

RUSHMORE LOFTS
DECLARATION OF CONDOMINIUM

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THE STATE OF TEXAS
COUNTY CLERK
HARRIS COUNTY, TEXAS
COUNTY OF HARRIS

KNOW ALL MEN BY THESE PRESENTS:

THAT Rushmore Lofts, L.P., a Texas limited partnership, being the owner of that tract of land more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes and the improvements thereon, and desiring to submit such land and improvements pursuant to the Texas Uniform Condominium Act for the purpose of establishing the condominium regime known as Rushmore Lofts and does hereby adopt, establish, promulgate and impress this Declaration of Condominium (this "Declaration") upon such land and improvements.

ARTICLE I

Definitions

Section 1.1: Definition of Terms. When used in this Declaration, the words set out below shall have the following meanings:

- a. **Board or Board of Directors** - The Board of Directors of Rushmore Lofts Condominium Association ("Association") whether such Board be appointed by Declarant or elected by the Council in accordance with the provisions of this Declaration.
- b. **Building** - The structure (including any parking structure) located at 2216 Choucrier Street, Unit 1, Unit 2, Unit 3, Unit 4, Unit 5, Unit 6, Unit 7, Unit 8, Unit 9, Unit 10, Unit 11, Unit 12, Unit 13, Unit 14, Unit 15, Unit 16, Unit 17, Unit 18, Houston, Texas 77003.
- c. **By-Laws** - The By-Laws adopted by the Board of Directors of Rushmore Lofts Condominium Association, incorporated December _____, 2004.
- d. **Common Elements** - The Common Elements shall be and include all of the Land and the Building except the Units as defined herein and shall include, without limitation, the general utility of the foregoing, all improvements located or to be located on the Land; foundation; supporting columns; girders, beams, slabs, supports; load-bearing walls; shear walls; exterior glass block walls; dividing walls between two or more Units or between Units and Common Elements; roofs; halls; lobbies; walkways; stairs, stairways; fire escapes; entrances and exits of the Building; grounds, gardens, areas used for storage of janitorial supplies, maintenance equipment and materials; cable television lines, converters, conduit and facilities; electrical lines and cables

up to and including the point of entry into the breaker boxes of a Unit, plumbing fixtures, pipes and lines installed in the walls of the Building or of a Unit that do not exclusively service a particular Unit; installations of all central service, that do not exclusively service a particular Unit, including power, light, water, chilled and heated water lines, heating, air conditioning (including "air handlers" and fan coil units not located within or providing exclusive service to a Unit) and waste collection facilities; tanks; pumps; motors; fans; compressors; ducts; driveways; and in general all apparatus and installations of the Association existing for the common use or necessary or convenient to the operation, maintenance and use of the Land, the Building and all other improvements located or to be located on the Land as a condominium including the Common Elements; and all repairs and replacements of or additions to any of the foregoing. The hallways, stairs, elevators, gardens, and those portions of the Land and other Common Elements intended to be used for passage or temporary occupancy by persons outside of a particular unit are also sometimes referred to herein as the "Common Elements."

- e. **Common Expense Charges** - The assessment made and levied by the Board against each Owner and Unit for administration, management and operation of the Condominium and the Condominium Regime and for repairs, maintenance, additions, alterations, reconstruction and operation of all or any portion of the Common Elements (including reserves for replacements) and other expenses provided by the terms of this Declaration to be paid by the Council, in accordance with the provisions hereof.
- f. **Common Expense Fund** - The accumulated Common Expense Charges and other amounts collected or received by the Council.
- g. **Condominium** - The Land, the Building and all other improvements located or to be located on the Land and all other rights appurtenant to the Land, the Building and all other improvements located or to be located on the Land. The components of the Condominium are further herein classified as "Common Elements," "Limited Common Elements" and "Units," as defined herein.
- h. **Condominium Regime** - The legal rights and duties of Ownership, use and administration created by the terms of the Texas Uniform Condominium Act and all amendments thereto (to the extent that such amendments are applicable to this Declaration and the Condominium), this Declaration, and the By-Laws and Rules and Regulations promulgated thereunder.
 - (i) **Council** - Rushmore Lofts Condominium Association, a Texas non-profit corporation, incorporated December 22, 2004, the members of which shall be Owners of the Units during the period of their respective ownerships, and the successors and assigns of such Owners. The term "Council" shall have the same meaning as the term "Association" in the Texas Uniform Condominium Act.

OFFICE OF
SEVERAL B. HARRIS
COUNTY CLERK, HARRIS COUNTY, TEXAS
COMMERCIAL RECORDS OF COUNTY CLERK
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RUSHMORE LOFTS
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- (ii) **Custom Design Criteria** - The Custom Design Criteria, as same may be amended or modified from time to time in accordance with this Declaration, promulgated by the Board, are those standards and specifications of the Units for custom modifications made to the Units from time to time by Owners.
- (iii) **Declarant** - Rushmore Lofts, L.P., a Texas limited partnership, or its successors and assigns that have been designated as such pursuant to a written instrument duly executed by Rushmore Lofts, L.P. and recorded in the Office of the County Clerk of Harris County, Texas.
- (iv) **Easement** - A right to use a particular part of the Common Elements for the purposes for which they were designed and in compliance with the terms of this Declaration, the By-Laws and the Rules and Regulations.
- (v) **Land** - The real property more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes.
- (vi) **Limited Common Elements** - Those portions of the Common Elements reserved for the exclusive use of the Owners of certain Units to the exclusion of the Owners of all other Units, same being those Parking Spaces, Storage Spaces assigned by Declarant for the exclusive use of particular Owners and any balconies adjoining a Unit and not shared in common with other Units. When used herein the term "Common Elements" includes the Limited Common Elements unless otherwise expressly indicated.
- (vii) **Managing Agent** - The person, firm or entity that may be selected by the Board in accordance with the provisions hereof for the purpose of performing any duties, powers or functions of the Board in connection with the administration, management and operation of the Condominium.
- (viii) **Mortgage** - A security interest, mortgage, deed of trust or lien granted by an Owner and covering a Unit to secure the repayment of a loan made to an Owner, duly filed for record in the Office of the County Clerk of Harris County, Texas.
- (ix) **Mortgagee** - The person or entity who holds a first lien Mortgage as security for the payment of a debt and who has provided the Board with written notice that such person or entity desires to have voting rights on matters requiring the vote of Mortgagees pursuant to this Declaration. Whenever the Board is required to obtain the agreement, approval, or consent, of any Mortgagee, such agreement, approval or consent, shall be deemed to have been given if the Council provides written notice stating the subject matter of the agreement, approval, or consent requested, by certified mail, return receipt requested at the address provided by the Mortgagee to the Council and the Mortgagee does not respond within thirty (30) days after such Mortgagee receives such notice.
- (x) **Owner** - Any person or persons, firm, corporation or other entity that owns, of record, a Unit, or legal interest therein, including the Declarant, but the term "Owner" as to a particular Unit shall not include a Mortgagee of that Unit.
- (xi) **Parking Spaces** - The spaces for the parking of vehicles within the Building as shown on the attached Exhibit "C."
- (xii) **Percentage Ownership Interests** - The undivided interests in and to the Common Elements associated with and appurtenant to each Unit as set forth on Exhibit "D" attached hereto and made a part hereof for all purposes.
- (xiii) **Replacement Reserve Fund** - The fund established pursuant to Article IV hereof for maintenance, repairs and replacements to the Condominium.
- (xiv) **Units** - The 18 condominium units designated on Exhibit "B" attached hereto, the boundaries of which shall be the centerlines of the perimeter walls and the interior surfaces of the perimeter floors, ceilings, windows and window frames, doors and door frames that provide access to and egress from Common Areas, and which shall include the portions of the Building and the air space within such boundaries, excepting Common Elements. The term Units shall have the same meaning as the term "Apartment" as used in the Texas Uniform Condominium Act. Included within the boundaries of each Unit, without limitation, shall be any finishing materials applied or affixed to the interior surfaces of the interior walls, floors or ceilings, such as, but without limitation, paint, wallpaper, wall or floor coverings (including carpet); interior walls and doors separating rooms within a Unit and all interior pipes, lines, systems, fixtures or appliances serving only that Unit (whether or not within the boundaries of that Unit) including, without limitation, hot water heaters, chilled and heated water pipes, air handlers, fan coil units and all visible and exposed plumbing fixtures, lines and pipes within the boundaries of a Unit.
- (xv) **Rules and Regulations** - The rules and regulations adopted by the Council concerning the management and administration of the Condominium and the use of the Common Elements and the enforcement of the terms and provisions of this Declaration and the rules and regulations governing the Condominium in order to assure to all Owners the pleasures and benefits of ownership of a Unit and use of the Common Elements. The initial Rules and Regulations shall be promulgated by Declarant and shall be subject to amendment by Declarant or the Board after notice of such amendment has been given to the Owners.

- (xvi) **Special Assessment** - Any assessment, approved by the Council as hereinafter set forth, over and above the Common Expense Charge deemed by the Board to be necessary for the preservation, repair, maintenance, management and administration of the Condominium.
- (xvii) **Storage Spaces** - The rooms or spaces for storage for the Lofts within the garage as shown on the attached Exhibit "C."
- (xviii) **Texas Uniform Condominium Act** - Title 7, Chapter 82 of the Texas Property Code, enacted in 1993, which permits the creation of condominium regimes and provides the basic rules for their operation, together with all amendments thereto to the extent such amendments affect this Declaration or anything covered hereby.

Section 1.3: Definition of Rights and Responsibilities.

- a. Each Owner shall have exclusive ownership of its respective Unit and shall have the common right to share, with all other Owners, in the use of the Common Elements in accordance with the purpose for which they are intended and the provisions hereof, without hindering or encroaching upon the lawful rights of other Owners.
- b. Where the term "Owner" is used in the granting of licenses, easements or rights to use Units, Common Elements or Limited Common Elements, such Owner's guests, tenants, servants, employees, invitees, and family members of such Owner residing with such Owner, shall also be entitled to the rights, easements or licenses so granted.

Section 1.3: Parking Spaces and Storage Spaces. Parking Spaces and Storage Spaces shall be Limited Common Elements for the exclusive use of the Owners of the Units. Declarant reserves all rights to assign specific Parking Space(s) and Storage Space(s) to any Unit(s). Declarant may assign any specific Parking Space(s) and Storage Space(s) to any Unit as a Unit is sold. Declarant may also assign any specific Parking Space(s) and Storage Space(s) to any Units prior to sale by Declarant. Spaces may not be reassigned by Declarant after assignment. Parking Spaces shall be used only for parking of automobiles and motorcycles, and shall not be used for the parking or storage of recreational vehicles, bicycles, boats or trailers. Storage Spaces shall be used only for the storage of personal items and in accordance with the restrictions set forth in the Rules and Regulations. Hazardous substances or items that would increase the cost of insurance (whether such items are for insurance premium purposes considered alone or in conjunction with other similar items) covering the Condominium shall not be stored in any Storage Space. Parking Spaces and Storage Spaces shall be perpetually appurtenant to the Unit to which they are assigned. Any conveyance of any Unit shall be deemed to convey also such Parking Spaces and Storage Spaces even though made without specifically or particularly referring to the same.

Units therein (including, without limitation, maintaining model units, a sales office, a design center for selection of allowance items, providing space for the closing of sales transactions covering other unsold Units owned by Declarant and the placing of "For Sale" or "For Lease" signs or other advertising material in or about such unsold Units). The provisions of this subsection shall not prohibit the use by the Council of all Common Elements in any reasonable manner necessary in connection with the operation and maintenance of the Condominium. In addition to the foregoing, the Council has the right to grant permits, licenses and easements over the Common Elements for utilities, roads and other purposes necessary for the proper operation of the Condominium and the Condominium Regime.

- d. Nothing shall be done in or kept in or on any Unit, or Common Element that will increase the rate of insurance on the Condominium or any other Unit over that applicable to buildings of a type similar to the Building, or result in uninsurability of the Condominium or any part thereof, or the cancellation, suspension, modification or reduction of insurance in or on covering the Condominium or any part thereof. If, by reason of the occupancy or use of any Unit or Common Element by any Owner in contravention of the restrictions set forth in this Section, the rate of insurance on all or any portion of the Condominium shall be increased, such Owner shall immediately cease any such use of the Unit and shall be personally liable to the Council for such increase caused thereby and such sum shall be payable to the Council upon presentation to such Owner by the Council of a statement thereof.
- e. No Owner shall install, attach or hang or allow to be installed, attached or hung any equipment or wiring or electrical installations, television or radio transmitter or receiving antennas, air-conditioning units or any other equipment, item, or wiring, in or across any portion of any Common Elements or through any wall, floor, ceiling, window or door that is a Common Element, except as approved by the Board. All radios, televisions, electrical equipment or appliances of any kind or nature and the wiring therefor installed or used in a Unit shall fully comply with all rules, regulations or requirements of all state and local public authorities having jurisdiction. Notwithstanding the foregoing, an Owner may maintain an awning outside the entrance to the Owner's Unit if the size, color and shape of the awning is pre-approved in writing by the Board of Directors.
- f. Except as expressly reserved by Declarant at Section 2.1 c, no Owner shall advertise in any form or manner in the Common Elements or in a Unit which advertisement is visible from the exterior of any Unit, including without limitation, "For Sale" or "For Lease" signs.

Section 2.2: Decorations, Maintenance and Repair of the Units and Common Elements. Provided the same do not violate the Custom Design Criteria, any Owner shall have the right to decorate and redecorate the Owner's Unit and may make any non-structural improvements or structural alterations within the Owner's Unit (but not to Common Elements) and shall have the

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ARTICLE 2

General Provisions

Section 2.1: Use Restrictions.

- a. Units shall be used only for residential purposes. For the purpose of this provision, a Unit shall be deemed to be used for residential purposes when it is used to house persons and their belongings, without regard to whether the persons are Owners of the Unit or occupy the Unit pursuant to a rental, leasing or other arrangement. The use of a Unit for the maintenance of a personal library or for the keeping of personal business or professional records or accounts or for the handling of personal, business or professional telephone calls or correspondence when used in conjunction with the residential occupancy of a Unit shall not be deemed to be in violation of this provision; but regular consultation with clients or other commercial activities in a Unit are prohibited.
- b. No noxious or offensive activities of any sort shall be permitted, nor shall anything be done in any Unit or in or about any Common Element that shall be or may become an annoyance or nuisance to or unreasonably interfere with the other Owners, nor shall any loud or disturbing noises be emitted from any Unit in such a manner as to be an annoyance or objectionable to another Owner. By way of example only, the following activities may constitute a nuisance if resulting from any activity within a Unit:
 - (i) use which emits dusts, sweepings, dirt or cinders, discharges liquids, solid waste or other matter in a manner that may adversely affect the health, safety, comfort of any occupant, or intended use of any Unit in the Building;
 - (ii) the escape or discharge of any fumes, odors, gases, vapors, steam, acids or other substances which are detrimental to the health, safety or welfare of any person, unreasonably interferes with other Owners, or is harmful to any property or vegetation within the Condominium;
 - (iii) the radiation or discharge of intense glare or heat, atomic, electromagnetic, microwave, ultrasonic, laser or other radiation; or
 - (iv) any vibration, noise, sound or disturbance which unreasonably interferes with the quiet use and enjoyment of any other Unit because of its intermittence, beep, frequency, strength, shrillness or volume.
- c. Notwithstanding any other provisions of this Article, the Declarant may make such use of the Common Elements and Units as is reasonably necessary to facilitate and complete the improvements to the Land, construction of the Building, the operation of Declarant's sales efforts and the showing of the Condominium and any unsold

right to paint, repaint, tile, wax, paper, or otherwise furnish or decorate any interior surfaces of walls, partitions, ceilings and floors within the Unit. Each Owner shall, at its own cost and expense, maintain the Owner's Unit and the entirety of all windows or other glass surrounding the Unit and the Storage Space, and any awning, as the case may be, appurtenant to such Owner's Unit, in good condition and repair. Except as provided herein, the Council shall maintain all Common Elements, including Limited Common Elements, the cost of which shall be an expense for which a Common Expense Charge may be assessed and levied (except to the extent that repair to Common Elements is caused by the negligence or misuse of a particular Owner; in which event, such Owner shall be liable to the Council for the cost of such repair, and such Common Expense Charge shall be due and payable upon presentation to such Owner by the Council of a statement thereof). Additionally and notwithstanding anything contained herein to the contrary, each Owner shall maintain, repair or replace, as necessary, all windows and glass doors of such Owner's Unit at such Owner's sole cost and expense.

Section 2.3: Alterations to Common Elements. No Owner shall do any act or permit any act to be done in, on or to any Unit, or any portion of the Common Elements that will impair the structural integrity, weaken the support or otherwise adversely affect the Building or any Common Elements. Decorative wall items such as lights, shelves and art work may be affixed to or installed on the walls of any Unit that are not Common Elements without prior approval of the Council, provided such affixation or installation is done in a good and workmanlike manner. No Owner shall make any alterations to any of the Common Elements (including walls, windows and doors that are Common Elements) nor install, attach, paste or nail any article thereto without the prior approval of the Council. No Owner shall place, affix, permit or install any items, including, without limitation, decorative items, such as lights, shelves, artwork, plants, furniture, accessories, mats, carpets or any other items of whatever nature in any Common Element without the prior approval of the Council.

Section 2.4: Additional Provisions. The Council, by provisions of its By-Laws or by Rules and Regulations enacted pursuant to the provisions hereof, may provide such additional rules and regulations for use of the Common Elements and Limited Common Elements, and the Units as are necessary or desirable in the judgment of the Council for the operation of the Condominium, provided such Rules and Regulations and By-Laws are not in conflict with the provisions of this Declaration.

Section 2.5: Custom Design Criteria. In addition to any other provisions hereof relating to alteration, maintenance, decoration or repair of any Unit, each Owner shall comply with the standards set by the Custom Design Criteria in effect at the time any alterations or modifications are made to such Owner's Unit or such Owner otherwise decorates the Owner's Unit. The object of the Custom Design Criteria is to insure the design integrity of the Building and to the standards of alteration, maintenance, decoration or repair of any Unit by any Owner after construction or rehabilitation, as the case may be by the Declarant of the Building. The Custom Design Criteria is not intended to control the construction of the basic building improvements by the Declarant. The Board shall promulgate the Custom Design Criteria and shall have the sole right to enforce same with respect to Units. Unless and until changed by the Board, all windows must be covered by blinds that are white or off-white as visible from the exterior of each Unit. Approval by the Board

of any modification, alteration or decoration of a Unit shall be conclusive as to compliance with the standards set by the Custom Design Criteria unless the representations made to the Board by the Owners of such Unit with respect to such modifications, alteration or decoration are incorrect or unless the facts upon which the Board makes its decisions shall materially change. Amendment or modification of the Custom Design Criteria shall be in the sole control and at the sole discretion of the Board from time to time. No amendment of the Custom Design Criteria, however, shall be retroactive or shall be applicable to any modification, alteration or decoration of a Unit made upon the approval of the Board or made or undertaken in good faith based upon the Custom Design Criteria in effect immediately prior to the date of enactment of such amendment and in progress at the date the amendment is voted on.

ARTICLE 3

Council of Co-Owners

Section 3.1: Authority to Manage

- a. The affairs of the Condominium and Condominium Regime shall be administered by the Council. The Council shall have all rights, powers and duties of an "Association," as that term is used in the Texas Uniform Condominium Act. The Council shall have the right, power and obligation to provide for the management, maintenance, and care of the Condominium and Condominium Regime as provided herein, in the By-Laws and in the Rules and Regulations. The business and affairs of the Council shall be managed by its Board of Directors. The Declarant shall determine the number of directors and appoint, dismiss and reappoint all of the members of the Council's Board of Directors to ensure the stability of the Council and to administer the Council's and the Condominium's affairs, until the first meeting of members of the Council is held in accordance with the provisions of this Section and a board of directors elected. The Board of Directors elected at the first meeting of members of the Council is herein called the "First Elected Board." The Board appointed by Declarant pursuant to the provisions of this Section is herein referred to as the "Appointed Board."
- b. The Appointed Board may engage the Declarant or any entity, whether or not affiliated with Declarant, as the managing agent (the "Managing Agent") to perform the day to day functions of the Council and to provide for the maintenance, repair, replacement, administration and operation of the Condominium and Condominium Regime under a contract terminable by either party upon no more than sixty (60) days prior written notice without penalty. Such contract shall provide for payment to the Managing Agent of a management fee substantially the same as the fees contracted for by managers of buildings similar to the Building (whether rental condominium in Houston, Texas. The members of the Board shall not be liable for any acts or omissions of the Managing Agent.

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RECORDS & SURVEY
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Section 3.2: Membership in the Council. Each Owner (and only an Owner) shall be a member of the Council so long as such person or entity shall be an Owner, and such membership shall automatically terminate when such Ownership ceases. Upon the transfer of ownership of a Unit (however achieved, including, without limitation, by foreclosure of a Mortgage or a deed in lieu thereof), the new Owner succeeding to such ownership shall likewise succeed to membership in the Council. The Condominium may issue certificates evidencing membership therein.

Section 3.3: Voting of Members. There shall be one vote in the affairs and management of the Council for each Unit, weighted in proportion to the Percentage Ownership Interest of such Unit in the Common Elements as set forth in Exhibit "D" attached hereto and made a part hereof for all purposes. The total voting power of the Council shall be the sum of the votes of all of the Units. In the event that a Unit is owned by more than one member of the Council, the members shall exercise their right to vote in such manner as they may among themselves determine, but in no event shall more than one vote be cast for each Unit. Such Owners shall appoint one of them as the member who shall be entitled to exercise the vote of that Unit at any meeting of the Council. Such designation shall be made in writing to the Board and shall be revocable at any time by actual written notice to the Board. The Board shall be entitled to rely on any such designation until written notice revoking such designation is received by the Board. In the event that a Unit is owned by more than one member of the Council and no single member is designated to vote on behalf of the members having an ownership interest in such Unit, then none of such members shall be allowed to vote. All members of the Council may attend meetings of the Council and all voting members may exercise their vote at such meetings either in person or by proxy. The Declarant may exercise the voting rights with respect to Units owned by it.

Section 3.4: Meetings of the Members

- a. The first meeting of the members of the Council shall be held when called by the Appointed Board upon no less than ten (10) and no more than fifty (50) days prior written notice to the members. Such meeting may be held at any time, but must not be held later than four months after seventy-five percent (75%) of all Units have been sold by the Declarant. The First Elected Board shall be elected at the first meeting of the members of the Council.
- b. Thereafter, annual and special meetings of the members of the Council shall be held at such place and time and such date as shall be specified in the By-Laws.
- c. At the annual meeting of members of the Council, the Board shall present an audit of the Common Expense Fund, itemizing receipts and disbursements for the preceding calendar year and the allocation thereof to each Owner. Within thirty (30) days after the annual meeting of members, copies of the statements presented at the annual meeting of members by the Board shall be delivered to all Owners.

Section 3.5: Election and Meetings of the Board of Directors. The Board of Directors shall be elected and shall meet in the manner set forth in the By-Laws.

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Section 3.6: Administration of the Condominium. The Council, acting through its Board of Directors, its officers or other duly authorized management representatives (including, without limitation, a Managing Agent), shall manage the business and affairs of the Condominium and maintain the Common Elements, and shall, without limitation, have the powers of collection and enforcement set forth herein; and, for the benefit of all of the Owners in the Condominium shall provide, perform, cause to be performed, maintained, acquired, contracted and paid for out of the Common Expense Fund the cost thereof, including, without limitation, the following:

- a. Utility services used in or for the Common Elements and, if not separately metered or charged, other utility services for the Units. Electricity, water and sewer services used by or consumed by the Units, cable television systems, telephone and other utility services separately metered or charged (including, without limitation, charges for chilled and heated water as allocated to such Unit by the Board for use of chilled or heated water in excess of the amount contemplated for such Unit under the Common Expense Charge) shall be paid for by the Owner of the Unit served by such utility services.
- b. The insurance required by Section 5.1 hereof and such other policies of casualty, liability and/or other insurance covering persons, property and risks as are determined by the Board to be in the best interest of the Condominium.
- c. The services of a Managing Agent and such other persons as the Board shall, from time to time, determine are necessary or proper to the management, operation and maintenance of the Condominium.
- d. All supplies, tools, and equipment reasonably required for use by the Managing Agent or the Board in the management, operation, maintenance, cleaning and enjoyment of the Condominiums.
- e. The cleaning, maintenance, repairing, reconstruction and replacement of the Common Elements as the Board shall determine is necessary unless otherwise provided in this Declaration.
- f. The services of gardeners, security guards, and such other persons utilized in the operation of the Condominium in the manner determined by the Board.
- g. The removal of all trash, garbage and rubbish from the central garbage receptacle or receptacles of the Building; including the employment of the services of a garbage collection company or agency, public or private.
- h. Costs of bookkeeping of the accounts of the Council and the annual audit provided for herein; costs of legal, accounting and other professional services engaged by the Board premiums of fidelity bonds, taxes or assessments of whatever type assessed or imposed against any of the Common Elements.
- i. All other costs of management, operation and maintenance of the Condominium.

The Board shall not, without the prior authorization of the members of the Council at a meeting of the members, contract to pay or pay for any one item of capital addition or improvement (other than replacement of existing Common Elements that in the aggregate as to all capital additions or improvements made in any one year constitute less than substantially all of the Common Elements) having an aggregate cost exceeding an amount equal to ten percent (10%) of the amount of the then applicable annual budget referred to in Section 4.3. Nothing herein shall authorize the Board to furnish to any person services primarily for the benefit of or a convenience of any Owner or Owners or any occupant or occupants of any Unit other than services customarily available to all Owners and occupants of Units. The Board shall have the exclusive right and obligation to contract for all goods, services and insurance in connection with the administration of the Condominium, payment for which is to be made from the Common Expense Fund.

Section 3.7: Accounting and Audit. The Board of Directors shall keep or cause to be kept books of detailed account of the receipts and expenditures affecting the Condominium and its administration and specifying the maintenance and repair expenses of the Common Elements and any other expenses incurred by or on behalf of the Condominium or the Council. Both the books of accounts and all vouchers accrediting and supporting the entries made therein shall be available for examination at the office of the Council by all Owners at convenient hours on working days and the Board of Directors shall cause to be established and announced for general knowledge the days and hours within which such books shall be available for inspection. All such books and records shall be kept in accordance with good accounting procedures, consistently applied, and may be reviewed at least once a year by a certified public accountant. All filings of income tax returns and other filings required of the Council by applicable law shall be prepared and filed or caused to be prepared and filed by the Board. The fiscal year of the Council shall be the calendar year unless another period is established by resolution of the Board. In addition to the foregoing, the Board shall maintain copies of the Declaration, the Articles of Incorporation of the Council and the By-Laws for inspection by Owners, tenants, insurance carriers of the Owner and guarantors of first Mortgages on Units.

Section 3.8: Right of Entry. The Board, or its duly authorized representative (including any then acting Managing Agent), shall have the right and authority to enter any Unit, Parking Space or Storage Space for the purposes of:

- a. Making necessary repairs to Common Elements;
- b. Performing necessary maintenance to the Common Elements (including, without limitation, cable television facilities), for which the Council is responsible;
- c. Abating any nuisance or any dangerous, unauthorized, prohibited or unlawful activity being conducted or maintained in such Unit or any appurtenance thereto;
- d. Protecting the property rights and welfare of other Owners; and

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- e. Enforcing the provisions of this Declaration, the By-Laws or the Rules and Regulations promulgated thereunder.

Except in the event of any emergency or, when the periodic cleaning and maintenance of the perimeter windows and walls of the Building have been scheduled, such right of entry shall be exercised only in the presence of the Owner or other occupant of the Unit that is entered and in the presence of the Managing Agent or its agent. In all events, such right of entry shall be exercised in such manner as to avoid any unreasonable or unnecessary interference with the possession, use or enjoyment of the Unit by the Owner or occupant thereof and shall, whenever possible, be preceded by reasonable notice to the Owner or occupant thereof. In the event that any damage to the property of any Owner is caused by negligence of the Council or its authorized representative in connection with the exercise of any such right of entry, such damage shall be repaired at the expense of the Council, and the Board is authorized to expend money from the Common Expense Fund therefor. The rights of entry herein granted to the Council or its duly authorized representative shall be accomplished by and exercised subject to such methods and procedures as may be set forth in the Rules and Regulations.

Section 3.9: Notices. Any notice permitted or required to be given to a member of the Board or to an Owner may be delivered personally, by mail or by placing such notice in the mail distribution facility of each Owner if such facilities are present in the Building wherein such Owner's Unit is located. If delivery is made by mail, it shall be deemed to have been delivered when deposited in the U.S. Mail postage prepaid, addressed to an Owner at the Owner's Unit or to such other address as the Owner may have given in writing to the Council for the purpose of service of notices. Any address for purposes of notice may be changed from time to time by notice in writing to the Council at least thirty days before such address shall be effective.

Section 3.10: Disputes. In addition to its other powers conferred by law or hereunder, the Board shall be empowered to create procedures for resolving disputes between Owners and the Board or the Council, including appointment of committees to consider and recommend resolutions or to resolve any such dispute.

Section 3.11: Board Action in Good Faith. Any action or omission by the Board taken in good faith shall not subject the Board to any liability to the Council, its members or other party.

ARTICLE 3

Common Expense Fund; Assessments; Collection

Section 4.1: Common Expense Charges. Except as provided in Section 4.2 hereof, all Owners are bound to contribute to the Common Expense Fund the Common Expense Charge in proportion to their Percentage Ownership Interests. The Common Expense Charge and Special Assessments shall be assessed in accordance with the provision hereinafter set forth. Additionally, each Owner shall pay, upon demand, for any services rendered to such Owner by the Council or arising as the obligation of such Owner to the Council.

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Section 4.2: Payment of Common Expense Charges by Declarant. Subject to the provisions of this Section 4.2, the Declarant shall pay to the Council, until election of the First Elected Board as provided in Section 3.4(a) above, in lieu of any Common Expense Charge or Special Assessment with respect to all Units that the Declarant continues to own, an amount, if any, by which the "Actual Operating Expenses" (as hereinafter defined) incurred for any fiscal year (or portion thereof) of the Council ending prior to such election of the First Elected Board, exceeds the aggregate of the Common Expense Charges (less any portion thereof that is deposited in the Replacement Reserve Fund) payable during such period by other Owners of Units. The assessment of the Common Expense Charges shall commence no later than 60 days after Declarant sells a Unit of the Common Expense Charges shall commence no later than 60 days after Declarant sells a Unit. All Owners, including Declarant, shall pay a Common Expense Charge after Declarant sells its first Unit; however, Declarant's obligation to pay the Common Expense Charge for any unsold and unoccupied Units shall be limited to the extent necessary that the Actual Operating Expenses exceed the Common Expense Charges assessed against the Owners of the Units that have been sold by Declarant. If the amounts collected as Common Expense Charges from Owners other than the Declarant (less any portion thereof that is deposited in the Replacement Reserve Fund) exceed such Actual Operating Expenses for such period, then, within a reasonable time after the expiration of such period, an amount equal to such excess shall be refunded to the Owners who shall have paid such Common Expense Charges, in proportion to their respective contributions. For the purposes of this provision, the term "Actual Operating Expenses" shall mean those expenses reasonably necessary for the normal maintenance and operation of the Condominium and shall not include (i) capital expenditures (determined in accordance with generally accepted accounting principles) (ii) any amount paid into the Replacement Reserve Fund, or (iii) prepaid items, inventory items or similar expenses to the extent attributable to periods after such fiscal year (or part thereof). After election of the First Elected Board, the Common Expense Charge to be paid by each Owner (including the Declarant) shall be determined as provided in this Article IV. The Declarant (in notice in writing to the Council, may waive the benefits of the first sentence of this Section and, in the event of such waiver, shall thereafter be bound to contribute to the Common Expense Fund the Common Expense Charges and Special Assessments in proportion to the Percentage Ownership Interest attributable to the Units owned by the Declarant.

Section 4.3: Budgets; Establishment of Common Expense Charges and Special Assessments. Until the commencement of the first full fiscal year after the first meeting of the members of the Council is held, the Appointed Board shall have the right and obligation to establish the annual budgets for each fiscal year projecting all expenses for the forthcoming year that may be required for the proper operation, management and maintenance of the Condominium and Condominium Regime. Such budget, and all successive budgets, shall contain a reasonable allowance for contingencies and shall establish a reserve fund (the "Replacement Reserve Fund") for maintenance, repairs and replacements to Common Elements, including those that must be replaced on a periodic basis.

- a. Commencing with the first full fiscal year after the first meeting of the members of the Council is held, the Board of Directors of the Council shall establish an annual budget in advance for each calendar year and such budget shall project all expenses for the forthcoming year that may be required for the proper operation, management and maintenance of the Condominium and the Condominium Regime, including a

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reasonable allowance for contingencies and a reasonable addition to the Replacement Reserve Fund. The Common Expense Charge for such year shall be established by the Board after adoption of such annual budget by the Board of Directors of the Council. Copies of each such budget and the Common Expense Charge for each particular Unit for such year shall be delivered to each Owner on or before the first of the applicable fiscal year by such reasonable means as the Board of Directors may provide. If the Board of Directors at any time determines that the Common Expense Charges so levied are or may prove to be insufficient to pay the costs of operation, management, or maintenance of the Condominium for such fiscal year or in the event of casualty losses, condemnation losses or other events (including non-payment of Common Expense Charges by some Owners) that require that additional funds be supplied for the management, maintenance or operation of the Condominium, the Board of Directors shall have the authority, in its discretion, at any time or from time to time to increase such Common Expense Charges or to levy such Special Assessment as it shall deem necessary for that purpose. Except as otherwise specifically provided in Article VI, Section 4 of the By-Laws and Section 7.3(d) of this Declaration, such Special Assessment shall not be levied, however, without the prior approval of Owners having at least a majority of the votes in the Council unless a greater number of votes is required by law applicable to the Condominium.

- b. The failure or delay of the Board to prepare any annual budget or to deliver copies of such budgets to each Owner shall not constitute a waiver or release in any manner of any Owner's obligation to pay Common Expense Charges whenever the same shall be determined, and in the event of any delay or failure to establish any annual budget each Owner shall continue to pay the Common Expense Charges, monthly, at the rate established for the previous period until a new annual budget is established.
- c. The Replacement Reserve Fund shall contain an amount determined by the Board, but shall not be less than an amount equal to 2 months of estimated Common Expense Charges for each Unit, unless within the previous budget year, a portion of the Replacement Reserve Fund was used for capital expenditures; in which case, the amount required for the Replacement Reserve Fund shall be restored within the current budget year. Any amounts paid into the Replacement Reserve Fund shall not be considered as advance payments of Common Expense Charges. The Replacement Reserve Fund shall be maintained by Declarant and transferred to the Council at the first meeting of the members of the Council is held. As Units are sold by the Declarant, Declarant shall be entitled to collect and retain, out of funds collected in closing, payment of the Replacement Reserve Fund attributable to each Unit. Upon reimbursement for funds it previously paid into the Replacement Reserve Fund for the such Units' share of the Replacement Reserve Fund, Declarant shall not use the Replacement Reserve Fund to defray any of its own expenses, reserve contributions or construction costs or to make up any budget deficits before the first meeting of the members of the Council.

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Section 4.4: Payment of Common Expense Charges, Special Assessment and Other Sums. The Common Expense Charge shall be allocated among those Owners obligated by this Declaration to pay the same according to their respective Percentage Ownership Interest. Common Expense Charges shall be due and payable monthly in advance on the first of each calendar month (or such other day as the Board may designate by written notice to all Owners) during the year for which such Common Expense Charge has been assessed. Special Assessments and other sums for which an Owner may be liable hereunder (including, without limitation, sums due under Section 2.2 hereof, charges for chilled and heated water allocated to a Unit by the Board and other sums incurred by the Council at the request of or on behalf of an Owner) shall be payable on or before ten (10) days after the date on which an invoice has been sent to an Owner. Payment of Common Expense Charges, Special Assessments and other sums due hereunder shall be in default if such Common Expense Charges, Special Assessments and other sums or any part thereof, are not paid to the Council on or before ten (10) days from the due date for such payment. Common Expense Charges, Special Assessments and other sums due hereunder in default shall bear interest at the highest non-usurious contract rate permitted by applicable Texas or federal law, whichever from time to time permits the higher lawful rate, from and after the date of delinquency until paid, due credit being given for all charges or fees theretofore contracted for, charged or received that shall be deemed to be interest under applicable law. The Board shall also have the right, in its discretion, by appropriate resolution of the Board, to establish late fees or delinquency charges, in an amount determined by the Board from time to time, to be imposed in addition to the interest to which such delinquent Common Expense Charges, Special Assessments and other sums due hereunder are subject. Each Owner (whether one or more persons) shall be personally liable for the payment of all Common Expense Charges, Special Assessments and other sums due hereunder, interest and late fees (or delinquency charges) that may be levied against such Owner and the Owner's Unit pursuant to the provisions hereof.

Section 4.5: Enforcement.

- a. In order to secure the payment of the Common Expense Charges and Special Assessments levied hereunder and other sums due hereunder (including interest, late fees or delinquency charges), a vendor's lien and superior title shall be and is hereby reserved in and to each Unit and assigned to the Council, without recourse, which lien shall be enforceable as hereinafter set forth by the Council, the Board on behalf of the Council, or any Owner on behalf of the Council. The liens described in this Section 4.5 and the superior title herein reserved shall be subordinate and inferior to any Mortgage for the purchase or improvement of any Unit and any renewal, extension, rearrangement or refinancing thereof. Notwithstanding the foregoing, until such lien is partially released by Union Planters Bank of Texas, N.A. as to a particular Unit, the note and lien, and any renewal, extension, rearrangement or refinancing thereof, executed by Rushmore Lofts, L.P. and currently owned and held by Union Planters Bank of Texas, N.A. against the entirety of the Condominium shall be and remain unsubordinated and superior to the liens for Common Expense Charges and Special Assessments identified, reserved and assigned in this Section 4.5. The collection of such Common Expense Charges, Special Assessments and other sums due hereunder may, in addition to any other applicable method at law or

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in equity, be enforced by suit for a money judgment and in the event of such suit, the expense incurred in collecting such delinquent amounts, including interest, costs and attorney's fees shall be chargeable to and be a personal obligation of such defaulting Owner. The voting rights of any Owner in default in the payment of the Common Expense Charges, any Special Assessment or other charge owing hereunder for which an Owner is liable may be revoked by action of the Board of Directors for the period during which such default exists.

b. Notice of the lien referred to in the preceding paragraph may be given by the recordation in the Official Public Records of Real Property of Harris County, Texas of an affidavit, duly executed, sworn to and acknowledged by an officer of the Council, setting forth the amount owed, the name of the Owner (or Owners) of such Unit according to the books and records of the Council, and the legal description of such Unit, or in such other manner as may be specified by the Texas Unitform Condominium Act.

c. Each Owner, by acceptance of a deed to a Unit, hereby expressly recognizes the existence of such lien as being prior to its ownership of such Unit and hereby vests in the Board or its agents the right and power to bring all actions against such Owner (or Owners) personally for the collection of such unpaid Common Expense Charges, Special Assessments, and other sums due hereunder as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, both judicially and by non-judicial foreclosure pursuant to Section 51.002 of the Texas Property Code (as same may be amended or revised from time to time hereafter) and in addition to and in connection therewith, by acceptance of the deed to a Unit, each Owner by acceptance of such deed expressly GRANTS, BARGAINS, SELLS AND CONVEYS to the President of the Council from time to time acting as trustee (and to any substitute or successor trustee as hereinafter provided for) such Owner's Unit, and all rights appurtenant thereto, for the purpose of securing the aforesaid Common Expense Charges, Special Assessments, and other sums due hereunder remaining unpaid hereunder by such Owner from time to time. The trustee herein designated may be changed any time and from time to time by execution of an instrument in writing signed by the President or Vice President of the Council and attested to by the Secretary of the Council and filed in the Official Public Records of Real Property of Harris County, Texas. In the event of the election by the Board to foreclose the lien herein provided for nonpayment of sums secured to be paid by such lien, then, it shall be the duty of the trustee, or his successor, as herein above provided, at the request of the Board (which request shall be presumed) to enforce this trust and to sell such Unit, and all rights appurtenant thereto, at the time of the County Courthouse of Harris County, Texas on the first Tuesday in any month between the hours of 10:00 a.m. and 4:00 p.m. to the highest bidder for cash at public vendue after the trustee and the Board, respectively, shall have given notices of the proposed sale in the manner hereinafter set forth and to make the conveyance to purchaser or purchasers, with general warranty of title to such purchaser or purchasers binding upon the Owner (the Owners) of such Unit and its heirs,

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- (ii) Whether the Owner of the Unit is more than 60 days delinquent in the payment of the Common Expense Charge or other charges owed by the Owner to the Council;
- (iii) Whether any insurance policy required to be maintained by the Council has lapsed, been canceled or been materially modified; and
- (iv) Proposed action, if any, of the Council that requires the consent of a specified percentage of eligible Mortgagees.

The written requests to Council on any particular Unit shall be limited to three (3) times in any calendar year.

Section 4.6: Common Expense Fund. The Common Expense Charges collected shall be paid into the Common Expense Fund to be held and used for the benefit, directly or indirectly, of the Condominium; and such Common Expense Fund may be expended by the Board for the purposes set forth herein, including, without limitation, providing for the enforcement of the provisions of this instrument, the By-Laws of the Council and Rules and Regulations promulgated thereunder, for the maintenance, operation, repair, benefit and welfare of the Common Elements, and generally for doing those things necessary or desirable in the opinion of the Board to maintain or improve the Condominium. The use of the Common Expense Fund for any of these purposes, except as provided herein, is permissive and not mandatory, and the decision of the Board with respect thereto shall be final, as long as made in good faith.

ARTICLES

Insurance

Section 5.1: General Provisions. The Board of Directors of the Council shall have authority to and shall obtain insurance for the Condominium as follows:

- a. Insurance on the Building, including the Units as defined in Section 1.1, Definition of Terms, h (xiv) Units, and including the cabinets and built-in appliances and including interior surfaces and coverings of the perimeter floors, ceilings, window frames, doors and door frames that provide access to and egress from the Common Elements (except as set forth in Section 5.2 below) and the Common Elements against loss or damage by fire and loss or damage by all risks now or hereafter embraced by the so-called all-risk fire and extended coverage policy and any other extended coverage policy, policies, or endorsement thereto, designed for multi-condominium regimes in the State of Texas (with vandalism and malicious mischief endorsements), in amounts sufficient to prevent the Council or the Owners from becoming a co-insurer within the terms of the applicable policies, but in any event in an amount not less than the full insurable replacement cost thereof and which policy shall contain a replacement cost endorsement. The "full insurable replacement cost" of the Building, including the Units and the Common Elements, shall be

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executors, administrators and successors. The trustee shall give notice of such proposed sale by posting a written notice of the time, place and terms of the sale for at least twenty-one (21) consecutive days preceding the date of sale at the Courthouse door of Harris County, Texas, filing a copy of such notice in the Official Public Records of Real Property of Harris County, Texas, and, in addition, the Board shall serve written notice at least twenty-one (21) days preceding the date of sale or the proposed sale be certified mail on each of such Owner or Owners according to the records of the Council. Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such Owner or Owners at the most recent address as shown by the records of the Council, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of such service.

- d. At any foreclosure, judicial or non-judicial, the Council shall be entitled to bid up to the amount of the sum secured by its lien, together with costs and attorney's fees, and to apply as a cash credit against its bid all sums due to the Council covered by the lien foreclosed. From and after any such foreclosure the occupants of such Unit shall be required to pay a reasonable rent for the use of such Unit, and such occupancy shall constitute a tenancy-at-sufferance, and the purchaser at such foreclosure sale shall be entitled to the appointment of a receiver to collect such rents and, further, shall be entitled to sue for recovery of possession of the Unit by forcible detainer without further notice.
- e. It is the intent of the provisions of this Section to comply with the provisions of Section 51.002 of the Texas Property Code, relating to non-judicial sales by power of sale and, in the event of the amendment of said Section 51.002 hereafter, which amendment is applicable hereto, the President of the Council, acting without joinder of any other Owner or Mortgagee or other person may, by amendment to this Declaration filed in the Official Public Records of Real Property of Harris County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002.
- f. It is expressly agreed that the Common Expense Charge assessed against any Unit shall be the personal obligation of the Owner of such Unit from the time that the Common Expense Charge becomes due. Upon written request to the Council stating both the name and address of the party making the request and the number and address of the Unit on which the request is made, the Council will provide to a Mortgagee, insurance carrier or guarantor of a Mortgage of a Unit, the following information:
 - (i) Any condemnation or casualty loss that affect either a material portion of the Condominium or the Unit subject to the request;

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determined from time to time but not less often than once in a twelve-month period by the Board and the Board shall have the authority to obtain and pay for an appraisal by a person or organization selected by the Board in making such determination. The cost of any and all such appraisals shall be borne by the Common Expense Fund.

- b. Insurance on the Building against all loss or damage from explosion of boilers, heating apparatus, pressure vessels and pressure pipes installed in, on or about the Building, without co-insurance clause, so long as available, in such amount as the Board may deem desirable.
- e. Comprehensive public liability and property damage insurance (including "umbrella" or "excess" coverage) against claims for personal injury or death or property damage suffered by the public or any Owner, the family, agent, employee or invitee of any Owner, occurring in, on or about the Common Elements or upon, in or about the driveways, roadways, walkways and passageways, on or adjoining the Condominium, which public liability and property damage insurance shall be in a minimum amount of \$1,000,000 combined single limit, or such greater amounts as the Board shall deem desirable. Such liability and property damage insurance policy shall contain a cross-liability endorsement wherein the rights of named insureds under the policy or policies shall not prejudice its, his, her or their action or actions against another named insured.
- d. Such worker's compensation insurance as may be necessary to comply with applicable laws.
- e. Employer's liability insurance in such amount as the Board may deem desirable.
- f. Fidelity bonds indemnifying the Council, the Board and the Owners from loss of funds resulting from fraudulent or dishonest acts of any employee of the Council or of any other person handling the funds of the Council in such an amount as the Board may deem desirable.
- g. Liability insurance insuring the Board and officers of the Council against any claims, losses, liabilities, damages, or causes of action arising out of or in connection with or resulting from any act or omission in their representative capacities.
- h. Such other insurance in such reasonable amounts as the Board shall deem desirable.

The premiums for all insurance acquired on behalf of the Council or the Owners pursuant to the provisions hereof shall be borne by the Common Expense Fund. All insurance provided for in this Section shall be effected under valid and enforceable policies issued by issuers of recognized responsibility authorized to do business in the State of Texas. Policies of insurance of the character described in Subsections (a), (b) and (c) of this Section 5.1 shall name as insured the Council and each Owner as their interests may appear; shall contain standard mortgagee clause endorsements in

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favor of the Mortgagee or Mortgagees of each Unit, if any, as their respective interests may appear, shall be without contribution with regard to any other such policies of insurance carried individually by any Owner, whether such other insurance covers the Unit owned by such Owner and/or the additions and improvements made by such Owner to its respective Unit; shall provide that such policy shall not be terminated for non-payment or premiums or for any other cause without at least thirty (30) days prior written notice to the Council and at least ten (10) days prior written notice to the Mortgagee of each Unit. If possible, and if approved by the Board, all policies of insurance of the character described in Subsection (a) of this Section 5.1 shall contain an endorsement extending coverage to include the payment of Common Expense Charges with respect to Units damaged during the period of reconstruction thereof. Any loss covered by such insurance policies shall be adjusted and settled by the affected insurers with the Board acting on behalf of, and as trustee for, the Owners, and the proceeds of such insurance shall be paid to the Board as trustee for the Owners and their Mortgagees, as their interests may appear.

Section 5.2: Individual Insurance. Each Owner shall be responsible for insurance on the contents of its Unit and the appliances on all parts of the Unit that are not Common Elements, and on all personal property or fixtures therein, including cabinets, appliances, wall coverings and floor coverings to the extent not covered by the policies of casualty insurance obtained by the Council for the benefit of all the Owners as above provided. Any betterments and/or improvements installed in any Unit by any Owner which does or may disproportionately increase the premium charged for the insurance provided under Section 5.1a over the premium attributable to other similar items of the other Owners may be excluded from the coverage afforded under Section 5.1a. Any betterments, improvements or other items excluded from coverage under the insurance afforded under Section 5.1a, shall be the sole responsibility of the Owner of the affected Unit. Owners may carry individual policies of liability insurance insuring against the liability of such Owners, at their own cost and expense. In the case of a partial destruction of the Condominium or one or more Units within the Condominium, the Board shall have the absolute discretion as to the manner and extent to which insurance proceeds are utilized to repair and/or replace the damaged or destroyed Units and Common Elements.

Section 5.3: Subrogation. Each Owner and the Council hereby agree to and hereby waive all present and future rights of subrogation and rights of recovery against the Declarant that they may be entitled to under any property insurance policies described in this Declaration.

ARTICLE 6

Fire or Casualty: Rebuilding

Section 6.1: Determination of Loss.

- a. In the event of a fire or other casualty causing damage or destruction to the Building, the Board shall, within thirty (30) days thereafter, determine whether such loss comprises the whole or more than two-thirds ($\frac{2}{3}$) of the Building (above the foundations). Unless otherwise provided by law applicable to the Condominium, such determination shall be made by determining whether the cost of necessary

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repair or reconstruction would exceed two-thirds ($\frac{2}{3}$) of the cost of reconstructing the Building as they existed prior to such fire or other casualty. In the event of fire or other casualty damage that does not comprise more than two-thirds ($\frac{2}{3}$) of the Building (above the foundations), unless otherwise unanimously agreed to by the Owners, the Building shall be repaired and reconstructed substantially in accordance with the original plans and specifications for the Building and in accordance with the provisions hereof.

- b. In the event that fire or other casualty damage comprises the whole or more than two-thirds ($\frac{2}{3}$) of the Building (above the foundation), unless thereafter otherwise unanimously agreed by the Owners, all proceeds of insurance policies carried by the Council and all accrued and collected Common Expense Charges (after deducting any unpaid Common Expense Charges for which such Owner may be liable) shall be delivered to the Owners or their Mortgagees, as their interests may appear, in proportion to the Percentage Ownership Interests of each Owner and the Condominium Regime established by this Declaration shall terminate. Upon such termination, the Units and Common Elements shall be deemed to be regrouped and merged into a single estate owned in undivided interests by all Owners as tenants-in-common in the Percentage Ownership Interest previously owned by each Owner in the Common Elements. In such case, unless otherwise unanimously agreed on by all Owners, the Board, as soon as reasonably possible and as agent for all Owners, shall sell the Condominium, in its then condition, free from the effect of this Declaration, on terms satisfactory to the Board and the net proceeds of such sale shall thereupon be distributed to the Owners or their Mortgagees, as their interests may appear, in the Percentage Ownership Interest previously owned by each Owner in the Common Elements. If the Board fails to consummate a sale pursuant to the preceding sentence within twenty-four (24) months after the destruction or damage occurs, then the Board shall (or if the Board does not, any Owner or to Mortgagee may) record a sworn statement setting forth such facts and reciting that under the provisions of this Declaration the prohibition against judicial partition provided for in Section 10.2 below has terminated and that judicial partition of the property may be obtained pursuant to the laws of the State of Texas.

Section 6.2: Rebuilding. In the event that it is determined that the Building shall be repaired and/or reconstructed, then all proceeds of insurance policies with respect to such fire or casualty, earned by the Council, shall be paid to a bank (selected by the Board), as trustee, insured by the Federal Deposit Insurance Company (or its successors) and located in Harris County, Texas, to be held in trust for the benefit of the Owners and their Mortgagees as their respective interests may appear. The Board shall thereupon contract on behalf of all Owners to repair or rebuild the damaged portions of all Units, subject to the limitation set forth in Section 6.3, the Building and all other Common Elements in accordance with the original plans and specifications therefor and the funds held in the trust by such depository bank shall be used for this purpose and disbursed by the Board in accordance with the terms of the contract of repair and rebuilding. In the event such proceeds are insufficient to cover the cost of reconstruction, the reconstruction costs in excess of the insurance

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proceeds available for that purpose shall be paid by all the Owners, pro rata in accordance with each Owner's Percentage Ownership Interest in the Common Elements.

Section 6.3: Repair of Units. Following any such fire or other casualty where there is no termination of the Condominium Regime as provided above, each Owner shall be responsible for the reconstruction, repair, and replacement of all personal property and other property not a Common Element in or part of the Owner's Unit, including, but not limited to, the floor coverings, wall coverings, furniture, furnishings, decorative light fixtures and appliances located therein, to the extent each Owner wishes said reconstruction, repair, and replacement to be accomplished; the Council shall have no responsibility for any of same.

ARTICLE 7

Eminent Domain

Section 7.1: General Provisions. If all or any part of the Condominium is taken or threatened to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), the Board and each Owner shall be entitled to participate in proceedings incident thereto at their respective expense. The Board shall give notice of the existence of such proceeding to all Owners and to all Mortgagees known to the Board to have an interest in any Unit. The expense of participation in such proceedings by the Board shall be borne by the Common Expense Fund. The Board is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Board, in its discretion, deems necessary or advisable to aid or advise it in matters relating to such proceedings. All damages or awards for any such taking shall be deposited with the Board, acting as trustee, and such damages or awards shall be applied or paid as provided herein.

Section 7.2: Taking of Common Elements. In the event that an action in eminent domain is brought to condemn a portion of the Common Elements (together with or apart from any Unit), then as to such portion of the Common Elements which is subject to such action the Board, in addition to the general powers set out herein, shall have the sole authority to determine whether to defend or resist any such proceedings, to make any settlement with respect thereto, or to convey such property to the condemning authority in lieu of such condemnation proceeding. With respect to any taking of Common Elements only, all damages and awards shall be determined for such taking as a whole and not for each Owner's interest therein. After the damages or awards for such taking are determined, such damages or awards shall be paid to each Owner in proportion to its Percentage Ownership interest in the Common Elements. The Board may, if it deems advisable, call a meeting of the Owners, at which meeting the Owners, by a majority vote, shall decide whether to replace or restore as far as possible the Common Elements so taken or damaged. In the event it is determined that such Common Elements should be replaced or restored by obtaining other land or building additional structures, this Declaration in accordance with the provisions of Section 9.1 herein shall be duly amended by instrument executed by the Board of Directors on behalf of the Owners.

Section 7.3: Taking of Units. In the event that such eminent domain proceeding results in the taking of or damage to one or more, but less than two-thirds ($\frac{2}{3}$) of the total number of Units, then

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the damages and awards for such taking shall be determined for each Unit and the following shall apply:

- a. The Board shall determine which of the Units damaged by such taking may be made tenable for the purposes set forth in this Declaration, taking into account the nature of the Condominium and the reduced size of each Unit so damaged.
- b. The Board shall determine whether it is reasonably practicable to operate the remaining Units of the Condominium, including those damaged Units that may be made tenable, as a condominium in the manner provided in this Declaration.
- c. In the event that the Board determines that it is not reasonably practicable to operate the undamaged Units and the damaged Units that can be made tenable as a condominium, then the Condominium shall be deemed to be regrouped and merged into a single estate owned jointly in undivided interests by all Owners, as tenants-in-common, the Percentage Ownership Interests previously owned by each Owner in the Common Elements. In such case, unless otherwise unanimously agreed upon by all Owners, the Board, as soon as reasonably possible and as agent for all Owners, shall sell the Condominium, in its then condition, free from the effect of this Declaration, on terms satisfactory to the Board and the net proceeds of such sale shall thereupon be distributed to the Owners or their Mortgagees, as their interests may appear, in proportion to the Percentage Ownership Interest previously owned by each Owner in the Common Elements. If the Board fails to consummate a sale pursuant to the preceding sentence within twenty-four (24) months after the taking occurs, then the Board shall (or if the Board does not, any Owner or Mortgagee may) record a sworn statement setting forth such facts and reciting that under the provisions of this Declaration the prohibition against judicial partition provided for in Section 10.2 below has terminated and that judicial partition of the property may be obtained pursuant to the laws of the State of Texas.
- d. In the event that the Board determines that it will be reasonably practicable to operate the undamaged Units and the damaged Units that can be made tenable as a condominium, then the damages and awards made with respect to each Unit that has been determined to be capable of being made tenable shall be applied to repair and reconstruct such Unit so that it is made tenable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Owners of those Units that may not be made tenable. The award made with respect to each such Unit shall be paid to the Owner of such Unit or its Mortgagee or Mortgagees, as their interests may appear, and the remaining portion of such Units, if any, shall become a part of the Common Elements and repair and use of such Unit shall be determined by the Board. Upon the payment of such award for the account of such Owner as provided herein, such Unit shall no longer be a part of the Condominium and the Percentage Ownership Interests in the Common Elements appurtenant to each remaining Unit that shall continue as part of the

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Condominium shall be equitably adjusted to distribute the Ownership of the undivided interests in the Common Elements among the reduced number of Owners.

e. If the entire Condominium is taken, or two-thirds (2/3) or more of the Units are taken or by such taking, all damages and awards shall be paid to the accounts of the Owners of the Units, as provided herein, in proportion to their Percentage Ownership Interests in the Common Elements and the Condominium Regime shall terminate upon such payment. Upon such termination, the Units and the Common Elements shall be deemed to be regrouped and merged into a single estate owned in undivided interest by all Owners as tenants-in-common in the Percentage Ownership Interest previously owned by each Owner in the Common Elements. In such case, unless otherwise unanimously agreed upon by all Owners, the Board, as soon as reasonably possible and as agent for all Owners, shall sell the Condominium, in its then condition, free from the effect of this Declaration, on terms satisfactory to the Board and the net proceeds of such sale shall thereupon be distributed to the Owners or their Mortgagees, as their interests may appear, in proportion to the Percentage Ownership Interest previously owned by each Owner in the Common Elements. If the Board fails to consummate a sale pursuant to the preceding sentence within twenty-four (24) months after the taking occurs, then the Board shall (or if the Board does not, any Owner or Mortgagee may) record a sworn statement setting forth such facts and reciting that under the provisions of this Declaration the prohibition against judicial partition provided for in Section 10.2 below has terminated and that judicial partition of the property may be obtained pursuant to the laws of the State of Texas.

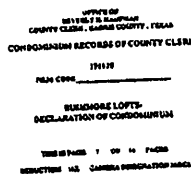
Section 7.3: Payment of Awards and Damages. Any damages or awards provided in this Article to be paid to or for the account of any Owner by the Board, acting as trustee, shall be applied first to the payment of any taxes or assessments by governmental authorities owing with respect to that Unit; secondly, to amounts due under any Mortgage; thirdly, to the payment of any Common Expense Charges or Special Assessments or other sums due and owing hereunder charged to or made against the Unit and unpaid; and finally, to the Owner of such Unit.

ARTICLE 8

Renovation

Section 8.1: Decision to Renovate. When it has been determined by the vote of Owners representing an aggregate Percentage Ownership Interest of eighty percent (80%) or more of the Condominium and by vote of Mortgagees of Units representing at least fifty-one percent (51%) of the votes of the Percentage Ownership Interest appurtenant to such Units that all or substantial part of the Common Elements can and should be renewed, reconstructed, renovated or replaced (other than as may be called for under Articles VI and VII), the expenses thereof shall be borne by the Common Expense Fund and a Special Assessment may be assessed therefor; provided, that any Owner not agreeing to such renewal, reconstruction, renovation or replacement may give written notice to the Board within ten (10) days following such decision to renew, reconstruct, renovate or replace that such Owner shall sell the Owner's Unit to the Council, for a cash price equal to the fair

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market value thereof. If such Owner and the Board, acting as agent of and on behalf of the Council, can agree on the fair market value thereof, then such sale shall be consummated within thirty (30) days after Owner and the Board agree upon such value. If such Owner and Board are unable to agree upon the price thereof, the date when either party notifies the other that either is unable to agree with the other as to such price or terms shall be the "Commencement Date," from which all periods of time mentioned in this Section 8.1 shall be measured. Within ten (10) days from the Commencement Date, the Owner and the Board shall designate in writing (and give notice of such designation to the other party) the appraiser selected by each such party who shall be a member of the Houston Board of Realtors (or successor entity) and shall have been active in the sale of condominium units similar to those in the Building in the Houston, Harris County, Texas, area for a period of at least five (5) years prior thereto. If either party fails to make such designation within the aforesaid ten (10) day period, then the appraiser already designated by one of the parties shall, within five (5) days after the expiration of such ten (10) day period, appoint another appraiser, who shall likewise be a member of the Houston Board of Realtors (or successor entity) and shall have been active in the sale of condominium units for a period of not less than five (5) years prior thereto. If the two appraisers designated by the Owner and the Board (or selected pursuant to the provisions of the preceding sentence) are unable to agree upon the price of such Unit within ten (10) days from the date of their designation or selection, then they shall appoint a third appraiser, being subject to the same qualifications as herein set forth for the first two (2) appraisers. If the two (2) appraisers are unable to agree upon a third appraiser within fifteen (15) days from the date that such first two (2) appraisers are appointed (or selected pursuant to the preceding provisions hereof; if one party fails to designate an appraiser), then either Owner or the Board, on behalf of both, may request such appointment of the third appraiser by the Senior Judge of the United States District Court for the Southern District of Texas, Houston Division acting in his individual capacity. In the event of the failure, refusal or inability of any appraiser so appointed to act, a new appraiser shall be appointed in his stead, which appointment shall be made in the same manner as hereinbefore provided for the appointment of such appraiser so failing, refusing or so unable to act. Each party shall pay the fees and expenses of the original appraiser (and any successor) appointed by (or on behalf of) a party and any party fails to designate an appraiser such party; the fees and expenses of the third appraiser, and any other expenses, if any, shall be borne equally by the Owner and the Board (which expenses, however, shall be paid out of the Common Expense Fund). A decision joined in by two (2) of the three (3) appraisers shall be the decision of the appraisers. If no two (2) appraisers agree, then the average of the two (2) closest in mathematical determinations shall constitute the decision of the appraisers. After reaching a decision, the appraisers shall give written notice thereof to the Owner and the Board, whereupon the sale of such Unit shall be consummated at such price within fifteen (15) days thereafter.

Section 8.2: Determination of Obsolescence and Decision to Sell. Upon the written agreement of Owners having a Percentage Ownership Interest of at least eighty percent (80%) and Mortgagees of Units representing at least sixty-seven percent (67%) of the votes of the Percentage Ownership Interest appurtenant to such Units, the Common Elements shall be declared obsolete and the entire Condominium shall be sold. In such instance, the Board shall forthwith file and record with the County Clerk of Harris County, Texas, a notice setting forth such fact or facts, and after the filing of such notice, the entire Condominium shall forthwith be sold by the Board as attorney-in-fact for all Owners, free and clear of the provisions contained in this Declaration; and upon such sale the

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Condominium Regime shall be terminated. The net sales proceeds shall be apportioned between the Owners on the basis of each Owner's Percentage Ownership Interest in the Common Elements, such apportioned proceeds shall be paid into separate accounts, each such account representing one Unit. Each such account shall be in the name of the Council, and shall be further identified by the number of the Unit and the name of the Owner. From each separate account, the Board, as attorney-in-fact, shall use and disburse the total amount (of each) of such funds, without contribution from one fund to another and such proceeds shall be disbursed first to the payment of any taxes or assessments by governmental authorities owing with respect to that Unit; secondly, to amounts due under any Mortgage; thirdly, to the payment of any Common Expense Charges or Special Assessments or other sums due and owing hereunder charged to or made against the Unit or Owner thereof and unpaid; and finally, to the Owner of such Unit.

Section 8.3: Termination of Legal Status of Condominium Regime. The legal status of the Condominium Regime may be terminated upon the agreement of Owners having a Percentage Ownership Interest of at least eighty percent (80%) and Mortgagees of Units representing at least sixty-seven percent (67%) of the votes of the Percentage Ownership Interest appurtenant to such Units. In such instance, the Board shall follow the same notice and sales procedure set forth above in Section 8.2 when the Common Elements have been declared obsolete.

ARTICLE 9

Amendment of Declaration, By-Laws, Rules and Regulations and Conflicts Between Provisions

Section 9.1: Amendment of Declaration. Except as otherwise provided by law and elsewhere in this Declaration (specifically Sections 8.1, 8.2 and 8.3), the provisions of this Declaration may be amended by an instrument duly recorded and approved by Owners having a Percentage Ownership Interest of at least sixty-seven percent (67%) and by the Mortgagees of Units representing a Percentage Ownership Interest appurtenant to Units of at least fifty-one percent (51%). Any amendment to this Declaration shall become effective only upon the recording in the Condominium Records of Harris County, Texas of a written amendment signed by the duly authorized officers of the Council, attesting to the proper adoption of such amendment and this Declaration may alter or destroy a Unit or a Limited Common Element without the consent of the Owners affected by such amendment.

Section 9.2: Amendment of By-Laws. The By-Laws of the Council, adopted pursuant to the provisions of this Declaration, may be amended from time to time at any regular or special meeting by the affirmative vote of members having fifty-one percent (51%) of the voting power. The Council provided notice of said proposed amendment is contained in the notice of any such meeting.

Section 9.3: Amendments of Rules and Regulations. The Rules and Regulations may be amended from time to time by the Board. Each Owner, by accepting conveyance of a Unit, shall comply with and abide by the Rules and Regulations as the same may be amended from time to time.

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Section 9.4: Conflict Between Provisions. In the event of any conflict among the terms and provisions of this Declaration, the Articles of Incorporation of the Council, the By-Laws, the Rules and Regulations or applicable law, or between any of them, the By-Laws shall control over the Rules and Regulations; the Articles of Incorporation shall control over both the By-Laws and the Rules and Regulations; this Declaration shall control over the Articles of Incorporation, the By-Laws and the Rules and Regulations; and applicable law shall control over all of the foregoing.

ARTICLE 10

Miscellaneous

Section 10.1: Estoppel Certificate. Any Mortgagee and any prospective purchaser of a Unit shall be entitled upon written request therefor to a statement from the Board (or any party appointed by the Board) setting forth the amount of any unpaid Common Expense Charges, Special Assessments or other sums due and owing hereunder against the Unit or the Owner thereof not paid by the Owner of a Unit in which such prospective purchaser or Mortgagee has an interest. Any prospective purchaser shall not be liable for nor shall the Unit conveyed be subject to the lien provided in this Declaration for any unpaid Common Expense Charges or Special Assessments made by the Board against the particular Unit involved or other sums due and owing hereunder against the Unit or the Owner thereof in excess of the amount set forth in such statement. Any such purchaser shall, however, be liable for any Special Assessments, Common Expense Charges, and any other sums owing hereunder against such Unit or the Owner thereof becoming due after the date of any such statement and shall be subject to the liens securing same as provided in this Declaration.

Section 10.2: No Partition. Except as may be otherwise specifically provided in this Declaration, the Common Elements shall remain undivided and shall not be subject to an action for partition or division of the co-ownership thereof so long as the Condominium is maintained as a Condominium Regime in accordance with the provisions hereof, and, in any event, all Mortgages secured by an interest in the Common Elements must be paid in full prior to bringing any action for partition or the consent of all holders of such Mortgages must be obtained; provided, however, that if any Unit shall be owned by two (2) or more Owners as tenants-in-common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition of such Unit as between such co-tenants.

Section 10.3: Alterations of Boundaries of Units.

a. If one person, firm or entity (including Declarant) is the Owner of all or part of two (2) Units that are adjoining, whether adjoining vertically (above and below each other) or horizontally (on the same floor of a Building) or if two Owners of adjoining Units so agree, then such Owner or Owners shall have the right (subject to all applicable building codes and ordinances and with the consent of its [their] Mortgagee[s] and upon obtaining written approval by the Board of plans and specifications therefor and the approval of appropriate amendment of this Condominium Declaration at a regular or special meeting of an aggregate number of members having not less than sixty-seven percent (67%) of the total voting power of the Council) to remove all or any part of any intervening partition or floor or to

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Section 10.7: Easements.

create doorways or other openings in such partition or floor, notwithstanding the fact that such partition or floor may in whole or in part be a Common Element, so long as no portion of any load bearing wall or load bearing column or structural slab is weakened or removed and no portion of any Common Element other than that partition or floor is damaged, destroyed or endangered. Likewise, in the event an Owner (including Declarant) shall own two (2) Units (or if the Owners of two (2) such Units so agree) such Owner or Owners shall have the right (subject to all applicable building codes and ordinances and with the consent of its (or their) Mortgage[s] and upon obtaining written approval of the Board of plans and specifications therefor and the approval of appropriate amendment of this Declaration at a regular or special meeting of an aggregate number of members having not less than sixty-seven percent (67%) of the total voting power of the Council) to install doorway openings in the wall separating such Units at such location as shall be appropriate to permit such Owner or Owners to utilize both such Units as one Unit. All of such work shall be performed at the sole cost and expense of the Owner or Owners involved and shall be subject to reasonable rules and procedures relating thereto as may be established by the Board. In any of such procedures relating thereto as may be established by the Board, in any of such events, the Owner or Owners involved may relocate the boundaries between adjoining Units by causing an appropriate instrument of amendment to this Declaration and the exhibits hereto to be prepared and executed by such Owners, which instrument, in order to be binding, shall be joined in by the President of the Council and filed for record in the office of the County Clerk of Harris County, Texas. The instrument of amendment (i) shall show the boundaries between those Units that are being relocated, (ii) shall recite the occurrence of any conveyancing between the Owners of such adjacent Units, and (iii) shall specify any reasonable reallocation as agreed upon between the Owners of the Units involved of the aggregate Percentage Ownership Interest in the Common Elements pertaining to those Units. Such plats and floor plans as may be necessary to show the altered boundaries between the Units involved shall be certified as to their accuracy by a registered architect or engineer.

- a. Prior to the election of the First Elected Board in accordance with Section 3.4(a) above, the Declarant shall have the right to grant to utility companies and other entities, such easements, rights-of-way, and other rights as may be reasonably necessary to service the Condominium and establish, operate or maintain the same as a viable condominium regime, without the consent or joinder of any other Owners or any Mortgagee. After the election of the First Elected Board in accordance with section 3.4(a), the Council, acting through its Board of Directors, shall have the right to grant permits, licenses and easements over the Common Elements for utilities, roads and other purposes necessary for the proper operation of the Condominium and the Condominium Regime. Additionally, in the event that the Condominium improvements are constructed, reconstructed, repaired, shift, settle or in some other way move in a manner resulting either in the Common Elements encroaching on any Unit or in any Unit encroaching on the Common Elements or on another Unit, the Owner or Owners affected shall have a valid easement with respect to such encroachment and the continued maintenance of such improvements for a period of as long as such encroachment exists.
- b. Each owner is hereby granted an Easement in common with each other Owner or ingress and egress through all Common Elements, subject to this Declaration and the Rules and Regulations promulgated from time to time by the Council. Such Easement shall be used jointly and in common with the other Owners and tenants of any Owners, each Mortgagee, and the agents, employees, customers and invitees of each Owner, tenant of each Owner and each such Mortgagee. Nothing contained herein shall be construed to create any rights of any nature in the public, nor shall any portion of the Common Elements be deemed to be dedicated for public use.

Section 10.8: Declarant's Right to Lease or Rent Units. The Declarant shall have the right to rent or lease Units owned by the Declarant to such parties and upon such terms and conditions as the Declarant may elect. All tenants or lessees of the Declarant shall have access to the Condominium and the Common Elements in the same manner as the Owners, and shall be bound by the terms of this Declaration, the By-Laws and the Rules and Regulations.

Section 10.9: No Amendment Without the Prior Consent of Declarant. The provisions of Sections 2.1(d), 10.3, 10.4 and 10.8 may not be added to, amended or deleted without the prior written consent of the Declarant.

- b. At any time prior to election of the First Elected Board, the Declarant shall have the right, at its option and sole cost and expense, without the consent of the Owners or the representative or representatives of any Mortgagee, to (i) make alterations, additions or improvements in, to and upon Units owned by the Declarant (hereinafter called "Declarant-Owned Units"), whether structural or non-structural, interior or exterior, ordinary or extraordinary; (ii) change the layout or number of rooms in any Declarant-owned Unit; (iii) change the size and/or number of Declarant-owned Units (including those resulting from such subdivision or otherwise) into one or more Units, combining separate Declarant-owned Units (including those resulting from such subdivision or otherwise) into one or more Units, altering the boundary walls between any Declarant-owned Units, or otherwise; and (iv) reapportion among the Declarant-owned Units affected by such change in size or number pursuant to the preceding clause (iii) their appurtenant interest in the Common Elements; provided, however, any such alteration, combination or improvement which (i) changes the

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SEVERY & SAFFORD
COUNTY CLERK, HARRIS COUNTY, TEXAS
CONDOMINIUM RECORDS OF COUNTY CLERK
FILE NO. _____
11/14/04
RUSHMORE LOFTS
DECLARATION OF CONDOMINIUM
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REGISTERED 146 CAMELDA OPERATING METHOD

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size and/or number of Declarant-owned Units; (ii) alters the boundary walls between any Declarant-owned Units; or (iii) reapportions among the Declarant-owned Units affected by such change in size or number pursuant to the preceding clause (ii) their appurtenant interest in the Common Elements shall not be effected unless an aggregate number of members having not less than sixty-seven percent (67%) of the total voting power of the Council shall approve at a regular or special meeting any amendments to this Declaration necessary to reflect such change or improvement; provided further, that the Percentage Ownership Interest in the Common Elements of the Unit (other than Declarant-owned Units) shall not be changed by reason thereof unless the Owners and Mortgagees, if any, of such Units shall consent thereto and, provided further, that the Declarant shall comply with all laws applicable to the Condominium and shall agree to hold all other Owners harmless from any liability arising therefrom. The Declarant shall also have the authority, at its sole option, cost and expense, to make improvements to the Common Elements without the prior consent of the Board, other Owners or the representative or representatives of holders of any Mortgage; provided, however, no improvement necessitating amendment of this Declaration shall be made unless an aggregate number of members having not less than sixty-seven percent (67%) of the total voting power of the Council shall approve such improvement and amendment at a regular or special meeting. No Owner shall ever be assessed for any such changes or improvements done by the Declarant pursuant to this provision. In the event of any such alteration, combination or improvement, the Declarant, at its sole cost and expense, shall file any amendments to this Declaration necessary to reflect such change or improvement.

IN WITNESS WHEREOF, Declarant, as the owner of 100% of the Units and the only member of the Council, and the officers of the Council, adopt and attest to the proper adoption of this instrument as required by the Texas Uniform Condominium Act on this the 31 day of December, 2004.

DECLARANT:

RUSHMORE LOFTS, L.P., a Texas limited partnership

By: HADLEY-CHENEVERT, LLC, a Texas limited liability company, general partner

[Signature]
Mr. Azizi, Manager

THE STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on Jan 25 2005 by MIR AZIZI, Manager of HADLEY-CHENEVERT, LLC, a Texas limited liability company, general partner of RUSHMORE LOFTS, L.P., a Texas limited partnership, for and on behalf of said limited partnership.

[Signature]
NOTARY PUBLIC, STATE OF TEXAS



Section 10.4: Correction of Errors. Declarant reserves, and shall have the continuing right until election of the First Elected Board to amend this Declaration or the By-Laws for the purpose of clarifying or resolving any ambiguities or conflicts herein, or correcting any misstatements, errors or omissions herein, provided, however, no such amendment of this Declaration shall be effected without obtaining at a regular or special meeting the approval of an aggregate number of members having not less than sixty-seven percent (67%) of the total voting power of the Council, and provided further that no such amendment shall change the stated numbers of Units nor the Percentage Ownership Interest in the Common Elements attributable thereto (except as set forth in Section 10.3).

Section 10.5: Enforcement. The Board or any Owner shall have the right to enforce, by any proceedings at law or in equity, all terms and provisions hereof. Failure by the Board or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed to be a waiver of the right to enforce such covenant or restriction thereafter.

Section 10.6: Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.