



The State of Texas  
Secretary of State

MAR. 30, 2001

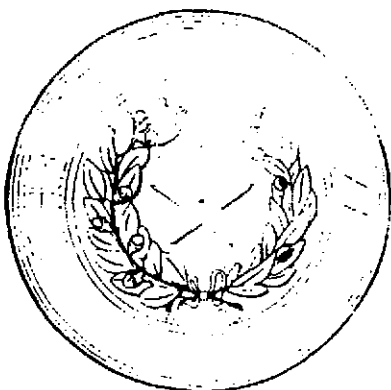
JOHN D. HUGHES/HUGHES WATTERS & ASKANASE  
1415 LOUISIANA, STE 3700  
HOUSTON ,TX 77002

RE:  
THE CAPITOL LOFTS COUNCIL OF CO-OWNERS  
CHARTER NUMBER 01622447-01

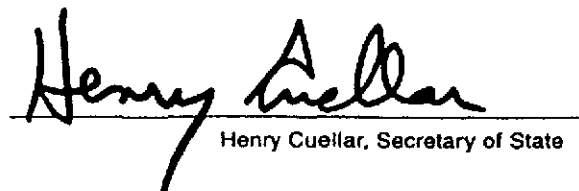
IT HAS BEEN OUR PLEASURE TO APPROVE AND PLACE ON RECORD THE ARTICLES OF INCORPORATION THAT CREATED YOUR CORPORATION. WE EXTEND OUR BEST WISHES FOR SUCCESS IN YOUR NEW VENTURE.

AS A CORPORATION, YOU ARE SUBJECT TO STATE TAX LAWS. SOME NON-PROFIT CORPORATIONS ARE EXEMPT FROM THE PAYMENT OF FRANCHISE TAXES AND MAY ALSO BE EXEMPT FROM THE PAYMENT OF SALES AND USE TAX ON THE PURCHASE OF TAXABLE ITEMS. IF YOU FEEL THAT UNDER THE LAW YOUR CORPORATION IS ENTITLED TO BE EXEMPT YOU MUST APPLY TO THE COMPTROLLER OF PUBLIC ACCOUNTS FOR THE EXEMPTION. THE SECRETARY OF STATE CANNOT MAKE SUCH DETERMINATION FOR YOUR CORPORATION.

IF WE CAN BE OF FURTHER SERVICE AT ANY TIME, PLEASE LET US KNOW.



VERY TRULY YOURS,

  
Henry Cuellar, Secretary of State



The State of Texas  
Secretary of State

CERTIFICATE OF INCORPORATION  
OF

THE CAPITOL LOFTS COUNCIL OF CO-OWNERS  
CHARTER NUMBER 01622447

THE UNDERSIGNED, AS SECRETARY OF STATE OF THE STATE OF TEXAS, HEREBY CERTIFIES THAT THE ATTACHED ARTICLES OF INCORPORATION FOR THE ABOVE NAMED CORPORATION HAVE BEEN RECEIVED IN THIS OFFICE AND ARE FOUND TO CONFORM TO LAW.

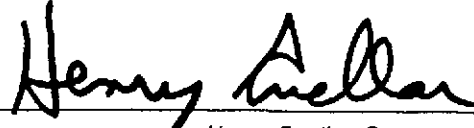
ACCORDINGLY, THE UNDERSIGNED, AS SECRETARY OF STATE, AND BY VIRTUE OF THE AUTHORITY VESTED IN THE SECRETARY BY LAW, HEREBY ISSUES THIS CERTIFICATE OF INCORPORATION.

ISSUANCE OF THIS CERTIFICATE OF INCORPORATION DOES NOT AUTHORIZE THE USE OF A CORPORATE NAME IN THIS STATE IN VIOLATION OF THE RIGHTS OF ANOTHER UNDER THE FEDERAL TRADEMARK ACT OF 1946, THE TEXAS TRADEMARK LAW, THE ASSUMED BUSINESS OR PROFESSIONAL NAME ACT OR THE COMMON LAW.

DATED MAR. 29, 2001

EFFECTIVE MAR. 29, 2001



  
Henry Cuellar, Secretary of State

NOTICE OF DEDICATORY INSTRUMENT  
*for*  
THE CAPITOL LOFTS COUNCIL OF CO-OWNERS

MAY 30 2006

THE STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS           §

05/12/06   2296310  
                  101127673

\$176.00

The undersigned, being the Managing Agent for The Capitol Lofts Council of Co-Owners ("Association"), a property owners' association as defined in Section 202.001 of the Texas Property Code hereby certifies as follows:

1.    Property: The Property to which the Notice applies is described as follows:  
  
The Capitol Lofts, a condominium regime located in Harris County, Texas according to the map or plat thereof recorded in Volume 179, Page 25, *et seq.* and re-filed in Volume 179, Page 49, *et seq.* of the Condominium Records of Harris County, Texas and any replats thereof.
  
2.    Restrictive Covenants: The description of the documents imposing restrictive covenants on the Property, the amendments to such documents, and the recording information for such documents are as follows:
  - a.    Documents:
    - (1)    The Condominium Declaration for The Capitol Lofts A Condominium.
  
  - b.    Recording Information:
    - (1)    Harris County Clerk's Film Code No. 179025 and re-filed under Film Code No. 179049.
  
3.    Dedicatory Instrument: In addition to the Dedicatory Instrument identified in Paragraph Two (2) above, the following documents are Dedicatory Instrument governing the Association:
  - a.    Articles of Incorporation of The Capitol Lofts Council of Co-Owners.
  - b.    Condominium By-Laws of The Capitol Lofts Council of Co-Owners.
  - c.    Rules of The Capitol Lofts Council of Co-Owners for Residential Units.
  - d.    Rules of The Capitol Lofts Council of Co-Owners for Commercial Units.

True and correct copies of such Dedicatory Instrument are attached to this Notice.

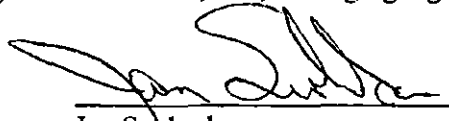
RP 021-79-0636

This Notice is being recorded in the Official Public Records of Real Property of Harris County, Texas for the purpose of complying with Section 202.006 of the Texas Property Code. I hereby certify that the information set forth in this Notice is true and correct and that the copies of the Dedicatory Instrument attached to this Notice are true and correct copies of the originals.

Executed on this 8th day of May, 2006.

THE CAPITOL LOFTS COUNCIL OF CO-OWNERS

By: Prime Site, Inc., Managing Agent

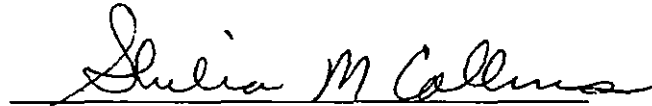
  
\_\_\_\_\_  
Jan Svoboda

THE STATE OF TEXAS  
COUNTY OF HARRIS

§  
§  
§

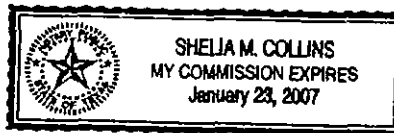
BEFORE ME, the undersigned notary public, on this day personally appeared Jan Svoboda of Prime Site, Inc., Managing Agent for The Capitol Lofts Council of Co-Owners, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purpose and in the capacity therein expressed.

SUBSCRIBED AND SWORN TO BEFORE ME on this the 8th day of May, 2006, to certify which witness my hand and official seal.

  
\_\_\_\_\_  
Notary Public in and for the State of Texas

Return to:  
Butler & Hailey, P.C.  
1616 S. Voss, Suite 500  
Houston, Texas 77057

116265



RP 021-79-0637

**ARTICLES OF INCORPORATION  
OF  
THE CAPITOL LOFTS COUNCIL OF CO-OWNERS**

FILED  
In the Office of the  
Secretary of State of Texas  
MAR 29 2001  
Corporations Section

The undersigned, a natural person over the age of eighteen years, acting as incorporator of The Capitol Lofts Council of Co-Owners (the "Corporation") under the Texas Non-Profit Corporation Act (the "Act"), does hereby adopt the following Articles of Incorporation (these "Articles") for the Corporation:

**ARTICLE I**

*Condominium Association*

The Corporation shall be, mean, and constitute a unit owners' association organized under Section 82.101 of the Uniform Condominium Act (Texas Property Code, Chapter 82) (the "Condominium Act"), as more specifically described in the Declaration of The Capitol Lofts, a Condominium, recorded under Film Code No. 179025 and re-recorded under Film Code No. 179049, both in the Real Property Records of Harris County, Texas, as amended from time to time (the "Declaration"), with respect to certain real property located in the City of Houston, Harris County, Texas, and described in the Declaration.

**ARTICLE II**

*Name*

The name of the Corporation is The Capitol Lofts Council of Co-Owners.

**ARTICLE III**

*Non-Profit Corporation*

The Corporation is a Non-Profit Corporation.

**ARTICLE IV**

*Duration*

The duration of the Corporation shall be perpetual.

**ARTICLE V**

*Purposes*

The purposes for which the Corporation is formed are to exercise the rights and powers of a unit owners' association under the Condominium Act, and to perform the duties and obligations of the Corporation in accordance with the Declaration, by-laws of the Corporation

RP 021-70-0638

(the "By-Laws"), and the laws of the State of Texas, including the Condominium Act, as each may be amended from time to time. Such purposes include (without limitation) the acquisition, construction, management, maintenance and care of property owned by the Corporation or owned commonly by the members.

## ARTICLE VI

### *Powers*

In furtherance of its purposes, the Corporation shall have the following powers which, unless otherwise provided in these Articles, the Declaration, the By-Laws, or the laws of the State of Texas, may be exercised by the board of directors:

1. all rights and powers conferred upon Non-Profit corporations by the laws of the State of Texas in effect from time to time;
2. all rights and powers conferred upon condominium associations by the laws of the State of Texas, including the Condominium Act, as amended from time to time; and
3. all powers necessary, appropriate, or advisable to perform any purpose or duty of the Corporation as set out in these Articles, the Declaration, the By-Laws, or the laws of the State of Texas.

## ARTICLE VII

### *Prohibitions*

No loans shall be made by the Corporation to its directors, unless permitted by the Act. No dividend shall be paid and no part of the income or net earnings the Corporation shall be distributed to, or inure to the benefit of, its members, directors, or officers, provided that:

1. The Corporation may pay compensation in a reasonable amount to its members, directors, or officers for services rendered and for actual expenditures made;
2. The Corporation may confer benefits upon its members in conformity with its purposes, including (without limitation) by acquiring, constructing or providing management, maintenance and care of property owned by the Corporation or owned commonly by the members, or by rebating excess membership dues, fees or assessments;
3. Upon dissolution or final liquidation, the Corporation may make distributions to its members, as permitted by the Act, the Condominium Act, and the Declaration; and
4. Any other distributions may be made if permitted by the Act or the Condominium Act.

## ARTICLE VIII

### *Membership*

The Corporation shall be a non-stock membership corporation. The members of the Corporation shall consist solely of the owners of units of the condominium created by the Declaration. The Declaration and By-Laws shall determine the number and qualifications of members of the Corporation; the classes of membership, if any; the voting rights and other privileges of membership; and the obligations and liabilities of members. Cumulative voting is not allowed.

## ARTICLE IX

### *Management by Board of Directors*

The management and affairs of the Corporation shall be vested in the board of directors, known as the Board of Administrators, except for those matters expressly reserved to the members in the Declaration and By-Laws. The Declarations and By-Laws shall determine the number and qualifications of directors; the term of office of directors; the methods of electing, removing, and replacing directors; and the methods of holding board meetings and obtaining consents.

## ARTICLE X

### *Limitations on Liability*

An officer or director of the Corporation shall not be liable to the Corporation, any unit owner or any other person for an act or omission in the officer's or director's capacity as an officer or director, unless a person seeking to establish liability proves that the officer or director has not acted: (1) in good faith; (2) with ordinary care; and (3) in a manner the officer or director reasonably believes to be in the best interest of the Corporation.

If the Texas Miscellaneous Corporation Laws Act, the Condominium Act, or the Act is amended after the date of adoption of this Article X to authorize action further eliminating or limiting the personal liability of officers or directors, then the liability of an officer or director of the Corporation shall be eliminated or limited to the fullest extent permitted by such statutes, as so amended. Any repeal or modification of the foregoing paragraph shall not affect adversely any right of protection of an officer or director of the Corporation existing at the time of such repeal or modification.

## ARTICLE XI

### *Indemnification*

The Corporation shall indemnify and advance expenses to each director and officer of the Corporation to the fullest extent permitted by law, including Article 1396-2.22A of the Act, for indemnifying and advancing the expenses of directors of non-profit corporations. The Corporation may, by By-Law or by resolution of the directors, indemnify and advance expenses to an employee or agent of the Corporation, or a person serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, to the same extent and subject to the same conditions under which it may indemnify and advance expenses to directors and officers under this Article.

The indemnification provided by this Article shall be in addition to any indemnification provided in the Declaration and By-Laws. Any repeal or modification of the indemnification provisions in the Act, this Article, the Declaration or the By-Laws shall not affect adversely any right to indemnification existing at the time of such repeal or modification.

## ARTICLE XII

### *Interested Transactions*

A contract or transaction between the Corporation and one or more of its directors, officers, or members, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors, officers, or members are directors, officers, or members, or have a financial interest, shall be void or voidable only to the extent described in Article 1396-2.30 of the Act, as amended.

## ARTICLE XIII

### *Amendment of Articles*

These Articles may be amended in accordance with the requirements of the Act and the Condominium Act, provided, however, that:

1. An amendment shall not conflict with the Declaration or the Condominium Act; and
2. An amendment shall not impair or dilute a right granted to a person by the Declaration, without that person's written consent.



## ARTICLE XIV

### *Amendment of By-Laws*

The By-Laws of the Corporation may be amended or repealed by the members only, according to the amendment provision of the By-Laws.

## ARTICLE XV

### *Dissolution*

The Corporation may be dissolved only as provided in the Declaration, the By-Laws, and the laws of the State of Texas. On dissolution, the assets of the Corporation shall be distributed to the members in accordance with the Declaration provision for distribution upon termination; if the Declaration has no such provision, then in accordance with the termination provision of the Condominium Act.

## ARTICLE XVI

### *Action by Non-Unanimous Consent Without Meeting*

Unless otherwise restricted by law, these Articles, or the By-Laws, any action required or permitted to be taken at any meeting of the members, directors, or members of a committee authorized by the board of directors may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of members, directors, or committee members as would be necessary to take that action at a meeting at which all of the members, directors, or committee members were present and voted. Any action taken by written consent signed by less than all of the members, directors, or committee members entitled to vote with respect to such action shall comply with the requirements, if any, for such action contained in Article 1396-9.10 of the Act, as amended.

## ARTICLE XVII

### *Initial Board of Directors*

The number of directors constituting the board of directors of the Corporation and their qualifications shall be fixed or determined by, or in the manner provided in, the By-Laws of the Corporation. In the absence of a by-law providing for the number of directors, or should the Corporation fail to determine the number of directors in the manner provided in the By-Laws, the number of directors constituting the board of directors shall be three (3). The number of directors constituting the initial board of directors is three (3), and the names and addresses of the persons who are to serve as the initial directors of the Corporation are:

<u>Name</u>	<u>Address</u>
James Knightstep	513 Mija Lane Seabrook, TX 77586
Duncan Shantz	530 Crestwood Seabrook, TX 77586
Gordon Jumonville	24910 Canston Court Spring, TX 77389

**ARTICLE XVIII**

*Initial Registered Office and Registered Agent*

The address of its initial registered office of the Corporation is 530 Crestwood, Seabrook, Texas 77586, and the name of the initial registered agent at such address is Duncan Shantz.

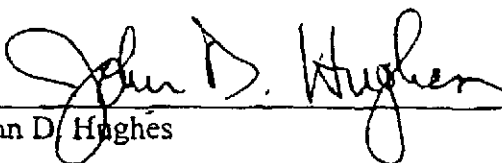
**ARTICLE XIX**

*Incorporation*

The name and street address of the incorporator are as follows:

John D. Hughes  
1415 Louisiana, Suite 3700  
Houston, Texas 77002

Executed on the 28<sup>th</sup> day of March 2001.

  
 \_\_\_\_\_  
 John D. Hughes

THE STATE OF TEXAS   §  
  §  
COUNTY OF HARRIS   §

This instrument was acknowledged before me on the 28<sup>th</sup> day of March 2001, by John D. Hughes.



  
 \_\_\_\_\_  
 Notary Public in and for the State of Texas

RP 021-79-0643

**CONDOMINIUM BY-LAWS  
OF  
THE CAPITOL LOFTS COUNCIL OF CO-OWNERS**

WHEREAS, a Declaration has been filed in the Condominium Records of Harris County, Texas, establishing a condominium regime over certain property more particularly described therein and to be commonly known as the "Condominium Project"; and

WHEREAS, pursuant to said Declaration, all the Co-Owners of Units in the aforesaid Condominium Project constitute the Council of Co-Owners, which shall govern the operation of said project subject to the Act, the Declaration and these By-Laws; and

WHEREAS, said Council of Co-Owners has been organized as a Texas non-profit corporation in connection with said Declaration; and

WHEREAS, the Developer of said Condominium Project desires to adopt By-Laws to govern the operation of The Capitol Lofts Council of Co-Owners and its Board of Administrators, pursuant to said Declaration, which By-Laws, as amended from time to time, as hereinafter provided, shall constitute the Condominium By-Laws of the Condominium Project pursuant to the Act and the Corporate By-Laws of The Capitol Lofts Council of Co-Owners, a Texas non-profit corporation:

NOW, THEREFORE, the Developer does hereby adopt the following Condominium By-Laws of the Condominium Project and corporate By-Laws of The Capitol Lofts Council of Co-Owners (hereinafter called the "Council of Co-Owners" or the "Council"):

1. Definitions. All words, terms and phrases used herein shall have the meaning set out in the Declaration.

RP 021-79-0644

RP 021-79-0645

2. Controlling Documents. In the event of any conflict between the terms and provisions of these By-Laws and the Declaration or the Act, or both, the Declaration shall control over these By-Laws and the Act shall control over both the Declaration or these By-Laws.

3. Voting by Co-Owners.

a. Each Co-Owner shall be entitled to one vote for each Unit owned by such Co-Owner. Such vote shall be weighted according to the percentage of interest of such Unit in the Common Elements relative to the total interest in all Common Elements then held by one or more Co-Owners. A vote which requires a majority of the weighted votes hereunder shall require the approval of Co-Owners whose percentage interest in the Common Elements exceeds fifty Percent of all interest in the Common Elements then held by one or more Co-Owners, regardless of whether the approving Co-Owners constitute a majority of the total number of Co-Owners. Unless otherwise specified herein, all votes by the Council shall be weighted. A vote taken without regard to such weighing of votes is referred to herein as a "simple" vote.

b. No Co-Owner, other than the Developer, shall be entitled to vote at any meeting of the Council until such Co-Owner has presented evidence of ownership of a Unit in the Condominium Project to the Secretary of the Board. The vote of each Co-Owner may only be cast by such Co-Owner or by a proxy given by such Co-Owner to a duly authorized representative. If title to a Unit shall be in the name of two or more persons as Co-Owners, any one of such Co-Owners may vote as the Co-Owner of the Unit at any meeting of the Council and such vote shall be binding on such other Co-Owners who are not present at such meeting until written notice to the contrary has been received by the Secretary of the Board, in which case the unanimous action of all such Co-Owners (in person or by proxy) shall be required to cast their vote. If two or more of such Co-Owners are present at any meeting of the Council, then unanimous action shall be required to cast their vote; provided, that they shall be deemed to be in unanimous agreement if one of them votes and none of such other Co-Owners makes prompt protest to the person presiding over the meeting.

4. Meetings.

a. Elections During Period of Developer Control. Until one hundred and twenty (120) days after the sale of seventy-five percent (75%) of the Units that may be created to persons other than the Developer, or at any time prior thereto at the sole discretion of the Developer, whichever shall occur first, the Developer shall appoint and remove all officers, all members of the Board, and the Manager. If the Developer voluntarily surrenders such appointment and

removal power before termination of the 120-day period described above, the Developer may require, for the duration of such one hundred twenty (120) day period, that specified actions of the Council or the Board be approved by the Developer before they become effective. Notwithstanding the foregoing, within one hundred and twenty (120) days after the sale of fifty percent (50%) of the Units that may be created to persons other than the Developer, one-third of the members of the Board shall be elected by Unit Co-Owners other than the Developer, at a regular or special meeting of the Council. In no event shall the period of Developer control described in this paragraph extend beyond three (3) years after the first conveyance of a Unit to a person other than the Developer, at which time such period of control shall automatically expire.

b. Annual Meetings. After the expiration of the Developer's appointment and removal power, pursuant to paragraph 4.a. above, the first annual meeting of the Council of Co-Owners shall be held, at which time the then officers and Administrators shall resign and a new Board of Administrators shall be elected. The new Board shall elect new officers of the Council within thirty (30) days after the expiration of the period of Developer control. Thereafter, each subsequent regular annual meeting of the Council shall be held at such time as may be set by the Board not less frequently than once every calendar year. At each annual meeting, the Administrators shall be elected by ballot of the Co-Owners in accordance with the provisions hereinafter set out and such other business as the Co-Owners deem proper shall be transacted at such time. All meetings of the Council shall be scheduled for a time and place reasonably convenient to the Co-Owners and the Project.

c. Notice. Notice of the time and place of all annual meetings, and the time, place and subject matter of all special meetings, shall be given to each Co-Owner by either personally delivering, faxing or mailing such notice to such Co-Owner. Notice of annual meetings shall be personally delivered, faxed or deposited in the mail, postage prepaid, at least ten (10) but no more than sixty (60) days prior to an annual meeting. If any Co-Owner shall fail to give an address to the Board for mailing such notices, all such notices shall be sent to the Unit of such Co-Owner and such Co-Owner shall be deemed to have been given notice of any such meeting upon the mailing of such notice irrespective of actual receipt of same. Attendance by a Co-Owner at any meeting, whether in person or by proxy, shall constitute waiver of notice of such meeting. Upon written request to the Secretary, a mortgagee shall be sent a copy of all notices and may designate a representative to attend any meetings.

d. Special Meetings. Special meetings of the Council of Co-Owners may be called at any time for the purpose of considering any matter which, by the terms of the Declaration, require the approval of all or some of the Co-Owners, or for any other reasonable purpose. Said meetings shall be called by written notice, signed by the President, a majority of the Board or by the Co-Owners having at least twenty percent (20%) of the total weighted votes and either personally

delivered, faxed or deposited in the mail, postage prepaid, not less than fifteen (15) nor more than forty (40) days prior to the date fixed for said meeting. Said notices shall specify the date, time and place of the meeting and the matters to be considered thereat.

e. Quorum. The presence in person or by proxy of the Co-Owners of more than fifty percent (50%) of the weighted votes of all Units shall constitute a quorum for holding any meeting of the Council. If, however, such quorum shall not be present or represented at any meeting of the Council, the Co-Owners present in person or represented by proxy shall have the power to adjourn and reconvene the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such reconvened meeting, at which a quorum shall be present or represented by proxy, any business may be transacted as was set out in the notification of the original meeting.

f. Proxies. At any meeting of the Council, votes may be cast in person or by proxy. Proxies must be in writing, dated and duly executed by a Co-Owner, and filed with the Secretary of the Board at or before the appointed time of each meeting of the Council. If a Unit is owned by more than one Co-Owner, each Co-Owner may vote or register protest to the casting of votes by the other Co-Owners of such Unit through a proxy duly executed by such Co-Owner. A Co-Owner may not revoke a proxy except by giving actual notice of revocation to the person presiding over a meeting of the Council. A proxy is void if it is not dated or if it purports to be revocable without notice. A proxy terminates one year after its date unless it specifies a shorter or longer time.

g. Majority Vote.

(1) When a quorum is present at any meeting of the Council, the vote of a majority (more than fifty percent (50%) of the weighted Unit votes by Co-Owners present in person or by proxy at such meeting) shall decide any question brought before such meeting unless the question is one upon which by express provisions of the Act, the Declaration or the By-Laws, a different vote is required, in which case such express provision shall govern and control a vote on such question.

(2) Notwithstanding anything to the contrary contained herein, subsequent to the surrender of control by Developer as set forth in paragraph 4(a) above, no vote which creates, alters or eliminates any right, duty or obligation of the Co-Owners of the Commercial Units shall be effective without the written consent of at least one of the affected Commercial Unit Co-Owners.

h. Cumulative Voting Prohibited. At all meetings of the Council, cumulative voting shall not be permitted.

5. Board of Administrators.

a. Number and Qualifications. The affairs of this Council shall be managed by a Board of five (5) Administrators, two (2) of whom shall thereafter be appointed by the Board as president and vice-president of the Council. Each member of the Board must be a Co-Owner, with the exception of the members of the first Board who shall be appointed by the Developer (and any replacement Administrators selected by the Developer or the members of the first Board prior to the first annual meeting of the Council).

b. Election. At the first annual meeting of the Council, the Co-Owners shall elect, by simple majority vote, two (2) Administrators for a term of one (1) year and three (3) Administrators for a term of two (2) years; and at each annual meeting thereafter, the Council shall elect, by simple majority vote, Administrators for a term of two (2) years, as vacancies occur by expiration of an Administrator's term of office.

c. Removal and Vacancies. Any Administrator may be removed from the Board, with or without cause, by a simple vote of two-thirds (2/3) of the Council by Co-Owners voting in person or by proxy at a special meeting called for such purpose or at an annual meeting. In such an event, a successor for such Administrator as has been removed shall be selected by a simple majority vote of the Council, and shall serve for the remainder of the term of the removed Administrator. Except as to vacancies provided by removal of Administrators by vote of the Council, vacancies in the Board occurring between annual meetings of the Council shall be filled by the remaining Administrators, and the successor shall serve for the remainder of the term of the replaced Administrator. Notwithstanding anything contained herein to the contrary, no Administrator appointed by the Developer may be removed by a vote of the Co-Owners prior to the first annual meeting called by the Developer pursuant to paragraph 4.b. above; and, provided further, the Developer may, at any time and from time to time, remove and replace any Administrator appointed by the Developer.

d. Compensation and Expenses. No member of the Board shall receive any compensation from the Council for acting as such but shall be reimbursed for reasonable expenses incurred while serving in such capacity.

e. Organization Meeting. The organization meeting of a newly elected Board shall be held within thirty (30) days of their election at such place and time as shall be fixed by the Administrators so elected at the meeting at which they were elected, and no further notice of the organization meeting shall be necessary. At each such organization meeting, the Board shall elect officers and address such other business as may come before the meeting.

f. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the Administrators. Notice of regular meetings shall be given to each Administrator, personally or by telephone, facsimile or telegraph, at least three (3) days prior to the date named for such meeting or by mail by depositing in the mail, postage prepaid, at least five (5) calendar days prior to such date.

g. Special Meetings. Special meetings of the Administrators may be called by the President and must be called by the Secretary at the written request of two (2) of the Administrators. Not less than three (3) days' notice of the meeting shall be given personally by telephone, facsimile or telegraph, which notice shall state the time, place and purpose of the meeting. Such notice may also be given by mail, by depositing in the mail, postage prepaid, at least five (5) calendar days prior to the date of the meeting.

h. Waiver of Notice. The attendance of any Administrator shall constitute waiver of notice of such meeting, unless such attendance is for the purpose of objecting that the meeting is not properly called.

i. Quorum. A quorum at Board meetings shall consist of a majority (more than fifty percent (50%)) of the entire Board. The acts approved by a majority of those present and voting at a meeting at which a quorum is present shall constitute the acts of the Board, except where approval by a greater number is required by the Declaration or by the By-Laws.

j. Nomination. Nomination for election to the Board shall be made by a nominating committee, which shall consist of a chairman who shall be a member of the Board, and two or more Co-Owners, all of whom shall have been appointed by the Board prior to each annual meeting of the Council, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. At the next annual meeting following its selection, the nominating committee shall make as many nominations for election to the Board as it shall in its discretion determine but not less than the number of vacancies that are to be filled. Nominations may also be made from the floor at the annual meeting.

k. Election. Election to the Board shall be by secret written ballot, at which election the Co-Owners may cast, in person or by proxy, in respect to each vacancy, such votes as they are entitled to exercise under the provisions of the Declaration. Persons receiving the largest number of votes, without regard to weighting, shall be elected. Cumulative voting shall not be permitted.

l. Open Meetings. Meetings of the Board must be open to Unit Co-Owners, subject to the right of the Board to adjourn a meeting of the Board and reconvene in closed executive session to consider actions involving personnel, pending litigation, contract negotiations, enforcement actions, matters involving



the invasion of privacy of individual Unit Co-Owners or matters that are to remain confidential by request of the affected parties and agreement of the Board. The general nature of any business to be considered in closed executive session must first be announced at the open meeting of the Board.

m. Notice of Board Meetings to Unit Owners. On the written request of a Unit Co-Owner to an officer or Administrator of the Council, such officer or Administrator shall inform the Co-Owner of the time and place of the next regular or special meeting of the Board or inform such Co-Owner of where such time and place may be obtained.

n. Powers and Duties. All the powers and duties of the Council existing under the Act, the Declaration and the By-Laws, shall be exercised exclusively by the Board, its agents, contractors or employees, subject only to approval by Co-Owners when such is specifically required. Such powers and duties shall include, but shall not be limited to, the following; subject, however, to the provisions of the Act, the Declaration and the By-Laws:

(1) To make and collect assessments against the Co-Owners for the purposes outlined in the Declaration for the Condominium Project and all its property and facilities;

(2) To use the proceeds of assessments in the exercise of its powers and duties;

(3) To maintain, repair, replace and operate the Property;

(4) To purchase insurance upon the Property and for the protection of the Co-Owners as required by, and pursuant to, the Declaration;

(5) To reconstruct improvements after casualty and further improve the Property;

(6) To amend the original regulations attached hereto as Exhibit "A" and to make such other regulations as it deems necessary respecting the use of the Property;

(7) To approve or disapprove of the transfer, mortgage and ownership of Units in the manner provided by the Declaration, if any;

(8) To arrange for and purchase water, sewer, garbage, electrical, gas and other necessary utility services for the Common Elements and (to the extent not separately metered and charged) for the Units;

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(9) To carry out, effect and enforce the provisions of the Act, the Declaration, the By-Laws and the regulations for the use of the Property; and, in particular, to establish a Rules Committee and procedures for the operation of such Committee to hear and determine the facts with respect to allegations of a failure of a Co-Owner or Co-Owners of a Unit or Units to comply with the provisions of the law and governing documents of the Condominium Project, all in accordance with the notice requirements set out in the Act and the Declaration, which Committee shall recommend to the Board such action as may be appropriate by way of limitation or use of Common Elements, cessation of furnishing of any common services or other remedy or action authorized by law or such governing documents;

(10) To contract for management of the Property and to delegate to the Manager all power and duties of the Board, except those that require the consent of the Co-Owners such as are specifically required by the Act, the Declaration and the By-Laws; provided, however, the Board may delegate to a contract manager the power to approve a proposed lessee of a Unit from a Co-Owner pursuant to the provisions of the Declaration; provided, further, any management contract shall be cancelable upon such terms as are approved by the Board;

(11) To employ personnel to perform the services required for proper operation of the condominium;

(12) To cause to be kept a complete record of all its acts and affairs and to present a statement thereof to the Co-Owners at the annual meeting of the Council or at any special meeting when such statement is required in a writing signed by twenty-five percent (25%) or more of the weighted votes of the Co-Owners calling such special meeting.

6. Actions by Written Consent; Telephone Meetings.

a. Written Consent. Any action required or permitted to be taken at any meeting of the Co-Owners, the Board of Administrators or any committee authorized by the Board of Administrators may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by a sufficient number of Co-Owners, Administrators or committee members as would be necessary to take such action at a meeting at which all of the Co-Owners, Administrators or committee members were present and voted. Any such action taken by less than unanimous written consent (hereinafter a "Non-Unanimous Consent") must comply with the following requirements:

(1) Each Non-Unanimous Consent must: (i) bear the date of signature of each Co-Owner, Administrator or committee member who signs the consent, and (ii) be delivered to the Council, by hand or by

certified or registered mail, return receipt requested, to the Council's principal place of business (addressed to the president or principal executive officer), or to its registered office, registered agent, transfer agent, registrar, exchange agent or an officer or agent of the Council having custody of the corporate books in which meetings of the Co-Owners, Administrators and committee members are recorded.

(2) A telegram, telex, cablegram or similar transmission by a Co-Owner, Administrator or committee member, or a photographic, photostatic, facsimile or similar reproduction of a writing signed by such person, shall be regarded as signed by such person for purposes of this Paragraph 6.a.

(3) No Non-Unanimous Consent shall be effective unless the requisite minimum number of consents is delivered to the Council, as required by this Paragraph 6.a, within sixty (60) days after the date of the earliest dated consent so delivered.

(4) Prompt notice of action by the Co-Owners, Board of Administrators or committee members by Non-Unanimous Consent shall be given to all Co-Owners, Administrators or committee members, as applicable, who did not consent to such action.

(5) If any action of the Co-Owners or Board of Administrators is taken by Non-Unanimous Consent, any articles or documents filed with the Secretary of State as a result of such action shall state, in lieu of any statement required by the Texas Non-Profit Corporation Act concerning any vote of the members or directors, that written consent has been given in accordance with the provisions of Article 1396-9.10 of such Act and that any written notice required by such Article 1396-9.10 has been given.

b. Telephone Meetings. The Co-Owners, Board of Administrators or any committee authorized by the Board of Administrators may hold a meeting by telephone conference call or similar communications equipment whereby all persons participating in the meeting can hear each other. Any notice of a meeting by telephone conference or similar equipment must state the fact that the meeting will be held by such means, as well as all other matters required to be included in the notice. Participation of a person in a conference call meeting constitutes presence of that person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

## 7. Officers.

a. The executive officers of the Council shall be a President, who shall be an Administrator, a Vice-President who shall be an Administrator, and a

Treasurer and Secretary, all of whom shall be elected annually by the Board and who may be pre-emptorily removed by vote of the Board at any meeting, with or without cause. Notwithstanding the foregoing, the Developer shall have the sole power to appoint officers during the period prior to the first annual meeting of the Council, as described in Paragraph 4.a. above, and within thirty (30) days after the expiration of the Developer's appointment power, the newly elected Board shall appoint the officers of the Council. Any person may hold two or more offices except the President shall not also be the Secretary. The Board shall from time to time elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Council.

b. The President shall be the chief executive officer of the Council and shall have all the powers and duties that are usually vested in the office of President of an organized association, including, but not limited to, the power to appoint committees from among the Co-Owners from time to time to assist in the conduct of the affairs of the Council, as the President determines in his or her discretion.

c. The Vice-President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President and shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board.

d. The Secretary shall keep the minutes of all proceedings of the Board and Council, and shall attend to the giving and serving of all notices to the Co-Owners and Administrators and other notices required by law, shall keep the records of the Council, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary of an organized association and as may be required by the Board or the President.

e. The Treasurer shall have custody of all property of the Council, including funds, securities and evidences of indebtedness and shall keep the books of the Council in accordance with good accounting practices, and shall perform all other duties incident to the office of Treasurer.

f. The compensation of all officers and employees of the Council shall be fixed by the Board. This provision shall not preclude the Board from employing an Administrator as an employee of the Council nor preclude the contracting with an Administrator for the management of the condominium.

Any amendments to the Declaration, as are approved pursuant to the procedures set forth in the Declaration, shall be prepared, executed, certified and recorded by the President and Secretary of the Council.

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8. Delegation of Board Duties. Notwithstanding anything contained herein to the contrary, the Board may, by written instrument executed by a majority of the Board, delegate any of its duties, powers or functions to a Manager, provided that any such delegation shall be revocable upon notice by the Board. The members of the Board shall not be liable for any omission or improper exercise by the Manager of any such duty, power or function so delegated.

9. Records. The Board or the Manager shall keep or cause to be kept a set of the following records at the registered office or principal office of the Council in Texas:

(a) Detailed financial records of all financial transactions of the Council, including all income and expenditures, that comply with generally accepted accounting principles (GAAP), and that are sufficiently detailed to enable the Council to prepare a resale certificate as required by the Act;

(b) The plans and specifications used to construct the condominium, except for buildings originally constructed before January 1, 1994;

(c) The condominium information statement prepared under the Act, and any amendments, and current copies of the Declaration, the Articles of Incorporation of the Council, these Bylaws and any rules and regulations adopted by the Council;

(d) The name and mailing address of each Co-Owner, including a list of all Co-Owners entitled to vote at meetings of the Council;

(e) Voting records, proxies and correspondence relating to amendments to the Declaration; and

(f) Minutes of meetings of the Council, the Board and any committees authorized by the Board.

All such records shall be reasonably available at the office of the Council, during normal business hours, for examination by a Co-Owner and a Co-Owner's agents, at such Co-Owner's expense, and by the holders, insurers and guarantors of any first Mortgages secured by Units. The Council shall, as a common expense, annually obtain an

independent audit of its financial records, which shall be performed by a certified public accountant if required by a vote of the Board or by majority simple or weighted vote of the Co-Owners at a meeting of the Council. A Mortgagee may also require that such audit be performed by a certified public accountant, and shall pay for any additional expense required. Copies of the audit shall be made available to the Co-Owners and to the holders, insurers and guarantors of first Mortgages, at the offices of the Council, during normal business hours. All financial records and annual audits shall be kept for at least three (3) years after the closing of the fiscal year to which they apply.

10. Co-Owner Information. Within thirty (30) days after acquiring an interest in an Unit, each Co-Owner shall provide the Manager with: (a) the Co-Owner's mailing address, telephone number and driver's license number, if any; (b) the name and address of the holder of any lien against the Unit, and any loan number; (c) the name and telephone number of any person occupying the Unit other than the Co-Owner; and (4) the name, address and telephone number of any person managing the Unit as agent of the Co-Owner. A Co-Owner shall notify the Manager within thirty (30) days after such Co-Owner has notice of a change in any such information, and shall provide the information on request by the Manager, the Board or the Council.

11. Amendment. These By-Laws may be amended from time to time as set forth in paragraph 4.g.(2) above; provided, however, no amendment to Section 4.a. may be made without the consent of the Developer and a weighted vote of eighty percent (80%) or more of such votes; and provided further, that Material Amendments to these By-Laws shall require the consent of at least sixty-seven percent (67%) of the weighted votes of all Units and at least fifty-one percent (51%) of the Eligible Mortgagees. Notice

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of the specific text of a proposed By-Law amendment shall be included in the notice of any meeting at which the amendment is to be considered. Notice of such meeting shall be provided to each Co-Owner and, in the case of Material Amendments, to each Eligible Mortgagee, no sooner than twenty (20) days, and no later than ten (10) days, before the date of the meeting and shall be either personally delivered, with a receipt signed by the Co-Owner, or deposited in the United States mail, postage prepaid. The date of delivery is the date of personal delivery or the postmark date, whichever is applicable.

12. Severability. The invalidity of any provision or provisions of these By-Laws shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of these By-Laws, and in such event, all the other provisions of these By-Laws shall continue in full force and effect as if such invalid provisions had never been included herein.

13. Fiscal Year. The Board of Administrators shall have the authority to set the fiscal year of the Council. In the absence of Board action, the fiscal year shall be the calendar year.

14. Waiver. No provision in these By-Laws or the attached Rules is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

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THE  
CONDOMINIUM DECLARATION  
FOR  
THE CAPITOL LOFTS  
A CONDOMINIUM

711 Main  
Houston, Texas 77002

Presented by  
711 Main, LLC



**CONDOMINIUM DECLARATION  
THE CAPITOL LOFTS  
A CONDOMINIUM**

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**CONDOMINIUM DECLARATION  
FOR**

**THE CAPITOL LOFTS  
A CONDOMINIUM**

WHEREAS, 711 MAIN, LLC, a Texas limited liability company (hereinafter called "Developer") is the owner of a certain tract of real property which, with improvements, is commonly known as "THE CAPITOL LOFTS, A CONDOMINIUM," consisting of approximately 8400 square feet, more or less, of land with one building 11 stories high thereon, containing a total of 35 residential apartment-home units and 2 commercial units, and certain other improvements located thereon (such real property and the improvements located thereon being hereinafter sometimes referred to as the "Property"), such tract of real property being located in Harris County, Texas, and more particularly described on Exhibit "A" attached hereto and made a part hereof, and the improvements thereon being more particularly described on the plan (hereinafter referred to as the "Plan"), attached hereto as Exhibit "B" and made a part hereof for all purposes; and

WHEREAS, Developer desires to submit said Property to a condominium regime pursuant to the Uniform Condominium Act (hereinafter called "Act"), Chapter 82 of the Texas Property Code;

NOW, THEREFORE, Developer hereby declares that the land described in Exhibit "A" attached hereto, together with all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, is hereby submitted to a condominium regime pursuant to the Act, and that said Property is and shall be held, conveyed, hypothecated, encumbered, pledged, leased, rented, used, occupied and improved subject to the following limitations, easements, restrictions, covenants, conditions, charges and liens, all of which are declared to be established for the purpose of enhancing the value, desirability and attractiveness of said Property and every part thereof. All of said limitations, easements, covenants, restrictions, conditions, charges and liens shall run with the said Property and shall be binding upon all parties having or acquiring any right, title or interest therein or any part thereof and shall be for the benefit of each owner of any portion of said Property or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof.

**ARTICLE I**

**DEFINITIONS**

For the purposes of this Declaration, the terms used shall have the following meanings:

A. Act shall mean Chapter 82 of the Texas Property Code, commonly known as the Uniform Condominium Act, as amended.

B. Board shall mean the Board of Administrators of the Council of Co-Owners established pursuant to this Declaration.

C. Building shall mean and refer to the principal structures presently situated on the Land.

D. Common Elements shall have the meaning given to it in Article II, Paragraph A.

E. Common Expenses means expenditures made or liabilities incurred by or on behalf of the Council of Co-Owners, together with any allocations to reserves.

F. Common Expense Liability means the liability for common expenses allocated to each Unit pursuant to Article IV.

G. Co-Owner shall mean a person, firm, corporation, partnership, association, trust, fiduciary or other legal entity, or any combination thereof, who owns a Unit or Units within the project, and shall include the Developer, but shall exclude those having an interest in a Unit or Units merely as security for the performance of an obligation. A Co-Owner shall have an exclusive ownership to such Co-Owner's Unit or Units and shall have a common right to a share or shares, with Co-Owners of other Units, in the Common Elements. Each Co-Owner may use the Common Elements in accordance with the purposes for which they are intended without hindering or encroaching upon the lawful rights of other Co-Owners.

H. Council of Co-Owners shall mean a council of all of the Co-Owners, as defined in Paragraph G. of this Article I, which shall be organized as a Texas non-profit corporation.

I. Developer shall mean and refer to 711 MAIN, LLC, and any of its affiliate entities and their successors and assigns, provided such successors or assigns are designated in writing by the Developer as a successor or assign of the right of the Developer set forth herein.

J. Exclusive Roof Area shall mean that area on the roof of the Building and the adjacent building at 719 Main designated for the exclusive use of a certain Unit Co-Owner, as described in Article X, Paragraph C.3. Such Exclusive Roof Areas shall be specifically identified on the Plan and such Plan shall set forth the Unit to which such Exclusive Roof Area is appurtenant.

K. Land shall mean the real property described in Exhibit "A" attached hereto.

L. Limited Common Elements. Limited Common Elements shall have the meaning prescribed to them in Article II, Paragraph D.

M. Maintenance Room shall mean the second floor area that is neither a Residential Unit nor a Commercial Unit, as described in Article III.A, which shall be owned by the Project as a Common Element and used for storage and maintenance purposes.



N. Manager shall initially mean 711 Main, LLC, and after it ceases to be the Manager, the person or firm selected by the Developer or the Board pursuant to the provisions of this Declaration.

O. Mortgage shall mean a Mortgage or Deed of Trust covering a Unit and the undivided interest in the Common Elements appurtenant thereto.

P. Mortgagee shall mean a beneficiary under a Mortgage and any servicing agent of such beneficiary. An Eligible Mortgagee shall mean a Mortgagee holding a first Mortgage who has submitted a written request that the Council notify it of any proposed action requiring the consent of Eligible Mortgagees hereunder. A reference to a given percentage of the Eligible Mortgagees (e.g. "51% of the Eligible Mortgagees") shall mean Eligible Mortgagees who represent such percentage of the votes of Units that are subject to Mortgages held by Eligible Mortgagees. Material Amendments shall refer to those amendments described in Article XV as requiring the consent of Eligible Mortgagees.

Q. Parking Area shall mean those portions of the Property and portions of any other properties, whether adjacent or not, and whether owned, leased or otherwise accessible by the Project, which are designated for parking for the Co-Owners pursuant to the Plan, this Declaration, the Rules and Regulations, or any resolution of the Board. The Parking Area includes any access areas or driveways related to the Parking Area.

R. Plan shall mean the plats, plans and list attached hereto as Exhibit "B" and hereby made a part hereof.

S. Project shall mean the Condominium Project established by this Declaration to be known as "THE CAPITOL LOFTS, A CONDOMINIUM."

T. Property shall mean the Land, together with all improvements and structures thereon and all easements, rights and appurtenances belonging thereto.

U. Restaurant shall mean that certain restaurant located in Commercial Unit 100 and 200, which Commercial Unit is sometimes referred to herein as the "Restaurant," without prejudice to the right of the Co-Owner of such Commercial Unit to lease it to other tenants or use it for other purposes.

V. Storage Spaces shall mean those areas of the Common Elements provided for storage purposes. The Developer, the Board, or the Council may allocate Storage Spaces on such basis and at such fees as the Developer, the Board, or the Council deems appropriate, and may prescribe such rules and regulations with respect to the Storage Spaces as it may deem fit.

W. Units.

1. Unit shall mean an enclosed space consisting of one or more rooms occupying all or part of a floor or floors of the Building, which enclosed space is not owned in common with the Co-Owners of other Units in the project. A balcony or patio

adjacent or contiguous to or associated with a Unit, if any, shall be a Limited Common Element allocated exclusively to that Unit. Each Unit is numbered as shown on the Plan, and the boundaries of each Unit shall be and are the interior surfaces of the perimeter walls, windows, window frames, doors and door frames and the unfinished surface of the floor and ceiling. A Unit includes both the portion of the Building so described and the air space so encompassed. Any Unit may be jointly or commonly owned by more than one person. All lath, furring, drywall, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces of the walls, floors or ceilings are a part of the Unit, and all other portions thereof are a part of the Common Elements. If any chute, flue, duct, wire, conduit, pipe, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements. All other spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are a part of the Unit. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies and patios (including interior and exterior surfaces of balconies or patios), and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit. Unless otherwise provided by law, the "interior surfaces of balconies or patios," as used in this Declaration, shall mean the area enclosed by (i) those horizontal planes being the top of the concrete floor surface of the balcony or patio in question and the plane of the ceiling of the Residential Unit of which such balcony or patio is a part; and by (ii) those vertical planes being the vertical exterior surfaces of the Building and those planes adjacent to the vertical exterior edges of the balcony or patio; and "exterior surfaces of balconies or patios" shall mean all other parts of balconies and patios. "Exterior doors," as used herein, shall mean doors entering into a Unit either from the common interior hallways of the Building, or from outside of the Building, including from balconies or patios.

2. Residential Unit shall mean those Units in the Project used for the purposes set forth in Article XIV, Paragraph A.1.

3. Commercial Unit shall mean those Units in the Project used for the purposes set forth in Article XIV, Paragraph A.2.

4. Definition of "Unit". A reference to "Unit" or "Units" shall mean and include Residential Units and Commercial Units. It is intended that the terms "Unit," "Residential Unit" and "Commercial Unit," as used in this Declaration, shall have the same meaning as the term "Unit," as used in the Act.

## ARTICLE II

### COMMON ELEMENTS

A. Definition of Common Elements. Common Elements consist of all portions of the Property, except the Units, and including the Limited Common Elements and all easements benefiting the Property, unless otherwise expressly specified herein. The Common Elements include, without limitation and, if applicable, any of the following items located on the Property: the walls, roof, hallways, stairways, exterior windows, entrances and exits, mechanical equipment areas, grounds, walkways, mailboxes, fire escapes, pipes, ducts, flues, shafts, electrical wiring and conduits (except pipes, ducts, flues, shafts, electrical wiring and conduits situated entirely within a Unit and serving only such Unit), central heating and ventilating systems servicing the Common Elements, public utility lines, structural parts of the Buildings, the Maintenance Room, and all other portions of the Property except the individual Units. Structural columns located within the boundaries of a Unit shall be part of the Common Elements. Any references to "Common Elements" appearing on the Plan (except references to Limited Common Elements) shall be deemed solely for purposes of general information and shall not be limiting in any way, nor shall any such reference define the Common Elements in any way. The use of the Common Elements and the right of the Unit Owners with respect thereto shall be subject to and governed by the Act, the documents described in Article VI, and the rules and regulations of the Council.

B. Restrictions on Use of Certain Common Elements by Commercial Unit Co-Owners. Unless by express written permission of the Council, the owners, tenants, guests, licensees, invitees, agents, representatives, and guests of the Co-Owners of the Commercial Units shall not have the right to use the following Common Elements, which shall be for the exclusive use of the Residential Unit Co-Owners:

1. Any and all Common Elements on the third floor through the tenth floor, including any Common Elements on the roof of the Building or the roof of building located at 719 Main, adjacent to the Building.

2. All passenger elevators and their respective lobbies, shafts and pits, except in the event that use of the elevator is necessary (i) to provide access to the second level of the first floor Restaurant to disabled guests or (ii) to provide access to the portion of the second floor Commercial Unit that is not the Restaurant up to a maximum of twenty persons per day;

3. The weight room, Maintenance Room, and storage areas on the second floor.

C. Partition Prohibited. The Common Elements shall remain undivided and shall not be the object of an action for partition or division of the co-ownership thereof so long as suitable for a condominium regime, and, in any event, all Mortgages must be paid in full prior to bringing an action for partition or the consent of all Mortgagees must be obtained.

D. Definition of Limited Common Elements. In general, the Limited Common Elements consist of those areas of the Building and facilities which are not part of a Unit and are to be used exclusively by one or more Unit Co-Owners, including all installations, equipment and facilities contained in such areas or elsewhere which service only one or more Units, including hallways, common entrances to and exits from one or more Units which are for the exclusive use of the Co-Owner or Co-Owners of such Unit or Units served thereby. Examples of Limited Common Elements include, but are not limited to, shutters, awnings, window boxes, doorsteps, stoops, porches, balconies and patios (including interior and exterior surfaces of balconies or patios), parking spaces, Storage Spaces, the Exclusive Roof Area, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries. The Limited Common Elements for Commercial Unit 100 include, but are not limited to, the vent on the back of the Building used by the Restaurant, the area in the alley behind the Building where the Restaurant air conditioning equipment is located, and the area in the Maintenance Room where the air handler mechanical unit for such Commercial Unit is located. The Limited Common Elements for Commercial Unit 200 include, but are not limited to, the area in the Maintenance Room where the air handler mechanical unit for such Commercial Unit is located.

E. Parking Spaces. Each Co-Owner shall be provided the use of those parking spaces in the Parking Area that are allocated to such Unit in the Plan. Upon the sale or other transfer of a Unit, the transferee of a Unit shall succeed to the parking rights of the transferring Co-owner. A Co-Owner may lease the use of an assigned parking space. The Developer may, at its option, at any time and from time to time, designate any unassigned parking spaces to a Co-Owner or to the Council. Parking spaces designated by the Developer to the Council may be provided by the Council for other uses at its option at any time and from time to time under such terms and conditions as the Council may deem appropriate.

### ARTICLE III

#### UNIT DESCRIPTIONS AND DEVELOPER RIGHTS

A. Types of Units. There shall be thirty-five (35) Residential Units and two (2) Commercial Units, identified by type and unit and generally described as follows:

	<u>Type</u>	<u>Unit</u>	<u>Sq. Ft.</u>	<u># Bathrms</u>
10th Floor	<u>Residential Units:</u>	1001	2301 ft.	2 B
		1002	2123	2 B
		1003	2118	2-1/2 B
9th Floor	<u>Residential Units:</u>	901	1179	1-1/2 B
		902	1378	1 B
		903	1267	1 B
		904	906	1 B
		905	1000	1 B

8th Floor	<u>Residential Units:</u>	801	2557	2-1/2 B
		802	650	1 B
		803	906	1 B
		804	1000	2 B
7th Floor	<u>Residential Units:</u>	701	1179	1-1/2 B
		702	1981	2 B
		703	1258	1-1/2 B
		704	906	1 B
		705	1000	2 B
6th Floor	<u>Residential Units:</u>	601	1179	1-1/2 B
		602	1378	1 B
		603	1000	2 B
5th Floor	<u>Residential Units:</u>	501	1179	1-1/2 B
		502	1378	1 B
		503	1258	1-1/2 B
		504	1258	1-1/2 B
		505	1812	2-1/2 B
		506	1000	2 B
4th Floor	<u>Residential Units:</u>	401	1179	1-1/2 B
		402	1378	1 B
		403	1000	2 B
3rd Floor	<u>Residential Units:</u>	301	1179	1-1/2 B
		302	1378	1 B
		303	1258	1-1/2 B
		304	1258	1-1/2 B
		305	1812	2-1/2 B
		306	1000	2 B
2nd Floor	<u>Commercial Units:</u>	200	4015	2 B
1st Floor	<u>Commercial Units:</u>	100	4911	2 B

B. Unit Identification and Location. Each Unit is separately numbered and is identified by unit number on the Plan, attached hereto and incorporated herein as if fully recited by reference thereto, and on the respective plats of each floor attached hereto as part of the Plan.

C. Unit Boundaries. The boundaries of each Unit are shown on the Plan, including the plats included with the Plan, and are more particularly described in the definition of Unit in Article I of this Declaration.

D. Maximum Number of Units. As described in Article X, Paragraphs D and E, of this Declaration, the Developer reserves the right to make alterations to both Residential and Commercial Units owned by the Developer, including by subdividing or combining such Units or converting Residential Units to Commercial Units or Commercial Units to Residential Units, or either into Common Elements. However, no such alterations will change the percentage interests in the Common Elements of any Units (other than Developer-Owned Units) without the consent of the Co-Owners of such other Units. The maximum number of Units that the Developer reserves the right to create in the Building is 45.

E. Developer Rights. Pursuant to the Act, the Developer reserves the following rights:

1. Special Declarant Rights. The Developer reserves the following rights, referred to as "Special Declarant Rights" under the Act:

a. To complete or make improvements indicated on plats and plans filed with this Declaration, including the Plan attached as Exhibit "B" hereto;

b. To exercise any development right set forth in Paragraph E.2 below;

c. To maintain sales, management and leasing offices, signs advertising the Project, and models, as described in Articles V.C.4 and XIV.E of this Declaration, and use common rooms for sales purposes;

d. To use easements through the Common Elements for the purpose of making improvements within the Project or within real property that may be added to the Project, or any other easements as may be reasonably necessary to discharge Developer's obligations under the Act and this Declaration, including the recorded easements described in Exhibit "C" attached hereto and the utility easements described in Article V.C.5 hereof; and

e. To appoint or remove any officer or Board member, during the period of Developer control described in Article VII, Paragraph I of this Declaration.

2. Development Rights. The Developer reserves the following development rights ("Development Rights"):

a. To add real property or interests in real property to the Project, whether by purchase, lease, easement or otherwise, which may specifically include easements or access rights related to the Parking Area; provided, that any additions of real property for purposes of creating additional Units shall comply with the Act;

b. To alter, subdivide, combine and convert any Residential and Commercial Units owned by Developer, including by converting such Developer-Owned Units into Common Elements, as described in Article X, Paragraphs D.1 and E. hereof, and to make any amendments to this Declaration that results therefrom, as described in Article XVII.C hereof.

c. To make changes or additional improvements to the Common Elements, including without limitation, the Exclusive Roof Area and back alley, during any time when the Developer owns a Unit, as described in Article X.D.2 hereof;

d. To amend the Declaration, if necessary, to meet FNMA, FHLMC, FHA or VA requirements, as described in Article XVII.C.4. hereof; and

e. To designate any unassigned parking spaces, as described in Article II.E. hereof; and

f. To convey, license, and lease to any person or entity any easement or portion thereof appurtenant to the Property.

3. Time Limitations and Applicable Property. Unless sooner terminated by a recorded instrument signed by Developer, any of the above Special Declarant Rights and Development Rights may be exercised by Developer for the maximum period of time permitted by the Act and the applicable provisions of this Declaration. All such Special Declarant Rights and Development Rights apply to the Property as a whole, as described on Exhibit "A" attached hereto, unless limited to specific portions of the Property by the applicable provisions of this Declaration. Unless limited by this Declaration, any of the Special Declarant Rights and Development Rights may be exercised with respect to different portions of the Property at different times, and in any order. Developer makes no assurances as to the timing or order of its exercise of any such rights, the boundaries of any portions of the Property affected, or whether its exercise of such rights with respect to one portion will require the exercise of such rights as to other portions or the Property as a whole.

## ARTICLE IV

### OWNERSHIP INTEREST AND SHARE OF COMMON EXPENSE

The ownership interest of each Co-Owner shall consist of fee simple title to the Unit owned by such Co-Owner, an undivided interest in the Common Elements, and the right to use any Limited Common Elements allocated to that Unit. All Limited Common Elements allocated to a Unit and identified in this Declaration (including the Plan) are hereby permanently assigned to each such Unit. Any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of an undivided interest in the Common Elements will be void unless the Unit to which that interest is allocated is also transferred.

The fractional interest, expressed as a percentage, which each Unit owns in and to the Common Elements, and the fractional share, expressed as a percentage, of the common expenses for which each Unit is liable, are as set out on the Plan. As between the Residential Units and the Commercial Units, the formula for determining each Unit's undivided interest in the Common Elements and the share of common expense liability is a proportional allocation based on the access to the Limited Common Elements. As among the Residential Units, the formula for determining each Residential Unit's undivided interest in the Common Elements and the shares of common expense liability is a proportional allocation based on the relative square footage of each Residential Unit divided by the total square footage of all Residential Units.

## ARTICLE V

### ENCROACHMENTS AND EASEMENTS

A. Recorded Easements. Recorded easements and licenses to which the Project is currently subject are set forth on Exhibit "C" attached hereto. The Project is also subject to the easements described in Paragraphs B. and C. of this Article V, and to the easement of enjoyment of the Residential Limited Common Elements described in Paragraph A. of Article XVI.

B. Encroachments. If (1) any portion of the Common Elements or Limited Common Elements encroaches upon any Unit; (2) any Unit encroaches upon any other Unit or upon any portion of the Common Elements or Limited Common Elements; or (3) any encroachment shall hereafter occur as a result of (i) construction of the Building; (ii) settling or shifting of the Building; (iii) any alteration or repair to the Common Elements or Limited Common Elements made by or with the consent of the Board in accordance with this Declaration or the By-Laws; (iv) any repair or restoration of the Building (or any portion thereof) or any Unit or Limited Common Elements after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements or Limited Common Elements then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the encroachment exists and so long as the physical boundaries of the Units after the events described in items (i) through (iv) above are in substantial accord with the description of the boundaries that appear in this Declaration.

C. Other Easements.

1. Pipes, Wires, Ducts, Cables, Conduits, Public Utility Lines and All Other Common Elements Located Inside of Units. Each Unit shall have an easement in common with all other Units, and each Unit shall be subject to an easement in favor of each other Unit, to install, use, operate, maintain, repair, rebuild, restore, alter and replace all pipes, wires, ducts, vents, cables, conduits, public utility lines and all other Common Elements and Limited Common Elements located in, over, under, through or upon any of the other Units or elsewhere on the Property and serving such Unit. The Board shall have a right of access to each Unit to inspect the same, to remove violations therefrom and to maintain, repair or replace the Common Elements and Limited Common Elements contained therein or elsewhere in the Property; provided such right of access shall be



exercised in such a manner as will not unreasonably interfere with the use of the Residential Units for dwelling purposes. Such entry shall be permitted on not less than one day's notice, except that no notice will be necessary in the case of an emergency.

2. Access. Each Unit shall have, and each Unit shall be subject to, a perpetual easement for the use and maintenance of all rights of ingress and egress along driveways, walkways, stairways, lobbies, hallways and corridors providing access to such Unit and to the Parking Area.

3. Support and Necessity. Each Unit shall have an easement of support and necessity and shall be subject to an easement of support and necessity in favor of all other Units, Common Elements, and the Limited Common Elements.

4. Signs for Developer Sales Program. At any time when the Developer owns a Unit, the Developer, its successors and assigns, shall have an easement to erect, maintain, repair and replace, from time to time, one or more signs on the Property for the purposes of advertising the sale of Residential Units or the leasing of any Unit, and for the purpose of advertising the name of any interim or permanent lenders affording financing respecting the Project or any Unit.

5. Utilities. The Developer reserves the right, for itself and its designee (until the Developer no longer owns a Unit), and the Board also reserves the right, to grant such electric, gas, steam or other utility easements or relocate any existing utility facilities in any portion of the Property as the Developer, its designee or the Board shall deem necessary or desirable for the proper operation and maintenance of the Building, or any portion thereof, or for the general health or welfare of the Unit Co-Owners or their tenants provided that such additional utilities or the relocation of existing utilities will not prevent or unreasonably interfere with the use of the Residential Units for dwelling purposes. The utilities and their employees and agents shall have the right of access to any Unit or the Common Elements or the Limited Common Elements in maintenance of such facilities, provided such right of access shall be exercised in such a manner as shall not unreasonably interfere with the use of the Residential Units for dwelling purposes or the normal conduct of business of the tenants and occupants of the Commercial Units. Notwithstanding the foregoing, the Co-Owners of ground floor Commercial Units may grant additional (or relocate existing) utility facilities in respect of such Commercial Units or Commercial Limited Common Elements only, and the Board may grant additional (or relocate existing) utility facilities in respect of all other Residential and Commercial Units, the Common Elements or Residential Limited Common Elements only, subject to the provisions set forth in the preceding sentences.

## ARTICLE VI

### APPLICABLE DOCUMENTS

Applicability of Declaration and Other Documents. The Council and all present and future Co-Owners, tenants and occupants of the Units shall be subject to, and shall comply with,

the provisions of this Declaration, the By-Laws adopted or to be adopted by the Developer or the Council, and the Rules and Regulations for the Project as the same may exist from time to time. The acceptance of a deed or conveyance to, or the entering into of a lease or the entering into the occupancy of, any Unit shall constitute an agreement that the provisions of this Declaration, the By-Laws, and the Rules and Regulations, as they may exist from time to time, are accepted and ratified by such Co-Owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the Land and shall bind any person having at any time any interest or estate in any Unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof.

## ARTICLE VII

### ORGANIZATION OF THE COUNCIL OF CO-OWNERS

A. Incorporation. Within a reasonable time of filing this Declaration, the Developer shall cause the Council of Co-Owners to be organized as a Texas non-profit corporation to be known as "The Capitol Lofts Council of Co-Owners," herein referred to as the "Council of Co-Owners" or the "Council".

B. Membership and Voting. All of the Co-Owners shall be members of the Council of Co-Owners.

1. Subject to the provisions of Article IX, Paragraph F.5. and subparagraph 3 below, the Co-Owner or Co-Owners of one or more Units shall be entitled to one vote per Unit for each Unit owned by such Co-Owner or Co-Owners equaling the percentage of interest of such Unit in the Common Elements.

2. No Co-Owner, other than the Developer, shall be entitled to vote at any meeting of the Council until he has presented evidence of ownership of a Unit in the condominium Project to the Secretary of the Board. The vote of each Co-Owner may only be cast by such Co-Owner or by a proxy given by such Co-Owner to his duly authorized representative. If title to a Unit shall be in the name of two or more persons as Co-Owners, any one of such Co-Owners may vote as the Co-Owner of the Unit at any meeting of the Council and such vote shall be binding on such other Co-Owners who are not present at such meeting until written notice to the contrary has been received by the Secretary of the Board, in which case the unanimous action of all such Co-Owners (in person or by proxy) shall be required to cast their vote. If two or more of such Co-Owners are present at any meeting of the Council, then their unanimous action shall be required to cast their vote; provided, that they shall be deemed to be in unanimous agreement if one of them votes and none of such other Co-Owners makes prompt protest to the person presiding over the meeting.

3. In the event of a vote of the Co-Owners on an issue that could materially affect the interests of the Co-Owners of the Commercial Units, the issue must be approved by at least one Co-Owner of a Commercial Unit along with the percentage of the Co-Owners required hereunder or in the Bylaws to approve such measures.

C. By-Laws. The initial condominium By-Laws of the Council shall be adopted by the initial Board and may be amended thereafter as provided in the Act. Such By-Laws shall also serve as the by-laws of the non-profit corporation.

D. Meetings. Meetings of the Council of Co-Owners to perform its duties under this Declaration shall be in accordance with the condominium By-Laws and as amended from time to time.

E. Board of Administrators. The affairs of this Council shall be managed by a Board of five (5) Administrators, two of whom shall thereafter be appointed by the Board as the president and vice-president of the Council. Each member of the Board must be a Co-Owner, and one member shall be a Co-Owner of a Commercial Unit, with the exception of the initial Board members who shall be appointed by the Developer (and any replacement Administrators selected by the Developer or the members of the initial Board prior to the first meeting of the Council). In the event of a vote of the Board on an issue materially affecting the Commercial Units, the Board member who is also a Co-Owner of a Commercial Unit must vote in favor of the measure in order for it to be approved by the Board. The Administrators shall have staggered two-year terms, as further described in the By-Laws.

F. Powers of the Board. The Board of Administrators shall have such powers as set out in the Act and the By-Laws and shall exercise them in accordance with the Act, this Declaration and said By-Laws.

G. Officers of the Council. The Executive Officers of the Council shall be a president, who shall be an Administrator, a vice-president, who shall be an Administrator, a treasurer and a secretary, all of whom shall be elected annually by the Board and who may be pre-emptorily removed by vote of the Board at any meeting, with or without cause. Any person may hold two or more offices, except the president shall not also be the secretary. The Board shall, from time to time, elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Council.

H. Officers' Powers and Responsibilities. The officers shall have such powers and responsibilities as are set out in the By-Laws and shall exercise them in accordance with the Act, this Declaration and the By-Laws.

I. Period of Developer Control. Notwithstanding anything herein to the contrary, until one hundred and twenty (120) days after the sale of seventy-five percent (75%) of the Units that may be created to persons other than the Developer, or at any time prior thereto at the sole discretion of the Developer, whichever shall occur first, the Developer shall appoint and remove all officers of the Council, all members of the Board, and the Manager. If the Developer voluntarily surrenders such appointment and removal power before termination of the 120-day period described above, the Developer may require, for the duration of such one hundred twenty (120) day period, that specified actions of the Council or the Board be approved by the Developer before they become effective. Notwithstanding the foregoing, within one hundred and twenty (120) days after the sale of fifty percent (50%) of the Units that may be created to

persons other than the Developer, one-third of the members of the Board shall be elected by Unit Co-Owners other than the Developer, at a regular or special meeting of the Council. In no event shall the period of Developer control described in this paragraph extend beyond three (3) years after the first conveyance of a Unit to a person other than the Developer, at which time such period of control shall automatically expire. After the expiration of the Developer's appointment and removal power, pursuant to this paragraph, the first annual meeting of the Council of Co-Owners shall be held at which time the then officers and Administrators shall resign and a new Board of Administrators shall be elected. The new Board shall elect new officers of the Council within thirty (30) days after the expiration of the period of Developer control.

## ARTICLE VIII

### INDEMNITY AND LIABILITY FOR LATENT DEFECTS

A. Indemnification of Administrators and Officers. Each Administrator and officer of the Council (hereinafter "Official") shall be indemnified by the Council against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon such Official in connection with any proceeding to which the Official may be a party, or in which the Official may become a party, or in which the Official may become involved, by reason of being or having been an Administrator or officer of the Council, or any settlement thereof, whether or not such person is an Administrator or officer at the time such expenses are incurred, except in such cases wherein the Official is adjudged guilty of willful misfeasance or malfeasance, gross negligence or bad faith in the performance of duties; provided that in the event of a settlement the indemnification herein shall apply only when the Board approves such settlement and reimbursement as being in the best interest of the Council.

The foregoing rights of indemnification shall be in addition to, and not exclusive of, all other rights to which such Official may be entitled, under statute, contract or otherwise. Specifically, all such Officials shall be indemnified and entitled to the advancement of expenses to the maximum extent permitted for directors of non-profit corporations under Article 1396-2.22A of the Texas Non-Profit Corporation Act. The rights of indemnification herein provided may be insured against by policies maintained by the Council; shall be severable, shall not affect any other rights to which any Administrator or officer may now or hereafter be entitled, shall continue as to a person who has ceased to be such Administrator or officer and shall inure to the benefit of the heirs, executors and administrators of such a person. Nothing contained herein shall affect any rights to indemnification to which Council personnel, other than Administrators and officers, may be entitled by contract or otherwise under law.

Expenses in connection with the preparation and presentation of a defense to any claim, action, suit or proceeding of the character described above may be advanced by the Council prior to final disposition thereof upon receipt of an undertaking by or on behalf of the Administrator or officer, to repay such amount if it is ultimately determined that he or she is not entitled to indemnification under this Article. Such undertaking may be secured by a surety bond on other suitable insurance if required by the Board of Administrators or otherwise required by law.

It is intended that the Administrators and officers shall have no personal liability (except as Co-Owners) with respect to any contract made by them on behalf of the Council or the Project. It is also intended that the liability of any Co-Owner arising out of any contract made by the officers or Board or out of the aforesaid indemnity in favor of the Administrators and officers shall be limited to such proportion of the total liability therefor as is equal to such Co-Owner's share of common expenses as set out in the Declaration. Every agreement made by the Board or by the officers or the managing agent or Manager on behalf of the Council or Project shall provide that the Administrators, the officers and agent, as the case may be, are acting only as agents for the Co-Owners and shall have no personal liability thereunder (except as Co-Owners), and that each Co-Owner's liability thereunder shall be limited to such proportion of the total liability therefor as is equal to such Co-Owner's share of common expenses as set out in the Declaration.

B. Liability for Latent Defects. Notwithstanding any duty of the Council to maintain and repair parts of the condominium Property, The Council shall not be liable for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the Property to be maintained and repaired by The Council, or by the elements or other Co-Owners or persons. The Council's duties of maintenance and repair are expressly limited to those set forth in Articles X and XII of this Declaration.

## ARTICLE IX

### ASSESSMENTS

A. Definition. For purposes of this Declaration, "assessment" means any regular or special assessment (including annual assessments, defined below), dues, fees, charges, interest, late fees, fines, collection costs, attorney's fees, and any other amount due to the Council by a Co-Owner or levied against a Unit by the Council, all of which are enforceable as assessments under this Declaration and the Act.

B. Obligation to Pay. All Co-Owners of a Unit are bound to contribute, in proportion to their common expense liability, as set out in the Plan, to the payment of common expenses covering the expenses of administration of the Project and the administration, maintenance, repair and replacement of the Common Elements, and other expenses authorized by the terms hereof. No Co-Owner shall be exempt from the obligation to make such contribution by waiver of the use of enjoyment of the Common Elements, either general or limited, or by abandonment of such Co-Owner's Unit, or under any other circumstances.

C. Determination of Common Expenses and Fixing of Common Expense Liability. The Developer, initially, and thereafter the Board, shall from time to time, and at least annually, prepare an annual budget for the Project, fixing and determining the amount of assessments payable by the Co-Owners to meet the common expenses of the Project and allocate and assess such common expenses among the Co-Owners in proportion to their common expense liability, as set out in the Plan.

1. Common expenses shall include, but not be limited to:

- a. Expenses for the operation, maintenance, repair or replacement of the general Common Elements (including the roof of the Building) and the Limited Common Elements;
- b. Cost of carrying out the powers and duties of the Council;
- c. All insurance premiums and expenses relating thereto, including fire insurance and any other expenses designated as common expenses from time to time by the Board;
- d. Utility expenses for the Common Elements, and utility expenses for Limited Common Elements that are not separately metered; and
- e. Any costs to use, lease, operate, maintain or repair the Parking Area and access thereto, and Maintenance Room.

2. Common expenses associated with specified Limited Common Elements shall be assessed against the Unit or Units to which such Limited Common Elements are assigned. If any such Limited Common Element is assigned to more than one Unit, the common expenses attributable to such Limited Common Element shall be assessed pro rata among the Units to which it is assigned, based on percentage of interests in the Common Elements.

3. The Board may also include, as common expenses, an amount for working capital for the Council, amounts necessary to make up any deficit in the common expenses for a prior year, and such amounts as may be necessary to effect any other purpose or requirement of this Declaration, including the purchase of additional equipment or services. The Developer shall establish an initial working capital fund in an amount at least equal to two (2) months of estimated assessments against each Unit for common expenses. The Developer may reimburse itself for amounts paid into the initial working capital fund, either at the time of closing the sale of a Unit (out of funds collected at closing) or when the period of Developer control (described in Article VII, Paragraph I) expires, whichever is earlier. Amounts in the initial working capital fund shall not be considered advance payments for regular assessments. If kept in a Developer account, the initial working capital fund shall be transferred to the Council for deposit in a segregated fund when the period of Developer control expires. The Developer may not use any working capital funds to defray any of its expenses, reserve contributions or construction costs or to make up any budget deficits during the period of Developer control. However, the Developer may reimburse itself for contributions to the initial working capital fund when an unsold Unit is sold, up to such Unit's share of the working capital fund, out of funds collected at closing.

5. The Board shall establish an adequate reserve fund for replacement of Common Element components and Limited Common Elements (including amounts for deductibles in property insurance policies), to be a part of the common expenses and paid

as part of the assessments. Without the prior approval by majority vote of the Co-Owners (or such greater vote as may be required by law), no part of such reserve fund may be spent for normal operating expenses.

6. The Board shall promptly advise all Co-Owners in writing of the amount of the assessment payable by each of them, respectively, as determined by the Board, or Developer, as aforesaid, and shall furnish copies of the budget on which such assessment is based to all Co-Owners.

7. If the allocation and assessment of common expenses to the Co-Owner or Co-Owners of each respective Unit (hereinafter referred to as the "annual assessment") proves inadequate for any reason, including nonpayment of any Co-Owner's annual assessment, or in the event of casualty losses, condemnation losses or other events which require additional funds to be supplied for preservation, repair, replacement, rebuilding or restoration of the Project, the Board shall have the authority at any time and from time to time to levy a special assessment as it shall deem necessary for such purposes against each of the Co-Owners in accordance with their percentage interest in the Common Elements, except as otherwise expressly provided herein.

D. Payment of Assessments. The aggregate of the annual assessment made by the Board and allocated and assessed to the Co-Owner or Co-Owners of each Unit shall be payable in twelve (12) equal monthly installments following the date of the last determination or amendment of assessments by the Board, prorated to the date of conveyance of a Unit. Assessments against all Units shall begin on a date determined by the initial Board, and no later than sixty (60) days after the first conveyance of a Unit to a person other than the Developer; but the Board may provide for a reduced assessment on unsold Units that are not occupied. Such payments shall be due and payable in advance on the fifteenth day of each month for the succeeding month. If a Co-Owner fails to pay any monthly installment within fifteen (15) days after the date it is due, the Co-Owner shall pay a late charge of fifteen percent (15%) of the overdue monthly installment. Only one (1) late charge shall be assessed for each late payment. If, at any time, a Co-Owner is in arrears more than fifteen (15) days with respect to the payment of two (2) monthly installments, the Board may, at its option, accelerate the due date of the remaining unpaid monthly installments and declare said sums immediately due and payable and give notice of such action to such Co-Owner. From and after the date of such notice, the Board may enforce the payment of any such sums determined to be due as in the case of any other assessment. Special assessments shall be payable on or before 10 days after Co-Owners are invoiced therefor.

The failure or delay of the Developer or Board to prepare any annual budget or to deliver copies of such budgets to each Co-Owner shall not constitute a waiver or release in any manner of any Co-Owner's obligation to pay common expenses as assessed and, in the event of any delay or failure to establish any annual budget, each Co-Owner shall continue to pay the common expenses, monthly, at the rate established for the previous period.

E. Interest on Unpaid Assessments. Assessments that are unpaid for over sixty (60) days after due date shall bear interest at the rate of ten percent (10%) per annum from due date until paid.

F. Unpaid Assessments: Liens, Penalties and Methods of Collection. All assessments are a personal obligation of the Co-Owner charged, and shall not pass to successors in title unless expressly assumed. The Council shall have a lien on a Unit for any unpaid assessments against the Co-Owners of such Unit, together with interest thereon and reasonable attorney's fees incurred in collection of same and the enforcement of said lien. Such lien shall include all rents and insurance proceeds received by such Co-Owners and relating to such Unit. All such liens shall be subordinate and inferior to the purchase money lien (vendor's or deed of trust or both) of a first Mortgage or to the lien of a Mortgagee for improvements to a Unit if such first Mortgage lien or lien for improvements was recorded before the date on which the unpaid assessment becomes delinquent. The Board shall take such action as it deems necessary to collect assessments and may settle and compromise the same if it is in the best interest of the Council. Said liens shall be effective as and in the manner provided for by the Act and shall have the priorities established by said Act.

1. The Board may bring an action at law against the Co-Owner personally obligated to pay an assessment or foreclose the lien against the Unit, or both, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each Co-Owner, by his acceptance of a deed to a Unit, hereby expressly vests in the Board or its agents the right and power to bring all actions against such Co-Owner personally for the collection of such assessments as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to the Texas Property Code, and such Co-Owner hereby expressly grants to the Board a power of sale in connection with said lien. The Board may designate a trustee in writing from time to time to post or cause to be posted the required notices and to conduct such foreclosure sale. The trustee may be changed at any time and from time to time by an instrument in writing signed by the President or a Vice-President of the Council and attested by the Secretary or any Assistant Secretary of the Council and filed for record in the Official Public Records of Real Property of the County in which the Project is located. The lien provided for in this section shall be in favor of the Council for the common benefit of all Co-Owners. In the event that the Board has decided to foreclose the lien provided herein for the nonpayment of assessments by any Co-Owner, the Board shall mail to such Co-Owner or Co-Owners and the Mortgagee of the Unit for which the assessment has not been paid a copy of the Notice of Trustee's Sale no less than twenty-one (21) days prior to the date on which said sale is scheduled by posting same through the U.S. Postal Service, postage prepaid, certified or registered, return receipt requested, properly addressed to such Co-Owner or Co-Owners at their last known address according to the records of the Board.

2. At any foreclosure, judicial or non-judicial, the Council shall be entitled to bid up to the amount of its lien, together with cost and attorney's fees, and to apply as a cash credit against its bid all sums due the Council covered by the lien foreclosed. Any amount bid by the Council shall be a common expense of the Council. From and after



any such foreclosure the occupants of such Unit shall be required to pay a reasonable rent for the use of the Unit and the purchaser at such foreclosure shall be entitled to the appointment of a receiver to collect same, and, further, shall be entitled to sue for recovery of possession of the Unit premises at forcible detainer without the necessity of giving any notice to the former Co-Owner or Co-Owners or any occupants of the Unit sold at foreclosure.

3. The Council may also, at its option, accept a deed in lieu of foreclosure, or sue to recover a money judgment for unpaid assessments, without thereby waiving the lien securing the same.

4. A foreclosure of the Council's lien for unpaid assessments shall not affect, in any way, a valid first lien of any Mortgagee on any Unit sold at such foreclosure, whether the instruments creating such lien were recorded before or after the time at which the lien for assessments became fixed.

5. In addition to, and cumulative of, any other remedy provided herein, in the case of failure of any Co-Owner to pay any assessment due or comply with the terms and provisions of the governing documents, the Board may suspend the voting rights of any Co-Owner (i) for any period after such Co-Owner has been delinquent in the payment of assessments due the Council for more than thirty (30) days, (ii) for any period during which such Co-Owner shall remain in default of any other obligation herein provided, and (iii) for any period not to exceed thirty (30) days for a single infraction of the By-laws or Rules and Regulations, or both; provided, however, except for failure to pay assessments, no such suspension shall be effected until the Co-Owner shall have been given the opportunity to present evidence on the Co-Owner's behalf at a hearing before the Board or a committee designated by the Board, and no such hearing shall be held until the Co-Owner shall have received at least ten (10) days' written notice specifying the nature of the alleged default and the exact time and place of the hearing.

6. Assessments involving a charge for property damage or a fine for violation of this Declaration, the By-laws or the Rules and Regulations shall involve the following notice procedure:

a. The Council shall give the Co-Owners of the affected Unit a written notice that:

(1) describes the violation or property damage and states the amount of the proposed fine or damage charge;

(2) states that not later than the thirtieth (30<sup>th</sup>) day after the date of the notice, the Co-Owners may request a hearing before the Board to contest the fine or damage charge; and

(3) allows the Co-Owners a reasonable time, by a specified date, to cure the violation and avoid the fine unless the Co-Owners were

given notice and a reasonable opportunity to cure a similar violation within the preceding twelve (12) months.

b. After levying the fine or damage charge, the Council shall give notice of the fine or damage charge to the Co-Owners not later than the thirtieth (30<sup>th</sup>) day after the date of levy.

c. The Council may give a copy of the notices required by this paragraph 6 to any occupant of the affected Unit.

7. Notwithstanding anything herein to the contrary, the Council may not foreclose a lien for assessments consisting solely of fines for violation of this Declaration, the By-laws or the Rules and Regulations, unless such foreclosure is permitted by applicable law. Foreclosure shall be permitted for any assessments that include fines in addition to other types of assessments.

G. Liability of Purchaser for Unpaid Assessments.

1. Where a First Mortgagee of record, or other purchaser of a Unit, obtains title thereto as a result of foreclosure of said First Mortgage, or where said Mortgagee accepts a deed or assignment to said Unit in lieu of foreclosure, such acquirer of the title and its heirs, successors, legal representatives and assigns, shall not be liable for the assessments pertaining to such Unit or chargeable to the former Co-Owner of such Unit which became due prior to acquisition of title thereto in the manner set out above. Such foreclosure shall cut off and extinguish the lien of the Council securing assessments which became due and payable prior to acquisition of title by such Mortgagee. However, no such foreclosure shall free such Unit from the lien securing assessments thereafter becoming due and payable; nor shall the personal obligation of the former Co-Owner of such Unit for unpaid assessments be extinguished by any foreclosure.

2. Upon the sale or conveyance of a Unit, except through foreclosure of a First Mortgage of record or deed in lieu thereof, as specifically provided in the immediately preceding paragraph, all unpaid assessments against a Co-Owner shall first be paid out of the sale price, as provided in the Act; provided, however, that if such unpaid assessments are not paid or collected at the time of a sale or conveyance of a Unit, the grantee of the same shall be jointly and severally liable with the selling Co-Owner for all unpaid assessments against the latter for his or her share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the selling Co-Owner the amounts paid by the grantee therefor. Any grantee of a Unit shall be entitled, upon written request therefor, to a statement from the Board setting forth the amount of the unpaid assessments against the selling Co-Owner due the Board and such grantee shall not be liable for, nor shall the Unit conveyed be subject to, a lien for any unpaid assessments made by the Board against the selling Co-Owner in excess of the amount set forth in the statement; provided, however, the grantee shall be liable for any assessments becoming due after the date of any such conveyance; and, further, such grantee shall not be entitled to occupancy of the Unit or enjoyment of the Common

Elements until such time as all unpaid assessments due and owing by the former Unit Co-Owner have been paid.

3. The provisions of this part of the By-Laws shall be cumulative of the rights of the Council set out in the Act.

H. Assessment for Utility Service. The Council shall arrange for utility services for the Project, including Common Elements and all Units. The service centrally metered shall be a part of the common expense payable as in the case of other expenses; except that any such service individually sub-metered to each Unit shall be paid by the Co-Owner of such Unit based upon the amount of usage reflected by such sub-meter as a pro rata amount of the charges based on the central master meter (if such usage is measured by a sub-meter).

I. Assessments in Case of Claims Against Common Elements. The Board shall also pay any amount necessary to discharge any lien or encumbrance claimed or levied against the Property or any part thereof which may, in the opinion of the Board, constitute a lien against the Common Elements, rather than merely against the interests therein of particular Co-Owners. Where one or more Co-Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the amount required to discharge it; and any costs incurred by the Board by reason of said lien or liens shall be specially assessed to said Co-Owners and the payment of any such sums assessed shall be secured by the lien provided above and may be enforced as in the case of assessments for common expenses.

J. Information To and From Mortgagees. At the request of the Mortgagee of a Co-Owner or the insurer or guarantor of a Mortgage, the Council may furnish such Mortgagee, insurer or guarantor with information about the Project and such Co-Owner's obligations to the Council (as further described in Article XV hereof). If a Co-Owner is delinquent in payment of assessments to the Council, at the request of the Council a Mortgagee or the insurer or guarantor of a Mortgage may provide the Council with information about such Co-Owner's debt secured by the Mortgagee's lien and other relevant information. By agreeing to be bound by this Declaration, each Co-Owner expressly consents to the Council providing such information to a Mortgagee, insurer or guarantor, and to a Mortgagee, insurer or guarantor providing such information to the Council.

## ARTICLE X

### MAINTENANCE, ALTERATION AND IMPROVEMENTS

Responsibility for the maintenance of the Property and restrictions upon the alteration and improvement thereof shall be as follows:

A. Maintenance of Units, Common Elements and Limited Common Elements.

1. By The Council. The Council shall maintain, repair and replace, as a common expense of the Council:

a. All portions of the Common Elements and Limited Common Elements adjacent or contiguous to a Unit, or between or within Units, contributing to the support of the Building, which portions shall include but not be limited to the outside walls of the Building and all fixtures on the exterior thereof, boundary walls of Units, floor and ceiling slabs, load-bearing columns, and load-bearing walls.

b. All conduits, vents, ducts, plumbing, wiring and other facilities for the furnishing of utility services which are contained in the portions described in Subparagraph a. above; and all of such facilities contained within a Unit which service part or parts of the Project, other than the Unit within which contained.

c. All exterior windows and exterior doors to Units, except for exterior doors entering into Units from balconies or patios.

d. Right of Access. A Unit Co-Owner shall grant a right of access to the Unit and any Limited Common Elements such as the balcony of a Unit, and the Exclusive Roof Area for such Unit, to the Board, the Manager and/or any other person authorized by the Board or the Manager, for the purpose of making inspections, or for the purpose of removing violations noted or issued by any governmental authority against the Common Elements, the Limited Common Elements or any other part of the Property, or for the purpose of correcting any conditions originating in such Unit and threatening another Unit or all or any part of the Common Elements or Limited Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other portions of the Common Elements within such Unit or elsewhere in any Building, or for the purpose of reading, maintaining or replacing utility meters or sub-meters relating to the Common Elements, such Unit or any other Unit in the Building or to correct any condition which violates the provisions of any Mortgage covering another Unit, provided that requests for such entry are made not less than one day in advance and that any such right shall be exercised in such a manner as will not unreasonably interfere with the use of the Unit. In case of an emergency, such right of entry shall be immediate, without advance notice, whether or not the Unit Co-Owner is present.

A Unit Co-Owner shall grant a right of access to the Co-Owner's Unit and any Limited Common Elements such as the balcony of a Unit, and the Exclusive Roof Area for such Unit,, and the Board shall grant a right of access to the Common Elements, to the Developer and Developer's contractors, subcontractors, agents and employees, for the purposes of completing construction of improvements to the Building in accordance with the plans and specifications thereof; provided that access thereto shall be exercised in such a manner as will not unreasonably interfere with the use of Units.

2. By Each Co-Owner. The responsibilities and obligations of a Co-Owner shall be as follows:

a. Each Co-Owner shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceiling, floor and doors bounding such Co-Owner's Unit at the Co-Owner's expense. Decorative wall items such as lights, shelves and art work may be affixed to or installed on the interior walls, floor, doors and ceiling of any Unit which are Limited Common Elements without prior approval of the Council provided such affixation or installation is done in a good and workmanlike manner. Except for such affixation or installation of decorative wall items, no Co-Owner shall make any alterations to, or that affect, any of the Common Elements (including windows and doors which are Limited Common Elements) nor install any article therein without the prior approval of the Council.

b. A Co-Owner shall repair, replace and maintain in good repair and condition (i) the Fixtures (as hereinafter defined) within the Co-Owner's Unit or installed by a Co-Owner within a Limited Common Element assigned to such Co-Owner's Unit; (ii) interior walls, and the finished interior surfaces of perimeter walls, ceiling and floor of the Unit, including, but not limited to, such materials as lath, furring, drywall, wallboard, plasterboard, plaster, paneling, wallpaper, paint, wall and floor tile and flooring (but not including the subflooring); (iii) any Solar-X or similar material on the interior surface of all exterior windows; (iv) the interior surfaces of any balcony or patio (as defined in Article I.V.1), as the case may be (with exterior surfaces to be maintained by the Council as a Limited Common Element), and any exterior doors entering into Units from balconies or patios or Exclusive Roof Areas; and (v) the air handler mechanical unit in such Unit or serving such Unit to the extent described below. The repair, replacement and maintenance required by this paragraph of these areas or surfaces which are exposed to public view shall be done in a manner consistent with the decor of the Project and shall be subject to the control and direction of the Council. No Co-Owner shall disturb or relocate any Utilities (as hereinafter defined) running through a Unit.

(1) "Utilities," as used herein, means all lines, pipes, wires, conduits or systems located within the walls, floors or ceilings of a Unit which are a part of the Common Elements.

(2) "Fixtures," as used herein, means the personal property, appliances, machinery and equipment installed in, on or within, or affixed to, a wall, ceiling or floor of, a Unit or an Exclusive Limited Common Element assigned to such Unit, commencing at the point where such items connect with the Utilities, including, but not limited to, all light fixtures, plumbing appliances (such as but not limited to faucets, water valves, shower heads, tubs, sinks and drain taps within a Unit), electrical wall switches or outlets, common TV antenna outlet, satellite disks, air conditioning vents, range, oven, dishwasher, disposal, vented hood over kitchen sink, if any, refrigerator and the like.

c. Each Co-Owner shall be responsible, at such Co-Owner's expense, for periodic maintenance, repair and replacement of the air handler mechanical unit located in such Co-Owner's Unit or serving such Unit, including periodic maintenance and replacement of filters in such air handler mechanical unit; provided, that the Board shall have the right of access to each air handler mechanical unit for the purpose of providing such other periodic maintenance and replacement of filters as the Board shall deem appropriate. Maintenance provided by the Board shall be a common expense of the Council, unless the Board determines that such maintenance is the result of a Co-Owner's failure to reasonably provide periodic maintenance or replacement of filters, in which event the expense shall be specially assessed against such Unit as provided in Article X.A.3. hereof.

d. No Co-Owner shall paint or otherwise decorate or change the appearance of any portion of the exterior of their Unit, any balcony or patio to their Unit, or of the Building, including windows and exterior doors of the Unit.

e. All Co-Owners shall promptly report to the Board any defect or need for repairs that are the responsibility of the Council under this Article X.

f. In addition to the obligations under (a) through (e) hereof, the Commercial Unit 100 Co-Owner shall maintain the vent on the back of the Building and any other equipment in the building or in the alleyway used exclusively by the Restaurant.

3. Required Maintenance of Individual Units – Special Assessments. Maintenance and repair of any Units, if such maintenance or repair is reasonably necessary, in the discretion of the Board, to protect the Common Elements or Limited Common Elements or preserve the appearance and value of the Property, when the Co-Owner or Co-Owners of said Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Board, shall be performed by the Board for which it shall levy a special assessment against the Unit of such Co-Owner or Co-Owners for the cost of said maintenance or repair, the payment of which shall also be secured by the lien for assessments hereinabove provided as in the case of assessments for common expenses.

4. Costs Expended for Individual Units. The costs of any materials, supplies, furniture, labor, services, maintenance, repairs, approved interior structural alterations or taxes provided or paid for particular Units shall be specially assessed against the Unit and Co-Owners of the Unit benefited.

5. Special Services for Individual Units Prohibited. Nothing herein shall authorize the Board to furnish to any person services primarily for the benefit or convenience of any Co-Owner or Co-Owners, or any occupant or occupants, of any Unit

other than services which may be customarily available, with or without charges therefor, to all Units.

6. Maintenance and Repair of the Roof. The Council shall be responsible for all repairs and maintenance of the roof surface materials and any underlying structural elements of the Building and shall perform all such repairs and maintenance as are reasonably necessary to ensure the integrity of the roof surface materials and the underlying structural elements of the Building and for the enjoyment of the Co-Owners; provided, however, the Co-Owners of the Units which have been designated an Exclusive Roof Area herein shall be responsible for repairing any damage to the roof surface materials and any underlying structural elements of the Building and the adjacent building at 719 Main either (i) caused by the Co-Owner and his/her tenants, subtenants, guest, licensees, invitees and agents or (ii) resulting from the installation and/or presence of the Patio Improvements (defined hereinbelow).

B. Common Elements, General.

1. By The Council. The maintenance and operation of the Common Elements and Limited Common Elements shall be the responsibility and the common expense of the Council, except where maintenance and repairs of Limited Common Elements are specifically assigned to a Co-Owner or Unit by this Declaration or the rules and regulations governing the Project.

2. Alteration and Improvement. There shall be no alteration or further improvement of Common Elements by the Council (excluding normal repairs and replacement when needed) without prior approval in writing by the Co-Owners of 60 percent of the Unit votes weighted in accordance with their percentage interest in the Common Elements; provided, however, any alteration or improvement of the Common Elements having the approval in writing of a majority or more of such votes, but less than 60 percent of such votes and which alteration or improvement does not interfere with the rights of any Co-Owners withholding their consent, may be done if the Co-Owners who do not approve are relieved from the cost thereof. The share of any cost not assessed to non-consenting Co-Owners shall be assessed to the consenting Co-Owners in such proportion as their respective shares in the Common Elements bear to the total shares in the Common Elements owned by all of the consenting Co-Owners. There shall be no change in the share and rights of a Co-Owner in the Common Elements which are altered or further approved, whether or not any Co-Owner or Co-Owners contribute to the cost thereof.

3. By Developer. The Developer shall have the right to alter the Common Elements to the extent described in Paragraph D.2. of this Article X.

C. Alterations of Units and Common Elements Adjacent, Contiguous or Between Units.

1. General. Except as otherwise provided herein, a Co-Owner shall not make any alterations of a Unit or remove any portion thereof, or make any additions thereto, or otherwise perform any work within a Unit, which would affect the Common Elements or Limited Common Elements without first obtaining approval in writing of the Board. Such alterations, removal, additions or other work may, by way of example but without limitation, include subdividing a Unit or combining adjacent Units, proposals to change electrical wiring or water or sewer piping, removing all or a portion of interior walls, moving built-in electrical or plumbing facilities, or attaching to or building on or in common walls items of a utilitarian or decorative nature which weigh in excess of fifty (50) pounds, or the like. A copy of plans for all such work shall be filed with the Board at or prior to the time of submitting request for such approval. In the case of plans submitted by a Unit Co-Owner for any work which would affect the Common Elements, the Board shall approve or disapprove of said plans within thirty (30) days after receipt of such plans and the Co-Owner's request for approval; and, in the absence of disapproval, following the expiration of thirty (30) days, said plans shall be deemed to have been approved by the Board. No Co-Owner or other occupant of a Residential Unit shall install and operate within a Unit any dishwasher, clothes washer or clothes dryer, or any other appliance or piece of equipment that has or may have utility requirements exceeding the capacity of any utility system servicing such Unit or which may adversely affect any utility system in the Project.

2. Limitation. Neither a Co-Owner nor the Council shall make or approve any alterations to a Unit or remove any portion thereof or make any additions thereto, or perform or approve the performance of any other work to or within a Unit, which would jeopardize the safety or soundness of the Building or impair any easement or the Common Elements of the Project.

3. Exclusive Roof Areas. The Co-Owners of the Units on the third floor and tenth floor shall have the right to use the Exclusive Roof Area and construct patio, garden or other similar open air improvements ("Patio Improvements") on the Exclusive Roof Area designated for each such Unit pursuant to this Declaration, subject to prior written approval of the Council (defined herein) of any plans for constructing Patio Improvements, which approval shall not be unreasonably withheld. Each Co-Owner shall be solely responsible for the costs of constructing Patio Improvements on his/her designated Exclusive Roof Area, including all engineering work necessary to ensure that the Patio Improvements do not materially impair the integrity of the roof surface materials and the underlying structural elements of the Building, insuring the Patio Improvements, and for any permits related to same. The Co-Owners who choose to make Patio Improvements shall insure that the work is performed in a good and workmanlike manner, and shall not suffer or permit any mechanic's lien or other liens to be enforced against the Property in connection with the Patio Improvements. Such Co-Owners shall keep his/her Exclusive Roof Area reasonably clean and free of debris.



D. Alterations by Developer.

1. The Developer shall have the right, at its option and sole cost and expense, without the vote or consent of the Board, other Co-Owners or the representative or representatives of holders of Mortgages on Units, to (i) make alterations, additions, or improvements in, to and upon Units owned by the Developer (hereinafter called "Developer-Owned Units") whether structural or nonstructural, interior or exterior, ordinary or extraordinary; (ii) change the layout or number of rooms in any Developer-Owned Unit; (iii) change the size and/or number of Developer-Owned Units by subdividing one or more Developer-Owned Units into two or more separate Units, combining separate Developer-Owned Units (including those resulting from such subdivision or otherwise) into one or more Units, altering the boundary walls between any Developer-Owned Units, or otherwise; (iv) reapportion among the Developer-Owned Units affected by such change in size or number pursuant to the preceding clause (iii), their appurtenant interest in the Common Elements; (v) change any Developer-Owned Residential Unit to a Commercial Unit or to Common Elements, or any Developer-Owned Commercial Unit to a Residential Unit or to Common Elements; and (vi) make any other changes to Developer-Owned Units, to the Plan, or to the Common Elements as are permitted hereunder or under the Act; provided, however, that the percentage interest in the Common Elements of any Units (other than Developer-Owned Units) shall not be changed by reason thereof unless the Co-Owners of such Units shall consent thereto and, provided further, that the Developer shall comply with all laws applicable thereto and shall agree to hold the Board and all other Unit Co-Owners harmless from any liability arising therefrom.

2. At any time when the Developer owns a Unit, the Developer shall have the authority, at its sole option, cost and expense, to make changes in or additional improvements to the Common Elements without the prior consent of the Board, other Unit Co-Owners or the representative or representatives of holders of Mortgages on Units. No Co-Owner shall ever be assessed for any such changes or improvements done by the Developer pursuant to this provision.

E. Changes in Commercial Units. The Developer, or any subsequent Co-Owner of a Commercial Unit, shall have the right, without the vote or consent of the Board, other Unit Co-Owners or the representative or representatives of holders of Mortgages on Units to (i) make alterations, additions or improvements in, to and upon a Commercial Unit, whether structural or non-structural, interior or exterior, ordinary or extraordinary; (ii) change the layout or number of rooms in a Commercial Unit from time to time; (iii) change the size of a Commercial Unit by subdividing the same into any desired number of Units (or by combining any Units resulting from such subdivision); (iv) change a Commercial Unit to a Residential Unit; and (v) reapportion among the newly created Units resulting from such subdivision (or combination) their appurtenant interest in the Common Elements; provided, however, that the percentage interest in the Common Elements of other Units shall not be changed by reason thereof, unless the Co-Owners of such Units shall consent thereto, and, provided further, that the Co-Owner of a Commercial Unit shall comply with all applicable laws and shall agree to hold the Board and all other Co-Owners harmless from any liability arising therefrom.

In the event of the subdivision of a Commercial Unit into separate Units, a combining of two or more Commercial Units, or a change of a Commercial Unit to a Residential Unit, each Co-Owner of a changed Unit shall have all of the rights, privileges and benefits, and be subject to all of the obligations of the Co-Owners of the original Commercial Units as provided in this Declaration, the By-Laws and the rules and regulations initially adopted, as thereafter amended. The provisions of this section may not be added to, amended or deleted without the prior written consent of the Developer and the then Co-Owner or Co-Owners of the Commercial Units.

## ARTICLE XI

### INSURANCE

Insurance, other than such title insurance which may be issued to each Co-Owner upon their respective Units and appurtenant interests in the general Common Elements, shall be governed by the following to the extent policies containing such provisions and affording such coverages are reasonably available and the premiums therefor are not found by the Board to be an unnecessary economic burden.

#### A. General.

1. All insurance policies on the Property purchased by the Board shall be for the benefit of the Co-Owners and their respective Mortgagees, as their interests may appear, and provisions shall be made for the issuance of certificates of Mortgagee endorsements to the Mortgagees of Unit Co-Owners. Such policies shall be payable to the Board as trustee for the Co-Owners and Mortgagees, as their interests may appear, and such policies and endorsements thereon shall be deposited with the Board.

2. Any hazard policy acquired by the Board shall provide that if, at the time of loss, there is other insurance in the name of a Co-Owner covering the same property covered by the policy acquired by the Board, the insurance coverage afforded by the policy acquired by the Board shall be primary and not contributing with such other insurance. In no event shall the insurance coverage obtained and maintained be brought into contribution with insurance purchased by the Co-Owners of the Units or their Mortgagees.

3. All policies shall provide that coverage shall not be prejudiced by (i) any act or neglect of any occupants or Co-Owners of Units when such act or neglect is not within the control of the Council or Co-Owners (collectively); or (ii) by failure of the Council to comply with any warranty or condition with regard to any portion of the premises over which the Council or Co-Owners (collectively) have no control.

4. All policies shall provide that coverage may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days' prior written notice to any and all insured named thereon and to all holders of first Mortgages and Mortgage share loans.

5. All such policies shall contain a waiver of subrogation by the insurer as to any and all claims against the Council, the Co-Owner of any Unit and/or their respective agents, employees or tenants, and waivers of any defenses based upon co-insurance or other insurance or upon invalidity arising from the acts of the insured and of pro rata reduction of liability.

6. If available, all policies of property insurance shall provide that, notwithstanding any provisions thereof which give the carrier the right to elect to restore damage in lieu of making the cash settlement, such option shall not be exercisable without the prior written approval of the Council.

B. Coverage.

1. Casualty. The Project (including the Building, the Parking Area, the roof area of the adjacent building at 719 Main, and all other easements owned by the Project, and all of the Common Elements, Limited Common Elements and Units therein and the improvements, including fixtures, installations or additions, of each Unit initially installed therein whether by the Developer or at a Co-Owner's expense, or replacements thereof, but not including furniture, furnishings or other personal property supplied by Unit Co-Owners or tenants of Unit Co-Owners) and all other improvements upon the Land and all personal property owned by the Project and included in the Common Elements shall be insured under a "master" or "blanket" type of policy, in an amount equal to not less than one hundred percent (100%) of the insurable "replacement cost," exclusive of land, foundations, excavation and other items normally excluded from coverage. Such coverage shall afford protection against:

a. Loss or damage by fire and other hazards covered by standard extended coverage policies, and debris removal, cost of demolition, vandalism, malicious mischief, windstorm and water damage;

b. Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the Building on the Land, including those covered by the standard "all risk" endorsement or "broad form" covered causes of loss.

The casualty policy must be written by an insurance carrier that has an acceptable rating from the A. M. Best Company, Demotech, Inc., or Standard and Poor's, Inc., or is covered by reinsurance with a company meeting the ratings specified by FNMA. The maximum deductible amount on any casualty policy shall be the lesser of \$10,000 or one percent (1%) of the face amount of the policy. The casualty policy shall include the following endorsements:

(i) Replacement Cost Endorsement - either the "Guaranteed Replacement Cost Endorsement" (providing for replacement regardless of cost) or the "Replacement Cost Endorsement" (providing for payment of up to 100% of

replacement cost); and if the policy includes a coinsurance clause, an “Agreed Amount Endorsement” (waiving the requirement for coinsurance).

(ii) Standard Mortgage Clause - naming as mortgagees all holders of Mortgages on Units. If FNMA has purchased or securitized a Mortgage, the named mortgagees shall include, as applicable, either FNMA or the servicers (and the servicers’ successors and assigns) for the Mortgages or Mortgage share loans held by FNMA on Units.

(iii) Inflation Guard Endorsement - when it can be obtained.

(iv) Building Ordinance or Law Endorsement - for continuing liability from operation of building, zoning or land-use laws, including loss or damage, increased costs of repair or reconstruction, or additional demolition and removal costs.

(v) Steam Boiler and Machinery Coverage Endorsement - If the Project has central heating or cooling, either this endorsement or separate stand-alone coverage, with a minimum coverage per accident equal to the lesser of \$2,000,000 or the insurable value of the building housing the boiler or machinery.

(vi) Special Condominium Endorsement - providing that any Insurance Trust Agreement will be recognized, and including the provisions of subparagraphs 2 (primary coverage), 3 (coverage not prejudiced) and 5 (waiver of subrogation) of Paragraph A of this Article.

2. General Liability. The Council shall also obtain a comprehensive policy or policies of commercial general liability insurance, including medical payments insurance, with a “Severability of Interest Endorsement” or equivalent coverage which would preclude the company from denying the claim of a Unit Co-Owner because of the negligent acts of the Council, Board or Unit Co-Owners, with limits not less than \$1,000,000.00 per occurrence covering all claims for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements (including all common areas, public ways and other areas under the supervision of the Council, and any commercial spaces owned by the Council, even if leased to others). Such coverage shall include protection against water damage liability, liability for non-owned and hired automobile, liability for property of others (excluding property damage to property in the care, custody or control of a named insured or as to which a named insured is for any purpose exercising physical control), and, if applicable: elevator malfunction, garage-keeper’s liability, host liquor liability and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

3. Common Provisions. In addition to the provisions in Paragraph A of this Article XI, insurance policies carried under paragraphs 1 and 2 above shall provide that:

a. Each Co-Owner is an insured person under the policy with respect to liability arising out of such Co-Owner's ownership of an undivided interest in the Common Elements or membership in the Council;

b. The insurer waives its right of subrogation under the policy against a Co-Owner;

c. No action or omission of a Co-Owner, unless within the scope of such Co-Owner's authority on behalf of the Council, will void the policy or be a condition to recovery under the policy; and

d. If, at the time of a loss under the policy, there is other insurance in the name of a Co-Owner covering the same property covered by the policy, the Council's policy provides primary insurance.

4. Officers and Administrators. The Council may also obtain a policy or policies of liability insurance insuring the Administrators and Officers of the Council against any claims, losses, liabilities, damages or causes of action arising out of, in connection with or resulting from, any act done or omission to act in their respective capacities. This insurance shall be purchased by the Council to the extent available and the cost thereof shall be a common expense.

5. Worker's Compensation. The Council shall also obtain such Worker's Compensation insurance as may be necessary to meet the requirements of law.

6. Other Insurance. The Council may also obtain such other insurance as the Board shall determine from time to time to be desirable, including, but not limited to, rent insurance covering the common charges and expenses payable by the Co-Owners to the Board, machinery insurance, and plate glass insurance.

7. Fidelity Bonds. The Board may obtain adequate fidelity bonds or fidelity insurance for all Administrators, Officers, agents and employees of the Council handling or responsible for condominium or Council funds, whether or not they receive compensation for such services. Any professional manager hired by the Council may obtain its own fidelity insurance providing for the same coverage as that obtained by the Council. Fidelity coverage for the Council shall be mandatory if required by the FNMA, and shall comply with any FNMA requirements for such coverage. The premiums on such bonds shall constitute a common expense. Such fidelity bonds shall meet the following requirements:

a. All such fidelity bonds shall name the Council as an obligee; and

b. Such fidelity bonds shall be written in an amount equal to at least 100 percent of the estimated annual operating expenses of the condominium Project, including reserves, and in no event less than the maximum funds in custody of the Council and its professional manager; and

c. Such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of employee or similar expression; and

d. Such bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to the Council, any Mortgagee and each servicer that services a FNMA-owned or FNMA-securitized Mortgage.

The Board may enact financial controls to reduce the fidelity insurance requirements of any Mortgage lender or the FNMA, including separate bank accounts for the Council's working account and reserve account, requiring checks on the reserve account to be signed by two Board members, prohibiting access to the reserve account by any professional manager, and requiring any professional manager to maintain separate records and accounts for its clients.

8. Flood Insurance. The Board may obtain flood insurance in such amounts and coverages as it determines appropriate. Such insurance shall be mandatory if any part of the Project is in a Special Flood Hazard Area designated as A, AE, AH, AO, A1-30, A-99, V, VE or VI-30 on a Flood Insurance Rate Map (FIRM), or if otherwise required by FNMA. If so required, the policy shall be a "master" or "blanket" policy, with coverage for the lesser of the maximum coverage available under the applicable National Flood Insurance Administration program, or one hundred percent (100%) of the insurable value of the Project as follows:

a. Building Coverage - One hundred percent (100%) of the insurable value of the Project (including the Building, Parking Area, adjacent roof area and all other easements), including machinery and equipment that are part of the Building and easement areas; and

b. Contents Coverage - One hundred percent (100%) of the insurable value of all contents in the Project (including the Building, Parking Area, adjacent roof area and all other easements), including machinery and equipment that are not part of the Building or easement areas but owned in common by the Council.

C. Premiums - Common Expense. Premiums upon insurance policies and fidelity bonds purchased by the Board shall be paid as a common expense.

D. Administrators as Trustees of Insurance Proceeds. All such policies shall provide that adjustment of loss shall be made by the Board as trustee for the Co-Owners and Mortgagees, as their interest may appear. The duty of the Administrators and their successors from time to time who shall receive proceeds of any insurance policies shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein and for the benefit of the Council, Co-Owners and their Mortgagees, in the following shares, but which shares need not be set forth on the records of the trustees:

1. Common Elements. Proceeds on account of damage to Common Elements—an undivided share for each Unit's Co-Owner, such share being the same as the undivided share in the Common Elements appurtenant to such Unit.

2. Units. Proceeds on account of damage to Units or Limited Common Elements specifically assigned to a Unit shall be held in the following undivided shares:

a. When damaged Units or assigned Limited Common Elements are to be restored—an undivided share for the Co-Owner of each damaged Unit in proportion to the total cost of repairing the damage suffered by such Unit Co-Owner, which cost shall be determined by the Board.

b. When any damaged Units are not to be restored but the condominium is not terminated – an undivided share for the Co-Owner of each damaged Unit in proportion to the total cost of repairing the damage suffered by such Unit Co-Owner, which cost shall be determined by the Board.

c. When the Building is not to be restored and the condominium is terminated—an undivided share of each Co-Owner, such share of the total net proceeds being the same as the undivided share in the Common Elements appurtenant to such Unit.

3. Mortgages. In the event a Mortgagee endorsement has been issued with respect to a Unit, the share of the Co-Owner shall be held in trust for the Mortgagee and the Co-Owner as their interests may appear; provided, however, no Mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired.

E. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the trustee shall be distributed to or for the benefit of the beneficial owners or their respective Mortgagees or both in the following manner:

1. Expenses of Trustees. All expenses of the trustees shall be first paid or provision made therefor, but in no event shall this provision take priority over payments to first Mortgagees of Units.

2. Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such cost shall be distributed to the beneficial Co-Owners, remittances to Co-Owners and their Mortgagees being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

3. Failure to Reconstruct or Repair. If it is determined, in the manner elsewhere provided, that the damage for which the proceeds are paid shall not be

reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial Co-Owners, remittances to Co-Owners and their Mortgagees being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

4. Certification of Co-Owners, Mortgagees and Shares. In making distribution to Unit Co-Owners and their Mortgagees, the trustees may rely upon a certificate of the Secretary of the Council as to the names of the Unit Co-Owners' Mortgagees and their respective shares of the distribution.

F. Board as Agent. The Board is hereby irrevocably appointed agent and attorney-in-fact for each Co-Owner and for each owner and holder of a Mortgage or other lien upon a Unit and for each Co-Owner of any other interest in the condominium Property to adjust all claims and negotiate losses covered by insurance policies purchased by the Board and to execute and deliver releases upon the payment of claims.

G. Co-Owner's Insurance.

1. Co-Owners shall be responsible for obtaining insurance coverage at their own expense upon their own personal property and for their personal liability and cost and expenses incident thereto. The Council shall not be responsible for procurement or maintenance of any insurance covering the contents of the interior of any Unit or covering the liability of any Co-Owner for occurrences not caused or connected with the Council's operation, maintenance, or use of the Project.

2. Any insurance carried by a Co-Owner which separately insures such Co-Owner's Unit or any part thereof against any loss or damage which is also covered by insurance carried by the Council under this Article shall be in such form as to not cause any diminution in the insurance proceeds payable to the Board under policies carried pursuant to this Article; and if any such diminution is caused or results from the nature or type of any policy carried by a Co-Owner then such diminution shall be chargeable to the Co-Owner who acquired such other insurance, who shall be liable to the Council to the extent of any such diminution. All personal liability insurance carried by a Co-Owner shall contain waiver of subrogation rights by the insurance carrier as to negligent Co-Owners.

## ARTICLE XII

### RECONSTRUCTION AND REPAIR AFTER CASUALTY

A. Duty to Repair. Subject to Section 82.111 of the Act, any portion of the Project for which insurance is required by this Declaration or the Act shall be promptly repaired or replaced by the Council unless: (i) the Project is terminated; (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (iii) at least eighty percent (80%) of the Co-Owners, including each Co-Owner of a Unit or assigned Limited Common Element that will not be rebuilt or repaired, vote to not rebuild. The vote on whether to terminate



the condominium or repair damaged portions shall be pursuant to the procedures set forth in Paragraph B. of this Article XII.

B. Determination of Necessity of Reconstruction or Repair. If any part of the Project shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

1. Special Meeting. Within fifteen (15) days after the date of such casualty, the Board shall call and give notice of a special meeting of the Council, to be held not less than fifteen (15) days, nor more than forty (40) days, following the date of such notice. Such notice shall be in writing and personally delivered or mailed, Certified Mail, Return Receipt Requested, to each Co-Owner and shall state the date, time and place of the meeting of the Council to be held, and the purpose of the meeting which shall be to determine, in accordance with the Act, whether the Project shall be reconstructed.

2. Determination of Extent of Damage. At the meeting of the Council called for the purpose set out above, a vote shall be taken to determine: (i) whether the required construction comprises the whole or more than two-thirds (2/3) of the Building, and (ii) whether to undertake the reconstruction.

3. Termination After Damage to More Than 2/3 of Project. If, as determined by the vote of at least fifty percent (50%) of the Co-Owners, reconstruction is required for the whole or more than two-thirds (2/3) of the Building, then a second vote shall be held on whether to terminate the Project. If at least eighty percent (80%) of the Co-Owners and fifty-one percent (51%) of the Eligible Mortgagees vote to terminate, all insurance proceeds shall be paid by the trustees, in accordance with the provisions of Paragraphs D and E of Article XI, and the condominium regime shall be terminated in accordance with Articles XIII and XVIII. If less than eighty percent (80%) of the Co-Owners or less than fifty-one percent (51%) of the Eligible Mortgagees vote to terminate, a third vote shall be held on whether to repair the damaged portions of the Project, in the same manner, and with the same consequences, as the second vote described in the succeeding Paragraph A.4 of this Article XII.

4. Effect of No Termination, or Damage to Less Than 2/3 of Project. If, by vote of at least fifty percent (50%) of the Co-Owners, it is determined that the required construction does not comprise more than two-thirds (2/3) of the Building, then a second vote shall be held on whether to repair or replace the damaged portions of the Project. Likewise, such a vote shall be taken if the Co-Owners vote not to terminate the Project despite damage to more than two-thirds (2/3) of the Building. If at least eighty percent (80%) of the Co-Owners vote not to repair or replace the damaged portions, including the vote of each Co-Owner of a Unit or assigned Limited Common Element that will not be rebuilt or repaired, then:

a. Any insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Project;

b. Any insurance proceeds attributable to Units and Limited Common Elements that are not repaired or rebuilt shall be distributed to the Co-Owners of those Units and the Co-Owners of the Units to which those Limited Common Elements were assigned, and to their Mortgagees, as their interests may appear, pursuant to Article XI.E hereof;

c. The remainder of the proceeds shall be distributed to all Co-Owners based on their interests in the Common Elements; and

d. The percentage interests in the Common Elements of any Units that are not being rebuilt are deemed automatically reallocated as if the Unit had been condemned, and the Council shall prepare, execute and record an amendment to this Declaration reflecting the reallocation.

If, in the foregoing vote, less than eighty percent (80%) of the Co-Owners vote not to repair or replace the damaged portions (*i.e.* more than 20% are in favor of repair), then all insurance proceeds shall be paid by the trustees to repair and reconstruct all damaged Common Elements, Units and Limited Common Elements. In such event, Co-Owners and their Mortgagees shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Project has been completely repaired or restored. Any surplus proceeds shall be distributed to all Co-Owners based on their interests in the Common Elements. Any cost of repair or replacement in excess of the insurance proceeds and reserves is a common expense assessable under Paragraph E below.

Likewise, if at least eighty percent (80%) of the Co-Owners vote against repair, but such 80% vote does not include a Co-Owner of a damaged Unit or assigned Limited Common Element, then a portion of the insurance proceeds shall be paid by the trustees to repair and reconstruct such damaged Unit or assigned Limited Common Element. In such event, Co-Owners and their Mortgagees shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged Unit or assigned Limited Common Element has been completely repaired or restored. Any surplus proceeds after such repair shall be distributed in the manner provided in Paragraphs 4(a)-(d) above, with no payments under Paragraph 4(b) to Co-Owners of Units or assigned Limited Common Elements that have been repaired. Any cost of repair or replacement in excess of the insurance proceeds and reserves is a common expense assessable under Paragraph E below.

5. Certification of Determination of Necessity of Reconstruction. The insurance trustees may rely upon a certificate of the Board made by the President and Secretary to determine whether or not the damaged Property is to be reconstructed or repaired.

C. Plans and Specifications for Reconstruction. All reconstruction and repair must be substantially in accordance with the plans and specifications for the original Building and

facilities constituting the Project and Property (including any subsequent renovations by Developer), or, if the same be not available, then according to plans and specifications approved by the Board.

D. Board to Obtain Estimates. Immediately after a determination to rebuild or repair damage to Property for which the Council has the responsibility of repair and reconstruction, the Board shall obtain reliable and detailed estimates of the cost to rebuild or repair.

E. Assessments for Construction in Case of Insufficient Insurance Proceeds. If the proceeds of insurance are not sufficient to defray the estimated cost of reconstruction and repair by the Council, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the cost thereof are insufficient, assessments shall be made against all Co-Owners as a common expense, in sufficient amounts to provide funds for the payment of such costs. All assessments made pursuant hereto may be enforced in accordance with any other provision hereof relating to regular assessments.

F. Distribution of Remaining Funds After Reconstruction. If there is a balance of funds, including insurance proceeds and assessments, if any, after payment of all costs of reconstruction and repairs for which funds were collected, such balance shall be distributed to the beneficial Co-Owners thereof in the manner elsewhere stated; except, however, that such part of the distribution to a Co-Owner which is not in excess of assessments paid by such Co-Owner for repair and reconstruction shall not be made payable to any Mortgagee.

## ARTICLE XIII

### TERMINATION AFTER CASUALTY

A. Project Not Reconstructed; Distribution of Insurance Proceeds; Sale of Project and Termination of Declaration. If at least eighty percent (80%) of the Co-Owners and fifty-one percent (51%) of the Eligible Mortgagees vote to terminate the Project after more than two-thirds (2/3) of the Building is destroyed or damaged by fire or other casualty, as provided in Article XII, then the insurance proceeds shall be delivered to the Co-Owners and their Mortgagees, as their interests may appear, in proportion to the percentage interest of each Co-Owner in the Common Elements as set forth in the Plan. Thereafter, the Board, as soon as reasonably possible and as agent for the Co-Owners, and with the approval of all remaining Mortgagees of Units, shall sell the entire Project, in its then condition, on terms satisfactory to the Board, free from the effect of this Declaration, which shall terminate upon such sale, and the net proceeds of such sale, after the payment of all remaining debts and expenses of the Council, shall thereupon be distributed to the Co-Owners or their Mortgagees, as their interests may appear, in proportion to the percentage interest of each Co-Owner in the Common Elements as set forth in the Plan.

B. Partition in the Event of Board's Failure to Sell. If the Co-Owners should not rebuild, pursuant to the above provisions, and the Board fails to consummate a sale pursuant to Paragraph A. above within twenty-four (24) months after the destruction or damage occurs, then the Manager or the Board shall, or if they do not, any Co-Owner or Mortgagee may, with the approval of all remaining Mortgagees of Units, record a sworn statement in the Condominium

Records and Deed Records describing the Property and setting forth such decision not to rebuild and reciting that under the provisions of this Declaration the condominium form of ownership had terminated and the prohibition against judicial partition contained in the Act and in this Declaration has terminated, and that judicial partition of the Project may be obtained pursuant to the laws of the State of Texas. Upon final judgment of a court of competent jurisdiction decreeing such partition, this Declaration shall be null and void and of no further force and effect. The provisions of this paragraph can be amended only by the unanimous written consent of the Co-Owners.

## ARTICLE XIV

### USE AND OCCUPANCY

#### A. Uses; Limitation on Number of Occupants.

1. Each of the Residential Units may be used only (i) as a residence or (ii) as premises which are used by a professional or a quasi-professional Co-Owner both as a residence and a home office for professional pursuits which shall not be disruptive or violate the use, enjoyment, or rights of other Co-Owners. Not more than one family may occupy a Residential Unit at one time. Units may only be leased in accordance with Paragraph D of this Article XIV.

2. The Commercial Units may be used for a retail sales or service business, commercial or professional purposes, and any other lawful purposes, except sexually oriented businesses (SOBs) subject to regulation by City of Houston ordinance. No advertising on the Project (whether on the interior or exterior of the Building or any improvements) relating to a use of the Commercial Units, or a part thereof, shall unreasonably affect the operations or exterior appearance of the Project or affect access to any part of the Common Elements or any other Units.

B. Insurance Related to Use; No Hazardous, Annoying or Illegal Use. Unit Co-Owners shall not permit or suffer anything to be done or kept in their Units which will increase the rate of insurance or the insurance premiums on the Property, unless an insurance increase is specifically attributable to a Co-Owner's proposed use and such Co-Owner pays for such increase. Specifically, and without limitation to the foregoing, any insurance increase specifically attributable to the Restaurant, due to its use as a restaurant or other commercial uses, shall be assessed against such Unit. No Co-Owner shall permit or suffer anything to be done or kept in such Co-Owner's Unit which will obstruct or interfere with the rights of other Unit Co-Owners or annoy them by unreasonable noises or otherwise, or create foot traffic that unreasonably disturbs other Co-Owners; nor shall a Unit Co-Owner commit or permit any nuisance or illegal act in or about the Property.

C. Use to be in Accordance with Law, Declaration, By-Laws, Rules and Regulations. The use of each Unit shall be consistent, and in compliance, with existing laws, the provisions of this Declaration, the By-Laws and the rules and regulations adopted pursuant to the By-Laws.

D. Renting or Leasing of Units. Commercial Units may be rented without the prior approval of the Board, provided the lease is in writing, and such lease shall be subject to all requirements of this Declaration, the By-Laws and the Rules and Regulations of the Council pertaining to Commercial Units. Residential Units may be rented, provided the lease is in writing, the occupancy is only by the lessee, the lessee's family and guests, and provided, further, that all of the provisions of this Declaration, By-Laws and the Rules and Regulations of the Council pertaining to the use and occupancy of the leased Residential Unit shall be applicable and enforceable against any person occupying a Residential Unit as a tenant to the same extent as are applicable to the Co-Owner of a Residential Unit; and the provisions herein contained shall constitute a covenant and agreement by such tenant occupying a Unit to abide by this Declaration and the By-Laws, Rules and Regulations, as they may exist from time to time. The Board is and will be designated as the agent of the Co-Owner of the Residential Unit for the purpose of exercising, and with, the authority to terminate any lease covering the Residential Unit upon the violation by the Co-Owner or the tenant of the provisions herein contained. No Unit may be leased for transient or hotel purposes. The provisions of this Paragraph D. shall be included, in substantially similar form, in any lease of a Residential Unit.

E. Limitation During Sales Period. The Developer shall have the right to transact any business on the Property necessary to completion of any improvements or changes or to consummate sales of Units, including, but not limited to, the right to maintain models and offices in unsold Units or leased Units, having signs on the Common Elements in furtherance of these purposes, maintaining employees in its offices, use of elevators and Common Elements on the Property, and to show Units for sale. Any furniture and furnishings in any Units or offices or the model apartments, signs and other items owned by Developer and used in the sales or construction program shall not be considered Common Elements and shall remain the property of the Developer, and may be removed by the Developer after the Developer ceases to own any Units. In the event there are unsold Units, Developer's right as the owner of said unsold Units shall be the same as all other Unit Co-Owners in said Property, and Developer, as the owner of Units, shall contribute to the common expenses in the same manner as other Co-Owners, and shall have a vote in the Council for each unsold Unit weighted in accordance with the interest of those Units in the Common Elements.

## ARTICLE XV

### MAINTENANCE OF COMMUNITY INTERESTS

In order to maintain a community of congenial residents and thus protect the value of the Units, the mortgaging of Units by any Co-Owner other than the Developer shall be subject to the following provisions so long as the Project exists and the Building in useful condition exists upon the Land, which provisions each Co-Owner covenants to observe:

A. Mortgage. Any Unit Co-Owner may mortgage such Co-Owner's Unit without the approval of the Board.

1. Notice to Board. A Unit Co-Owner who mortgages such Unit shall notify the Board of the name and address of the Mortgagee; the Board shall maintain such information in a separate file or book covering Mortgages of Units.

2. Notice of Unpaid Assessments or Other Default. The Board, whenever so requested in writing by a Mortgagee or a prospective Mortgagee of a Unit, or an insurer or guarantor of a Mortgage, shall promptly report any then unpaid assessments due from, or any other default by, the Co-Owner of the Mortgaged Unit or any intent of the Council to foreclose on its lien on such Unit, and shall consider such request a continuing one and shall report to such Mortgagee, insurer or guarantor any unpaid assessment or other default by such Unit's Co-Owner in the performance of such Co-Owner's obligations under the governing documents of the Project which is not cured within sixty (60) days.

3. Notice of Default. The Board, when giving notice to a Unit Co-Owner of a default in the payment of assessments or other default, shall send a copy of such notice to each holder of a Mortgage covering such Unit whose name and address has theretofore been furnished to the Board, and to each insurer or guarantor of such Mortgage who has requested such notice.

4. Notice of Material Amendments and Other Votes. The Board shall send notice to each Eligible Mortgagee, and to all insurers and guarantors of Mortgages who have made written request for such notice, of any Material Amendment (as defined below) or any other matter requiring the consent of Eligible Mortgagees. Notice to such persons shall be delivered at the same time and in the same manner as provided for notice to Co-Owners entitled to vote on such matters, provided that notice to Eligible Mortgagees shall be sent by certified or registered mail, return receipt requested. The consent of an Eligible Mortgagee shall be implied when an Eligible Mortgagee fails to submit a response to any written proposal within thirty (30) days after such Eligible Mortgagee receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, return receipt requested. The notice requirements for Eligible Mortgagees are in addition to any such requirements herein for Mortgagees generally.

Any changes to this Declaration, the condominium information statement, the Articles of Incorporation and By-Laws of the Council, and the rules and regulations adopted by the Council (collectively, the "Project Documents") shall be considered "Material Amendments" if they relate to any of the following matters:

- (a) Voting rights;
- (b) Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens;
- (c) Reductions in reserves for maintenance, repair and replacement of Common Elements;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use;

- (f) Redefinition of any Unit boundaries;
- (g) Convertibility of Units into Common Elements or vice versa;
- (h) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- (i) Hazard or fidelity insurance requirements;
- (j) Imposition of any restrictions on the leasing of Units;
- (k) Imposition of any restrictions on a Co-Owner's right to sell or transfer his or her Unit;
- (l) If the Project then contains fifty (50) or more Units, a decision by the Council to establish self-management if professional management had been required previously by the Project Documents or by an Eligible Mortgagee;
- (m) Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Project Documents; or
- (n) Any provisions that expressly benefit Mortgage holders, insurers or guarantors.

5. Notice of Condemnation, Casualty or Insurance Changes. The Board, whenever so requested in writing by a Mortgagee or an insurer or guarantor of a Mortgage, shall promptly send written notice to each such person of: (i) any condemnation or casualty loss that affects either a material portion of the Project or the Unit securing such person's Mortgage; and (ii) a lapse, cancellation or material modification of any insurance policy maintained by the Council.

B. Persons Bound. Any persons, owners or grantees acquiring an interest in a Unit shall be subject to all of the provisions of this Article XV, except as is provided herein.

C. Exceptions. The provisions of this Article shall not be applicable to or be enforceable by the Board or any person with respect to:

1. A sale, transfer or conveyance of any Unit to any person pursuant to a tax sale, execution sale, judicial or non-judicial foreclosure of a mortgage or deed of trust of record, or a deed in lieu of foreclosure. If the purchaser following any such sale (or grantee under deed given in lieu of such foreclosure) shall be the immediate prior holder of the judgment lien, mortgage or deed of trust (or its nominee), the said purchaser, grantee or nominee may thereafter sell, lease or convey the Unit free and clear of the provisions of this Article, but its grantee shall thereupon and thereafter be subject to all the provisions hereof.

2. A sale of any Unit by the Developer and the creation of a mortgage in connection therewith, provided that the above notice provisions for the benefit of Mortgagees, insurers and guarantors shall include such initial Mortgages.

3. Any rental of any Unit by the Developer, with or without a written lease.

4. A transfer of title by testamentary disposition, intestate succession, or otherwise, resulting from death.

5. The transfer of all or any part of a partner's interest in a partnership Co-Owner (i) as a result of withdrawal, death or otherwise, to the remaining partners carrying on the partnership business and/or to a person or persons becoming partners; or (ii) between one or more partners.

6. The transfer of a Co-Owner corporation's interest to (i) the persons formerly owning the stock of the corporation as the result of a dissolution; or (ii) the resulting entity following a corporate merger or consolidation; provided, however, that over fifty percent (50%) of the stock of the resulting entity is owned by the stockholders of the corporation formerly owning the Unit.

7. A sale pursuant to an order of a court of competent jurisdiction in any bankruptcy, probate or other proceeding.

D. Unauthorized Transactions. Any sale, mortgage or lease which is not authorized pursuant to the terms of this Declaration shall be void unless subsequently approved by the Board.

## ARTICLE XVI

### LIMITATIONS ON EASEMENT OF ENJOYMENT; COMPLIANCE AND DEFAULT; CERTAIN NOTICES; COURT ACTIONS

A. Easement of Enjoyment. The right and non-exclusive easement of enjoyment of each Residential Unit Co-Owner in and to the Residential Limited Common Elements which are appurtenant thereto passes with the title to every Residential Unit, but is subject to the following provisions:

1. The right of the Council to limit or exclude the number of guests of Co-Owners.

2. The right of the Council to suspend the right to use the recreational facilities by a Co-Owner (i) for any period during which such Co-Owner shall be delinquent in the payment of assessments due the Council or during which such Co-Owner shall remain in default of any other obligation herein provided, and (ii) for any period not to exceed thirty (30) days for a single infraction of the By-Laws or rules and regulations, or both; provided, however, except for failure to pay assessments, no such suspension shall be effected until the Co-Owner shall have been given the opportunity to present evidence on the Co-Owner's behalf at a hearing before the Board or a committee designated by the Board, and no such hearing shall be held until the Co-Owner shall have received at least ten (10) days' written notice specifying the nature of the alleged default and the exact time and place of the hearing.

B. Compliance and Default. Each Co-Owner shall be governed by and comply with the terms of the Declaration of Condominium, By-Laws, and rules and regulations adopted



pursuant thereto, and said documents and rules and regulations as they may be amended from time to time. Failure of a Co-Owner to comply therewith shall entitle the Board or other Co-Owners to a right of action against the non-complying Co-Owner, for the following relief in addition to the remedies provided by the Act.

1. Negligence. A Unit Co-Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by such Co-Owner's neglect or carelessness, or by that of any member of the Co-Owner's family or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Council. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of a Unit or its appurtenances, or of the Common Elements.

2. Costs and Attorney's Fees. In any proceeding arising because of an alleged failure of a Co-Owner to comply with the terms of the Declaration, By-Laws and rules and regulations adopted pursuant thereto, and said documents and rules and regulations as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be awarded by the court.

3. No Waiver of Rights. The failure of the Council, Board or any Co-Owner to enforce any covenant, restriction or other provision of the Act, the Declaration, the By-Laws or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of same or the right to enjoin the enforcement of same for a subsequent default.

4. Definition. Failure to comply with any of the terms of this Declaration, the Articles of Incorporation or By-Laws of the Council, or the duly adopted rules and regulations of the Council, shall constitute an event of default and shall be grounds for relief, which may include without limitation an action to recover sums due for damages or injunctive relief, or any combination thereof.

5. Remedies. In addition to all other remedies herein contained or as may be provided by law, the Council may discontinue the furnishing of any services to a Co-Owner who is in default of such Co-Owner's obligations to the Council or other Co-Owners as set forth herein including, but not limited to, the non-payment of any assessment due hereunder, upon thirty (30) days' written notice to such Co-Owner and to any Mortgagee of such Co-Owner's Unit of its intent to do so, after prior written notice and the holding of a hearing as prescribed in Paragraph A.2, above.

C. Notice of Lien or Suit.

1. Notice of Lien. A Unit Co-Owner shall give notice to the Board of every lien upon his Unit, other than for permitted Mortgages, taxes and special assessments, within five (5) days after the attaching of the lien.

2. Notice of Suit. A Unit Co-Owner shall give notice to the Board of every suit or other proceeding which may affect the title to his Unit, such notice to be given within five (5) days after the Unit Co-Owner receives knowledge thereof.

3. Failure to Give Notice. Failure to comply with this subsection concerning liens will not affect the validity of any judicial sale.

D. Notice in Case of Damage or Condemnation. In the event of substantial damage to or destruction of any Unit or any part of the Common Elements, or the institution of condemnation proceedings with respect to any of same, the Board shall give timely notice of such occurrence and the nature thereof to the institutional holder of any first Mortgage on a Unit.

E. Required Consent for Court Actions in Certain Instances. No action may be brought by any Administrator or Administrators or other person designated by the Council on behalf of the Council or two (2) or more of the Co-Owners, as their respective interests may appear, with respect to any cause of action, excluding enforcement of any provision of the Act, this Declaration, the By-Laws or Rules and Regulations and actions related to repair and reconstruction of the Project and the collection of insurance proceeds related thereto, without the prior written consent or a record vote at an annual or special meeting of at least eighty percent (80%) of the Co-Owners. No Co-Owner who has not consented to or voted for the filing of any such action shall bear or incur any part of the fees or expenses in connection with same. The recovery, if any, of a person described in the preceding sentence shall not be reduced by their pro rata share of all fees and expenses incurred in such action based on the ratio of their individual recovery, if any, to the aggregate recovery, if any, of all persons represented in or a party to such action unless such person has signed a written agreement to such effect; provided, however, if there is no recovery from such action, no such person shall have any responsibility or liability for any such fees or expenses nor shall any of same be paid as a part of the common expenses of the Project.

## ARTICLE XVII

### AMENDMENTS

This Declaration of Condominium may be amended in the following manner, as well as in the manner provided in the Act and elsewhere in this Declaration:

A. Resolution.

1. Proposal. A resolution for the adoption of an amendment may be proposed by either the Board or an aggregate number of Co-Owners representing 10 percent of the total Unit votes weighted in accordance with each Unit's respective interest in the Common Elements. Such resolution shall be considered at a regular meeting of the Council or a special meeting of the Council called for such purpose.

2. Notice. Notice of the specific text of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be

considered. Notice of such meeting shall be provided to each Co-Owner no sooner than twenty (20) days, and no later than ten (10) days, before the date of the meeting and shall be either personally delivered, with a receipt signed by the Unit Owner, or deposited in the United States mail, postage prepaid. The date of delivery is the date of personal delivery or the postmark date, whichever is applicable. Notice shall also be sent to Eligible Mortgagees and to insurers and guarantors requesting notice, to the extent required by Article XV, Paragraph A.

3. Approval. Except as elsewhere provided, an amendment to the Declaration considered at such a meeting or meetings must be approved by not less than an aggregate of Co-Owners representing eighty percent (80%) of the total vote of all Units weighted in accordance with their interests in the Common Elements, and fifty-one percent (51%) of the Eligible Mortgagees.

B. Agreement. Any proposed amendment may be approved by an agreement in writing by an aggregate number of Co-Owners representing eighty percent (80%) of the total votes of all Units weighted in accordance with their interests in the Common Elements, and fifty-one percent (51%) of the Eligible Mortgagees, without the necessity of a meeting.

C. By Developer or Commercial Unit Co-Owner.

1. If the number of rooms in a Developer-Owned Unit is changed, or the size and/or number of Developer-Owned Units is changed (whether as a result of a subdivision or combination of Developer-Owned Units or alteration of boundary walls between Developer-Owned Units, or otherwise) and the appurtenant percentage interest in the Common Elements is reapportioned as a result thereof, or the Developer converts a Developer-Owned Residential Unit to a Commercial Unit or to Common Elements, or a Developer-Owned Commercial Unit to a Residential Unit or to Common Elements, or a change is made in or additional improvement is made to the Common Elements, all in accordance with Article X hereof, or an error has been made in this Declaration or any attachments, or the Developer exercises any right of the Developer hereunder or under the Act that requires amendment of the Declaration, then the Developer shall have the right to execute or (on its request) the Board shall execute, and record in the Office of the County Clerk of Harris County, Texas, and elsewhere, if required by law, an amendment to this Declaration (together with such other documents as may be required to effectuate the same) reflecting such change in the number of rooms in a Developer-Owned Unit or in the size and/or number of Developer-Owned Units (whether as a result of said subdivision, combination, alteration or otherwise) and the reapportionment of the interests in the Common Elements resulting therefrom, or such change in or additional improvement to the Common Elements, or correcting any such error, all without the approval of the Board, the Unit Co-Owners or the representative or representatives of holders of Mortgages, notwithstanding the provisions of Paragraph D. below.

2. If the number of rooms in, or the sizes of, the Commercial Units are changed and the percentage interests in the Common Elements appurtenant to the Commercial Units are reapportioned among any newly created Commercial Units

resulting from any subdivision of the Commercial Units (or any combining of newly created Commercial Units), or a Commercial Unit is changed to a Residential Unit, all in accordance with Article X hereof, then the Developer or the then owner of a newly created Commercial or Residential Unit shall have the right to execute, or (on its request) to require the Board to execute, and record in the Office of the County Clerk of Harris County, Texas, and elsewhere, if required by law, an amendment to this Declaration (together with such other documents as may be required to effectuate the same) reflecting such change in the number of rooms in a Commercial Unit or the subdivision of a Commercial Unit into separate Units (or the subsequent combination of such newly created Commercial Units) and the reapportionment of the common interests among such newly created Commercial Units or the change to a Residential Unit, all without the approval of the Board, the Unit Co-Owners or the representative or representatives of holders of Mortgages.

3. The provisions of this Paragraph C., Article XVII, may not be amended or deleted, in whole or in part, without the consent of the Developer (so long as the Developer or its designee owns any Unit) and, if subparagraph 2 above is being amended or deleted, also the consent of the then Co-Owner or Co-Owners of the Commercial Units.

4. The Board or the Developer, if the Developer owns a Unit that has never been occupied, may without the approval of the Unit Co-Owners, the Council or the representative or representatives of the holders of Mortgages, amend the Declaration in any manner necessary to meet the requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration or the Veterans Administration.

D. Proviso. Provided, however, that no amendment shall discriminate against any Unit Co-Owner nor against any Unit or class or group of Units, unless the Unit Co-Owners so affected shall consent; and no amendment shall change any Unit nor the share in the Common Elements appurtenant to it, nor increase the Co-Owner's share of the common expenses, unless the record Co-Owner of the Unit concerned and all record owners of Mortgages thereon shall join in the execution of the amendment; nor shall any amendment change or delete any provision affecting, relating to or granting any rights to the Developer without its written consent, or any provision affecting, relating to or granting any rights to the Co-Owners of Commercial Units, or any subgroup thereof, without the written consent of the affected Co-Owners; nor make any change in the section entitled "Insurance" nor in the section entitled "Reconstruction or Repair After Casualty" unless the record owners of all Mortgages upon Units shall join in the execution of the amendment.

E. Execution and Recording. No amendment shall be effective until recorded in the Office of the County Clerk of Harris County, Texas. The holders of Mortgages on Units may, at their election, designate a representative or representatives (not to exceed three in number) to act upon any and all amendments to this Declaration and if such representative or representatives are designated and written notice thereof is given to the Board by registered or certified mail addressed to the office of the Project, then any amendment to this Declaration that requires the

approval of such Mortgage holders shall require the approval in writing of said representative or a majority of said representatives. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, which certificate shall be executed by the President and Secretary of the Council and acknowledged as in the case of a deed.

## ARTICLE XVIII

### TERMINATION

The condominium may be terminated in the following manner, in addition to the manner provided by the Act:

A. Destruction or Eminent Domain. In the event it is determined in the manner elsewhere provided that the Project shall not be reconstructed because of major damage or taking by eminent domain, the condominium plan of ownership will be thereby terminated pursuant to, and in accordance with Article XIII or Article XIX, as applicable.

B. Agreement. The condominium may be terminated at any time by the approval, in writing, of all of the Co-Owners, or by a vote of eighty percent (80%) of the Co-Owners at a duly held meeting of the Council and sixty-seven percent (67%) of the Eligible Mortgagees, the notice of which meeting shall give notice of the proposed termination. If the proposed termination is approved at a meeting, then the approving Co-Owners shall have an option to buy all of the Units of the other Co-Owners for the period ending on the 60<sup>th</sup> day from the date of such meeting. Such option shall be upon the following terms:

1. Exercise of Option. The option shall be exercised by delivery, or mailing by certified mail, return receipt requested, to each of the record Co-Owners of the Units to be purchased an agreement to purchase signed by the record Co-Owners of Units who will participate in the purchase. Such agreement shall indicate which Units will be purchased by each participating Co-Owner and shall agree to purchase all of the Units owned by Co-Owners not approving the termination, but the agreement shall effect a separate contract between each seller and his purchaser.

2. Price. The sale price of each Unit shall be the fair market value determined by agreement between the seller and purchaser within thirty (30) days from the delivery or mailing of such agreement, and in the absence of agreement as to price, it shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

3. Payment. The purchase price shall be paid in cash.

4. Closing. The sale shall close within ten (10) days following the determination of the sale price.

C. Certification of Termination. Except as otherwise provided in Article XIII, Paragraph B, the termination of the condominium in any of the foregoing manners shall be evidenced by an instrument in writing subscribed and acknowledged by the Co-Owners voting in favor of termination. Such instrument shall request the County Clerk of Harris County, Texas, to re-group or merge the records of the filial estates with the principal Property, provided the filial estates are unencumbered, or, if encumbered, provided that all of the creditors in whose behalf the encumbrances are recorded shall agree to accept, as security, the undivided portions of the property owned by the Co-Owners, which agreement shall be evidenced by an instrument in writing subscribed by each of the creditors and properly acknowledged. If any part of the Property is to be sold as part of the agreement to terminate the condominium, including pursuant to Paragraph B of this Article XVIII, then the instrument recorded with the County shall include the terms of the sale.

D. Share of Owners After Termination. After termination of the condominium, the Unit Co-Owners shall own the condominium Property and all assets of the Council as tenants in common in undivided shares, and their respective Mortgagees and lienors shall have Mortgages and liens upon the respective mortgaged undivided shares of the Unit Co-Owners. Such undivided shares of the Unit Co-Owners shall be the same as the fractional or percentage interest in the Common Elements appurtenant to the Co-Owners' Units prior to the termination.

E. Amendment. This section concerning termination cannot be amended without the consent of the percentage of Unit Co-Owners and Eligible Mortgagees required to approve termination.

## ARTICLE XIX

### EMINENT DOMAIN

A. 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 shall represent all Co-Owners in proceedings incident thereto. The Board shall give such notice as it receives of the existence of such proceedings to all Co-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 as a common expense. 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.

B. 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), 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 proceeding, 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 such taking of Common Elements only, all damages and awards shall be determined for such taking as a whole and not for each Co-Owner's interest therein. After the damages or awards for such taking are determined, such damages or awards shall be paid to each Co-Owner and his or her Mortgagees, as their interests may appear, in proportion to such Co-Owner's percentage interest in the Common Elements. The Board may, if it deems advisable, call a meeting of the Co-Owners, at which meeting the Co-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 and the Plan attached hereto shall be duly amended by instrument executed by the Board of Directors on behalf of the Co-Owners.

C. Taking of Units. In the event that such eminent domain proceeding results in the taking of or damage to less than two-thirds (2/3) of the Building, then the damages and awards for such taking shall be determined for each Unit and the following shall apply:

1. The Board shall determine which of the Units damaged by such taking may be made habitable for the purposes set forth in this Declaration, taking into account the nature of this Project and the reduced size of each Unit so damaged.

2. The Board shall determine whether it is reasonably practicable to operate the remaining Units of the Project including those damaged Units which may be made habitable as a condominium in the manner provided in this Declaration.

3. In the event that the Board determines that it is not reasonably practicable to operate the undamaged Units and the damaged Units which can be made habitable as a condominium, then the Board shall promptly call a special meeting of the Council to determine whether or not to terminate the condominium. If at least eighty percent (80%) of the Co-Owners and at least fifty-one percent (51%) of the Eligible Mortgagees vote to terminate the condominium, then all damages and awards shall be paid as provided herein and in the Act, and the Project shall terminate upon payment. Upon such termination, the Project shall be deemed to be regrouped and merged into a single estate owned jointly in undivided interest by all Co-Owners, as tenants in-common, in the percentage interests previously owned by each Co-Owner in the Common Elements. If less than eighty percent (80%) of the Co-Owners vote to terminate the condominium, then the Board's decision is deemed reversed, and the Board shall proceed under subparagraph 4 of this Paragraph C.

4. In the event that the Board determines that it will be reasonably practicable to operate the undamaged Units and the damaged Units which can be made habitable as a condominium, then the damages and awards made with respect to each Unit which has been determined to be capable of being made habitable shall be applied to repair and reconstruct such Unit so that it is made habitable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against

the Co-Owners of those Units which are being repaired or reconstructed so as to be made habitable. With respect to those Units which may not be made habitable, the award made with respect to such Unit shall be paid to the Co-Owner of such Unit and his 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 Units shall be determined by the Board. Upon the payment of such award for the account of such Co-Owner as provided herein, such Unit shall no longer be a part of the Project and the percentage interests in the Common Elements appurtenant to each remaining Unit which shall continue as part of the Project shall be equitably adjusted to distribute the ownership of the undivided interests in the Common Elements among the reduced number of Co-Owners.

If the entire Project is taken, or two-thirds (2/3) or more of the Building is taken or damaged by such taking, all damages and awards shall be paid to the accounts of the Co-Owners of Units and their Mortgagees, as their interests may appear, as provided herein and in the Act, and this Condominium Regime shall terminate upon such payment. Upon such termination, the Units and Common Elements shall be deemed to be regrouped and merged into a single estate owned in undivided interest by all Co-Owners as tenants in-common in the percentage interest previously owned by each Co-Owner in the Common Elements.

D. Payment of Awards and Damages. Any damages or awards provided in this Article to be paid to or for the account of any Co-Owner by the Board, acting as Trustee, shall be applied first to the payment of any taxes or assessments by governmental authorities past due and unpaid with respect to that Unit; secondly, to amounts due under any mortgage instruments duly perfected; thirdly, to the payment of any common charges or special assessments charged to or made against the Unit and unpaid; and finally to the Co-Owner of such Unit.

## ARTICLE XX

### ATTORNEY-IN-FACT

A. Appointment of Council as Attorney-in-Fact. Each Co-Owner, by acceptance of a deed or other instrument of conveyance from Developer or from any Co-Owner or grantor resulting in ownership of a Unit, shall be deemed to appoint the Council (acting through the Board and its officers) as his or her true and lawful attorney-in-fact (which shall be deemed to be an irrevocable power of attorney coupled with an interest and not voidable due to the incapacity or disability of a Co-Owner) to act in connection with all matters concerning the maintenance of insurance policies and the destruction, repair, condemnation, taking by eminent domain or obsolescence of the Project, in whole or in part.

B. Specific Powers. Without limiting the generality of the foregoing, the Council, by and through the Board and its officers, shall have full power and authority to purchase and maintain such insurance, to collect and remit the premiums therefore, to collect insurance proceeds, to institute and prosecute litigation or arbitration (subject to any consent requirements in Article XVI.E), to pay all costs associated with its activities as common expenses (to the extent the proceeds received from such insurance are not adequate to pay such costs), to



administer the distribution of such proceeds in connection with any reconstruction or repair, to distribute any remaining proceeds to Co-Owners and their Mortgagees (subject to the provisions of this Declaration and the Act) as their interests may appear, to execute releases of liability, and to execute all documents and do all things on behalf of the Co-Owners and the Project as shall be necessary or convenient to the accomplishment of the foregoing (other than exercising any voting rights in determining whether to repair or reconstruct); and any insurer may deal exclusively with the Council in regard to such matters.

## ARTICLE XXI

### SEVERABILITY; WAIVER

The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of the Declaration and the By-Laws and rules and regulations of the Association shall not affect the validity of the remaining portions thereof. No provision in this Declaration, the Articles and By-Laws of the Council, or the Rules and Regulations is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches that may occur.

## ARTICLE XXII

### CAPTIONS AND HEADINGS

The captions and headings herein are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of this Declaration, nor the intent or meaning of any provision hereof.

EXECUTED this the 16<sup>th</sup> day of March 2001.

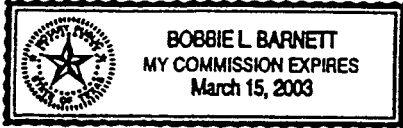
711 MAIN, LLC,  
a Texas limited liability company

By: \_\_\_\_\_

  
Duncan Shantz, Vice-President

THE STATE OF TEXAS   §  
                                  §  
COUNTY OF HARRIS   §

This instrument was acknowledged before me on March 16, 2001, by Duncan Shantz, Vice-President of 711 Main, LLC, a Texas limited liability company, on behalf of such limited liability company.



*Bobbie L. Barnett*  
\_\_\_\_\_  
Notary Public in and for the State of Texas

EXHIBIT "A"

TO THE CONDOMINIUM DECLARATION  
OF THE CAPITOL LOFTS, A CONDOMINIUM

DESCRIPTION OF PROPERTY

All of Lot 8; the north 5 by 100 feet of Lot 7, adjoining Lot 8; the south 25 feet of Lot 11 in the rear of and adjoining Lot 8; the north 30 by 50 feet of Lot 12 adjoining the rear of Lots 7 and 8 and the south line of Lot 11 and 5 north/south by 15 east/west out of the northwest corner of Lot 2, being the north 5 feet of the west 15 feet of Lot 1 and 2, all in Block 80, south side of Buffalo Bayou, City of Houston, Harris County, Texas, including a non-exclusive easement (to be used in common with others) over and across a 7 foot alleyway (7 feet west 15 feet of Lots 1 and 2) from building on above described land to Rusk Avenue to the south, as more particularly described by metes and bounds as follows:

Being a 0.193-acre (8408 square-foot) tract of land out of Block 80, S.S.B.B. in the City of Houston, Harris County, Texas, and being all of Lot 8, the northeasterly 5 feet of Lot 7, the southeasterly 25 feet of Lot 11, the northeasterly 30 feet of Lot 12, and the northeasterly 5 feet of the northwesterly 15 feet of Lot 2, all in said Block 80, and being more particularly described by metes and bounds as follows: (Basis of bearing on City of Houston reference monuments)

BEGINNING at an 'X' cut in concrete found for the north corner of Lot 8 and the west corner of Lot 9 on the southeast right-of-way line of Main Street (90 feet wide), from which the City of Houston Reference Rod No 248 located in the centerline of Main Street at it's intersection with the centerline of Rusk Avenue, (80 feet wide), bears two (2) courses and distances:

1. South 32° 52' 24" West 190.00 feet, and
2. North 57° 07' 36" West 45.00 feet,

THENCE South 57° 07' 36" East in part with the common line between Lots 8, and 9, and in part across Lot 11, and generally along the common party wall between two buildings, as provided for in Party Wall Agreement in deed recorded in Volume 345, Page 148, Harris County Deed Records, at 101.00 feet pass the east corner of Lot 8, and the south corner of Lot 9, for a total distance of 151.50 feet to a point for corner at the north corner of Lot 3, and the west corner of Lot 4, on the southeast line of Lot 11 and within said mufti-story building;

THENCE South 32° 52' 24" West with the southeast line of Lots 11 and 12 and the northwest line of Lot 3 in part along the southeast side of an alleyway, at 0.70 foot pass the southwest face of said building, at 25.00 feet pass the south corner of Lot 11 and the west corner of Lot 12, and at a total distance of 50.00 feet to an "X" cut in concrete found for the west corner of Lot 3 and the north corner of Lot 2, and located 1.23 feet northeast of the most northerly west corner of the Texas State Hotel Building;

THENCE South 57° 07' 36" East with the common line between Lots 2 and 3 and generally along a northwest face of said Hotel building 15.00 feet to an "X" cut in concrete set for corner located 1.27 feet northwest and 0.06 feet southwest of an interior corner of said Hotel building;

THENCE South 32° 52' 24" West within Lot 2 and along another east side of said alleyway and generally paralleling the northwest face of said Hotel building 5.00 feet to an "X" cut in concrete found for corner;

THENCE North 57° 07' 36" West crossing Lots 2, 12, and 7 in part crossing said alleyway and in part within a multi-story building located southwest of the herein described tract at 6.41 feet pass the southeast face of said building at it's east corner, at 15 feet pass the common line between Lots 2 and 12, at 65 feet pass the common line between Lots 12 and 7, at 166.10 feet pass the northwest face of said building at a point 0.40 foot southwest of it's north corner, at a total distance of 166.50 feet to an "X" cut in concrete found for corner on the northwest line of said Lot 7, and on the said southeast right-of-way line of said Main Street;

THENCE North 32° 52' 24" East with the northwest line of said Lot 7 and 8 and with the southeast right-of-way line of said Main Street, at 5.00 feet pass the north corner of said Lot 7 and the west corner of said Lot 8 and at a total distance of 55.00 feet to the POINT OF BEGINNING and containing 0.193 acre (8409 square feet) of land.

**EXHIBIT "B"**

**TO THE CONDOMINIUM DECLARATION  
OF THE CAPITOL LOFTS, A CONDOMINIUM**

**PLANS AND SPECIFICATIONS AND  
UNITS' PERCENTAGE INTEREST IN COMMON ELEM**

**UNITS' PERCENTAGE INTEREST  
IN COMMON ELEMENTS**

<b>Unit Number</b>	<b>Sq Ft.</b>	<b>% Ownership</b>
100	4911	1.900
200	4015	1.600
301	1179	2.442
302	1378	2.854
303	1258	2.605
304	1258	2.605
305	1812	3.753
306	1000	2.071
401	1179	2.442
402	1378	2.854
403	1000	2.071
501	1179	2.442
502	1378	2.854
503	1258	2.605
504	1258	2.605
505	1812	3.753
506	1000	2.071
601	1179	2.442
602	1378	2.854
603	1000	2.071
701	1179	2.442
702	1981	4.103
703	1258	2.605
704	906	1.876
705	1000	2.071
801	2557	5.296
802	650	1.346
803	906	1.876
804	1000	2.071
901	1179	2.442
902	1378	2.854
903	1267	2.624
904	906	1.876
905	1000	2.071
1001	2301	4.766
1002	2123	4.397
1003	2118	4.387
		100.000%

## EXHIBIT "C"

### TO THE CONDOMINIUM DECLARATION OF THE CAPITOL LOFTS, A CONDOMINIUM

#### RECORDED EASEMENTS AND LICENSES

1. Terms of Houston Downtown Management District as defined in form and/or plat recorded under Clerk's File No. R-573373 of the Real Property Records of Harris County, Texas
2. Access Easement across adjoining tract at 705 Main Street, for access to parking area in the basement of the Building and the basement of 719-723 Main, set forth in an instrument recorded under County Clerk's File No. U075476 in the Official Records of Real Property of Harris County, Texas
3. Staircase, Storage and Underground Parking Easements, at adjoining tract at 719-723 Main Street, for use of underground parking area in the basement of such tract, staircase access to such parking area, and use of ground floor area for storage, set forth in an instrument recorded under County Clerk's File No. U065871 in the Official Records of Real Property of Harris County, Texas
4. Air Rights Space, Roof, Fire Exit and Alley Easements over adjoining tract at 719-723 Main Street, for (i) right to construct balconies on the exterior of the Building encroaching on the air rights of such tract, (ii) right to construct a finished and landscaped area on a portion of the roof of the building located on such tract, (iii) a fire exit on the roof of 719-723 Main, and (iv) a common alleyway along the rear of such tract to Rusk Avenue, set forth in an instrument recorded under County Clerk's File No. U065870 in the Official Records of Real Property of Harris County, Texas
5. Store Area Easement by and between 711-723 Main, L.P. and 711 Main, LLC as set forth in instrument filed for record under Harris County Clerk's File No. U065872.
6. Easement for light and air in addition to the right to use an alleyway seven (7) feet over the west fifteen (15) feet of Lots 1 and 2, as shown by the plat recorded in Volume 38, Page 535 of the Contract Records and recited in Volume 345, Page 148 of the Deed Records of Harris County, Texas.

EXHIBIT "D"

TO THE CONDOMINIUM DECLARATION  
OF THE CAPITOL LOFTS, A CONDOMINIUM

CONSENT OF MORTGAGEE

The undersigned, Southwest Bank of Texas, N.A., a national banking association, being the owner and holder of an existing mortgage and liens upon and against the land and property, (described as the "Property" in the foregoing Declaration), and as such mortgagee and lienholder does hereby consent to said Declaration and the exhibits attached thereto and to the recording of same for submission of said Property to the provisions and condominium regime of the Texas Uniform Condominium Act, Chapter 82 of the Texas Property Code.

The undersigned hereby subordinates its mortgage lien and security interests and any and all other liens owned or held by it (in and to the Property of the condominium regime to be created) to the terms and provisions of the above and foregoing Condominium Declaration for The Capitol Lofts (to which this Consent of Mortgagee is annexed) and to the condominium regime created thereby (or to be created thereby upon recordation) all with the same effect and intent as if said Declaration had been executed and recorded prior to the execution and recordation of the mortgage and other instruments creating said liens and security interests. This consent shall not be construed or operate as a release of said mortgage or liens owned and held by the undersigned, or any part thereof, but the undersigned agrees that its said mortgage and liens shall hereafter be upon and against each and all of the individual Units and all appurtenances thereto, and all of the undivided shares and interests in the Common Elements of the Property and of said condominium regime established by said Declaration, until said mortgage and liens are otherwise released by the undersigned.

SIGNED AND ATTESTED by the undersigned by and through its duly authorized officers, this the 14<sup>th</sup> day of MARCH 2001.

SOUTHWEST BANK OF TEXAS, N.A.

ATTEST:

Megan Kleine  
Secretary

By: MARC A. DUNMIRE  
Name: MARC A. DUNMIRE  
Title: S.V.P.

THE STATE OF TEXAS

§  
§  
§

COUNTY OF HARRIS

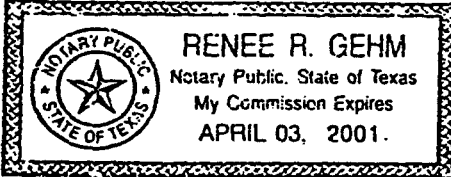
This instrument was acknowledged before me on this 14<sup>th</sup> day of MARCH, 2001, by MARC A. DUNMIRE, the SENIOR VICE PRESIDENT of Southwest Bank of Texas, N.A., a national banking association.

Renee R. Gehm

Notary Public in and for \_\_\_\_\_

\_\_\_\_\_  
Name of Notary Public

My Commission Expires: \_\_\_\_\_





## SUMMARY OF MATERIAL MODIFICATIONS TO THE CONDOMINIUM DECLARATION FOR THE CAPITOL LOFTS

As provided in Article IV of the Condominium Information Statement furnished at the time of signing Earnest Money Contracts, the following is a summary of certain material and substantive changes made in the Condominium Declaration before recording the Condominium Declaration in the public records. You should review the copy of the recorded Condominium Declaration attached to the amended Condominium Information Statement for the complete description of these and other revised provisions.

1. General. With the addition of penthouse units on the roof, the number of stories in the Building is now shown as 11 instead of 10. The number of Residential Units has been reduced from 40 to 35 because additional larger units were needed. The Units, their square footage, and their percentage interest in the Common Elements are now set out on Exhibit "B." Exhibit "B" also shows the plans for each floor and the parking areas.
2. Definitions and Common Elements
  - a. The definition of a Unit was expanded, particularly to address the boundaries of balconies and patios.
  - b. The definitions of Residential Unit and Commercial Unit have been shortened to avoid repetitive provisions from the definition of a unit and to describe their use only.
  - c. The previous description of types of residential and commercial units has been deleted and references to types of units in Article III, paragraph A. has been modified.
  - d. The Restaurant Lease definition has been changed to refer to the "Restaurant" and the definition has been modified to reflect that Commercial Units 100 and 200 are not restricted to the existing restaurant lease(s).
  - e. A new definition "Exclusive Roof Area" has been added.
  - f. The definition of Mortgagee has been expanded.
  - g. The definition of "Storage Area" has been changed to "Storage Spaces" and expanded.
  - h. The definitions of Common Elements and Limited Common Elements have been shortened to refer to the meanings in new Article II entitled, "Common Elements." In Article II, those terms and the term "Parking Spaces" have expanded descriptions based on changes necessitated by the buildout of such areas.

3. Commercial Units and Sharing of Common Expenses

- a. In Article II, paragraph B. "Restrictions on the Use of certain Common Elements by Commercial Unit Owners" has been added. In Article III, paragraph E.2(f) dealing with Development Rights, the lease of Commercial Units and easement areas has been modified.
  - b. In Article IV, the definition of an ownership interest has been expanded and the sharing of common expenses between the Residential Unit Co-Owners and Commercial Unit Co-Owners has been modified based on the restrictions on use of the Common Elements by the Commercial Co-Owners and their assumption of certain expenses attributable to their space in the building. For consistency, similar changes have been made to Article IX on Assessments and in Article X with respect to the Commercial Unit Co-Owners' maintenance of certain restaurant equipment.
  - c. In Article VII, a provision has been added so that at least one member of the Council of Co-Owners must be an owner of a Commercial Unit and in any voting on an issue by the Council of Co-Owners that could materially affect the interests of the Co-Owners of the Commercial Units at least one board member who represents the Commercial Unit Owners must approve such matter. Likewise in a vote by the Co-Owners on an issue that could materially affect the interests of Co-Owners of Commercial Units, at least one Co-Owner of a Commercial Unit must vote for approval.
  - d. Also in Article VII, the period of Developer Control has been limited to no more than three years no matter how many units have been sold.
4. Assessments. In Article IX, a provision describing initial working capital provided by the Developer and reimbursement of same to the Developer has been added. Changes have been made to the provisions on Payment of Assessments, covering prorations of assessments, reductions in the assessment for unsold units that are not occupied, and assessment of a late charge for delinquent payments. A clarification of the extent of liability of mortgage companies for unpaid assessments has also been added.
5. Maintenance, Alteration and Improvements. In Article X, the Right of Access to Limited Common Elements and Exclusive Roof Areas has been clarified. Clarifications of repair responsibilities between the Co-Owner and the Council of Co-Owners for items constructed or installed within a Unit or constructed or installed by a Co-Owner within a Limited Common Element assigned to such Co-Owner's Unit and with respect to the air handler mechanical unit located in each Co-Owner's Unit or serving such Unit, have been made. Clarifications have also been added with respect to the division of responsibility for repairs between the Council of Co-Owners and the Owners of Units that have designated Exclusive Roof Areas.

6. Insurance. In Article XI, additions have been made to the descriptions of the Insurance coverage. The provisions for Fidelity Bonds or Fidelity Insurance with respect to administrators, officers, agents, and employees of the Council of Co-Owners have been expanded and a provision covering flood insurance has been added.
7. Reconstruction and Repair After Casualty. In Article XII a requirement has been added that at least 51% of the Eligible Mortgagees must vote to terminate the condominium regime in the event two-thirds or all of the Building requires reconstruction. In addition if insurance does not cover the entire reconstruction cost all co-owners shall be subject to assessment for additional construction funds.
8. Use and Occupancy. In Article XIV a provision has been added to permit combined home office and residential use. A provision has been added to prohibit the use of the commercial units for sexually oriented businesses as that term is defined by City of Houston ordinances. If the operation of the restaurant causes additional insurance cost that additional cost shall be borne by the restaurant. Any leasing of the commercial units shall be subject to the Declaration, By-laws and Rules & Regulations of the Council of Co-Owners pertaining to commercial units.
9. Mortgages. A number of provisions have been added to give notice to and protect holders of mortgages.
10. Termination. The provision that the condominium regime may be terminated at any time (whether damaged or not) has been changed to require 67% approval by the eligible mortgagees.
11. Eminent Domain. In Article XIX a change has been made to indicate that the Board of Administrators of the Council of Co-Owners shall represent all Co-Owners in the condemnation proceeding. Provision for approval by Eligible Mortgagees has also been added.

**UNDERSTANDINGS AMONG the CAPITOL LOFTS COUNCIL OF CO-OWNERS, the DEVELOPER, AND THE COMMERCIAL TENANT**

1. The Capitol Lofts Council of Co-Owners recognizes the right of Developer, 7711 MAIN, L.L.C. or their successors or assigns ("Developer"), to lease the Commercial Unit.
2. Developer's Lessee, however, does not have all the rights of the Co-Owners and Developer agrees that Lessee shall have only a single access key to the front door and one garage access remote and not be given any access code and not be given access by phone.
3. The Lessee does have one assigned parking space in the Capitol Lofts garage and right of ingress and egress from that space. That is a single designated space, for a single vehicle. The Lessee has no right to permit others to park, even temporarily anywhere else in the garage. The Lessee will provide the Board of Administrators the description of the vehicles (maximum two) and their license plate numbers that will be permitted to use that space.
4. The Lessee does not have the right to use the elevator or stairway or the lobby for any purpose other than his, and those who accompany him, ingress or egress to or from the garage.
5. The Lessee, for instance, does not have the right to permit his employees, customers, licensees, concessionaires, invitees, visitors, guests, officers, or agents or anyone else (collectively referred to as "Agents") to use these ingress and egress rights except when they accompany him.
6. Neither the Lessee nor his Agents have any right to use the garage, elevator, lobby, or any other common area of the Capitol Lofts Condominium for access to the Commercial Unit for any business purposes including loading or unloading materials or supplies for the Commercial Unit or for construction, decoration, or business use of the Commercial Unit, or any right to have others use these areas for those purposes.
7. If the Lessee believes that there may be emergency occasions when access to the second floor of the Condominium or use of the elevator for access to the second floor will be necessary for any Agent, the Lessee will spell out those possibilities in writing and present them to the Board of Administrators for purposes of reaching an agreement.
8. The Lessee shall provide the Board of Administrators copies of all insurance contracts related to the Commercial Unit and its use and shall immediately notify the Board if any insurance contract should terminate or lapse or become

unenforceable for any reason and copies of subsequent contracts as they are placed in force.

9. The Lessee shall maintain sufficient insurance to indemnify the Capitol Lofts Council of Co-Owners and all unit owners for any loss that may occur as a result of any event in the Commercial Unit or as a result of any action by the Lessee or any Agent.
10. The Lessee acknowledges that during the weekend of January 30 through February 1, 2004, its Agents violated paragraph 9 his lease. There was interference with Co-Owners access and use of the front door, lobby, elevators, garage driveways, and parking places; an Agent at least once rode an elevator to the 10<sup>th</sup> floor; Agents overloaded the elevator with cases of beer, wine, and other restaurant supplies and forced the doors open for purposes of loading and unloading; Agents verbally abused some of the Co-Owners.
11. The "No Nuisance" provision in paragraph 17.16 of the lease shall apply as well to the first floor except that live music may be played with noise kept within reasonable limits considering the use of the Condominium as residential units. Further, outside speakers and lights that shine on any residential are prohibited. Any other methods for attracting customers are subject to the approval of the Board of Administrators.
12. The Lessee will provide proof of each pest control treatment to the Board of Administrators.
13. Any work on the second floor shall be conducted without using the common areas of the Capitol Lofts Condominium for access in any way and work that causes sounds outside of the leased premises will not commence prior to 9:00am or continue beyond 6:00pm.
14. If Lessee should violate any of these provisions, Lessee shall forfeit all rights to his assigned parking place and will surrender all access devices and keys to the garage and to the Capitol Lofts Condominium. Lessee also agrees to pay the Capitol Lofts Council of Co-Owners a fine of \$2,000 for each violation of any of the items detailed here except that he agrees to pay a fine of \$5,000 if the violation is brought to the attention of the Lessee or any Agent and the violation is not immediately corrected.

JUL 24 2009

**AMENDMENT**  
*to*  
**THE CONDOMINIUM DECLARATION**  
*for*  
**THE CAPITOL LOFTS, A CONDOMINIUM**

---

THE STATE OF TEXAS       §  
  §                   KNOW ALL PERSONS BY THESE PRESENTS:  
COUNTY OF HARRIS       §

WHEREAS, 711 MAIN, LLC, a Texas limited Partnership, (the "Developer") was the sole record owner of that certain property known as The Capitol Lofts, a condominium regime located in Harris County, Texas according to the map or plat recorded in Volume 179, Page 25 *et seq.* and refiled in Volume 179, Page 49 *et seq.* of the Condominium Records of Harris County, Texas ("The Capitol Lofts");

WHEREAS, Developer by that certain instrument entitled "The Condominium Declaration for The Capitol Lofts a Condominium" filed of record in the Condominium Records of Harris County, Texas, in Volume 179, Page 25 *et seq.* and refiled in Volume 179, Page 49 *et seq.* (the "Declaration"), imposed on The Capitol Lofts all those certain covenants, conditions, restrictions, and easements set forth therein;

WHEREAS, Article XVII, Section B provides that an amendment to the Declaration may be approved by an agreement in writing by an aggregate number of Co-Owners representing eighty percent (80%) of the total votes of all Units weighted in accordance with their interests in the Common Elements ... without the necessity of a meeting; and

WHEREAS, the Co-Owners representing eighty percent (80%) of the total votes of all Units weighted in accordance with their interests in the Common Elements (evidenced by the Consents attached hereto as Exhibit "A" and incorporated herein for all purposes) have agreed to amend the Declaration as set forth below.

NOW, THEREFORE, the Declaration is hereby amended to replace the Basement Plan depicted under Film Code No. 179065 on "Page 17 of 24" of the Declaration ("Original Basement

Plan”) with the attached Exhibit “B” attached hereto and incorporated herein for all purposes, which Exhibit “B” shall supersede and replace the Original Basement Plan in all respects.

DATED this 31<sup>st</sup> day of JULY, 2009.

ATTEST:

**THE CAPITOL LOFTS COUNCIL  
OF CO-OWNERS**

By: M. Drew Walters

By: [Signature]

Printed: M. DREW WALTERS

Printed: SAMMY ROBERTS JR

Its: Secretary

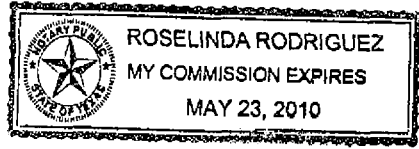
Its: President

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

Before me, a notary public, on this day personally appeared Sammy Roberts, as President of The Capitol Lofts Council of Co-Owners, known to me to be the person whose name is subscribed to the foregoing instrument and, being by me first duly sworn and declared that he/she executed same in the capacity and consideration therein expressed. Given under my hand and seal of office this the 31<sup>st</sup> day of JULY, 2009.

[Signature]  
NOTARY PUBLIC - STATE OF TEXAS

147127



**SECOND AMENDMENT TO  
CONDOMINIUM DECLARATION FOR  
THE CAPITOL LOFTS  
711 MAIN, HOUSTON, HARRIS COUNTY, TEXAS**

THE STATE OF TEXAS

§  
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§  
§  
§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF HARRIS

WHEREAS, by Condominium Declaration (the "Declaration"), recorded under Film Code Number 179025 in the Condominium Records of Harris County, Texas, 711 Main LLC (the "Declarant") adopted a plan of development for the Capitol Lofts, a condominium project located on the real property more particularly described on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the Declaration was re-recorded to add the Basement Plan, which was inadvertently omitted, to Exhibit B on Page 17, by a filing under Film Code Number 179049 of the Condominium Records of Harris County, Texas (the "First Amendment"); and

WHEREAS, the Declarant now desires to further amend the Declaration, as amended by the First Amendment, as permitted by Article XVII of the Declaration;

NOW THEREFORE, for and in consideration of the promises and agreements set forth below, the Declaration as amended by the First Amendment is hereby further amended as follows:

1. Article XI, Paragraph B.1. is hereby deleted in its entirety, and the following inserted in lieu thereof:

**B. Coverage.**

1. **Casualty.** The Project (including the Building, the Parking Area, the roof area of the adjacent building at 719 Main, and all other easements owned by the Project, and all of the Common Elements, Limited Common Elements and the unfinished surfaces of the perimeter walls, ceilings and floors of Units therein and all other improvements upon the Land and all personal property owned by the Project and included in the Common Elements shall be insured under a "master" or "blanket" type of policy, in an amount equal to not less than one hundred percent (100%) of the insurable "replacement cost," exclusive of land, foundations, excavation and other items normally excluded from coverage.



a. Such coverage shall afford protection against:

i. Loss or damage by fire and other hazards covered by standard extended coverage policies, and debris removal, cost of demolition, vandalism, and malicious mischief, windstorm and water damage;

ii. Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the Building on the Land, including those covered by the standard "all risk" endorsement or "broad form" covered causes of loss.

b. The policy referred to in this paragraph B.1. shall not afford protection against loss or damage to improvements, alterations, fixtures and additions, whether or not part of the building, which are contained within the unfinished interior surfaces of the perimeter walls, floors and ceilings of each Unit and any furniture, furnishings or personal property not owned by the Project. Each Unit Owner should secure their own coverage of all of these items under a Texas Homeowners Condominium Policy Form B or such other form providing similar coverage to condominium owners as the Texas Department of Insurance or any successor governmental agency having jurisdiction over insurance coverages in Texas may promulgate from time to time.

The casualty policy must be written by an insurance carrier that has an acceptable rating from the A. M. Best Company, Demotech, Inc., or Standard and Poor's, Inc., or is covered by reinsurance with a company meeting the ratings specified by FNMA. The maximum deductible amount on any casualty policy shall be the lesser of \$10,000 or one percent (1%) of the face amount of the policy. The casualty policy shall include the following endorsements:

u. Replacement Cost Endorsement - either the "Guaranteed Replacement Cost Endorsement" (providing for replacement regardless of cost) or the "Replacement Cost Endorsement" (providing for payment of up to 100% of replacement cost); and if the policy includes a coinsurance clause, an "Agreed Amount Endorsement" (waiving the requirement for coinsurance).

v. Standard Mortgage Clause - naming as mortgagees all holders of Mortgages on Units. If FNMA has purchased or securitized a Mortgage, the named mortgagees shall include, as applicable, either FNMA or the servicers (and the servicers' successors and assigns) for the Mortgages or Mortgage share loans held by FNMA on Units.

w. Inflation Guard Endorsement - when it can be obtained.

x. Building Ordinance or Law Endorsement - for continuing liability from operation of building, zoning or land-use laws, including loss or damage, increased costs of repair or reconstruction, or additional demolition and removal costs.

y. Steam Boiler and Machinery Coverage Endorsement - If the Project has central heating or cooling, either this endorsement or separate stand-alone coverage, with a

minimum coverage per accident equal to the lesser of \$2,000,000 or the insurable value of the building housing the boiler or machinery.

z. Special Condominium Endorsement - providing that any Insurance Trust Agreement will be recognized, and including the provisions of subparagraphs 2 (primary coverage), 3 (coverage not prejudiced) and 5 (waiver of subrogation) of Paragraph A of this Article.

2. Exhibit "B" is hereby amended as follows: the original Basement Plan, Level One Plan, Level Two Plan and Level Ten Roof Plan are deleted in their entirety and the revised plans for each of such levels attached hereto and dated May 2, 2002 are substituted in lieu thereof. In addition, an Elevator Roof Plan, which is attached hereto, is added to designate an additional Exclusive Roof Area and the first sentence of Article X C.3 is hereby amended to add the Co-Owner of Unit 200 as having the right to use its Exclusive Roof Area on the Elevator Penthouse Roof.

3. Exhibit "C" is hereby amended to add the following as items 7, 8, and 9:

7. Easement granted to Texas Cable Partners, a Texas corporation, which easement is recorded under County Clerk's file number V008290 in the Official Public Records of Real Property of Harris County, Texas, for the purposes set forth therein;

8. Easement granted by 705 Main Street Venture Partners L.P., a Texas Limited Partnership, which easement is recorded under County Clerk's file number U978492 in the Official Public Records of Real Property of Harris County, Texas, for the purposes set forth therein; and

9. Easement granted by the City of Houston, as set forth in City of Houston Ordinance number 2001-376, which easement is recorded under County Clerk's file number V092577 in the Official Public Records of Real Property of Harris County, Texas, for the purposes set forth therein.

4. Exhibit "C" is further amended to modify the Easement listed as item 4 to incorporate the additions, deletions and changes set out in the First Amendment to Air Rights Space, Roof, Fire Exit and Alley Easements over the adjoining tract at 719-723 Main, which is attached hereto and incorporated herein as Exhibit "C."

5. Except as modified expressly herein or by necessary implication, the terms and provisions of the Declaration and First Amendment as therein set forth remain in full force and effect.

[Signatures Appear on the Following Pages]

**EXHIBIT A**

**TO THE SECOND AMENDMENT TO  
CONDOMINIUM DECLARATION  
FOR THE CAPITOL LOFTS, A CONDOMINIUM**

**DESCRIPTION OF PROPERTY**

All of Lot 8; the north 5 by 100 feet of Lot 7, adjoining Lot 8; the south 25 feet of Lot 11 in the rear of and adjoining Lot 8; the north 30 by 50 feet of Lot 12 adjoining the rear of Lots 7 and 8 and the south line of Lot 11 and 5 north/south by 15 east/west out of the northwest corner of Lot 2, being the north 5 feet of the west 15 feet of Lot 1 and 2, all in Block 80, south side of Buffalo Bayou, City of Houston, Harris County, Texas, including a non-exclusive easement (to be used in common with others) over and across a 7 foot alleyway (7 feet west 15 feet of Lots 1 and 2) from building on above described land to Rusk Avenue to the south, as more particularly described by metes and bounds as follows:

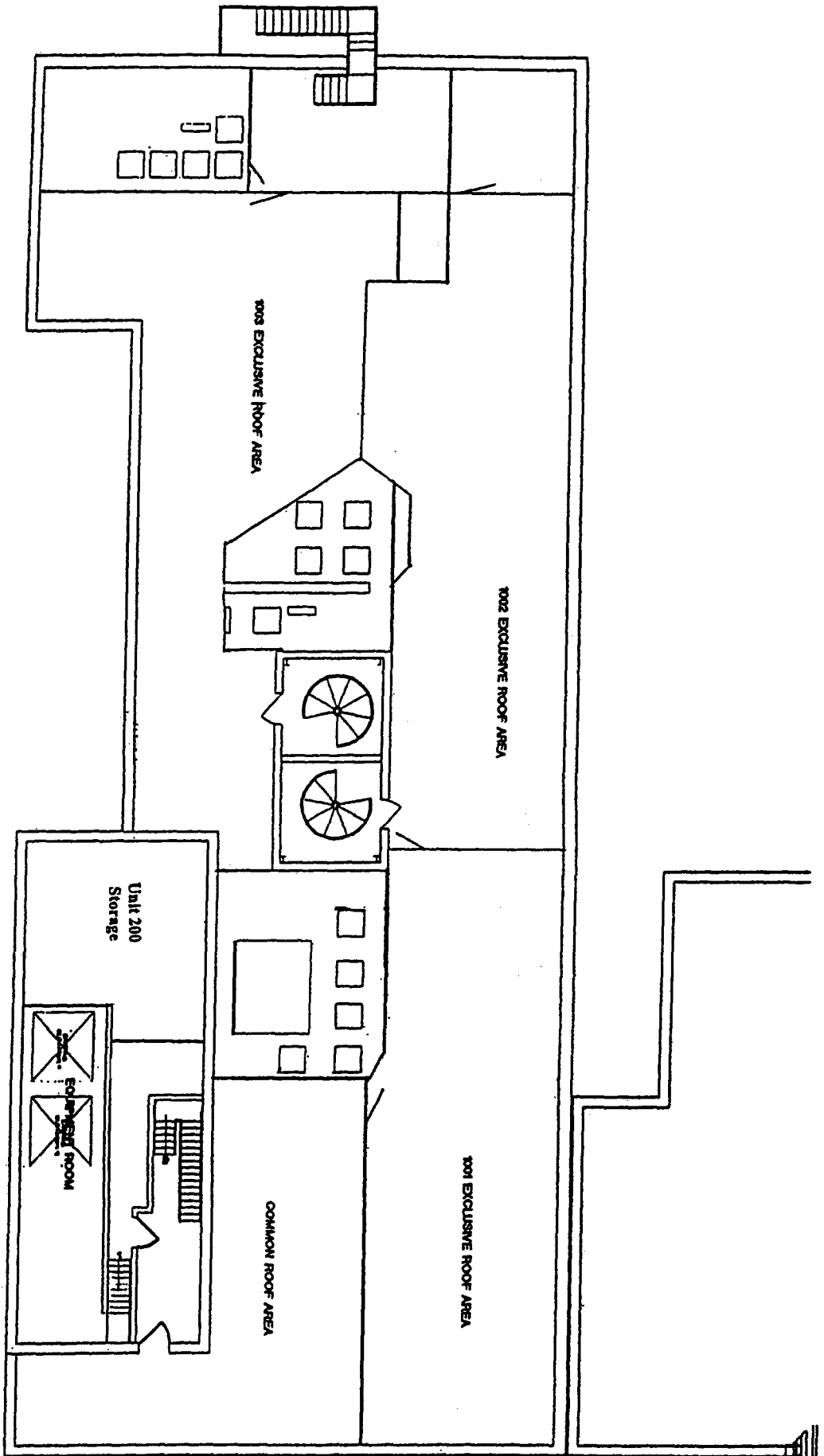
Being a 0.193-acre (8408 square-foot) tract of land out of Block 80, S.S.B.B. in the City of Houston, Harris County, Texas, and being all of Lot 8, the northeasterly 5 feet of Lot 7, the southeasterly 25 feet of Lot 11, the northeasterly 30 feet of Lot 12, and the northeasterly 5 feet of the northwesterly 15 feet of Lot 2, all in said Block 80, and being more particularly described by metes and bounds as follows: (Basis of bearing on City of Houston reference monuments)

BEGINNING at an 'X' cut in concrete found for the north corner of Lot 8 and the west corner of Lot 9 on the southeast right-of-way line of Main Street (90 feet wide), from which the City of Houston Reference Rod No 248 located in the centerline of Main Street at it's intersection with the centerline of Rusk Avenue, (80 feet wide), bears two (2) courses and distances:

1. South 32° 52' 24" West 190.00 feet, and
2. North 57° 07' 36" West 45.00 feet,

THENCE South 57° 07' 36" East in part with the common line between Lots 8, and 9, and in part across Lot 11, and generally along the common party wall between two buildings, as provided for in Party Wall Agreement in deed recorded in Volume 345, Page 148, Harris County Deed Records, at 101.00 feet pass the east corner of Lot 8, and the south corner of Lot 9, for a total distance of 151.50 feet to a point for corner at the north corner of Lot 3, and the west corner of Lot 4, on the southeast line of Lot 11 and within said mufti-story building;

THENCE South 32° 52' 24" West with the southeast line of Lots 11 and 12 and the northwest line of Lot 3 in part along the southeast side of an alleyway, at 0.70 foot pass the southwest face of said building, at 25.00 feet pass the south corner of Lot 11 and the west corner of Lot 12, and at a total distance of 50.00 feet to an "X" cut in concrete found for the west corner of Lot 3 and the north corner of Lot 2, and located 1.23 feet northeast of the most northerly west corner of the Texas State Hotel Building;



ROOF PLAN  
 REVISED MAY 2, 2002  
 SCALE 1" = 10'-0"

**CDC**  
 CAD DESIGN CONSULTANTS, INC.  
 1971 TELEGRAPH CLERK COURT  
 RICH, TEXAS 77709  
 281.362.1448 cdc@cadm.com

**CAPITOL LOFTS**  
 771 MAIN  
 HOUSTON, TEXAS

**CDC**

**SUPPLEMENTAL NOTICE OF DEDICATORY INSTRUMENTS**  
*for*  
**THE CAPITOL LOFTS COUNCIL OF CO-OWNERS**

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THE STATE OF TEXAS       §  
  §  
COUNTY OF HARRIS       §

The undersigned, being the Managing Agent for The Capitol Lofts Council of Co-Owners, a property owner's association as defined in Section 202.001 of the Texas Property Code ("the Association"), hereby supplements those certain instruments entitled "Notice of Dedicatory Instrument for The Capitol Lofts Council of Co-Owners" and "Supplemental Notice of Dedicatory Instrument for The Capitol Lofts Council of Co-Owners" filed of record in the Official Public Records of Harris County, Texas under County Clerk's File Nos. Z296310 and 20080592899 ("Notice"), which Notice was filed of record for the purpose of complying with Section 202.006 of the Texas Property Code.

1.    Restrictive Covenants. In addition to the description of the document(s) imposing restrictive covenants on the Property contained in the Notice, the following document likewise imposes restrictive covenants and the title and recording information for such documents are as follows:
  - a.    Documents:
    1.    Amendment to The Condominium Declaration for The Capitol Lofts, A Condominium.
  - b.    Recording Information:
    1.    Film Code No. 206196 *et seq.* of the Condominium Records of Harris County, Texas.
  
2.    Additional Dedicatory Instrument. In addition to the Dedicatory Instruments identified in the Notice, the following documents are Dedicatory Instruments governing the Association.
  - a.    Guidelines Relating to Rain Barrels and Rain Harvesting Systems, Solar Energy Devices, Storm and Energy Efficient Shingles, Flags, and Religious Items for The Capitol Lofts Council of Co-Owners.
  - b.    2012 Collection Policy: The Capitol Lofts.

True and correct copies of such Dedicatory Instruments are attached to this Supplemental Notice.

This Supplemental Notice is being recorded in the Official Public Records of Real Property of Harris County, Texas for the purpose of complying with Section 202.006 of the Texas Property Code. I hereby certify that the information set forth in this Supplemental Notice is true and correct and that the copies of the Dedicatory Instruments attached to this Notice are true and correct copies of the originals.

RF 080-87-2004

Executed on this 20th day of January, 2012.

THE CAPITOL LOFTS COUNCIL OF CO-OWNERS

By: Principal Management Group of Houston,  
Managing Agent

Corinne D. Casala  
Corinne D. Casala, Community Association Manager

THE STATE OF TEXAS

COUNTY OF HARRIS

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BEFORE ME, the undersigned notary public, on this 20 day of Jan, 2012 personally appeared Corinne D. Casala, Community Association Manager for Principal Management Group of Houston, Managing Agent for The Capitol Lofts Council of Co-Owners, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purpose and in the capacity therein expressed.

Ashley Gardiner  
Notary Public in and for the State of Texas

Return to: *N*  
Butler | Halley  
8901 Gaylord Drive, Suite 100  
Houston, Texas 77024



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Stan Stewart  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

RP 080-87-2005

**GUIDELINES RELATING TO RAIN BARRELS AND RAIN HARVESTING SYSTEMS,  
SOLAR ENERGY DEVICES, STORM AND ENERGY EFFICIENT SHINGLES,  
FLAGS, AND RELIGIOUS ITEMS**

*for*  
**THE CAPITOL LOFTS COUNCIL OF CO-OWNERS**

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THE STATE OF TEXAS     §  
  §  
COUNTY OF HARRIS     §

I, Drew Walters, Secretary of The Capitol Lofts Council of Co-Owners (the "Association"), do hereby certify that at a meeting of the Board of Administrators of the Association (the "Board") duly called and held on the 16<sup>th</sup> day of January, 2012, with at least a quorum of the Board being present and remaining throughout, and being duly authorized to transact business, the following "Guidelines Relating to Rain Barrels and Rain Harvesting Systems, Solar Energy Devices, Storm and Energy Efficient Shingles, Flags, and Religious Items" was duly approved by a majority vote of the members of the Board in attendance:

**RECITALS:**

1. Chapter 202 of the Texas Property Code was amended to add sections relating to rain barrels and rain harvesting systems, solar energy devices, storm and energy efficient shingles, flags, and religious items.

2. The amendments relating to solar energy devices, storm and energy efficient shingles, flags and religious items became effective on June 17, 2011 and the amendments relating to rain barrels and rain harvesting systems became effective on September 1, 2011.

3. The Board of Administrators of the Association desires to adopt guidelines relating to rain barrels and rain harvesting systems, solar energy devices, storm and energy efficient shingles, flags, and religious items consistent with the applicable provisions in Chapter 202 of the Texas Property Code.

**GUIDELINES:**

**Section 1.     Definitions.** Capitalized terms used in these Guidelines have the following meanings:

- 1.1.     **Capitol Lofts** - The condominium development located in Harris County, Texas as described, delineated and defined in the Declaration.
- 1.2.     **Declaration** – shall mean the following:
  - The Condominium Declaration for The Capitol Lofts a Condominium, recorded under Film Code No. 179025, *et seq.* of the Condominium Records of Harris County, Texas.
  - Amendment to the Condominium Declaration for The Capitol Lofts, a Condominium, recorded under Film Code No. 206196 *et seq.* of the Condominium Records of Harris County, Texas.

RP 080-87-2006

- 1.3. **Dedictory Instrument (or dedicatory instrument)** - Each document governing the establishment, maintenance or operation of the properties within Capitol Lofts, as more particularly defined in Section 202.001 of the Texas Property Code.
- 1.4. **Guidelines** - These Guidelines Relating to Rain Barrels and Rain Harvesting Systems, Solar Energy Devices, Storm and Energy Efficient Shingles, Flags, and Religious Items for The Capitol Lofts Council of Co-Owners.

**Section 2. Rain Barrels and Rain Harvesting Systems.** Section 202.007 of the Texas Property Code provides that a property owners' association may not enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from installing rain barrels or a rain harvesting system on property. However, Section 202.007 of the Texas Property Code further provides that a property owners' association is not required to permit a rain barrel or rainwater harvesting system to be installed on property owned in common by the members of the property owners' association.

Accordingly, a rain barrel or rain harvesting system is not permitted to be installed on, or attached to, any portion of the Common Elements or Limited Common Elements, as those terms are defined in the Declaration, which includes patio and balcony areas.

**Section 3. Solar Energy Devices.** Section 202.010 of the Texas Property Code provides that a property owners' association may not enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from installing a solar energy device except as otherwise provided therein. As used in Section 202.010 of the Texas Property Code, "solar energy device" has the meaning assigned by Section 171.107 of the Tax Code, which defines the term as "a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar generated power". The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power. However, Section 202.010 of the Texas Property Code further provides that a property owners' association is not required to permit a solar energy device to be installed on property owned in common by the members of the property owners' association.

Accordingly, a solar energy device is not permitted to be installed on, or attached to, any portion of the Common Elements or Limited Common Elements, as those terms are defined in the Declaration, which includes patio and balcony areas.

**Section 4. Storm and Energy Efficient Shingles.** Section 202.011 of the Texas Property Code provides that a property owners' association may not enforce a provision in a dedicatory instrument that prohibits or restricts a property Owner from installing shingles that:

- a. are designed to:
  - (i) be wind and hail resistant;
  - (ii) provide heating and cooling efficiencies greater than those provided by customary composition shingles; or
  - (iii) provide solar generation capabilities; and
- b. when installed:
  - (i) resemble the shingles used or otherwise authorized for use on property in the subdivision;

AP 080-87-2007



- (ii) are more durable than and are of equal or superior quality to the shingles described below; and
- (iii) match the aesthetics of the property surrounding the Owner's property.

The roofs of the buildings within Capitol Lofts are Common Elements and the Association, acting through the Board, is responsible for maintaining, repairing and replacing the roofs. Therefore, no Owner has the right or authority to install storm or energy efficient shingles on the roof of a building within Capitol Lofts.

**Section 5. Flags.** Section 202.011 of the Texas Property Code provides that a property owners' association may not enforce a provision in a dedicatory instrument that prohibits, restricts, or has the effect of prohibiting or restricting a flag of the United States of America, the flag of the State of Texas, or an official or replica flag of any branch of the United States armed forces, except as otherwise provided therein. However, Section 202.011 of the Texas Property Code further provides that a property owners' association is not required to permit flags or flagpoles on property owned in common by the members of the property owners' association.

Accordingly, flags and flagpoles are not permitted to be installed on, or attached to, any portion of the Common Elements or Limited Common Elements, as those terms are defined in the Declaration, which includes patio and balcony areas.

**Section 6. Religious Items.** Section 202.018 of the Texas Property Code provides that a property owners' association may not enforce or adopt a restrictive covenant that prohibits a property owner or resident from displaying or affixing on the entry to the owner's or resident's dwelling one or more religious items, the display of which is motivated by the owner's or resident's sincere religious belief, except as otherwise provided therein. Section 202.001(4) of the Texas Property Code defines "restrictive covenant" to mean any covenant, condition, or restriction contained in a dedicatory instrument.

The following Guidelines shall be applicable to the display of religious items in Capitol Lofts:

- 6.1. **Board Approval.** The Declaration prohibits an Owner from altering the exterior appearance of the Owner's Residential Unit. Thus, as authorized by the Declaration and Section 202.018(c) of the Texas Property Code, any alteration to the entry door or door frame must first be approved by the Board of Administrators.
- 6.2. **Location.** Except as otherwise provided in this Section, a religious item is not permitted anywhere except on the entry door or door frame of the Residential Unit. A religious item shall not extend past the outer edge of the door frame.
- 6.3. **Size.** The religious item(s), individually or in combination with each other religious item displayed or affixed on the entry door or door frame, shall not have a total size of greater than twenty-five (25) square inches.
- 6.4. **Content.** A religious item shall not contain language, graphics, or any display that is patently offensive to persons of ordinary sensibilities.
- 6.5. **Limitation.** A religious item shall not be displayed or affixed on an entry door or door frame if it threatens the public health or safety or violates a law.

- 6.6. **Color of Entry Door and Door Frame.** An Owner or resident is not permitted to use a color for an entry door or door frame of the Owner's or resident's Residential Unit or change the color of an entry door or door frame that is not authorized by the Board of Administrators.
- 6.7. **Other.** Notwithstanding the above provisions, these Guidelines shall not prohibit or apply to temporary seasonal decorations related to religious holidays, as otherwise permitted by the Board of Administrators.

I hereby certify that I am the duly elected, qualified and acting Secretary of the Association and that the foregoing Guidelines Relating to Rain Barrels and Rain Harvesting Systems, Solar Energy Devices, Storm and Energy Efficient Shingles, Flags, and Religious Items was approved by a majority vote of the Board of Administrators as set forth above and now appears in the books and records of the Association, to be effective upon recording in the Condominium Records of Harris County, Texas.

TO CERTIFY which witness my hand this the 24 day of January, 2012.

THE CAPITOL LOFTS COUNCIL OF CO-OWNERS

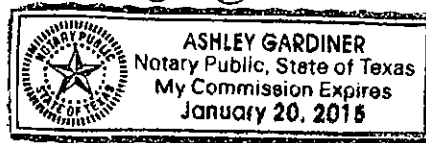
By: Drew Walters  
Drew Walters, Secretary

THE STATE OF TEXAS §  
COUNTY OF Harris §

BEFORE ME, the undersigned notary public, on this 24 day of January, 2012 personally appeared Drew Walters, Secretary of The Capitol Lofts of Co-Owners, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purpose and in the capacity therein expressed.

Ashley Gardiner  
Notary Public in and for the State of Texas

Return to:  
Butler | Hailey  
8901 Gaylord, Suite 100  
Houston, Texas 77024  
207477



RP 080-87-2009

# 2012 Collection Policy: The Capitol Lofts (Condominium)

## THIS POLICY IS EFFECTIVE JANUARY 1, 2012 AND REPLACES ANY AND ALL PRIOR COLLECTION POLICIES

The following actions are performed to collect on delinquent accounts. The charges assessed to an owner's account for certain collection action noted below are subject to change without notice. Monthly late fees and for late interest and handling fees are assessed to delinquent accounts according to the notification on the billing statement and a monthly past due letter with account analysis or a late statement is mailed.

Check Here	Collection Step	Approximate Day of Delinquency Each Step is Taken	Notes
<input checked="" type="checkbox"/>	Past due late statement	-late date--	A statement is mailed monthly after assessing late fees and/or late interest and handling fees to an account.
<input checked="" type="checkbox"/>	Initial collection letter	-- 30 to 45 --	This letter allows the owner thirty (30) days to pay or dispute their balance. It also informs them of future actions if payment is not received.
<input checked="" type="checkbox"/>	209 Demand Letter	-- 60 to 75 --	This letter allows the owner thirty (30) days to pay prior to turning their delinquent account over to the Attorney. It also informs the owner of the fee that will be charged to their account if reported to the credit bureau.
<input checked="" type="checkbox"/>	Forward owners file to the Association Attorney for small claims suit and/or foreclosure	-- 90 to 115 --	This action must be allowed in the association documents. A fee of \$25.00 will be charged to the owners account for preparing & forwarding the necessary documents to the association attorney.
<input type="checkbox"/>	Association is opting out of PMG Collection Program performed on delinquent accounts		If the association opts out of the PMG Collection Program then the association will be invoiced for any work performed on delinquent accounts as set-forth in the Management Contract.

**RECORDER'S MEMORANDUM:**

At the time of recording, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time this instrument was filed and recorded.

Signature - Authorized Board Member [Signature] Date 1-16-12

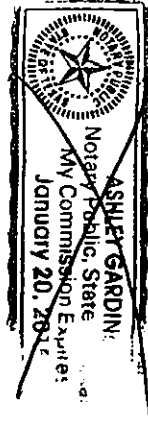
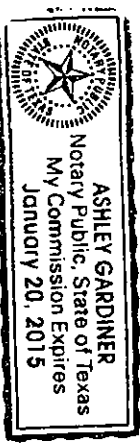
Printed Name SAMMY ROBERTS JR

AFTER RECORDING PLEASE RETURN TO:  
PRINCIPAL MANAGEMENT GROUP OF HOUSTON  
11000 CORPORATE CENTRE DRIVE, SUITE 150  
HOUSTON, TEXAS 77041

This document is being recorded as a COURTESY ONLY by Butler & Halley, P.C., without review and without liability, expressed or implied.

2012, by SAMMY ROBERTS day of JAN.

Notary Public, State of Texas  
Printed Name ASHLEY GARDINER  
My Commission Expires: JAN 20 2015



RP 080-87-2011

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

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

FEB - 3 2012



*Stan Stewart*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

**RULES**

**OF**

**THE CAPITOL LOFTS COUNCIL OF CO-OWNERS**

**FOR COMMERCIAL UNITS**

RULES  
OF  
THE CAPITOL LOFTS COUNCIL OF CO-OWNERS  
FOR COMMERCIAL UNITS

These Rules have been adopted by the Board of Administrators of The Capitol Lofts Council of Co-Owners, a Texas nonprofit corporation and condominium association (the "Council"), in accordance with the provisions of Article VII.F. of the Declaration of The Capitol Lofts, a Condominium (the "Declaration"), recorded in the Real Property Records of Harris County, Texas.

These Rules apply to the Commercial Units and Common Elements of The Capitol Lofts, a Condominium ("The Capitol Lofts" or the "Condominium"). By owning or occupying a Commercial Unit in The Capitol Lofts, each Owner and Occupant agrees to abide by these Rules, as well as the obligations of Owners and Occupants provided in the Declaration and By-Laws.

For the convenience of Owners and Occupants of The Capitol Lofts, these Rules may restate some of the rules and covenants contained in the Declaration. Most of these Rules, however, are in addition to the restrictions found in the Declaration. Words and phrases defined in the Declaration shall have the same meaning when used in these Rules. "Common Elements," as used herein, shall include Limited Common Elements. In the event of a conflict between Governing Documents (as defined herein), the hierarchy of authority shall be as follows: Declaration (highest), By-Laws, these Rules (lowest).

A. COMPLIANCE

- A-1. *Compliance.* Each Owner and Occupant of a Commercial Unit shall comply with the provisions of these Rules, the Declaration, the By-Laws, and community policies promulgated by the Board of Administrators to supplement these Rules, as any of these may be revised from time to time (collectively the "Governing Documents"). Each Owner, additionally, shall be responsible for compliance with the Governing Documents by (i) the occupants, tenants, and subtenants of their Commercial Unit and their respective families and invitees, and (ii) by agents, employees, or contractors (collectively "Occupants"). Use of "Owner" in these Rules shall be deemed to include and apply to all Co-Owners of a Commercial Unit in The Capitol Lofts, who shall be jointly and severally responsible for compliance with the Governing Documents with respect to such Unit and all Occupants of such Unit. An Owner or Occupant should contact the Board of Administrators if he or she has a question about these Rules.
- A-2. *Additional Rules.* Each Owner and Occupant shall comply with all rules and signs posted from time to time within the Condominium by the Council, including those regulating the

use of recreational facilities. Such posted rules are incorporated in these Rules by reference. Each Owner and Occupant shall comply with notices communicated by the Council, from time to time, in the nature of seasonal or temporary rules, or notice of a change affecting use of the Condominium. Such temporary rules are incorporated in these Rules by reference.

A-3. *Waiver.* Certain circumstances may warrant waiver or variance of these Rules. An Owner must make written application to the Board of Administrators for such waiver or variance. An Occupant may also make such application with the written consent of the Owner of such Unit. If the Board of Administrators deems the waiver or variance warranted, the Board of Administrators may condition its approval, which must be in writing to be effective.

A-4. *Emergency.* Notwithstanding anything in these Rules to the contrary, the Board of Administrators and the officers of the Council shall be entitled, in the event of an emergency, to take any such actions as are reasonably necessary to preserve the life, health and safety of Owners, Occupants and other persons on or near the Condominium and to prevent damage or destruction of the Condominium and property located thereon.

#### B. OBLIGATIONS OF OWNERS AND OWNER OR OCCUPANTS

B-1. *Safety.* Each Owner and Occupant is solely responsible for their own safety and for the safety, well-being and supervision of their guests and any person within the Condominium to whom the Owner or Occupant has a duty of care, control, or custody.

B-2. *Damage.* Each Owner is responsible for any loss or damage to their Unit, other Units, the personal property of other Owner and Occupants or their guests, or to the Common Elements and improvements, if such loss or damage is caused by the Owner or by any Occupant or other person for whom the Owner is responsible.

B-3. *Council Does Not Insure.* Each Owner and Occupant is solely responsible for insuring their Unit and their personal property in the Unit and within the Condominium, including their furnishings, automobile, and items kept in parking and storage areas. Each Unit and all personal property placed in a Unit or within the Condominium shall be solely at the risk of the Owner or Occupant who owns such Unit and personal property. The Council urges Owners and Occupants to purchase insurance on their own Unit and personal property.

B-4. *Risk Management.* No Owner or Occupant shall permit anything to be done or kept in their Unit or the Common Elements, which will result in the cancellation of insurance of any Unit, or any part of the Common Elements, or which may be in violation of any law.

B-5. *Reimbursement for Enforcement.* An Owner shall promptly reimburse the Council for any expenses incurred by the Council in enforcing the Governing Documents against the Owner, their Unit, or Occupants or other persons for whom the Owner is responsible.

- B-6. *Reimbursement for Damage.* An Owner shall promptly reimburse the Council for the cost of damage to the Condominium caused by the negligent or willful conduct of the Owner or the Occupants or other persons for whom the Owner is responsible.

### C. OCCUPANCY STANDARDS

- C-1. *Numbers.* A Commercial Unit may be occupied by no more persons than are permitted by the City of Houston fire and safety codes.
- C-2. *Danger.* The Council may prohibit occupancy by a person who constitutes a direct threat to the health or safety of other persons, or whose occupancy would result in substantial physical damage to the property of others.
- C-3. *Occupancy Defined.* Occupancy of a Unit, for purposes of these Rules, shall mean occupancy of at least 30 continuous days or 60 noncontinuous days in any 12-month period.
- C-4. *Term of Lease.* A Commercial Unit may not be leased for hotel or transient purposes.
- C-5. *Written Leases.* Each lease of a Commercial Unit must be in writing, and an Owner shall provide the Board of Administrators with a copy of each lease of that Owner's Unit.

### D. GENERAL USE AND MAINTENANCE OF COMMERCIAL UNITS

- D-1. *Commercial Use.* Each Commercial Unit must be used solely for commercial purposes, and may not be used for residential purposes unless converted in accordance with paragraph X.E. of the Declaration. Such use shall conform to all applicable laws and ordinances.
- D-2. *Annoyance.* No Unit may be used in any way that may reasonably be considered annoying to Occupants of neighboring Units, or that may endanger the health or safety of other Owners and Occupants or violate any law or any provision of the Governing Documents. Notwithstanding the foregoing, operation of Commercial Units as permitted by applicable laws, ordinances, or similar regulations governing facilities of their type shall not be deemed a violation of this provision D-2.
- D-3. *Maintenance.* Each Owner, at their sole cost and expense, shall maintain their Unit and keep it in good repair.
- D-4. *Patio/Balcony.* Each Owner and Occupant shall keep their Unit and patio or balcony, if any, in a good state of cleanliness, taking care that the cleaning of their patio or balcony does not annoy or inconvenience other Owners and Occupants. A patio/balcony may not be enclosed or used for storage purposes. The restaurant may locate chairs and tables on

RP 021-79-0670



the front patio and second floor balcony and operate their business on such patio and balcony provided those areas are maintained in a professional and responsible manner.

- D-5. *Exterior Windows.* Maintenance and repair of windows along the exterior of the building shall be made only by the Council, unless the Board of Administrators grants permission otherwise. The cost of such maintenance or repair of exterior windows may be assessed against a Unit if due to damage caused by the Owners or Occupants of such Unit or other persons for whom the Owner is responsible.
- D-6. *Air Conditioning Equipment.* Each Owner, at their sole cost and expense, shall maintain, repair, and replace the heating and cooling equipment/system serving their Unit, including periodic maintenance and replacement of filters in the air handler mechanical unit located in such Unit.
- D-7. *Combustibles.* No Owner or Occupant may store or maintain, anywhere within the Condominium (including within a Unit) explosives or materials capable of spontaneous combustion. Notwithstanding the foregoing, the Owner or Occupant of a Commercial Unit shall be permitted to store or maintain such combustible materials as are reasonably necessary to the operation of the business, provided that any and all such materials are stored and maintained in compliance with all applicable laws, ordinances or other regulations.
- D-8. *Report Malfunctions.* An Owner or Occupant shall immediately report to the Board of Administrators their discovery of any leak, break, or malfunction in any portion of their Unit or the adjacent Common Elements for which the Council has a maintenance responsibility. The failure to report promptly a problem may be deemed negligence by the Owner or Occupant, who may be liable for any additional damage caused by the delay.
- D-9. *Utilities.* Each Owner and Occupant shall endeavor to conserve the use of utilities furnished through the Council, including water consumption within their Unit, if applicable.
- D-10. *Frozen Water Pipes.* During periods of anticipated below freezing temperatures, water lines within or serving a Unit should be allowed to drip continuously, and cabinets enclosing plumbing lines should be left ajar. Failure by an Owner or Occupant to monitor the local weather and take appropriate precautions shall be deemed negligence.

#### **E. GENERAL USE & MAINTENANCE OF COMMON ELEMENTS**

- E-1. *Intended Uses.* Every area and facility in the Condominium may be used only for its intended and obvious use. For example, walkways, stairways, sidewalks, elevators, and driveways are to be used exclusively for purposes of access, not for social congregation or recreation.

RF 021-79-0671

E-2. Restrictions on Use of Certain Common Elements by Commercial Unit Co-Owners. Unless by express written permission of the Council, the owners, tenants, guests, licensees, invitees, agents, representatives, and guests of the Co-Owners of the Commercial Units shall not have the right to use the following Common Elements, which shall be for the exclusive use of the Residential Unit Co-Owners:

1. Any and all Common Elements on the third floor through the tenth floor, including any Common Elements on the roof of the Building or the roof of building located at 719 Main, adjacent to the Building.
2. All passenger elevators and their respective lobbies, shafts and pits, except in the event that use of the elevator is necessary (i) to provide access to the second level of the first floor Restaurant to disabled guests or (ii) to provide access to the portion of the second floor Commercial Unit that is not the Restaurant up to a maximum of twenty persons per day;
3. The weight room, Maintenance Room, and storage areas on the second floor.

E-3. *Grounds.* Unless the Board of Administrators designates otherwise, Owners and Occupants may not use or abuse any landscaped areas, lawns, beds, and plant materials within the Common Elements.

E-4. *Abandoned items.* No item or object of any type shall be stored, placed, or maintained anywhere on the Common Elements, including windowsills, passageways and courtyards, except by the Board of Administrators or with the prior written consent of the Board of Administrators. Items of personal property found within the Common Elements are deemed abandoned and may be disposed of by the Board of Administrators.

E-5. *Stored Items.* If the Council provides storage areas for use by Owners and/or Occupants, each Owner and Occupant agrees that the Council is not responsible for items stored there by an Owner or Occupant, who shall be solely liable at all times for their personal property.

## F. COMMUNITY ETIQUETTE

F-1. *Courtesy.* Each Owner and Occupant shall endeavor to use their Unit and the Common Elements in a manner calculated to respect the rights and privileges of other Owners and Occupants.

F-2. *Annoyance.* Each Owner and Occupant shall avoid doing or permitting anything to be done that will annoy, harass, embarrass, or inconvenience other Owners and Occupants or their guests, or the Council's employees and agents. Notwithstanding the foregoing, operation of Commercial Units as permitted by applicable laws, ordinances, or similar regulations governing facilities of their type shall not be deemed a violation of this provision F-2.

- RP 021-79-0673
- F-3. *Noise and Odors.* Each Owner and Occupant shall exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb Owners and Occupants of other Units.
  - F-4. *Reception Interference.* Each Owner and Occupant shall avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, or electronic reception within the Condominium.
  - F-5. *No Personal Service.* The Council's employees and agents are not permitted or authorized to render personal services to Owners and Occupants. Each Owner and Occupant agrees that the Council is not responsible for any item or article left with or delivered to the Council's employees or agents on behalf of such Owner or Occupant.
  - F-6. *Compliance with Law.* Owners and Occupants may not use the Condominium for unlawful activities. Each Owner and Occupant shall comply with applicable laws and regulations of the United States and of the State of Texas, and with ordinances, rules, and regulations of Houston, Texas. An Owner or Occupant who violates this provision shall hold the Council and other Owners and Occupants harmless from all fines, penalties, costs, and prosecutions for such person's violation or noncompliance.

#### G. ARCHITECTURAL CONTROL

- G-1. *Common Elements.* Without the prior written approval of the Board of Administrators, no Owner or Occupant may change, remodel, decorate, destroy, or improve the Common Elements, nor do anything to change the appearance of the Common Elements, including, without limitation, the entry door, balcony or patio, and landing or walkway appurtenant to the Unit.
- G-2. *Prohibited Acts.* No person may:
  - a. Post signs, notices, or advertisements within the Common Elements or in a Unit if visible from outside their Unit; except that the restaurant may post signs and advertisements of a reasonable size and nature, provided such signs comply with local ordinances.
  - b. Place or hang an object in, on, from, or above any window, interior windowsill, balcony, or patio that unreasonably detracts from the appearance of the Condominium.
  - c. Hang, shake, or otherwise display linens, clothing, towels, rugs, shoes, mops, bedding or other similar items from windows, doors, balconies, patios or passageways.

- d. Erect or install exterior horns, lights, speakers, aerials, antennas or other transmitting or receiving equipment, or cause anything to protrude through an exterior wall or roof.
- e. Place decorations on exterior walls or doors, or within the Common Elements.

## H. PARKING AREA RESTRICTIONS

- H-1. *Permitted Vehicles.* To be permitted in the Parking Area, a vehicle must be operable. For purposes of these Rules, vehicles include automobiles, motorcycles, motorized bikes, passenger trucks, small vans, and similar passenger vehicles. The following are not permitted in the Parking Area without the Board of Administrators' consent: trailers, boats, recreational vehicles, buses, large commercial trucks or industrial vehicles.
- H-2. *Repairs.* Washing, repairs, restoration, or maintenance of vehicles is prohibited in the Parking Area, except for emergency repairs, and then only to the extent necessary to enable movement of the vehicle to a repair facility.
- H-3. *Space Use.* All parking spaces in the Parking Area shall be used for parking purposes only, and may not be used for storage. No parking space may be enclosed or used for any purpose that prevents the parking of vehicles.
- H-4. *No Obstruction.* No vehicle may be parked in a manner that interferes with ready access to any entrance to or exit from the Parking Area. No vehicle may obstruct the flow of traffic, constitute a nuisance, or otherwise create a safety hazard in the Parking Area. No vehicle may be parked, even temporarily, in spaces reserved for others, in fire lanes, or in any area designated as "No Parking."
- H-5. *Nuisances.* Each vehicle shall be muffled and shall be maintained and operated to minimize noise, odor, and oil emissions. The use of car horns in the Parking Area is discouraged.
- H-6. *Violations.* Any vehicle in violation of these Rules may be towed or otherwise removed from the Parking Area by the Board of Administrators, at the expense of the vehicle's owner. The Council expressly disclaims any liability for damage to vehicles on which the Council exercises these remedies for Rules violations.

## I. TRASH DISPOSAL

- I-1. *General Duty.* Each Owner and Occupant shall not litter Common Elements and shall endeavor to keep the Condominium clean. All office refuse shall be placed in dumpsters to be provided at the expense of the Owner of each Commercial Unit, or otherwise collected and disposed of in a manner mutually agreed upon by the Owner and the Council. Notwithstanding the foregoing, the restaurant shall be responsible for the

HP 021-79-0674

collection and removal of its own trash. Such trash shall not be allowed to accumulate in the back alley for more time than is reasonably necessary for pick up and disposal.

- 1-2. *Hazards.* No Owner or Occupant may store trash inside or outside their Unit in a manner that encourages vermin, causes odors, or may permit the spread of fire. Before discarding coals, ashes, logs, or other materials used in barbecue grills or fireplaces, each Owner and Occupant shall ensure that the debris is thoroughly cold.

## J. MISCELLANEOUS

- J-1. *Security.* The Council may, but shall not be obligated to, maintain or support certain activities within the Condominium designed to make the Condominium less attractive to intruders than it otherwise might be. The Council, its Administrators, officers, committees, members, agents and employees, shall not in any way be considered an insurer or guarantor of security within the Condominium, and shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. Each Owner, Occupant, guest, and invitee within the Condominium assumes all risk for loss or damage to their person, to their Unit, to the contents of their Unit, and to any other of their property within the Condominium. The Council expressly disclaims and disavows any and all representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any security systems, equipment or measures recommended, installed or undertaken within the Condominium.
- J-2. *Right to Hearing.* An Owner may request in writing a hearing by the Board of Directors regarding an alleged breach of these Rules by the Owner or an Occupant of the Owner's Unit. An Occupant may also request a hearing with the written consent of the Owner of the Occupant's Unit. The Board of Administrators will schedule a hearing within 30 days of receiving the Owner or Occupant's written request. At the hearing, the Board of Administrators will consider the facts and circumstances surrounding the alleged violation. The Owner and, if applicable, the Occupant may attend the hearing in person, or may be represented by another person or by written communication. Any fines and assessments are specifically subject to the notice and hearing procedures in Article IX of the Declaration.
- J-3. *Mailing Address.* An Owner or Occupant who receives mail at any address other than the address of their Unit shall be responsible for maintaining with the Council their current mailing address. Notifications of change of name or change of address should be clearly marked as such. All notices required to be sent to Owners or Occupants by the Governing Documents shall be sent to the most recent address as shown on the records of the Council. If an Owner or Occupant fails to provide a forwarding address, the address of that Owner's or Occupant's Unit shall be deemed effective for purposes of delivery. Delivery may be either in person; by courier or messenger to any person at the address; by facsimile; or by United States mail. All deliveries shall be effective on receipt by the

addressee or any person at the addressee's address, except that delivery by mail shall be effective three days after deposit in the mail, postage prepaid.

- J-4. *Revision.* These Rules are subject to being revised, replaced, or supplemented. Owners and Occupants are urged to contact the management office to verify the rules currently in effect on any matter of interest. These Rules shall remain effective until the Council delivers notice of an amendment or revocation of these Rules to an Owner of each Unit.
- J-5. *Other Rights.* These Rules are in addition to and shall in no way whatsoever detract from the rights of the Council under the Declaration, By-Laws, Articles of Incorporation, and the laws of the State of Texas.
- J-6. *Effective Date.* These Rules are the initial Rules of The Capitol Lofts Council of Co-Owners and shall become effective March 29, 2001.

FILED  
2006 MAY 12 PM 4:00  
*Dorely B. Kayman*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

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

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW THE STATE OF TEXAS COUNTY OF HARRIS I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me, and was duly RECORDED. In the Official Public Records of Real Property of Harris County, Texas on

MAY 12 2006



*Dorely B. Kayman*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

**CERTIFICATE OF RESOLUTION  
OF  
THE CAPITOL LOFTS Council of Co-Owners**

**Procedures Relative to Collection of Routine and Special Assessments  
As Well as Delinquent Payments**

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The undersigned, being the duly elected, qualified and acting Secretary of The Capitol Lofts Co-owners, a Texas non-profit corporation, and the keeper of the minutes and records of said corporation, does hereby certify that the following is a true and correct copy of a resolution of this corporation as adopted by the Board of Directors at a duly called meeting held on October 18, 2006.

WHEREAS, there is a need to develop orderly procedures for the billing and collection of regular fees, special assessments and special charges;

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Directors, on behalf of the members of the Association, duly adopts the following assessment procedures:

I. Regular COLLECTIONS

A. The monthly assessment shall be due and payable in advance on the fifteenth day of the month "due date"; all special assessments shall be due and payable as provided in the resolution adopting or approving the special assessment.

B. All documents, correspondence, and notices relating to the charges shall be mailed to the address which appears on the books of the Association or to such other address as is designated in writing by an owner.

C. Non-receipt of an invoice shall in no way relieve the owner of the obligation to pay the amount due by the Due Date.

II. REMEDIES FOR NON-PAYMENT OF ASSESSMENTS

A. If payment of the total assessment due and owing, including all charges and late fees, is not received by the managing agent by the fifteenth day of the month, the account shall be delinquent.

B. If an owner defaults in paying the sum assessed against his/her Unit within *thirty (15) days of the Due Date*, or defaults in remitting full payment of the balance due, the owner shall be charged a late charge of fifteen percent (15%) on the unpaid balance and the managing agent is authorized to charge the owner a collection fee.

C. A "Late Notice" shall be sent by the managing agent every month to owners who owe assessments or other charges.

D. An Association Demand Letter (the "Association Demand Letter"), shall be sent by the managing agent in the second month of delinquency to owners who have not paid all assessments in full, requiring payment in full within ten days of the date of the notice.

E. If any owner shall fail to pay the full amount due within the thirty days specified in the Association Demand Letter pursuant to Section II (D) above, the matter shall be forwarded to legal counsel or a designated collection agent in the third month of delinquency. A letter from legal counsel, or a designated collection agent, shall be mailed to the owner by first class mail and certified mail, return receipt requested, with all related attorney and collection costs added to the owner's account. In addition to filing for non-judicial foreclosure, the Association's legal counsel may file civil action suit(s) to recover the amounts owed the Association, and legal counsel is authorized to take such other actions as may be reasonably necessary to collect any monies due for delinquent assessments.

F. *The Association may file a Notice of Lien against the delinquent unit if the account is not paid by the Due Date as additional evidence of the Associations lien.*

G. Pursuant to the authority provided by the association's governing documents and Section 82.113 of the Texas Property Code, the Association adopts and shall pursue a policy of collection of delinquent accounts by non-judicial foreclosure. Further in accordance with the association's governing documents and Section 82.113 of the Texas Property Code, the Association may appoint its attorney as its agent to conduct foreclosure sales under the Associations statutory power of sale and instructs its attorney to collect delinquent assessments pursuant to this Resolution by non-judicial foreclosure under authority of the association's governing documents and Section 82.113 of the Texas Property Code. *Foreclosure shall be conducted in accordance with the provisions of Article 51.002 Texas Property code or any revision or amendment thereto.*

H. All costs incurred by the Association as a result of any violation of the Declaration of the Association, the Bylaws of the Association, the Rules and Regulations covering the Association, or the Resolutions of the Board of Directors of the Association by an owner, his/her family, employees, agents or licensees, shall be specially assessed against such owner. Such costs include, without limitation, legal or administrative expenses (regardless of whether suits or liens are filed) resulting from an owner's failure to pay assessments when due or from other default referred to in this Resolution.



I. The Board of Directors may grant waiver of any provision herein upon petition in writing by an owner demonstrating a personal hardship and, in such case, also establishing a written, Board-approved extended payment plan to bring the owner's account current. Such relief granted an owner shall be appropriately documented in the files with the name of the person or persons representing the Board of Directors granting the relief and the conditions of the relief. In addition, the Board of Director is hereby authorized to extend the time for the filing of lawsuits, foreclosures, and liens, or to otherwise modify the procedures contained herein, as the Board of Directors shall determine appropriate under the circumstances.

J. The Board of Directors hereby authorizes the managing agent to waive the imposition of late fees and accrued interest on payments or collection fees received by the managing agent, if, in the judgment of the managing agent, the delinquent owner has owned the unit for less than three (3) months at the time of the delinquency and/or the managing agent determines the delinquency was the result of a misunderstanding of the correct procedures relative to payment of the assessment. Further, such a waiver may be granted only once to any owner.

K. Payments received from an owner will be credited in the following categorical order of priority. In each category, payments will be first applied to the oldest amount due.

1. Charges for legal fees, court costs and other costs of collection, including the managing agents collection fee and charges; all other charges incurred by the Association as a result of any violation by an owner, his/her family, employees, agents or licensees, of the Declaration, Bylaws, Rules and Regulations, or Resolutions.
2. All accrued interest and late charges, as applicable.
3. Special assessments;
4. The monthly assessment for a Unit.

L. Pursuant to the authority granted to the Association in the Declaration, if an owner defaults in paying an installation of any assessment levied against his/her Unit which continues beyond the Due Date, the Association may, at its option, accelerate the remainder of the assessment installments and declare them due and payable in full.

### III. RETURNED CHECKS

A. A Unit owner will be charged a \$25.00 fee for any check returned unpaid by the bank. A notice of the returned check and the \$25.00 fee will be sent to the Unit owner by the managing agent. If the returned check results in the payment of monies due the Association to be delinquent, interest in the amount of ten percent (18%) per annum will also be assessed to the unit owner's account.

B. If two or more of a Unit owner's checks are returned unpaid by the bank within any (fiscal) year, the Board of Directors may require that all of the Unit owner's future payments, for a period of one year, be made by certified check or money order.

TO CERTIFY WHICH, witness my hand this the 18<sup>th</sup> day of October, 2006

Andrew Wallas

Secretary

STATE OF TEXAS

COUNTY OF HARRIS



Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_, Secretary of The Capitol Lofts of Co-Owners, Inc., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that (s)he executed the same for the purposes and consideration, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL of office on this 18 day of October, 2006.

Notary Public, State of Texas

Typed/Printed Name of Notary  
My Commission Expires: 6/24/09

