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Polk County Iowa

TIMOTHY J. BRIEN RECORDER

File# 2004-00143159

**BK 10603 PG 354-415**

**RETURN TO:**

**Preparer  
Information**

Susan M. Boe  
Individual's Name

801 Grand Avenue, Suite 3100  
Street Address

Des Moines, IA 515/248-9000  
City 50309-8002 Phone

**SPACE ABOVE THIS LINE  
FOR RECORDER**

**DECLARATION  
OF  
WATER STREET BROWNSTONES**

**A CONDOMINIUM PROPERTY  
LOCATED IN THE CITY OF DES MOINES  
COUNTY OF POLK, STATE OF IOWA**

## DECLARATION OF WATER STREET BROWNSTONES

THIS DECLARATION is made as of the 18<sup>th</sup> day of June, 2004, by Water Street Brownstones LLC, a Minnesota limited liability company (the "Declarant").

A. Declarant is the owner of certain real property situated in the City of Des Moines, County of Polk, State of Iowa, being more particularly described on Exhibit A attached hereto and incorporated herein by this reference ("Real Estate"); and

B. Declarant intends to construct upon the Real Estate certain buildings, structures, and other improvements and desires to utilize the condominium form of ownership under this Declaration pursuant to the provisions of the Iowa Code Chapter 499B (the "Act").

**NOW, THEREFORE**, Declarant, the fee simple titleholder to the Real Estate, expressly intends to, and by recording this Declaration does hereby submit the Property (as hereafter defined) to condominium ownership under the Act, as the same may be amended from time to time, and hereby imposes upon all of said Property the following terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations and obligations, which shall be deemed to run with the Property and shall be a burden and a benefit to Declarant, its successors, assigns, and any person acquiring or owning an interest in the Property and their respective grantees, successors, heirs, personal representatives, executors, administrators, devisees or assigns.

### ARTICLE 1. NAME

The name of the condominium shall be **WATER STREET BROWNSTONES**.

### ARTICLE 2. DEFINITIONS

2.1. Definitions. As used herein, unless the context requires otherwise, the following terms shall have the following meanings:

(a) "Act" means Iowa Code Chapter 499B (2003) entitled Horizontal Property Act (Condominium).

(b) "Agencies" means the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Department of Housing and Urban Development ("HUD"), the Veteran's Administration ("VA") and any other governmental or quasi-governmental agency or private entity which performs functions similar to those currently performed by such entities.

(c) "Allocation of Undivided Interest" means the allocation of the undivided interests in the Common Elements to each Unit as specified on Exhibit B attached hereto.

(d) "Articles" means the Articles of Incorporation of the Association, attached hereto as an Exhibit C, as the same may be amended, modified or restated from time to time.

(e) "Association" means the Water Street Brownstones Homeowners Association, a non-profit membership corporation organized and existing under Iowa Code Chapter 504A, and for the purpose of this Declaration, shall be the 'Council of Co-Owners' as defined in the Act.

(f) "Board" means the Board of Directors of the Association.

(g) "Buildings" means and includes all structural improvements located or to be located on the Real Estate as further described in this Declaration.

(h) "Bylaws" means the Bylaws of the Association, attached hereto as an Exhibit D, as the same may be amended, modified or restated from time to time.

(i) "Condominium Documents" means this Declaration, all Exhibits attached hereto, and supplements and amendments thereto, all of which by this reference are made a part hereof.

(j) "Common Elements" means all the Property with the exception of the Units and those items reserved as Limited Common Elements, and shall include those items defined as general Common Elements in the Act, including the following:

(i) the Real Estate and any appurtenant easements which are a part of the Property;

(ii) all driveways;

(iii) all foundations, columns, girders, beams and supports of the Building;

(iv) all deck areas, balconies, patios, doors and windows (subject to reservation for Unit use as Limited Common Elements);

(v) the exterior walls of the Building and of each Unit, the main or bearing walls within the Building and each Unit, the main or bearing subflooring and the roof of the Building;

(vi) all entrances, exits, vestibules, halls, corridors, lobbies, lounges, stairways, fire escapes, communications ways, and elevators, if any, not within any Unit;

(vii) all compartments for installation of central services such as power, light, gas, cold and hot water, refrigeration, central air conditioning and central heating, reservoirs, water tanks and pumps and the like; and

(viii) all sewer, water, electrical, gas, telephone or other utility or service lines, wiring, ducts, conduits and piping serving more than one Unit, and in general all the devices or installations existing for the common use of all Units.

(k) "Common Expense" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves, including, without limitation all expenses of administration, operation, maintenance, repair, alteration, renovation, reconstruction or replacement of, or for additions to the Common Elements as provided in this Declaration.

(l) "Condominium" means the Property to be known as Water Street Brownstones which is submitted to the Act pursuant to this Declaration, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the Owners.

(m) "Declarant" means Water Street Brownstones LLC, 233 Park Avenue South, Suite 201, Minneapolis, Minnesota 55415, and any successor or assignee.

(n) "Declarant Control Period" means the period commencing on the date of conveyance of the first Unit to a Unit Owner other than Declarant and continuing until the earlier of the date three (3) years after said date or the date one hundred twenty (120) days after conveyance of seventy-five percent (75%) of the Units to Unit Owners other than Declarant.

(o) "Declarant Development Rights" means those rights granted to or reserved by Declarant as set forth in this Declaration or the Act, including without limitation, the rights set forth in Article 9 of this Declaration.

(p) "Declarant Development Rights Period" means the period commencing on the date of this Declaration and ending on the earlier of the following: (a) the sale of all of the Units, or (b) the date that Declarant waives all remaining Declarant Development Rights pursuant to an express written waiver executed and acknowledged by Declarant.

(q) "Declaration" means this document and any supplement or amendment thereto.

(r) "Eligible Mortgagee" means a holder of a first mortgage on a Unit who has submitted a written request that the Association notify such holder of any proposed action requiring consent of a specified percentage of Eligible Mortgagees.

(s) "Exhibits" shall include the following Exhibits attached hereto and incorporated herein unless otherwise stated.

- (i) Exhibit A: Legal Description of Real Estate
- (ii) Exhibit B: Allocation of Undivided Interest
- (iii) Exhibit C: Articles of Incorporation of the Association
- (iv) Exhibit D: Bylaws of the Association
- (v) Exhibit E: Floor Plans

(vi) Exhibit F: Underground Garage Plans

(vii) Exhibit G: Initial Rules and Regulations

(viii) Exhibit H: Declaration of Easements and Restrictive Covenants

(t) "Floor Plans" means the floor plans for the Buildings and the Residential Units attached hereto as Exhibit E.

(u) "Guest" means any agent, servant, family member, invitee, tenant or licensee of an Owner.

(v) "Home Occupations" means any occupation or profession conducted solely by the Owner within the Unit.

(w) "Landscaped Area" means the land in front of, behind or on the side of the Buildings, including sidewalks and driveways, which are designated as a Common Element.

(x) "Limited Common Element" means those Common Elements which are specified in this Declaration to be reserved for the use of one or more Units to the exclusion of the other Units, including the following:

(i) Any portion of a chute, flue, duct, pipe, wire, conduit or any other fixture lying partially within and partially outside or wholly outside of the designated boundaries of a Unit which serves only that Unit is a Limited Common Element to the Unit exclusively served thereby.

(ii) All balconies, balcony rails, balcony atriums, patios, exterior doors and door frames, exterior windows and window frames, the corridor surfaces of the ceilings, floors, walls and doorways located within the recessed entryway to the Unit, all of which are designed to serve a single Unit, are Limited Common Elements reserved exclusively to the Unit which they are designed to serve.

(y) "Owner" means the Person or Persons who own(s) a Unit in fee simple. The Declarant is the initial Owner of each Unit until that Unit is conveyed to another Person, and as to Units owned by it, Declarant shall enjoy the same rights and shall be subject to the same duties as other Owners, except as otherwise provided in this Declaration. If a Unit is sold under a contract for deed, the vendee shall be deemed the Owner of the Unit for purposes of this definition.

(z) "Parking Unit" means either a single parking stall or a double parking stall located in the Underground Garage and designated as a Parking Unit on the Underground Garage Plans.

(aa) "Person" means a natural person, corporation, partnership, limited liability company, association, trust or any other entity or combination thereof.

(bb) "Property" means all property, real, personal or mixed submitted to the Act pursuant to this Declaration including the Real Estate and the Buildings,

improvements and structures erected, constructed or contained therein or thereon and all easements, rights and appurtenances belonging thereto and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Owners collectively.

(cc) "Plans" means the Floor Plans and the Underground Garage Plans, collectively.

(dd) "Residential Unit" means any one of the Residential Units designated as such on the Floor Plans and such term shall have the same meaning as 'apartment' as defined in the Act.

(ee) "Rules and Regulations" means the rules and regulations relating to the use of the Property initially established by the Declarant and attached hereto as Exhibit G, or promulgated by the Association pursuant to this Declaration.

(ff) "Underground Garage" means the one-level underground parking garage included as part of the Buildings located on the Real Estate as further described in this Declaration.

(gg) "Underground Garage Plans" means the plans for the Underground Garage and the Parking Units attached hereto as Exhibit F.

(hh) "Unit" means either a Residential Unit or a Parking Unit

(ii) "Vine Street Lofts" means the apartment project adjacent to the Condominium which consists of a building containing 109 residential rental units and a one-level underground parking garage.

(jj) "Vine Street Lofts Underground Garage" means the one-level underground parking garage that is a part of Vine Street Lofts.

2.2. Other Definitions. Certain other terms are defined at various places in this Declaration. To the extent any term is not defined herein, the definitions contained in the Act shall apply.

2.3. Plural and Gender. Wherever the context so permits or requires, the singular shall include the plural and the plural shall include the singular and the usage of any gender shall include all genders.

### **ARTICLE 3. LOCATION, BUILDINGS, AND PLANS**

3.1. Location. The Condominium is located at 100 and 118 First Street, Des Moines, Polk County, Iowa.

3.2. Buildings. The Buildings to be constructed on the Real Estate consist of two (2) four (4) story buildings containing seventeen (17) Residential Units each, and the Underground Garage containing thirty-two (32) single Parking Units and eight (8) double Parking Units. The

Buildings are to be constructed principally of concrete, brick, masonry, steel and wood. The completed Buildings will also include gypsum board, metal and other materials.

3.3. Plans. The contents of the Plans shall govern for the purposes of this Declaration and contain the following information required by the Act:

- (a) The description, dimensions, area and location of Common Elements.
- (b) The description and location of the Limited Common Elements together with a description of the Unit to which such Limited Common Elements are reserved.
- (c) The Unit number of each Unit, statements of its location, approximate area, number of rooms, an immediate Common Element to which it has access, and other data necessary for its proper identification.

#### **ARTICLE 4. RESIDENTIAL UNITS AND PARKING UNITS.**

4.1. Residential Units. A Residential Unit shall include those spaces within a Building as depicted on the Floor Plans and identified by an identifying Unit number. A Residential Unit shall consist of all air space and improvements within a space bounded by the center of dividing walls between Residential Units or between Residential Units and Common Elements as shown on the Floor Plans. In the case of walls, floors and ceilings that are designated as boundaries of a Residential Unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallboard paint and finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Residential Unit. A Residential Unit includes both the boundaries above described, the air space so encompassed and all fixtures, improvements and interior partitions contained therein.

4.2. Parking Units. A Parking Unit shall include those parking stalls within the Buildings as depicted on the Underground Garage Plans and identified by an identifying Unit number. The boundaries of each Parking Unit shall be the air space contained within the garage floor, exclusive of the floor itself and the garage ceiling, exclusive of the ceiling itself and the front, back and sides of the Parking Unit as depicted in the Underground Garage Plans.

4.3. Use and Restrictions. Subject to all applicable governmental rules, regulations, laws, ordinances and restrictions, such Rules and Regulations as may be adopted by the Association from time to time, and the provisions of the Condominium Documents, the following shall govern and restrict the use, occupancy and alienation of the Units:

- (a) Residential Units are to be occupied and used only for residential purposes or Home Occupations by Owners and their Guests; provided, however, that the Declarant may maintain Residential Units as models or management offices as provided in Article 9 of this Declaration. An Owner may lease the Owner's Unit provided that the lease or rental agreement is writing and any tenancy shall be subject to the requirements of the Condominium Documents, the Rules and Regulations and the Association. No occupant of a Residential Unit shall create a nuisance to other occupants or interfere with the peaceable possession of occupants of other Residential Units. There shall be no restrictions on occupancy or alienation by reason of age, race, national origin, sex or religion.

(b) Parking Units may be used only for the parking and storage of motor vehicles and bicycles unless other uses are designated in the Rules and Regulations.

## **ARTICLE 5. OWNERSHIP INTERESTS AND USE OF COMMON ELEMENTS**

5.1. Allocation of Undivided Interest. The Property is divided into Residential Units and Parking Units, each consisting of a separate fee simple estate and an appurtenant undivided interest in the Common Elements which shall be owned by the Owners as tenants in common. The undivided interest in the Common Elements appurtenant to each Unit is determined by the Allocation of Undivided Interest for a Unit as specified on Exhibit B attached hereto. The Allocation of Undivided Interest has been computed for each Unit as a percentage determined by a fraction, the numerator of which is the square footage of the Unit and the denominator of which is the square footage of all Units. The square footage of each Residential Unit is based upon the square footage as determined by the architect who prepared the Plans and Specifications for the Building, which square footage may or may not be the exact square footage of the Unit. The square footage of the Parking Units is based upon the number of useable square feet determined by the Declarant in its sole discretion. The square footage used for purposes of computing the percentage interest in the Common Elements, as so determined, shall be final and conclusive notwithstanding the fact that any Owner may determine the square footage of any particular Unit to be different.

5.2. No Separate Conveyance or Partition. The ownership of the Allocation of Undivided Interest for a Unit shall not be conveyed separately from the Unit. The undivided ownership in the Common Elements corresponding to any Unit shall be deemed conveyed or encumbered with that Unit even though the legal description in the instrument conveying or encumbering such Unit may refer only to that Unit, or may refer to an incorrect percentage for that Unit. The Common Elements shall remain undivided and shall not be the object of an action for partition or division of the co-ownership thereof as provided in the Act.

5.3. Taxation. Each Unit shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing Unit and special district for all types of taxes authorized by law, including ad valorem levies and special assessments. The lien for taxes assessed to any Unit shall be confined to that Unit. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit. If such taxes or assessments for any year are not separately assessed to each Owner, but rather are assessed on the Property as a whole, then each Owner shall pay the Owner's proportionate share thereof in accordance with the Owner's Allocation of Undivided Interest in the Common Elements, and in said event such taxes or assessments shall be a Common Expense. Without limiting the authority of the Board provided for elsewhere herein, the Board shall have the authority to collect from the Owners their proportionate share of taxes or assessments for any year in which taxes are assessed on the Property as a whole.

5.4. Description of Units. Subsequent to the recording of this Declaration, every deed, lease, mortgage or other instrument affecting title to a Unit shall legally describe a Unit by use of the following legal description, or any other valid description allowed by law:

RESIDENTIAL UNIT NUMBER       , AND PARKING UNIT NUMBER(S)        TOGETHER WITH AN UNDIVIDED INTEREST IN THE COMMON ELEMENTS OF       % FOR THE RESIDENTIAL UNIT AND       % FOR THE PARKING UNIT(S) OF WATER STREET BROWNSTONES, A CONDOMINIUM, CITY OF DES MOINES, COUNTY OF POLK, IOWA, IN ACCORDANCE WITH AND SUBJECT TO THE DECLARATION OF WATER STREET BROWNSTONES, RECORDED ON 6-22-2004, 2004, IN BOOK 1603 AT PAGE 354 IN THE RECORDS OF THE POLK COUNTY IOWA RECORDER.

5.5. Transferability of Parking Units. The Parking Units are individual Units, which may be sold, leased or licensed by the Owner thereof, including without limitation the Declarant subject to the terms of this Declaration and applicable laws. Parking Units may be owned only by the Declarant, an Owner of a Residential Unit or the Association. Parking Units may be leased only to (a) an Owner, (b) an Owner's tenant who is occupying the Owner's Residential Unit, (c) the owner of Vine Street Lofts, or (d) a tenant of Vine Street Lofts.

## **ARTICLE 6. USE OF COMMON ELEMENTS AND LIMITED COMMON ELEMENTS**

6.1. Use of Common Elements. Each Owner shall have the right to use the Common Elements in common with all other Owners, as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of the Unit(s) owned by such Owners. Such right to use the Common Elements shall extend to not only each Owner, but also to the Owner's Guests. Such rights to use the Common Elements shall be subject to and governed by the provisions of the Act, this Declaration, the Bylaws of the Association and the Rules and Regulations. The Association shall have the authority to rent, grant concessions or grant easements with respect to parts of the Common Elements, subject to the provisions of the Declaration and Bylaws. All income derived by the Association from rents, concessions or other sources shall be held and used for the benefit of the members of the Association; pursuant to such rules, resolutions or regulations as the Board may adopt or prescribe.

6.1. Use of Limited Common Elements. Each Owner and such Owner's Guests shall have the right to the exclusive use and possession of the Limited Common Elements serving the Owner's Unit. Such rights to use the Limited Common Elements shall be subject to and governed by the provisions of the Act, this Declaration, the Bylaws and the Rules and Regulations.

## **ARTICLE 7. MANAGEMENT AND ADMINISTRATION OF PROPERTY BY ASSOCIATION**

7.1. Association, Membership and Voting. The management and administration of the Property shall be governed and managed by the Association. The action of the Association shall constitute the action of the Owners whenever such action is permitted or required herein or by the Act. Each Owner, whether one or more, shall be a member of the Association. An Owner's membership shall automatically terminate upon the conveyance or transfer of a Owner's

ownership interest in a Unit to a new Owner. Upon such conveyance or transfer, the new Owner shall simultaneously succeed to the former Owner's membership in the Association.

7.2. Voting. Whenever a vote or other action of Owners as a group is required the mechanics of conducting such a vote or taking such action shall be under the control and supervision of the Association. The Owners of a Unit shall be entitled to vote on all matters that are subject to a vote by the Owners. Voting shall be allocated to each Owner in the same manner as the Allocation of Undivided Interest in the Common Elements is allocated to the Owner. If a Unit is owned by more than one Person, the vote for the Unit shall be cast as one collective vote, as the Owners of the Unit shall agree. If the Owners do not agree when called upon to vote, the Owners will be treated as having abstained. No votes allocated to any Unit owned by the Association may be cast.

7.3. Limitation of Association's Liability. The Association shall not be liable for any failure of water, hot water, heat or other service to be obtained and paid for by the Association hereunder, or for injury or damage to property caused by or on the Common Elements or by another Owner or Person, or resulting from electricity, water, rain, air, dust, dirt or sand which may leak or flow from outside or from any parts of the Building, or from any of its pipes, drains, conduits, appliances or equipment or from any other place unless caused by negligence of the Association. No diminution or abatement of Common Expense assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements to the Common Elements or from any action taken to comply with any law, ordinance or orders of a governmental authority.

7.4. Liability and Indemnification of Board and Officers. The personal liability of members of the Board shall be governed by Iowa Code Section 504A.101. In addition, each member of the Association shall be indemnified by the Association against all expenses and liabilities including attorney's fees, reasonably incurred by or imposed upon the member in connection with any proceedings to which the member may be a party, or in which the member may become involved, by reason of the member being or having been an officer or director of the Association or any settlement thereof, whether or not the member is an officer or director at the time such expenses are incurred, except in such cases wherein such member is adjudged guilty of or liable for willful misfeasance or malfeasance in the performance of the member's duties. Notwithstanding the foregoing, in the event of a settlement the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interest of the Association.

7.5 Association as Attorney in Fact for Owners. The Association is hereby irrevocably appointed attorney in fact for the Owners to manage, control and deal with the interest of such Owners in the Common Elements so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, to deal with the Property upon its damage, destruction, taking by eminent domain or obsolescence as hereinafter provided, and to deal with and handle insurance and insurance proceeds and awards granted in connection with a taking by eminent domain. The acceptance by any Person of any interest in any Unit shall constitute an appointment of the Association as an attorney in fact as provided above.

## ARTICLE 8. COMMON EXPENSES AND ASSESSMENTS

8.1. Assessments. The right of the Association to make assessments for Common Element expenses shall commence upon the conveyance by Declarant of the first Unit to a third party. If the Association undertakes any expense, activity, function or service required by this Declaration or in connection with the use and enjoyment of the Property for the benefit of or to further the interests of all, some or any Owners which is authorized in accordance with this Declaration, such activities, functions or services shall be assessed as Common Expenses. Such activities, functions or services may include the providing of managing agents, police or similar security services, and the providing of garbage and trash collection services.

### 8.2. Allocation of Expenses.

(a) Except as otherwise provided herein, the cost of care, operation, maintenance, repair replacement and management of the Common Elements shall be assessed against all Units in accordance with the Allocation of Undivided Interests in the Common Elements. Without limiting the generality of the foregoing, the costs shall include keeping the Common Elements in good, clean, attractive and sanitary condition, order and repair; removing snow and any other materials from such Common Elements which might impair access to the Property or the Units; keeping the Property safe, attractive and desirable; and making necessary or desirable alterations, additions, betterments or improvements to or on the Common Elements.

(b) Except as otherwise provided herein, the cost of maintenance, repair, or replacement of Limited Common Elements shall be assessed against the Unit or in equal shares against the Units to which that Limited Common Element was serving at the time the expense was incurred. Without limiting the generality of the foregoing, such costs may include the keeping of the Limited Common Elements in good, clean, attractive and sanitary condition, order and repair; keeping the Property safe, attractive and desirable; and making necessary or desirable alterations, additions, betterments or improvements to or on the Limited Common Elements.

8.3. Annual Assessments. Payment of Common Expenses shall be by annual assessments made by the Association against each Unit and Owner. The Association may provide that assessments be payable monthly or at other intervals. The omission or failure to establish an assessment or to deliver or mail a statement for any period shall not be deemed a waiver, modification or release of the Owner's obligation to pay assessments.

8.4. Special Assessments. The Board shall have the right during any fiscal year, upon not less than 30 days' notice to the Owners, to levy and assess against the Owners, in a manner similar to assessments for Common Expenses, a special assessment for such purpose or purposes as may be necessary or appropriate to maintain the Property to such standard as the Board deems appropriate. Special assessments may include, without limitation, assessments for the cost of any construction, reconstruction, repair or replacement of any Common Elements, including fixtures and personal property, to the extent such cost is in excess of the amount contemplated by the approved Budget for such fiscal year. Within 30 days after the determination by the Board to levy any such special assessment, the Board shall set a date for a meeting of the Owners in accordance with the procedures set forth in the Bylaws. At such meeting, the proposed special

assessment(s) may be vetoed by a vote of fifty-one percent (51%) of the Owners who are present or voting by proxy at a meeting to be called for this purpose, whether or not a quorum is present, and if not so vetoed the special assessment shall be deemed ratified. If any Owner or occupant fails to perform any obligation imposed under the Declaration or the Bylaws or Rules and Regulations, then the Association may, but is not obligated to, perform the same for the Owner's account and for such purpose may enter upon the Units, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for any such expense, may levy a special assessment upon the Unit.

8.5. Working Capital and Assessment Reserves. Upon each sale of a Unit, the purchaser shall deposit at closing with the Association an amount determined by the Association, which sum shall not exceed two times the amount of the monthly Common Expense assessment then allocable to such Unit. Such sum shall be non-refundable and held, without interest, by the Association in a segregated account as a reserve for working capital, and may be used for such purposes as the Association or the Board deems necessary or appropriate. Such payment shall not be considered an advance payment of regular assessments or relieve an Owner from making the regular monthly payment of the monthly Assessments as the same come due. The Association must establish and maintain, out of regular assessments, an adequate reserve fund for replacement of improvements to the Common Elements and the Limited Common Elements it is obligated to maintain. Declarant shall not use any working capital funds to defray any of Declarant's expenses, reserve contributions, construction costs or to make up any budget deficits during the Declarant Control Period.

8.6. Budget. The Board shall cause to be prepared, at least thirty (30) days prior to the commencement of each fiscal year, a budget for such fiscal year (a "Budget"). The Budget shall show, in reasonable detail, the categories and estimated amounts of expenses for Common Expenses, any expected income of the Association for the coming fiscal year, any expected surplus from the prior year, and any existing surplus held by the Association. The Budget shall include an amount for contingencies and amounts deemed necessary or desirable for capital and/or replacement reserves to provide for repair, renovation, reconstruction or replacement of, or for any additions to the Common Elements, and such other expenditures as permitted under this Declaration. Within fourteen (14) days after the adoption of any Budget by the Board, the Board shall (a) mail by United States first class mail, or otherwise deliver a summary of the Budget to all Owners, and (b) set a date for a meeting of the Owners to consider ratification of the Budget not less than fourteen (14) nor more than thirty (30) days after mailing or other delivery of the summary. Such meeting may be concurrent with the annual meeting of the Owners as provided in the Bylaws. Unless at that meeting fifty-one percent (51%) of the Owners present or voting by proxy reject the Budget, the Budget shall be deemed ratified, whether or not a quorum is present. No further approval of the Owners shall be required for any expenditures contemplated by the Budget irrespective of the amount thereof. If the Budget is rejected, the Budget last ratified by the Owners shall constitute the Budget adopted by the Owners and shall remain in effect until such time as the Owners ratify a subsequent Budget proposed by the Board, it being the intention that at least annually a Budget shall be adopted by the Association either by affirmatively adopting the proposed Budget or ratifying the last Budget.

8.7. Failure to Pay; Lien. If default is made in the payment of the assessments, the Association may declare the entire assessment to be accelerated and to be immediately due and payable. If any assessment shall remain unpaid after the due date thereof, the Association shall

be entitled to collect from the defaulting Owner: (i) a late charge in an amount the Board determines from time to time to be sufficient to cover the extra costs and expenses involved in handling such delinquent payment; (ii) interest at the rate of eighteen percent (18%) per annum or the highest lawful rate, whichever is less on the amount of delinquent assessment, fine or penalty from the due date thereof; and (iii) all costs and expenses incurred by the Association in connection with the collection of the same, including reasonable attorneys' fees. The rate of default interest specified above may be changed by the Board from time to time, but may not exceed the maximum rate permitted by law. Amounts owed by an Owner under this Section shall constitute a lien on the interest of the Owner in the Unit(s).

8.8. Enforcement of Lien. The Board may bring an action at law against the Owner personally obligated to pay the same for collection of the Owner's unpaid proportionate share of the Common Expenses, or foreclose the lien against the Unit(s) owned by such Owner, all in accordance with the Act, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each Owner, by acceptance of a deed to a Unit, hereby expressly vests in the Board or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens. The lien provided for in this Section shall be in favor of the Association and shall be for the common benefit of all Owners. The Board acting on behalf of the Owners shall have the power to bid upon a Unit foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

8.9. Subordination of Assessment Liens. If any Unit subject to a lien created by any provision in this Declaration shall be subject to the lien of a first mortgage of record: (i) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such mortgage, and (ii) the foreclosure of the lien of such mortgage or the acceptance of a deed in lieu of the foreclosure by the mortgagee shall not operate to affect or impair the lien except that assessment liens, if any, as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the mortgage, with the foreclosure-purchaser and purchasers therefrom taking title free of assessments, if any, that have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or deed given in lieu of foreclosure, but subject to assessment liens that shall have come due subsequent to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the acceptance of a deed in lieu of foreclosure. All assessment liens as shall come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the acceptance of a deed in lieu of foreclosure and have not been paid shall be deemed to be an expense of the Association, but this shall not derogate the Association's right to collect said sums from the defaulting Owner personally.

8.10. Owner Responsibility. Each Owner shall be liable for the expense of any maintenance, repair or replacement to the Property rendered necessary by the Owner's act, neglect or carelessness or by that of any of the Owner's Guests, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association or the injured Owner. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or its appurtenances. Nothing herein contained,

however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

8.11. No Avoidance. The liability of an Owner for assessments made by the Association may not be avoided by waiver of the use or enjoyment of any Common Element or by abandonment of a Unit for which an assessment is made.

## ARTICLE 9. DECLARANT'S RESERVED RIGHTS AND POWERS

9.1. Declarant's Use and Ownership. Declarant shall have the right to sell, lease or rent Units to any Person and shall have the right to transact on the Property any business relating to construction, sale, lease or rental of such Units including, but not limited to, the right to maintain models, offices, signs, employees and equipment and materials on the Property, and to use Common Elements to show such Units. A sale and rental office, or signs and all items and equipment pertaining to sales or rentals and other facilities furnished by Declarant shall not be considered Common Elements and shall remain the Declarant's separate property. Declarant retains the right to be the Owner of completed but unsold Units under the same terms and conditions as other Owners including membership in the Association, subject to any additional rights reserved to Declarant as Declarant Development Rights and provided that if a Common Expense assessment has been levied, any Unit owned by the Declarant that is not occupied shall be assessed at the rate of twenty-five (25%) of the assessment that would otherwise be levied on such Unit

9.2 Right to Amend Plans or Subdivide or Combine Units. Declarant reserves the right to change the interior design and arrangement of all Units, to combine or subdivide the Units and to alter the boundaries between Units, so long as Declarant owns the Units so altered. Declarant reserves the right to convert any Units owned by it into Common Elements or Limited Common Elements. Declarant further reserves the right to relocate the boundaries of any or all of the Units located on the Property to the extent Declarant owns any of such Units to incorporate any portion or all of the Common Elements or Limited Common Elements located adjacent thereto as part of such Units. If Declarant so relocates the boundaries of any such Unit, it may designate, as additional Limited Common Elements appurtenant to such Unit, any walls, floors or other structural separations that formerly constituted the Unit boundary, or any space that would be occupied by such structural separations but for the relocation of the Unit boundary. If Declarant converts any Units to Common Elements or Limited Common Elements pursuant to this subparagraph, the allocated interest appurtenant to the remaining Units shall be reallocated proportionally and an appropriate amendment shall be prepared by Declarant and recorded appropriately.

9.3 Declarant's Rights Incident to Completion of the Property and Sale of Units. Declarant hereby retains a right to use, and an easement for ingress and egress over, in, upon, under and across, the Common Elements and Units, including the right to store materials in the Common Elements, the right to restrict use of the elevators, and the right to make such other use of the Common Elements as may be reasonably necessary or incidental to (i) any proposed construction or renovation of the Property and the sale or lease of the Units; (ii) the exercise of Declarant's Development Rights; and (iii) discharge of Declarant's obligations. None of the foregoing rights shall be exercised by Declarant in such a way as to unreasonably interfere with

any Owner's or Guest's occupancy, use or enjoyment of, or access to, such Owner's Unit and Limited Common Elements or the Common Elements.

9.4. Declarant Right Amend Declaration. Declarant may make minor amendments to this Declaration and the Exhibits attached hereto without the approval of the Owners, or Owner's mortgagees, during the Declarant Development Rights Period. Such amendments shall be solely for the purpose of (a) clarification or correction of errors in this Declaration and Exhibits, (b) exercising any Declarant Development Rights, (c) obtaining approvals from one or more of the Agencies, or (d) conforming the Declaration to the requirements of the Act.

9.5 Expiration. The reserved rights of Declarant set forth in this Article 9 shall terminate upon expiration of the Declarant Development Rights Period.

## **ARTICLE 10. MAINTENANCE, ALTERATION AND IMPROVEMENT OF PROPERTY.**

10.1. Maintenance by Association. The Association shall maintain, repair and replace all Common Elements and Limited Common Elements. The Association shall repair incidental damage caused to a Unit through maintenance by the Association. If a Owner defaults on the Owner's responsibilities of maintenance, the Association may assume such responsibilities. The Association may, in its discretion, assume responsibility for any maintenance project which requires reconstruction, repair, rebuilding, renovation, restoration or similar work to one or more Units and the cost thereof may in the discretion of the Association, either be assessed against each Unit for which such costs were incurred or be assessed against all Units as a common expense according to the circumstances.

### **10.2. Maintenance by Owner.**

(a) Each Owner at his own expense shall maintain the interior, including the boundary surfaces, of such Owner's Unit and its equipment, shall keep such interior in a clean and sanitary condition, shall do all redecorating, painting and other finishing which may at the time be necessary to maintain the Unit, and shall be responsible for the maintenance of all personality including carpets, furnishings, cabinets and appliances within such Unit.

(b) The Owner shall be responsible for maintenance of any plumbing fixtures, lighting fixtures, refrigerators, dishwashers, disposals and ranges located in or connected with a Unit and for the exclusive use of the Unit. The Owner shall also, at the Owner's own expense, keep in a clean condition any Limited Common Element which is reserved for the exclusive use of the Owner's Unit.

(c) The Owner shall maintain, at his expense any improvement or other alteration made by the Owner to the Owner's Unit.

(d) The Owner of each Unit shall promptly report to the Association any defects or other maintenance needs which are the responsibility of the Association.

10.3. Alterations or Improvements to Units. No Owner shall undertake any work, improvements or alterations in the Owner's Unit which would jeopardize the soundness, or safety of the Property, impair the structural integrity, electrical systems, or mechanical systems

or lessen the support of any portion of the Property, or impair an easement or hereditament thereon or thereto. No Owner shall enclose, by means of screening or otherwise, any balcony, deck or patio which is accessible from, associated with and which adjoins a Unit, nor shall any Owner enclose or otherwise partition any Parking Unit without having first obtained the prior written approval of the Board for such enclosure or partition and for the materials, plans and specifications for such enclosure or partition. No Owner shall make any alterations to the exterior portions a Unit or to the Buildings, nor shall an Owner make any changes to the water, gas or steam pipes, electric conduits, plumbing or other fixtures, nor shall an Owner remove any additions, improvements or fixtures from the Buildings, without in any such case having first obtained the prior written approval of the Board. No Owner may change the appearance of any of the Common Elements, including any Limited Common Elements appurtenant to such Owner's Unit, which are visible from the exterior of the Building or such Unit without the Board's approval, nor may any Owner in any way alter the appearance of any Parking Unit without the Board's approval. The foregoing restrictions shall not be applicable to Declarant. The Board shall determine the proper insurance for an approved improvement or other alteration, and the effect of such improvement or alteration on insurance of the Property, and the Owner shall pay the cost of such additional insurance. Any approval of the Board required under this Section may be withheld for any reason.

10.4. Alterations to Common Elements. Except as permitted by the Act and except as herein set forth, Common Elements shall not be altered or removed and no improvements shall be constructed or made thereon except by the Association or by others upon the prior written consent of the Association which may be withheld for any reason.

10.5. Access to Units. The authorized representatives of the Association or Board shall be entitled to reasonable access to the Units and Limited Common Elements as may be required in connection with the preservation of any Unit or Limited Common Elements in the event of an emergency, or in connection with maintenance of, repairs or replacements within the Common Elements, Limited Common Elements or any equipment, facilities or fixtures affecting or serving other Units, Common Elements and Limited Common Elements, or to comply with the requirements of any governmental authority.

## **ARTICLE 11. RELOCATION OF BOUNDARIES, COMBINATION OR SUBDIVISION OF RESIDENTIAL UNITS**

11.1. Relocation, Combination or Subdivision Permissible. The boundaries between adjoining Residential Units may be relocated or the combination of two or more adjacent Residential Units may be made and a Residential Unit may be subdivided into two or more Residential Units solely in accordance with the provisions of this Article with the following limitations:

(a) No Residential Unit may be modified by relocation of boundary to the extent that it no longer remains practicably usable as a Residential Unit.

(b) No Residential Unit may result from the subdivision of a Residential Unit to the extent that it no longer remains practicably usable as a Residential Unit.

(c) Each Residential Unit resulting from a subdivision or from a relocation of boundaries shall be at least 800 square feet in area and shall have at least one living room, one kitchen, one bedroom, one bathroom, two exterior windows and direct exclusive access to a Common Element or Limited Common Element corridor adjacent to the Residential Unit.

(d) The relocation, combination or subdivision shall not violate the structural integrity of the Buildings, nor shall it violate any building, fire, or similar code or ordinance from any governmental body having authority or jurisdiction over the Property.

**11.2. Procedure.**

(a) Subject to the provisions of the Act and all other governmental laws, ordinances, rules and regulations, and subject to the terms of this Declaration, an Owner or Owners desiring to relocate, combine or subdivide a Unit or Units must apply to the Board and request an amendment to this Declaration to allow the relocation, combination or subdivision. The application must include:

(i) Drawings showing the proposed alterations of the affected Units, prepared by and certified by a licensed architect;

(ii) A proposed reallocation of the undivided interest in the Common Elements, Common Expenses and votes to the Units affected by the relocation, combination or subdivision;

(iii) A description setting forth any changes in the Limited Common Elements serving the Residential Unit or Units;

(iv) Consent in writing by all mortgagees holding valid mortgages on the Residential Unit or Units affected by the reallocation, combination or subdivision.

(v) An exhibit, in a form acceptable to the Board, to attach to an amendment to the Declaration if the relocation, combination or subdivision is approved.

(b) The application must be approved by fifty-one percent (51%) of the Board to be effective. If approved by the Board, the Board shall submit an amendment for approval to the Association pursuant to this Declaration and on approval by the Association, the amendment must be filed of record. All expenses incurred in connection with such relocation, combination or subdivision shall be paid by the Owners of the Unit or Units affected by the relocation, combination or subdivision.

**11.3. Declarant's Rights.** Nothing in this Article shall affect the Declarant Development Rights.

## ARTICLE 12. EASEMENTS AND ENCROACHMENTS

12.1. Cross Easements. Appurtenant to each Unit shall be easements from each Owner to each other Owner and to the Association and from the Association to the respective Owners as follows:

(a) For ingress and egress through the Common Elements and for maintenance, repair, and replacement as authorized;

(b) Through the Units and Limited Common Elements for maintenance, repair and replacement or reconstruction of Common Elements and Limited Common Elements, but access to Units and Limited Common Elements shall be only during reasonable hours and upon reasonable notice, except in case of emergency; and

(c) Through the Units, the Limited Common Elements and Common Elements for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility or other services to the other Units in the building, and each Unit, the Limited Common Elements and the Common Elements shall be subject to an easement for structural support in favor of every other Unit, the Limited Common Elements and the Common Elements.

12.2 Encroachments. If any portion of the Limited Common Elements or Common Elements encroaches upon any Unit, or if any Unit encroaches upon any other Unit or upon any portion of the Limited Common Elements or Common Elements, or if any of such encroachments shall occur hereafter as a result of shifting or settling of the Buildings or from alteration, repair or improvement to the Common Elements or as a result of repair or restoration of a Unit, the Limited Common Elements or the Common Elements after damage by fire or other casualty, or as a result of condemnation or of eminent domain proceedings, then in each of such events a valid easement shall exist for such encroachment and for the maintenance thereof so long as the Buildings, Units, Limited Common Elements and Common Elements exist.

12.3 Easements for Underground Garage. The Declarant has entered into a Declaration of Easements and Restrictive Covenants (the "Easements and Restrictive Covenants"), dated August 12, 2002, and recorded on August 14, 2002, in Book 9274, at Page 29-50 in the Records of the Polk County Iowa Recorder, with Vine Street Limited Partnership, a Minnesota limited partnership and the owner of Vine Street Lofts (the "Limited Partnership"). The Underground Garage and the Vine Street Lofts Underground Garage are connected and share certain structural elements. Pursuant to the Easements and Restrictive Covenants, the Declarant and the Limited Partnership have granted to each other reciprocal easements relating to the Underground Garage and the Vine Street Lofts Underground Garage, including easements relating to the ingress and egress, building encroachments, support, utilities and use of two (2) parking stalls in the Underground Garage by the residents of Vine Street Lofts, and the Declarant and the Limited Partnership have entered into agreements relating to the construction, operation and maintenance of the Underground Garage and the Vine Street Lofts Underground Garage.

12.4. Easements for Courtyard. The Landscaped Area behind the Buildings adjoins a landscaped area behind Vine Street Lofts forming a courtyard between the Condominium and Vine Street Lofts (the "Courtyard"). Pursuant to the Easements and Restrictive Covenants, the Declarant and the Limited Partnership have granted to each other reciprocal easements relating

to the Courtyard, including easements relating to ingress and egress, and the Declarant and the Limited Partnership have entered into agreements relating to the construction, operation, and maintenance of the Courtyard.

12.5. Assumption of Duties. The Association shall assume the duties of Declarant under the Easements and Restrictive Covenants upon expiration of the Declarant Control Period.

## ARTICLE 13. EMINENT DOMAIN, DAMAGE OR DESTRUCTION

13.1. Taking by Eminent Domain. Any award for the taking of a portion of a Unit or of the Common Elements by eminent domain or the conveyance under threat thereof shall be deemed to be proceeds from insurance on account of casualty and shall be deposited with the Association. Even though the awards may be payable to Owners, the Owners shall deposit the awards with the Association as Trustee. In the event of failure to do so, at the discretion of the Association, a special assessment shall be made against a defaulting Owner in the amount of the Owner's award, and the amount of such award shall be set off against the sum hereinafter made payable to such Owner. The proceeds of the award shall be distributed or used in a manner provided for insurance proceeds except that when the horizontal property regime is not to be terminated, and one or more Units are taken in part, the taking shall have the following effects:

(a) If the taking reduces the size of the Unit, and the remaining portion of the Unit can be made tenable, the Unit shall be made tenable and the following shall apply:

- (i) If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Owner of the Unit.
- (ii) If the cost of such work does not exceed the amount of the award, the balance of the award, if any, shall be distributed to the Owner of the Unit, or to any mortgage of the Unit, as may be required by any mortgage affecting the Unit.

(iii) If the taking reduces the square footage of the Unit, the Allocation of Undivided Interest shall be reduced on an equitable basis to be determined by the Association.

(b) If the taking destroys or so reduces the size of the Unit that it cannot be made tenable, the awards for the taking of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the horizontal property regime:

(i) The market value of such Unit immediately prior to the taking shall be paid to the Owner of the Unit and to each mortgagee of the Unit of record, the remittance being payable jointly to the Owner and the mortgagees. In the event that the market price cannot be determined by negotiations, it shall be determined by binding arbitration in accordance with Chapter 679 of the Code of Iowa.

(ii) The remaining portion of such Unit, if any, shall become a part of the Common Elements and shall be placed in condition for use by all of the

Owners in a manner approved by the Association; provided, if the cost of such work shall exceed the balance of the fund from the award for the taking, such work shall be paid for by assessment as a Common Expense among all remaining Units.

(iii) If the amount of the award for the taking is not sufficient to pay the market value of the condemned Unit to the Owner, and to condition the remaining portion of the Unit for use as part of the Common Elements, the additional funds required for such purposes shall be raised by assessments against all of the Owners who will continue as co-Owners of Units.

(iv) If the amount of the award for the taking exceeds the amounts necessary to pay the market value of the condemned Unit to the Owners as provided in clause (i) above and to condition the remaining portion of the Unit for use as part of the Common Elements as provided in clause (ii) above, the excess funds shall be payable to the Owner of the condemned Unit.

13.2. Damage and Destruction. In the event the Property is damaged or destroyed by fire or other peril, it shall be deemed that the Association shall have immediately voted unanimously to repair, reconstruct or rebuild and the same shall be promptly repaired or reconstructed in substantial conformity with the original plans and specification with the proceeds of insurance available for that purpose, if any. Provided, however, if the Owners holding seventy-five percent (75%) or more of the votes in the Association within thirty (30) days from such damage and destruction notify the Board of Directors in writing, requesting a vote of the Association members concerning the question of rebuilding, repairing or reconstructing the damage or destruction, the Association shall hold such a meeting and shall commence such rebuilding, repairs and reconstruction upon the affirmative vote of fifty-one (51%) of the votes in the Association. Provided further, in the event that damage or destruction by fire or other peril exceeds fifty percent (50%) of the then fair market value of the Property, the Association must hold a meeting of its members within thirty (30) days of the damage or destruction on the question of rebuilding, repairing or reconstructing the damage and shall commence such rebuilding, repair or reconstruction upon the affirmative vote of fifty-one (51%) of the votes in the Association.

13.3 Expenses of Repair. In the event the proceeds of insurance are not sufficient to repair damage or if destruction is caused by any peril not herein required to be insured against, then the repair or reconstruction of the damaged Common Elements shall be accomplished promptly by the Association as a Common Expense and the repair or reconstruction of any Unit shall be accomplished promptly by the Association at the expense of the Owner of the affected Unit. The expense of such repairs or reconstruction shall be assessed and the lien for the same shall have all the priorities heretofore provided for in this Declaration and by the Bylaws of the Association.

13.4 Disposition of Property. In the event a vote is properly requested or required and an affirmative vote is not obtained as provided in Section 13.2, then the provisions of the Act in such event shall apply.

13.5 Amendment to Declaration. The Association shall have the right to file of record any amendment to this Declaration to incorporate any changes required by this Article in connection with any taking of, or damage or destruction to, the Property.

## ARTICLE 14. THE ASSOCIATION

14.1 General Purposes. The Association is an Iowa non-profit corporation formed to manage the Property and to perform its functions as provided in this Declaration in furtherance of the interests of the Owners.

14.2 Board of Directors. The affairs of the Association shall be managed by a Board of Directors in accordance with the provisions of this Declaration, the Articles and Bylaws.

14.3 Managing Agent. The Association may (a) obtain and pay for the services of a Managing Agent to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Association or by any Person with whom or with which it contracts; (b) obtain and pay for legal and accounting services and other professional services necessary or desirable in connection with the operation of the Property or the enforcement of this Declaration; and (c) arrange with others to furnish lighting, heating, water, trash collection, sewer service and other common services. Any contract with a Managing Agent shall not exceed three (3) years and shall provide for the right of the Association to terminate such contract without penalty at any time upon not more than ninety (90) days notice.

14.4 Duty to Keep Records. The Association shall keep books, records and financial statements sufficiently detailed to enable the Association to comply with the Act, including, but not limited to, financial records sufficiently detailed to provide a statement setting forth the amount of any unpaid Assessments currently levied against an owner. The Association additionally shall cause an audited financial statement to be available annually within one hundred twenty (120) days after the end of the Association's then current fiscal year. The Association shall maintain current copies of this Declaration, Articles, Bylaws, and Rules and Regulations, and of all amendments to any of such documents. The foregoing items shall be available for inspection by any Owner, or by holders, insurers and guarantors of any first mortgage secured by a Unit upon advance arrangements during normal business hours.

14.5 Bylaws and Articles. The purposes and powers of the Association and the rights and obligations with respect to Owners set forth in this Declaration may and shall be amplified, but not modified, by provisions of the Articles and Bylaws of the Association.

14.6 Rules and Regulations. The Association shall have the authority to amend and adopt reasonable Rules and Regulations governing the use of the Property and such rules shall be observed and obeyed by the Owners and their Guests. Such Rules and Regulations after being properly adopted shall have the same force and effect as if contained in this Declaration. The initial Rules and Regulations promulgated by the Declarant shall be deemed properly adopted by the Association without any formal action. Any Rule and Regulations so promulgated by the Association shall be effective ten days after the date that written notice of such Rule or Regulation is provided to the Owners. A rule that becomes effective thirty (30) days or more

prior to the next following annual meeting of the Association may be challenged at, or at any time prior to, such annual meeting, or at a special meeting called for such purpose prior to the date of such annual meeting. Any Rule or Regulation which becomes effective less than thirty (30) days prior to the next following annual meeting of the Association may be challenged at, or at any time prior to, either such annual meeting or the next year's annual meeting, or at a special meeting called for such purpose prior to the date of the next year's annual meeting. Such challenge shall be in the form of a petition objecting to the rule, and must be signed by owners representing an aggregate ownership interest of ten percent (10%) or more of the Common Elements. If a petition with sufficient signatures is delivered to the Association at least one day prior to the annual meeting at which such Rule or Regulation must be challenged, enforcement of the challenged Rule or Regulation shall be suspended until the meeting at which the challenge is to be presented, and the ratification or termination of the challenged rule shall be an item of business at the applicable meeting. Provided a quorum is present at such meeting (or, in the absence of a quorum, any continuation of such meeting), the rule shall be deemed ratified if it is approved by Owners representing a majority of the ownership interests present or voting by proxy at such meeting, and shall be deemed revoked if it is not supported by such a majority.

14.7. Property of Association. The Association may pay for, acquire and hold or lease real property and tangible and intangible personal property, and may dispose of the same by sale or otherwise. Subject to the Rules and Regulations, each Owner and such Owner's Guests may use such property as may be designated by the Association for such use. Upon termination of condominium ownership of the Property and dissolution of the Association, if ever, such property shall be deemed to be owned by the then Owners as tenants in common in the same proportion as their respective interests in the Common Elements. A transfer of a Unit, including a transfer resulting from a foreclosure pursuant to a mortgage, shall transfer to the transferee the transferor's interest in such property without any reference thereto. Each Owner may use such property in accordance with the purposes for which it is intended so long as such use does not hinder or encroach upon the lawful rights of the other owners. The Association shall have the right to lease, license, grant easements or concessions or permit the use of any portion of the Common Elements or any Unit owned by the Association (including any Unit purchased from the Declarant).

14.8. Enforcement by Association. The Association may take judicial action against any Owner to enforce compliance with the Rules and Regulations and all other obligations arising under this Declaration or to obtain damages and/or injunctive relief for noncompliance thereof, all to the extent permitted at law or in equity. Additionally, after not less than ten (10) days prior written notice and an opportunity by the Owner to be heard, the Association may levy reasonable fines against any Owner for the Owner's violation of this Declaration, the Bylaws and the Rules and Regulations. In any action or proceeding commenced pursuant to this Section, the Association shall have the right to recover reasonable attorneys' fees and costs from any Owner who violates this Declaration, the Bylaws or the Rules and Regulations. The Association, however, shall not have the power to suspend any Owner's voting rights in the Association or the right of an Owner and said Owner's Guests to use the amenities due to such Owner's failure to comply with any obligation arising under this Declaration, except as provided in the Bylaws.

14.9. Declarant Control of Association. Declarant shall have exclusive control of the Association during the Declarant Control Period. This control shall include but not be limited to the right to name all Directors and Officers of the Association. Declarant shall have the right to

enter into a management contract during the Declarant Control Period. Any fee under such contract shall be commercially reasonable as determined in the relative market place of similar types of projects and services and such contract shall be terminable without cause by the Association upon expiration of the Declarant Control Period. Such management fee shall be a Common Expense allocated and assessed as provided in this Declaration.

## ARTICLE 15. INSURANCE

15.1. Duty of the Association. Commencing not later than the date of the first conveyance of a Unit to a Person other than Declarant, the Association shall obtain and maintain at all times, to the extent available, at least the following insurance (hereinafter referred to as Condominium Property Insurance):

(a) Insurance on the Property in an amount equal to full replacement value of the Property (as determined annually by the Association) and with a replacement cost endorsement which provides for the payment of all losses without deduction or allowance for depreciation. Such coverage shall afford protection against, at least, the following:

(i) loss or damage by fire or other hazards (covered by the Insurance Services Office ("ISO") cause of loss special form CP1030 or its then-current equivalent, as determined by the Association);

(ii) such other risks as shall customarily be covered with respect to projects similar in construction, location and use, including, but not limited to, vandalism, malicious mischief, machinery explosion or damage, and such other insurance as the Association may from time to time determine.

(b) Comprehensive public liability insurance, written by a responsible casualty or indemnity company authorized to do business in Iowa on an "occurrence basis" not a "claims basis", with a combined general liability insurance limit of at least \$2,000,000 in the aggregate and at least \$1,000,000 per occurrence of injury or property damage. The amount of insurance required by this Section shall be adjusted at the end of each five (5) year period by the amount necessary to continue insurance coverage at a comparable level considering the effects of inflation unless otherwise determined appropriate by the Association. The liability insurance required by this Section shall include coverage offered in the ISO's Commercial General Liability Coverage form CG0001 or its equivalent, as determined by the Association.

(c) Worker's compensation insurance to the extent necessary to comply with any applicable law.

(d) Such other policies of insurance, including insurance for other risks of a similar or dissimilar nature, as are or shall hereafter be considered appropriate by the Association.

### 15.2. Premiums and Terms.

(a) The premiums for the insurance coverage shall be a Common Expense to be paid by assessments levied by the Association against Owners.

(b) The Association, or its designee, shall have the exclusive authority to adjust losses under the insurance policies.

(c) In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by Owners of Units or their mortgagees.

(d) Each Owner may obtain additional insurance at the Owner's expense upon the Owner's Unit provided that no Owner shall maintain insurance coverage which will tend to decrease the amount which the Association may realize under any insurance policy which it may have in force on the Property.

(e) The Association may from time to time designate an Insurance Trustee. The Association shall be responsible for fees and expenses of the Insurance Trustee which shall constitute a common expense.

(f) Except as hereinafter provided, the Association or Insurance Trustee named in the condominium property endorsement, as the case may be, shall receive and hold the amount payable under the Condominium Property Insurance and apply the same to the cost of reconstruction or repair of a damaged or destroyed condominium Unit, Common Elements or Limited Common Elements. The work of repairing or reconstruction of the damaged or destroyed condominium Unit shall be commenced within thirty (30) days from the date of the damage or destruction. The work shall be accomplished in accordance with the same plans and specifications by which the Units were originally constructed, subject, however, to the prior written approval of the Association. The Association or the Insurance Trustee shall make available and pay to the owner the amount of insurance proceeds received by the Insurance Trustee for the reconstruction and repair of the Unit. The payment of the proceeds of insurance shall be made as the work progresses at such time and upon compliance by the Owner with such conditions as the Association or Insurance Trustee shall impose, in order to assure full restoration or repair of the damaged portions of the Unit in a workmanlike manner, free and clear of any mechanic's and materialmen's liens and any encumbrances, liens, claims or charges other than a first mortgage lien. If the cost of reconstruction or repair exceeds the amount paid to the Insurance Trustee, the excess shall be paid by the Owner; provided, however, that in the event a decision to reconstruct is not made according to the terms of Article 13 hereof, the Condominium shall be considered terminated. In the event of such termination, the Board of Directors shall have the responsibility of closing out the affairs of the Condominium in an orderly manner.

15.3. General Provisions. Any insurance obtained pursuant to the requirements of this Article, except under subsection (h) hereof, shall be subject to the following provisions:

(a) All policies shall be written with a company or companies licensed to do business in the State of Iowa and holding a rating of "A-XI" or better by Best's Insurance Reports.

(b) Exclusive authority to negotiate losses under said policies shall be vested in the Board or its authorized representative, including any trustee with which the

Association may enter into any Insurance Trust Agreement, or any successor trustee, each of which shall herein elsewhere be referred to as the "Insurance Trustee" and all proceeds covering any loss shall be payable to the Insurance Trustee, or to his successor. All proceeds from an insured loss under such policy shall be held for the use and benefit of the Association and the Owners of all Units and their respective mortgagees as interest may appear. Such insurance proceeds shall be applied and distributed in accordance with the articles relating to insurance in the Declaration and Bylaws.

(c) In no event shall the insurance coverage obtained and maintained pursuant to the requirements of this Article be brought into contribution with insurance issued in the name of any individual Owner purchased as herein permitted by such Owner of a Unit or their mortgagee. Any "no other insurance" or similar clause in the policy obtained by the Association pursuant to the requirements of this Article shall exclude such policies from consideration.

(d) All policies shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days prior written notice to any and all insured named thereon. If determined necessary or appropriate by the Association and to the extent available to the Association, the policies obtained by the Association may also include a requirement on the insurer to provide the notice under the immediately preceding sentence to any mortgagees of the Units that require such notice, provided that for so long as the Declarant is the Owner of any Unit, the policies must provide that they cannot be canceled or substantially modified without at least thirty (30) days prior written notice to the Declarant's first mortgage lender, U.S. Bank National Association.

(e) All fire and other hazard insurance policies shall provide that, notwithstanding any provisions thereof which give the carrier the right to erect a structure or restore damage in lieu of making a cash settlement, such option shall not be exercisable when in conflict with the provisions of the Declaration or the Bylaws.

(f) All policies shall contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Board of Directors, their agents and employees, the respective Owners, their residence employees, agents. Independent contractors shall not be considered agents, employees or servants of the Association or of the respective Owners within the meaning of said waiver.

(g) The insurance policy shall contain a provision that the insurance shall not be prejudiced:

(i) By any act or neglect of any occupants or Owners of the Building when such act or neglect is not within the control of the Owners collectively; or

(ii) By failure of the Owners collectively to comply with any warranty or condition with regard to any portion of the premises over which the Owners collectively have no control.

(h) The Owner of any Unit (including the holder of any mortgage thereon) will be responsible for obtaining additional insurance (including a "condominium Unit-owner's endorsement" for improvements and betterments to the condominium Unit made

or acquired at the expense of the owner) at the Owner's expense. Such insurance shall be in minimum liability amounts established by the Association and shall provide that the Association is an additional insured. Such insurance shall be written either by the same carrier as that purchased by the Association pursuant to this Article or if written by another carrier, shall provide that it shall be without contribution as against the same. Such insurance shall contain the same waiver or subrogation provisions as set forth in Subsection (f) above. The Declarant recommends that each Owner of a Unit in the project obtain, in addition to the insurance hereinabove provided to be obtained by the Association, a "Tenant's Policy", or equivalent to insure against loss or damage to personal property, including but not limited to decorated surfaces of walls, floor coverings, plumbing and electrical fixtures, non-load bearing walls and appliances used or incidental to the occupancy of the condominium Unit, vandalism or malicious mischief, theft, personal liability and the like. Such policy should include a "condominium Owner's endorsement" covering losses to improvements and betterments to the condominium Unit made or acquired at the expense of the Owner.

## **ARTICLE 16. REMEDIES**

In addition to the remedies to enforce the lien for failure to pay assessments and other charges provided in this Declaration, the Association shall have the right to enforce the provisions of the Act, this Declaration and Exhibits hereto, and any Rules and Regulations properly adopted by it against an individual Owner or the occupant of any Unit. The Association shall have the right to proceed at law or in equity to enforce any lien or any of the above items against the Owner including an action for damages or injunction. Specifically, the Association shall have the right, after ten (10) days notice to the Owner to evict in the Owner's name, any tenant of the Owner in the event such tenant or other occupant is violating any of the Rules and Regulations, or provisions of this Declaration. In the event of any such action, the Owner agrees to pay all costs including reasonable attorney's fees. In the event of any default by any Owner under the terms of this Declaration, the Association shall have the right to correct such default and seek reimbursement from the Owner. Any such costs, damages, or expenses in connection with this Article shall be a lien against the Unit enforceable at law or in equity.

## **ARTICLE 17. AMENDMENTS**

17.1 Unanimous Amendment. No amendment to this Declaration shall change the Allocation of Undivided Interest for a Unit unless the Owner of the Unit affected by such change and mortgagees of record for such affected Unit shall affirmatively consent to the adoption of such amendment.

17.2 Amendments Requiring Consent of Declarant. No amendment affecting the Declarant Development Rights may be made without the written consent of the Declarant.

17.3 Other Amendments. Except as provided (a) in the other Sections of this Article, (b) in Section 9.4, and (c) in Article 18, amendments to this Declaration may be made by an affirmative vote of a majority of the voting interests of the Members the Association.

## ARTICLE 18. PROVISIONS FOR ELIGIBLE MORTGAGEES

18.1 Amendments of a Material Nature. Amendments to the Condominium Documents that are of a material nature shall be agreed to by Unit Owners who represent at least sixty-seven percent (67%) of the total voting interests in the Association and by at least fifty-one percent (51%) of Eligible Mortgagees. For purposes of this Section, a change to any provision governing the following would be considered material in nature:

- (a) voting rights;
- (b) increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens;
- (c) reductions in reserves for maintenance, repair, and replacement of Common Elements;
- (d) responsibility for maintenance and repairs;
- (e) reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use;
- (f) redefinition of any Unit boundaries;
- (g) convertibility of Units into Common Elements or vice versa;
- (h) expansion or contraction of the Condominium, or the addition, annexation, or withdrawal of property to or from the Condominium;
- (i) hazard or fidelity insurance requirements;
- (j) imposition of any restrictions on the leasing of Units;
- (k) imposition of any restrictions on an Owner's right to sell or transfer the Owner's Unit;
- (l) restoration or repair of the Condominium after damage or partial condemnation in a manner other than that specified in the Condominium Documents; or
- (m) any provisions that expressly benefit mortgage holders, insurers, or guarantors.

18.2 Termination of Condominium. Any action to terminate the Condominium after substantial damage or destruction or after a taking by eminent domain shall be agreed to by Unit Owners who represent at least sixty-seven percent (67%) of the total voting interests in the Association and by at least fifty-one percent (51%) of Eligible Mortgagees. Any action to terminate the Condominium for any other reason shall be agreed to by Unit Owners who represent at least sixty-seven percent (67%) of the total voting interests in the Association and by at least sixty-seven percent (67%) of Eligible Mortgagees.

18.3 Deemed Approval. Approval of an Eligible Mortgagee may be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for amendment to this Declaration under Section 18.1 or termination of the Condominium under Section 18.2 within thirty (30) days after the Eligible Mortgagee receives proper notice of the proposal, provided that the notice was delivered by certified or registered mail, with a "return receipt" requested.

18.4 Notice to Mortgagees. The Association shall give the holder, insurer or guarantor of any mortgage on any Unit who has previously sent to the Association a written request for such information, stating the mortgagee's (or insurer's or guarantor's) name, address and the unit number or address of the Unit on which it has (or insures or guarantees) a mortgage, timely written notice of following actions:

1. any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit secured by the party's mortgage;
2. any 60-day delinquency in the payment of Condominium assessments or charges owed by the Owner of any Unit on which it holds a mortgage;
3. a lapse, cancellation or material modification of any insurance policy maintained by the Association; and
4. any proposed action that requires the consent of a specified percentage of Eligible Mortgagees.

## ARTICLE 19. MISCELLANEOUS

19.1 Severability. Invalidity of any covenant, restriction, agreement, undertaking or other provision of any Condominium Document shall not affect the validity of the remaining portions thereof.

19.2 Incorporation. Exhibits attached hereto and referred to herein are hereby made a part hereof with the same force and effect as other provisions of this Declaration.

19.3 Supplemental to Law. The provisions of this Declaration shall be in addition and supplemental to the Act and to all other provisions of law.

19.4 Successors and Assigns. This Declaration shall run with the land and be binding upon and shall inure to the benefit of Declarant, the Association and each Owner, and the heirs, personal representatives, successors and assigns of each of them.

19.5 Captions. The captions and headings in this Declaration are for convenience only and shall not be considered in construing any provision of this Declaration.

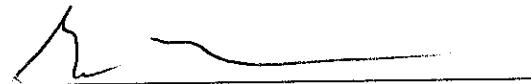
19.6 No Waiver. Failure to enforce any provision of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration no matter how many violations or breaches occur.

19.7 Conflict. In the event of a conflict between the provisions of the Declaration and the Bylaws, the Declaration shall prevail, except to the extent the Declaration is inconsistent with the Act. In the event of a conflict between provisions relating to the exercise of Declarant Development Rights and provisions relating to Owners, provisions relating to the exercise of Declarant Development Rights shall prevail notwithstanding that Declarant is also an Owner of one or more Units.

[The remainder of this page has been left blank intentionally. Signature page follows.]

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

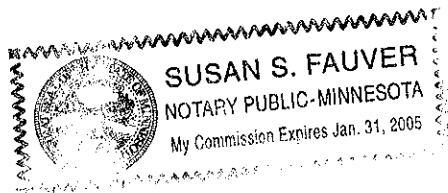
WATER STREET BROWNSTONES LLC, a Minnesota limited liability company



By: George E. Sherman  
Its: President

STATE OF MINNESOTA      )  
                                    ) SS:  
                                    )  
COUNTY OF HENNEPIN

On this 17<sup>th</sup> day of June, 2004, before me a Notary Public in and for said county, personally appeared George E. Sherman, to me personally known, who being by me duly sworn did say that that person is the President of said Water Street Brownstones LLC and that said instrument was signed on behalf of the said limited liability company.

  
Notary Public in the State of Minnesota

**EXHIBIT A  
TO  
DECLARATION OF WATER STREET BROWNSTONES CONDOMINIUM**

**LEGAL DESCRIPTION OF REAL ESTATE**

PARCEL B OF THE PLAT OF SURVEY FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF POLK COUNTY, IOWA, ON APRIL 16, 2002, IN BOOK 9116, AT PAGE 233, ALSO MORE PARTICULARLY DESCRIBED AS:

A PARCEL OF LAND IN BLOCK 35, FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED  
IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA,  
BEING  
MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEASTERLY CORNER OF LOT 10 OF SAID BLOCK 35;  
THENCE S15°30'00"E, ALONG THE EASTERLY LINE OF SAID BLOCK 35, A DISTANCE  
OF  
4.12 FEET, TO THE POINT OF BEGINNING;

THENCE S15°30'00"E, ALONG THE EASTERLY LINE OF SAID BLOCK 35, A DISTANCE  
OF  
251.83 FEET;

THENCE SOUTHWESTERLY 17.70 FEET ALONG A 11.50 FOOT RADIUS CURVE  
CONCAVE  
NORTHWESTERLY HAVING A LONG CHORD OF 16.00 FEET BEARING S28°51'24"W;

THENCE S72°55'30"W, A DISTANCE OF 111.29 FEET;

THENCE N15°30'00"W, A DISTANCE OF 265.48 FEET;

THENCE N74°02'41"E, A DISTANCE OF 120.28 FEET;

THENCE SOUTHEASTERLY 2.16 FEET ALONG A 20.00 FOOT RADIUS CURVE  
CONCAVE  
SOUTHWESTERLY HAVING A LONG CHORD OF 2.16 FEET BEARING N77°08'31"E, TO  
THE  
POINT OF BEGINNING.

TOGETHER WITH, THE APPURTEnant COVENANTS AND EASEMENTS CREATED  
BY THAT CERTAIN DECLARATION OF EASEMENTS AND RESTRICTIVE  
COVENANTS FILED AUGUST 14, 2002, IN BOOK 9274, PAGE 29, AS INSTRUMENT NO.  
116208, BETWEEN WATER STREET BROWNSTONES LLC AND VINE STREET  
LIMITED PARTNERSHIP.

**EXHIBIT B**  
**TO**  
**DECLARATION OF WATER STREET BROWNSTONES CONDOMINIUM**  
**ALLOCATION OF UNDIVIDED INTEREST**

<b>Unit Number</b>	<b>Square Footage</b>	<b>% Undivided Interest</b>
102 (TH-B)	1,564	2.60%
103 (TH-B)	1,564	2.60%
104 (A)	1,535	2.55%
105 (B)	1,273	2.11%
106 (C)	1,270	2.11%
101 (TH-C)	1,648	2.74%
204 (A2)	1,483	2.46%
205 (B)	1,273	2.11%
206 (C)	1,270	2.11%
301 (D)	1,741	2.89%
302 (E)	2,335	3.88%
303 (C)	1,270	2.11%
304 (B)	1,273	2.11%
401 (D)	1,741	2.89%
402 (E)	2,335	3.88%
403 (C)	1,270	2.11%
404 (B)	1,273	2.11%
120 (TH-C)	1,648	2.74%
121 (TH-B)	1,564	2.60%
122 (TH-B)	1,564	2.60%
123 (A)	1,535	2.55%
124 (B)	1,273	2.11%
125 (C)	1,270	2.11%
223 (A2)	1,483	2.46%
224 (B)	1,273	2.11%
225 (C)	1,270	2.11%
322 (D)	1,741	2.89%
323 (E)	2,335	3.88%
324 (B)	1,273	2.11%
325 (C)	1,270	2.11%
422 (D)	1,741	2.89%
423 (E)	2,335	3.88%
424 (B)	1,273	2.11%
425 (C)	1,270	2.11%
P-1	166.50	0.28%
P-2	166.50	0.28%
P-3	166.50	0.28%

P-4	166.50	0.28%
P-5	166.50	0.28%
P-6	166.50	0.28%
P-7	166.50	0.28%
P-8	166.50	0.28%
P-9	166.50	0.28%
P-10	166.50	0.28%
P-11	166.50	0.28%
P-12	333	0.55%
P-13	333	0.55%
P-14	333	0.55%
P-15	333	0.55%
P-16	166.50	0.28%
P-17	166.50	0.28%
P-18	166.50	0.28%
P-19	166.50	0.28%
P-20	166.50	0.28%
P-21	166.50	0.28%
P-22	166.50	0.28%
P-23	166.50	0.28%
P-24	166.50	0.28%
P-25	166.50	0.28%
P-26	333	0.55%
P-27	333	0.55%
P-28	333	0.55%
P-29	333	0.55%
P-30	166.50	0.28%
P-31	166.50	0.28%
P-32	166.50	0.28%
P-33	166.50	0.28%
P-34	166.50	0.28%
P-35	166.50	0.28%
P-36	166.50	0.28%
P-37	166.50	0.28%
P-38	166.50	0.28%
P-39	166.50	0.28%
P-40	166.50	0.28%
<b>TOTAL</b>	<b>60,228</b>	<b>100.00%</b>

9/27/2003

**EXHIBIT C**  
**TO**  
**DECLARATION OF WATER STREET BROWNSTONES CONDOMINIUM**  
**ARTICLES OF INCORPORATION**  
**OF**  
**WATER STREET BROWNSTONES HOMEOWNERS ASSOCIATION**

**TO THE SECRETARY OF STATE OF THE STATE OF IOWA:**

The undersigned, acting as Incorporator of a corporation under the Iowa Nonprofit Corporation Act, Chapter 504A of the Code of Iowa (2003), adopts the following Articles of Incorporation for such Corporation:

**ARTICLE I. NAME**

The name of the Corporation is Water Street Brownstones Homeowners Association.

**ARTICLE II. CORPORATE EXISTENCE**

The corporate existence of this Corporation shall begin on the date these Articles of Incorporation are filed with the Secretary of State of the State of Iowa and shall continue perpetually thereafter unless dissolved as provided by law.

**ARTICLE III. PURPOSES AND POWERS**

The Corporation is organized exclusively as a Homeowners Association within the meaning of Section 528 of the Internal Revenue Code of 1986, as amended. The primary purpose of the Corporation is to operate a Homeowners Association for Water Street Brownstones, a condominium property located in the City of Des Moines, Polk County, Iowa.

As a means of accomplishing the foregoing purposes, the Corporation shall have all of the general powers set forth in Chapter 504A of the Code of Iowa (2003), and as it may hereafter be amended. These general powers shall be exercised exclusively for the attainment of the purposes of the Corporation as set forth in this Article.

**ARTICLE IV. NO PRIVATE INUREMENT**

No part of the net earnings shall inure to the benefit of any Director or Officer of the Corporation or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation affecting one or more of its purposes). No Director or Officer of the Corporation, or any private individual, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

## **ARTICLE V. DISSOLUTION PROVISIONS**

Upon the dissolution of the Corporation, the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the Corporation, dispose of all of the remaining assets of the Corporation exclusively for the purpose(s) of the Corporation set forth in Article III hereof in such a manner or to such organization or organizations operated exclusively as charitable organizations as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed of by the District Court of the County in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations as said District Court shall determine which are organized exclusively for such designated purpose(s).

## **ARTICLE VI. INITIAL REGISTERED OFFICE AND REGISTERED AGENT**

The address of its initial registered office in the State of Iowa is 801 Grand Avenue, Suite 3100, Des Moines, Polk County, Iowa 50309, and the name of its initial registered agent at such address is Susan Boe.

## **ARTICLE VII. INITIAL BOARD OF DIRECTORS**

The number of Directors constituting the initial Board of Directors of the Corporation shall be two (2). The number of Directors may be changed by the Board of Directors upon the adoption of Bylaws for the Corporation and by any subsequent amendment to the Bylaws adopted by the Board of Directors. The names and addresses of the persons who are to serve as the initial Directors are:

<u>Name</u>	<u>Address</u>
Michael Lander	3503 Hennepin Avenue South Minneapolis, Minnesota 55408
George E. Sherman	233 Park Avenue South Suite 201 Minneapolis, Minnesota 55415

## **ARTICLE VIII. MEMBERS**

The Corporation shall have Members. The designation of membership classes, the manner of election and the qualifications and rights of the Members of each class shall be as set forth in the Bylaws of the Corporation.

## **ARTICLE IX. EXEMPTION OF PRIVATE PROPERTY**

Consistent with Section 504A.101 of the Code of Iowa (2003), the private property of the directors, officers, employees and members of the corporation shall be exempt from all debts, obligations and liabilities of the Corporation of any kind whatsoever and directors, officers,

members and other volunteers of this Corporation shall not be personally liable in that capacity, for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for a breach of the duty of loyalty to the Corporation, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit. If Iowa law is hereafter changed to mandate or permit further elimination or limitation of the liability of the Corporation's directors, officers, employees, members and volunteers, then the liability of the Corporation's directors, officers, employees, members and volunteers shall be eliminated or limited to the full extent then permitted.

#### ARTICLE X. INCORPORATOR

The name and address of the Incorporator is Susan Boe, 801 Grand Avenue, Suite 3100, Des Moines, Polk County, Iowa 50309.

#### ARTICLE XI. AMENDMENTS

These Articles of Incorporation may be amended at anytime and from time to time as provided by the Code of Iowa, but no amendment shall be adopted which deprives the Corporation of tax exempt status under the Internal Revenue Code of 1986, as amended.

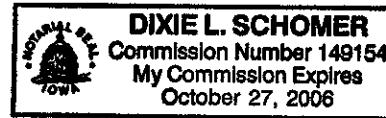
Dated June 21, 2004

Susan Boe  
SUSAN BOE, Incorporator

STATE OF IOWA )  
                  )ss:  
COUNTY OF POLK )

On this 21 day of June, 2004 before me, the undersigned, a Notary Public in and for said County, in said State, personally appeared Susan Boe, to me known to be the identical person named in and who executed the within and foregoing instrument, and acknowledged that she executed the same as her voluntary act and deed.

Dixie L. Schomer  
Dixie L. Schomer, Notary Public



**EXHIBIT D**  
**TO**  
**DECLARATION OF WATER STREET BROWNSTONES CONDOMINIUM**  
**BYLAWS**  
**OF**  
**WATER STREET BROWNSTONES HOMEOWNERS ASSOCIATION**

**ARTICLE I. PURPOSES**

. The management and administration of the Property shall be governed and managed by the Water Street Brownstones Homeowners Association (hereinafter called the "Association") who will conduct its activities to promote the purposes for which it was organized as set forth in Article III of the Articles of Incorporation for the Association. The action of the Association shall constitute the action of the Owners whenever such action is permitted or required herein or by the Act.

No substantial part of the activities of the Association shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Association shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provisions of these Bylaws, the Association shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 528 of the Internal Revenue Code (or the corresponding provision of any future United States Internal Revenue Law).

**ARTICLE II. DEFINITIONS**

The terms used in these Bylaws shall have the meanings set forth in the Declaration of Water Street Brownstones, a Condominium located in the City of Des Moines, County of Polk, State of Iowa (the "Condominium"), recorded on \_\_\_\_\_, 2004, in Book \_\_\_\_\_, at Page \_\_\_\_\_ in the Records of the Polk County Iowa Recorder (the "Declaration"). In the event of a conflict between the provisions of the Declaration and the Bylaws, the Declaration shall prevail, except to the extent the Declaration is inconsistent with the Act.

**ARTICLE III. OFFICES**

Section 3.1 Principal Office. The principal office of the Association in the State of Iowa shall be located in the City of Des Moines, Polk County, Iowa. The Association may have such other offices, either within or without the State of Iowa as the Board of Directors may designate or as the business of the Association may require from time to time.

Section 3.2 Registered Office. The registered office of the Association in the State of Iowa may be, but need not be, identical with the principal office in the State of Iowa, and the address of the registered office may be changed from time to time by the Board of Directors.

## ARTICLE IV. MEMBERSHIP

Section 4.1 Members. Every Owner of a Unit in the Condominium shall be a Member of the Association. When more than one person holds an interest in any Unit, all such persons shall be Members. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of a Unit shall be the sole qualification for membership.

Section 4.2 Voting. Subject to the provisions of Section 4.4 of this Article, voting shall be allocated to each Owner in the same manner as the Allocation of Undivided Interest in the Common Elements is allocated to the Owner. If a Unit is owned by more than one Person, the vote for the Unit shall be cast as one collective vote, as the Owners of the Unit shall agree. If the Owners do not agree when called upon to vote, the Owners will be treated as having abstained. No votes allocated to any Unit owned by the Association may be cast.

Section 4.3 Suspension of Voting Rights. The Association shall suspend the voting rights of a Member for any period during which any assessment against the Member's Unit remains unpaid. The Association may suspend the voting rights of a Member for a period not to exceed sixty (60) days for an infraction of the Rules and Regulations.

Section 4.4 Sole Voting Member. Declarant shall be the only Member of the Association entitled to vote until the expiration of the Declarant Control Period.

Section 4.5 Annual Meeting. The annual meeting of the Members shall be held the first Monday in January in each year, for the purpose of electing the Board of Directors of the Association and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day. If a quorum is not present for the election or transaction of business on the day designated herein for the annual meeting of the Members, the Members shall cause the annual meeting to be held at a special meeting of the Members as soon thereafter as it may conveniently be held. Notwithstanding the foregoing, no annual meeting of the Members shall be required until the expiration of the Declarant Control Period.

Section 4.6 Special Meetings. Special meetings of the Members may be called by or at the request of the President or a majority of the Members upon the written demand, signed, dated and delivered to the Secretary. Such written demand shall state the purpose or purposes for which such meeting is to be called. The time, date and place of any special meeting shall be determined by the Board of Directors, or, at its direction, by the President.

Section 4.7 Notice of Meetings. Written notice stating the place, date and time of each annual meeting and special meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given not less than ten (10) days and not more than sixty (60) days before the date of the meeting, delivered personally or mailed to each Member at the address of the Member's Unit, or such other address as may be designated by the Member in writing. Such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid.

Section 4.8 Quorum. Twenty-five percent (25%) of the Members shall constitute a quorum for the transaction of business at any meeting of the Members, but if less than the

required quorum is present at a meeting, a majority of the Members present may adjourn the meeting without further notice. If the required quorum is not present another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be fifty percent (50%) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Subject to Section 4.4 of this Article and the terms of the Declaration, if a quorum is present, the affirmative vote of a majority of the voting interests of the Members shall be the act of the Members.

Section 4.9 Presumption of Assent. A Member of the Association who is present at a meeting of the Members at which action on any matter is taken shall be presumed to have assented to the action taken unless the Member's dissent shall be entered in the minutes of the meeting or unless the Member has submitted written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Member who voted in favor of such action.

## ARTICLE V. BOARD OF DIRECTORS

Section 5.1 General Powers. The business and affairs of the Association, shall be managed by its Board of Directors. The Board of Directors shall manage the business and affairs of the Association in such a manner so as to comply with the meaning of the terms and limitations of the Articles of Incorporation, these Bylaws and the Declaration so that such actions will not jeopardize the federal income tax exemption of this Association pursuant to the provisions of Section 528 of the Internal Revenue Code as now in force or as may be amended.

Section 5.2 Number, Tenure and Qualifications. Subject to Section 5.3 of this Article, the Board of Directors of the Association shall consist of at least three (3) Directors and not more than seven (7) Directors, which number may be changed from time to time by vote of the Members of the Association. The Directors shall serve for a term of one (1) year commencing with appointment or until a successor shall have been appointed or elected and qualified.

Section 5.3 Initial Appointment of Board of Directors. Declarant shall appoint the Board of Directors of the Association and determine the number of Directors of the Association until the expiration of the Declarant Control. The initial Board of Directors shall consist of two (2) members as set forth in the Articles of Incorporation of the Association.

Section 5.4 Annual and Regular Meetings. An annual meeting of the Board of Directors shall be held without notice immediately after, and at the same place as the annual meeting of the Members for the purpose of organization, election of Officers and the transaction of other business. Regular meetings of the Board of Directors may be held at such time and place as the Board of Directors shall by resolution fix and determine from time to time without other notice than such resolution.

Section 5.5 Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President or a majority of the Directors. The person or persons authorized to call special meetings of the Board of Directors may fix any place, either within or

without the State of Iowa, as the place for holding any special meeting of the Board of Directors called by them.

Section 5.6 Notice. Notice of any special meeting shall be given not less than ten (10) days and not more than sixty (60) days before the date on which the meeting is to be held, by written notice delivered personally or mailed to each Director at the address of the Director's Unit, or such other address as may be designated by the Director in writing. Such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid.

Section 5.7 Waiver. Any Director may waive notice of any meeting. The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except when a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Except as otherwise provided in these Bylaws, neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 5.8 Quorum. A majority of the Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if less than such majority is present at a meeting, a majority of the Directors present may adjourn the meeting without further notice. At all meetings of Directors, a quorum being present, the act of the majority of the Directors present at the meeting shall be the act of the Board of Directors, unless otherwise specified in the Declaration.

Section 5.9 Presumption of Assent. A Director who is present at a meeting of the Board of Directors at which action on any matter is taken shall be presumed to have assented to the action taken unless the dissent shall be entered in the minutes of the meeting or unless the Director submits a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

Section 5.10 Action Without Meeting. Any action required to be taken at a meeting of the Directors, or any other action which may be taken at a meeting of the Directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors entitled to vote with respect to the subject matter thereof. For purposes hereof, facsimile signatures shall be adequate to show consent.

Section 5.11 Resignation and Removal. Any Director may at anytime resign by serving written notice thereof on the remaining Directors. A Director may be subject to removal, with or without cause, at a meeting of the Members called for that purpose in the manner prescribed by law. A Director who misses more than three (3) consecutive Board meetings will be subject to removal upon resolution by the Board of Directors. Any Director shall automatically be removed if the Director is no longer a Member.

Section 5.12 Vacancies. Subject to Section 5.3 of this Article, any vacancy occurring in the Board of Directors and, to the extent permitted by law, any Directorship to be filled by reason

of an increase in the number of Directors, may be filled by election by a majority of the then sitting Directors of the Association. A Director so elected shall serve the unexpired term of the Director's predecessor in office or the full term of such new Directorship, as the case may be.

Section 5.13 Compensation. Directors shall serve without compensation, except reasonable expenses may be paid. Notwithstanding the foregoing, to the extent deemed necessary by the Association, the Association may retain the services of a Director other than in the capacity as a Director and the Director may be compensated for services so rendered as the Board of Directors may from time to time deem appropriate.

## ARTICLE VI. OFFICERS

Section 6.1 Designation of Officers, Election and Term of Office. The Officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer. Any two or more offices may be held by the same person. The Officers shall be elected annually at the annual meeting of the Board of Directors held after the annual meeting of the Members and each Officer shall hold office until a successor shall have been duly elected and qualified or upon death, resignation or removal.

Section 6.2 Management Company. Until the expiration of the Declarant Control Period, the Board of Directors may, in its discretion, contract with a professional management company to manage the regular business and affairs of the Association and shall have other such powers and duties as the Board of Directors shall specify at the expense of the Association.

Section 6.3 Resignation. Any Officer may at anytime resign by serving written notice thereof on the Board of Directors. Such resignation shall take effect upon receipt thereof or at any later time specified therein and, unless otherwise specified therein, acceptance thereof shall not be necessary to make it effective.

Section 6.4 Removal. Any Officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby. Any Officer holding the position of President, Vice President, Secretary or Treasurer shall automatically be removed if the individual holding the subject office is no longer a Member.

Section 6.5 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, shall be filled by the Board of Directors for the unexpired portion of the term.

Section 6.6 Salaries. The President, Vice President, Secretary and Treasurer shall serve with compensation which shall be fixed from time to time by the Board of Directors. Further, to the extent deemed necessary by the Association, the Association may retain the services of the President, Vice President, Secretary and Treasurer other than in their capacity as such Officers and they may be compensated for services so rendered as the Board of Directors may from time to time deem appropriate.

Section 6.7 Duty to Keep Records. The Association shall keep books, records and financial statements sufficiently detailed to enable the Association to comply with Iowa Code Chapter 499B including, but not limited to, financial records sufficiently detailed to provide a

statement setting forth the amount of any unpaid Assessments currently levied against an owner. The Association additionally shall cause an audited financial statement to be available annually within one hundred twenty (120) days after the end of the Association's then current fiscal year. The Association shall maintain current copies of the Declaration, Articles, Bylaws, and Rules and Regulations, and of all amendments to any of such documents. The foregoing items shall be available for inspection by any Owner, or by holders, insurers and guarantors of any first mortgage secured by a Unit upon advance arrangements during normal business hours

## **ARTICLE VII. INDEMNIFICATION**

Except for any prohibition against indemnification specifically set forth in these Bylaws or in the Iowa Nonprofit Corporation Act at the time indemnification is sought by any member, director, officer, employee, volunteer or agent of the Association, the Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceedings, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that the person is or was a member, director, officer, employee, volunteer or agent of the Association, or is or was serving at the request of the Association as a member, director, officer, employee or agent of another Association, partnership, joint venture, trust or other enterprise (such serving as a member, director, officer, employee or agent of the Association or at the request of the Association referred to herein as "serving on behalf of or at the Association's request"), against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit, or proceeding if the person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Association, and with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that person's conduct was unlawful.

## **ARTICLE 8. COMMON EXPENSES AND ASSESSMENTS**

8.1. Assessments. The right of the Association to make assessments for Common Element expenses shall commence upon the conveyance by the declarant of the first Unit to a third party.

8.2. Allocation of Expenses.

(a) Except as otherwise provided herein, the cost of care, operation, maintenance, repair replacement and management of the Common Elements shall be assessed against all Units in accordance with the Allocation of Undivided Interests in the Common Elements. Without limiting the generality of the foregoing, the costs shall include keeping the Common Elements in good, clean, attractive and sanitary condition, order and repair; removing snow and any other materials from such Common Elements which might impair access to the Property or the Units; keeping the Property safe,

attractive and desirable; and making necessary or desirable alterations, additions, betterments or improvements to or on the Common Elements.

(b) Except as otherwise provided herein, the cost of maintenance, repair, or replacement of Limited Common Elements shall be assessed against the Unit or in equal shares against the Units to which that Limited Common Element was serving at the time the expense was incurred. Without limiting the generality of the foregoing, such costs may include the keeping of the Limited Common Elements in good, clean, attractive and sanitary condition, order and repair; keeping the Property safe, attractive and desirable; and making necessary or desirable alterations, additions, betterments or improvements to or on the Limited Common Elements.

8.3. Annual Assessments. Payment of Common Expenses shall be by annual assessments made by the Association against each Unit and Owner. The Association may provide that assessments be payable monthly or at other intervals. The omission or failure to establish an assessment or to deliver or mail a statement for any period shall not be deemed a waiver, modification or release of the Owner's obligation to pay assessments.

8.4. Special Assessments. The Board shall have the right during any fiscal year, upon not less than 30 days' notice to the Owners, to levy and assess against the Owners, in a manner similar to assessments for Common Expenses, a special assessment for such purpose or purposes as may be necessary or appropriate to maintain the Property to such standard as the Board deems appropriate. Special assessments may include, without limitation, assessments for the cost of any construction, reconstruction, repair or replacement of any Common Elements, including fixtures and personal property, to the extent such cost is in excess of the amount contemplated by the approved Budget for such fiscal year. Within 30 days after the determination by the Board to levy any such special assessment, the Board shall set a date for a meeting of the Owners in accordance with the procedures set forth in these Bylaws. At such meeting, the proposed special assessment(s) may be vetoed by a vote of fifty-one percent (51%) of the Owners who are present or voting by proxy at a meeting to be called for this purpose, whether or not a quorum is present, and if not so vetoed the special assessment shall be deemed ratified. If any Owner or occupant fails to perform any obligation imposed under the Declaration or the Bylaws or Rules and Regulations, then the Association may, but is not obligated to, perform the same for the Owner's account and for such purpose may enter upon the Units, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for any such expense, may levy a special assessment upon the Unit.

8.5. Working Capital and Assessment Reserves. Upon each sale of a Unit, the purchaser shall deposit at closing with the Association an amount determined by the Association, which sum shall not exceed two times the amount of the monthly Common Expense assessment then allocable to such Unit. Such sum shall be non-refundable and held, without interest, by the Association in a segregated account as a reserve for working capital, and may be used for such purposes as the Association or the Board deems necessary or appropriate. Such payment shall not be considered an advance payment of regular assessments or relieve an Owner from making the regular monthly payment of the monthly Assessments as the same come due. The Association must establish and maintain, out of regular assessments, an adequate reserve fund for replacement of improvements to the Common Elements and the Limited Common Elements it is obligated to maintain. .

8.6. Budget. The Board shall cause to be prepared, at least thirty (30) days prior to the commencement of each fiscal year, a budget for such fiscal year (a "Budget"). The Budget shall show, in reasonable detail, the categories and estimated amounts of expenses for Common Expenses, any expected income of the Association for the coming fiscal year, any expected surplus from the prior year, and any existing surplus held by the Association. The Budget shall include an amount for contingencies and amounts deemed necessary or desirable for capital and/or replacement reserves to provide for repair, renovation, reconstruction or replacement of, or for any additions to the Common Elements, and such other expenditures as permitted under this Declaration. Within fourteen (14) days after the adoption of any Budget by the Board, the Board shall (a) mail by United States first class mail, or otherwise deliver a summary of the Budget to all Owners, and (b) set a date for a meeting of the Owners to consider ratification of the Budget not less than fourteen (14) nor more than thirty (30) days after mailing or other delivery of the summary. Such meeting may be concurrent with the annual meeting of the Owners as provided in the Bylaws. Unless at that meeting fifty-one percent (51%) of the Owners present or voting by proxy reject the Budget, the Budget shall be deemed ratified, whether or not a quorum is present. No further approval of the Owners shall be required for any expenditures contemplated by the Budget irrespective of the amount thereof. If the Budget is rejected, the Budget last ratified by the Owners shall constitute the Budget adopted by the Owners and shall remain in effect until such time as the Owners ratify a subsequent Budget proposed by the Board, it being the intention that at least annually a Budget shall be adopted by the Association either by affirmatively adopting the proposed Budget or ratifying the last Budget.

8.7. Failure to Pay; Lien. If default is made in the payment of the assessments, the Association may declare the entire assessment to be accelerated and to be immediately due and payable. If any assessment shall remain unpaid after the due date thereof, the Association shall be entitled to collect from the defaulting Owner: (i) a late charge in an amount the Board determines from time to time to be sufficient to cover the extra costs and expenses involved in handling such delinquent payment; (ii) interest at the rate of eighteen percent (18%) per annum or the highest lawful rate, whichever is less on the amount of delinquent assessment, fine or penalty from the due date thereof; and (iii) all costs and expenses incurred by the Association in connection with the collection of the same, including reasonable attorneys' fees. The rate of default interest specified above may be changed by the Board from time to time, but may not exceed the maximum rate permitted by law. Amounts owed by an Owner under this Section shall constitute a lien on the interest of the Owner in the Unit(s).

8.8. Enforcement of Lien. The Board may bring an action at law against the Owner personally obligated to pay the same for collection of the Owner's unpaid proportionate share of the Common Expenses, or foreclose the lien against the Unit(s) owned by such Owner, all in accordance with the Act, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each Owner, by acceptance of a deed to a Unit, hereby expressly vests in the Board or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens. The lien provided for in this Section shall be in favor of the Association and shall be for the common benefit of all Owners. The Board acting on behalf of the Owners shall have the power to bid upon a Unit foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

8.9. Maintenance by Association. The Association shall maintain, repair and replace all Common Elements and Limited Common Elements. The Association shall repair incidental damage caused to a Unit through maintenance by the Association. If a Owner defaults on the Owner's responsibilities of maintenance, the Association may assume such responsibilities..

## ARTICLE IX. SEAL

The Association shall have no corporate seal.

## ARTICLE X. AMENDMENTS

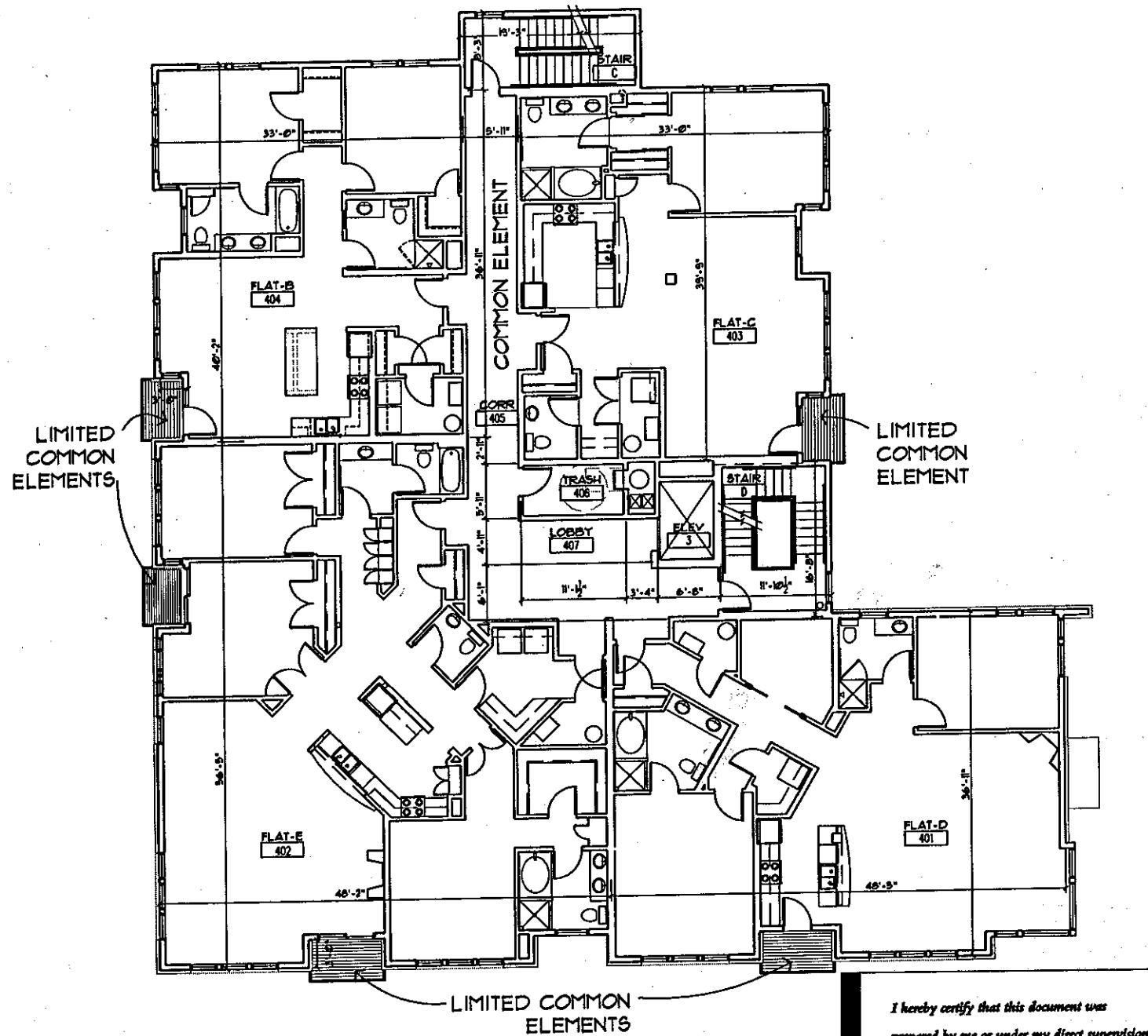
These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by a majority vote of the Directors of the Board of Directors at any regular or special meeting of the Board of Directors provided that a minimum of thirty (30) days written notice specifying the character of the proposed alteration, amendment or repeal is given to all Directors of the Board of Directors.

---

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, Secretary

**EXHIBIT E**  
**TO**  
**DECLARATION OF WATER STREET BROWNSTONES CONDOMINIUM**  
**FLOOR PLANS**



**100 FIRST STREET  
FOURTH FLOOR PLAN**

SCALE: 1/16" = 1'-0"



Waterstreet Brownstones

Des Moines, Iowa

6.11.04

I hereby certify that this document was  
prepared by me or under my direct supervision  
and that I am a duly licensed architect  
under the Laws of the State of Iowa.

Signature

MARK SWENSON

Typed or Printed Name

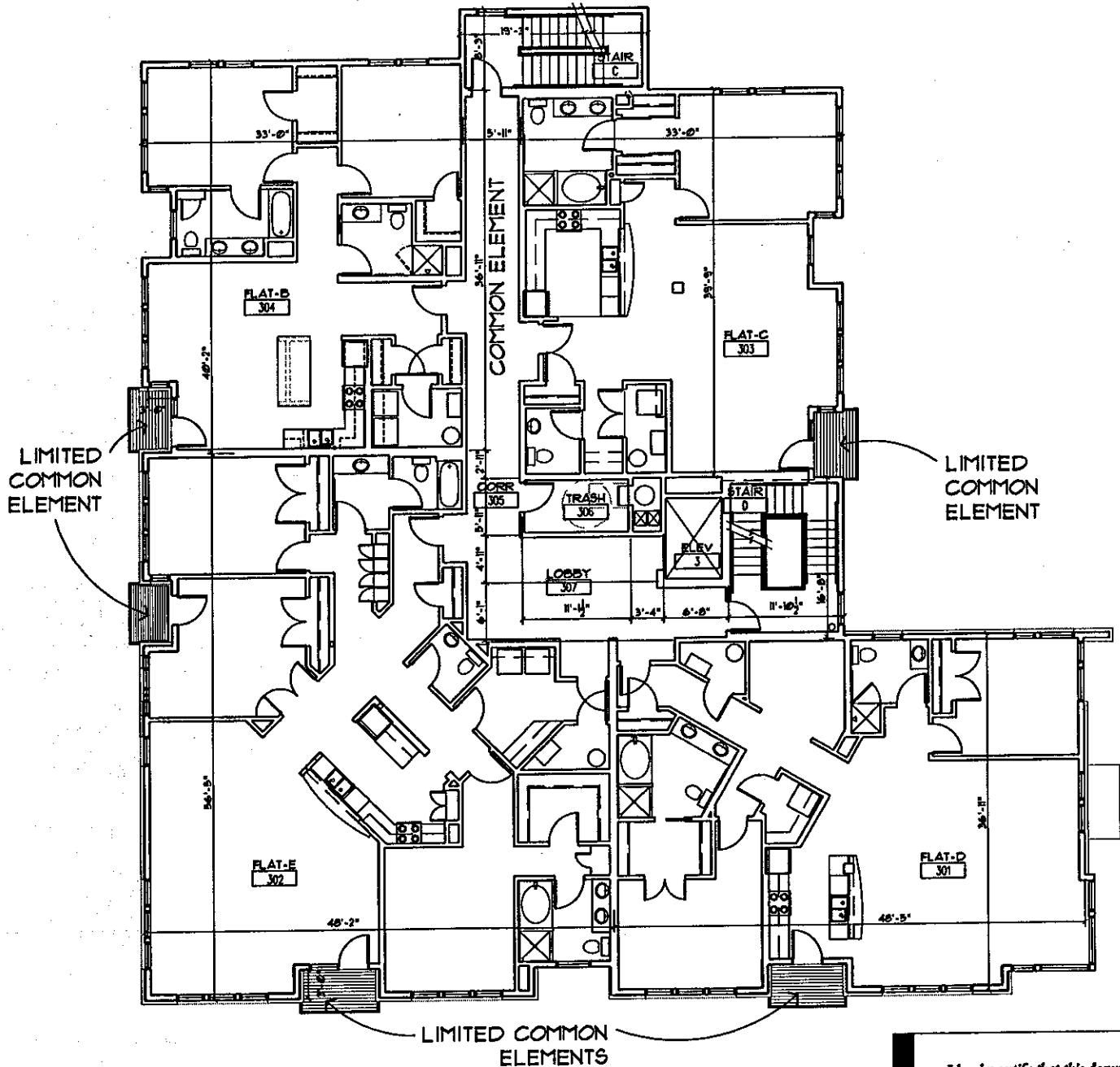
3823

6/11/04

Lic. No.

Date

**E|S|G**



**100 FIRST STREET  
THIRD FLOOR PLAN**

SCALE: 1/16" = 1'-0"

I hereby certify that this document was  
prepared by me or under my direct supervision  
and that I am a duly licensed architect  
under the laws of the State of Iowa

*Signature*

MARK SWENSON

Typed or Printed Name

3823

6/11/04

Lic. No.

Date

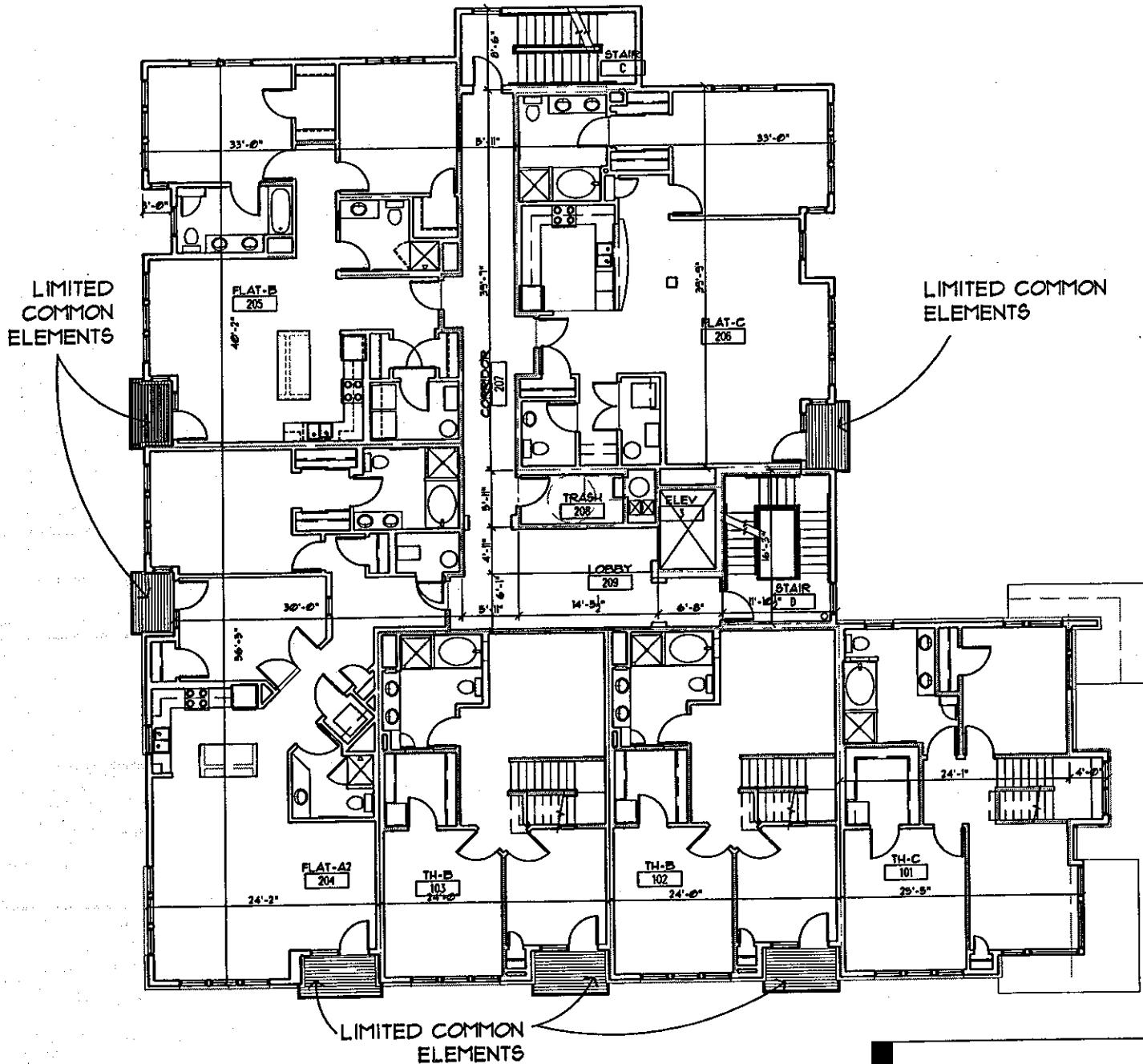
**LANDER SHERMAN**  
URBAN DEVELOPMENT

**Waterstreet Brownstones**

Des Moines, Iowa

6/11/04

**E|S|G**



**100 FIRST STREET  
SECOND FLOOR PLAN**

SCALE: 1/16" = 1'-0"

I hereby certify that this document was  
prepared by me or under my direct supervision  
and that I am a duly licensed architect  
under the laws of the State of Iowa

*[Signature]*  
MARK SWENSON

Typed or Printed Name

3823 6/11/04

Lic. No. Date

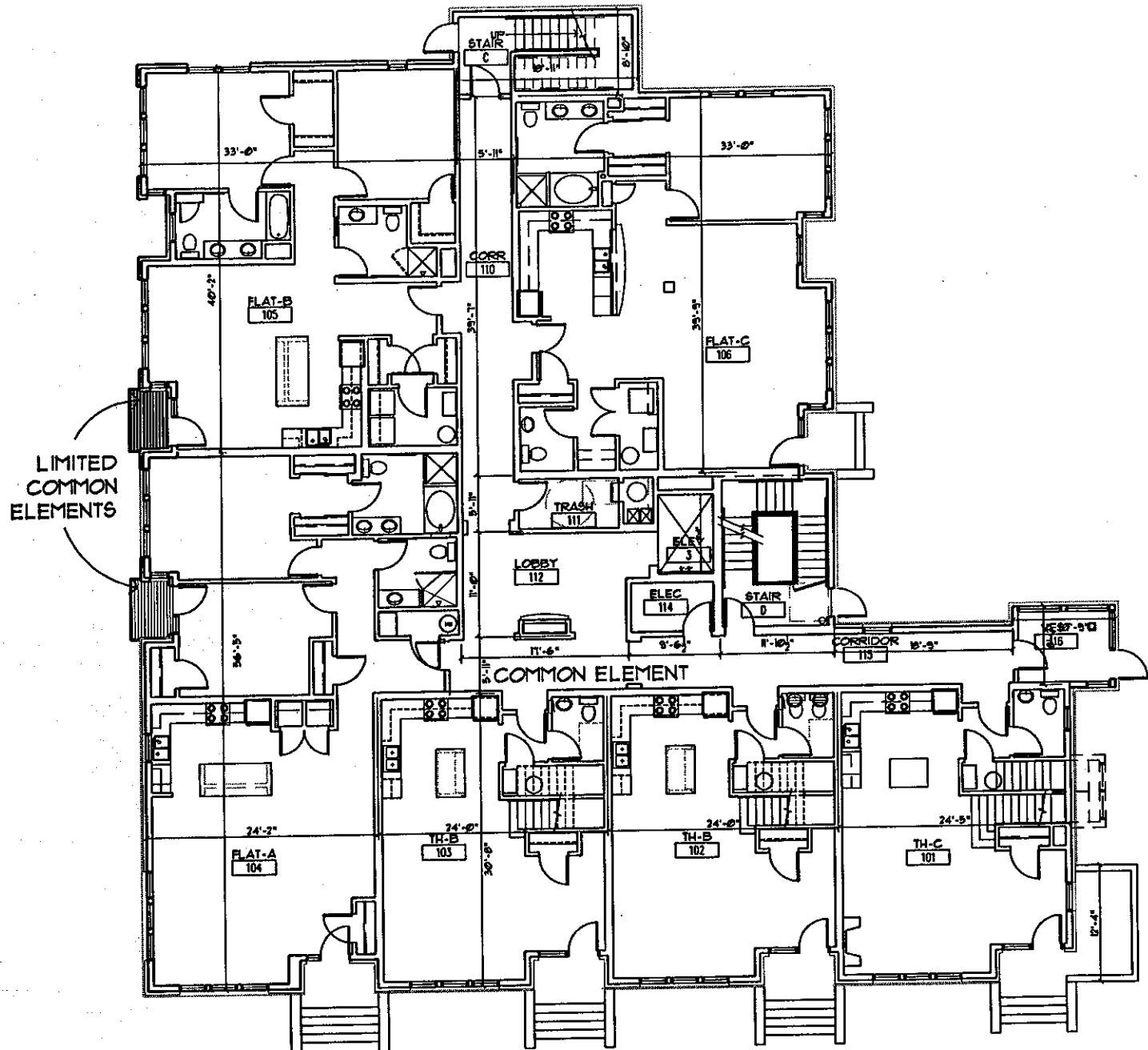
**LANDER  SHERMAN**  
URBAN DEVELOPMENT

**Waterstreet Brownstones**

Des Moines, Iowa

6.11.04

**E|S|G**



**100 FIRST STREET  
FIRST FLOOR PLAN**

SCALE: 1/16" = 1'-0"

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under the laws of the State of Iowa

*[Signature]*

**MARK SWENSON**

Typed or Printed Name

3823 6/11/04

Lic. No.

Date

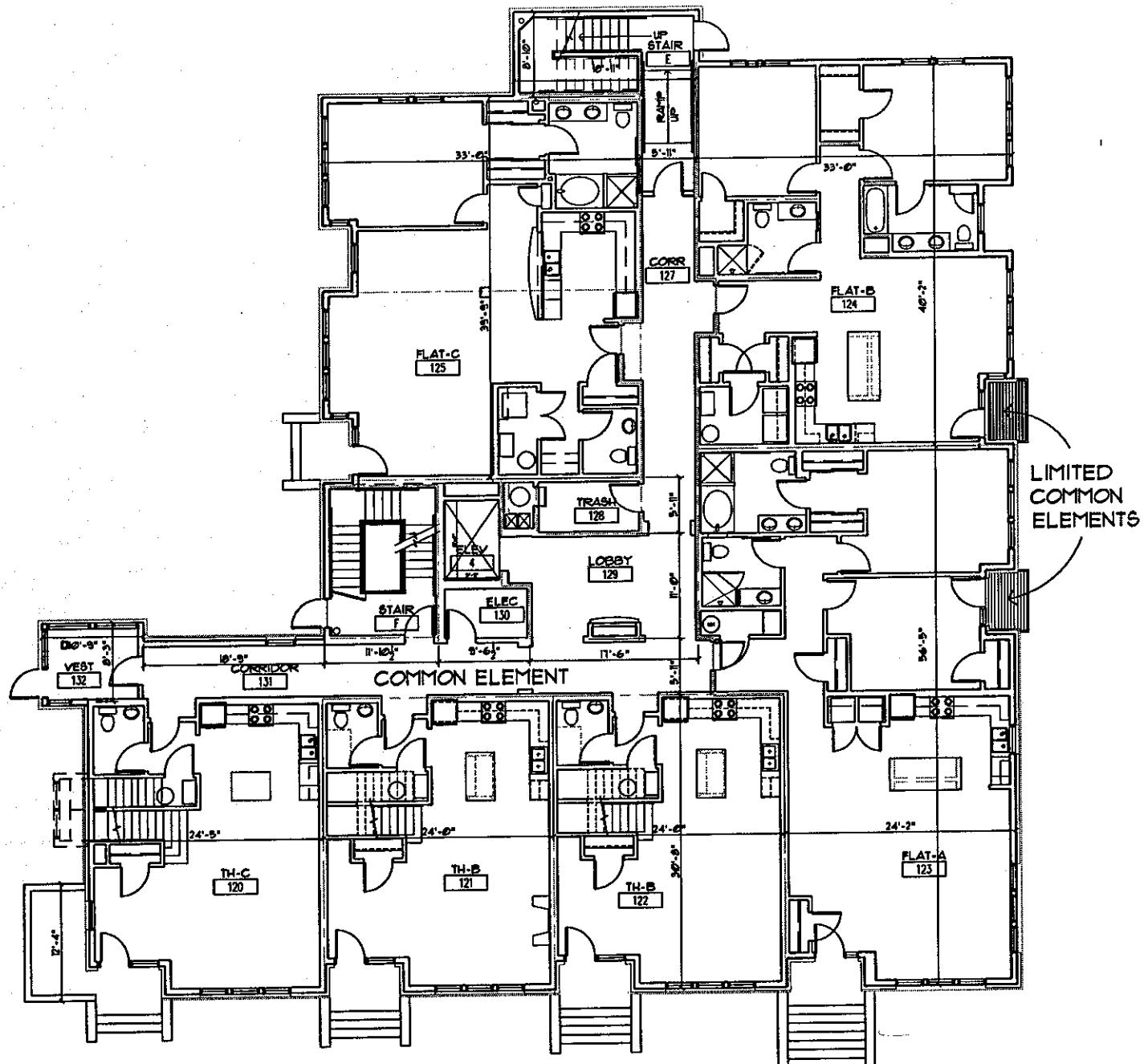
**LANDER SHERMAN**  
URBAN DEVELOPMENT

**Waterstreet Brownstones**

Des Moines, Iowa

6/11/04

**E|S|G**



**118 FIRST STREET  
FIRST FLOOR PLAN**

SCALE: 1/16" = 1'-0"

I hereby certify that this document was prepared by me or under my direct supervision and that I am a duly licensed architect under the laws of the State of Iowa

Signature

MARK SWENSON

Typed or Printed Name

3823

6/11/04

Lic. No.

Date

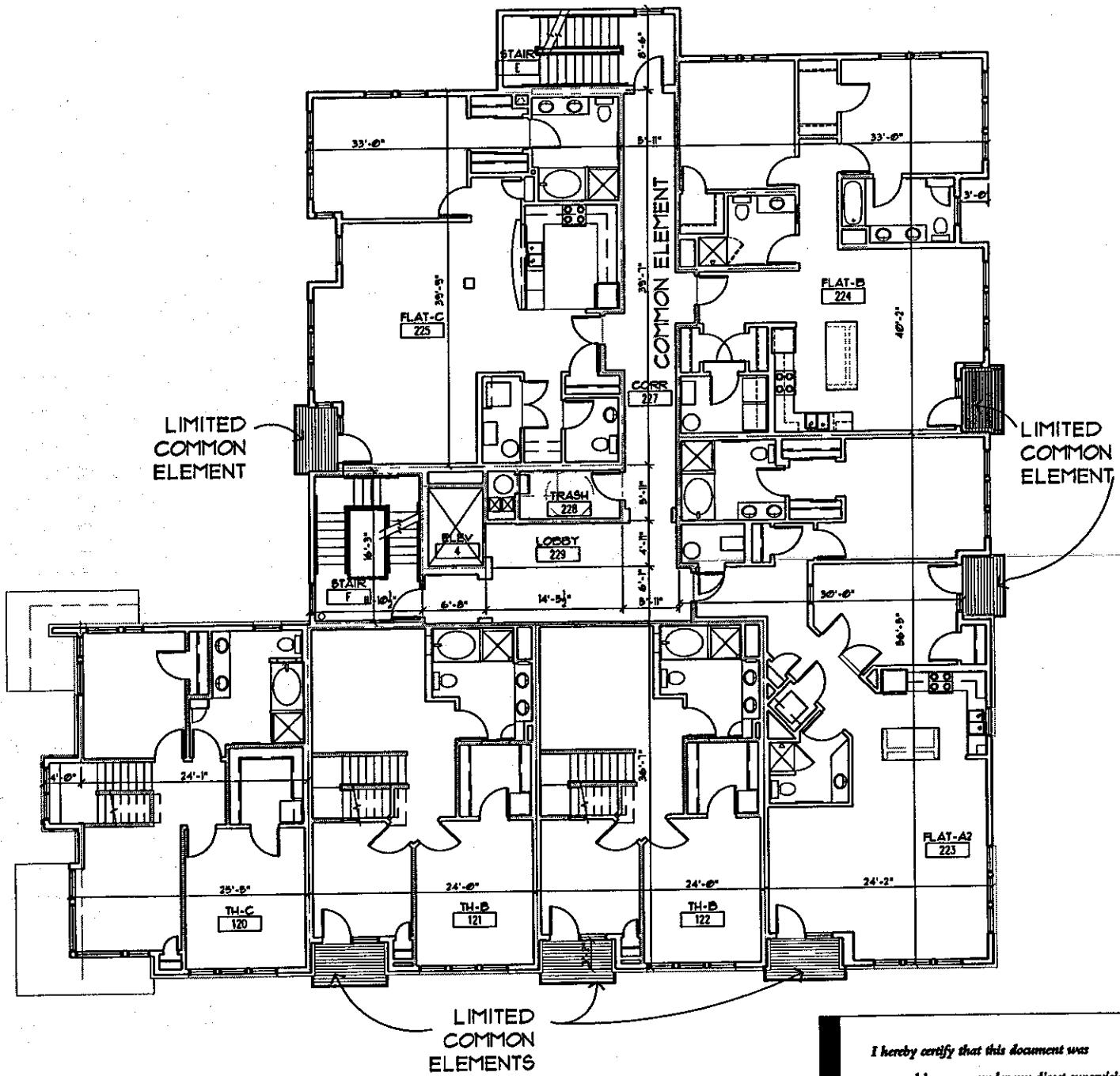
**LANDER SHERMAN**  
URBAN DEVELOPMENT

Waterstreet Brownstones

Des Moines, Iowa

6.11.04

**E|S|G**



**118 FIRST STREET  
SECOND FLOOR PLAN**

SCALE: 1/16" = 1'-0"

I hereby certify that this document was prepared by me or under my direct supervision and that I am a duly licensed architect under the laws of the State of Iowa

*[Signature]*

MARK SWENSON

Typed or Printed Name

3823 6/11/04

Lic. No. Date

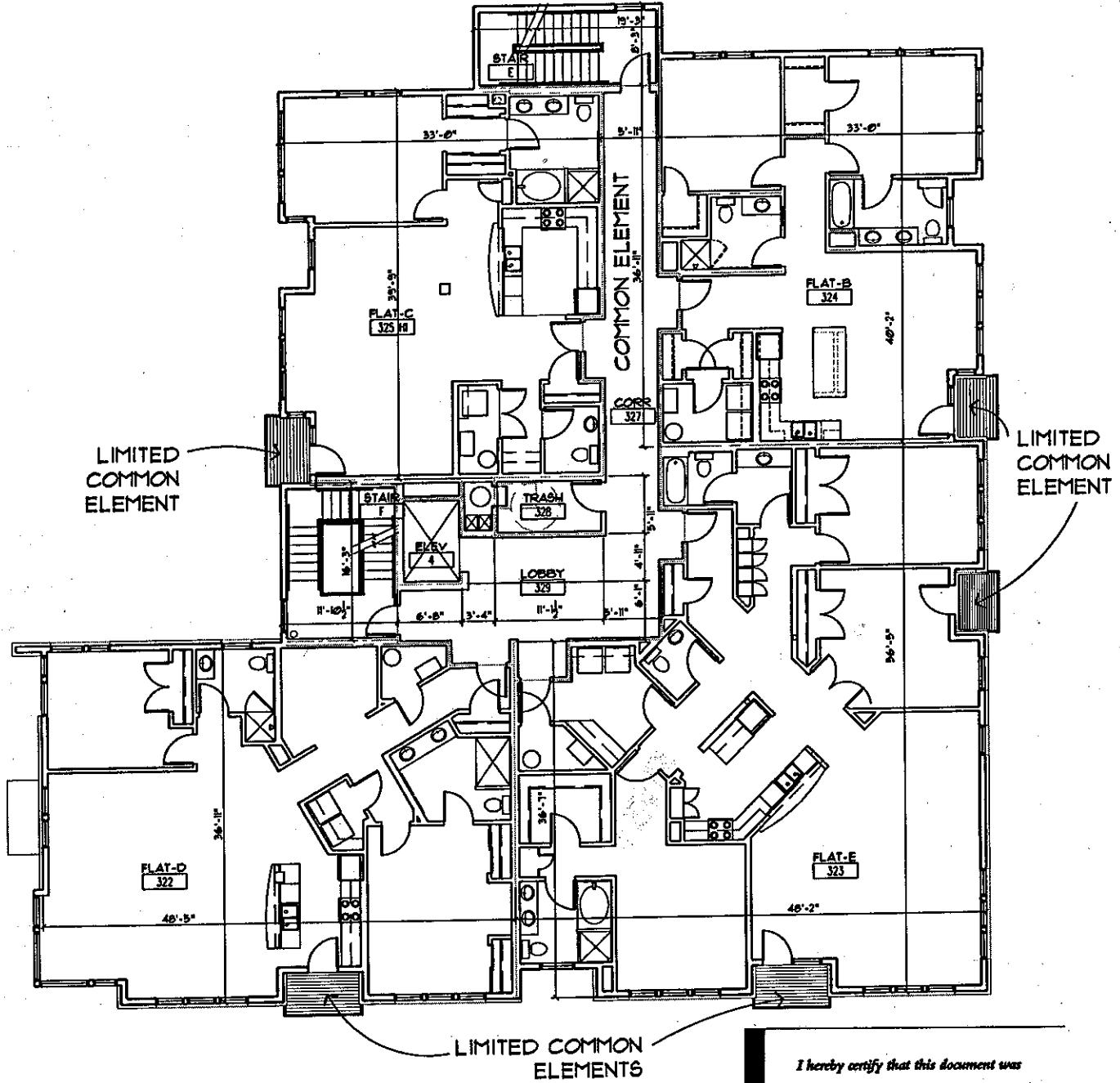
**LANDER  SHERMAN**  
URBAN DEVELOPMENT

**Waterstreet Brownstones**

Des Moines, Iowa

6.11.04

**E|S|G**



**118 FIRST STREET  
THIRD FLOOR PLAN**

SCALE: 1/16" • 1'-0"

I hereby certify that this document was  
prepared by me or under my direct supervision  
and that I am a duly licensed architect  
under the Laws of the State of Iowa

*(Signature)*

MARK SWENSON

Typed or Printed Name

3823 6/11/04

Ic. No. Date

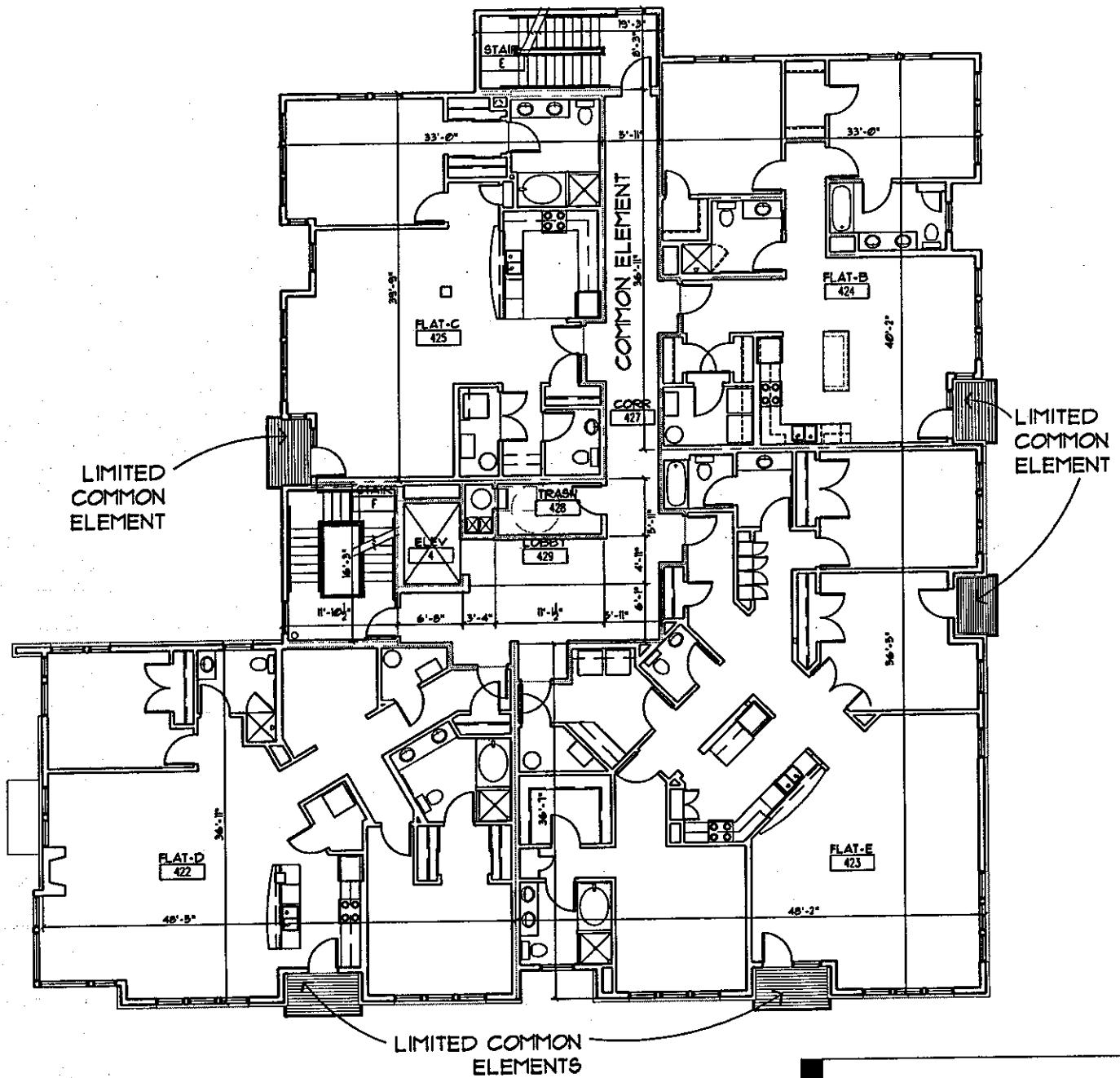
**LANDER  SHERMAN**  
URBAN DEVELOPMENT

**Waterstreet Brownstones**

Des Moines, Iowa

6.11.04

**E|S|G**



**118 FIRST STREET  
FOURTH FLOOR PLAN**

SCALE: 1/16" = 1'-0"

I hereby certify that this document was  
prepared by me or under my direct supervision  
and that I am a duly licensed architect  
Under the laws of the State of Iowa

*[Signature]*

MARK SWENSON

Typed or Printed Name

3823 6/11/04

Lk. No. Date

**LANDER SHERMAN**  
URBAN DEVELOPMENT

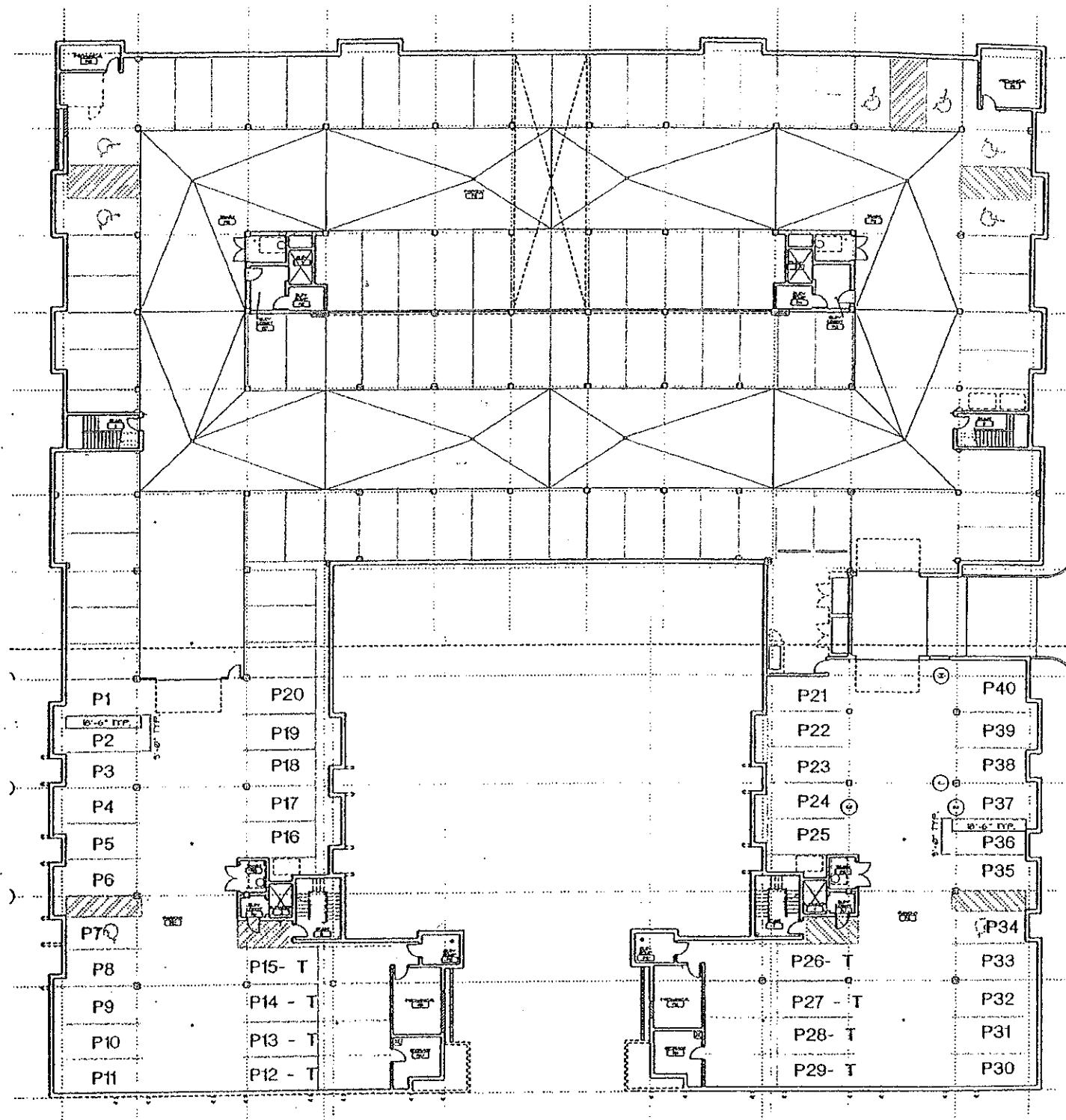
**Waterstreet Brownstones**

Des Moines, Iowa

6.11.04

**E|S|G**

**EXHIBIT F**  
**TO**  
**DECLARATION OF WATER STREET BROWNSTONES CONDOMINIUM**  
**GARAGE PLANS**



LANDER  SHERMAN  
URBAN DEVELOPMENT

07/02/02

Waterstreet Brownstones  
Des Moines, Iowa



**EXHIBIT G**  
**TO**  
**DECLARATION OF WATER STREET BROWNSTONES CONDOMINIUM**

**INITIAL RULES AND REGULATIONS**  
**FOR WATER STREET BROWNSTONES**

Each Owner's use of the facilities in Water Street Brownstones is subject to these and to any new rules that may be established by the Board of Directors ("Board") of Water Street Brownstones Homeowners Association (the "Association") from time to time.

These Rules and Regulations have been drafted to provide guidelines and protections to the Owners. The Board can review the Rules at any time to assure that they meet the requirements and wishes of the majority of the Owners.

The Rules and Regulations are not intended to place impossible restrictions on Owners, but they do include certain guidelines which must be observed for everyone's benefit and quiet enjoyment. You should review this document carefully.

Each Owner is responsible for compliance with the Rules and Regulations by the Owner's Guests, including family, visitors, lessees and other invitees.

**I. Limitation on Use of Residential Unit.**

Each Owner has total control and use of the Owner's Residential Unit for residential living. All lessees and occupants of any Unit are subject to these Rules and Regulations, and the Owner is responsible for providing any lessee and occupant with a copy of the then current Rules and Regulations. The following uses are specifically prohibited:

A. Any use which creates a nuisance or disturbance for others. Each Owner should particularly minimize noise intrusion in any form including that from music, machinery and appliances from 10 p.m. to 9 a.m.

B. Any use that damages or interferes with the operation of the structural or mechanical elements.

C. The facilities, Common Elements, and Limited Common Elements shall not be used for any purpose other than those for which they are designed. Any damages resulting from misuse shall be borne by the Owner.

D. No Owner shall use or permit to be brought into the Units or any portion of the Common Elements, any inflammable fluids, explosives or articles deemed hazardous to person or property without, in each case, obtaining the prior written consent of the Board.

E. An Owner or occupant, may engage within the boundaries of the Owner's Residential Unit in a Home Occupation including but not limited to office and studio uses (but excluding music studios), and such other uses which by custom are considered accessory to a

dwelling; provided, however, that no sign advertising such occupation shall be displayed. Other than Home Occupations, no business activity, trade, or occupation of any kind shall be conducted, maintained or permitted on any part of the Condominium.

F. Each Owner shall comply with all applicable laws, ordinances and regulations, and shall defend, indemnify, and hold the Association and other Owners harmless from all fines, penalties and costs for any violation thereof.

G. Window treatments must be in harmony with the design of the Condominium and the surrounding area and must be properly installed. No blankets, sheets, loose fabric or excessively-brightly colored window treatments shall be permitted.

## II. Membership Procedures.

A. Unit Leasing Regulations. The following Regulations have been adopted for any Owner who leases the Owner's Unit:

1. Units must be leased in their entirety;

2. Rental is prohibited for transient or hotel purposes requiring customary hotel type services, or for a period of less than six (6) months;

3. The Lease Agreement must provide the Association with the authority to terminate the lease in the event of infractions of the Association's Rules and Regulations;

4. The Unit Owner must provide the Association with a copy of the Lease Agreement containing the name of the Lessee and all occupants of the Unit and the term of the Lease Agreement. The Lease Agreement should be delivered to the Secretary of the Association;

5. The Owner must provide the information requested in item (4) above each time a Unit is sublet to a new Lessee, or whenever the term of the lease is extended or renewed with an existing Lessee;

6. It is the Owner's responsibility to supply a copy of the Rules and Regulations to the Lessee, and to see that the Lessee complies with all Rules and Regulations of the Association; and

7. The Association has the right to charge an administration fee for the processing of Lease Agreements.

### III. Pet Regulations.

Domestic dogs and cats, fish and small birds may be brought into, or kept in or about the Unit. Any commercial or breeding purpose is specifically prohibited. No more than in the aggregate two dogs and/or cats may be kept in any Unit. The following restrictions apply:

A. Any disturbance, excessive noise or noxious odor caused by any of these pets will be cause for action by the Board to remove the offending pet from the property.

B. The Board has full and final authority in determining which pets will be allowed pursuant to this regulation.

### IV. Enforcement of Rules and Regulations Regarding Pets.

A. Upon receipt of a detailed written complaint from an Owner, and upon confirmation of the complaint by the Board or its representative, the Owner of the offending pet will be given written notice of the complaint and will have the opportunity to meet with the Board prior to the Board's enforcement of the Pet Regulations.

B. Any Owner or Lessee/Occupant who violates this, or any future regulation regarding pets, shall be required to pay a Regulatory Expense Charge in an amount not to exceed \$200 for each violation. The Board is required to give notice to the Owner of the violation. In addition, any Owner who violates this covenant shall be subject to all legal remedies available to the Association, its Board, and all other Owners as provided in the Declaration, any amendments thereto, and by law.

C. The Owner of a pet shall assume full responsibility for the personal injuries or property damage caused by such pet and shall be responsible to indemnify, defend and hold harmless the Association, its Board and the other Owners against loss, damages, claims or liability of any kind or nature, arising from, or growing out of, any act of such pet.

### V. Children.

An Owner, lessee/occupant or guest bringing children into the complex shall be in personal control of the child's conduct at all times.

Owners and their Guests are solely responsible for the children's welfare and safety while visiting Water Street Brownstones. The Association and the other Owners shall be indemnified, defended and held harmless by such Owner(s) and their Guests in any action or occurrence involving the use of the Common Elements by children.

**VI. Dispute Resolution.**

If any differences arise between the Owners under this Declaration, or with respect to the party walls, easements, conditions, covenants or restrictions set forth herein, the differences shall be determined and the disagreements shall be settled by the majority vote of the Board. The decision of the Board shall be final as to the content and interpretation of the Declaration or any other instrument related to the Association, and as to the mode of carrying the provisions into effect. The Board shall be entitled to the advice of professionals in resolving such disputes, and shall be entitled to assess costs of such advice against the disputing Owners.

**VII. Board's Authority.**

The Board reserves the right to amend, alter, grant waivers or cancel any of these Rules and Regulations and to make such other Rules and Regulations, from time to time as necessary for the safety, care and cleanliness of Water Street Brownstones, and for securing the comfort and convenience of all Owners.

**VIII. Notice to Members.**

The Board will provide reasonable notice of any changes in these Rules and Regulations to the Owners prior to their effective date.

## CONSENT TO DECLARATION

The undersigned, U.S. Bank National Association, a national banking association, holder of that certain Combination Mortgage, Security Agreement and Fixture Financing Statement, dated February 26, 2003, filed March 3, 2003 in Book 9666, Page 78-109 in the records of the Polk County, Iowa, Recorder, as amended by Amendment of Loan Documents, dated October 6, 2003, filed October 16, 2003, in Book 10216, Page 91-97 in said Records, does hereby consent to the foregoing Declaration.

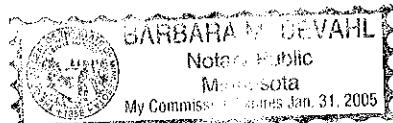
U.S. BANK NATIONAL ASSOCIATION, a  
national banking association

By: Emily Smith  
Its: CBO

STATE OF Minnesota)  
) ss.  
COUNTY OF Hennepin)

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of  
June, 2004, by Emily Smith, the CBO of  
U.S. Bank National Association, a national banking association, on behalf of the  
association.

Barbara M. Devahl  
Notary Public



22  
CC 610



Doc ID: 036698480004 Type: GEN  
Kind: RESTRICTIVE COVENANT  
Recorded: 06/16/2021 at 01:39:34 PM  
Fee Amt: \$22.00 Page 1 of 4  
Revenue Tax: \$0.00  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2021-00063369

**BK 18592 PG 631-634**

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RETURN TO:

**RETURN TO:**

Document prepared and after recording return to James M. Heckmann, Attorney at Law, 111 10<sup>th</sup> Street, Unit 406, Des Moines, Iowa 50309. Telephone number 563-580-2952.

**CORRECTED AMENDMENT TO DECLARATION  
OF WATER STREET BROWNSTONES**

**THIS CORRECTED AMENDMENT TO DECLARATION OF WATER STREET BROWNSTONES** is made and executed on this 15<sup>th</sup> day of June, 2021, by **WATER STREET BROWNSTONES HOMEOWNERS ASSOCIATION**, an Iowa non-profit corporation, (hereinafter referred to as "Association").

WITNESSETH:

**WHEREAS**, the Declaration of Water Street Brownstones was recorded June 22, 2004, in book 10603, page 354 with the Polk County, Iowa records (the "Declaration"); and

**WHEREAS**, Articles 17.3 and 18.1 of the Declaration provide criteria by which the Declaration may be amended; and

**WHEREAS**, at a meeting of the Members on January 12, 2009, the following two Amendments to the Declaration were approved by not fewer than 67% of the Members of the Association in accordance with the Declaration; and,

**WHEREAS**, there existed no Eligible Mortgagees eligible to vote on the Amendments;

**NOW, THEREFORE**, the Declaration is amended as follows:

1. Paragraph 4.3 (a) of the Declaration is hereby amended to read as follows:

Residential Units are to be occupied and used only for residential purposes or Home Occupations by Owners and their Guests: provided, however, that the Declarant may maintain Residential Units as models or management offices as provided in Article 9 of this Declaration.

Any Owner may lease the Owner's Unit provided that the lease or rental agreement is in writing and no more than 3 units are non-Owner occupied. The Board of Directors shall not approve any lease which causes the 3 unit limit to be exceeded. In addition, no Owner can have more than one (1) non-Owner occupied Unit and any tenancy shall be subject to the requirements of the Condominium Documents, the Rules and Regulations and the Association. No occupant of a Residential Unit shall create a nuisance to other occupants or interfere with the peaceable possession of occupants or other Residential Units. There shall be no restrictions on occupancy or alienation by reason of age, race, national origin, sex or religion.

2. Paragraph 5.5 of the Declaration is hereby amended to read as follows:

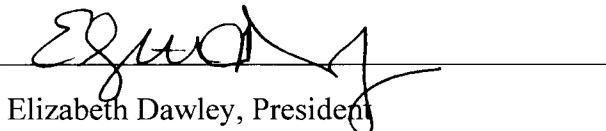
The Parking Units are individual Units, which may be sold, leased or licensed by the Owner thereof, including without limitation the Declarant subject to the terms of this Declaration and applicable laws. Parking Units may be owned by the Declarant, an Owner of a Residential Unit, a former Owner for up to three months following residential ownership, or the Association. Parking Units may be leased only to (a) an Owner or (b) an Owner's tenant who is occupying the Owner's Residential Unit.

3. Except as amended hereby, the Declaration shall remain unchanged and in full force and effect on the effective date hereof.

**IN WITNESS WHEREOF**, the Association has executed this Corrected Amendment to Declaration of Water Street Brownstones effective as of, and relating back to, April 1, 2009, that being the date the original Amendment to Declaration of Water Street Brownstones was filed of record.

**WATER STREET BROWNSTONES HOMEOWNERS ASSOCIATION**

By:



Elizabeth Dawley, President

And By:



Elizabeth Mansfield, Secretary

STATE OF IOWA )

COUNTY OF POLK )

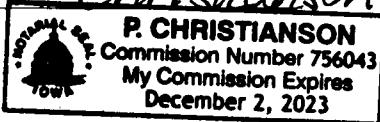
On this 15<sup>th</sup> day of June, 2021, before me, a Notary Public, in and for the state of Iowa, personally appeared Elizabeth Dawley, to me personally known, who being by me duly sworn did say that she is the President of Water Street Brownstones Homeowners Association and that said instrument was signed on behalf of the said Water Street Brownstones Homeowners Association by authority of its board of directors and the said Elizabeth Dawley acknowledged the execution of said instrument to be the voluntary act and deed of said Water Street Brownstones Homeowners Association by it voluntarily executed.



Notary Public

Print Name: P. Christianson

(Seal, if any)



My commission expires: 12.2.23

STATE OF IOWA )

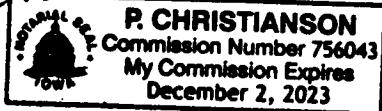
COUNTY OF POLK )

On this 15<sup>th</sup> day of JUNE, 2021, before me, a Notary Public, in and for the state of Iowa, personally appeared Elizabeth Mansfield, to me personally known, who being by me duly sworn did say that she is the Secretary of Water Street Brownstones Homeowners Association and that said instrument was signed on behalf of the said Water Street Brownstones Homeowners Association by authority of its board of directors and the said Elizabeth Mansfield acknowledged the execution of said instrument to be the voluntary act and deed of said Water Street Brownstones Homeowners Association by it voluntarily executed.

P. Christianson  
Notary Public

Print Name: P. Christianson

(Seal, if any)



My commission expires: 12.2.23

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WATER STREET BROWNSTONES HOMEOWNERS ASSOCIATION  
ARTICLE I

## ARTICLES OF INCORPORATION

OF

### WATER STREET BROWNSTONES HOMEOWNERS ASSOCIATION

TO THE SECRETARY OF STATE OF THE STATE OF IOWA:

The undersigned, acting as Incorporator of a corporation under the Iowa Nonprofit Corporation Act, Chapter 504A of the Code of Iowa (2003), adopts the following Articles of Incorporation for such Corporation:

#### ARTICLE I. NAME

The name of the Corporation is Water Street Brownstones Homeowners Association.

#### ARTICLE II. CORPORATE EXISTENCE

The corporate existence of this Corporation shall begin on the date these Articles of Incorporation are filed with the Secretary of State of the State of Iowa and shall continue perpetually thereafter unless dissolved as provided by law.

#### ARTICLE III. PURPOSES AND POWERS

The Corporation is organized exclusively as a Homeowners Association within the meaning of Section 528 of the Internal Revenue Code of 1986, as amended. The primary purpose of the Corporation is to operate a Homeowners Association for Water Street Brownstones, a condominium property located in the City of Des Moines, Polk County, Iowa.

As a means of accomplishing the foregoing purposes, the Corporation shall have all of the general powers set forth in Chapter 504A of the Code of Iowa (2003), and as it may hereafter be amended. These general powers shall be exercised exclusively for the attainment of the purposes of the Corporation as set forth in this Article.

#### ARTICLE IV. NO PRIVATE INUREMENT

No part of the net earnings shall inure to the benefit of any Director or Officer of the Corporation or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation affecting one or more of its purposes). No Director or Officer of the Corporation, or any private individual, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

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## **ARTICLE V. DISSOLUTION PROVISIONS**

Upon the dissolution of the Corporation, the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the Corporation, dispose of all of the remaining assets of the Corporation exclusively for the purpose(s) of the Corporation set forth in Article III hereof in such a manner or to such organization or organizations operated exclusively as charitable organizations as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed of by the District Court of the County in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations as said District Court shall determine which are organized exclusively for such designated purpose(s).

## **ARTICLE VI. INITIAL REGISTERED OFFICE AND REGISTERED AGENT**

The address of its initial registered office in the State of Iowa is 801 Grand Avenue, Suite 3100, Des Moines, Polk County, Iowa 50309, and the name of its initial registered agent at such address is Susan Boe.

## **ARTICLE VII. INITIAL BOARD OF DIRECTORS**

The number of Directors constituting the initial Board of Directors of the Corporation shall be two (2). The number of Directors may be changed by the Board of Directors upon the adoption of Bylaws for the Corporation and by any subsequent amendment to the Bylaws adopted by the Board of Directors. The names and addresses of the persons who are to serve as the initial Directors are:

<u>Name</u>	<u>Address</u>
Michael Lander	3503 Hennepin Avenue South Minneapolis, Minnesota 55408
George E. Sherman	233 Park Avenue South Suite 201 Minneapolis, Minnesota 55415

## **ARTICLE VIII. MEMBERS**

The Corporation shall have Members. The designation of membership classes, the manner of election and the qualifications and rights of the Members of each class shall be as set forth in the Bylaws of the Corporation.

## **ARTICLE IX. EXEMPTION OF PRIVATE PROPERTY**

Consistent with Section 504A.101 of the Code of Iowa (2003), the private property of the directors, officers, employees and members of the corporation shall be exempt from all debts, obligations and liabilities of the Corporation of any kind whatsoever and directors, officers,

members and other volunteers of this Corporation shall not be personally liable in that capacity, for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for a breach of the duty of loyalty to the Corporation, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit. If Iowa law is hereafter changed to mandate or permit further elimination or limitation of the liability of the Corporation's directors, officers, employees, members and volunteers, then the liability of the Corporation's directors, officers, employees, members and volunteers shall be eliminated or limited to the full extent then permitted.

## ARTICLE X. INCORPORATOR

The name and address of the Incorporator is Susan Boe, 801 Grand Avenue, Suite 3100, Des Moines, Polk County, Iowa 50309.

## ARTICLE XI. AMENDMENTS

These Articles of Incorporation may be amended at anytime and from time to time as provided by the Code of Iowa, but no amendment shall be adopted which deprives the Corporation of tax exempt status under the Internal Revenue Code of 1986, as amended.

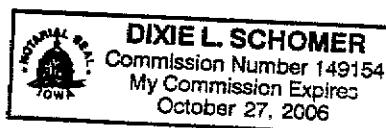
Dated June 21, 2004.

Susan Boe  
SUSAN BOE, Incorporator

STATE OF IOWA )  
 )ss:  
COUNTY OF POLK )

On this 2nd day of June, 2004, before me, the undersigned, a Notary Public in and for said County, in said State, personally appeared Susan Boe, to me known to be the identical person named in and who executed the within and foregoing instrument, and acknowledged that she executed the same as her voluntary act and deed.

Dixie L Schomer  
Dixie L Schomer Notary Public



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# Water Street Brownstones Condominiums

## Rules and Regulations

### February 24, 2017

#### **Mission**

To maintain a regulatory environment at the Water Street Brownstones Condominiums that promotes the quality of life and the enjoyment of the residents in their homes, while protecting the integrity of the condominium community and building its value.

#### **Premise**

“The management and administration of the Property shall be governed and managed by the Water Street Brownstones Homeowners Association, who will conduct its activities to promote the purposes for which it was organized...” *Article 1, Bylaws of Association*

“Each Owner’s use of the facilities in Water Street Brownstones is subject to these and to any new rules that may be established by the Board of Directors of Water Street Brownstones Homeowners Association from time to time.” *Declaration of Condominium, Initial Rules and Regulations*

The Rules and Regulations are intended to provide guidelines and protections to the Owners and are not intended to place impossible restrictions on them. They apply equally to the Owners’ guests, family, visitors, lessees, and other invitees. All Owners should carefully review this document and provide any lessee or other occupant with a copy the then-current Rules and Regulations.

The Board reserves the right to amend, alter, grant waivers from, or cancel any of these Rules and Regulations, and to make such other Rules and Regulations from time to time as it deems necessary for the safety, care, and cleanliness of Water Street Brownstones, and for securing the comfort and convenience of all Owners.

The Board will provide reasonable notice of any changes in these Rules and Regulations prior to their effective date.

#### **General**

1. Water Street Brownstones (WSB) is a superior-quality community of private, Owner-occupied, single family residences. However, an Owner may engage within the boundaries of the Owner’s unit in a Home Occupation, including office and studio uses, excluding music studios, and such other uses which by custom are considered accessory to a dwelling, provided that no sign advertising such occupation or use

shall be displayed. Other than Home Occupations, no business activity, trade or occupation of any kind shall be conducted, maintained, or permitted on any part of a Condominium unit.

2. Complaints and suggested improvements regarding the services of the buildings and grounds shall be made in writing to the Management Company.
3. Meetings of the Board of Directors shall be open at all times to Association members, and notice of meetings shall be posted on the news board located on the first floor of each Condominium building. Grievances or suggestion for improving services of comfort of the membership may be also be presented at the Board Meetings. Notice of such presentation shall be registered in advance with the Board President to be placed on the agenda.
4. Initial distribution and redistribution of all building keys and garage door openers is strictly controlled by WSB management, which has primary authority in all such instances. Unit Owners must never give exterior keys or garage door openers to any person who is not a member of the Owner's immediate family, an authorized lessee, or a guest of an Owner not in residence. However, service personnel may be given a key by a resident, but that must be approved in advance by the Board.
5. No occupant will open an exterior door electronically for anyone not personally known to them.
6. Condominium units shall be secured when not occupied.

### **Rules Pertaining to Use of Residential Unit**

1. The following uses are prohibited (applies to unit and balcony):
  - A. Any use other than normal and customary living activities which creates a nuisance or disturbance for others. Each Owner should particularly minimize noise intrusion in any form including that from music, machinery, and appliances from 10 pm to 9 am;
  - B. Any use that damages or interferes with the operation of the structural or mechanical units;
  - C. Unattended outdoor cooking grills in use;
  - D. Any use of the balconies that allows litter or other debris/material to fall below.
2. No Owner shall use or permit to be brought into the Units or any portion of the Common Elements any flammable fluids, explosives, or articles reasonably

considered hazardous to person or property without, in each case, obtaining the prior written consent of the Board.

3. Each Owner shall comply with all applicable laws, ordinances, and regulations, and shall defend, indemnify, and hold the Association and the other Owners harmless from all fines, penalties, and costs for any violation thereof.
4. Window treatments must be in harmony with the design and aesthetics of the Condominium and the surrounding area, and must be properly installed. No materials may be used for window treatments that are not specifically designed for that purpose.

### **Rules Pertaining to the Exterior of the Buildings**

1. Except for the interior of the units, all alterations and repairs of the buildings are the responsibility of the Association. No painting, alterations, appendages (whether temporary or permanent) nor work of any kind is permitted on the exterior of the building walls or ceilings of unit balconies/patios without first obtaining the approval of the Board of Directors.
2. No radio or television antenna, satellite dish, or wiring for any purpose may be installed on the exterior of the building or on the balcony (limited common element) without prior approval of the Board.

### **Rules Pertaining to Common Elements**

1. Except for welcome mats, no articles shall be placed on or in any of the Common Elements, except for those articles of property which are the common property of all the Owners without first obtaining the approval of the Board of Directors.
2. For Sale, For Lease, or other signs shall not be placed on the Common or Limited Common Elements, including balconies and windows.
3. The lawns are an integral part of the WSB and shall not be used in a manner that may do damage to the lawn, shrubs, or trees. Excessive noise in the courtyard and grounds surrounding the building is not permitted.
4. Common sidewalks, driveways, entrances, and elevators shall not be obstructed nor used by any Owner or occupant for any purpose other than ingress and egress from the units.
5. Children shall not be permitted to loiter or play on the stairways, in the hallways, entry ways, or elevators, nor in any storage, parking or maintenance areas.

6. No smoking is permitted in the interior Common Elements, including the garages and elevators.
7. No hall, lobby, or elevator shall be decorated or furnished in any manner without the prior approval of the Board of Directors.
8. An Owner may identify his/her unit with a name plate of a size and type approved by the Board and mounted in a place and manner approved by the Board.
9. Any damage to the Common Elements or common personal property caused by the Owners or members of their families, guests, or lessees shall be repaired at the expense of the Unit Owner responsible. This should be worked out with the help of management.
10. Garbage shall not be thrown down the trash chutes unless contained in a securely- closed container or bag. No bulky objects that could clog the chute may be placed in it, but must be hand-carried to the trash room in the garage.
11. All garbage and recyclable materials shall be handled pursuant to the posted guidelines in the trash room on each floor.
12. Management shall be notified of extraordinary usage of elevators in advance so that protective covering may be installed before use.
13. Bicycles shall be parked in the garage. Ingress and egress for bicycles shall be through the garage doors, except for first floor residents, who may handle ingress and egress through their outside doors. Bicycles shall not be transported on elevators or carried on stairwells. This rule is intended as a housekeeping measure and to prevent damage to Common Elements.
14. Any use of the Common Elements for gatherings, events, or personal work spaces shall be preceded by written notice to management 5 business days prior to such use.

### **Rules Pertaining to the Garage Areas**

1. The parking stalls are not intended as storage areas and shall not be used for such purposes. However, the space between the vehicle and the wall at the front of the car may be used for bicycles, hand carts and dollies, provided that it is maintained in a clean and orderly manner. If any other items not listed above are stored in the garage and not in the approved storage cabinets the homeowner is subject to a \$500.00 per month fine until such items are removed from the garage area or stored properly.
2. Approval of the Board of Directors is required before any construction or decorating is done in the garages. Requests made to the Board for construction of storage cabinets in the Unit Owner's designated parking space shall contain the following certification:

- a.** That the cabinet will conform generally in placement, size, and materials to the cabinets originally installed by the General Contractor. Cabinets that do not conform will be subject to removal at the Owner's expense.
    - b.** That the cabinet will be constructed pursuant to all applicable building codes with a permit for its construction filed with the City of Des Moines.
- 3.** It is the responsibility of each Owner or lessee to maintain his/her parking space(s) in a clean condition.

### **Rules Pertaining to the Occupancy of Pets**

General: Domestic dogs, cats, fish, and small birds may be brought into or kept in or about the unit. Any commercial or breeding purpose is prohibited. No more than in the aggregate two dogs and/or cats may be kept in any unit. The following rules apply:

- 1.** No pets are permitted in leased units. No pet in excess of 30 pounds is permitted in any unit, whether leased or Owner-occupied.
- 2.** Pet owners shall register all pets with the Board in order to keep them on premises. For new pets, registration shall be made prior to bringing the pet into the unit. For purposes of this rule, registration shall mean the presentation to the Secretary of the Board of Directors of a current rabies certification for the pet.
- 3.** Permission to keep pets at the WSB may be granted only to an Owner in residence and will be subject to the following conditions:
  - a.** Pet owners are required to clean up after their pets when walking them;
  - b.** No pets may defecate or urinate within the WSB grounds;
  - c.** All pets must be kept on a leash within the WSB grounds;
  - d.** A pet owner is responsible for all activities of any pet. Any damage to the WSB property or to any person remains the responsibility of the pet owner, who shall indemnify and hold harmless the Association, its Board of Directors, and its members from any and all damages caused by such owner's pet.
- 4.** Any pet which frequently or for a sustained period causes noise or any other disturbance offensive to other occupants shall not be allowed to remain on the premises.
- 5.** No pet shall be left unattended in a condominium unit for a consecutive period exceeding 24 hours.

6. Any violation of these Rules shall be grounds for the Board of Directors to require the owner of the offending pet to immediately remove it from the premises. Violations of these rules shall also subject the offending owner to a Regulatory Expense Charge in an amount not to exceed \$200 for each violation.

### **Rules Pertaining to Leasing and Guest Occupancy**

1. No more than 3 units can be non-Owner occupied at any given time. In addition, no Owner can have more than one non-Owner occupied unit. Any Owner not obtaining Board approval and causing the number of non-Owner occupied units to exceed 3 will be subject to a \$5,000.00 fine per month during the time that the Association is exceeding the 3 unit rental maximum. The Board of Directors will review applications in the order in which they are received.
2. On application to and approval by the Board of Directors, an entire unit may be made available to non-Owners under written lease for a term of not less than 12 continuous months and not to exceed 2 years maximum per unit.
3. A notice of intention to lease and a copy of the proposed lease identifying the lessee(s) shall be presented to the Board in advance of tenant occupancy. The Board will review at the first monthly Board Meeting following and will approve or disapprove the lease and the proposed tenant(s) in writing after the meeting, not to exceed 31 days. The Unit Owner will be bound by the Board's decision. Each subsequent lease or sub-lease shall be presented to the Board 45 days prior to its effective date for Board approval. The failure to obtain approval by the Board of the lease and/or the proposed tenant(s) shall result in a fine to the Unit Owner of \$2,000.00 per month.
4. Management will make available to any Owner wishing to lease a copy of a Board-approved lease document and a tenant information form. Owners are encouraged to use these documents. Any deviations from the standard lease must be approved by the Board prior to signing and at least 45 days prior to occupancy. Such approval will incur a lease-processing fee of \$100. The Unit Owner will be bound by the Board's decision regarding such deviations.
5. The WSB are intended as single-family residences. Therefore, no more than two adults may occupy a unit as lessees or guests. All adult occupants must be listed on the lease. No one other than lessees and own/adopted children may occupy the unit. All lessees must provide two (2) personal references and their most recent income tax statement. In addition, lessees may be subject to a credit check.
6. A notice of the intention to accommodate guests who are members of the Owner's immediate family in a unit not occupied by the Owner must be presented to the Board at least 45 days in advance of tenant occupancy. Such notice must include two personal references for each guest. The Board will approve or disapprove the occupancy in writing within 15 days. The Unit Owner will be bound by the Board's decision. The failure to obtain the Board's approval prior to occupancy will result in a fine not to exceed \$500.00.

7. Adult non-family guests of an Owner not in residence may occupy the Owner's unit for a period of not more than 30 days in any consecutive 12-month period.
8. For purposes of these Rules, an adult lessee or guest in a non-Owner occupied unit is defined as a person at least 25 years old who is personally known to the unit Owner to be of good and reliable character and known also to be willing and able to accept all of the responsibilities for high standards of behavior during the occupancy period. This definition does not apply to a casual, short-term guest of an Owner in residence.
9. The presence of lessees or guests will not relieve the Owner of primary responsibilities under WSB Bylaws and other regulatory documents.
10. On grounds deemed sufficient by the Board, e.g., vandalism, any occupancy by lessees or guests as described above may be terminated.
11. Lessees are not permitted under any circumstances to re-let or sub-let the unit or any part of the unit which they occupy.

Send all notices of intention to lease and a copy of the proposed lease identifying the lessee(s) to Randi Johnson at Knapp Properties via email, [randi.johnson@knappproperties.com](mailto:randi.johnson@knappproperties.com) to ensure a time stamped receipt of application.

### **Rules Pertaining to Moving In/Out and Workers' Hours**

1. Moving In/Out is allowed only Monday through Saturday from 8 am to 8 pm.
2. Workers in the building for remodeling, maintenance, or repair work are allowed only on Monday through Saturday from 8 am to 5 pm. An exception may be made for emergency repair of heating, cooling, electrical, and plumbing systems.
3. Exceptions to #1 and #2 above may be allowed by the Board or its management agent upon request.
4. There will be a Move In or Move Out fee assessed to the unit Owner in the amount of \$300.00 paid to the Management Company two weeks prior to any move by the unit Owner, or his/her lessee or guest. The fee will be returned to the Owner in whole or in part depending upon damage, if any, to the Common Elements resulting from the move. If there is damage that exceeds \$300.00, the Unit Owner shall be responsible for payment of all damages.

## **Dispute Resolution**

If any differences arise between the Owners under the Declaration of Water Street Brownstones, its Articles of Incorporation, its Bylaws, its Rules and Regulations, or with respect to other matters of residential use including but not limited to party walls, easements, conditions, covenants, or Common Elements, the differences shall be determined and settled by the majority vote of the Board. The decision of the Board shall be final as to the content and interpretation of the Declaration or any other instrument related to the Association, and as to the mode of carrying the provisions into effect. The Board shall be entitled to the advice of professionals in resolving disputes, and shall be entitled to assess costs of such advice against the disputing Owners.

## **Enforcement**

The Board of Directors is authorized to enforce all Rules and Regulations and all governing instruments applicable to the Water Street Brownstones Condominiums. Nothing in the Rules and Regulations shall prevent the Board of Directors from taking any reasonable action to further its responsibilities to the residents and the property.