

CO
Amend
X

20070734005
12/14/2007 RP2 \$252.00

AMENDED & RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

OF

COMMERCE AVENUE TOWNHOME ASSOCIATION, INC.

HARRIS COUNTY, TEXAS

DECEMBER 13, 2007

Includes North Ennis Townhomes & Commerce Avenue Townhomes

✓

AFTER RECORDING, RETURN TO:

Epstein Becker Green Wickliff & Hall, PC
Attn: Arthur Fant
1000 Louisiana, Suite 5400
Houston, Texas 77002

TABLE OF CONTENTS

	Page
ARTICLE I Definitions and Terms	2
1.1 "Assessment"	2
1.2 "Association"	2
1.3 "Common Area"	2
1.4 "Common Expenses"	2
1.5 "Declarant"	3
1.6 "Declaration"	3
1.7 "Governing Documents"	3
1.8 "Improvements"	3
1.9 "Occupant"	3
1.10 "Owner"	3
1.11 "Plat"	3
1.12 "Property"	4
1.13 "Restated Declaration"	4
1.14 "Townhome"	4
1.15 "Water Supply System"	4
ARTICLE II Townhome And Common Area Designations And Descriptions	4
2.1 DESIGNATION OF TOWNHOME	4
2.2 INSEPARABLE UNITS	4
2.3 GOVERNMENTAL ASSESSMENT	4
2.4 COMMON AREA	4
2.5 COMMON UTILITY/WATER SUPPLY SYSTEM	7
2.6 COMMON WALL	8
ARTICLE III Protective Covenants	10
3.1 USE AND OCCUPANCY RESTRICTION	10
3.2 INSURANCE	10
3.3 SIGNS	10
3.4 NOXIOUS OR OFFENSIVE ACTIVITY	11
3.5 TEMPORARY STRUCTURES	11
3.6 FIRES	11
3.7 STORAGE AND DISPOSAL OF GARBAGE AND REFUSE	11
3.8 AIRING LAUNDRY	12
3.9 VEHICLE PARKING	12
3.10 VEHICLE REPAIRS	12
3.11 STREETS AND DRIVEWAYS	12
3.12 AIR CONDITIONERS	12
3.13 ANTENNAE	12
3.14 EXTERIOR APPEARANCE OF TOWNHOME	12
3.15 ANIMALS	13
3.16 LEASING	13
3.17 TEMPORARY AND OTHER STRUCTURES	13
3.18 COMPLETION OF DEVELOPMENT AND SALE OF PROPERTY	14

3.19	IMPROVEMENTS AND UTILITIES; INSTALLATION AND MAINTENANCE	14
3.20	OBSTRUCTIONS	15
3.21	LIABILITY FOR DAMAGES	15
3.22	GENERAL MAINTENANCE	15
3.23	REMOVAL OF DIRT	16
3.24	TREE CUTTING	16
3.25	AIR CONDITIONERS	16
3.26	TOWNHOME WATER SYSTEMS	16
3.27	FIREARMS	17
3.28	JOINT RESPONSIBILITY	17
	ARTICLE IV Rights And Obligations Of Ownership	17
4.1	OWNERSHIP	17
4.2	EXCLUSIVENESS OF OWNERSHIP	17
4.3	ONE-FAMILY RESIDENTIAL DWELLING	17
4.4	OWNER MAINTENANCE	17
4.5	ALTERATION	18
4.6	SUBJECT TO DECLARATION	18
	ARTICLE V Management And Administration	18
5.1	ADMINISTRATION	18
5.2	DECLARANT CONTROL	19
5.3	MANAGING AGENT	19
5.4	MEMBERSHIP AND VOTING	19
5.5	INSURANCE	20
	ARTICLE VI Maintenance Assessments	21
6.1	ASSESSMENTS FOR COMMON EXPENSES	21
6.2	PURPOSE OF ASSESSMENTS	21
6.3	DETERMINATION OF ASSESSMENTS	22
6.4	INITIAL ASSESSMENT AND MAXIMUM MONTHLY ASSESSMENT	22
6.5	OBLIGATION OF DECLARANT FOR ASSESSMENTS AND MAINTENANCE	23
6.6	SPECIAL ASSESSMENTS FOR IMPROVEMENTS	24
6.7	COMMENCEMENT OF ASSESSMENTS	24
6.8	NO EXEMPTION	24
6.9	LIEN FOR ASSESSMENTS	24
6.10	EFFECT OF SALE UPON LIEN	26
6.11	STATEMENT OF ASSESSMENTS	26
	ARTICLE VII Destruction of Improvements	27
7.1	DESTRUCTION	27
7.2	INSURANCE PROCEEDS	27
	ARTICLE VIII General Provisions	27
8.1	TAXES, ASSESSMENTS AND CHARGES	27
8.2	JUDICIAL PARTITION	28
8.3	AMENDMENT	28

8.4	CORRECTION OF ERROR	28
8.5	NOTICE	28
8.6	INVALIDATION OF PARTS.....	28
8.7	OMISSIONS.....	28
8.8	NUMBER;GENDER.....	29
8.9	ENFORCEMENT.....	29
8.10	NOTICE OF SALE.....	29
8.11	ADDITIONS TO PROPERTY SUBJECT TO DECLARATION.....	30
8.12	CITY OF HOUSTON ENCROACHMENT PERMIT.....	31

EXHIBIT "A"	LEGAL DESCRIPTIONS
EXHIBIT "B" & "B-1"	STREET ADDRESSES
EXHIBIT "C" & "C-1"	PLATS
Exhibit "D" & "D-1"	SITE PLANS
EXHIBIT "E"	ENCROACHMENT PERMIT

COMMERCE AVENUE TOWNHOME ASSOCIATION, INC.

RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

STATE OF TEXAS §

COUNTY OF HARRIS §

WHEREAS, on March 21, 2007, Urban Lofts XV, Ltd., filed for record that certain Declaration of Covenants, Conditions and Restrictions of Meadow Street Townhomes under Harris County Clerk's File Number 20070170358 of the Real Property Records of Harris County, Texas, hereinafter referred to as the "Declaration"; and

WHEREAS, pursuant to Section 8.4 of the Declaration, the purpose of this Restated Declaration (“Restated Declaration”) is to amend and restate the Declaration in its entirety including without limitation amending all Exhibits attached to and made a part of the Declaration; and

WHEREAS, URBAN LOFTS XV, LTD., a Texas limited partnership, having its principal office at 4512 Montrose, Houston, Texas 77006 (hereinafter called "Declarant"), owns the parcel or parcels of real property (the "Property") described on EXHIBIT "A," and

WHEREAS, Declarant has constructed or will construct fee simple Townhome buildings and other improvements appurtenant thereto on the Property; and

WHEREAS, Declarant does hereby establish and by this Restated Declaration does establish a plan for the individual ownership in fee simple estates consisting of a Townhome or parcel of land with an individual dwelling unit built thereon and all appurtenances thereto including improvements thereon.

Now, THEREFORE, Declarant does hereby submit the Property and all improvements thereon, as a restricted planned unit development, and does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, limitations and obligations

shall be deemed to run with the land and shall be a burden and a benefit to Declarant, each of its successors, assigns, and to any person or entity acquiring or owning an interest in the Property or any parcel or parcels contained therein or the improvements thereon ("Improvements"), their grantees, successors, heirs, executors, administrators, devisees and assigns.

ARTICLE I

DEFINITIONS AND TERMS

1.1 "Assessment" shall mean and refer to the fees, charges and other financial obligations imposed upon the Owners of Townhomes by the Association to pay for Common Expenses as set forth herein, including without limitation, the annual Assessments, special Assessments and estimates thereof as determined by the Association and as further described in Article 6 hereof.

1.2 "Association" shall mean the Commerce Avenue Townhome Association, Inc., a Texas non-profit corporation.

1.3 "Common Area" shall mean and refer to any real property together with any Improvements thereon conveyed to, owned or leased by the Association or over which the Association has an easement, an agreement or the responsibility for maintenance, repair or replacement and/or as may be expressly designated as Common Area by this Restated Declaration or by the Plat (either of which as may be amended from time to time) or the Association, which may include without limitation all water systems, sewer pipes and sewer lines, storm piping, electrical systems, wiring equipment and paving in, on or under the Common Area, any trash or refuse collection areas, dumpsters and/or receptacles and the Land upon which they are situated, and such driveways, unimproved areas or other Common Area as may be designated by the Association or as may be described on EXHIBIT "C", EXHIBIT "C-1", EXHIBIT "D" and/or EXHIBIT "D-1" attached hereto, if applicable, all of which shall be for the common use by or benefit to all Owners and Occupants.

1.4 "Common Expenses" shall mean expenses attributable to the maintenance of and replacement of the Common Area, including without limitation any common water supply system, common drainage facilities, paths or ways, together with any other expenses which the

Association designates as Common Expenses and any other expenses for the common benefit of all Owners declared to be Common Expenses by this Restated Declaration.

1.5 "Declarant" shall mean URBAN LOFTS XV, LTD., a Texas limited partnership, or its successors or assigns.

1.6 "Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions recorded among the Real Property Records of Harris County, Texas under Harris County Clerk's File Number 20070170358.

1.7 "Governing Documents" shall mean and refer to the Articles of Incorporation, Bylaws, minutes, decisions and actions of the Association and/or the Board of Directors thereof and this Restated Declaration.

1.8 "Improvements" shall mean any buildings, structures, fixtures, additions and appurtenances to a Townhome or constructed or situated upon any Common Area.

1.9 "Occupant" shall mean a person or persons in occupancy or possession of a Townhome, regardless of whether said person is an Owner.

1.10 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Townhome. "Owner" shall include contract sellers, but shall exclude persons or entities having only a security interest in a Townhome or any portion of the Property.

1.11 "Plat" shall mean and refer to both of: (a) the map or plat recorded in Harris County, Texas under Harris County Clerk's File #20070099490, Film Code #608290 dated 2/15/2007 known as the "North Ennis Townhomes" plat and (b) the map or plat recorded in Harris County, Texas under Harris County Clerk's File #20070099445, Film Code #608288 dated 2/15/2007 known as the "Commerce Avenue Townhomes" plat and all supplements, amendments and additions thereto.

1.12 "Property" shall mean and include the Property described above and all Improvements and structures thereon and all rights, easements and appurtenances belonging thereto.

1.13 "Restated Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions.

1.14 "Townhome" shall mean and refer to each of the individual Townhomes or parcels of land as shown on the Plat with an individual dwelling unit built or to be built thereon and all appurtenances thereto and including all Improvements thereon.

1.15 "Water Supply System" shall mean the master-water meter and/or water supply pipe, line or service situated upon the Property and providing water service to Townhomes, if applicable.

ARTICLE II

TOWNHOME AND COMMON AREA DESIGNATIONS AND DESCRIPTIONS

2.1 DESIGNATION OF TOWNHOME. The portions of the Property being more particularly described in EXHIBIT "A" is hereby divided into parcels consisting of ninety-nine (99) separately designated Townhomes, being more particularly shown as individual Townhomes in each Plat. Each Townhome is further identified by street address as set out in EXHIBIT "B" and EXHIBIT "B-1" attached hereto and incorporated by reference herein.

2.2 INSEPARABLE UNITS. Each Townhome shall be inseparable and shall at all times remain indivisible.

2.3 GOVERNMENTAL ASSESSMENT. Declarant shall give written notice to the Assessor's Office of the division and Ownership of the Property, as is provided by law, so that each Townhome shall be deemed a separate parcel and subject to separate Assessment and taxation.

2.4 COMMON AREA.

a) Declarant hereby designates those portions of the Property shown on the Plat or site plan, if applicable, as Common Area, including any shared driveway or common drainage system, as may be further defined in Section 1.3 of this Restated Declaration and as may be further described in EXHIBIT "C," and/or EXHIBIT "C-1" attached hereto and incorporated by reference herein. Every Owner and Occupant shall have, and all Owners and Occupants and the Association shall grant and does hereby grant to all other Owners or Occupants or their invitees, an easement of access and a right of way and easement of enjoyment in, upon and over the Common Area, subject to all covenants, conditions, restrictions and easements set forth in this Restated Declaration. Declarant does hereby grant in perpetuity to all Owners and Occupants and their invitees an easement and right-of-way for purposes of vehicular and pedestrian ingress and egress upon, over and across the Common Area and to and from such Owner's or Occupant's Townhome, but not for parking, occupancy, recreation or any other use. Upon expiration of the Declarant Control Period, the Association shall be solely responsible for all maintenance and repair of the Common Area and all Improvements thereon, which shall include without limitation all water, sewer, storm piping if any, electrical, all paving and trash and/or dumpster maintenance and removal whether by public or private service. Any shared driveway portion of the Common Area shall further be subject to the following:

- i. Each Owner shall have the right to use the driveway as an easement for ingress and egress to and from the Owner's Townhome.
- ii. Neither the Association nor any Owner, without the written consent of the other Owners, shall ever alter, change, or do any other act or thing to said driveway which would in any way materially adversely affect said driveway or the use thereof or access thereto by other Owners or their invitees, except by duly approved action by the Association and including written approval of any Owner who may be adversely affected by such action.
- iii. Notwithstanding any other provision of this Restated Declaration to the contrary, an Owner who by his negligence or willful act causes the Common Area to be damaged shall bear the whole cost of repairing said damage.

- iv. The Association is obligated to maintain and repair the driveway in good condition and repair and is obligated to pay the cost of such maintenance and repair.
- v. Nothing in this Restated Declaration shall be interpreted to prohibit the Owners from enjoying the easement estates granted to them in the driveway and the Common Area as a whole. Nothing in this Restated Declaration shall ever constitute or be construed as a dedication of any interest herein to the public or give any member of the public any right whatsoever with respect to any such drive area or any other portion of the Common Area.

b) The undersigned does hereby adopt the Plats referenced herein designating the Property as shown thereon as an addition to the City of Houston, Texas for the use of Owners of the Townhomes upon the Property and their invitees forever upon the Common Areas shown thereon. The easements, drive areas and Common Areas shown thereon are hereby granted and reserved for the purposes indicated. The utility and fire lane easements shall be open to the public, fire and police units, garbage and rubbish collection agencies and all public and private utilities for each particular use. The maintenance of paving on the utility and fire lane easements over any Townhome property is the responsibility of the Townhome Owner or the Association, as governed by the Association. No buildings, fences, trees, shrubs or other improvements or growths shall be constructed, reconstructed or placed upon, over or across the utility and fire lane easements as shown, said easements being hereby reserved for the mutual use and accommodation of all public utilities using or desiring to use same. All and any public utilities shall have the right to remove and keep removed all or parts of any building, fences, trees, shrubs or other improvements or growths which in any way may endanger or interfere with the construction, maintenance or efficiency of its respective system on the easements, and all public utilities shall at all times have the full right of ingress and egress to or from and upon the said easements for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining and adding to or removing all or parts of its respective systems without the necessity at any time of procuring the permission of anyone. Any public utility shall have the right of ingress and egress to private property for the purpose of reading meters and any maintenance or service required or ordinarily performed by that utility.

Water main and wastewater easements shall also include an additional reasonable area of working space for construction and maintenance of the systems as may be reasonably necessary during periods of such construction and maintenance. An additional easement area is also granted for installation and maintenance of manholes, cleanouts, fire hydrants, water services and waste water services from the main to the curb or pavement line, and description of such additional easements herein granted shall be determined by their location as installed and as may be reasonably necessary for such purpose.

2.5 COMMON UTILITY/WATER SUPPLY SYSTEM. If there is a common Utility and/or Water Supply System serving all of the Townhomes on any portion of or any parcel or parcels constituting the Property with common metering for use of such utility service and/or water supply by the Property, then notwithstanding anything to the contrary set forth herein, such Utility and/or Water Supply System and all meters and appurtenances thereto shall be deemed part of the Common Area and owned and maintained by the Association, and the Declarant and Owners of all Townhomes shall and by this instrument give and grant to the Association an easement and right-of-way over, upon and under the area of each Townhome at such location as shall be necessary for the purpose of installation, maintenance, repair and/or replacement of such Utility and/or Water Supply System; and each of the Declarant and Owners of Townhomes shall do any and all things and execute and deliver any and all documents which may be necessary or appropriate to evidence such ownership of the Utility and/or Water Supply System and the easement with respect thereto. If the use and/or consumption of such Utility and/or Water Supply System is invoiced to the Property as a whole or sections thereof, the Association shall be responsible for payment of such invoices and shall invoice each Townhome and the Owners thereof for their proportionate share of costs through the use of meters or submeters installed by the Association as a Common Expense. Each Owner agrees to promptly pay to the Association the allocated share of such costs as invoiced to such Townhome by the Association and such allocated share shall be treated as an Assessment hereunder, provided however that the Association may discontinue providing such Utility and/or Water Supply System to any Townhome if such invoice to such Townhome remain unpaid for more than sixty (60) days and the Association may further charge late fees for late payment of such charges by any Owner and a reconnection fee if such Utility or Water Supply System has been disconnected or suspended due to non-payment as provided herein, further provided that the Association or Declarant shall

have provided at least ten (10) days written notice to such Townhome or Owner prior to disconnection or suspension of such services.

2.6 COMMON WALL. If two Townhomes share a common wall as an exterior wall for each of said Townhomes, the Owners of such Townhomes shall be bound by the following:

a) Each wall, fence and roof which is built as a part of the original construction of the Townhome and placed on the dividing line between the Townhomes (subject to Section 2.7 hereof) shall constitute a common wall, fence or roof, and, to the extent not inconsistent with the provisions of this Article, the rules of law in effect in the State of Texas regarding common walls, fences and roofs and liability for property damage due to negligence or willful acts or omissions shall apply thereto subject to the following:

- i) The cost of reasonable repair and maintenance of a common wall, fence or roof shall be shared equally by the Owners who share said wall or roof.
- ii) That neither Owner, without the written consent of the other, shall ever alter, change, repair or do any other act or thing to said common wall, fences or roofs which would in any way affect said wall structurally, the said Owners hereby agreeing that the common wall between such Townhomes and any extension thereof shall at all times be, and the same is, a "Party Wall."
- iii) That in case either Owner desires to build a building longer than the present Party Wall herein described, that said wall shall be on a line with the present Party Wall, and be of the same size, and of the same or similar material, and of like quality with the present Party Wall and if either Owner desires to build more than one (1) story high, the wall shall be on top of and of the same likeness and appearance as the present Party Wall or any extension thereof, and be of the same or similar material and of like quality with the present Party Wall; or
- iv) That when either Owner shall extend the Party Wall, the other Owner shall have the right to use the extended Party Wall as a Party Wall by paying

the other Owner one-half of the cost of whatever portion of the extension of the Party Wall as that Owner shall use.

- v) That if it shall become necessary or desirable to repair or rebuild the whole or any portion of the Party Wall, the expense of repairing or rebuilding shall be borne equally by the Owners as to so much and such portion of the Party Wall as the Owners may at the time of rebuilding or repairing be using in common. Whenever the Party Wall or such portion thereof shall be rebuilt, it shall be erected on the same location, on the same line, and be of the same size, and of the same or similar material, and of like quality with the present Party Wall.
- vi) That in case of damage or destruction of the Party Wall or any extension thereof, including the foundation, either Owner shall have the right to repair or rebuild the Party Wall or extension, and the other Owner, whenever that Owner desires to use the same, shall have the right to do so on the payment of one-half of the expense of the repairing or rebuilding as to so much and such portion of the Party Wall as said Owner may at the time of rebuilding or repairing be using in common for the purpose aforesaid, without prejudice, however, to the right of the other Owner to call for a larger contribution from said Owner under any rule of law regarding liability for negligence or willful acts or omissions in damaging, destroying or failing to properly maintain the Party Wall or any extension thereof.
- vii) That notwithstanding any other provision of this Agreement an Owner who by his negligent or willful act causes the Party Wall to be damaged or exposed to the elements shall bear the whole cost of repairing or furnishing the necessary protection against such elements.

ARTICLE III

PROTECTIVE COVENANTS

3.1 USE AND OCCUPANCY RESTRICTION. Subject to the provisions of this Restated Declaration, no part of the Property may be used for purposes other than (a) single family residential housing and the related common purposes for which the Property was designed; (b) customary home-based businesses to be operated solely within the interior of a Townhome. No Townhome and no portion of the Common Area shall be used or occupied for any other business, commercial trade or professional purpose or as a church or other religious institutional meeting place, either apart from or in connection with the use thereof as a residence, whether for profit or not. The foregoing restrictions as to residential usage shall not, however, be construed in such manner as to prohibit an Owner or Occupant from:

- a) Maintaining a personal or professional library;
- b) Keeping personal business or professional records or accounts; or
- c) Handling personal business or professional telephone calls or correspondence, which uses are expressly declared customarily incidental to the principal residential use and not in violation of this Restated Declaration, provided that it does not entail traffic to or from the Townhome or upon the Common Area by anyone for business purposes, storage of equipment, machinery, supplies or inventory, objectionable odors or other nuisances or other violations of this Restated Declaration.

3.2 INSURANCE. Nothing shall be done or kept in any Townhome that will increase the rate of insurance for the Property, the Common Area or any other Townhome within the Property. No Owner or Occupant shall permit anything to be done or kept in his Townhome which will result in the cancellation of insurance on any Townhome, the Common Area or which will be in violation of any law.

3.3 SIGNS. No sign of any kind except a "for sale" or "for lease" sign not larger than 3' x 5' shall be displayed to the public view on or from any Townhome or the Common Area.

3.4 NOXIOUS OR OFFENSIVE ACTIVITY. No noxious or offensive activity shall be carried on, in or upon any Townhome or the Common Area, nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to the other Owners or Occupants. No loud music, noises, sounds or noxious odors shall be permitted on the Property. Examples of such noxious or offensive activity include, but are not limited to, the following:

- a) Exterior horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes);
- b) Noisy or smoky vehicles;
- c) Large power equipment or large power tools;
- d) Unlicensed off-road motor vehicles;
- e) Items which may unreasonably interfere with electronic, television or radio reception of any Owner or Occupant on the Property; and
- f) Unleashed or uncontrolled pets.

3.5 TEMPORARY STRUCTURES. No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuildings shall be permitted on the Property at any time temporarily or permanently, provided however that temporary structures may be erected for use in connection with the repair or rebuilding of a Townhome or any portion thereof.

3.6 FIRES. There shall be no exterior fires whatsoever except for barbecue fires contained within receptacles designed in such a manner that no fire hazard or nuisance is created.

3.7 STORAGE AND DISPOSAL OF GARBAGE AND REFUSE. No rubbish, trash, garbage or other waste material shall be kept or permitted upon any Townhome, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other portions of the Property in the vicinity thereof or to its Occupants. No lumber, grass, shrub or tree clippings, plant waste, metals, bulk material,

scrap, refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Property.

3.8 AIRING LAUNDRY. No clothing or other material shall be aired or dried upon the Property in any window, patio, balcony, nor anywhere exposed to outside view.

3.9 VEHICLE PARKING. No Owner or Occupant shall park, store or keep any vehicle, except wholly within the parking space designated therefore, and any inoperable vehicle shall not be stored in a parking space. No Owner or Occupant shall park, store or keep within or adjoining the Property any large commercial-type vehicle (dump truck, cement-mixer truck, oil or gas truck, delivery truck) and any other vehicle, equipment, mobile or otherwise, or any recreational vehicle (camper unit, motor home, truck, trailer, boat, mobile home or other similar vehicle).

3.10 VEHICLE REPAIRS. No Owner or Occupant shall conduct major repairs or major restorations of any motor vehicles, boat, trailer, aircraft or other vehicle upon any portion of the Property. Parking spaces shall be used for parking purposes only.

3.11 STREETS AND DRIVEWAYS. No vehicle shall be parked on driveways or the Common Area so as to obstruct ingress and egress by other Owners or Occupants, their families, guests and invitees.

3.12 AIR CONDITIONERS. No window or wall type air conditioner shall be installed, erected, placed or maintained on or in any Townhome.

3.13 ANTENNAE. Not more than one (1) exterior television or radio antenna per Townhome (not to exceed twelve (12) feet in height) or satellite dish (not to exceed one (1) meter in diameter), shall be allowed. Any such antenna or dish shall be screened or situated away from public view.

3.14 EXTERIOR APPEARANCE OF TOWNHOME. Each Owner or Occupant shall keep clean and in good condition and repair the windows and exterior of his Townhome and shall not permit garments, rugs, laundry or other unsightly items to extend from or be placed outside of such Townhome including but not limited to, over windows or on patios and balconies. No aluminum foil or similar reflective material shall be used or placed over doors or on windows.

No unsightly objects that constitute a nuisance or might reasonably be considered to give annoyance to neighbors or ordinary sensibility shall be placed or allowed to remain on any yard or any patio or balcony or parking space.

3.15 ANIMALS. Except as otherwise set forth herein, no animals, livestock, reptiles or poultry of any kind shall be raised, bred or kept in any Townhome. Dogs, cats, fish, birds and other customary household pets may be kept in Townhomes, provided they are not kept, bred or maintained for commercial purposes or in "unreasonable quantities" as hereinafter defined. As used in this Restated Declaration, "unreasonable quantities" shall mean more than two (2) pets per household, unless written approval of a larger quantity is granted by the Association. Animals belonging to Owners, Occupants or their licensees, tenants or invitees within the Property must be kept either within the Townhome, its enclosed patio or on a leash being held by a person capable of controlling the animal. No Owner, Occupant or their agents shall permit any animal to defecate or urinate upon the streets or sidewalks, and it shall be the absolute duty and responsibility of each such Owner or Occupant to clean up after such animals.

3.16 LEASING. No Owner shall be permitted to lease his Townhome for hotel or transient purposes. No Owner shall be permitted to lease less than the entire Townhome. Every such lease shall provide that the lessee shall be bound by and subject to all of the obligations set forth in the Declaration; an Owner failing to do so, shall be in default hereunder. The Owner making such lease shall not be relieved thereby from any obligations arising under this Restated Declaration.

3.17 TEMPORARY AND OTHER STRUCTURES. No structure of a temporary character; trailer, mobile home, manufactured home, tent or shack shall be placed on any Townhome or the Common Area, either temporarily or permanently and no previously used residence, house, garage or other structure appurtenant thereto, shall be moved upon any Townhome or the Common Area from another location; except, however, that the Declarant reserves the exclusive right to erect, place and maintain and to permit builders to erect, place and maintain such facilities in and upon the Property as in its sole discretion may be necessary or convenient during the period of an in connection with the construction and/or sale of a Townhome or Townhomes and construction of other improvements in the Property. Such facilities may include, but not

necessarily be limited to, a temporary office, storage area, signs, portable toilet facilities and sales office. Declarant and builders shall also have the temporary right to use a residence as a temporary office or model home during the period of and in connection with construction and sales operations upon the Property, but in no event, shall a builder have such right for a period in excess of one (1) year from the date of substantial completion of his last residence upon the Property. Nothing contained herein, however, shall prohibit the construction or installation of permanent outbuildings pertinent to single family use and approved by the Association. Such outbuildings must meet all construction requirements of this Restated Declaration and must be of an architectural style similar to or complimentary to the style of the main residence.

3.18 COMPLETION OF DEVELOPMENT AND SALE OF PROPERTY. In order that Declarant may complete the development of the Property, no Owner or Occupant shall do anything to interfere with, and nothing in the Declaration shall be understood or construed to:

- a) Prevent or hinder Declarant, its contractors or subcontractors, from working in any Declarant owned Townhome whenever Declarant deems necessary, advisable or appropriate to perform any work thereon; or
- b) Prevent or hinder Declarant or its contractors, subcontractors or representatives, from erecting, constructing and maintaining any Townhome owned or controlled by Declarant, including without limitation such structures as may be reasonably necessary for the conduct of its business of construction and sale of Townhomes, construction and installation of Improvements and completing and establishing the Property as a Townhome project and disposing of the same by sale, lease or otherwise;
- c) Prevent or hinder Declarant or its representatives, from maintaining a sales office and maintaining and showing model Townhomes to aid in the marketing of the Townhomes during or after the construction period; or
- d) Prevent or hinder Declarant or its contractors or subcontractors, from maintaining such sign or signs for marketing of Townhomes in and upon the Property.

3.19 IMPROVEMENTS AND UTILITIES; INSTALLATION AND MAINTENANCE. There is hereby created an easement upon, across, over and under all of the Property for ingress and

egress in connection with the completion of all development work by the Declarant or its agents and with the construction of Improvements and the installation, replacement, and maintenance of all utilities, including, but not limited to, roadways, drainage ways, water systems, telephones, electricity, natural gas and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying such service to install and maintain pipes, wires, conduits, service lines, or other utility facilities or appurtenances thereto, on, above, across, and under the Property within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any structure. The Declarant and the utility companies furnishing service shall have the right to remove all trees situated within or adjacent to the utility easements shown on the Plat or otherwise granted or authorized hereunder which would constitute a hindrance to the installation of such utilities, and to trim overhanging trees and shrubs located on portions of the Property abutting such easements.

3.20 OBSTRUCTIONS. No Owner or Occupant shall place any object or structure, do any act nor any work that in any manner obstructs the Common Area, any shared driveway areas and/or easements with respect thereto or prevent or in any way hinder any other Owner, Occupant or invitee access to, ingress to and egress from their Townhome or the Common Area by, over, or through the Property's Common Area, shared driveway and/or the easement described herein even if all or part of the shared driveway may be owned by such Owner.

3.21 LIABILITY FOR DAMAGES. The Owner of each Townhome shall be liable for all damages to any other Townhome, Owner, Occupant, guest, contractor or invitee caused by such Owner or any Occupant of his Townhome or guest.

3.22 GENERAL MAINTENANCE. All Townhomes and Common Areas shall at all times be kept in a neat, clean, well maintained, painted where appropriate, healthful, sanitary and attractive condition. No Townhome or any part of the Common Areas shall be used or maintained as a dumping grounds for garbage, trash, junk or other waste matter. All trash, garbage or waste matter shall be kept in adequate containers constructed of metal, plastic or masonry materials, with tightly fitting lids, which shall be maintained in a clean and sanitary condition and screened from public view except as necessary for garbage pick-up days. No

Townhome shall be used for open storage of any materials whatsoever, which storage is visible from the street, except that new building materials used in the construction or improvements erected on any Townhome may be placed upon such Townhome at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until completion of the improvements, after which these materials shall either be removed from the Townhome, or stored in a suitable enclosure on the Townhome.

3.23 REMOVAL OF DIRT. The digging of dirt or the removal of any dirt from any Townhome or from any portion of the Common Areas is prohibited, except as necessary in conjunction with landscaping or construction of improvements thereon, and subject to the approval of the Association.

3.24 TREE CUTTING. No Owner or Occupant shall cut or permit the cutting of any live timber or trees upon any Townhome or any portion of the Common Area from the ground except on that portion of said Townhome which comprises the actual building site where improvements are going to be erected, together with a driveway leading to such building site.

3.25 AIR CONDITIONERS. No window or wall type air conditioners shall be permitted to be used, erected, placed or maintained on or in any building in any part of the Property, provided that the Association may, at its discretion, permit window or wall type air conditioners to be installed if such unit, when installed, shall not be easily visible from a street, such permission to be granted in writing.

3.26 TOWNHOME WATER SYSTEMS. The Owner or each Townhome is solely responsible for the protection of all portions of the water system serving and located upon or under his Townhome. The location of the water tap and water meter shall be marked by the Townhome owner implanting two posts, painted white and with twenty-four (24) inches showing above ground with the one post being placed on each side of said water connections(s). The posts shall remain prominently showing until all construction on the Townhome is complete and the lawn has been established. Repair of damages to the water system upon an Owner's Townhome caused by negligence or willful misconduct of the Owner, his family, guests or representatives shall (at the option of the utility company) be the Townhome Owner's expense.

3.27 FIREARMS. The use or discharge of firearms, firecrackers or other fireworks in the Property is prohibited.

3.28 JOINT RESPONSIBILITY. All Occupants or tenants of any Townhome shall be jointly responsible with the Owner for abiding by all of the provisions of this Restated Declaration and the rules and regulations of the Association. Failure to comply shall give the Association the right to evict said Lessee or Tenant. The Owner shall be jointly responsible with the Tenants for any costs or fines.

ARTICLE IV RIGHTS AND OBLIGATIONS OF OWNERSHIP

4.1 OWNERSHIP. A Townhome will be a fee simple estate and may be held and owned by any person, firm, corporation or other entity singularly, as joint tenants, as tenants-in-common, or in any real property ownership or relationship recognized under the laws of the State of Texas. The Common Area shall be owned and maintained solely by the Association, except as otherwise shown on the Plat or as may be provided in this Restated Declaration.

4.2 EXCLUSIVENESS OF OWNERSHIP. Each Owner shall be entitled to exclusive ownership and possession of his Townhome subject to the rights and obligations set forth herein.

4.3 ONE-FAMILY RESIDENTIAL DWELLING. Each Townhome shall be occupied and used or leased by the Owner or Occupant only as and for a single family residential dwelling for the Owner, Occupant, their families, social guests or tenants.

4.4 OWNER MAINTENANCE. An Owner shall at his sole cost and expense maintain and keep in repair the structure (including the foundation, walls, roofs and all appurtenances thereto), exterior surface and appurtenances, interior and patio and/or balcony space and lawn, garden, parking and storage of his own Townhome and all other Improvements and appurtenances to such Townhome, including the fixtures thereof, keeping the same in good condition and repair, painted (if a painted area), neat and clean at all times. All fixtures and equipment installed servicing the Townhome, including, but not limited to, electrical, plumbing and gas shall be maintained and kept in good condition and repair by the Owner thereof and an Owner shall be obliged to promptly repair any damage to the exterior of the Townhome and

replace any broken or cracked glass in windows and doors and any exterior portion of the Townhome. An Owner or Occupant shall be responsible for the heating and cooling system in his Townhome. Each Owner or Occupant shall keep his balcony or patio and all outside areas adjacent to his Townhome clean and neat at all times. No exterior maintenance, repairs or painting that changes the color, design, or appearance of a Townhome shall be done by an Owner without the consent of the Association. Townhome ownership shall entitle the Owners to cast one (1) vote per Townhome in all matters of such modification of exterior maintenance, repairs and painting. Except as herein provided a majority vote shall control. The Owners of one (1) Townhome are not entitled to split their vote.

4.5 ALTERATION. An Owner or Occupant shall do no act nor any work that will damage or impair the structural soundness or integrity of his Townhome or any other Townhome or Improvements situated on the Property or damage or impair any Common Area or any easement or hereditament. No Owner or Occupant shall in any way alter, modify, add to or otherwise perform any work whatever upon any of the Water Supply System, or alter the appearance of the exterior of his Townhome without the prior written consent and approval in writing by the Association which may be granted or denied in the sole discretion of the Association.

4.6 SUBJECT TO DECLARATION. Each Owner or Occupant shall comply strictly with the provisions of this Restated Declaration, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or for injunctive relief, or both, maintainable by an aggrieved Owner or the Association.

ARTICLE V

MANAGEMENT AND ADMINISTRATION

5.1 ADMINISTRATION. The administration and management of the Property including maintenance, repair and replacement of the Common Area or any component, portion or element thereof shall be the sole responsibility of the Association which may be further supplemented by the Articles of Incorporation, By-Laws, actions and decisions of the Association, all subject to the provisions contained in this Restated Declaration. An Owner of a Townhome, upon

becoming an Owner, shall automatically be a member of the Association and shall remain a member during the period of his ownership. Any party that holds an interest in a Townhome merely as security for performance of an obligation shall not be a member of the Association. The Association shall be managed by a Board of Directors, duly appointed or elected, pursuant to the terms and conditions of the Association By-Laws. In addition, the Association may enter into a management agreement upon the terms and conditions established in the Association By-Laws or by the Board of Directors, and said management agreement to be consistent with this Restated Declaration.

5.2 DECLARANT CONTROL. Paragraph 5.1 above notwithstanding, and for the benefit and protection of the Townhome Owners and any mortgagees of record and for the additional purpose of insuring a complete and orderly build out as well as timely sale of the Townhomes on the Property, Declarant shall retain control of all management and administration of the Association until the closing of sale of seventy five (75%) of the Townhomes, or when in the sole opinion of the Declarant, the Project becomes viable, self-supporting and operational (hereinafter referred to as "Declarant Control Period"). It is expressly understood that upon relinquishment of Declarant control, Declarant will not use its prior control to gain any advantage over the Townhome Owners by way of retention of any residual rights or interests in the Association or through the creation of any management agreement with a term longer than one (1) year without Association approval.

5.3 MANAGING AGENT. Declarant or the Board of Directors may employ or designate a manager or managing agent, who shall have and possess all of the rights, powers, authority, functions and duties as may be specified in the contract of employment or as may be delegated by Declarant or the Board of Directors. Declarant or the Board of Directors may pay such manager or managing agent such compensation as it may deem appropriate for the services to be rendered, which compensation shall constitute a part of the Common Expenses of the Association and shall be paid out of the Association funds.

5.4 MEMBERSHIP AND VOTING.

a) Any person upon becoming an Owner of a Townhome shall automatically become a member of the Association. Such membership shall terminate without any Association

action whenever such person ceases to own a Townhome, but such termination shall not relieve or release any such former Owner from any liability or obligation incurred under or in any way connected with the Association or arising as a result of his ownership during the period of such ownership and membership of the Association, or impair any rights or remedies which the Association or others may have against such former Owner arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto. No certificates of stock shall be issued by the Association, but the Association may, if it so elects, issue one (1) membership card to the Owner(s) of a Townhome. Such membership card shall be canceled and surrendered to the Secretary whenever ownership of the Townhome designated thereon shall terminate. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale, conveyance, judicial sale, or other voluntary or involuntary transfer of title or beneficial interest in the Townhome to which it is appurtenant, and then only to the purchaser in the case of a sale, or to the transferee in the case of a transfer. Any attempt to make a prohibited transfer is null and void.

b) Townhome ownership shall entitle the Owner(s) to cast one (1) vote per Townhome in the affairs of the Association. Voting shall not be split.

5.5 INSURANCE. Each Owner shall obtain and maintain replacement value casualty insurance upon his Townhome including all Improvements, fixtures, installations and/or additions thereto and shall further obtain and maintain liability insurance coverage for not less than \$300,000.00 for bodily injury and \$100,000.00 property damage for incidents occurring on such Owner's Townhome or upon the Common Area or any easement or right-of-way set forth herein or otherwise resulting from the negligence or willful misconduct of such Owner, his family members, tenants, Occupants, agents, contractors and invitees. Furthermore, the Association shall not be responsible for procurement or maintenance of any insurance covering the liability of any Owner or Occupant not caused by or connected with the Association's management or maintenance of the Property. Each Owner may obtain additional insurance at his own expense for his own benefit. Insurance coverage on the furnishings and other items of personal property belonging to an Owner and casualty and public liability insurance coverage within each Townhome are specifically made the responsibility of each Owner, and each Owner shall furnish a copy of his insurance policy or policies to the Association.

Any insurance obtained by the Association or an Owner shall contain provisions whereby the insurer waives its right of subrogation as to any claims against the Owners, Association or their respective employees, agents or guests.

ARTICLE VI

MAINTENANCE ASSESSMENTS

6.1 ASSESSMENTS FOR COMMON EXPENSES. All Owners shall be obligated to pay the Assessments imposed by the Association to meet the Common Expenses. Subject to the provisions of this Article VI, each Owner shall pay a fraction of the Common Expenses, the numerator of which shall be one (1) and the denominator of which shall be the number of actual or projected Townhomes situated or to be situated upon the Property. Each Owner of any Townhome by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual Assessments (which may be divided into estimated monthly payments or other periodic payments) and (2) special Assessments, such Assessments to be established and collected as hereinafter provided. The annual and special Assessments, together with interest, costs, and reasonable attorneys fees, shall be a charge on each Townhome and shall be a continuing lien upon the Townhome against which each such Assessment is made. Assessments for estimated Common Expenses shall be calculated on an annual basis by the Association and shall be due and payable as set forth in Section 6.7. Failure to pay by 5:00 p.m. on the date or dates which such payments are due shall automatically result in the imposition and Assessment by the Association of a late charge of ten percent (10%) of the late Assessment or twenty five dollars (\$25.00) whichever is greater, as a charge for handling delinquent accounts, or such other amount as may be determined by the Association.

6.2 PURPOSE OF ASSESSMENTS. The Assessments levied by the Association shall be used exclusively for the purposes of paying the Common Expenses and promoting the health, safety, welfare, convenience and recreation and for the benefit of the Owners and Occupants of the Property, and in particular for the improvement, maintenance and preservation of the Property, the services and the facilities devoted to said purposes that are related to the use and enjoyment of the Townhomes and the Common Area. Such uses may include, but are not limited to, the cost to the Association of the following: insurance, repair, replacement and

maintenance of any portion of the Common Area, the Water Supply System and easements or easements with respect thereto (if any), management costs, taxes, legal and accounting fees as may from time to time be authorized by the Association; maintenance of easements upon, constituting a part of, appurtenant to or for the benefit of the Property; mowing grass, caring for the grounds and landscaping; garbage pickup; pest control; driveway and/or sidewalk maintenance; irrigation of landscaping; lighting and utilities; security access or service for the Property; water and sewer service furnished to the Property by or through the Association; wages incurred for services to the Association, the Common Area or other matters for which any Common Expenses were made; common utilities; and other charges required by this Restated Declaration, or other charges that the Association may incur as Common Expenses. In addition, the Association may establish a reserve for repair, maintenance and other charges as specified herein.

6.3 DETERMINATION OF ASSESSMENTS. Subject to Section 6.5 hereof, the Assessments shall be determined by the Board of Directors based upon the financial requirements necessary to provide for the payment of all Common Expenses arising out of or connected with the management, administration, maintenance and operation of the Property and/or the Common Areas. This determination may include, among other items, any and all matters described in Section 6.2 above, expenses and liabilities incurred by the Association under or by reason of this Restated Declaration, expenses incurred in the operation and maintenance of recreation and administrative and management facilities, payment of any deficit remaining from a previous period and the creation of a reserve contingency fund. The omission or failure of the Board of Directors to fix the Assessment for any year shall not be deemed a waiver, modification or a release of the Owners from the obligation to pay the Assessment for such year. Upon change of ownership of a Townhome, said new Townhome Owner shall be responsible for and shall pay at the time of conveyance a fee of the greater of ten percent (10%) of the current annual Assessment or \$150.00 to reimburse the Association for costs of transfer, or such other cost as may be determined by the Association.

6.4 INITIAL ASSESSMENT AND MAXIMUM MONTHLY ASSESSMENT.

a) The annual Assessments shall be uniformly and fairly calculated for each Townhome.

b) The Association, acting by and through the Board of Directors, shall set the initial Assessment.

c) The Association, acting by and through the Board of Directors, shall set the Assessment for the next succeeding twelve (12) month period at an amount which shall not exceed one hundred twenty percent (120%) of the annual Assessment allowed for the preceding year. If the Association determines at any time during the calendar year that a greater increase of the annual Assessment is required to adequately perform the duties and responsibilities of the Association and pay all expenses thereof, the Association may call a special meeting of the Owners. By the assent of a two-thirds (2/3) vote of the quorum of Owners present at such meeting in person or by proxy, the annual Assessment may be set at an amount as such Owners approve, including an amount in excess of 120% of the preceding annual Assessment. The new Assessment shall become the basis for future annual increases, subject to the one hundred twenty percent (120%) formula described above.

d) The Association shall have authority to lower the annual Assessment if it deems feasible and appropriate.

6.5 OBLIGATION OF DECLARANT FOR ASSESSMENTS AND MAINTENANCE. During the Declarant Control Period, as provided in Paragraph 5.2 hereof, the Declarant shall be responsible for the difference between the cost of maintenance of the Property and any Assessment payments received from Owners other than Declarant until all Townhomes have been completed and sold, or until Declarant transfers responsibility for said maintenance to the Association, as provided in Paragraph 5.2 hereof, whichever first occurs. So long as Declarant is responsible for maintenance as provided herein, Declarant shall not be required to pay the annual Assessment for any Townhome owned by Declarant. During the Declarant Control Period, Declarant shall provide any additional funds necessary to pay actual cash outlays required to fund current operating expenses of the Association. Declarant shall not be obligated to fund any reserve accounts. After the Declarant Control Period expires, Declarant shall pay one half (½) the regular annual Assessment otherwise assessed to the Owners for each Townhome it owns.

6.6 SPECIAL ASSESSMENTS FOR IMPROVEMENTS. Subsequent to the Declarant Control Period and in addition to the annual Assessments authorized above, the Association may levy, at any time and from time to time, in any calendar year a special Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of Improvements upon the Property, including the necessary fixtures and personal property related thereto, provided that any such Assessment shall be approved by a two-thirds (2/3) vote of the quorum of Owners voting in person or by proxy at a meeting duly called for this purpose. Declarant shall pay one half (½) of the special Assessment otherwise assessed to the Owners for each Townhome it owns.

6.7 COMMENCEMENT OF ASSESSMENTS. The annual Assessments provided for herein shall be due and payable on the first (1st) day of each calendar year. The Assessments shall be prorated if the ownership of a Townhome commences or terminates on a day other than the first (1st) day of the calendar year. On Townhomes owned by the Declarant, the Assessment shall commence on the first (1st) day of the month after the Declarant Control Period expires, or the first (1st) day of the month following the transfer to the Association of the full responsibility for maintenance, but such Assessment shall be one half (½) of the Owner's Assessment. The Board shall fix the amount of the annual Assessments against such Townhome at least thirty (30) days prior to January 1st of each year; provided however that the Board may adjust the annual Assessments, and further provided that any such adjustment shall not exceed the maximum permitted hereunder, with thirty (30) days' written notice given to each Owner. Written notice of the Assessment adjustment shall be sent to every Owner subject thereto. The due date shall be established by the Board, and unless otherwise provided or unless otherwise agreed by the Association, the Board shall collect the Assessments annually in accordance with this Article VI.

6.8 NO EXEMPTION. No Owner other than Declarant shall be exempt from liability for the Assessments to his Townhome as set forth herein.

6.9 LIEN FOR ASSESSMENTS.

a) All sums assessed to but unpaid by an Owner for his share of Common Expenses chargeable to his Townhome, including interest thereon at ten percent (10%) per

annum, plus late charges and attorney fees and other costs of collection shall constitute a lien on such Townhome superior to all other liens and encumbrances, except only for:

i. Taxes and special Assessments levied by governmental and taxing authorities, and

ii. All liens securing sums due or to become due under any mortgage, vendor's lien or deed of trust lien filed for record prior to the time such costs, charges, expenses and/or Assessments become due securing payment of loans advanced for the purchase of and/or Improvements to the Townhome.

b) To evidence such lien the Association may, but shall not be required to, prepare written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Townhome and a description of the Townhome. Such notice shall be signed by one (1) of the members of the Board of Directors or other person designated by the Association for such purposes and may be recorded in the Office of the Clerk or Recorder of the county in which the Property is situated.. Such lien for Common Expenses shall attach from the due date of the Assessment. Such lien may be enforced by any and all laws, rules and remedies permitted by law, including without limitation, judicial or non-judicial foreclosure of the defaulting Owner's Townhome by the Association or by other legal action pursuant to Texas law. Any such foreclosure sale shall be conducted in accordance with the provisions applicable to the exercise of powers of sale in mortgages and deeds of trust, as set forth in Article 51.002 of the Texas Property Code, or in any other manner permitted by law. Each Owner, by accepting a deed to his Townhome, expressly grants to the Association a power of sale, as set forth in said Article 51.002 or otherwise in accordance with Texas law, in connection with the Assessment lien. In any such foreclosure, legal or collection action of any type, the Owner shall be required to pay the costs and expenses of such actions or proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. The Owner shall also be required to pay to the Association a reasonable rental for the Townhome during the period of his occupancy after foreclosure, and the Association shall be entitled to appoint a receiver to collect same. The Association shall have the power to bid on the Townhome at foreclosure sale and to acquire and hold, lease, mortgage and convey title to same.

c) The amount of the Common Expenses assessed against each Townhome shall also be a debt of the Owner thereof at the time the Assessment is made. Suit to recover a money judgment for unpaid Common Expenses, together with interest, attorney's fees and costs of Court, shall be maintainable without foreclosure and without waiving the lien securing same or any other remedy allowed by law.

d) In addition, to the extent permitted by law, Declarant reserves and assigns to the Association, without recourse, a vendor's lien against each Townhome to secure payment of a annual Assessment or special Assessment which is levied pursuant to the terms hereof. Said liens may be enforced by appropriate legal proceedings and the expenses incurred in connection therewith, including, but not limited to, interest, costs and reasonable attorney's fees, shall be chargeable to the Owner in default. Such lien shall be subordinated and inferior to those liens set forth in Subparagraphs 6.9 a) i and ii.

e) Any encumbrancer holding a lien on a Townhome may pay any unpaid Common Expense payable with respect to such Townhome, and upon such payment, such encumbrancer shall be entitled to equitable subrogation and shall have a lien on such Townhome for the amount paid of the same priority as the lien of his encumbrance.

f) The election of any remedy set forth herein shall not be deemed a waiver of any other remedy available at law or in equity.

6.10 EFFECT OF SALE UPON LIEN. Sale or transfer of any Townhome shall not affect the Assessment lien; provided, however, that the sale or transfer of any Townhome pursuant to a foreclosure, a deed in lieu of foreclosure or assignment in lieu of foreclosure under such purchase money or improvement mortgages or deeds of trust shall extinguish the lien securing such Assessments as to Assessments due prior to such sale or transfer. No sale or transfer shall relieve such Townhome, or the Owner thereof, from liability for any Assessments thereafter becoming due or from the lien securing payment thereof.

6.11 STATEMENT OF ASSESSMENTS. Upon the written request of any Owner or any encumbrancer or prospective encumbrancer of a Townhome, the Association, shall issue a written statement setting forth the unpaid Assessments, if any, with respect to the subject

Townhome, the amount of the current annual, monthly or other periodic Assessments, the date of such Assessment and the due date, credit for advance payments received or for prepaid items, including, but not limited to, insurance premiums, which shall be conclusive upon the Association in favor of all persons who rely therein in good faith. The purchaser, donee or other transferee of a Townhome, by deed or other writing (herein called "Grantee"), shall be jointly and severally liable with the transferor of such Townhome (herein called "Grantor") for all unpaid Assessments against the Grantor and/or the Townhome for his proportionate share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the Grantee's right to recover from Grantor the amounts paid by the Grantee. The Grantee shall be entitled to a statement from the Association, setting forth the amount of the unpaid Assessments, if any, with respect to the subject Townhome, the amount of the current monthly Assessment and the date such Assessment becomes due, as well as any credit for advance payments received or for prepaid items, including, but not limited to, insurance premiums. Said statement shall be conclusive upon the Association.

ARTICLE VII

DESTRUCTION OF IMPROVEMENTS

7.1 **DESTRUCTION.** In the event of damage or destruction to the Improvements, the Improvements shall be restored to substantially the same condition as in existence prior to such damage.

7.2 **INSURANCE PROCEEDS.** In the event of damage or destruction due to fire or other casualty, the insurance proceeds, if sufficient to reconstruct the improvement(s), shall be applied to such reconstruction and the Improvements shall be promptly repaired and reconstructed. If such insurance proceeds are not sufficient to fully repair and restore the Townhome, the Owner shall complete such repair and/or restoration at such Owner's expense.

ARTICLE VIII

GENERAL PROVISIONS

8.1 **TAXES, ASSESSMENTS AND CHARGES.** All taxes, Assessments and charges hereunder which may become liens against a Townhome shall relate only to the individual Townhome and not to the Property as a whole.

8.2 JUDICIAL PARTITION. There shall be no judicial partition of any Townhome, nor shall Declarant or any person acquiring any interest in the Property or any part thereof seek any such judicial partition.

8.3 AMENDMENT. This Restated Declaration shall not be revoked, nor shall any of the provisions herein be amended unless the Owners representing an aggregate ownership interest of not less than two-thirds (2/3) of all Townhomes upon the Property agree to such revocation or amendment by instruments duly recorded.

8.4 CORRECTION OF ERROR. Notwithstanding the provisions of Section 7.3 above, Declarant reserves, and shall have the continuing right until the end of the Declarant Control Period, without the necessity of consent of any other Owner or any Mortgagee, to amend this Restated Declaration for the purpose of resolving or clarifying any ambiguities or conflicts herein, or correcting any inadvertent misstatements, errors or omissions herein, provided that no such amendment shall change the stated number of Townhomes, materially decrease the rights of any Owner or the Association or materially increase the obligations of any Owner or the Association.

8.5 NOTICE. All notices, demands or other notices intended to be served upon an Owner shall be delivered by personal or courier delivery or by deposit in the United States mail, certified mail, postage prepaid, addressed in the name of such Owner at the Townhome or other address of such Owner which has been given to the Association in writing.

8.6 INVALIDATION OF PARTS. If any of the provisions of this Restated Declaration or any paragraph, sentence, clause, phrase or word or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of this Restated Declaration and the application of any provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

8.7 OMISSIONS. In the event of the omission from this Restated Declaration of any word, sentence, clause, provision or stipulation which shall be necessary for the accomplishment of the intent and purposes hereof, or any part thereof, then such omitted matter shall be supplied by inference and/or by reference to the Act.

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

8.9 ENFORCEMENT. The Association or any Owner acting for himself or on behalf of the Association if the Association fails to act, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Restated Declaration. Failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association or any Owner shall also have the right, but not the obligation to compel another Owner to make repairs or perform maintenance, abide by architectural, use or other rules or restrictions and in general to enforce the duties and obligations set forth in this Restated Declaration by any means permitted hereunder or by law including, but not limited to the filing of a lawsuit to obtain a restraining order, injunction or mandatory injunction or other Court Order. The non-complying Owner shall be responsible for reimbursing the prevailing Association or Owner for all costs of any such enforcement including, but not limited to, the cost of preparing and delivering all notice letters and demands, court costs and attorney's fees.

8.10 NOTICE OF SALE. The Board of Directors and the Declarant shall be notified of any sale, transfer or conveyance of a Townhome by any manner. Said notice shall indicate the Townhome number or address, date and type of conveyance, new Owner's name, address and phone number and any other such information as may be required for the issuance of a Certificate of Occupancy which may be required at the option of the Association before a new resident may move into the Townhome. The Board of Directors, upon receipt of the above information, shall prepare an estoppel certificate which shall set forth any Assessments and charges due upon such Townhome at time of conveyance and certify as to whether or not there are violations of the Governing Documents remaining on the Townhome as of the date of preparation of such certificate and further stating the remaining Assessment balance, if any, due from the buyer for the balance of the fiscal year. This certificate shall be delivered to the place of closing, and the outstanding Assessments, if any, and a reasonable charge to cover the cost of

providing such certificate shall be deducted from the seller's account at the closing and transmitted directly to the Association.

8.11 ADDITIONS TO PROPERTY SUBJECT TO DECLARATION. Additional property may become subject to this Restated Declaration in the following manner:

a) If Declarant or the Association (after expiration of the Declarant Control Period) desires to add real property to be covered by this Restated Declaration, it may do so by filing of record a Restated Declaration or amendment to this Restated Declaration, which shall extend the coverage of the application, covenants and restrictions of this Restated Declaration with respect to such property, provided however, that such covenants and restrictions as applied to the property which is so added may be altered or modified by said Restated Declaration or amendment. Each Restated Declaration or amendment shall include a legal description of the property added.

b) Such Restated Declaration or amendment shall contain covenants and restrictions to which the added property or properties shall be subject. Such covenants and restrictions may contain additions, deletions and modifications from those contained in this Restated Declaration as may be necessary to reflect the different character, if any, of the added property or properties. Such Restated Declaration or amendment shall impose an annual maintenance charge Assessment on the property covered thereby, on a uniform, per Townhome basis, substantially equivalent to the maintenance charge and Assessment imposed by this Restated Declaration, as provided in Article VI, and may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Restated Declaration as may be applicable to the additional property. In no event, however, shall such Restated Declaration or amendment revoke, modify or add to the covenants or restrictions established by this Restated Declaration or by previously filed Restated Declaration or amendment. All Townhomes added in Restated Declarations or amendments shall have the same rights, privileges and obligations pertaining to Common Areas as those Townhomes in the original Declaration unless specifically modified by the Restated Declaration or amendments.

8.12 CITY OF HOUSTON ENCROACHMENT PERMIT. Reference is hereby made to that certain City of Houston Encroachment Permit attached hereto, incorporated by reference herein and marked EXHIBIT "E" ("Encroachment Permit"). The Encroachment Permit provides generally for the construction, usage and maintenance of a private storm sewer line to service the Property and all Townhomes and Common Areas situated within the Property, said sewer line to be situated below the 2900 block of Commerce Street Public Right-of-Way adjacent to the Property. All of the terms, conditions and provisions of the Encroachment Permit are hereby adopted, approved and ratified by Declarant and the Association and shall be deemed a part of and incorporated into this Restated Declaration. The encroachment and sewer line described in the Encroachment Permit shall be deemed a part of the Common Area under Paragraph 1.3 of this Restated Declaration and all expenses in connection therewith shall be deemed Common Expenses pursuant to the provisions of Paragraph 1.4 of this Restated Declaration. The encroachment described in the Encroachment Permit shall further be deemed an Addition to the Property under the provisions of Paragraph 8.11 of this Restated Declaration. Declarant and, upon and subsequent to expiration of the Declarant Control Period, the Association shall honor, comply with and perform all obligations applicable to such party as set forth in the Encroachment Permit and each Townhome and all of the Common Areas shall be owned, occupied and/or operated subject to the provisions of this Restated Declaration and the Encroachment Permit.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Declarant have caused this instrument to be signed, sealed and delivered by its authorized officers on this the 13 day of December, 2007.

DECLARANT:

URBAN LOFTS XV, LTD.,
A TEXAS LIMITED PARTNERSHIP

BY: LAS VEGAS LOFTS, INC.,
a Texas corporation,
its general partner

(3) ZWL

By:

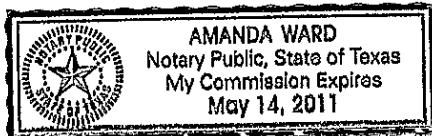

JOEL DAVIS, VICE PRESIDENT

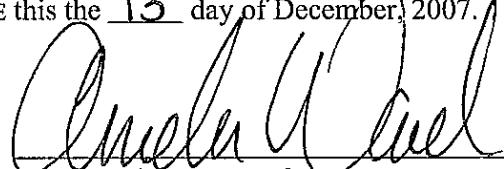
STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority on this day personally appeared Joel Davis, Vice President of Las Vegas Lofts, Inc., a Texas corporation, General Partner of the partnership of Urban Lofts XV, Ltd., known to me to be the person whose name is subscribed to the foregoing instrument and that he executed the same on behalf of Las Vegas Lofts, Inc. as its General Partner and as the act of such limited partnership and for the purposes and consideration expressed in the foregoing instrument.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 13 day of December, 2007.




Notary Public, State of Texas

MORTGAGEE CONSENT

FIRST HORIZON HOME LOAN CORPORATION, a Kansas corporation ("Lender"), beneficiary under a Master Deed of Trust dated June 2, 2006 recorded under File Code #20070162894 among the real property records of Harris County, Texas, as amended, for itself and its successors and assigns, approves the Amended & Restated Declaration of Covenants, Conditions and Restrictions for Commerce Avenue Townhomes (the "Restated Declaration") and the recorded Plat or Plats referenced herein, and Lender agrees and acknowledges that the restrictive covenants contained in this Restated Declaration will run with the land which serves as security for the debt evidenced by the Master Deed of Trust, as amended, and further agrees that the lien of Lender shall be inferior and subordinate to the Restated Declaration and that any foreclosure or enforcement of any other remedy available to Lender or any assignee, transferee or successor in interest of Lender under the Master Deed of Trust, as amended, whether by foreclosure or otherwise will not render void or otherwise impair the validity or priority of the Restated Declaration. Lender agrees that this instrument may be filed of record among the Real Property Records of Harris County, Texas.

Dated: December 13, 2007.

LENDER:

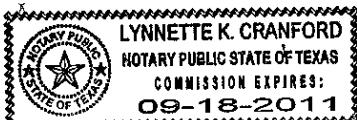
First Horizon Home Loan Corporation,
a Kansas corporation

By: Charles R. Dunshie
Name: CHARLES R. DUNSHIE
Title: VICE PRESIDENT

STATE OF TEXAS §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority on this day personally appeared Charles R. Dunshie as Vice Pres of First Horizon Home Loan Corporation, a Kansas corporation, known to me to be the person whose name is subscribed to the foregoing instrument and that he executed the same on behalf of Horizon Home Loan Corporation for the purposes and consideration expressed in the foregoing instrument.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 13th day of Dec, 2007.



Lynnette K. Cranford
Notary Public, State of Texas

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 1 - NORTH ENNIS TOWNHOMES

Lots One (1) through Nine (9) of Block One (1) and Lots One (1) through Sixteen (16) of Block Two (2) of North Ennis Townhomes Subdivision, being a Replat of 1.108 acres of land out of the S. M. Williams Survey, A-87, Harris County, Texas being of the a portion of Blocks 7 & 8 of the Lockhart Addition as per Plat recorded in Volume 69, Page 96, Harris County Deed Records

Re

And

The south 43.18 Feet of Lot 9, Block 9, of the Lockhart Addition as per Plat recorded in Volume 69, Page 96 of the Harris County Deed Records

And

A Portion of Lots 10 & 11 in Block 9 of the Lockhart Addition as per Plat recorded in Volume 69, Page 96 of the Harris County Deed Records.

PARCEL 2 - COMMERCE AVENUE TOWNHOMES

Lots One (1) through Seventy-Four (74) in Block One (1) of Commerce Avenue Townhomes Subdivision, being a Replat of 3.068 Acres of Land out of the S. M. Williams Survey, A-87, Harris County, Texas also being out of the J. J. Settegast S. M. Williams Subdivision, Volume 3, Page 75, Harris County Map Records, Houston, Harris County, Texas.

EXHIBIT "B"
NORTH ENNIS TOWNHOMES STREET ADDRESSES

Lot 1/Block 1	3035 Commerce Street
Lot 2/Block 1	3031 Commerce Street
Lot 3/Block 1	3027 Commerce Street
Lot 4/Block 1	3023 Commerce Street
Lot 5/Block 1	3019 Commerce Street
Lot 6/Block 1	3015 Commerce Street
Lot 7/Block 1	2 N. Ennis Street
Lot 8/Block 1	6 N. Ennis Street
Lot 9/Block 1	10 N. Ennis Street
Lot 1/Block 2	1 N. Ennis Street
Lot 2/Block 2	3 N. Ennis Street
Lot 3/Block 2	5 N. Ennis Street
Lot 4/Block 2	7 N. Ennis Street
Lot 5/Block 2	9 N. Ennis Street
Lot 6/Block 2	11 N. Ennis Street
Lot 7/Block 2	13 N. Ennis Street
Lot 8/Block 2	15 N. Ennis Street
Lot 9/Block 2	17 N. Ennis Street
Lot 10/Block 2	19 N. Ennis Street
Lot 11/Block 2	21 N. Ennis Street
Lot 12/Block 2	23 N. Ennis Street
Lot 13/Block 2	25 N. Ennis Street
Lot 14/Block 2	27 N. Ennis Street
Lot 15/Block 2	29 N. Ennis Street
Lot 16/Block 2	31 N. Ennis Street

EXHIBIT "B-1"

COMMERCE AVENUE TOWNHOMES STREET ADDRESSES			
Lot 1/Block 1	3058 Commerce Street	Lot 39/Block 1	2960 Commerce Street
Lot 2/Block 1	3056 Commerce Street	Lot 40/Block 1	2958 Commerce Street
Lot 3/Block 1	3054 Commerce Street	Lot 41/Block 1	2956 Commerce Street
Lot 4/Block 1	3052 Commerce Street	Lot 42/Block 1	2954 Commerce Street
Lot 5/Block 1	3050 Commerce Street	Lot 43/Block 1	2952 Commerce Street
Lot 6/Block 1	3048 Commerce Street	Lot 44/Block 1	2950 Commerce Street
Lot 7/Block 1	3046 Commerce Street	Lot 45/Block 1	2948 Commerce Street
Lot 8/Block 1	3044 Commerce Street	Lot 46/Block 1	2946 Commerce Street
Lot 9/Block 1	3042 Commerce Street	Lot 47/Block 1	2944 Commerce Street
Lot 10/Block 1	3040 Commerce Street	Lot 48/Block 1	2942 Commerce Street
Lot 11/Block 1	3038 Commerce Street	Lot 49/Block 1	2940 Commerce Street
Lot 12/Block 1	3036 Commerce Street	Lot 50/Block 1	2938 Commerce Street
Lot 13/Block 1	3034 Commerce Street	Lot 51/Block 1	2936 Commerce Street
Lot 14/Block 1	3032 Commerce Street	Lot 52/Block 1	2934 Commerce Street
Lot 15/Block 1	3030 Commerce Street	Lot 53/Block 1	2932 Commerce Street
Lot 16/Block 1	3028 Commerce Street	Lot 54/Block 1	2930 Commerce Street
Lot 17/Block 1	3026 Commerce Street	Lot 55/Block 1	2928 Commerce Street
Lot 18/Block 1	3024 Commerce Street	Lot 56/Block 1	2926 Commerce Street
Lot 19/Block 1	3022 Commerce Street	Lot 57/Block 1	2924 Commerce Street
Lot 20/Block 1	3020 Commerce Street	Lot 58/Block 1	2922 Commerce Street
Lot 21/Block 1	3018 Commerce Street	Lot 59/Block 1	2920 Commerce Street
Lot 22/Block 1	3016 Commerce Street	Lot 60/Block 1	2918 Commerce Street
Lot 23/Block 1	3014 Commerce Street	Lot 61/Block 1	2916 Commerce Street
Lot 24/Block 1	3012 Commerce Street	Lot 62/Block 1	2914 Commerce Street
Lot 25/Block 1	3010 Commerce Street	Lot 63/Block 1	2912 Commerce Street
Lot 26/Block 1	3008 Commerce Street	Lot 64/Block 1	2910 Commerce Street
Lot 27/Block 1	3006 Commerce Street	Lot 65/Block 1	2908 Commerce Street
Lot 28/Block 1	3004 Commerce Street	Lot 66/Block 1	2906 Commerce Street
Lot 29/Block 1	3002 Commerce Street	Lot 67/Block 1	2904 Commerce Street
Lot 30/Block 1	2978 Commerce Street	Lot 68/Block 1	2902 Commerce Street
Lot 31/Block 1	2976 Commerce Street	Lot 69/Block 1	2903-A Sherman Street
Lot 32/Block 1	2974 Commerce Street	Lot 70/Block 1	2903-B Sherman Street
Lot 33/Block 1	2972 Commerce Street	Lot 71/Block 1	2903-C Sherman Street
Lot 34/Block 1	2970 Commerce Street	Lot 72/Block 1	2905-C Sherman Street
Lot 35/Block 1	2968 Commerce Street	Lot 73/Block 1	2905-B Sherman Street
Lot 36/Block 1	2966 Commerce Street	Lot 74/Block 1	2905-A Sherman Street
Lot 37/Block 1	2964 Commerce Street		
Lot 38/Block 1	2962 Commerce Street		

EXHIBIT "C"
NORTH ENNIS TOWNHOMES PLAT

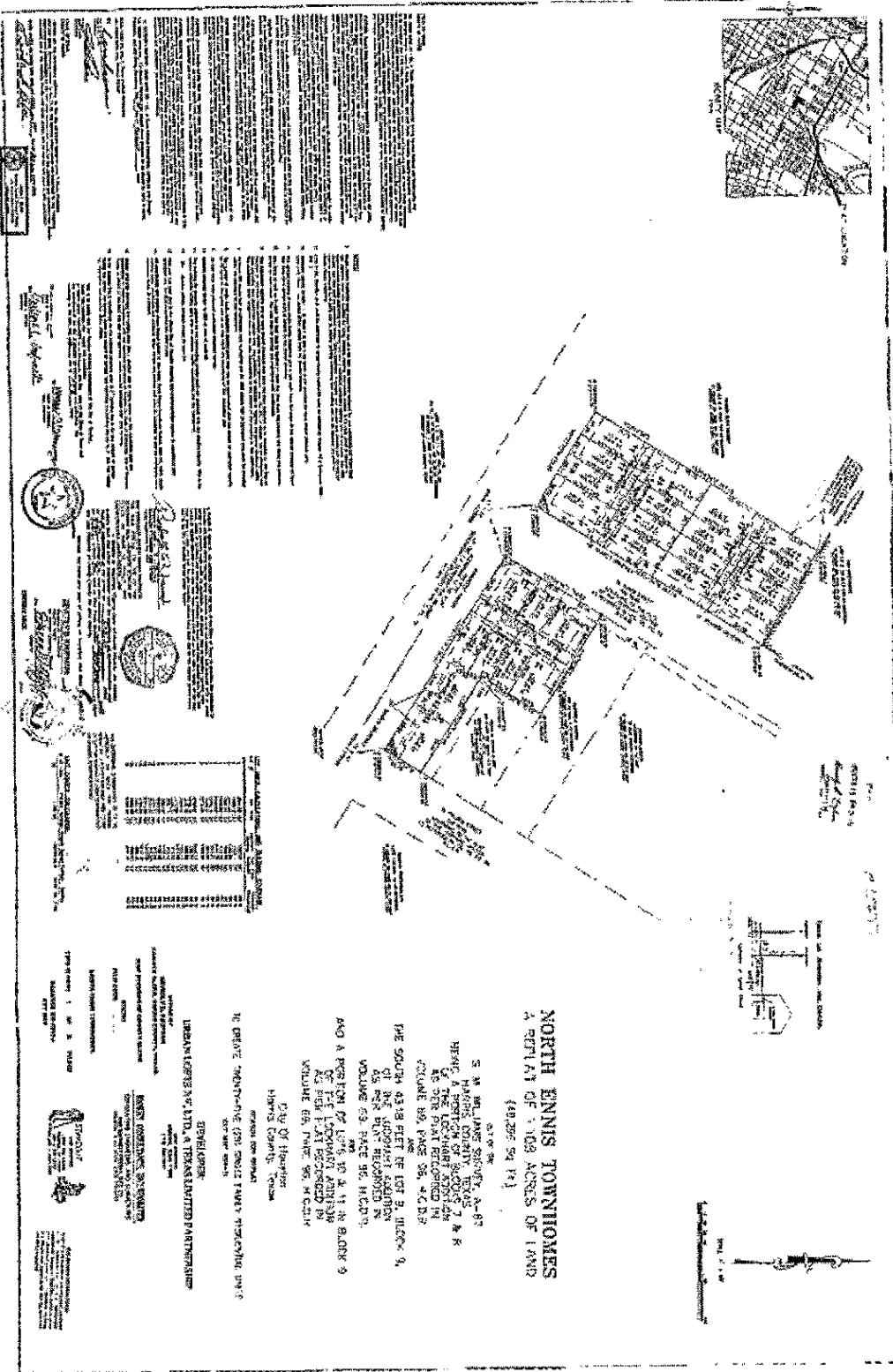


EXHIBIT "C-1"
COMMERCE AVENUE TOWNHOMES PLAT

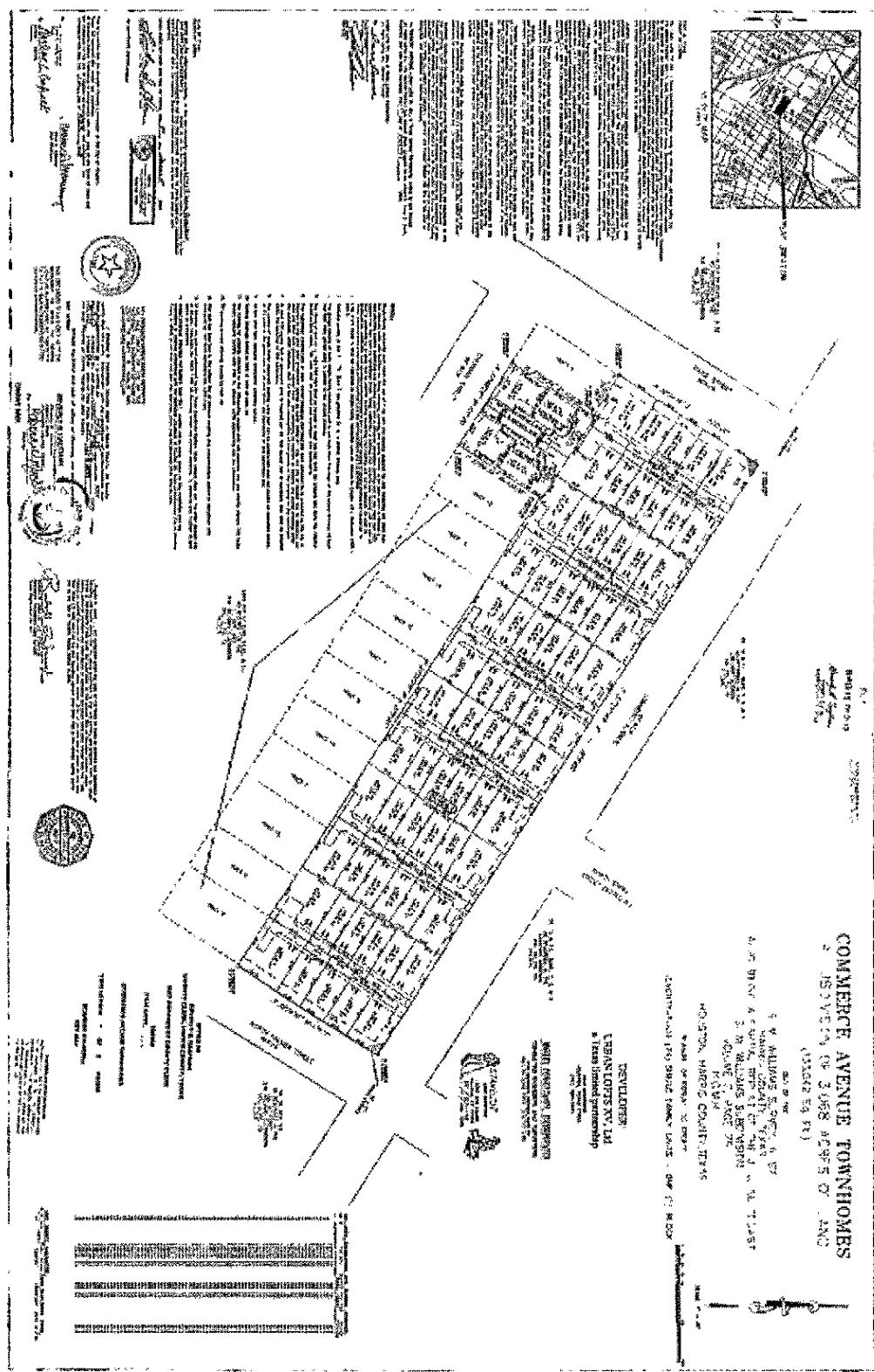
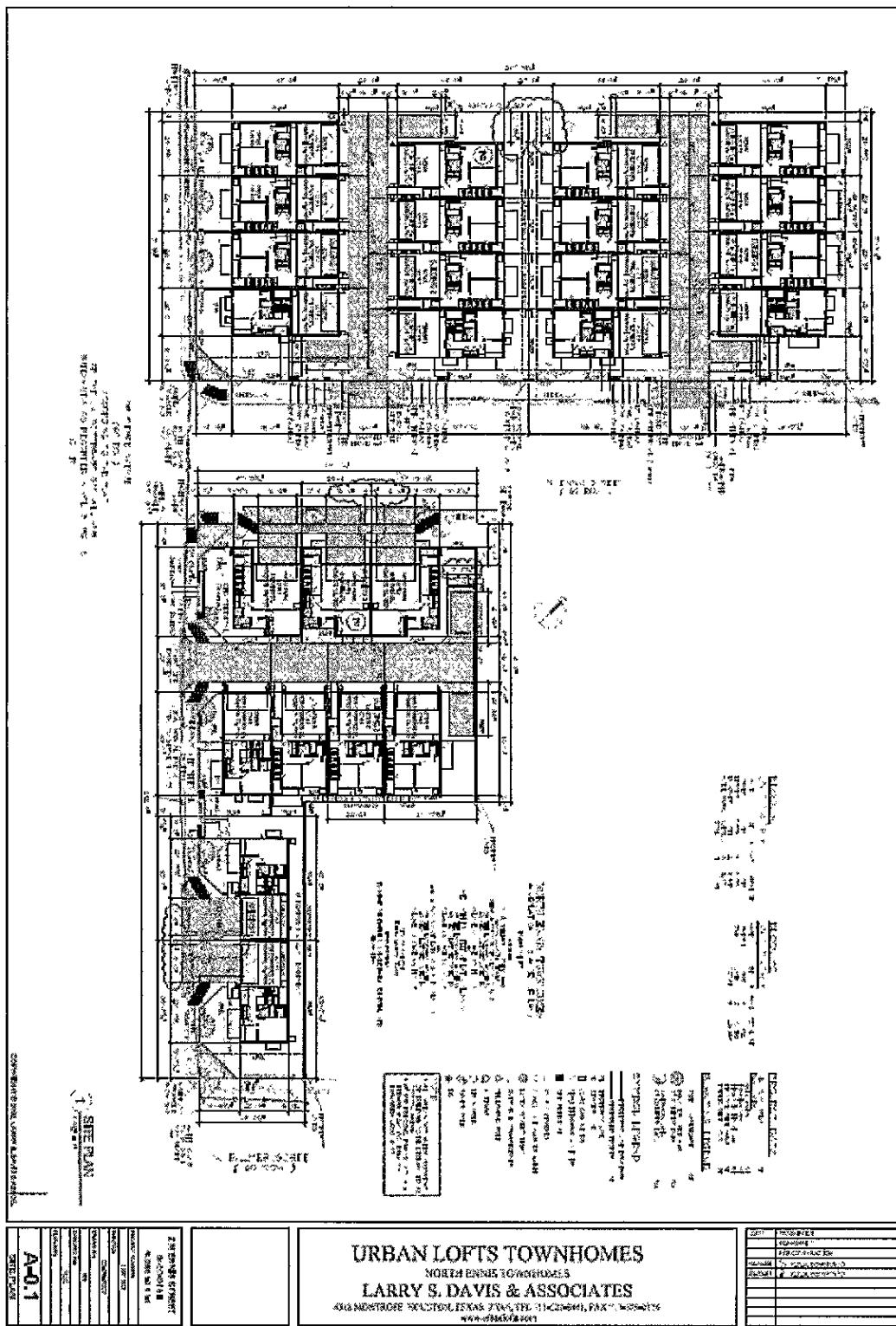


EXHIBIT "D"
NORTH ENNIS STREET TOWNHOMES SITE PLAN

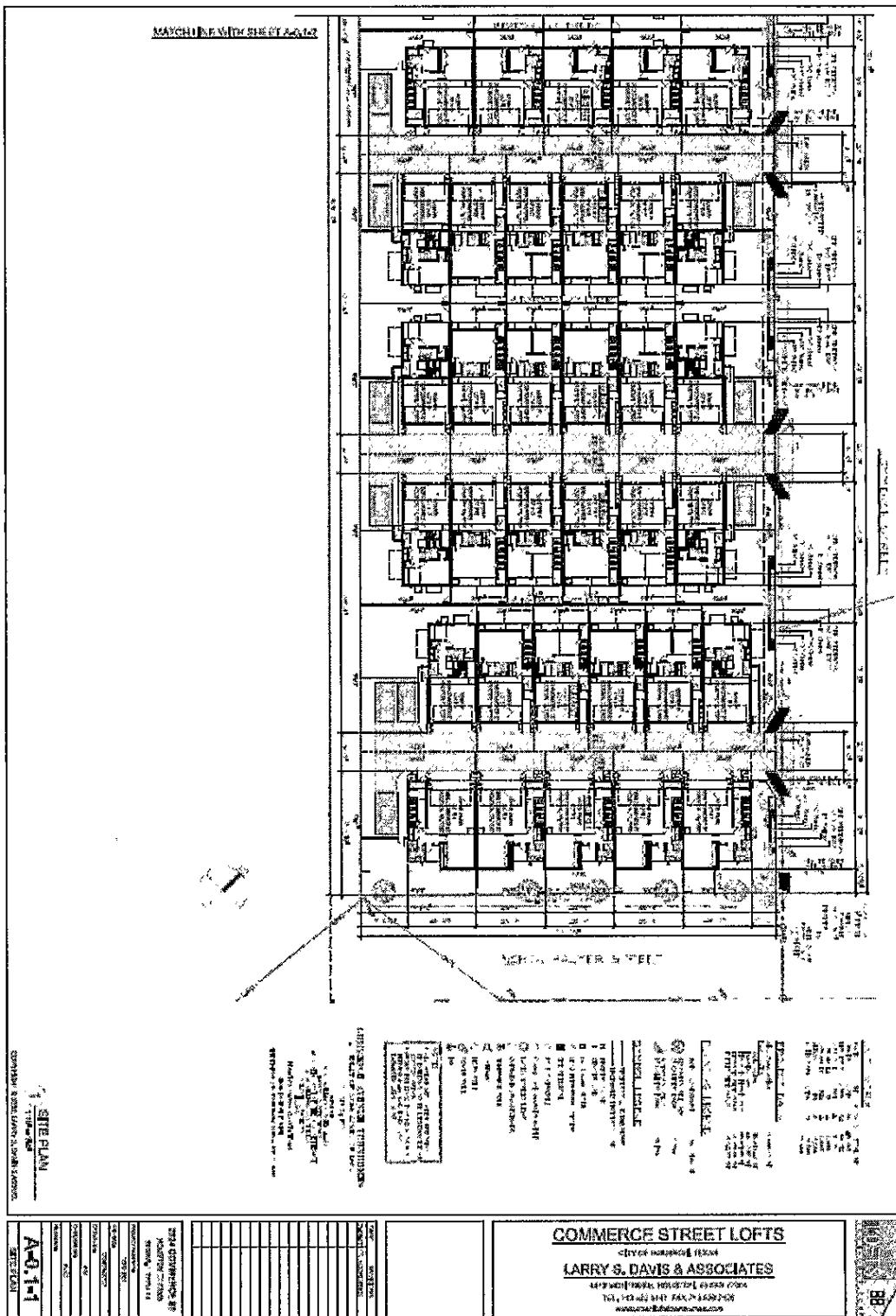


Commerce Ave (Ennis) CCRs
HO.339264v1/052819.009

EXHIBIT "D"

Page 1

EXHIBIT "D-1"
COMMERCE AVENUE TOWNHOMES SITE PLAN — PAGE 1 OF 2



Commerce Ave (Ennis) CCRs
HO:339264v1/052819.009

EXHIBIT "D-1"

Page 1

EXHIBIT "D-1"
COMMERCE AVENUE TOWNHOMES SITE PLAN – PAGE 2 OF 2

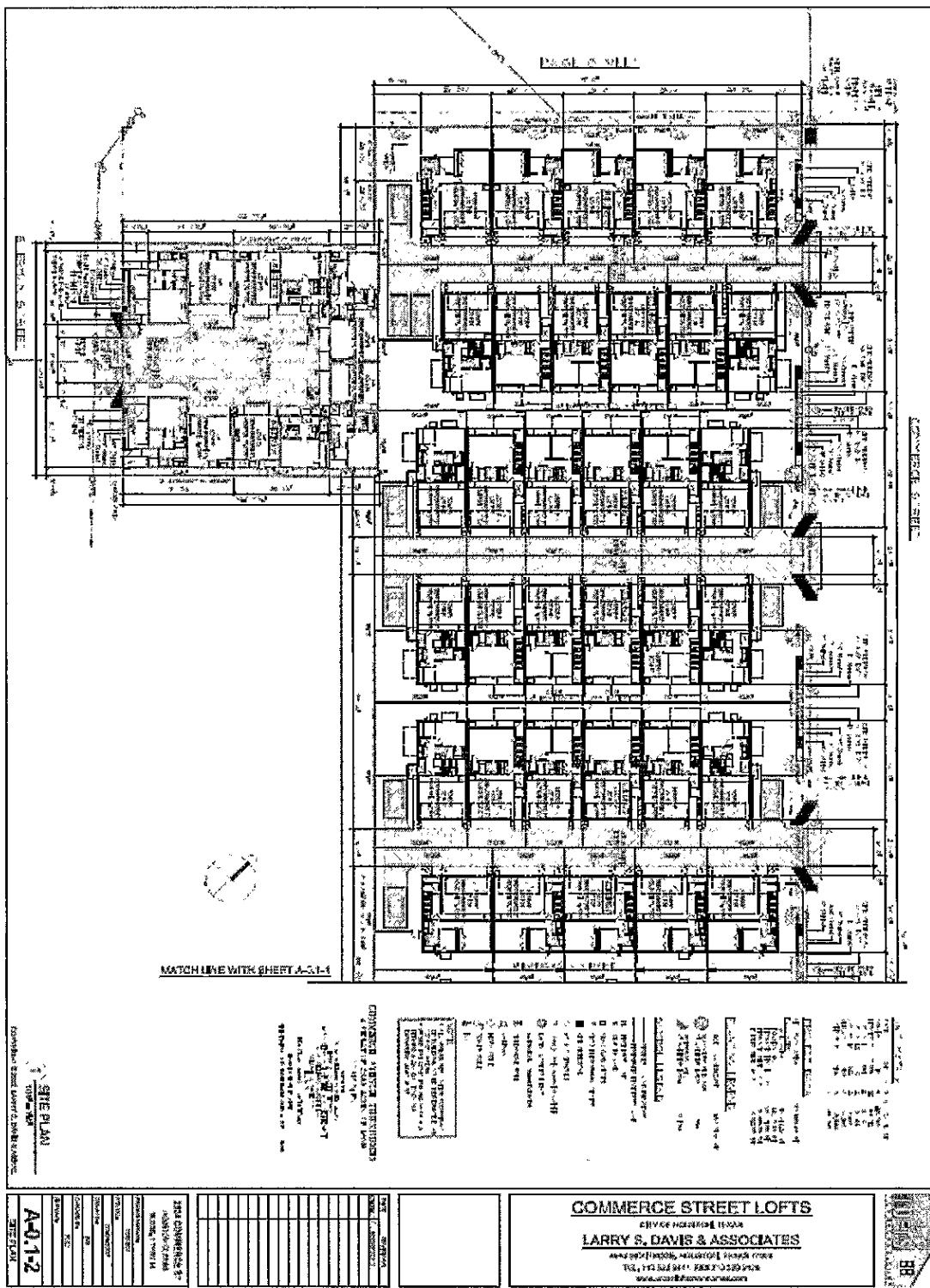


EXHIBIT "E"
ENCROACHMENT PERMIT

ENCROACHMENT PERMIT 5/5/1042

* * *

WHEREAS, Urban Lofts XV, Ltd., a Texas limited partnership, ("Permittee"), has requested that the City of Houston, Texas ("City") issue a permit ("Permit") to construct, use, occupy, operate, maintain and repair: a private storm sewer line, within, along and below the 2900 Block of Commerce Street Right of Way, approximately 60 linear feet, (the "Encroachment") within the Commerce Street right of way ("Street"), which is a public street right of way of the City;

WHEREAS, Permittee has supplied the City a description of the location, drawings and information (collectively, the "Plans") for the Encroachment, setting forth the point or points at which the Encroachment runs under, within, across and along the Street, and which Plans have been assigned Drawing Approval Number 42802;

WHEREAS, the Director of the Department of Public Works & Engineering ("Director", which term includes his or her designee or designees) has reviewed the Plans and the terms and provisions of this Permit, and recommends that this Permit be issued to Permittee, as follows:

Section 1. Adoption of Recitals. The City and Permittee hereby ratify, confirm and adopt the findings and recitals contained in the preamble to this Permit and further find that said findings and recitals are true and correct.

Section 2. Issuance of Permit. Permittee, and its successors, if and only to the extent allowed herein, is hereby issued, subject to the conditions and provisions hereof, a Permit to use, occupy, operate, maintain and repair the Encroachment within, under, over, across, and along the Street, for the Term of this Permit as set forth in Section 19, and solely at the locations set forth in the Plans. Permittee must obtain the Director's written consent prior to any material change in use of the Encroachment for which this Permit is issued.

Section 3. Approval of Plans. Permittee represents that, to the best of its knowledge, the Plans approved by the Department of Public Works & Engineering accurately reflect the design, details and location of the Encroachment, and the point or points at which the Encroachment is within, under, over, across and along the Street. Provided, however, that notwithstanding any language to the contrary in the Plans, Permittee is issued a Permit only for the purposes and subject to the conditions contained herein. It is expressly understood that Permittee is not being granted a franchise, easement, lease or other interest in land notwithstanding any contrary inference contained in the Plans or elsewhere. Notwithstanding such approval of the Plans by the Department of Public Works & Engineering, no agent, officer, director, official, legal representative, employee or assignee of the City is empowered to authorize the Permittee or any of its agents or employees to do or perform any act contrary to the terms of this Permit, the law or ordinances of the City; nor shall any act or deed, including but not limited to the approval of the Plans by the Director, by any agent, officer, director, official, legal representative, employee or assignee of the City purporting to authorize or permit the Permittee to do or perform any act contrary to the terms of this Permit or the law or ordinances of the City ever be held to work as an estoppel or waiver upon the City or in any manner be held to justify or excuse any such act on the part of the Permittee or to create a duty in the City not expressly provided for herein.

Section 4. Expenses and Operations. All costs and expenses connected with the Encroachment, including without limitation, costs and expenses for operation, maintenance, repair, and insurance shall be Permittee's sole responsibility. The Encroachment and the internal or external, structural, electrical or mechanical apparatus and hardware included therein shall at all times during the Term of this Permit be the sole property of the Permittee. The City retains the right, but not the duty, at any and all times to inspect and to have direct access to the Encroachment and its respective apparatus and hardware without cause or benefit of notice to Permittee. Furthermore, throughout the Term of the Permit, Permittee agrees that Permittee will, at all times, operate and maintain the Encroachment in a reasonable manner.

Section 5. Encroachment Repair. Permittee agrees to repair any damage, of whatever nature, to the Encroachment to the reasonable satisfaction of the Director. The Director shall inspect and approve any material repair to the Encroachment.

Section 6. Repairs of Cuts and Excavations in City Property. Permittee further agrees at its sole cost and expense to refill and repair, including repaving any cut in any pavement or sidewalk, all excavations made by Permittee within the Street or any adjacent public right-of-way or other City property in connection with its obligations to operate, maintain and repair the Encroachment as set forth in this Permit. The Director shall inspect and approve any repair made by Permittee to the Street or any adjacent public street right-of-way or other City property.

Section 7. Plans for Repairs. Permittee shall make any such repairing or refilling as required by the preceding Section under plans and specifications pre-approved by the Director and subject to his/her reasonable approval of the completed work. Further, any excavation in the Street or any street, alley or sidewalk, must be replaced by Permittee with materials of the same kind as those removed unless the Director approves some other type of fill or material. Permittee shall notify the Director before commencing, at any time, any excavation in the Street or any portion of any street, alley or sidewalk and shall not wholly close the Street or any adjacent street, alley or sidewalk, but shall at all times maintain a route of vehicular travel along and within such roadway area and leave at least one (1) sidewalk area open to pedestrian travel, except that in cases of emergency the Director, the Mayor or the City Council may authorize a temporary closing of the Street or any street, alley or sidewalk in order to remedy any malfunction in the Encroachment if, in the opinion of the Director, the Mayor or the City Council, such closing is necessary to protect the safety of the public.

Section 8. Remedy for Failure to Repair. In the event that Permittee fails to commence or thereafter to diligently prosecute any required repair, refilling or other work so required to be done by the Permittee, following notice and opportunity to cure as provided in Section 10 of this Permit, then the City may cause such work to be done and may recover all costs thereof from Permittee together with all court costs and reasonable attorney's fees; or the City may elect, at its option, to declare the Permit issued hereunder terminated in addition to its other and further rights contained in this Permit.

Section 9. Environmental Restrictions. Permittee shall not transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any "Hazardous Material" (hereinafter defined) upon or about the Encroachment nor allow Permittee's employees, agents, contractors, visitors or invitees to engage in such activities upon or

about the Encroachment. The foregoing provisions shall not prohibit the transportation to and from and use, storage, maintenance and handling within the Encroachment of substances customarily used in property similar to the Encroachment; provided (i) such substances shall be used and maintained only in such quantities as are reasonably necessary for Permittee's permitted use of the Encroachment and in accordance with applicable law and the manufacturers' instructions therefor, (ii) such substances may be disposed of, released or discharged at the Encroachment if permitted by and in compliance with applicable laws, and shall be transported to and from the Encroachment in compliance with all applicable laws, and as the City shall reasonably require, and (iii) any remaining such substances shall be completely, properly, and lawfully removed by Permittee from the Encroachment upon expiration or termination of this Permit.

Permittee shall promptly notify the City upon becoming aware of: (i) any enforcement, cleanup, or other regulatory action taken or threatened by any governmental or regulatory authority with respect to the presence of any Hazardous Material in or about the Encroachment, (ii) any demands or claims made or threatened relating to any loss or injury resulting from any Hazardous Material on or about the Encroachment, (iii) any unlawful release, discharge or non-routine, improper or unlawful disposal or transportation of any Hazardous Material on or from the Encroachment, and (iv) any matters where the Permittee is required by law to give a notice to any governmental or regulatory authority respecting any Hazardous Materials in or about the Encroachment. At such times as City may reasonably request, Permittee shall provide City with a written list identifying any Hazardous Material then actually known to Permittee to be then used, stored, or maintained upon the Encroachment, a copy of any material safety data sheet ("MSDS") issued by the manufacturer therefor written information concerning the removal, transportation and disposal of the same, and such other information as the requesting party may reasonably require or as may be required by law. The term "Hazardous Material" shall mean any chemical, substance, material, or waste or component thereof which is now or hereafter listed, defined or regulated as a hazardous or toxic chemical, substance, material or waste or component thereof by any federal, state or local governing or regulatory body having jurisdiction, or which would trigger any employee or community "right-to-know" requirements adopted by any such body, or for which any such body has adopted any requirements for the preparation or distribution of an MSDS. If any Hazardous Material is released, discharged or disposed of by Permittee or its employees, agents, contractors, visitors or invitees on or about the Encroachment in violation of the foregoing provisions, Permittee shall immediately notify the Director and properly and in compliance with all applicable laws and ordinances, clean up and remove the Hazardous Material from the Encroachment and any other affected property, at Permittee's sole cost and expense. Such cleanup and removal work shall be subject to the Director's prior written approval (except in emergencies), not to be unreasonably delayed, conditioned or withheld, and shall include, without limitation, any testing, investigation and/or preparation and implementation of any remedial action plan required by any governmental body having jurisdiction. If Permittee shall fail to comply with the provisions of this Section within forty-five (45) days after written notice by City, or such shorter time as may be required by law, City may (but shall not be obligated to) arrange for such compliance directly at the Permittee's sole expense.

Section 10. Events of Termination. The Permit issued herein shall, at the option of the Director, terminate upon the occurrence of any one (1) or more of the events described below (collectively referred to hereinafter as "Events of Termination"). Each Event of Termination is a separate and independent basis for termination of the Permit.

The Events of Termination are as follows:

- (a) The Director determines that the existence of or Permittee's operation of the Encroachment, or any part thereof, constitutes a hazard, nuisance or other threat to the public health, safety or welfare or that the existence of or Permittee's continued operation of the Encroachment, or any part thereof, interferes with the current or prospective use of all or any portion of the public street right-of-way which constitutes the Street. Termination under this Section 10 (a) shall become effective after Permittee has been given one hundred eighty (180) days' notice of such termination in the manner provided in Section 21, unless circumstances comprising a bona fide emergency and an imperative public necessity warrant more immediate termination.
- (b) Expiration of the Term of this Permit as set forth in Section 19
- (c) Permittee defaults in the payment of any of the fees herein provided for or is delinquent in the payment of any lawful charges due under the Permit.
- (d) Permittee fails to provide at any time the insurance as required herein.
- (e) Permittee fails to commence or thereafter to diligently prosecute to completion any required maintenance, repair or other work required to be done by Permittee herein within thirty (30) days after being notified of such required action by the Director. In the event of an emergency, notice shall be deemed given and received after telephone contact with an authorized officer or director of Permittee and Permittee shall commence the requested repairs within twenty-four (24) hours.
- (f) Permittee abandons the Encroachment.
- (g) Permittee fails to comply with any of the terms, conditions or provisions of this Permit.
- (h) Permittee commences dissolution or some other similar proceeding that would impair, modify, alter, extinguish or significantly change Permittee's ability to perform Permittee's obligations under this Permit.

Upon the occurrence of an Event of Termination described in Subsections (a) or (b), such an Event of Termination may not be cured by Permittee and the Permit shall terminate in the manner and in accordance with the applicable provisions of said Subsections and this Permit. Upon the occurrence of one (1) or more of the Events of Termination other than in Subsections (a) or (b), the Director shall so notify Permittee in the manner provided herein. After such notice, Permittee shall have thirty (30) days in which to cure the Event of Termination; however, should Permittee fail or refuse to cure the Event of Termination within the thirty (30)-day time period prescribed, the Permit issued herein shall terminate. Notwithstanding the foregoing, if such Event of Termination is not reasonably susceptible of being cured within said thirty (30) day period, said failure to cure will not result in termination if Permittee shall have commenced curing said Event of Termination within said thirty (30) day period and shall thereafter prosecute the curing of such Event of Termination with diligence and continuity to completion. Failure of the City to enforce its rights and remedies under this Section with respect to one (1) Event of Termination shall

not operate as a waiver of the City's right to thereafter enforce its rights and remedies with respect to such Event of Termination or another Event of Termination. Termination of this Permit shall not waive, release or satisfy any duty, covenant or obligation hereunder of Permittee which Permittee has not fully performed as of the time of termination.

If Permittee has given written notice to the City of the existence of and the name and address of a lender (a "Lender") holding a mortgage, deed of trust, security agreement, or other instrument in the name thereof (a "Mortgage") encumbering all or part of the Permittee's property or interests hereunder, the Director shall give such Lender notice of such Event of Termination [other than in Subsections (a) or (b)]. When the Director so notifies the Permittee (such notices to be given in accordance with the requirements of Section 21 to such Lender at the most recent address of which it has advised the City in writing) and such Lender shall have the right to cure such default within the time period given to Permittee. Any cure of a default by any Lender of Permittee shall be accepted by the City if offered within any applicable cure period.

The Permittee may at any time upon one hundred eighty (180) days prior written notice to the City, and with the consent of the Director, which will not be unreasonably withheld or delayed, relinquish the use and possession of all or any part of the Encroachment, whereupon this Permit shall terminate as to that part so relinquished. In the event that any part of the Encroachment shall be relinquished pursuant to the preceding sentence, then the amount payable under Section 13 shall be reduced on a pro rata basis. Following any such relinquishment, Permittee shall, upon the written request of the Director, remove, at Permittee's sole cost and expense, any and all parts of the Encroachment that were within or upon any property so relinquished by the Permittee.

Section 11. Duties Upon Termination. At any time after the termination of the Permit, the Director reserves the right to require Permittee to remove the Encroachment from the Street and cause the Street to be restored to the same condition, or in as good a state of repair or condition, as said Street was in prior to placement or removal of the Encroachment, whichever condition fosters the most safe condition for the City's use of the Street. All work incident to the removal of the Encroachment or restoration of the Street shall be done under the supervision and to the satisfaction of the Director. The Director shall have the right, but not the duty, to supervise the removal process. Notwithstanding anything to the contrary contained herein, Permittee shall not remove the Encroachment at any time for any reason without the prior written approval of the Director.

Section 12. Ordinances and Charter. The Permit issued hereunder is in all respects subject to the Charter and Ordinances of the City, including but not limited to Ordinances 2000-1115, 2001-162, and 2001-203 amending Chapter 40 to the Code of Ordinances and the regulations issued pursuant thereto, and such future charter provisions and ordinances which may be hereafter passed and adopted by the City. The City Council, or other governing body of the City, reserves the right at all times to change, by ordinance, the provisions of this Permit including, without limitation, the right to require Permittee to modify the height or width clearances of, or relocate the Encroachment ("Remedial Action") during the course of any eminent domain or other action instituted by the City or any other governmental entity or during the City's, or some other governmental entity's expansion, alteration, redevelopment or relocation ("Alteration") of any portion of the Street at surface, below grade and/or above grade or the public utilities therein. Permittee agrees that any Remedial Action requested by the City shall be implemented by the Permittee at its sole cost and expense. Permittee acknowledges and agrees that the City

shall have no obligation to reimburse or compensate Permittee for any Remedial Action required by, or arising out of, any action undertaken by the City pursuant to this Section. Further, Permittee shall abide by reasonable rules and regulations for the operation, maintenance and repair of the Encroachment as established by the Director and provided in writing to the Permittee.

Section 13. Application and Inspection Fees. Permittee shall pay to the City an initial Permit application and processing fee in the amount of One Thousand Five and No/100 Dollars (\$1,005.00) and additionally, for each year of this Permit, a fee in the amount of Two Hundred Ten and No/100 Dollars (\$210.00) for administering this Permit and inspecting the Encroachment. The initial Permit fee and initial annual fee, under this paragraph, shall be payable on or before the date Permittee executes this Permit, and each subsequent annual fee shall be payable on or before each anniversary of the date of this Permit. The Director reserves the right, upon thirty (30) days prior written notice to Permittee, to alter the annual fee under this Section 13 to an amount based upon the City's costs and expenses in connection with the administration of this Permit and the administration, supervision, inspection and regulation of the use and maintenance of the Encroachment and the likelihood of damage to adjacent water and sewer utilities.

Section 14. Intentionally Omitted.

Section 15. Indemnification. PERMITTEE, HEREBY RELEASES AND DISCHARGES THE CITY FROM AND AGREES THAT IT WILL PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS AGENTS, OFFICERS, DIRECTORS, OFFICIALS, LEGAL REPRESENTATIVES (EXCLUDING OUTSIDE COUNSEL), EMPLOYEES AND ASSIGNS (COLLECTIVELY REFERRED TO IN THIS SECTION AS "THE CITY") FROM ANY AND ALL FINES, DEMANDS, DAMAGES, INJURIES OR CLAIMS ARISING BY REASON OF OR IN CONNECTION WITH:

- (a) ANY ACTUAL OR ALLEGED ERRORS, OMISSIONS, NEGLIGENT ACTS OR FAILURES TO ACT BY PERMITTEE (INCLUDING ITS OFFICERS, AGENTS, BONDING COMPANIES, EMPLOYEES AND ANY OTHER PARTY EMPLOYED OR CONTRACTED BY PERMITTEE TO PERFORM UNDER THIS PERMIT) IN CONNECTION WITH THE ENCROACHMENT OR THIS PERMIT; AND
- (b) ANY ACTUAL OR ALLEGED ERRORS, OMISSIONS, NEGLIGENT ACTS OR FAILURES TO ACT BY THE CITY (INCLUDING WITHOUT LIMITATION, THE CITY'S CONCURRENT OR SOLE NEGLIGENCE) IN ANYWAY RELATING TO THE ISSUANCE OR ADMINISTRATION OF THIS PERMIT, INCLUDING, WITHOUT LIMITATION, THE CITY'S APPROVAL OF PLANS, INSPECTIONS OF THE ENCROACHMENT OR THE REPAIR OR MAINTENANCE THEREOF, RECEIPT OF INSURANCE POLICIES, APPROVAL OF ASSIGNMENTS, TERMINATION OF THIS PERMIT AND ANY OTHER SIMILAR ACT OF THE CITY IN CONNECTION WITH FULFILLING ITS DUTIES OR ENABLING PERMITTEE TO BENEFIT FROM THIS PERMIT.

AS TO ANY MATTERS ARISING UNDER THIS INDEMNITY PROVISION FOR WHICH PERMITTEE HAS AGREED TO INDEMNIFY THE CITY, THE CITY SHALL BE REPRESENTED BY COUNSEL REASONABLY SATISFACTORY TO THE CITY, BUT

SELECTED BY PERMITTEE OR ITS INSURANCE COMPANY AND PERMITTEE SHALL INDEMNIFY THE CITY FOR THE REASONABLE AND NECESSARY ATTORNEY FEES OF SUCH COUNSEL. NOTWITHSTANDING ANY LIMITATION ON THE PERMITTEE'S LIABILITY STATED IN THIS SECTION, OR EXHAUSTION OF THE INSURANCE LIABILITY AMOUNTS PROVIDED BELOW, ALL COSTS OF DEFENSE OF THE CITY SHALL BE PAID BY THE PERMITTEE REGARDLESS OF THE AMOUNT.

Section 16.1 Risks and Limits of Insurance. With no intent to limit Permittee's liability under the indemnification provisions set forth in Section 15, Permittee shall provide and maintain in full force and effect during the Term of this Permit and all extensions and amendments thereto, at least the following insurance:

- (a) Worker's Compensation at statutory limits;
- (b) Employer's Liability, including bodily injury by accident and by disease, for \$500,000 combined single limit per occurrence and a twelve (12)-month aggregate policy limit of \$1,000,000;
- (c) Commercial General Liability Coverage which includes broad form coverage, contractual liability, bodily and personal injury, completed operations, operations hazard, explosion collapse and underground hazards for \$2,000,000 per occurrence and twelve (12) - month aggregate policy limit of \$4,000,000;
- (d) Automobile Liability Insurance (for automobiles used by the Permittee in the course of its performance under this Permit, including employer's non-ownership and hired auto coverage) for \$1,000,000 combined single limit per occurrence; and
- (e) The Director, on the fifth (5th) and tenth (10th) anniversary dates of the Effective Date of this Permit, shall have the right, upon thirty (30) days notice to Permittee, to adjust the above minimum liability limits to compensate for the effects of inflation and with the objective to reestablish the value of coverage required as of such Effective Date.

Section 16.2 Form of Certificates. The insurance coverages required hereunder may be represented in one (1) or more certificates of insurance. It is agreed, however, that nothing included within or omitted from the insurance certificates shall relieve Permittee from its duties to provide the required coverage hereunder.

Section 16.3 Issuers of Policies. The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas issued by the Texas Board of Insurance and a rating of at least "B+" and a financial size of Class VI or better in the most current edition of Best's Insurance Reports. Alternatively, Permittee may self-insure for the risks referred to in Section 16.1 (a. - d.) only if the Long-Term Issue Credit Rating of their respective parent entity is BBB or higher ("Investment Grade") by the current Rating Definitions and Terminology of Standard & Poor's. Each issuer or self-issuer must be responsible and reputable and must have financial capability consistent with the risks covered.

Section 16.4 Insured Parties. Each policy, except those for Worker's

Compensation and Employer's Liability, must name the City and its agents, officers, directors, officials, legal representatives, employees and assigns as additional insured parties on the original policy and all renewals or replacements during the Term of this Permit. If any of same policies is written as "claims made" coverage and the City is required to be carried as an additional insured, then Permittee agrees to purchase policy period extensions so as to provide coverage to the City for a period of at least two (2) years after the last date that this Permit is in effect.

Section 16.5 Deductibles. A policy may contain such deductible or self-insured retention amounts as reasonably approved by the Director. Permittee shall assume and bear any claims or losses to the extent of such deductible amounts and waives any claim it may ever have for the same against the City, its officers, agents or employees.

Section 16.6 Cancellation. All such policies and certificates shall contain an agreement that the insurer shall notify the Director in writing not less than thirty (30) days before any material change, reduction in coverage or cancellation of any policy. Permittee shall give written notice to the Director within five (5) days of the date upon which total claims by any party against Permittee reduce the aggregate amount of coverage below the amounts required by this Permit.

Section 16.7 Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, its officers, agents or employees.

Section 16.8 Endorsement of Primary Insurance. Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to the City as an additional insured with respect to claims arising hereunder and that the insurance applies separately to each insured.

Section 16.9 Liability for Premium. If any of the policies referred to above does not have a flat premium rate and such premium has not been paid in full, such policy must have a rider or other appropriate certificate or waiver sufficient to establish that the issuer is entitled to look only to Permittee for any further premium payment and has no right to recover any premiums from the City.

Section 16.10 Blanket Policies. The Permittee shall be entitled to purchase and maintain the insurance required under this Section 16 under so-called "blanket" policies, provided the coverage thereunder is at least at the levels contained herein and is otherwise adequate in keeping with prudent underwriting standards.

Section 16.11 Other Parties. Permittee shall require all parties contracted by Permittee to perform under this Permit, including without limitation, independent contractors and subcontractors, to carry insurance meeting all of the above requirements except in an amount no less than Six Hundred Thousand and No/100 Dollars (\$600,000) per occurrence.

Section 16.12 Delivery of Policies. At the Director's request, a designee of the Director shall be entitled, upon reasonable notice and during normal business hours, to inspect the policies referred to above at Permittee's offices in Houston, Texas in order to determine that Permittee has complied with its obligations under this Permit. If the Director fails to request the inspection of such policies, Permittee shall provide certificates of insurance reflecting that the terms of this Permit have been met. Permittee shall provide the Director with such certificates before or at the time of Permittee's execution of this Permit, and thereafter before the beginning of each year of the Term of this Permit. Notwithstanding the notice provisions of Section 16.6 or those contained in Section 10 above, the failure of Permittee to provide the Director with the above proof of insurance within the time periods of the preceding sentence shall constitute a default on the part of Permittee entitling the Director, upon thirty (30) days written notice to Permittee, to terminate this Permit if the information is not provided during such 30-day period. This default provision shall also apply to the proof of insurance requirements under circumstances where a policy is canceled or expires during a given year of the Term of the Permit. Notwithstanding the proof of insurance requirements set forth herein, it is the intention of the parties hereto that Permittee, throughout the Term of this Permit, continuously and without interruption, maintain in force the required insurance coverages set forth in Section 16.1. Failure of the Permittee to comply with this requirement shall constitute a default of Permittee allowing the City, if such default is not cured within thirty (30) days after written notice to Permittee, to terminate this Permit.

Section 17. Non-Assignability. No transfer or assignment of this Permit by a Permittee shall be effective unless and until:

- (a) The Permittee has provided to the Director the name and address of the transferee or assignee and background information regarding the transferee or assignee demonstrating that such entity or its affiliates are experienced in the operation of facilities such as the Encroachment or will retain the services of a professional management firm to operate same;
- (b) The transferee or assignee has furnished to the Director its written agreement to assume and perform all of the duties, covenants and obligations of the Permittee under this Permit that accrue from and after the date of such transfer or assignment; and
- (c) The Director, in the exercise of his/her business judgment, gives written consent and approval to the transfer or assignment, which consent will not be unreasonably delayed, conditioned or withheld.

The transferee or assignee shall cooperate fully with the Director in his/her effort to determine whether to approve such transfer or assignment. Failure of transferee or assignee to provide any requested information to the Director in aid of making this determination shall be grounds for denial of a transfer or assignment of the Permit. The Director shall approve or deny transferee's or assignee's request for approval of the transfer or assignment within thirty (30) days after receiving all information requested of such transferee or assignee. The failure of the Director to respond within such thirty (30)-day period shall be deemed a denial of the request for transfer or assignment. Upon the Director's approval of any transfer or assignment permitted hereunder, each provision of

this Permit shall thereupon be binding upon and inure to the benefit of, the transferee or assignee of the Permittee and the assigning or transferring Permittee shall be released from all liability under the Permit accruing from and after the date of such transfer.

An assignment of this Permit in connection with the encumbrance of this Permit by Permittee as collateral shall not constitute an assignment or transfer for purposes of this Section. A transfer of this Permit, or the rights of Permittee herein, as a result of a Uniform Commercial Code sale, a judicial or non-judicial foreclosure of liens covering this Permit, or pursuant to any transfer in lieu of such sale or foreclosure, shall be an approved transfer to such assignee or transferee under this Permit, on a temporary basis, subject to such transferee's or assignee's immediate and full compliance with the terms and conditions of this Permit and providing the Director with evidence of such compliance within fifteen (15) days following any such transfer or assignment. Permittee may grant licenses, permissions to use and/or similar rights in and to the Encroachment to third parties and the same shall not constitute an assignment or transfer of this Permit. Any attempt by the Permittee to assign this Permit without the prior written approval of the Director is voidable and at the option of the Director terminates this Permit.

Section 18. Successors. This Permit and all limitations upon and obligations imposed herein, shall inure to the benefit of and be binding upon the successors, in law or otherwise, of Permittee.

Section 19. Term. The term ("Term") of this Permit, subject to the cancellation provisions contained herein, shall be for a period of thirty (30) years, from and after the Effective Date of this Permit. Provided Permittee is not then in default of this Permit, such Term may be extended prior to the expiration set out above at the request of the Permittee and upon the approval of the Director.

Section 20. Acceptance and Effectiveness of Permit. Permittee shall indicate, by its authorized signature, its unconditional acceptance of this Permit to the Director and shall thereupon be bound by all of the terms and conditions hereof. Such acceptance shall constitute an unconditional and unqualified acceptance of all limitations and obligations contained herein and shall further constitute an affirmative acknowledgment of Permittee's obligations to abide by, observe and perform in accordance with all of the terms, provisions and conditions of this Permit, together with an affirmation of any and all representations and agreements of Permittee included herein. If Permittee is an entity other than a natural person, Permittee shall file with such signed Permit a copy of its Corporate Resolution or other document ("Authorization") appropriate to demonstrate that Permittee is duly authorized to accept the Permit. The Permit herein issued shall commence and inure to the benefit of Permittee, effective immediately upon the execution of this Permit by the City's authorized representative.

Section 21. Notice to Permittee. All notices required or permitted to be given to Permittee to this Permit must be in writing and shall be addressed and sent to Permittee at the following address:

Urban Lofts XV, Ltd.
4512 Montrose
Houston, Texas 77006,
713-522-6441

ATTN: Gil Martinez

Permittee may change the address for notification from the City by notifying the Director as provided herein. Notice from the City shall be effective when addressed to Permittee at the address above [or to such address(es) changed by Permittee as provided for herein] and deposited with the United States Postal Service, certified mail, return receipt requested.

Section 22. Notice to City. Any notice to the City, by Permittee, must be in writing to the Director by United States certified mail, return receipt requested and addressed as follows:

Director of Public Works & Engineering
City of Houston, Texas
P.O. Box 1562
Houston, Texas 77251-1562

ATTN: Kathie Bulloch, Managing Engineer
Office of City Engineer

Such notice to the City shall be effective upon the actual receipt of such notice by the Director and/or his/her designee.

Section 23. Enforcement. The City Attorney, or his/her designee shall have the right to enforce all legal rights and obligations under this Permit without further authorization. Permittee covenants to provide to the Director or the City Attorney documents and records that the Director or City Attorney deem reasonably necessary to determine Permittee's compliance with this Permit, with the exception of those documents made confidential by federal or state law or regulation or any documents that would be privileged under the Texas Rules of Civil Procedure.

Section 24. Intentionally Omitted

Executed, in duplicate originals, to become effective on the date of signature by the City's representative.

CITY:

By: *Thomas J. Eng*
(Signature)

Name: *Thomas S. Eng - Ballou*
(Printed Name)

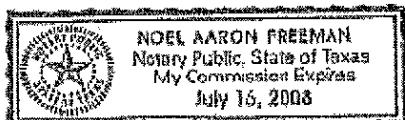
Title: *Thomas S. Eng - Engineer*
(Printed Title)

Date of
Signature: 11/29/07

THE STATE OF TEXAS S
COUNTY OF HARRIS S

This instrument was acknowledged before me on the 29th day of November,
2007 by Thomas S. Eng - Ballou (Name), Thomas Eng (Title),
Department of Public Works & Engineering, City of Houston, a municipal
corporation on behalf of said Corporation.

(Notary Seal)



Notary Seal
Notary Public, State of Texas

PERMITTEE:

Urban Lofts XV, Ltd.
a Texas limited partnership

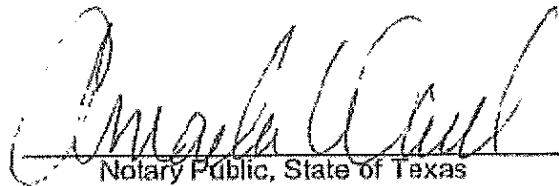
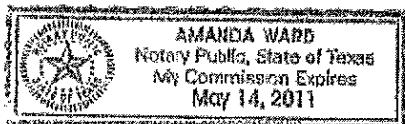
By: Las Vegas Lofts, Inc., General Partner

By: 
Joel Davis, Director

THE STATE OF TEXAS \$
COUNTY OF HARRIS \$

This instrument was acknowledged before me on the 19 day of November,
2007 by Joel Davis, Director of Las Vegas Lofts, Inc., a Texas corporation. General Partner
of Urban Lofts XV, Ltd., a Texas limited partnership on behalf of said corporation and
partnership.

(Notary Seal)



Notary Public, State of Texas

After recording, return to:

**PERMIT FOR USE AND OCCUPANCY
OF A PORTION OF THE CITY'S RIGHT OF WAY**

ORDINANCE# NA

DATE : November 29, 2007

Pursuant to the terms and provisions of Ordinance #72-97 & its successor ordinances, as amended, passed by the City Council of Houston on January 19, 1972, the required annual permit fee having been heretofore paid in full, the application made for this permit has been approved and is hereby issued to Urban Loftz XV, Ltd., a Texas limited partnership, said permit being issued on the condition that by the acceptance of this permit, the applicant, including the individual, partnership, organization, or corporation, for whose benefit this permit was requested and issued, expressly covenants and agrees to comply with each and every term, provision and condition in the City of Houston Ordinance # 72-97 & its successor ordinances, as amended.

The legal description and address of the property that encroaches into the City's Right of Way:

A private storm sewer line, within, along and below the 2900 Block of Commerce Street Right of Way, approximately 60 linear feet, (the "Encroachment") within the Commerce Street Right of Way ("Street"), which is a public street right of way of the City.

The metes and bounds description of the area to be used:

SEE ATTACHED DRAWING (COH DRAWING # 42802)

CITY OF HOUSTON, TEXAS

By Franklin D. Roosevelt
Director, and his/her designee

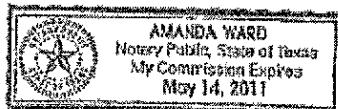
ACCEPTED
URBAN 5075 XV, 97. 09 LAS VEGAS 40775, NV

By: John W. Parker
STATE OF TEXAS, COUNTY OF HARRIS

Before me, the undersigned, on this day personally appeared Joel Davis, who states that He/She is the President a corporation known to me to be the person whose name is subscribed to the foregoing instrument.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 29 DAY OF NOVEMBER
A.D. 2007.

John R. Rice
John Rice in care of Maria Santos, Toronto



**CERTIFICATE OF CORPORATE RESOLUTION OF
BOARD OF DIRECTORS OF LAS VEGAS LOFTS, INC., GENERAL PARTNER
OF URBAN LOFTS XV, LTD., A TEXAS LIMITED PARTNERSHIP**

The undersigned, being the duly elected Vice President and Secretary of Las Vegas Lofts, Inc., a Texas corporation ("Corporation"), General Partner of Urban Lofts XV, Ltd., A Texas limited partnership, does hereby certify that pursuant to and in accordance with Article VI, Section 4 of the Corporation's Bylaws and Article 9.10 of the Texas Business Corporation Act, the Directors, by Unanimous Written Consent In Lieu of Meeting dated November 15, 2007, consented to adopt the following resolutions as the action of the Board of Directors of the Corporation:

RESOLVED, that Encroachment Permit by and between the City of Houston and Urban Lofts XV, Ltd. be and the same is hereby approved;

RESOLVED FURTHER, that Joel Davis, a member of the Board of the Corporation be and he hereby is authorized to execute the Encroachment Permit for and on behalf of Urban Lofts XV, Ltd. and the Corporation as general partner;

IN WITNESS WHEREOF, the above resolutions and the actions contemplated therein were adopted by unanimous written consent of the Board of Directors pursuant to and in accordance with Article 9.10 of the Texas Business Corporation Act and the undersigned, by affixing his signature hereto, represents and certifies that the above and foregoing resolutions are accurate and true.

Dated this 10 day of November, 2007


Joel Davis, Vice President and Secretary

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

ANY PROVISION WHICH MIGHT RESTRICT THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS

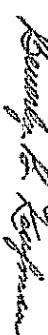
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me, and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas on

DEC 14 2007





COUNTY CLERK
HARRIS COUNTY, TEXAS


Brenda L. Kayser
COUNTY CLERK
HARRIS COUNTY, TEXAS

FILED

2007 DEC 14 PM 2:57