

**DECLARATION OF UNIT OWNERSHIP ESTATE  
HEMINGWAY CONDOMINIUMS  
OKLAHOMA CITY, OKLAHOMA**

This Declaration is made this 21<sup>st</sup> day of September 1982, by Hemingway Partners, Ltd., an Oklahoma limited partnership ("Declarant"), with reference to the following facts:

1. Declarant is the owner of certain real property (the Land) located in Oklahoma County, Oklahoma more particularly described as follows:

**(legal description purposely omitted)**

2. Certain buildings and improvements are located on the Land, which buildings are more particularly described on Exhibit A attached hereto and made a part hereof (the improvements').

3. Declarant desires and intends to sell and convey interests in the Land and Improvements to various persons subject to the protective restrictions, conditions, covenants, reservations, liens and charges set forth in this Declaration, and for this purpose, desires to submit the Land and Improvements to the provisions of the Oklahoma Unit Ownership Estate Act, 60 Okla. Stat. Section 501 et seq.

NOW THEREFORE, Declarant hereby declares that all the Land and Improvements are held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the following limitations, covenants, conditions, restrictions, reservations, liens, and charges, all of which are hereby declared and established and agreed to be in furtherance of a general plan and scheme for the sale of Unit Ownership Estates, as defined in 60 Okla. Stat. Section 503(g), and all of which are declared, and established for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Land and Improvements. All of said limitations, covenants, reservations, liens, charges, and restrictions are hereby established and imposed upon the Land and Improvements for the benefit thereof and for the benefit of each and every individual Unit hereinafter described and of each owner of one or more Units, as that term is hereinafter defined, and the owners of any interest of any kind or character in the Land or Improvements, or any portion thereof.

All of said limitations, liens, covenants, conditions, reservations, charges, and restrictions shall run with the Land and shall be binding on all parties having or acquiring any right, title or interest in the Land and Improvements or any part thereof, whether as sole owner, joint owner, lessee, tenant, occupant, or otherwise.

**ARTICLE I  
DEFINITIONS**

Whenever used in this Declaration the following terms shall have the following meanings:

1. Articles: "Articles" shall mean the duly adopted Articles of Incorporation of the Association, as the same may be amended from time to time.

2. Association: "Association" shall mean and refer to The Hemingway Association, Inc. an Oklahoma nonprofit corporation, its successors and assigns.

3. Bylaws: "Bylaws" shall mean the duly adopted bylaws of the Association, a copy of which is attached hereto as Exhibit B and made a part hereof, as the same may be amended, changed and modified from time to time.

4. Board of Directors: "Board of Directors or Board" shall mean the Board of Directors of the Association.

5. Building: "Building" shall mean one or more of the buildings or structures located on the Property, more particularly shown on the plans attached hereto as Exhibit C and made a part hereof.

6. Common Elements: "Common Elements" means the following elements of the Property:

a. The Land.

b. The foundations, columns, girders, beams, supports, main supporting walls, roofs, floors, ceilings, fireplaces, tire escapes, and entrances and exits of the Buildings.

c. The yards, gardens, fences, stairwells, access to parking areas, roadways, and all parking areas and structures, storage areas and facilities not located within a Building.

d. Those installations of central services including power, light, gas, hot and cold water, heating, refrigeration, and air conditioning servicing Common Elements.

e. All equipment, apparatus and installations existing for common use.

f. The swimming pool, club house, and related amenities.

g. All other parts of the Property necessary or convenient to its existence, maintenance, or safety, and normally in common use.

7. Common Expenses: "Common Expenses" means the following:

a. Expenses of administration, maintenance, repair or replacement of Common Elements and Limited Common Elements to the extent such expenses are to be borne by the Association.

b. Amounts deposited in the Reserve Fund for maintenance, repair, and replacement of the Common Elements, as required by Section 6 of Article XV of the Declaration.

c. Expenses agreed upon as common by all Unit Owners acting through the Association.

d. Expenses declared common by the provisions of the Oklahoma Unit Ownership Estate Act or by the Bylaws.

8. Declarant: "Declarant" means Hemingway Partners, Ltd., an Oklahoma limited partnership, its successors and assigns,

9. Declaration: "Declaration" means this Instrument, by which the Property is submitted to the provisions of the Oklahoma Unit Ownership Estate Act, together with such amendments to this instrument as may hereafter from time to time be lawfully made.

10. Limited Common Elements: "Limited Common Elements" mean those parts of the Common Elements reserved for use by the Owner or Owners of a certain Unit or certain Units, to the exclusion of the Owners of other Units, as agreed upon by all Unit Owners and including but not limited to those elements described in Article V hereof.

11. Person: "Person" means an individual, corporation, partnership, association, trust or other legal entity, or any combination thereof.

12. Property: "Property" means and includes the Land, the Buildings, all improvements and structures thereon, and all easements, rights, and appurtenances belonging thereto, together with all personal property intended for use in connection therewith which has been or intended to be submitted to the provisions of the Oklahoma Unit Ownership Estate Act.

13. Unit: "Unit" means an enclosed part of the Property intended for use as a residence, with direct access to a common area, including the several rooms and enclosed spaces therein, as shown on attached Exhibit "C", but excluding all supporting walls, ceilings, floors, fireplaces, fences and other structures thereon.

14. Unit Designation: "Unit Designation" means the number designating each particular Unit, as set forth in Exhibits A and E attached hereto and made a part hereof.

15. Unit Owner: "Unit Owner" or "Owner" means a person owning a Unit within a Building.

**ARTICLE II  
DESCRIPTIONS OF BUILDINGS**

The buildings are shown and described on Exhibit "A" attached hereto and made a part hereof.

**ARTICLE III  
UNIT DESIGNATIONS AND DESCRIPTION OF UNITS**

The Unit Designations and a particular description of each Unit subject hereto are contained in Exhibits "C" and "E" attached hereto and made a part hereof.

**ARTICLE IV  
GENERAL COMMON ELEMENTS**

The general common elements, as such term is used in the Oklahoma Unit Ownership Estate Act, include all Common Elements except those specifically defined as Limited Con Elements in Article V hereof.

**ARTICLE V  
LIMITED COMMON ELEMENTS**

The Limited Common Elements are the parking areas reserved for the exclusive use of the Owners of Units and the patios and/or balconies corresponding to each Unit, the fireplaces, interior surfaces of supporting walls, floors and ceilings adjoining or within each Unit, and all air conditioning and heating equipment providing service to a Unit.

Each individual Unit Owner shall be solely responsible for the maintenance, repair and replacement of all plumbing, electrical, air conditioning and heating equipment and installations which provide service exclusively to such Unit Owner's Unit. All appliances, including but not limited to hot water heaters, washers, dryers, disposals, ovens, ranges, refrigerators, cleaning systems, and ventilating systems shall be maintained, repaired and replaced at the sole cost and expense of the Owner of the Unit in which such appliances are installed or service.

**ARTICLE VI  
PROPORTIONATE INTEREST IN COMMON ELEMENTS**

The proportionate interest of each Unit Owner in the Common Elements is shown on Exhibit "D" attached hereto and made a part hereof. Each Unit Owner shall be entitled to the undivided interest in the Common Elements shown on such exhibit, which ratio is based on the fair value of each Unit in relation to the value of all Units subject hereto.

**ARTICLE VII  
SERVICE AGENT**

The name of the person to receive service of process in actions against the Association and the name of the person to receive service of process on two or more Unit Owners in actions relating to the Common Elements or more than one Unit is Charles S. Givens, whose address is 1140 N.W. 63rd Street, Oklahoma City, Oklahoma County, Oklahoma.

**ARTICLE VIII  
AMENDMENT OF DECLARATION**

The Declaration may be amended by a majority of the Unit Owners voting in person or by written proxy at a meeting of the members of the Association duly called and held for that purpose, and any such amendment shall become effective upon the filing, with the office of the Registrar of Deeds of Oklahoma County, Oklahoma, of an instrument in writing setting forth such amendment and duly executed and acknowledged by the president of the Association, as the act and deed of the Association, and attested by the secretary or assistant secretary thereof. Provided, however, the Declaration may not be amended in a manner which would allow the use of proceeds of hazard insurance policies for any purpose other than the repair, replacement, or reconstruction of the Unit or Units or Common Elements, without the prior written consent of seventy—five percent (75%) of all Unit Owners and mortgagees of Unit Owners other than Declarant; provided further that the Property may not be removed from the provisions of Unit Ownership Estate Act except with the unanimous consent of all Unit Owners nor may the percentage interest in the Common Elements of any Owner be reduced without such Owner's consent. Provided, further, that no amendment to this Declaration shall make any change in the requirements for insurance made herein, nor in any way affect the security interest or the lien of the mortgage of any mortgage holder unless the owners of all recorded mortgages upon any Unit or the Property shall have consented thereto in writing.

**ARTICLE IX  
RESTRICTIONS AS TO USE**

1. Single Family Use. The Buildings, and each of the Units are intended for and restricted to use as single family residences, and the Units shall be occupied only by a single family. A Unit shall not be subdivided, nor shall any part less than the whole thereof be sold or otherwise transferred. No gainful occupation, profession, business, trade or other non—residential activity shall be conducted in any Unit.

2. Signs and Billboards. No sign or billboard shall be permitted on the Property.

3. Animals. No animals, other than one house pet in weight less than 15 pounds, shall be maintained in any Unit, and then, only if kept solely as a household pet and not kept, bred, or raised for commercial purposes. Upon the request of any Unit Owner, the Board of Directors shall determine, in its sole discretion, whether for the purposes of this section a particular animal kept in a Unit shall be considered to be a house pet.

4. Offensive Activity. No obnoxious or offensive activity shall be carried on in any Unit, nor shall anything be done therein which may be or may become a nuisance or an annoyance to the surrounding Unit Owners or may cause an increase in insurance rates.

5. Rubbish. All rubbish, trash and garbage shall be regularly removed from the Units by the Unit Owners and shall not be allowed to accumulate therein or in the common areas. Rubbish shall not be allowed to be placed in Common Elements and Limited Common Elements except in designated places and only at designated time.

**ARTICLE X  
INSURANCE**

1. Public Liability Insurance. Comprehensive public liability insurance shall, be purchased by the Association and shall be maintained in full, force and effect at all times. Such insurance shall be obtained from reputable insurance companies authorized to do business in the State of Oklahoma having a financial rating by Best's Insurance Reports of class VI or better. The amount of coverage shall be determined by the Board from time to time so as to provide such coverage as the Board may deem prudent, provided, however, that the minimum amounts of coverage shall be \$1,000,000 for any one accident or occurrence, and \$1,000,000 for property damage. The premiums shall be paid from the assessments levied and collected pursuant to this Declaration. Such policy shall name all Unit Owners as insured's, and shall also name, as additional insured's, such persons or entities, including the Association, the Board, and any agents or employees of the Board, as the Board may deem necessary or required in order to insure, the Association, the Board, the Unit Owners and their respective agents, guests and invitees, against liability to the public, the Unit Owners, their guests, tenants, family members and invitees, or any other persons whomsoever in connection with any damage or injury occurring on

the Property or resulting or arising as a result of the ownership or use of the Property or any part thereof. Provided, however, such insurance shall not insure against loss caused by injuries to Unit Owners or invitees of Unit Owners in such Owner's Unit or members of their households occurring in their own Unit. Such policy shall otherwise be in such form and content and contain such endorsements as the Board may deem appropriate. Such policy shall be contain a severability of interest endorsement which shall preclude the insurer from denying the claim of a condominium Unit Owner because of negligent acts of the Condominium Association of Owners or other Unit Owners.

2. Fire and Extended Coverage Insurance. A blanket fire and hazard insurance policy shall be purchased by the Association and shall be maintained in force at all times, the premium thereon to be paid from the assessments levied against each of the Unit Owner, in accordance with this Declaration. Such insurance shall be obtained from reputable insurance companies authorized to do business in the State of Oklahoma having a financial rating by Best's Insurance Reports of class VI or better and shall insure against loss from fire and such other hazards as the Board may deem appropriate, and shall insure all structures and improvements upon the Property and all personal property owned by the Association or jointly by all the Unit Owners as tenants in common for not less than one hundred percent (100%) of the full insurable replacement cost value thereof (as determined annually by the Board in conjunction with the insurance company issuing such policy). Such policy shall contain vandalism and malicious mischief coverage, together with such other coverage, endorsements, and adjustment clauses as the Board deems appropriate. Such policy shall name the Association as insured, as trustee for the benefit of all the Unit Owners. Such policy shall name the respective mortgagees of the Unit Owners, as their respective interests may appear, and shall provide for the issuance of certificates or such endorsements evidencing the insurance as may be required by any insured or an insured's mortgagee. The Board may select such deductible, franchise, or franchise deductible provisions which, in its opinion, are consistent with good business practices in connection with the purchase of such policy.

3. Use of Proceeds. All insurance proceeds available under Section 2 of this Article X shall be paid to the Association and held for the benefit of the Unit Owners, mortgagees, and such other persons, as their respective interests shall appear, and shall be paid out in accordance with Article XI of this Declaration.

4. Additional Insurance. The Association, may, at its option, purchase and maintain in force at all times, demolition insurance in adequate amounts to cover demolition in the event of destruction of the buildings, or any of them, and the decision by Unit Owners not to rebuild. The premium therefore shall be paid from the assessments levied against all Unit Owners in accordance with this Declaration. Such policy, if purchased, shall contain a determinable demolition clause, or similar clause, to allow for coverage of the cost of demolition in the event of destruction and the decision not to rebuild. The Association may also purchase and maintain fidelity bonds, insurance on commonly owned personal property, and such other insurance as it may deem necessary, the premiums therefore to be paid from the assessments levied against all of the Unit Owners in accordance with the provisions of this Declaration.

5. Owner Insurance. Any Owner may, at his option, and at his sole cost and expense, purchase personal liability and personal property insurance as he may desire; provided, however, that such policy or policies shall include a waiver of subrogation clause. The existence of such policy or policies shall not alter the obligations of the Association to obtain insurance as herein provided. Under no circumstance shall the Association be liable for the damage to or destruction of personal property located in the Property and owned individually by any Unit Owner.

6. Authority of Board. Each of the Owners, and every other person named as an insured in connection with any of the policies, as purchased by the Association, hereby irrevocably delegates to the Board all authority as may be necessary to negotiate loss settlements with the appropriate insurance carriers on behalf of the persons named as insured's. The Board shall have the sole and exclusive authority and right to negotiate any such loss settlements; provided, however, that any execution of a loss claim form and release form in connection with the settlement of a loss claim shall be binding on all Unit Owners and upon any other person named as an insured on any such policy or policies only upon the execution thereof by a majority of the members of the Board.

7. Annual Review of Insurance. The Board shall review annually the limits of coverage of the policies of insurance purchased by the Association.

8. Notice of Cancellation. After the written request made by a holder of a first mortgage on a Unit to do so, the Board shall give notice to such holder 10 days prior to the cancellation of any policy of insurance purchased by the Association.

9. Fidelity Insurance. The Association shall purchase and maintain in full, force and effect at all times fidelity insurance, insuring against dishonest acts of members of the Board, employees of the Association, and volunteers responsible for handling funds belonging to or administered by the Association. Such policy shall name the Association as insured and shall be in an amount, as determined annually by the Board, to provide adequate protection to the Association, but in no event shall such policy be in an amount less than one and one-half (1 1/2) times the Association's estimated annual operating expenses and reserves for the current year.

## **ARTICLE XI DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS**

1. Repair and Restoration. Except as hereinafter provided, damage to or destruction of any or all of the Buildings shall be promptly repaired and restored by the Association, using the proceeds of insurance, if any, on the Building or Buildings damaged or destroyed for that purpose, and all Unit Owners shall be liable for assessments for any deficiency; provided, however, that upon the occurrence of the substantially total destruction of all the Buildings, or if 75% of the Unit Owners other than Declarant, elect in writing not to proceed with the repair or restoration of the property destroyed then in that event, the Property, or so much thereof as shall remain, shall be subject to partition at the suit of any Unit Owner, in which event the net proceeds of sale, together with the net proceeds of insurance policies, if any, shall be considered as one fund and shall be divided among all Unit Owners on the basis of the percentage ownership of the Common Elements, as shown on Exhibit D, after first paying, out of the respective shares of Unit Owners, to the extent sufficient for that purpose, all liens on the Unit of each Unit Owner. Except upon the substantially total, destruction of all the Buildings or upon the written election of seventy— five percent (75%) of the Unit Owners other than Declarant not to proceed with reconstruction, all hazard insurance proceeds shall be used exclusively for the repair, replacement, or reconstruction of the buildings. The Board, their agents, and employees shall have an easement to enter Units to make repairs to Common Elements, or when repairs reasonably appear to be necessary for public safety or to prevent damage to property other than the Unit.

2. Obligation of the Board. Upon the partial destruction of one or more of the Buildings, the Board shall obtain bids from at least two reputable contractors and shall call a meeting of the Unit Owners to consider whether reconstruction of the damage should be undertaken. Unless 75% of the Unit Owners other than Declarant, elect in writing not to proceed with reconstruction, the Board shall award the contract for the reconstruction to the lowest bidder; provided, however, that the Board shall not be required or authorized to award such contract until it has sufficient monies, whether from insurance or the collection of special assessments levied in accordance herewith, with which to pay the cost of reconstruction as reflected by the bid to be accepted by the Board. The Board, upon awarding said contract, shall thereafter be authorized to disburse monies to the contractor in accordance with said contract out of the insurance proceeds held by the Board and the special assessments levied and collected by the Board. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of such reconstruction at the earliest possible date. All such reconstruction shall be in accordance with the plans of construction of the Property attached hereto as Exhibit C.

3. Notice to Mortgagee. After written request made by a holder of a first mortgage on a Unit to do so, the Board shall give notice to such holder of any substantial damage or loss to the property.

## **ARTICLE XII MEMBERSHIP IN ASSOCIATION**

1. Qualification. Each Unit Owner shall be a member of the Association and shall be entitled to representation in the Association in proportion to said Owner's interest in the Common Elements as shown in Exhibit D attached hereto and made a part hereof. If a given Unit is owned by more than one owner, all such owners shall be members of the Association; provided, however, that for the purpose of representation of such Unit with regard to the affairs of the Association and the voting of the members of the Association, such Unit shall be represented by and entitled only to the representation shown on the attached Exhibit "D", which vote shall be

exercised and cast in accordance with the provisions of the Declaration and the Bylaws. Ownership of a Unit shall be the sole qualification for membership in the Association.

2. Transfer of Membership. The Association membership of each Unit Owner shall be an appurtenant right to the Unit giving rise to such membership and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon the transfer of title to said Unit and then only to the transferee of title of said Unit. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Unit shall operate automatically to transfer the membership in the Association appurtenant thereto to the new owner.

3. Membership Rights of Declarant. Until such time as Declarant shall have transferred title to Seventy—Five Percent (75%) of the Units at any time and from time to time subject to this Declaration and the amendments thereto Declarant shall be entitled to Four (4) times the representation in the Association hereinabove specified for each Unit in which it retains ownership. Upon the sale of 75% of the Units subject at any time and from time to time to this Declaration and the amendments hereto or September 15, 1986, whichever occurs first Declarant shall be entitled only to the representation specified in Exhibit D for the Units in which it retains ownership. Declarant shall pay the regular assessments established by the Board for each unit owned by Declarant.

### **ARTICLE XIII VOTING RIGHTS**

1. Required Percentage of Vote. Whenever the Declaration, the Bylaws, or the Articles requires the vote, assent or presence of a stated percentage of Unit Owners with regard to the taking of any action or any other matter whatsoever, the requisite number of votes to constitute such stated percentage shall be the votes of Unit Owners whose aggregate interest in the Common Elements, as determined with reference to Exhibit D hereto, totals such percentage.

2. Joint Owner Disputes. The vote for each Unit may be cast only as a unit, and votes of fractions of a Unit shall not be allowed. In the event that joint owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners casts a vote representing a certain Unit, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other Owners of the same Unit. In the event more than one vote is cast for a particular Unit, none of said votes shall be counted and all of said votes shall be deemed void.

### **ARTICLE XIV DUTIES AND POWERS OF ASSOCIATION**

1. Administration of Property. The Unit Owners and each of them, together with all parties bound by this Declaration, covenant and agree that the administration of the Property shall be in accordance with the provisions of this Declaration, the Articles, Bylaws, and such rules and regulations as may be adopted by the Board, and the amendments, changes and modifications thereto as may come into effect from time to time. In the event of any inconsistency between the provisions of this Declaration and the provisions of the Articles, the Bylaws, or rules and regulations, the provisions of this Declaration shall prevail.

2. Duties and Authority of Association. The Association shall have the following powers and duties:

(a) The Association shall acquire and pay out of the assessments levied and collected in accordance herewith, all charges for water, gas, gardening services, refuse collection, electrical, telephone, other necessary utility services, security services and all other expenses incurred in connection with safety and welfare of the Property and Unit Owners and the Common Elements.

(b) Except as provided in Article XVI, Section 4, hereof, the Association shall maintain or cause the Common Elements and the landscaping, improvements, facilities, and structures thereof to be maintained and kept in a good state of repair, and acquire for the Association and pay from assessments for such services, furnishings, equipment, maintenance, painting, and repair as it may determine are necessary in order to keep and at all times maintain the Common Elements and the landscaping, improvements, and facilities thereon in a good and sanitary state of condition and repair.

(c) Except as to the taxes, levies or assessments levied separately against an individual Unit, and/or the owner thereof, the Association shall pay all taxes, real and personal, and assessments, bonds and levies which are or would become a lien on the entire Property or the Common Elements.

(d) The Association may, at its option, employ a manager, independent contractors, and such other employees as it deems necessary and prescribe their duties, and enter into contracts and agreements, all for the purpose of providing for the performance of the business, powers, duties and/or obligations of the Association, or any portion thereof. Such manager, if any, and all employees shall have the right of ingress and egress over and access to, such portions of the Property as may be necessary in order for them to perform their obligations.

(e) The Association, at any time, and from time to time, may establish, in accordance with the Bylaws, such uniform rules and regulations as the Association may deem reasonable in connection with the use, occupancy and maintenance of the Units and the Common Elements by Unit Owners and their family members, servants, tenants, guests and invitees, and the conduct of such persons with respect to vehicles, parking, bicycle use, use of recreational facilities, control of pets, and other activities which, if not so regulated, might detract from the appearance of the Property or be offensive to or cause inconvenience, noise or damage to persons residing in or visiting the Property. The Association shall send a copy of such rules and regulations, together with amendments and additions thereto, to each Unit Owner upon receiving written notice of his status as an Owner.

(f) The Association shall levy assessments against the Unit Owners and enforce payment thereof, all in the manner and subject to limitations, set forth in this Declaration and the Bylaws.

(g) The Association shall maintain books and records relating to the management and operation of the property. Such books and records shall be subject to inspection and copying, during normal business hours, by any Unit Owner and by the holder of a mortgage on any Unit.

(h) Upon request received from the holder of any mortgage on a Unit, the Association shall notify the holder of such mortgage of any default thereafter occurring in the performance by the owner of the Unit burdened by such mortgage of any obligation hereunder or under the Articles, Bylaws or rules and regulations of the Association, which default is not cured within 60 days of the date of default. Such notice shall be in writing and shall be addressed to the mortgagee at the address specified in the request submitted by the mortgagee.

(i) The Association shall have the power to perform such other acts, whether expressly authorized by the Declaration or the Bylaws, as may be reasonably necessary to enforce any of the provisions of the Declaration, the Bylaws, or the rules and regulations duly adopted by the Association or to carry out and perform its powers and responsibilities.

## **ARTICLE XV ASSESSMENTS**

1. Creation of Lien and Personal Obligation of Assessments. Each Unit Owner, by acceptance of a deed to a Unit, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) regular monthly assessments or charges, and (2) emergency assessments, such assessments to be fixed, established and collected from time to time as hereinafter provided. The regular monthly and emergency assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge and a lien on the Unit against which each such assessment is made, and all appurtenances thereto, which lien is created and shall be enforced in accordance with the provisions of this Article. Each such assessment (and all other assessments levied in accordance with this Declaration), together with late charges, interest, costs, penalties, and reasonable attorney's fees, as provided for by this Declaration, shall also be the joint and several personal obligation of each person who was an Owner of such Unit at the time when such assessment fell due.

### 2. Regular Monthly Assessments.

(a) Regular Monthly Assessment. As soon as is reasonably practicable after the election of the first Board, the Board shall set the monthly assessments to be assessed for the initial fiscal year against each Unit for the purposes hereinafter specified. Monthly assessments shall be for the period running from the 1st day of a calendar month to and including the last day of such month. Assessments for each calendar month shall be due and payable by the Unit Owners on the 1st day of such month. The total of such assessments for all Units for

each fiscal year shall total (i) the estimated expenses of the Association in carrying out the obligations described herein for such fiscal year; other than for the repair or replacement of the Common Elements (the "Maintenance Fund Requirement"), plus (ii) an amount, to be determined by the Board, to be set aside during the fiscal year to provide for a reserve fund for the repair and replacement of the Common Elements (the "Reserve Fund Requirement").

(b) Fiscal Year. The fiscal year shall be the calendar year.

(c) Increase in Monthly Assessments. For each fiscal year following the initial fiscal year of the Association, the regular monthly assessment may be increased prior to, but effective as of, the beginning of such fiscal year, by the Board without a vote of the members of the Association, provided that any such increase shall not be more than twenty percent (20%) of the regular monthly assessment in effect during the previous year. The term 'regular monthly assessment,' as used herein, shall mean that monthly assessment set at the beginning of the fiscal year by the Board.

(d) Increase in Monthly Assessment by Association. From and after the end of the initial fiscal year of the Association, the regular monthly assessment may be increased by the Board in an amount greater than provided for in subsection (c) of this section for the succeeding fiscal year, such increase to be made prior to but effective as of the beginning of such fiscal year, provided that any such change shall first be approved by the vote of at least 80 percent of the members present in person or by proxy, and entitled to vote at a meeting held prior to the commencement of the fiscal year for which such increase is to be made and duly called for such purpose, at which a quorum is present, written notice of which will be sent to all members not less than 10 days or more than 30 days in advance of the meeting, setting forth the purpose of the meeting. Notice of increase pursuant to this section shall be given by the Board to each Owner prior to the commencement of the fiscal year for which such increase is to be effective.

(e) Certificate of Payment. The Association shall, upon demand, furnish to any Unit Owner, mortgagee of a Unit Owner, or prospective purchaser of any Unit a certificate in writing signed by an officer of the Association, setting forth whether the assessments on the specified Unit have been paid, and the amount of the delinquency, if any. A reasonable charge may be made by the Board for the issuance of such certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

3. Special Emergency Assessments. In the event that the Board shall determine that its budget for any current month is or will become inadequate to meet all expenses for any reason, including nonpayment of any Owner's assessment on a current basis, it shall immediately determine the appropriate amount of such inadequacy for such month and may levy an emergency assessment for the amount required to meet all such expenses on a current basis against the Owners of each Unit; provided, however, that any such emergency assessment in an amount exceeding \$100.00 per Unit must first be approved by 75 percent of the Unit Owners, present either in person or by proxy and entitled to vote at a meeting called for such purpose at which a quorum is present, written notice of which meeting shall be sent to all members not less than 10 days nor more than 30 days in advance of the meeting. Emergency assessments levied in accordance with this section shall be due and payable within 30 days of written notice thereof by the Board.

4. Payment of Assessments. Each payment of regular monthly and emergency assessments made by a Unit Owner shall first be applied to that portion of such Unit's assessments allocable to the Maintenance Fund Requirement, and the remainder of such payment shall be applied to that portion of such Unit's assessments allocable to the Reserve Fund requirement.

5. Maintenance Fund. All collected assessment charges allocable to the Maintenance Fund Requirement shall be properly deposited in a separate commercial bank account in a bank or trust company to be selected by the Board. The Board shall have control of said account and shall be responsible to the Unit Owners for the maintenance of accurate records thereof at all times.

6. Reserve Fund. All collected assessment charges allowable to the Reserve Fund Requirement shall be properly deposited in a separate commercial banking account in a bank or trust company to be selected by the Board. The Board shall have control over such account and shall be responsible to the Unit Owners for the maintenance of accurate records thereof at all times. The funds in such account may be expended only for expenses incurred by the Association for the repair, and replacement of the Common Elements.

7. Non-Payment of Assessments; Lien Rights, Remedies. Every Unit Owner is deemed to covenant and agree to pay the assessments provided for in this Declaration and further agrees to the enforcement of such assessments in the manner provided for in this Declaration.

(a) Delinquency. Any assessment provided for in this Declaration which is not paid when due shall become delinquent on the date on which such assessment is due (the date of delinquency). A late charge of \$5.00 for each delinquent assessment shall be payable with respect to such assessment not paid within 5 days after the date of delinquency. Assessments not paid within 5 days after the date of delinquency shall thereafter bear interest at the rate of 18% per annum from the date of delinquency and the Board, its attorney or other authorized representative may, at its option, at any time after such period, and in addition to the other remedies herein or by law or in equity provided, enforce the obligation to pay assessments in any manner provided by law or in equity and, without limited the generality of the foregoing, by any or all of the following procedures:

(i) Enforcement by Suit. The Board may cause a suit to be commenced and maintained in the name of the association against any Owner or Owners, or any of them, personally obligated to pay assessments for such delinquent assessments for which they are personally obligated. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of 18% per annum from and after the date of delinquency, late charges as provided for by this Declaration, court costs and reasonable attorney's fees in such amounts as the court may award. Suit to recover a money judgment for unpaid assessments shall be maintainable by the Board, or its authorized agent, without foreclosing or waiving the lien hereinafter provided for.

(ii) Enforcement of Lien. Any assessment which remains unpaid on the date on which such assessment is due shall be a lien on the Unit for which such assessment is due and on all appurtenances thereto. Such lien may be foreclosed by a suit instituted by the Association, its attorney or duly authorized agent. In any such foreclosure action the Unit Owner shall be required to pay reasonable rental for the use of his Unit during the pendency thereof. The Association, or its duly authorized agent, shall have the power to bid in at the foreclosure sale and to acquire, hold, lease, mortgage and convey the Unit Ownership Estate acquired at such sale. Provided, however, in any such foreclosure sale the Association may not bid an amount in excess of any judgment rendered in its favor in such foreclosure action and certifiable out of the proceeds of such sale.

(b) Additional Costs Secured by Lien. In the event the lien described above is foreclosed, reasonable attorneys' fees as the court may award and court costs, abstracting fees, interest at the rate of 18% per annum from the date of delinquency, late charges as provided for by this Declaration, and all other costs and expenses shall be allowed to the Association.

(c) Rights of Association. Each Owner hereby vests in and delegates to the Association or its duly authorized representative the right and power to bring all actions at law or lien foreclosures, against any Owner or Owners for the collection of delinquent assessments in accordance herewith.

(d) Purchaser at Foreclosure Sale. Any purchaser of a Unit at a foreclosure sale pursuant to an action to foreclose the lien herein provided shall take title to such Unit subject to all the terms, provisions and restrictions of this Declaration. There shall be a lien on the Unit of the purchaser which may be foreclosed in accordance with this Declaration and which shall secure all assessments which become due after the date of such sale. For the purposes of this section a sale of a Unit shall occur on the date any judicial sale is held.

(e) Purchase by Mortgagee. In the event the holder of a first mortgage on a Unit obtains title to such Unit as a result of a foreclosure of the mortgage, such mortgagee shall not be liable for the foreclosed Unit's unpaid assessments which accrue prior to the acquisition of title to such Unit by the mortgagee.

(f) Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the members of the Association, their guests and invitees, and in particular; shall be used for the purpose of improving, protecting, operating, repairing, and maintaining the Common Elements and the facilities, improvements, landscaping and structures located thereon, and providing for the acquisition and maintenance of property, services and facilities devoted to this purpose and directly related to the use and enjoyment of the Common Elements and the Units and otherwise providing for the performance by the Association of each and every power and duty of the Association.

**ARTICLE XVI  
RIGHTS AND OBLIGATIONS OF UNIT  
OWNERS AS TO THE COMMON AREAS**

1. Owners' Easement of Enjoyment. Subject to the provisions of Article XVIII, Section 1 of this Declaration, every Unit Owner and his tenants, servants, family members, guests and invitees, to the extent permitted by such Unit Owner, shall have a non—exclusive easement of access to, use and enjoyment of, and ingress and egress through, the General Common Elements and shall have an exclusive easement of access to, use and enjoyment of, and ingress and egress through the Limited Common Elements which are appurtenant to his Unit, as shown on Exhibit 'A', and such easements shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(a) Such easements shall be subject to the right conferred by this Declaration of the Board to establish uniform rules and regulations concerning the use of the Common Elements.

(b) Such easements shall be subject to the right of Declarant, its agent and representatives, to the non-exclusive use of the Common Elements and the facilities thereof, for display and exhibit purposes in connection with the sale of the Units, which right Declarant hereby reserves. Provided, however, that no such use by Declarant or its agents or representatives shall otherwise restrict the Unit Owners in their use and enjoyment of the Common Elements.

2. Waiver of Use. A Unit Owner may not waive or otherwise escape liability for the assessments provided for by this Declaration or otherwise duly and properly levied by the Board, by non—use of the Common Elements and the facilities thereon or any part thereof, or by abandonment of his Unit.

3. Maintenance and Repair of Units. Each Unit Owner shall bear the cost of and be responsible for the maintenance, repair and replacement, as the case may be, of all electrical and plumbing fixtures, and all other appliances or equipment, including any fixtures and the connections required to provide water, light, power, telephone, conditioned air, sewage and sanitary service to his Unit and which may now or hereafter be affixed or contained within his Unit. Each Unit Owner shall also bear the cost of and be solely responsible for the upkeep and maintenance of all interior and exterior air conditioning and heating equipment installed for the use of his Unit.

4. Decoration and Maintenance of Unit Interiors. The Unit Owners may decorate the interiors of their Units in any manner they see fit, provided that no structural changes may be made to the Common Elements without the prior written consent of the Board. No Unit Owner shall cause any improvements or changes to be made on the exterior of any building, including painting or other decoration, the installation of awnings, shutters, electrical wiring or other things which might protrude through or be attached to the exterior walls of the Building. Each Unit Owner shall bear the cost of and be responsible for the painting, upkeep, maintenance and replacement of any and all interior walls, fireplaces, ceiling and floor surfaces, fixtures, appliances, including hot water heaters, and furnishings and all other accessories which such Unit Owner may desire to place or maintain in his Unit.

5. Damage to Common Elements. Any damage to any Common Element which is caused by the negligent act or the willful misconduct of any Unit Owner may be repaired by the Association but, in such event, the Association shall be entitled to reimbursement for all reasonable costs of such repair and/or replacement from the Unit Owner responsible for such damage.

6. Additional Provisions. Each Unit Owner's undivided interest in the Common Elements shall have a permanent character and the amount of each Unit Owner's interest shall not be altered without his consent. Such interest shall not be separated from the Unit to which it is appurtenant and shall be deemed to be conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the deed or other instrument of conveyance. The Common Elements shall remain undivided and no Unit Owner or any other person shall bring any action for partition, except as herein provided.

## **ARTICLE XVII CONDEMNATION**

In case at any time or times the Property or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for or on account of any land and improvements of the project shall be payable to the Association as Trustee for all Unit Owners and mortgagees according to the loss or damage to their respective Units and appurtenant interest in the Common Elements and shall be used promptly by the Association to the extent necessary for restoring or replacing such improvements on the remaining land according to plans thereof or first approved as herein provided, provided, however, that in case the building shall be substantially damaged and the condemnation proceeds are insufficient for restoration thereof or in case restoration of such building to substantially its same size and function as immediately prior to such damage shall be prevented by any laws or ordinances then in effect whether to rebuild, repair or restore said building and the extent and manner thereof shall be determined by vote of 75 percent of the interests in the Common Elements, subject to written approval as to any modified plans by all owners of the Common Elements and mortgages thereby directly affected.

Restoration of the Property with less than all of the Units after condemnation may be undertaken by the Association only pursuant to an amended Declaration, duly executed by Unit Owners representing not less than 75 percent of the Common Elements; consented to in writing by all holders of liens affecting any of the Unit Owners of the Common Elements executing such amended Declaration; removing the Property from the Unit Ownership Estate established hereby; reconstituting all of the remaining Units, parking stalls, and Common Elements to be restored as a new Unit Ownership Estate and providing for payment to each Unit Owner of a Unit or parking stall, not to be restored, of the agreed value of such Unit or parking stall, and its interest in the Common Elements, which payment shall include, without prejudice to the generality of the foregoing, all of the proceeds of condemnation award payable for or on account of such Unit or parking stall, and his proportionate share of the Maintenance Fund and the Reserve Fund without deduction for the cost of such restoration except for his proportionate share of the cost of debris removal.

## **ARTICLE XVIII GENERAL PROVISIONS**

1. Access to Units. The Association shall have the irrevocable right to access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of the Common Elements and facilities therein or accessible therefrom, for making emergency repairs therein necessary to prevent damage to the Common Elements and facilities or to another Unit or Units. Such right shall be exercised by the Board or its duly authorized agent.

2. Enforcement. The Association, or any group of two or more Unit Owners, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Board or any group of Unit Owners to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. A waiver of any such right shall be only pursuant to an instrument in writing signed by the party to be charged with such waiver and shall be limited to the particular covenant, condition or restriction which is expressly set forth in such writing as being waived.

3. Encroachments. In the event any portion of the Common Elements encroaches upon any Unit or any Unit encroaches upon the Common Elements as a result of the construction, reconstruction, repair, shifting, settlement, or movement of any portion of the Property, a valid easement for the encroachment and for the maintenance for the same shall exist so long as the encroachment exists.

4. Use by Declarant. Notwithstanding any provision herein contained to the contrary, it shall be expressly permissible for Declarant to maintain, during the period of sale of Units, such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient or incidental to the sale of said Units, including, but not limited to, a business office, storage areas, signs, model units and sales offices.

5. Notice of Failure to Pay Assessments. Upon the written request by the holder of a first mortgage covering any Unit to do so, the Association shall notify such holder in the event the Unit covered by such holder's mortgage is delinquent in the payment of monthly assessments for 60 days.

6. Certain Consents Required. No amendment to this Declaration concerning the matters hereinafter set forth shall be effective with respect to any holder of a first mortgage covering any Unit except upon the written consent of such holder, to—wit:

- (a) Restoration or repair of the Property not substantially in accordance with the plans set forth in Exhibit "C" attached hereto;
- (b) The revocation of the Declaration;
- (c) Reserves for maintenance, repair and replacement of Common Elements;
- (d) Insurance or Fidelity Bonds;
- (e) Right to the use of Common Elements;
- (f) Responsibility for the maintenance and repair of the Property;
- (g) The boundaries of any Unit;
- (h) The voting rights of Unit Owners and the interests of Unit Owners in the Common Elements and Limited Common Elements.
- (i) The conversion of Common Elements into Units or the conversion of Units into Common Elements;
- (j) Leasing of Units;
- (k) The amendment of this Declaration to provide for a right of first refusal or other restriction on the right of a Unit Owner to sell, encumber or convey a Unit; or
- (l) Assessments, assessment liens or subordination of such liens.

7. Assessment Liens. All sums assessed by the Association for the share of common expenses chargeable to any Unit which sums remain unpaid shall constitute a lien on such Unit provided, such lien shall not be prior to mortgage instruments of encumbrance duly recorded prior to the date of such assessment.

8. Association Rights. The Association shall have the right to grant permits, licenses and easements over the Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the property.

9. Mortgagee Consent. The written consent of each holder of a mortgage covering a Unit shall be required to amend any provisions of the Declaration which are for the express benefit of such mortgage holders.

10. Notice to Mortgagee. Upon written request to the Association, holders of mortgages covering Units shall be given timely notice of:

- (a) Condemnation loss or any casualty loss which affects a material part of the Property or any Unit on which there is a first mortgage held, insured, or guaranteed.
- (b) Any lapse, cancellation, or material modification of any insurance, policy or fidelity bond maintained by the Association.
- (c) Any proposed action which would require the consent of a specified percentage of mortgage holders.

11. Severability. The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one or more of the provisions hereof shall not affect the validity of the remaining provisions.

12. Successors and Assigns. This Declaration shall inure to the benefit of and be binding upon the successors and assigns of Declarant, and to the heirs, personal representatives, grantees, lessees, successors and assigns of the Unit Owners.

13. Remedies Cumulative. Each remedy provided by this Declaration for breach of any of the covenants, conditions, restrictions, reservations, liens, or charges contained herein shall be in addition to any other available remedy, whether provided for by law or in equity, and all of such remedies, whether provided for by this Declaration or otherwise, shall be cumulative and not exclusive.

14. Notices. Any written notice or other document relating to or required by this Declaration may be delivered personally or by mail. If by mail, such notice, unless expressly provided herein or in the Bylaws to the contrary, shall be deemed to have been delivered and received 3 business days after a copy thereof is deposited in the United States mail, postage prepaid, addressed as follows:

(a) If to a Unit Owner other than Declarant, to the address of the Unit or Units owned by him.

(b) If to Declarant, whether in its capacity as owner of a Unit, or in any other capacity, addressed as follows:

Hemingway Partners, Ltd.  
1140 N.W. 63rd Street  
Oklahoma City, Oklahoma

(c) Prior to the organizational meeting of the Board, notices to the Board shall be addressed to the address set forth for giving notice to the Declarant. Thereafter, notices to the Board shall be addressed to the secretary of the Association. The Board shall cause the address of the secretary of the Association to be made known by mail to all Unit Owners.

15. Sales of Units. Concurrently with the consummation of the sale of any Unit under circumstances whereby the transferee becomes a Unit Owner, the transferee shall notify the Board in writing of such sale. Such notification shall set forth (i) the name of the transferee and his transferor, (ii) the street address or the unit number of the Unit purchased by the transferee, (iii) the transferee's mailing address and (iv) the date of sale. Prior to receipt of such notification, any and all communications required or permitted to be given by Declarant, the Association, the Board, or their agents or representatives, shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor.

Dated this 21st day of September, 1982.

Signed by Charles S. Givens, General Partner of Hemingway Partners, Ltd., an Oklahoma Limited Partnership, Declarant.

Acknowledgment purposely omitted.

**FIRST AMENDMENT TO DECLARATION  
OF UNIT OWNERSHIP ESTATE  
HEMINGWAY CONDOMINIUMS  
OKLAHOMA CITY, OKLAHOMA**

This First Amendment to the Declaration of Unit ownership Estate (the "Declaration") is made this 14th day of March, 1984, by the undersigned, as the President and Secretary of The Hemingway Association, Inc. (the "Association"), an Oklahoma non—profit corporation, pursuant to Article VIII of the Declaration, with reference to the following facts:

1. On October 4, 1982, the Declaration was filed of record with the office of the Registrar of Deeds of Oklahoma County, Oklahoma and can be found in Book 4920, beginning at page 1405, said Declaration relating to the real property described on Exhibit A attached hereto and made a part hereof.

2. At a meeting of the members of the Association held on February 21, 1984, a majority of the Unit Owners, as said term is defined in the Declaration, voting in person or by written proxy, voted to amend Article VII of the Declaration. Said Article, after amendment, reads as follows:

**ARTICLE VII  
SERVICE AGENT**

The name of the person to receive service of process in actions against the Association and the name of the person to receive service of process on two or more Unit Owners in actions relating to the Common Elements or more than one Unit is Stan Case, whose address is 4400 North Hemingway Drive, #211, Oklahoma City, Oklahoma 73118.

3. Said members also voted to amend certain sections of the Bylaws of the Association. A copy of the Bylaws, as amended, is attached hereto as Exhibit B and made a part hereof.

4. Said meeting was duly called and held for, among other reasons, the purpose of approving the foregoing amendments to the Declaration and Bylaws of the Association.

Dated this 11th day of July, 1984.

Signed by Stan Case, President of The Hemingway Association, Inc.

Acknowledgment purposely omitted.

**EXHIBIT A**

**(legal description purposely omitted)**

**SECOND AMENDMENT TO  
DECLARATION OF UNIT OWNERSHIP ESTATE  
HEMINGWAY CONDOMINIUMS  
OKLAHOMA CITY, OKLAHOMA**

This Second Amendment to the Declaration of Unit Ownership Estate (the "Declaration") is made this 15th day of May, 1986, by the undersigned, as the President and Secretary of The Hemingway Association, Inc. (the "Association"), an Oklahoma nonprofit corporation, pursuant to Article VIII of the Declaration, with reference to the following facts:

1. On October 4, 1982, the Declaration was filed of record with the office of the Registrar of Deeds of Oklahoma County, Oklahoma and can be found in Book 4920, beginning at page 1405, said Declaration relating to the real property described on Exhibit A attached hereto and made a part hereof.

2. On July 12, 1984, the Declaration was amended and the First Amendment to Declaration of Unit Ownership Estate was filed of record with the Office of the Registrar of Deeds of Oklahoma County, Oklahoma and can be found in Book 5199, beginning at page 1052, said First Amendment to Declaration relating to the real property described on Exhibit A attached hereto and made a part hereof.

3. At a meeting of the members of the Association held on April 15, 1986, a majority of the Unit Owners, as said term is defined in the Declaration, voting in person or by written proxy, voted to amend Article VII of the Declaration. Said Article, after amendment, reads as follows:

**ARTICLE VII  
SERVICE AGENT**

The name of the person to receive service of process in actions against the Association and the name of the person to receive service of process on two or more Unit Owners in actions relating to the Common Elements or more than one Unit is Pamela W. Harris, whose address is Two Leadership Square, Tenth Floor, Oklahoma City, Oklahoma 73102.

4. Said meeting was duly called and held for, among other reasons, the purposes of approving the foregoing amendment to the Declaration of the Association.

Dated this 15th day of May, 1986.

Signed by Pamela Harris, President of The Hemingway Association, Inc.

Acknowledgment purposely omitted.

**EXHIBIT A**

**(legal description purposely omitted)**

**THIRD AMENDMENT TO  
DECLARATION OF UNIT OWNERSHIP ESTATE  
HEMINGWAY CONDOMINIUMS  
OKLAHOMA CITY, OKLAHOMA**

This Third Amendment to the Declaration of Unit Ownership Estate (the "Declaration") is made this 22<sup>nd</sup> day of June, 1990, by the undersigned, as the President and Assistant Secretary of The Hemingway Association, Inc. (the "Association"), an Oklahoma non-profit corporation, pursuant to Article VIII of the Declaration, with reference to the following facts:

1. On October 4, 1982, the Declaration was filed of record with the office of the Registrar of Deeds of Oklahoma County, Oklahoma and can be found in Book 4920, beginning at page 1405, said Declaration relating to the real property described on Exhibit A attached hereto and made a part hereof.

2. On July 12, 1984, the Declaration was amended and the First Amendment to Declaration of Unit Ownership Estate was filed of record with the Office of the Registrar of Deeds of Oklahoma County, Oklahoma and can be found in Book 5199, beginning at page 1052, said First Amendment to Declaration relating to the real property described on Exhibit A attached hereto and made a part hereof.

3. On June 6, 1986, the Declaration was amended and the Second Amendment to Declaration of Unit Ownership Estate was filed of record with the Office of the Registrar of Deeds of Oklahoma County, Oklahoma and can be found in Book 5479, beginning at page 1640, said Second Amendment to Declaration relating to the real property described on Exhibit A attached hereto and made a part hereof.

4. At a meeting of the members of the Association held on April 24, 1990, a majority of the Unit Owners, as said term is defined in the Declaration, voting in person or by written proxy, voted to amend Article vii of the Declaration. Said Article, after amendment, reads as follows:

**ARTICLE VII  
SERVICE AGENT**

The name of the person to receive service of process in actions against the Association and the name of the person to receive service of process on two or more Unit Owners in actions relating to the Common Elements or more than one Unit is Thelma A. Clark, whose address is 4400 North Hemingway Drive, Oklahoma City, Oklahoma 73118.

5. Said meeting was duly called and held for, among other reasons, the purposes of approving the foregoing amendment to the Declaration of the Association.

Dated this 22<sup>nd</sup> day of June, 1990.

Signed by Paul Allison, President of The Hemingway Association, Inc.

Acknowledgment purposely omitted.

**EXHIBIT A**

**(legal description purposely omitted)**

**FOURTH AMENDMENT TO  
DECLARATION OF UNIT OWNERSHIP ESTATE  
HEMINGWAY CONDOMINIUMS  
OKLAHOMA CITY, OKLAHOMA**

This Fourth Amendment to the Declaration of Unit Ownership Estate (the "Declaration") is made this 10th day of December 1990, by the undersigned as the President and Secretary of The Hemingway Association, Inc. (the "Association") an Oklahoma non-profit corporation pursuant to Article VIII of the Declaration, with reference to the following facts:

1. The Declaration was adopted on September 21, 1982, and, on October 4, 1982, the Declaration was filed of record with the office of the Registrar of Deeds of Oklahoma County, Oklahoma and can be found in Book 4920, beginning at page 1405, said Declaration relating to the real property described on Exhibit A attached hereto and made a part hereof.

2. The Declaration was amended on July 11, 1984, and, on July 12, 1984, the First Amendment to Declaration of Unit Ownership Estate was filed of record with the Office of the Registrar of Deeds of Oklahoma County, Oklahoma and can be found in Book 5199, beginning at page 1052, said First Amendment to Declaration relating to the real property described on Exhibit A attached hereto and made a part hereof.

3. The Declaration was further amended on May 15, 1986, and, on June 6, 1986, the Second Amendment to Declaration of Unit Ownership Estate was filed of record with the Office of the Registrar of Deeds of Oklahoma County, Oklahoma and can be found in Book 5479, beginning at page 1640, said Second Amendment to Declaration relating to the real property described on Exhibit A attached hereto and made a part hereof.

4. On April 24, 1990, the Declaration was further amended, and on July 16, 1990, the Third Amendment to Declaration of Unit Ownership Estate was filed of record with the Office of the Registrar of Deeds of Oklahoma County, Oklahoma and can be found in Book 6067, beginning at Page 1488, said Third Amendment to Declaration relating to the real property described on Exhibit A attached hereto and made a part hereof.

5. At a meeting of the members of the Association held on December 10, 1990, a majority of the Unit Owners, as said term is defined in the Declaration, voting in person or by written proxy, voted to amend Section 2, of Article X of the Declaration. Said meeting was duly called and held for, among other reasons, the purposes of approving the following amendment to the Declaration of the Association. Said section of said. Article, after amendment, reads as follows:

2. FIRE AND EXTENDED COVERAGE INSURANCE. A blanket fire and hazard insurance policy shall be purchased by the Association and shall be maintained in force at all times, the premium thereon to be paid from the assessments levied against each of the Unit Owners in accordance with this Declaration. Such insurance shall be obtained from reputable insurance companies authorized to do business in the State of Oklahoma having a financial rating by Best's Insurance Reports of class VI or better and shall insure against loss from fire and such other hazards as the Board may deem appropriate, and shall insure all structures and improvements upon the Property and all personal property owned by the Association or jointly by all the Unit Owners as tenants in common for not less than one hundred percent (100%) of the full insurable replacement cost value thereof (as determined annually by the Board in conjunction with the insurance company issuing such policy). Such policy shall contain vandalism and malicious mischief coverage, together with such other coverage, endorsements, and adjustment clauses as the Board deems appropriate. Such policy shall name the Association as insured, as trustee for the benefit of all the Unit Owners. Such policy shall name the respective mortgagees of the Unit Owners, as their respective interests may appear, and shall provide for the issuance of certificates or such endorsements evidencing the insurance as may be required by any insured or an insured's mortgagee. The Board may select such deductible, franchise, or franchise deductible provisions which, in its opinion, are consistent with good business practices in connection with the purchase of such policy.

Notwithstanding any contrary language in this Declaration or the Bylaws, The Association's Fire and Hazard Insurance coverage of the Buildings, and all improvements and structures thereon, may, upon Board approval, include and be used for the repair, replacement or reconstruction of (1) The buildings and the structures and improvements upon the property and all personal property owned by the association or Jointly by all the Unit

Owners as tenants—in--common, (2) The common elements and (3) those improvements which were originally installed by the builder or replaced thereof by the owner, fixtures or alterations within Units, if they are a part of the building in the sense that they would normally remain with the Realty on the sale of the Unit (for example, carpet, wallpaper, built—in cabinets, stove, refrigerator, washer/dryer, microwave, a/c—heat, garbage disposal, hot water tank and dishwasher). However such coverage shall be effective and shall be used for such repair, replacement or reconstruction if and only if the fire or other hazard, which has caused the damage within the Unit, originated in or upon a common element, such as a common element water pipe bursting and causing water damage in a Unit. Any deductible amount payable under the Association's Fire and Hazard Insurance Policy shall be paid prorata by the Association and any Unit Owners based on the share of the amount of total damages, measured in dollars, sustained in each covered event by the common elements and the unit or units.

6. At this same meeting of the members of the Association held on December 10, 1990, a majority of the Unit Owners, as said term is defined in the Declaration, voting in person or by written proxy, voted to amend Section 1 of Article VII of the By—laws of The Association. Said meeting was duly called and held for, among other reasons, the purposes of approving the following amendment to the Bylaws of the Association. Said section of said Article, after amendment, reads as follows:

SECTION 1. The affairs of the Corporation shall be managed by a board of seven (7) directors, at least four (4) of whom must be resident members of the Corporation. There may be up to three (3) non—resident board members. The non—resident directors may hold any offices within the Corporation, except that they shall not hold the office of President. Notwithstanding any contrary language in these by—laws, a non—resident director may serve on any committee of the Corporation or the board, including the Nominating Committee. All directors shall serve for a term of three (3) years. At the annual meeting to be held on April 15, 1991, seven (7) directors shall be elected. Immediately thereafter the new board shall elect its officers. In order for the directors to serve staggered terms— with two (2) members designated to serve an initial one (1) year term, two (2) members to serve an initial two (2) year term, and three (3) members to serve an initial three (3) year term— the new President of the Board shall immediately decide by casting lots which of the seven (7) new board members will initially serve such one—year, two year or three— year terms. After each new Board member's one—year, two—year or three—year term ends, their successors shall serve a three year term.

And a copy of the Amended By-laws is attached hereto as Exhibit B.

Dated this 10th day of December, 1990.

Signed by Paul Allison, President of The Hemingway Association, Inc.

Acknowledgment purposely omitted.

**EXHIBIT A**  
**(legal description purposely omitted)**

**EXHIBIT "E"**  
**DESCRIPTION OF UNITS**

- 102 A two bedroom flat with two baths, fireplace, balcony, and utility room, located on the first floor of building 1, as shown on Exhibit C hereto, and containing approximately 1010 square feet.
- 103 A two bedroom flat with two baths, fireplace, balcony, and utility room, located on the first floor of building 1, as shown on Exhibit C hereto, and containing approximately 1010 square feet.
- 104 A two bedroom flat with two baths, fireplace, balcony, and utility room, located on the first floor of building 1, as shown on Exhibit C hereto, and containing approximately 1010 square feet.
- 105 A two bedroom flat with two baths, fireplace, balcony, and utility room, located on the first floor of building 1, as shown on Exhibit C hereto, and containing approximately 1010 square feet.
- 106 A two bedroom flat with two baths, fireplace, wet bar, balcony, utility room, and greenhouse window, located on the first floor of building 2, as shown on Exhibit C hereto, and containing approximately 1312 square feet.
- 107 A two bedroom flat with two baths, fireplace, wet bar, balcony, utility room, and greenhouse window, located on the first floor of building 2, as shown on Exhibit C hereto, and containing approximately 1312 square feet.
- 108 A two bedroom flat with two baths, fireplace, wet bar, balcony, utility room, and greenhouse window, located on the first floor of building 2, as shown on Exhibit C hereto, and containing approximately 1312 square feet.
- 109 A two bedroom flat with two baths, fireplace, wet bar, balcony, utility room, and greenhouse window, located on the first floor of building 2, as shown on Exhibit C hereto, and containing approximately 1312 square feet.
- 110 A two bedroom flat with two baths, fireplace, balcony, and utility room, located on the first floor of building 3, as shown on Exhibit C hereto, and containing approximately 1010 square feet.
- 111 A two bedroom flat with two baths, fireplace, balcony, and utility room, located on the first floor of building 3, as shown on Exhibit C hereto, and containing approximately 1010 square feet.
- 112 A two bedroom flat with two baths, fireplace, balcony, and utility room, located on the first floor of building 3, as shown on Exhibit C hereto, and containing approximately 1010 square feet..
- 113 A two bedroom flat with two baths, fireplace, balcony, and utility room, located on the first floor of building 3, as shown on Exhibit C hereto, and containing approximately 1010 square feet.
- 114 A two bedroom flat with two baths, fireplace, balcony, and utility room, located on the first floor of building 3, as shown on Exhibit C hereto, and containing approximately 1010 square feet.
- 115 A two bedroom flat with two baths, fireplace, wet bar, balcony, utility room, and greenhouse window, located on the first floor of building 4, as shown on Exhibit C hereto, and containing approximately 1312 square feet.
- 116 A two bedroom flat with two baths, fireplace, wet bar, balcony, utility room, and greenhouse window, located on the first floor of building 4, as shown on Exhibit C hereto, and containing approximately 1312 square feet.
- 117 A two bedroom flat with two baths, fireplace, wet bar, balcony, utility room, and greenhouse window, located on the first floor of building 4, as shown on Exhibit C hereto, and containing approximately 1312 square feet.















- 269 A two bedroom townhouse with two baths, wet bar, fireplace, two balconies, utility room, and greenhouse window, located in building 14, as shown on Exhibit C hereto, and containing approximately 1615 square feet.
- 270 A two bedroom townhouse with two baths, wet bar, fireplace, two balconies, utility room, and greenhouse window, located in building 14, as shown on Exhibit C hereto, and containing approximately 1615 square feet.
- 271 A two bedroom flat with two baths, fireplace, wet bar, balcony, utility room, and greenhouse window, located on the second floor of building 15, as shown on Exhibit C hereto, and containing approximately 1312 square feet.
- 272 A two bedroom flat with two baths, fireplace, wet bar, balcony, utility room, and greenhouse window, located on the second floor, of building 15, as shown on Exhibit C hereto, and containing approximately 1312 square feet.
- 273 A two bedroom flat with two baths, fireplace, wet bar, balcony, utility room, and greenhouse window, located on the second floor of building 15, as shown on Exhibit C hereto, and containing approximately 1312 square feet.
- 274 A two bedroom flat with two baths, fireplace, wet bar, balcony, utility room, and greenhouse window, located on the second floor of building 15, as shown on Exhibit C hereto, and containing approximately 1312 square feet.
- 276 A two bedroom flat with two baths, fireplace, balcony, and utility room, located on the second floor of building 16, as shown on Exhibit C hereto, and containing approximately 1010 square feet.
- 277 A two bedroom flat with two baths, fireplace, balcony, and utility room, located on the second floor of building 16, as shown on Exhibit C hereto, and containing approximately 1010 square feet.
- 278 A two bedroom flat with two baths, fireplace, balcony, and utility room, located on the second floor of building 16, as shown on Exhibit C hereto, and containing approximately 1010 square feet.
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- 282 A two bedroom flat with two baths, fireplace, balcony, and utility room, located on the second floor of building 16, as shown on Exhibit C hereto, and containing approximately 1010 square feet.
- 283 A two bedroom flat with two baths, fireplace, balcony, and utility room, located on the second floor of building 16, as shown on Exhibit C hereto, and containing approximately 1010 square feet.

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