declaration.
13. **Gender.** Wherever used, singular shall include the plural, plural the singular, and use of any gender shall include all genders.

14. Name. The name by which the Real Estate shall be known is "Hobbs Taylor Lofts."

IN WITNESS WHEREOF, Declarant has caused this Declaration to be made and executed as of the Effective Date.

DECLARANT: 8TH & NEW HAMPSHIRE, L.L.C.,
a Kansas limited liability company

By: _____
Roger N. Harris, Manager

STATE OF KANSAS, COUNTY OF DOUGLAS) ss:

BE IT REMEMBERED, that on this _____ day of _____, 2004, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Roger N. Harris, Manager of 8th & New Hampshire, L.L.C., a Kansas limited liability company, who is personally known to me to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same on behalf of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

My Appointment Expires: _____

Notary Public

G:\TEL\C\HarrisHobbsTaylor5.wpd

EXHIBIT A

[Drawings]

The Plat of Survey and Drawings were recorded in the Office of the Register of Deeds of Douglas County, Kansas on _____, 2004, in Book _____, Pages _____ to _____.

EXHIBIT B

[Bylaws of Hobbs Taylor Lofts Association, Inc.]

EXHIBIT C

Par Values of each Unit
in the Condominium Association

UNIT NUMBER	PAR VALUE OF EACH UNIT IN THE COMMON AREA
Unit 100	0.14474
Unit 110	0.14474
Unit 201	0.14474
Unit 206	0.14474
Unit 3A	0.01316
Unit 3B	0.01316
Unit 3C	0.01316
Unit 3D	0.01316
Unit 3E	0.01316
Unit 3F	0.01316
Unit 3G	0.01316
Unit 3H	0.01316
Unit 3I	0.01316
Unit 3J	0.01316
Unit 3K	0.01316
Unit 3L	0.01316
Unit 3M	0.01316
Unit 4A	0.01316
Unit 4B	0.01316
Unit 4C	0.01316
Unit 4D	0.01316
Unit 4E	0.01316
Unit 4F	0.01316
Unit 4G	0.01316
Unit 4H	0.01316
Unit 4I	0.01316

Unit 4J	0.01316
Unit 4K	0.01316
Unit 4L	0.01316
Unit 4M	0.01316
Unit 5A	0.01316
Unit 5B	0.01316
Unit 5C	0.01316
Unit 5D	0.01316
Unit 5E	0.01316
Unit 5F	0.01316
TOTAL	1.00

(Note: the number of units shown herein are for purposes of example only, and not limitation, of the actual number of units that eventually may be constructed on any Condominium Property, which shall be shown by Amendment to the Declaration.)

CONSENT OF MORTGAGEE

The undersigned Mortgagee does, by the signature of its authorized representative below, consent to the foregoing Declaration of Covenants, Conditions, Restrictions and Dedication, and of Condominium Ownership for Hobbs Taylor Lofts (the "**Declaration**"), and agrees to be bound by the terms and conditions of such Declaration.

CAPITAL CITY BANK

By: _____

Mortgage dated January 24, 2003, recorded in Book 828, beginning at Page 487, in the Office of the Register of Deeds of Douglas County, Kansas.

STATE OF KANSAS, COUNTY OF DOUGLAS) ss:

BE IT REMEMBERED, that on this _____ day of _____, 2004, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____ of Capital City Bank, a Kansas banking corporation, who is personally known to me to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same on behalf of said banking corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

My Appointment Expires: _____

Notary Public

