

**CERTIFICATE OF FORMATION  
OF  
ASBURY PARK CONDOMINIUM ASSOCIATION**

**FILED**  
In the Office of the  
Secretary of State of Texas  
SEP 04 2008

**Corporations Section**

That the undersigned, for the purposes of forming a non-profit corporation under the laws of the State of Texas, does hereby adopt the following Certificate of Formation.

1. **Name.** The name of this corporation (hereinafter "Association") is Asbury Park Condominium Association.

2. **Duration.** The period of duration of the Association shall be perpetual.

3. **Principal Place of Business.** The initial known place of business and principal office for the transaction of business of the Association is located at 3405 N. Shepherd, Houston, Texas 77018.

4. **Statutory Agent.** The name and address of the Association's initial Statutory Agent, a duly organized domestic limited liability company are:

Leticia Mendoza  
13100 Southwest Freeway, Suite 130  
Sugar Land, Texas 77478

5. **Nonprofit Corporation.** This Association is organized as a nonprofit corporation under the laws of the State of Texas.

6. **Purpose and Powers.** This Association does not contemplate the distribution of gains, profits or dividends to its Members. The primary purposes for which the Association is formed are to promote the health, safety and welfare of all of the Unit Owners and Residents and to provide the management, operation, administrative, maintenance, repair, improvement, preservation and architectural control of the Common Elements and all other areas for which the Association has such responsibility within Asbury Park Condominium. The Condominium is more particularly described in that certain Declaration of Condominium and of Covenants, Conditions and Restrictions for Asbury Park Condominium dated May 22, 2008, recorded in the Official Public Records of Real Property of Harris County, Texas, under Clerk's File No. 20080287670 (the "Declaration"), as it thereafter may be amended from time to time.

In furtherance of said purposes, this Association shall, *inter alia*, have the powers to:

a. Perform all of the duties and obligations of the Association as set forth in the Declaration;

b. Fix, levy, collect and enforce Assessments, late charges, monetary penalties, fines, fees or other charges as set forth in the Declaration;

c. Pay all expenses and obligations incurred by the Association in the conduct of its business, including without limitation, all licenses, taxes or governmental charges levied or imposed against any property owned by the Association;

d. Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association (but Common Elements are owned by Unit Owners as provided in the Declaration and are subject to the specific provisions of the Declaration and the Condominium Act relating to ownership, encumbrance and transfer of Common Elements);

e. Borrow money and, only with the assent (by vote or written consent) of two-thirds (2/3) of the Members other than Declarant, and with the consent of Declarant during the Period of Declarant Control, mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property (not including the Common Elements owned by the Unit Owners in their allocated undivided interests) as security for money borrowed or debts incurred;

f. Grant easements over the Common Elements to any public agency, authority or utility company consistent with the provisions of Article 3 of the Declaration;

g. Convey the Common Elements or subject the same to a mortgage or other security interest, further subject to the provisions of the Declaration and the Condominium Act;

h. Participate in mergers and consolidations with other nonprofit corporations organized for the same purpose, provided that any merger or consolidation shall have the assent of Members as required by the Condominium Act;

i. Have and exercise any and all powers, rights and privileges which a corporation organized under the Texas Business Organizations and the Texas Condominium Act, Texas Property Code § 82.001 *et seq.* by law may now or hereafter have or exercise.

7. **Membership Voting Rights:** This Association will have one class of Members. The number and qualifications of Members of the Association, the voting and other rights and privileges of Members, their liability for Assessments and the method of collection thereof shall be as set forth in the Declaration and the Bylaws. Without limiting the foregoing, every person or entity who is a record owner of a fee or undivided fee interest in any Unit, including contract purchasers with right of possession of a Unit, but excluding persons or entities holding an interest merely as security for the performance of an obligation, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit.

8. **Board of Directors:** The affairs of this Association shall be managed by a Board of Directors. The initial Board shall consist of three directors, who shall serve until their successors are appointed by Declarant in accordance with the Declaration and Bylaws, and whose names and addresses are as follows:

Leticia Mendoza  
13100 Southwest Freeway, Suite 130  
Sugar Land, Texas 77478

Charles T. Donnels  
1502 W. Osborn Rd., Suite 7  
Phoenix, Arizona 85015

Michelle Ravello  
1502 W. Osborn Rd., Suite 7  
Phoenix, Arizona 85015

After the Period of Declarant Control expires or terminates: (i) the number of directors on the Board shall remain three (3) in number; (ii) no director serving on the Board at any time shall be related by blood, adoption, or marriage to, or share ownership of or any interest in a Unit with, any other director serving on the Board at that same time; and (iii) all directors serving on the Board shall be elected by the Membership as provided in the Declaration and Bylaws. Directors elected by the Membership shall be Unit Owners; provided, further, however, that if a Unit Owner is other than a natural person, a Director may be an officer, director, member, manager, partner, or trustee of such Unit Owner.

9. **Elimination of Director Liability:** 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, by reason of the fact that he/she is or was a Director, officer, committee member, employee, servant or agent of the Association against expenses (including attorneys' fees, judgments, fines, and amount; paid in settlement) actually and reasonably incurred by him/her in connection with such action, suit or proceeding if it is found and determined by the Association or a competent court of law that he/she (i) acted in good faith and in a manner he/she reasonably believed to be in, or not opposed to, the best interests of the Association, or (ii) with respect to any criminal action or proceeding, had no reasonable cause to believe his/her conduct was unlawful. The termination of any action, suit or proceeding by settlement, 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 or in a manner which he/she reasonably believed to be in, or not opposed to, the best interests of the Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that his/her conduct was unlawful. The Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant or agent of the Association, against any liability asserted against him/her or incurred by him/her in any such capacity, or arising out of his/her status as such, whether or not the Association would have the power to indemnify him/her against such liability hereunder or otherwise.

**10. Dissolution.** The Association may be dissolved with the consent given in writing and signed by Members holding not less than eighty percent (80%) of the total votes in the Association. So long as Declarant owns one or more Units, the Association may not be dissolved without the prior written consent of Declarant. In the event of dissolution, liquidation or winding up of the Association (other than incident to a merger or consolidation), the Association shall pay or adequately provide for the debts and obligations of the Association and otherwise comply with the Texas Business Organizations Code and Texas law. Upon dissolution of the Association, the assets of the Association, both real and personal, shall be (i) granted, conveyed and assigned to any non-profit corporation, association, trust or other organization engaged in activities substantially similar to those of the Association and which are qualified as exempt organizations under the Internal Revenue Code of 1986, as amended from time to time, or the corresponding provisions of any future United States Internal Revenue law, or (ii) dedicated to an appropriate public agency to be devoted to purposes as nearly as practicable as those to which they were required to be devoted by the Association. If such actions are not feasible, or, in the event of a termination of the Condominium, said directors in charge of the liquidation, said Directors or other Persons in charge of the liquidation, shall divide the remaining assets among the Members in accordance with their respective allocated interests as set forth in the Declaration, except as may be required by law.

**11. Amendments.** These Articles may be amended by vote or written assent of Members representing at least two-thirds (2/3) of the total allocated votes in the Membership; provided, however, that the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause or provision. The Board, without the consent of the Members or First Mortgagees, may amend these Articles to conform to the requirements and guidelines of any governmental or quasi-governmental entity or federal corporation that insures, guarantees, or invests in residential mortgages.

**12. Incorporation.** The name and address of the incorporator of the Association are:

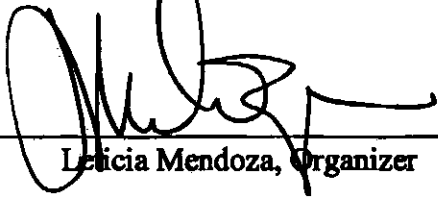
Leticia Mendoza  
13100 Southwest Freeway, Suite 130  
Sugar Land, Texas 77478

**13. VA/FHA Approval.** During the Period of Declarant Control, the approval of the VA or FHA, as applicable, shall be required prior to the annexation of additional real property to the Condominium, mergers, consolidations and/or dissolution, of the Association, conveyancing, mortgaging or dedication of Common Elements, or amendment of these Articles.

**14. Definitions.** All initially capitalized terms used herein without definition shall have the meanings set forth in such terms in the Declaration and/or the Condominium Act.

*[Signature page follows.]*

IN WITNESS WHEREOF, the undersigned has executed these Certifications of Formation as the Organizer this 9 day of June, 2008.

  
\_\_\_\_\_  
Leticia Mendoza, Organizer