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WHEN RECORDED, MAIL TO:

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BY: CBA, DEPUTY - WI 59 P.

# DECLARATION OF

# COVENANTS, CONDITIONS, AND RESTRICTIONS

# FOR

# THE COLONY FARMS OWNERS' ASSOCIATION

**(A Community Located in Magna Metro Township, Salt Lake County, Utah)**

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**
**FOR**
**THE COLONY FARMSOWNERS' ASSOCIATION**

This *Declaration of Covenants, Conditions, and Restrictions the Colony Farms Owners' Association* ("**Declaration**") is made and executed this 29 day of November, 2019, by FIG Colony Farms LLC ("**Declarant**").

1. RECITALS.

1.1. Declarant has created, or will create, a subdivision in the Town of Magna Metro Township ("**City**"), Salt Lake County, Utah, as identified in the Plat ("**Project**"). The Project will consist of multiple Buildings, with all of the Buildings containing one or more individual residential Units.

1.2. The covenants, conditions and restrictions contained in this Declaration and in the Exhibits hereto shall be enforceable equitable servitudes and shall run with the land and encumber the Project in perpetuity.

1.3. The Project may be platted and developed in phases, in accordance with the approvals and ordinances of the Town of Magna Metro Township and Salt Lake County.

1.4. The Project will have common areas and facilities to be owned by and through the Association. The Project is subject to the Community Association Act, Sections 57-8a-101 et seq. of the Utah Code. The Project is not a cooperative and is not a condominium project. The Project is not subject to the provisions of the Utah Condominium Ownership Act, Sections 57-8-1 et seq. of the Utah Code.

NOW, THEREFORE, for the foregoing purposes, the Owners adopt the following covenants, conditions, easements and restrictions to govern the development, use, maintenance and management of the Project:

2. DEFINITIONS.

Unless the context clearly indicates otherwise, capitalized terms as used in this Declaration and the foregoing Recitals have the meanings set forth in this Section 2.

2.1. Reserved.

2.2. Amendment means any amendment to this Declaration made in accordance with the Declaration.

2.3. Assessable Unit means each Unit and Garage Unit, except for Exempt Units.

2.4. Assessments means all assessments described in Section 19 of this Declaration, including Regular Common Assessments, Special Common Assessments, Specific Assessments and Garage Assessments.

2.5. Association means The Colony Farms Homeowners' Association, which association will be, or has been, organized as a Utah nonprofit corporation.

2.6. Attached Garage means a garage located upon a Lot, attached to a Unit and owned by the Unit Owner.

2.7. Board means the Board of Directors of the Association, appointed or elected in accordance with this Declaration and the Bylaws.

2.8. Building(s) means the buildings constructed as part of the Project. It is anticipated that the Buildings will contain two (2) or more Units. The term "Buildings" shall not include Garage Buildings.

2.9. Bylaws means the *Bylaws of the Colony Farms Homeowners' Association*, a copy of which is attached to this Declaration as **Exhibit B**, as the same may be amended from time to time.

2.10. Capital Improvement means any improvement with a useful life of more than three (3) years.

2.11. Commercial Space shall mean any space designated for commercial use on the Plat and allowed by the Association. Commercial Space shall not include the Garage Units, notwithstanding any commercial rental activities in connection therewith.

2.12. Common Areas and Facilities or Common Areas means all portions of the Project other than the Units and other than the Garage Units, as more fully described in Section 6 of this Declaration. Unless otherwise indicated in this Declaration, each reference to Common Areas and Facilities or Common Areas includes reference to Limited Common Areas and Facilities.

2.13. Common Assessment Share means a share of Regular Common Assessments, as determined by the Association.

2.14. Common Assessments means those assessments described in Section 19 of this Declaration to fund the Common Expenses, and include Regular Common Assessments and Special Common Assessments.

2.15. Common Expenses means all expenses of the administration, maintenance, repair, or replacement of the Common Areas and Facilities and all other expenses denominated as Common Expenses by this Declaration. Common Expenses do not include the Garage Expenses.

2.16. Common/ Garage Assessments. Common/ Garage Assessments include the Common Assessments and the Garage Assessments.

2.17. Common/ Garage Expense Account means one or more deposit or investment accounts of the Association into which are deposited the Common/ Garage Assessments.

2.18. Common Wall(s)means the walls in each Building that divide and are located between any two (2) adjoining Units in a Building. The Common Walls are used by the Owners

of adjoining Units in a Building, and are subject to the provisions of Section 7.2 of this Declaration and the subsections thereof.

2.19. Declarant means FIG Colony Farms LLC

2.20. Declarant Affiliate means any person directly or indirectly controlling, controlled by or under common control with Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

2.21. Declarant Control Period means the period of time during which the Declarant has administrative control of the Association, which will continue so long as Declarant is a Class B Member of the Association. Declarant will remain a Class B Member so long as Declarant owns any Lot or Unit in the Project (as the terms "Lot" and "Unit" are defined herein to not include any Garage Lot or Garage Unit). After Declarant no longer owns any Lot or Unit in the Project, Declarant will remain a Class B Member until the later to occur of (i) ninety (90) days following the date when Declarant transferred the last remaining Lot or Unit owned by Declarant, or (ii) ninety (90) days following the date when all of the Units within the Project have received a certificate of occupancy from the municipal authority having jurisdiction over the Project. If, after Declarant's Class B Membership shall terminate, Declarant owns any Garage Lot in the Project, Declarant shall become a Class A Member with respect to each Garage Lot owned by Declarant. Notwithstanding the foregoing, Declarant may, at any time, deliver to the Association written notice that Declarant is withdrawing as a Class B Member of the Association. If Declarant provides such notice while Declarant owns any Lot or Unit in the Project, Declarant shall become a Class A Member with respect to each Unit owned by Declarant. If Declarant provides such notice while Declarant owns any Garage Lot in the Project, Declarant shall become a Class A member with respect to each Garage Lot owned by Declarant.

2.22. Exempt Unit(s) means (i) each Unit in the Project that has not received a certificate of occupancy from the municipal authority having jurisdiction, regardless of who owns the Unit; and (ii) each Unit in the Project while owned by Declarant or a Declarant Affiliate until the one hundred eightieth ($180^{th}$) day after the municipal authority having jurisdiction thereover issues a certificate of occupancy for such Unit. In addition, each Lot that does not contain a fully-constructed Unit shall be an "Exempt Unit," and each model unit owned by the Declarant shall be an "Exempt Unit" so long as the same is used as a model unit by the Declarant, a Declarant Affiliate, or their assign(s).

2.23. Garage Assessments shall mean the annual assessments levied by the Association on the Garage Owner to pay the Garage Expenses. The Garage Assessments shall be based on a garage reserve analysis as set forth in Section 19.2, if available, or otherwise, the Garage Assessments shall be based on the costs and expenses of maintaining, repairing and replacing the exterior and rooftops of the Garage Buildings, the proportionate share of the costs and expenses of maintaining, repairing and replacing the driveways attributable to the Garage Buildings, and the Garage Buildings' proportionate share of insurance purchased by the Association under Section 13; provided, however, the Garage Assessments per Garage Unit shall in no case be more than one-twelfth (1/12) of the Regular Common Assessment levied upon each Unit Owner. Garage

Assessments shall be used for no purpose other than as specified in this Section 2.25. The Garage Owner shall not be required to pay any portion of Regular Common Assessments. Garage Assessments shall not be levied against Unit Owners owning Attached Garages.

2.24. Garage Building means the garage structure constructed on the Garage Lot. It is anticipated that each Garage Building will contain two or more Garage Units. It is contemplated that the Garage Units will be leased. Garage Building shall not mean a building comprised of an Attached Garage.

2.25. Garage Expenses means all expenses of the maintenance, repair or replacement of the exterior of the Garage Buildings, the rooftops of the Garage Buildings, the Garage Buildings' proportionate share of the driveways and roadways providing access to the Garage Buildings, and the Garage Buildings' proportionate share of insurance purchased by the Association under Section 13. The Garage Expenses shall not include expenses for the maintenance, repair or replacement of the exterior or rooftops of Attached Garages.

2.26. Garage Lot shall mean each of the separate parcels of land within the Project as shown on the Plat upon which a detached Garage Building is or will be constructed. Ownership of a Garage Lot and the Building constructed thereon shall be inseparable, and any conveyance of a Garage Lot shall operate to convey title to the Garage Building constructed on the Garage Lot. Likewise, any conveyance of a Garage Building shall operate to convey title to the Garage Lot on which the Garage Unit is located. Garage Lot shall not mean a Lot upon which an Attached Garage is located.

2.27. Garage Owner means any person or entity at any time owning in fee simple a Garage Lot within the Project as such ownership is shown by the real property records of the County Recorder of the county in which the Project is located. The term Garage Owner shall not refer to any Mortgagee, unless such Mortgagee has acquired title for other than security purposes. Garage Owner shall not include a Unit Owner owning an Attached Garage.

2.28. Garage Unit shall mean each individual parking stall within a Garage Building. It is anticipated there will be two or more Garage Units in each Garage Building. It is contemplated that the Garage Owner will lease the Garage Units. Garage Unit shall not include a parking stall located within an Attached Garage.

2.29. HOA Manager means person(s) or company(ies) hired by the Association to manage the affairs of the Association and the Project. The Association shall enter into a written management agreement with any Manager, setting forth the rights, duties and obligations of the Manager, including, without limitation, the services to be provided, including, without limitation, managing the financial affairs of the Association, maintaining the Common Areas and Limited Common Areas, and the calculation and collection of any Assessments. The written agreement shall also include the standards of performance required, and the rights and remedies applicable in the event of any breaches or defaults. The rights and remedies shall include, without limitation, the right to terminate the management agreement in accordance with the terms and provisions thereof, and the right of the Association to hire a replacement Manager.

2.30. Improvement means every structure, feature or improvement of any kind placed or constructed in the Project, including but not limited to any Building, Unit, Residence, garage, lighting, deck, porch, patio, sidewalk, foundation, awning, fence, retaining wall, driveway, irrigation or drainage feature, storage structure or other product of construction and also includes landscaping, provided that nothing in this Declaration shall require the Declarant to construct any particular Improvement on a Lot, Garage Lot, Common Area, or other portion of the Project.

2.31. Leasing means any agreement for the leasing or rental of any Unit in the Project.

2.32. Limited Common Areas and Facilities or Limited Common Areas means a portion of the Common Areas and Facilities, if any, allocated by the Declaration, as may be shown on the Plat or described in this Declaration, for the exclusive use of one or more, but fewer than all, of the Units. Limited Common Areas may include driveways, parking areas, hallways, porches, balconies, but Declarant will have no obligation to include any of the foregoing features in the Project.

2.33. Lot means each of the separate parcels of land within the Project as shown on the Plat on which a Building, with or without an Attached Garage, is or will be constructed. "Lot" shall not mean a Garage Lot. Ownership of a Lot and the Unit(s) constructed thereon shall be inseparable, and any conveyance of a Lot shall operate to convey title to the Unit(s) constructed on the Lot. Likewise, any conveyance of a Unit shall operate to convey title to the Lot on which Unit is located.

2.34. Mortgage means any mortgage, deed of trust or other security instrument by which a Unit or any part thereof or interest therein is encumbered. A First Mortgage is a Mortgage having priority as to all other Mortgages encumbering a Unit or any part thereof or interest therein.

2.35. Mortgagee means (i) any persons or entities named as the Mortgagee or beneficiary under any Mortgage by which the interest of any Owner is encumbered, (ii) any successor to the interest of such person or entity under such Mortgage, or (iii) any insurer or guarantor of such person or entity under such Mortgage.

2.36. Owner means any person or entity at any time owning in fee simple a Lot within the Project as such ownership is shown by the real property records of the County Recorder of the county in which the Project is located. The term "Owner" shall include Unit Owner(s) and Garage Owner(s). The term "Owner" shall not refer to any Mortgagee, unless such Mortgagee has acquired title for other than security purposes.

2.37. Plat means the plat(s) for the Project, as filed in the real property records of the County Recorder of the county in which the Project is located, as such plats may be amended, and includes plats for subsequent phases of the Project.

2.38. Project means the Property, Buildings, Units, Common Areas and Facilities and all Improvements constructed on the Property, as approved by the applicable governmental authorities.

2.39. Property means that certain real property on which the Units, Buildings, Garage Units, Garage Buildings and other Improvements are or will be located, as more particularly described on **Exhibit A** of this Declaration.

2.40. Property Manager means that person(s) or company(ies) hired to manage the Leasing of all Units, Garage Units and other applicable property within the Project.

2.41. Property Management Agreement means the agreement entered into between the Association and the Property Manager.

2.42. Regular Common Assessments means the annual assessments levied by the Association to pay the budgeted Common Expenses. Regular Common Assessments shall not include any expense comprising the Garage Assessments for the maintenance, repair or replacement of the exterior or rooftops of the Garage Buildings. Regular Common Assessments shall include all expenses for the maintenance, repair or replacement of roadways and driveways and insurance purchased by the Association under Section 13, except for the proportionate share of such expenses comprising the Garage Assessment.

2.43. Special Assessment Share means a share of the Special Common Assessments, as determined by the Association.

2.44. Special Common Assessments means assessments, which the Association may levy from time to time, in addition to the Regular Common Assessments, for unexpected Common Expenses or other purposes as provided herein.

2.45. Specific Assessments means assessments which the Association may levy from time to time against an Owner or Owner's Unit, in addition to Regular Common Assessments and Special Common Assessments, for the purposes provided herein.

2.46. State means the State of Utah, in which the Property is located.

2.47. Total Votes of the Association means the total number of votes appertaining to all Units and Garage Lots, as described in Section 22 of this Declaration, including all votes pertaining to the Class B Member for such time as Declarant is a Class B member of the Association.

2.48. Unit means an individual residential dwelling area within a Building designed for separate residential use and occupancy as described in Section 5 of this Declaration. It is anticipated that there will be two (2) or more Units per Building. There is no requirement that the Units be owner-occupied. It is contemplated that most, if not all, of the Units will be leased to, and occupied by, tenants. If the Plat provides for Commercial Spaces within the Project, the term "Unit" also includes individually owned portions of the Project which are designated as Commercial Spaces. The term "Unit" shall not include "Garage Unit."

2.49. Unit Number means the number, letter or combination of numbers and letters that identifies only one Unit in the Project.

2.50. Unit Owner means any person or entity at any time owning in fee simple a residential Lot within the Project as such ownership is shown by the real property records of the

County Recorder of the county in which the Project is located. The term "Unit Owner" shall not refer to any Mortgagee, unless such Mortgagee has acquired title for other than security purposes.

3. DESCRIPTION OF PROPERTY; EXPANDABLE PROJECT

3.1. The boundaries of the Property are depicted on the recorded Plat, and the Property is more particularly described on **Exhibit A** of this Declaration.

3.2. The Buildings in the Project will be principally constructed of the following materials: Wooden frames with load bearing and non-load bearing walls studded with wood; glass openings; wooden joist floors and roofs; roof surfaces with asphalt shingles; interior walls surfaced with gypsum sheets. The exterior finishes may include stucco, siding, and stone, hardiplank and/or masonry products.

3.3 The Project is expandable. Hence, following construction of the Buildings and Improvements in the first phase of the Project, subsequent phases may also be constructed in accordance with the plat approvals and zoning requirements of the City. There is no guarantee that subsequent phases will be constructed or that the Project will be expanded. Declarant (or its assigns) shall have the sole discretion to determine if and when to apply for plat approval to develop and construct additional phases. If approved and constructed, the additional phases shall be annexed into, and made a part of, this Project by recording an instrument confirming the Declarant's intention to expand the Project to include the additional phase(s). Upon the recordation of such an instrument, the land and Improvements against which the instrument is recorded shall automatically become part of the Project, subject to and governed by all of the terms and provisions of this Declaration.

4. INTENTIONALLY OMITTED.

5. DESCRIPTION OF UNITS, LOTS, AND BUILDINGS.

Most, if not all, of the Buildings and Lots will contain two (2) or more Units, as shown on the Plat. Within the Project, the Units in some Buildings may be individually and separately owned (with each Unit having its own tax parcel identification number) while the Units in other Buildings may be commonly owned as a single parcel as shown on the Plat. If so approved by the applicable municipal authority, two (2) Buildings may be located adjacent to each other with a zero lot line. Each Unit shall consist of the interior surfaces of each residential dwelling or Commercial Space, if any, and its perimeter walls, bearing walls, floors, ceilings, and the windows and doors of each Unit. In addition, each Lot shall consist of the airspace above and the subsurface below the land and all of the area and Improvements above and below the surface of the land and within and part of the vertical boundaries defined by the Lot lines shown on the Plat, extended upwards to the heavens and downward to the center of the earth, included within the boundaries of each Lot. Each Lot (and the Unit or Units thereon) is to be comprised of all of the physical Improvements that pertain solely to the area in which the Unit is located or pertain solely to the Improvements within the Lot, including, without limitation, all physical facilities, installations, lines, foundations, equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations that connect or provide service only to the applicable Unit. Without limitation, a Unit

shall include any finishing material applied or affixed to the interior surfaces of the interior walls, floors and ceilings of the Units in the Building; interior walls that support the Improvements within the Building as a whole or for the Units within the Building; and all utility outlets, fixtures or appliances found within the boundary lines of the Unit. The Owner(s) of each Unit will be responsible for all costs and expenses associated with the maintenance and repair of the interior of the Unit.

The Garage Buildings and the Garage Lots will contain two (2) or more Garage Units. Each Garage Unit shall be owned by the Garage Owner and all Garage Units within a Garage Lot shall be owned as a single parcel. Each Garage Building shall consist of the Garage Units therein and the interior surfaces of each Garage Building, and its perimeter walls, bearing walls, floors, ceilings, and the windows and doors of each Garage Unit. In addition, each Garage Lot shall consist of the airspace above and the subsurface below the land and all of the area and improvements above and below the surface of the land and within and part of the vertical boundaries defined by the Garage Lot lines shown on the Plat, extended upwards to the heavens and downward to the center of the earth, included within the boundaries of each Garage Lot. By this provision, the Declarant intends each Garage Lot (and the Garage Building thereon) to be comprised of all of the physical improvements that pertain solely to the area in which the Garage Building is located or pertain solely to the improvements within the Garage Lot, that connect or provide service only to the applicable Garage Building. Without limitation, a Garage Building shall include any finishing material applied or affixed to the interior surfaces of the interior walls, floors and ceilings of the Garage Building; interior walls that support the improvements within the Garage Building as a whole or for the Garage Units within the Garage Building; and all utility outlets or fixtures found within the boundary lines of the Garage Building. The Garage Owner will be responsible for all costs and expenses associated with the maintenance and repair of the interior of his/her/their respective Garage Building and the Garage Units therein. The Garage Owner shall also be responsible for all costs and expenses associated with the maintenance and repair of each Garage Unit door.

The following items shall not be included in the definition of a Unit, or Garage Building, but shall be considered Common Areas and Facilities to be maintained by the Association: the exterior surfaces of the Buildings, the exterior of the Garage Buildings (except for the Garage Unit doors), the exterior of the Attached Garages, the roofs of the Buildings, the roofs of the Garage Buildings, the roofs of the Attached Garages, all landscaping and yard areas located outside of the footprint of each Building and Garage Building, as more fully described in Section 6 of this Declaration. Utility meters or other Improvements may be attached to any portion of the exterior of a Building or Garage Building for the benefit of multiple Units or Garage Units within that Building or Garage Building or within adjoining or nearby Units or Garage Buildings. Such meters or common Improvements will be considered Common Areas and Facilities maintained by the Association, or, as applicable, the appropriate utility company.

6. COMMON AREAS AND FACILITIES.

6.1 The Common Areas and Facilities shall mean and shall include those portions of the Property that are not part of the Units or the Garage Units, and shall include, without limitation, the open space areas of the Project, the common landscaping of the Project, the non-public roadways, streets and walkways, if any, within the Project, the entry/exit gates and related

Improvements, if any, within the Project, as well as any other areas in the Project that are not designated as a Lot, Building, Unit, Garage Lot, Garage Building or Garage Unit on the Plat. The Common Areas and Facilities also include the roofs and exterior surfaces of the Buildings and Garage Buildings (but do not include the garage doors of the Garage Units) including utility meters, if any, on the exterior of the Buildings and the Garage Buildings; the grounds and certain parking areas in the Project, if any, designated as part of the Common Areas and Facilities on the Plat (such parking areas not to include the Garage Units); all landscaping; all fencing installed by Declarant; the park-strips (if any) designated as Common Areas on the Plat(s); all apparatuses and installations existing for common use of all Unit Owners and their tenants or guests; and all repairs, maintenance, clearing (snow), and replacements of any of the foregoing. Parking stalls (not to include Garage Units), if any, which are Common Areas and Facilities may be utilized for locating trash containers and similar items if needed by the Association. Moreover, the Association, (not the Owners individually) shall be responsible for all maintenance and repair, and snow-removal, of the driveways, sidewalks, and landscaping within the Project even if all or any portion of such areas are technically located within the boundaries of any Lot as shown on the Plat.

The Common Areas and Facilities shall also include, without limitation, a clubhouse, pool, or other recreational amenities or facilities if the same are constructed as part of this Project. This provision shall not be construed to require the construction or installation of any clubhouse, pool, or other such common amenities or facilities.

6.2. Except as set forth in Section 12.3, the Common Areas and Facilities in the Project shall be owned and maintained by the Association, and the recordation of the Plat(s) and this Declaration shall operate to convey title to all Common Areas and Facilities to the Association. The Association shall be responsible for the maintenance, repair, and snow removal of the non-public roadways within the Project, if any.

6.3. No Owner, directly or indirectly, shall make any alterations to any of the Common Areas and Facilities without the prior written consent of the Board, including, without limitation, any changes to any of the exterior elements of the Units or Buildings, the paint color of the exterior of the Units or Buildings, the landscaping of the Project, or any other component of the Common Areas and Facilities.

7. LIMITED COMMON AREAS AND FACILITIES; COMMON WALLS.

7.1 Limited Common Areas and Facilities. Limited Common Areas and Facilities shall mean the portion of the Common Areas and Facilities, if any, shown as Limited Common Areas on the Plat or indicated in this Declaration as reserved for the use of certain Units or Building to the exclusion of other Units or Buildings in the Project. Limited Common Areas and Facilities may include any balconies, attics, shared hallways or stairways, driveways, entry areas or gardens, or other areas, if any, indicated by the Declaration or the Plat to be for the exclusive use of one or more but fewer than all of the Units or Buildings in the Project. Notwithstanding the foregoing, the Declarant shall have no obligation to construct any Limited Common Areas and Facilities within the Project. Owners may not reallocate Limited Common Areas and Facilities. In addition, the Project may have certain common stairwells and hallways that are not designated on the Plat as "Limited Common Areas," but shall be treated as if they were Limited Common Areas and Facilities, if they meet certain criteria as set forth in Section 12.3 of this Declaration.

7.2 Common Walls. Where the Units, Buildings or Garage Units are connected by, or share, a common wall ("**Common Wall**"), the following provisions shall govern the use, maintenance, repair and restoration thereof:

7.2.1 Each Unit, Building or Garage Unit sharing a Common Wall with a different Unit, Building or Garage Unit shall provide such access as may be reasonably necessary to permit the Association and the Owner of the other Unit, Building or Garage Unit sharing said Common Wall, and their respective agents and contractors, to maintain the integrity of the Common Wall, and to repair and restore it as necessary.

7.2.2 Should any Common Wall be damaged or destroyed by the negligence or other act or omission of an Owner of one of the Units, Buildings or Garage Units sharing the same, or said Owner's agents, employees, invitees or guests, said Owner shall be liable, at its sole cost and expense, for all necessary repairs or restoration of said Common Wall, and related damage to any Unit, Building or Garage Building; provided, however, that any insurance proceeds received in connection with such damage or destruction from policies of insurance owned by the Owners of either Unit, Building or Garage Unit sharing said Common Wall, or by the Association, shall first be applied toward the costs of repairing or restoring the Common Wall and related damages to Units, Buildings or Garage Units. All repairs or restorations to be completed pursuant to this subparagraph shall be completed to the reasonable satisfaction of the affected Owners.

7.2.3 Should any Common Wall be damaged or destroyed by any cause other than the negligence, act or omission of the Owner of either Unit or Garage Unit sharing said Common Wall, or said Owner's agents, employees, invitees or guests, the Owners of the Units sharing said Common Wall shall be equally liable for all necessary repairs or restoration of said Common Wall, and related damage to the affected Unit or Garage Unit; provided, however, that any insurance proceeds received in connection with such damage or destruction from policies of insurance owned by the Owners of either Unit, Building or Garage Unit sharing said Common Wall, or by the Association, shall first be applied toward the costs of repairing or restoring the Common Wall and related damages to the affected Units, Buildings or Garage Units. All repairs or restorations to be completed pursuant to this subparagraph shall be completed to the reasonable satisfaction of the affected Owners.

7.2.4 Should any party fail or refuse to complete the repairs or restorations imposed upon it by these provisions, the Association, after giving written notice to said party of its intention to do so, may undertake said repairs or restorations, and be entitled to reimbursement for all costs incurred in connection therewith from said party. Such reimbursement shall be made within thirty (30) days after the Association has completed the work and presented said party with a statement and demand for payment setting forth all costs incurred. The Association shall have a lien against the Unit or Building owned by the liable Owner to secure payment to the Association of all costs and expenses incurred in making the necessary repairs or restorations, and the Association shall be entitled to enforce said lien in the same manner as it is authorized to enforce assessment liens, including recovery of attorney fees, costs and interest.

7.2.5 In the event of a dispute or controversy between the Owners of Units, Buildings or Garage Units sharing a Common Wall, as to any matter within or arising out of the provisions of this Section 7, or the respective use, maintenance, repair, or replacement of said Common Wall, such dispute or controversy shall be submitted to the Board of Directors of the Association for arbitration. The decision of the Board with respect to the issues presented shall be binding upon the parties involved.

8. NATURE AND INCIDENTS OF LOT OWNERSHIP.

8.1. Each Lot and Garage Lot must be held, conveyed, devised, mortgaged, encumbered, leased, rented, used, occupied, improved and otherwise affected in accordance with the provisions of this Declaration.

8.2. Subject to the limitations contained in this Declaration, each Unit Owner shall have the non-exclusive right to use and enjoy the Common Areas and Facilities, the exclusive right to occupy and use their Lot and the exclusive (or semi-exclusive, as the case may be) right to use any Limited Common Areas and Facilities designated for exclusive (or semi-exclusive) use by such Unit Owner, a limited group of Unit Owners, or all Unit Owners. Each Garage Owner shall have the non-exclusive right to use and enjoy the driveways and roadways of the Common Areas and Facilities providing access to the Garage Units, any other portion of the Common Areas and Facilities necessary for the intended use of the Garage Units, and the exclusive right to occupy and use its Garage Lot.

8.3. Except as otherwise provided herein, each Owner shall have the exclusive right to paint, repaint, tile, wax, paper, carpet or otherwise decorate the <u>interior</u> surfaces of the walls, ceilings, floors and doors forming the boundaries of the Buildings, Units and Garage Buildings and the surfaces of all interior walls, ceilings, floors and doors within such boundaries. Owners may not alter or modify any Common Areas or Limited Common Areas within the Project. Each Owner shall keep the interior of their Unit, Buildings and Garage Buildings including without limitation, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereto, in a sanitary condition and in a good state of repair. In addition, each Owner shall keep their Garage Building, driveways and patios, if these features are included in the Project, in a good state of repair. In the event that any Unit, Building or Garage Building should develop an unsanitary condition or fall into a state of disrepair and in the event that the Owner of such Unit, Building or Garage Building should fail to correct any condition or state of disrepair which is Owner's responsibility promptly following written notice from the Board, the Board shall have the right, at the expense of such Owner and without liability to the Owner for trespass or otherwise, to enter said Unit, Building or Garage Unit and correct or eliminate said unsanitary condition or state of disrepair. The Association shall collect any costs or expenses incurred by the Association to correct or eliminate an unsanitary condition or state of disrepair by Specific Assessment against the subject Unit(s)/Building/Garage Building.

8.4. The Board shall have the right to enter into any Unit, Building or Garage Building for the purpose of cleaning, maintenance, repairs, including emergency repairs, and for the purpose of abating a nuisance, or a known or suspected dangerous or unlawful activity, and for the purpose of cleaning, maintaining or repairing any Common Areas and Facilities.



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9. TITLE TO LOTS.

9.1. Title to a Lot or Garage Lot may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State.

9.2. Title to part of a Lot or Garage Lot may not be separated from any other part thereof during the period of ownership, and each Lot and Garage Lot shall always be conveyed, devised, encumbered and otherwise affected only as a complete Lot or Garage Lot. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Lot, Garage Lot, or any part thereof, shall be construed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Lot or Garage Lot, together with all appurtenant rights created by law and by this Declaration, including appurtenant membership in the Association as herein set forth.

9.3. The Common Areas and Facilities shall be owned by the Association, and no Owner may bring any action for partition thereof.

9.4. Each Owner shall have the right to encumber his or her interest in a Lot or Garage Lot with a Mortgage. However, no Owner shall attempt to or shall have the right to encumber the Common Areas and Facilities or any part thereof. The Mortgage of any Lot or Garage Lot within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.

9.5. No labor performed or services or materials furnished with the consent of or at the request of an Owner may be the basis for the filing of a lien against the Lot or Garage Lot of any other Owner, or against any part thereof, or against any other property of any other Owner, unless the other Owner has expressly consented to or requested the performance of such labor or furnishing of such services. Express consent shall be deemed to have been given by the Owner in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Project, if authorized by the Association and consistent with the Declaration, shall be deemed to be performed or furnished with the express consent of each Owner. The Owner may remove his or her Lot or Garage Lot from a lien against two (2) or more Lots, Garage Lots, or any part thereof by payment to the holder of the lien of the fraction of the total sums secured by such lien which is attributable to his or her Lot or Garage Lot.

9.6. Every contract for the sale of a Lot or Garage Lot and every other instrument affecting title to a Lot or Garage Lot within the Project may describe a Lot or Garage Lot by the name of the Project, the county wherein the Project is located and its Lot Number as indicated in this Declaration or as shown on the Plat. Such description will be construed to describe the Lot, the Garage Lot, the applicable Unit, and to incorporate all the rights incident to ownership of a Lot within the Project and all of the limitations on such ownership as described in this Declaration.

10. RESTRICTIONS ON USE.

The Lots, Buildings, Units, and Common Areas and Facilities, including but not limited to the Limited Common Areas and Facilities, except as otherwise permitted in writing by the Board, shall be used in accordance with the following restrictions:

10.1. Only those spaces, if any, designated on the Plat as Commercial Spaces and Garage Buildings may be used for commercial purposes. Any Commercial Spaces and Garage Buildings must be used exclusively in a manner consistent with all applicable laws, ordinances, and regulations governing such spaces. Unless specifically designated on the Plat as a Commercial Space or as a Garage Building, each Unit shall be used for residential purposes only. Notwithstanding the foregoing, home-based businesses which have no impact on the Project beyond the ordinary impact of residential use, and which are approved under applicable zoning regulations, are permissible.

10.2. No noxious, destructive or offensive activity shall be carried on or placed in or upon any Unit, Lot, Garage Building, or in the Common Areas, or Limited Common Areas, or any part thereof, which shall interfere with the legal rights of other Owners nor shall anything be done therein which is or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project. No activities shall be conducted, nor Improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property. Without limiting the breadth of the foregoing, aluminum foil, sheets, linen, bed sheets, newspapers, or any other similar materials may not be used to cover the windows in any Unit or Garage Unit. The Common Areas and Facilities shall be used only in a manner which is consistent with their community nature and the use restrictions applicable to the Units. Without limiting the breadth of the foregoing sentence: (i) no automobile or other vehicle shall be parked at any location within the Project which impairs or tends to impair vehicular or pedestrian access within the Project or to and from its various parts; (ii) no garments, rugs, or other household items, or wash lines of any kind may be hung, erected, or maintained outside of an Owner's Unit; (iii) no Owner or occupant shall discard or permit any items to fall from the windows of his or her Unit; (iv) no dogs are permitted on common areas unless the dog is on a leash; and (v) each pet owner must immediately remove any animal droppings and dispose of them in a garbage container.

10.3. Garage Units and Attached Garages may be used solely for the purpose of parking motor vehicles; provided, however, any Garage Unit utilized by the Association may be used for the additional purpose of storing Association maintenance related items.

10.4. The only commercial signs permitted in the Project are those signs, if any, which are approved by the applicable municipal authority for use in connection with the Commercial Spaces, or the leasing of Garage Units, if any, within the Project. Otherwise, no signs, flags or advertising devices of any nature, including, without limitation, informational or directional signs or devices, shall be erected or maintained on any part of the Project, without the prior inspection and written approval of the Board, except as may be necessary temporarily to caution or warn of danger. If the Board consents to the erection of any such signs or devices, the same shall be removed promptly at the request of the Board. Nothing in this Section 10.3 shall be deemed to restrict the right of Owners to display political, religious, and holiday signs subject to reasonable time, place, and manner restrictions adopted by the Board.

10.5. No pets, animals, livestock or poultry of any kinds shall be bred in or kept on or about the Project, except as may be allowed by the Association in accordance with rules and regulations governing pets which may be promulgated by the Board. Pets shall not create a nuisance, and the following acts may constitute a nuisance: (a) causing damage to the property of anyone other than the pet owner; (b) causing unsanitary conditions; (c) defecating on any Common

Areas and Facilities when the feces are not immediately cleaned up by the responsible party; (d) barking, howling, whining or making other disturbing noises in an excessive or continuous fashion; (e) harassing passersby by lunging at them or chasing vehicles; (f) attacking or threatening to attack people or other domestic pets; or (g) otherwise acting so as to unreasonably bother, annoy or disturb other residents or unreasonably interfering with their right of peaceful and quiet enjoyment of their Units. Pets in the Common Areas must be in a cage or on a leash at all times. Pets may not be tied or tethered in any Common Areas. The Board may establish and enforce rules and regulations governing pets within the Project and may charge a deposit for pets within the Project.

10.6. No Owner shall, without the prior written consent of the Board, make or permit to be made any alteration, improvement or addition in or to any Building or do any act that would impair the structural soundness or integrity of the Buildings or the safety of property, impair any easement or hereditament appurtenant to the Project, or make or permit to be made any alteration, improvement or addition to the Common Areas and Facilities.

10.7. There shall be no obstruction of the Common Areas and Facilities by any Owner. Owners shall neither store nor leave any of their personal property in the Common Areas and Facilities and Limited Common Areas and Facilities, including, without limitation, shared hallways or stairways, if any, within the Project, except with the prior consent of the Board.

10.8. Nothing shall be done or kept in any Unit, Building, Garage Unit, or in the Common Areas and Facilities or any part thereof, which would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit or Garage Unit which would increase the rate of insurance on the Project or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Board. Nothing shall be done or kept in any Unit, Garage Unit or in the Common Areas and Facilities or any part thereof which would be in violation of any statute or rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas and Facilities or any part thereof shall be committed by any Owner or guest, lessee, licensee or invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his or her guests, lessees, licensees or invitees.

10.9. Each Owner shall comply strictly with all rules and regulations adopted by the Association for the governance of the Units, the Garage Units, the Common Areas, and the Project, as such rules and regulations may be modified, amended and construed by the Association in the sole discretion of its Board.

10.10. Any Lease agreement between an Owner and a lessee regarding a Unit or Garage Unit shall be subject in all respects to the provisions of this Declaration, the Association's Articles of Incorporation ("**Articles**"), and Bylaws.

10.10.1. To ensure consistency and uniformity within the Project, each Owner shall be required to utilize the Property Manager for the Leasing, rental or similar use of any Unit within the Project. Such Owner shall be responsible for payment of such fees and costs as shall be imposed by the Property Manager under the Property Management Agreement. An Owner who has entered into a Leasing, rental or similar agreement with

an occupant of the Owner's Unit that has not been approved by the Property Manager shall be required to pay a fine in an amount established by the Board. Such fine shall constitute a lien and the collection thereof shall be in the same manner as the procedure set forth for the collection of Assessments in Section 19.1 hereunder.

10.10.2. No Units or Garage Units may be rented for overnight rentals or any rental term shorter than 30 days.

10.10.3. The Declarant shall appoint the initial Property Manager and enter into a written Property Management Agreement, setting forth the rights, duties and obligations of the Property Manager including, without limitation, the services to be provided, which shall include the Leasing of all Units, Garage Units and any other applicable property within the Project. The Property Management Agreement shall also include the standards of performance required and the rights and remedies applicable in the event of any breaches or default. The rights and remedies shall include, without limitation, the rights to terminate the Property Management Agreement in accordance with the terms and provisions thereof. The term of the Property Management Agreement shall expire two (2) years after the expiration of the Declarant Control Period, unless terminated earlier in Declarant's sole discretion. Thereafter, the Board shall select the Property Manager and enter into a written Property Management Agreement setting forth the rights, duties and obligations of the Property Manager including, without limitation, the services to be provided, the standards of performance required and the rights and remedies applicable in the event of any breaches or default. The rights and remedies shall include, without limitation, the rights to terminate the Property Management Agreement in accordance with the terms and provisions thereof. The Property Management Agreements to be entered into by the Board shall include provide for a minimum term of two (2) years and a maximum term of three (3) years.

10.10.4. Other than the foregoing, there is no restriction on the right of any Owner to Lease his Unit or Garage Unit. An Owner shall be responsible and liable for any damage to the Project caused by its tenant.

11. ASSOCIATION AND BOARD OF DIRECTORS.

11.1. Each Owner shall be entitled and required to be a member of the Association. There shall be two (2) classes of membership in the Association, as set forth in Section 22 of this Declaration. Class A Membership will begin immediately and automatically upon becoming a Unit Owner and shall terminate immediately and automatically upon ceasing to be a Unit Owner. Class A Membership will begin for the Garage Owner upon the termination of its Class B Membership, if the Garage Owner is the Declarant. If the Garage Owner is not the Declarant, Class A Membership will begin for the Garage Owner immediately and automatically upon becoming a Garage Owner and shall terminate immediately and automatically upon ceasing to be an Owner of a Garage Lot. If title to a Lot or Garage Lot is held by more than one person, the membership appurtenant to that Lot or Garage Lot shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Lot or Garage Lot is held. An Owner of a Lot shall be entitled to membership in the manner set forth in Section 22.1 of this Declaration. A Garage Owner shall be entitled to membership in the manner set forth in

Section 22.1 of this Declaration. Each membership shall be appurtenant to the Lot or Garage Lot to which it relates and shall be transferred automatically by conveyance of that Lot or Garage Lot. Ownership of a Lot or Garage Lot within the Project cannot be separated from the Association membership appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of a Lot or Garage Lot shall constitute a devise, encumbrance, conveyance or other disposition, respectively, of such Owner's or Garage Owner's membership in the Association and the rights appurtenant thereto. No person or entity other than an Owner or Garage Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Lot or Garage Lot.

11.2. The Association shall be governed by the following provisions:

11.2.1. The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by a Board of Directors consisting of at least three (3) natural persons as provided in the Bylaws. Initially, the Board shall be appointed or elected as provided in this Declaration and in the Bylaws. Notwithstanding the foregoing, the Declarant shall have the exclusive right to appoint, remove and replace all members of the Board during the Declarant Control Period.

11.2.2. Except as otherwise provided herein, the Board shall have all the powers, duties and responsibilities as are now or may hereafter be provided by this Declaration and the Bylaws, including but not limited to the following:

11.2.2.1. To make and enforce all rules and regulations governing the use, operation, and maintenance of the Project, the Buildings, the Units, the Garage Buildings and the Garage Units.

11.2.2.2. To carry out through a HOA Manager those of its functions which are properly the subject of delegation. A HOA Manager so engaged shall be an independent contractor and not an employee of the Association or the Board, shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Board, be authorized to perform any of the functions or acts required or permitted to be performed by the Board itself. The cost of retaining or employing a HOA Manager shall be a Common Expense.

11.2.2.3. To engage the services of accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefore, and to appoint committees as determined by the Board.

11.2.2.4. To operate, maintain, repair, improve and replace the Common Areas and Facilities.

11.2.2.5. To determine and pay the Common Expenses.

11.2.2.6. To assess and collect the proportionate share of Common Expenses from the Owners, as provided in Section 19 of this Declaration.

11.2.2.7. To assess and collect the Garage Assessments.

11.2.2.8. To levy Specific Assessments on Owners or Units, as provided in Section 19 of this Declaration.

11.2.2.9. To enter into contracts (including Property Management Agreements commencing two (2) years after the Declarant Control Period) , deeds, leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

11.2.2.10. To open bank accounts on behalf of the Association and to designate the signatories therefor.

11.2.2.11. To purchase, hold, sell, convey, mortgage or lease any one (1) or more Units in the name of the Association or its designee.

11.2.2.12. To bring, prosecute and settle any lawsuit, binding arbitration, mediation, or governmental proceeding for itself, the Association and the Project, provided that it shall make no settlement which results in a liability against the Board, the Association or the Project in excess of $25,000.00, without the prior approval of a majority of the Total Votes of the Association at a meeting or by written ballot distributed to Owners by mail; provided, any settlement which would be paid from proceeds of insurance which may be settled by the Association's insurance carrier and which in either case results in no actual liability of funds of the Association in excess of $20,000 shall not require Association approval.

11.2.2.13. To obtain insurance for the Association with respect to the Buildings and the Common Areas and Facilities, as well as worker's compensation insurance, as needed.

11.2.2.14. To repair or restore the Project following damage or destruction or a permanent taking by the power of, or power in the nature of, eminent domain, or by an action or deed in lieu of condemnation.

11.2.2.15. To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Owners, items of personal property necessary to or convenient to the management of the business and affairs of the Association and the Board and to the operation of the Project, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.

11.2.2.16. To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Project by Owners in accordance with the terms of the Bylaws. The Association or the Board shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the First Mortgage on any Unit current copies of the Declaration, Articles, Bylaws and other rules governing the Project and other books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

11.2.2.17. To do all other acts necessary for the operation, maintenance and security of the Project, including the maintenance and repair of any Unit if the same is necessary to protect or preserve the Project and the implementation of security measures, including closed circuit television.

11.2.2.18. To prepare, adopt, amend and disseminate budgets and other information from time to time in accordance with the terms of the Bylaws.

11.2.2.19. To grant conveyances, easements and rights-of-way over the Common Areas and Facilities.

11.2.3. Members of the Board, the officers and any assistant officers, agents and employees of the Association (i) shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith; (ii) shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such; (iii) shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, nor for acts performed for them in their capacity as such; and (iv) shall have no personal liability arising out of the use, misuse or condition of the Project, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

11.2.4. When a member of the Board is sued for liability for actions undertaken in his role as a member of the Board, the Association shall indemnify him for his losses or claims, and undertake all costs of defense, until and unless it is proven that he acted with willful or wanton misfeasance or with gross negligence. After such proof the Association is no longer liable for the cost of defense, and may recover costs already expended from the member of the Board who so acted. Members of the Board are not personally liable to the victims of crimes occurring at the Project. Punitive damages may not be recovered against the Association, but may, as permitted by law, be recovered from any persons whose gross negligence gave rise to the asserted damages.

11.2.5. Neither the Board nor the HOA Manager shall sell any of the Property of the Association except as permitted by this Declaration.

12. MAINTENANCE, ALTERATION AND IMPROVEMENT.

12.1. The Board, acting on behalf of the Association and, subject to the rights and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and Facilities, Limited Common Areas and Facilities, and all Improvements thereon and shall keep the same in a good, clean, attractive, safe and sanitary condition, order and repair. The Board shall be responsible for the maintenance and repair of the exterior of the Buildings, the exterior of the Garage Buildings, the roofs of the Buildings, the roofs of the Garage Buildings and other Improvements and grounds designated as Common Areas and Facilities and Limited Common Areas and Facilities, including, without limitation, painting thereof, repair and replacement of exterior trim, siding, railings, roofs and fences, and the

maintenance of all landscaping. The Board shall also be responsible for maintenance, repair and replacement of any and all other Common Areas and Facilities within the Project. The costs associated with the maintenance, replacement and repair of the Common Areas and Facilities shall be a Common Expense. The cost associated with the maintenance, replacement and repair of Limited Common Areas may be a Common Expense, if the cost applies to all Limited Common Areas in the Project, or an expense attributable exclusively to the affected Owners and enforceable as a Specific Assessment. The costs associated with the maintenance, replacement and repair of the rooftops and exterior of the Garage Buildings shall be part of the Garage Assessment. Such expenses shall be attributable to the Garage Owner and enforceable as Garage Assessments. Notwithstanding any other provision of this Declaration, if the Plat indicates that the Owners are responsible for any of the Limited Common Areas and Facilities of the Project, then the Owner or Owners of Units adjoining such Limited Common Areas and Facilities be responsible for the maintenance thereof, and shall bear the cost of the same.

12.2. Some of the Common Areas and Facilities or Limited Common Areas and Facilities are, or may be, located within the Buildings, attached to the exterior of the Buildings, or may be conveniently accessible only through the Units. The Association shall have an easement and irrevocable right to enter each Unit and Building in order to access, maintain, repair and/or replace, as necessary, all Common Areas and Facilities and Limited Common Areas and Facilities from time to time during such reasonable hours as may be necessary, or for making any emergency repairs at any time and when necessary to prevent damage to the Common Areas and Facilities, the Limited Common Areas and Facilities, or to any Unit. The Association shall also have the irrevocable right to have access to any Unit or Garage Unit when necessary in connection with any cleaning, maintenance, repair, replacement, painting, landscaping, construction or reconstruction for which the Association is responsible, or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Such entry shall be made with as little inconvenience to the Owners as is practicable under the circumstances and any damage caused thereby shall be repaired by the Association.

12.3. Notwithstanding any provision in this Declaration to the contrary, the Association shall also be responsible to manage, maintain and repair, as a Common Expense of the Association, any and all common stairwells and hallways that are not designated as Limited Common Areas on the Plat, but are located within a Unit shown on the Plat, if such stairwells and hallways provide access to: two (2) or more Units, at least one Unit and at least one Commercial Space, or two (2) or more Commercial Spaces. If the Project has common stairwell(s) and hallway(s) that meet one of these criteria, then the stairwell(s)/hallway(s) shall be treated as if they were Limited Common Areas for purposes of the maintenance and repair obligations of the Board and the Association.

12.4. Additions or Capital Improvements to the Project which cost no more than $25,000 may be authorized by the Board alone. Additions or Capital Improvements the cost of which exceed $25,000 and which are not part of the Board-approved annual budget of the Association must, prior to being constructed, be authorized by at least a simple majority of the undivided ownership in the Project. Any additional or Capital Improvements which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed, be authorized by at least sixty-seven percent (67%) of the Total Votes of the Association. For purposes of this Section 12.4, "materially alter the nature of the Project" shall mean any addition or Capital

Improvement that changes the Project from residential to any other use, such as any commercial space not already designated on the Plat, or to any form of timesharing.

12.5. No Owner shall enlarge or otherwise modify the exterior of his/her Unit, Building, or Limited Common Area or add any devices or structures such as, for illustration and not limitation, fences, greenhouses, solariums, room additions, enclosing decks, hot tubs, unless and until the Owner has received written consent from the Board. The Board may function by itself or may appoint a committee to be charged with the responsibility of keeping the Project's exterior and common areas consistent in appearance.

13. INSURANCE.

13.1. Unless otherwise required by law, the Association shall at all times maintain in force insurance meeting the following requirements:

13.1.1. A "master" or "blanket" type policy of property insurance shall be maintained covering the entire Project, including: Common Areas and Facilities and Limited Common Areas and Facilities; all Buildings including all Units (other than the interior contents thereof); all Garage Buildings; fixtures, building service equipment, personal property and supplies comprising a part of the Common Areas or Facilities or owned by the Association, but excluding land, foundations, excavations, and other items normally not covered by such policies. References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity insurance coverage. As a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to the Project in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Project covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. If the Board deems such advisable, the insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance); or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one-hundred percent of the property's insurable replacement cost but no more) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance). Unless the Board otherwise determines, the maximum deductible amount for such a policy covering the Common Areas and Facilities shall be Ten Thousand Dollars ($10,000) and for losses related to individual Units that are covered by such a policy, the maximum deductible related to each individual Unit shall be Ten Thousand Dollars ($10,000.00). Funds to cover these deductible amounts shall be included in the Association's operating reserve account.



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13.1.2. If any habitable structure located within the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Plat, a "master" or "blanket" policy of flood insurance shall be maintained covering the Buildings (a separate policy is required for each separate multi-story building that houses Units), any machinery and equipment that are not part of a Building and all Common Areas and Facilities within the Project (hereinafter "Insurable Property") in an amount deemed appropriate, but not less than the lesser of: (1) the maximum limit of coverage available under the National Flood Insurance Administration Program for all Buildings and Insurable Property within any portion of the Project located within a designated flood hazard area; or (2) one hundred percent (100%) of the insurable value of all such facilities. Unless the Board otherwise determines, the maximum deductible amount for any such policy shall be the lesser of Five Thousand Dollars ($5,000.00) or one percent (1%) of the policy face amount.

13.1.3. The name of the insured under each policy required to be maintained by the foregoing Sections 13.1.1 and 13.1.2 shall be the Association for the use and benefit of the individual Owners. (Said Owners shall be designated by name, if required.) Notwithstanding the requirement of the two immediately foregoing sentences, each such policy may be issued in the name of an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's Mortgagee. Each Owner and each such Owner's Mortgagee, if any, shall be beneficiaries of such policy. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

13.1.4. If the Board deems such advisable, each policy required to be maintained by the foregoing Sections 13.1.1 and 13.1.2 shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the Project is located. In addition, such mortgage clause or another appropriate provision of each such policy shall provide that the policy may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in the policy.

13.1.5. Each policy required to be maintained by the foregoing Sections 13.1.1 and 13.1.2 shall provide, if available, for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against Owners individually; the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively or the Association; and the policy is primary in the event the Owner has other insurance covering the same loss.

13.1.6. In contracting for the policies of insurance required to be maintained under this Section 13.1, the Board shall make reasonable efforts to secure, if the Board deems such advisable, coverage which provides the following endorsements: (1) "Inflation Guard Endorsement"; and (2) "Building Ordinance or Law Endorsement", if the enforcement of any building, zoning, or land use law will result in loss or damage,

increased cost of repairs or reconstruction, or additional demolition and removal costs (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction).

13.1.7. The Association shall at all times maintain in force and pay the premiums for "blanket" fidelity bonds for all officers, members, and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association whether or not that individual receives compensation for services. Furthermore, where the Association has delegated some or all of the responsibility for the handling of funds to the HOA Manager, the HOA Manager shall provide "blanket" fidelity bonds, with coverage identical to such bonds required of the Association, for the HOA Manager's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The total amount of fidelity bond coverage required shall be based upon the Association's best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association, or the HOA Manager, as the case may be, at any given time during the term of each bond. The bonds required shall meet the following additional requirements: (1) the fidelity bonds shall name the Association as obligee; (2) the bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; (3) the premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by the HOA Manager for its officers, employees and agents) shall be paid by the Association as part of the Common Expenses; and (4) the bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association.

13.1.8. The Association shall maintain in force, and pay the premium for a policy providing commercial general liability insurance coverage covering all of the Common Areas and Facilities, Building exteriors, public ways in the Project, all other areas of the Project that are under the Association's supervision, and any Commercial Spaces owned by the Association, if any, whether or not such spaces are leased to some third party. The coverage limits under such policy shall be in amounts generally required by private institutional mortgage investors for projects similar to the Project in construction, location, and use. Nevertheless, such coverage shall be for at least One Million Dollars ($1,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Common Areas and Facilities, Building exteriors, and legal liability arising out of lawsuits related to employment contracts of the Association. Additional coverages under such policy shall include protection against such other risks as are customarily covered with respect to projects similar to the Project in construction, location, and use, including but not limited to (where economically feasible and if available), host liquor liability, contractual and all-written contract insurance, employers liability insurance, and comprehensive automobile liability insurance. If such policy does not include "severability of interest" in its terms, the policy shall include a special endorsement to preclude an insurer's denial of any Owner's claim

because of negligent acts of the Association or any other Owner. Such policy shall provide that it may not be canceled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association and to each First Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

13.1.9. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Each Owner hereby appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as his or her attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or any Insurance Trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear.

Each insurance policy maintained pursuant to the foregoing Sections 13.1.1, 13.1.2, 13.1.7, and 13.1.8 shall, to the extent reasonably possible, be written by an insurance carrier which is licensed to transact business in the State and which has a B general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide or an A or better rating from Demotech, Inc., or which is written by Lloyd's of London. No such policy shall be maintained where: (1) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a Mortgagee, the Board, or the Association; (2) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Board, the Association, or Owner) from collecting insurance proceeds. The provisions of this Section 13.1.9 and of the foregoing Sections 13.1.1, 13.1.2, 13.1.7, and 13.1.8 shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

13.2. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Project which may have been damaged or destroyed. In addition, such policies shall be reviewed to determine their compliance with the provisions of this Declaration and the Act.



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14. DESTRUCTION OR DAMAGE.

14.1. All of the Owners irrevocably constitute and appoint the Association as their true and lawful attorney-in-fact in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from any Owner shall constitute an appointment by said grantee of the Association as his or her attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. All insurance proceeds shall be payable to the Association except as otherwise provided in this Declaration.

14.2. Repair and reconstruction of the Improvements as used herein means restoring the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas and Facilities having substantially the same vertical and horizontal boundaries as before.

14.3. In the event all or any part of the Project is damaged or destroyed, the Association shall proceed as follows:

14.3.1. The Association shall give timely written notice to any holder of any First Mortgage on a Unit who requests such notice in writing in the event of substantial damage to or destruction of any part of the Common Areas or Facilities or a Unit subject to such First Mortgage.

14.3.2. As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of the Project damaged or destroyed.

14.3.3. If the proceeds of the insurance maintained by the Association equal or exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, such repair and reconstruction shall be carried out.

14.3.4. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than seventy-five percent (75%) of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a Special Common Assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such Special Common Assessment shall be allocated and collected as provided in Section 19.1.4 of this Declaration, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

14.3.5. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if seventy-five percent (75%) or more of the Project is damaged or destroyed, such

damage or destruction shall be repaired and reconstructed, but only if within one hundred (100) days following the damage or destruction, Owners entitled to vote at least seventy-five percent (75%) of the votes of the Total Votes of the Association vote to carry out such repair and reconstruction. If, however, the Owners do not, within one hundred (100) days after such damage or destruction, elect by a vote of at least seventy-five percent (75%) of the votes of the Total Votes of the Association to carry out such repair and reconstruction, the Association shall record in the office of the County Recorder of the county in which the Project is located a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

14.3.5.1. The Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance of the Project, if any, shall be considered as one fund and shall be divided among all Owners in an amount equal to the pro-rata interests of the Owners in the Project.

14.3.5.2. In no event shall an Owner of a Unit or any other party have priority over the holder of any First Mortgage on such Unit with respect to the distribution to such Unit of any insurance proceeds.

14.4. If the damage or destruction is to be repaired or reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect the repair and reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas and Facilities having the same vertical and horizontal boundaries as before. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original architectural plans and specifications.

14.5. If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from Common Assessments shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners equally.

14.6. If any Owner (or the family members, guests, tenants or invitees of such Owner) causes any damages to or destruction of any Common Areas and Facilities or any Limited Common Areas, said Owner shall be fully responsible for all costs reasonably incurred to repair the damage or replace any items that need to be replaced as a result of the damage. All costs incurred by the Association in connection with such repair and/or replacement shall be secured by a lien in favor of the Association, and the Association shall have the same rights with respect to collection of said amounts and/or enforcement of the lien as it does with respect to collection of

assessments and enforcement of the lien securing payment of assessments as set forth in Section 19 of this Declaration.

15. TERMINATION.

15.1. Except as otherwise provided in this Declaration, including but not limited to Section 14, the Project may be terminated only by agreement of Owners entitled to vote at least sixty-seven percent (67%) of the Total Votes of the Association at a meeting of Owners duly called for such purpose at which a quorum is present, and with any and all approvals necessary from the governing City or the county with jurisdiction over the Project. Notwithstanding the foregoing, during the Declarant Control Period, the Project may only be terminated if the Declarant approves termination of the Project.

15.2. Reserved.

15.3. A termination agreement may provide that all of the Project shall be sold following termination. If, pursuant to the agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

15.4. The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Sections 15.1 and 15.2. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to affect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interests may appear, based on the relative value of each Unit. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and their successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and their successors in interest remain liable for all assessments and other obligations imposed on Owners by this Declaration.

15.5. Following termination of the Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Mortgagees as their interests may appear. Following termination, Mortgagees holding Mortgages on the Units which were recorded before termination may enforce those liens in the same manner as any lien holder.

16. EMINENT DOMAIN.

16.1. Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Areas and Facilities or one (1) or more Units, Garage Building, or portion thereof, by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation, the Board and each Owner shall be entitled to notice thereof and the Board shall, and the Owners at their respective expense may, participate in the proceedings incident thereto.



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16.2. With respect to the Common or Limited Common Areas and Facilities, any damages or awards shall be determined for such taking, injury or destruction as a whole and not for each Owner's interest therein. After such determination, each Owner shall be entitled to a share in the damages in the same proportion as his ownership interest in the Common Areas and Facilities. This provision does not prohibit a majority of the Owners from authorizing the Board to use such damages or awards for replacing or restoring the Common Areas and Facilities so taken on the remaining land or on other acquired land, provided that this Declaration and the Plat are duly amended.

16.3. With respect to one (1) or more Units or Garage Units, or portions thereof, the damages or awards for such taking shall be deemed to be proceeds from insurance on account of damage or destruction pursuant to Section 14 of this Declaration and shall be deposited with the Board as trustee. Even though the damages or awards may be payable to one (1) or more Owners, the Owners shall deposit the damages or awards with the Board as trustee. In the event an Owner refuses to so deposit his award with the Board, then at the option of the Board, either a Special Common Assessment shall be made against the defaulting Owner and his Unit or Garage Building in the amount of this award or the amount of such award shall be set off against the sum hereafter made payable to such Owner.

16.4. If one (1) or more Units are taken, in whole or in part, or one (1) or more Garage Buildings are taken, in whole or in part, the taking shall have the following effects:

16.4.1. If the taking reduces the size of a Unit and the remaining portion of the Unit may be made tenantable, the Unit shall be made tenantable. If the taking reduces the size of a Garage Building and the remaining portion of the Garage Building may be made useable, the Garage Building shall be made useable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Owners of the Unit or Garage Building. The balance of the award, if any, shall be distributed to the Mortgagee to the extent of the unpaid balance of its Mortgage and the excess, if any, shall be distributed to the Owner.

16.4.2. If the taking destroys or so reduces the size of a Unit that it cannot be made tenantable, or destroys or reduces the size of a Garage Building so that it cannot be made useable, the award shall be distributed to the Mortgagee of the Unit or Garage Building to the extent of the unpaid balance of its Mortgage and the excess, if any, shall be distributed to the Owners thereof. The remaining portion of such Unit, or Garage Building, if any, shall become a part of the Common Areas and Facilities and shall be placed in condition for use by all Owners in the manner approved by the Board. The ownership interest in the Common Areas and Facilities appurtenant to the Units and Garage Buildings that continue as part of the Project shall be equitably adjusted to distribute the ownership of the Common Areas and Facilities among the reduced number of Owners.

16.5. Changes in Units, the Garage Buildings, the Common Areas and Facilities and in the ownership of the Common Areas and Facilities that are affected by the taking referred to in this Section 16 shall be evidenced by an Amendment to this Declaration and the Plat, which need not be approved by the Owners.

17. MORTGAGEE PROTECTION.

17.1. The Association shall maintain and have current copies of the Declaration, Articles, Bylaws, and other rules concerning the Project as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of First Mortgages that are secured by Units in the Project. Generally, these documents shall be available during normal business hours.

17.2. The lien or claim against a Unit for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Unit if the First Mortgage was recorded before the delinquent assessment was due, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Unit shall take the same free of such lien or claim for unpaid assessment or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Unit affected or previously affected by the First Mortgage concerned.

17.3. In the event any taxes or other charges which may or have become a lien on the Common Areas and Facilities are not timely paid, or in the event the required hazard insurance described in 13.1.1 lapses, is not maintained, or the premiums therefore are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Association.

17.4. No provision of this Declaration or the Articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Units or the Common Areas and Facilities.

18. AMENDMENT.

18.1. Except as provided elsewhere in this Declaration, this Declaration may be amended by affirmative vote or written consent, obtained by written ballot or otherwise, or any combination thereof, of at least sixty-seven percent (67%) of the Total Votes of the Association. Notwithstanding the foregoing, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the Association in the office of the County Recorder for the county in which the Project is located. In such instrument an officer or a member of the Board of the Association shall certify that the vote required by this Section for amendment has occurred.

18.2. Declarant has the right to unilaterally amend, modify, extend or revoke this Declaration for any purpose during the Declarant Control Period, so long as a copy of the written amendment is provided to all other Owners. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary: (1) to bring any provision into compliance with any applicable governmental statute, rule, regulation or judicial determination; (2) to enable any reputable title insurance company to issue title insurance coverage on any Lot or Unit; (3) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans to make, purchase, insure, or guarantee mortgage loans on any Lot or Unit; or (4) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment occurring after the Declarant Control Period shall not adversely affect the title to any Lot or Unit unless the Owner of such Lot or Unit shall consent in writing. Declarant's right to amend shall be construed liberally and shall include, without limitation, the right to amend and/or restate this Declaration in part or in its entirety.

19. ASSESSMENT OF UNITS AND GARAGE UNITS BY THE ASSOCIATION.

19.1. The making and collection of Common Assessments by the Association from Owners of Units for their share of Common Expenses shall be pursuant to the Act and the Bylaws and subject to the following provisions:

19.1.1. Declarant, for each Unit owned by Declarant which is not an Exempt Unit, and each Owner, other than Declarant, by becoming an Owner of a Unit that is not an Exempt Unit, is deemed to covenant and agree to pay Assessments to the Association in accordance with this Declaration. Each Unit in the Project (except for Exempt Units) shall be liable for an equal share of the Common Expenses of the Association. Any commercial spaces shown on the Plat and permitted within the Project will be considered to contain one (1) Unit and allocated one share of Common Assessments under this Section 19 for each one thousand (1000) square feet, or any portion thereof, which the commercial space contains. Thus, if the commercial space is one thousand (1000) square feet or less, the commercial space shall be considered one (1) Unit and allocated one (1) share of the Common Expenses; if the commercial space contains between one thousand one (1001) and two thousand (2000) square feet, the commercial space will be considered two (2) Units and allocated two (2) shares of the Common Expenses; and so on.

19.1.2. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital reserve expenses. Such combined expenses shall constitute the Common Expenses, and the funds received from Common Assessments under this Section 19 shall be the Common Expense Account. Common Assessments shall include both Regular Common Assessments and Special Common Assessments. Regular Common Assessments must be made at least annually, based on a budget adopted at least annually by the Association in accordance with the provisions of this Declaration and the Bylaws. Regular Common Assessments shall be levied against each separate Unit annually.

19.1.3. The Association may not impose a Regular Common Assessment per Unit which is more than 20% greater than the previous year's Regular Common Assessment, without first obtaining the vote of Owners, constituting a quorum, as provided in the

Bylaws, casting a majority of the Total Votes of the Association at a meeting of the Association. Such percentage increase shall be calculated without regard to any increase attributable to an increase in real estate taxes against the Units. The Association shall provide notice, by first class mail to all Owners, of any increase in the Regular Common Assessments not less than fifteen (15), nor more than sixty (60), days prior to the date the increased Regular Common Assessment is due.

19.1.4. In addition to the Regular Common Assessments, the Association may levy in any calendar year, Special Common Assessments applicable to that year only. However, in any fiscal year, except as otherwise provided in this Declaration, the Board shall not, without the vote or written assent of Owners, casting a simple majority of the Total Votes of the Association at a meeting or by written ballot, levy Special Common Assessments which in the aggregate exceed 10% of the budgeted gross expenses of the Association for that fiscal year. All Units within the Project, except Exempt Units, shall pay a portion of any Special Common Assessment equal to that Unit's share of Common Expenses, as provided for in Section 19.1.1. These provisions with respect to the imposition or allocation of Special Common Assessments shall not apply when the Special Assessment is to pay an increase in real property taxes. The Board shall provide notice by first class mail to all Owners of any Special Common Assessments not less than fifteen (15) nor more than sixty (60) days prior to the date such Assessment is due. Special Common Assessments shall be paid as determined by the Board and the Board may permit Special Common Assessments to be paid in installments extending beyond the fiscal year in which the Special Common Assessment is imposed.

19.1.5. The Association may also levy a Specific Assessment against an Owner or an Owner's Unit, including Units, if any, which are commercial spaces: (1) to reimburse the Association for costs incurred in bringing an Owner and/or an Owner's Unit into compliance with the provisions of this Declaration, the Bylaws, rules and regulations of the Association or any other governing instrument of the Project; (2) to cover costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Owner prior written notice and an opportunity for a hearing, in accordance with the Bylaws, before levying a Specific Assessment for this purpose; (3) to pay the costs of repairs or maintenance to any Limited Common Areas and Facilities benefitting such Owner's Unit; or (4) to pay the costs, including overhead and administrative costs, of providing services to the Owner or the Owner's Unit in accordance with this Declaration or pursuant to any menu of special services which may be offered by the Association or the Manager. Specific Assessments for special services may be levied in advance of the provision of the requested service.

19.1.6. All Assessments shall be due as determined pursuant to this Declaration and the Bylaws. Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall be delinquent and shall bear interest at the rate of eighteen percent (18%) per annum, or at such lower rate of interest as may be set by the Board, from the date when due until paid. In addition, Owners who do not pay their Common Assessments when due shall be subject to a late fee of up to One Hundred dollars ($100.00), adjustable from year to year at the discretion of the Board. All payments of



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Assessments shall be first applied to accrued interest and late fees, and then to the Assessment payment first due. All Assessments to pay a judgment against the Association may be made only against the Units in the Project at the time the judgment was entered, in proportion to their liabilities for Common Expenses. If any Common Expense is caused by the misconduct of any Owner, the Association may assess that expense exclusively against such Owner's Unit(s). If the Owners' percentage interests in the Common Areas and Facilities are reallocated, assessments for Common Expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated percentage interests of the Owners.

19.1.7. There shall be a lien upon the applicable Unit for all unpaid Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to the Declaration and the Act. The lien for unpaid Assessments and related charges shall be effective upon recordation in the Office of the County Recorder of a written notice of lien by the Board or the Manager. The written notice of lien shall set forth the amount of the Assessment, the date(s) due, the amount remaining unpaid, the name of the Owner of the Units and Building, and a description of the Units and Building. No notice of lien shall be recorded until there is a delinquency in payment of the Assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law including specifically, but without limitation, the method recognized under the laws of the State for the enforcement of a mechanics lien which has been established in accordance with the provisions of Chapter 1, Title 38, Utah Code Ann., as amended from time to time. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Units which shall become due during the period of foreclosure, and all such Assessments shall be secured by the lien being foreclosed. The Board shall have the right and power on behalf of the Association to bid at any foreclosure sale and to hold, lease, mortgage or convey the subject Units in the name of the Association. In furtherance of such foreclosure rights, the Association may bring an action at law against the Owner personally obligated to pay the same or the Association may foreclose the lien in accordance with the provisions of the Act. The Board hereby appoints Paxton R. Guymon, Esq., of York Howell & Guymon, 6405 South 3000 East, #150, Utah City, Utah 84121, as trustee for the purposes of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1 Utah Code Ann. and made applicable hereto by Title 57, Chapter 8a Utah Code Ann. Provided, however, the Association reserves the right to substitute and appoint a successor trustee as provided for in Title 57, Chapter 1 Utah Code Ann. The Declarant hereby conveys and warrants pursuant to Utah Code Ann. Sections 57-1-20 and 57-8a-302 to Paxton R. Guymon, with power of sale, the Lots and Units and all Improvements to the Lots and Units for the purpose of securing payment of Assessments under the terms of the Declaration. Each Owner also hereby conveys all of its right, title and interest in its Units and Building to such trustee, in trust, with a power of sale, to secure each Owner's obligations under the Declaration, including but not limited to the obligation to pay all Assessments. The Association may, through its duly authorized agents, bid on the Lots and Units at any foreclosure sale and acquire,

hold, lease, mortgage and convey the same. The lien of the Association shall be superior (prior) to all other liens and encumbrances except liens and encumbrances recorded before recordation of this Declaration, a First Mortgage on a Unit and Building as provided for in Section 17.2 of this Declaration and assessments, liens and charges in favor of the state or any political subdivision thereof, for taxes and other governmental assessments or charges past due and unpaid on the Units and Building. The lien procedures described herein do not prohibit actions to recover sums for which the Act creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. The Board, upon written request, shall furnish to an Owner a statement setting forth the amount of unpaid Assessments against the Units. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Board, the Manager and every Owner, in favor of all who rely on such statement in good faith.

19.1.8. The amount of any Assessment against any Unit shall be the personal obligation of the Owner of such Units to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas and Facilities or by abandonment of his Units or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment of unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

19.1.9. The personal obligation of an Owner to pay unpaid Assessments against his Units as described in Section 19.1.8 shall not pass to successors in title unless assumed by them; provided, however, that a lien to secure unpaid assessments shall not be impaired, nullified or otherwise affected by the sale or transfer of the Units and Building unless foreclosure by a First Mortgagee is involved in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further Assessments.

19.1.10. All Exempt Units shall be exempt from the Assessments (including Regular Common Assessments and Special Common Assessments). Declarant shall remain a Class B Member in the Association as provided in Section 22.2 of this Declaration, notwithstanding its temporary exemption status from the required Assessment payments. On the date on which a Unit loses its status of being an Exempt Unit (as set forth in Section 2.18 of this Declaration), then it shall automatically be subject to its share of Assessments from that date forward.

19.2. The Board shall not expend funds designated as reserves for any purpose other than the repair, restoration, replacement or maintenance of major components of the Common Areas and Facilities for which the Association is responsible and for which the reserve fund was established or for litigation or binding arbitration involving such matters. Nevertheless, the Board may authorize the temporary transfer of money from the reserve account to the Association's operating account from time to time to meet short-term cash flow requirements and pay other expenses. Any such funds so transferred shall constitute a debt of the Association, and shall be restored and returned to the reserve account within three (3) years of the date of the initial transfer;



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provided, however, the Board may, upon making a documented finding that a delay in the restoration of such funds to the reserve account would be in the best interests of the Project and Association, delay such restoration until the time it reasonably determines to be necessary. The Board shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve account and shall, if necessary, levy a Special Common Assessment to recover the full amount of the expended funds within the time limit specified above. Any such Special Common Assessment shall not be subject to the limitations set forth in Section 19.1.4 hereof. At least once every three (3) years the Board shall cause a study to be conducted of the reserve account of the Association and its adequacy to satisfy anticipated future expenditure requirements. The Board shall, thereafter, annually review the reserve account study and shall consider and implement necessary adjustments to reserve account requirements and funding as a result of that review. Any reserve account study shall include, at a minimum:

19.2.1. Identification of the major components which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a useful life of less than 30 years.

19.2.2. Identification of the probable remaining useful life of the components identified in Section 19.2.1 above, as of the date of the study.

19.2.3. An estimate of the cost of repair, replacement, restoration or maintenance of each major component identified in Section 19.2.1 above, during and at the end of its useful life.

19.2.4. An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

For the purposes of this Section, the term "reserve account requirements" means the estimated funds which the Board has determined are required to repair, replace or restore those major components which the Association is obligated to maintain. The Association shall comply with the requirements of the Act pertaining to a reserve analysis and reserve fund.

19.3. If an Owner shall at any time lease his Unit and shall default in the payment of Assessments, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due, and the payment of such rent to the Board shall be sufficient payment and discharge of such tenant and the Owner for such assessments to the extent of the amount so paid.

20. OPTION TO CONVERT.

The Plat or Plats for the Project may show that some of the Buildings are jointly owned, with the Units therein not individually subdivided for tax purposes, and that some of the Buildings are subdivided, with each Unit therein being having a separate tax identification number. If the Owner of any building in which the Units are not currently shown on the Plat as subdivided into separate tax identification numbers desires to subdivide such Units, or if the Owner of Units in a Building where the Units are currently subdivided into separate tax identification numbers desires to combine those Units into a single tax identification number, such owner must comply with the

requirements of the City and the county in which the Project is located in order to accomplish such modification to the Plat.

21. REINVESTMENT FEE COVENANT.

21.1. For each and every conveyance of title to a Lot or Unit, notwithstanding any partial assessment or partial voting rights, including the original conveyance by Declarant to a purchaser, and with respect to each and every subsequent conveyance of title to the Building or Unit to a new Unit Owner, a fee in the amount of Four Hundred Dollars ($400.00) per Unit (the "Reinvestment Fee") shall be paid by the buyer to the Association. The Board shall have authority, by written resolution, to modify the amount of the Reinvestment Fee, according to the financial needs of the Association, so long as the amount is not less than $250.00 per Unit and not more than $600.00 per Unit. The Board may also authorize the Association to pay a portion of the Reinvestment Fee (no more than 25%) to the HOA Manager of the Association to offset start-up costs for new Unit Owners and accounts. To the fullest extent practicable, the Reinvestment Fee shall be collected at the closing of the purchase/sale transaction by the title company, escrow company, or other persons involved with the transaction, and paid directly to the Association.

21.2. The Association shall have a lien against the Unit of the buyer/new Unit Owner to secure payment and collection of the Reinvestment Fee. The lien securing payment of the Reinvestment Fee shall be enforceable in the same manner and in all respects as the lien securing payment of assessments as provided in the provisions of Section 19 of this Declaration.

21.3. The obligation to pay the Reinvestment Fee shall be a personal and continuing obligation of the buyer/new Unit Owner, regardless of whether the buyer/new Unit Owner acquired title to the Unit by regular conveyance, pursuant to a foreclosure sale (judicial or non-judicial), by inheritance or probate, or otherwise.

21.4. The Association shall use the funds obtained from payment of all Reinvestment Fees to fund the Association's reserve account for the repair and/or replacement of the Common Areas and Facilities of the Project for the benefit of all of the Lots, Buildings, and Units in the Project.

21.5. The provisions of this Section 21 shall be interpreted and enforced in a manner that complies with the provisions pertaining to "reinvestment fee covenants" in Sections 57-1-46 et seq. of the Utah Code, as the same may be amended. The provisions of this Section 21 are intended to run with the land of the Lots and Units, and to be binding upon all successors and assigns, and inure to the benefit of the Association.

21.6. The provisions of this Section 21 shall not apply to the Garage Owner as the activities related to the Garage Buildings have minimal impact on the Common Areas and any such actual and future impacts are accounted for in the Garage Assessment.

22. VOTING.

The Association shall have two (2) classes of memberships which shall be entitled to the following voting rights:

22.1. Class A. Each Owner of a Unit, which is an Assessable Unit, shall be a Class A Member of the Association. If the Garage Owner is the Declarant, Class A Membership for the Garage Owner shall commence when the Garage Owner's Class B Membership terminates. If the Garage Owner is not the Declarant, Class A Membership for the Garage Owner shall commence immediately and automatically upon becoming the Garage Owner. The number of votes allotted to each Owner and Garage Owner shall be determined in the following manner:

22.1.1. An Owner of a one (1) bedroom Unit shall be allotted one-half of a vote.

22.1.2. An Owner of a two (2) bedroom Unit shall be allotted three-quarters of a vote.

22.1.3. An Owner of a three (3) or more bedroom Unit shall be allotted one full vote.

22.1.4. An Owner of Commercial Space comprised of less than 1,000 square feet shall be allotted one-half of a vote.

22.1.5. An Owner of Commercial Space comprised of more than 1,000 square feet shall be allotted one full vote for each 1,000 square feet owned. There shall be no fractional votes for Commercial Spaces over 1,000 square feet (ie., if a Commercial Space is 2,500 square feet, the Owner shall be allotted 2 votes).

22.1.6. The Garage Owner is allotted one (1) vote per Garage Lot owned.

22.2. Class B. Declarant shall be the only Class B Member of the Association and shall be entitled to ten (10) votes for each Unit owned by Declarant within the Project. Declarant shall be entitled to cast votes for each Unit owned by Declarant even if the Units are temporarily classified as an Exempt Unit under Section 2.18 of this Declaration. Declarant will continue to be a Class B Member as long as Declarant owns any Lot or Unit in the Project. After Declarant no longer owns any Lot or Unit in the Project, Declarant will remain a Class B Member until the later to occur of (i) ninety (90) days following the date when Declarant transferred the last remaining Lot or Unit owned by Declarant, or (ii) ninety (90) days following the date when all of the Units within the Project have received a certificate of occupancy from the municipal authority having jurisdiction over the Project. If, after Declarant's Class B Membership shall terminate, Declarant owns any Garage Lot in the Project, Declarant shall become a Class A Member with respect to each Garage Lot owned by Declarant. Notwithstanding the foregoing, Declarant may, at any time, deliver to the Association written notice that Declarant is withdrawing as a Class B Member of the Association. If Declarant provides such notice while Declarant owns any Lot or Unit in the Project, Declarant shall become a Class A Member with respect to each Unit owned by Declarant. If Declarant provides such notice while Declarant owns any Garage Lot in the Project, Declarant shall become a Class A Member with respect to each Garage Lot owned by Declarant.

22.3. Voting Rights. Where a Unit or Garage Lot is owned by more than one Owner, the one (1) vote for such Unit or Garage Lot shall be exercised as they, among themselves, determine. The vote of any one of them shall be conclusively presumed to have been exercised as a result of an agreement among such Owners and in the event multiple Owners attempt to exercise a vote for such Unit(s) or Garage Lot(s) on any question or issue, the Owners of such Unit(s) or Garage



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Lot(s) will forfeit the right to vote on that question or issue. In no event shall more than one (1) vote be cast with respect to any Unit or Garage Lot. With respect to any question or issue requiring a vote of the Association, vote of the Owners, or vote of the Members of the Association, the total number of votes cast shall not exceed the number of Unit(s) plus Garage Lot(s) in the Project. Unless otherwise required by this Declaration or the Bylaws, the number of affirmative votes required for approval of any matter submitted to vote of the Members shall be a simple majority of the votes cast with respect to such matter. All voting rights shall be subject to the restrictions and limitations provided herein and in the Bylaws.

22.4. Declarant Approval. Notwithstanding any provision to the contrary in this Declaration, Class A Members shall have no voting rights in the Association so long as Declarant is a Class B Member of the Association unless governing law (State or Federal) requires that Class A Members be allowed to vote on the topic or matter at issue, in which event the voting rights shall be as stated above (1 vote for each Unit owned by a Class A Member, and 10 votes for each Unit owned by Declarant). Subject to the preceding sentence, during the period of time in which Declarant is a Class B Member, all matters requiring a vote of the Members or otherwise submitted to a vote of the Members shall be determined solely by the Class B votes (i.e., solely by the Declarant) with or without a meeting and with or without a vote of the Members. When Declarant is no longer a Class B Member of the Association, then (i) the Class B membership shall cease being a class of membership; (ii) there shall no longer be any Class B votes of the Association; and (iii) Class A votes shall become activated and shall be allowed to vote on all matters of the Association requiring votes of Members.

23. EASEMENTS.

23.1. If any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon a Lot, Unit or Garage Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit or Garage Lot encroaches or shall hereafter encroach upon the Common Areas and Facilities, or upon an adjoining Lot, Unit or Garage Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances either on the Common Areas and Facilities, the Units or Garage Lots. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any Improvement constructed or to be constructed within the Project, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

23.2. If any utility line of any kind is constructed such that it crosses through, over, or under one (1) or more Units or Garage Buildings in order to provide service to another Unit or Garage Building, or if, after construction, it becomes necessary to install a utility line through, over or under one or more Units or Garage Buildings in order to provide service to another Unit or Garage Building, a perpetual easement for such utility line(s) is hereby granted for the installation, maintenance, repair (or replacement) and operation of all such utility line(s).

23.3. Each Owner shall have the unrestricted right to ingress and egress over, upon and across the Common Areas and Facilities as necessary for access to the Unit or Garage Unit he or she is occupying or using, and to any Limited Common Areas and Facilities appurtenant to his or

her Unit, and shall have the right to the horizontal, vertical and lateral support of his or her Unit or Garage Building and such rights shall be perpetual and shall be appurtenant to and pass with title to each Unit or Garage Building.

23.4. The Association shall have an easement, including, without limitation, an easement through, over and across the Lots, the Units, the Garage Lots and the Garage Buildings to make such use of the Common Areas and Facilities and Limited Common Areas and Facilities as may be necessary or convenient to perform the duties and functions that each is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain the Common Areas and Facilities and Limited Common Areas and Facilities for use by the Owners and the Association.

23.5. All conveyances of Units or Garage Buildings within the Project shall be construed to grant and reserve such easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

24. NOTICES.

Any notice permitted or required to be delivered as provided herein may be delivered either personally, by first class mail, by express mail or overnight courier service providing proof of delivery, or by telecopy or facsimile transmission. Notice to Owners shall be addressed to each Owner at the address given by such Owners to the Board for the purpose of service of such notice or to the Unit of such Owner if no such address has been given to the Board. Notice shall be deemed given when actually received if personally delivered or sent by overnight courier; if faxed, when the fax is received, except that if the fax is received at a time other than the normal business hours of the office at which it is received, on the next regular business day; and if by mail, the earlier of the day actually received or the third business day after the notice is deposited in the United States Mail, properly addressed and postage prepaid. Such address may be changed from time to time by notice in writing to the Board.

25. NO WAIVER.

The failure of the Board or its agents or designees to insist, in one (1) or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration or the Bylaws, to exercise any right or option herein contained or to serve any notice or institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Board or its agents or designees of the payment of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.

26. ENFORCEMENT.

26.1. All Owners, guests or lessees of an Owner, and persons under Owner's control, shall strictly comply with the provisions of the Declaration, the Bylaws, and the rules and regulations and decisions issued pursuant thereto. The Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with provisions of the Declaration or the

decisions of the Association. Owners shall have a similar right or action against the Association. Failure to so comply shall be grounds for: (i) an action to recover sums due for damages or injunctive relief or both, maintainable by the Board, or its agent or designee on behalf of the Owners, or in an appropriate case, by an aggrieved Owner; and/or (ii) the Board to impose monetary penalties, temporary suspensions of an Owner's right to the use of the Common Areas and Facilities, or other appropriate discipline so long as any such Owner has been given notice and has had an opportunity to present a written or oral defense to the charges in a hearing. The Board shall determine whether the Owner's defense shall be oral or written. After the hearing, but before any disciplinary action is taken, the Owner shall be notified of the decision of the Board. The Board may delegate to the HOA Manager the power and authority to carry out disciplinary actions duly imposed.

26.2. The Board may adopt and enforce reasonable rules and regulations that are not inconsistent with the provisions of this Declaration. The Board may also adopt and enforce reasonable fine schedules and may impose and collect fines from Owners who violate the provisions of this Declaration. All costs and expenses incurred by the Board in enforcing the rules and regulations, and enforcing or collecting fines, shall be paid by the offending Owner and shall be secured by a lien against the Unit owned by the offending Owner. Said lien shall be enforced in the same manner as the lien securing payment of assessments, as provided in this Declaration.

26.3. The Association shall not be empowered to cause the absolute forfeiture of an Owner's right, title or interest in the Project on account of the Owner's failure to comply with the provisions of the Declaration or the rules and regulations for the Project except pursuant to:

26.3.1. The judgment of a court; or

26.3.2. A foreclosure for the failure of an Owner to pay assessments or fines duly levied by the Association.

27. AGENT FOR SERVICE OF PROCESS.

The name and address of the person to receive service of process shall be the registered agent and address of the Association as shown on the official corporate records maintained in the office of the Division of Corporations and Commercial Code of the State.

28. DISPUTE RESOLUTION; MANDATORY BINDING ARBITRATION.

28.1. Statement of Intent. Prior to purchasing a Lot or Garage Lot, every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, an inspection on any Lot or Garage Lot that Owner is purchasing or any other aspect of the Project, including, without limitation, the Common Areas. Moreover, if any written warranty has been provided, it identifies the only items that are warranted by the Declarant. Having had the ability to inspect prior to purchasing a Lot or Garage Lot, having received a written warranty if any warranty is provided, and having paid market price for a Lot or Garage Lot in the condition it and the Lots, the Garage Lots, and Common Area are in at the time of purchase, it is acknowledged that it is unfair and improper to later seek to have the Declarant and/or any subcontractor performing work in the Project to change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners (by purchasing a Lot or Garage Lot) and the Declarant

acknowledge and agree that litigation is an undesirable method of resolving disputes and conflicts in that it can be slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Lots and Garage Lots for years, unfairly prejudicing those Owners who must or want to sell their Lot or Garage Lot during any period when litigation is pending. For this reason, the Owners, by purchasing a Lot or Garage Lot, and the Declarant covenant and agree that claims and disputes shall not be pursued through court action, but shall be asserted and resolved only through the specific alternative dispute resolution mechanisms described below, and only after full disclosure, satisfaction of the right to cure periods, and knowing approval of the Owners, as set forth in the provisions of this Section 28. In addition, the Association and the Owners agree that they take ownership and possession of the Lots, Garage Lots and Common Areas AS IS, with no warranties of any kind except as otherwise required as a matter of law. The Declarant specifically disclaims any and all warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.

28.2. Binding Arbitration for All Disputes. To the fullest extent permitted by law, all claims and disputes of any kind that any Owner or the Association may have involving the Declarant, or any agent, employee, executing officer, manager, affiliate or owner of the Declarant, or any engineer or contractor involved in the design or construction of the Project, which arise from or are in any way related to a Building, Unit, or other Improvement on a Lot, Garage Building, Garage Unit or other improvement on a Garage Lot, Common Areas, Limited Common Areas or any other Improvement on or component of the Project (a "**Dispute**"), shall be submitted to final and binding arbitration. Binding arbitration shall be the sole remedy for resolving claims and disputes between or involving the Declarant and any Owner or between or involving the Declarant and the Association. Arbitration proceedings, however, shall not be commenced unless the Pre-Arbitration Requirements set forth in Section 28.3 below have been satisfied in full. Without in any way limiting the foregoing, Disputes subject to binding arbitration shall include the following:

28.2.1. Any allegation that a condition in any of the Buildings or Units on the Lots, the Garage Units, the Garage Buildings, the Common Areas, the Limited Common Areas, or other Improvements in the Project is or involves a construction defect;

28.2.2. Any disagreement as to whether an alleged construction defect has been corrected;

28.2.3. Any disagreement about whether any warranties, including implied warranties, are applicable to the subject matter of any Dispute;

28.2.4. Any disagreement as to the enforceability of any warranties alleged to be applicable to the subject matter of any Dispute;

28.2.5. Any disagreement about whether any warranty alleged to be applicable to the subject matter of any Dispute has been breached;

28.2.6. Any alleged violations of consumer protection, unfair trade practice, or other statutes or laws;

28.2.7. Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and all other claims arising in equity or from common law;



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28.2.8. Any allegation that any condition existing in the Project or created by the Declarant (or any of its contractors), including construction-related noise, dust, and traffic, is a nuisance, a defect, or a breach of any implied warranties of habitability or other implied warranties;

28.2.9. Any disagreement concerning the scope of issues or claims that should be submitted to binding arbitration;

28.2.10. Any disagreement concerning the timeliness of performance of any act to be performed by Declarant or any of its contractors;

28.2.11. Any disagreement as to the payment or reimbursement of any fees associated with binding arbitration;

28.2.12. Any disagreement or dispute regarding management of the Association, or regarding reserve studies or funding of Association expenses; and

28.2.13. Any other claim or disagreement arising out of or relating to the sale, design, or construction of any of Improvement on the Lots, Garage Lots, Common Areas, Limited Common Areas, off-site improvements, management of the Association, or other claims regarding the Project.

28.3. Pre-Arbitration Requirements. An Owner or the Association may only pursue a claim against the Declarant in arbitration after all of the following efforts of dispute resolution have been completed: (1) Right to Cure: the claimant (e.g. the Owner or the Association) shall provide to the Declarant a written Notice of Claim (defined below) and permit the Declarant one hundred eighty (180) days to cure or resolve the claim or defect or to try to get the builder or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any formal arbitration proceedings; (2) if the dispute is not resolved within the 180-day Right to Cure period, the parties shall participate in formal mediation with a mutually-acceptable third-party mediator in an effort to resolve the Dispute prior to taking further action or commencing arbitration. If additional, different, or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Declarant that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this Section shall immediately apply again and any pending action or proceedings, including any mediation or arbitration, shall be stayed during the 180-day period.

28.3.1. "Notice of Claim" shall mean and include the following information: (1) an explanation of the nature of the claim, (2) a specific breakdown and calculation of any alleged damages, (3) a specific description of the claim along with any supporting opinions, information, or factual evidence upon which the claim is based, (4) photographs of any alleged defective condition, if applicable, (5) samples of any alleged defective conditions or materials, if reasonably available, (6) an explanation of the efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom, and (7) the names, phone numbers, and address of each person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.

28.4. Member Approval; Legal Opinion; Arbitration. If a claim or dispute has not been resolved after satisfying and complying with the above-described "Pre-Arbitration Requirements," then the claimant (Owner or Association) shall have the right to proceed with binding arbitration; however, the Association shall not pursue or commence binding arbitration unless such action is first approved by a majority of the total votes of the Association after the Association has obtained a written opinion from legal counsel advising the Association of the likelihood of success on the merits of the claims, the anticipated costs and legal fees, the anticipated expert witness fees, and the likelihood of recovery if the Association prevails. The written opinion from legal counsel, addressing these topics, must be provided to all Owners before the formal vote on whether to proceed with binding arbitration. The binding arbitration shall be conducted by a mutually-acceptable arbitrator (preferably a former judge), or, if an arbitrator cannot be mutually selected, then by a member of the National Panel of Construction ADR Specialists promulgated by Construction Dispute Resolution Services, LLC ("**CDRS**"). The binding arbitration shall be conducted according to the rules and procedures set forth in the Arbitration Rules and Procedures promulgated by CDRS. The award of the arbitrator shall be final and may be entered as a judgment by any court of competent jurisdiction.

28.5. Fees and Costs of Arbitration. Each party shall bear its own attorney fees and costs (including expert witness costs) for the arbitration. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between the parties. The arbitrator shall not award attorney fees, expert witness fees or arbitration costs to the prevailing party.

28.6. No Waiver of Arbitration Right. If any Owner, the Association, or the Declarant files a proceeding in any court to resolve any Dispute, such action shall not constitute a waiver of the right of such party, or a bar to the right of any other party, to seek arbitration or to insist on compliance with the requirements set forth in this Section 28. If any such court action is filed, then the court in such action shall, upon motion of any party to the proceeding, stay the proceeding before it and direct that such Dispute be arbitrated in accordance with the terms set forth herein, including, without limitation, compliance with the Pre-Arbitration Requirements set forth above.

28.7. Waiver of Subrogation. The Association and each Owner waives any and all rights to subrogation against the Declarant and any builder, contractor, and engineer in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant, the Project engineer, and builder, contractors of the Declarant and the builder, and their officers, employees, owners, and representatives. To the full extent permitted by law, the Association and Owners hereby release Declarant, the Project engineer, and builder, and their respective officers, employees, owners, contractors, insurers, and representatives from any and all liability to the Association and all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant or builder, their officers, employees, owners, and representatives. The Association and each Owner agrees that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Association or any Owner to recover thereunder. The Association and all Owners shall indemnify and defend the Declarant, the builder, and any of their officers, employees, owners, contractors, or

representatives from any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation.

29. RIGHTS RESERVED FOR DECLARANT. During the Declarant Control Period, the Declarant shall have the right to use any Lot, Unit, Garage Lot or Garage Building owned by it, and any part of the Common Areas in furtherance of any activities designed to accomplish or facilitate construction, improvement and sale of all Lots or Units owned by the Declarant or to be added to the Project, and the construction and improvement of all Common Areas and/or Limited Common Areas as the Declarant may desire. The Declarant shall have the right to maintain one (1) or more sales offices and model Units. Such offices and model Units may be located in any Unit with the permission of the Owner of that Unit, who may be the Declarant, or in one (1) or more separate structures, trailers, or facilities placed in the Project for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. The Declarant shall also have the right to maintain any number and size of promotional, advertising, or directional signs, banners, or similar structures or devices at any place or places in the Project. The Declarant shall also have the right to designate by signs or otherwise any street or other parking as parking for sales only or to otherwise restrict and use any Common Area parking. The Declarant shall have the right from time to time to relocate, move, remove, or add to any of its sales offices, parking restrictions, model Units, signs, banners or similar structures or devices. The Declarant shall have no duty whatsoever to obtain a Reserve Analysis or to fund any Reserve Fund during the Declarant Control Period.

30. SEVERABILITY. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

31. LAW CONTROLLING. This Declaration shall be construed and controlled by and under the laws of the State of Utah.

This Declaration shall take effect when recorded. In this Declaration, the singular shall include the plural and the masculine shall include the feminine and vice versa, if the context so requires.

(*Signature Page Follows*)

WHEREFORE the Declarant has executed this Declaration on the date first set forth above.

**DECLARANT**:

FIG COLONY FARMS LLC

By: ______________________

Printed Name: MICHAEL C. MILLER

Title: MANAGER

STATE of Utah )
: ss.
COUNTY OF Utah )

The foregoing instrument was acknowledged before me this 29 day of November, 2018, by Michael C. Miller as Manager of FIG Colony Farms, LLC

______________________
NOTARY PUBLIC

SEAL:

## EXHIBIT A

Description of the Property

A tract of land conveyed to Fieldstone Utah Investors, LLC, described in that Special Warranty Deed recorded as Entry#12740339 in Book 10658 at Page 6082-6084 in the Office of the Salt Lake County Recorder, also a tract of land conveyed to Entheos Academy, described in that Special Warranty Deed recorded as Entry#11708461 in Book 10170 at Page 5208-5213 in the Office of the Salt Lake County Recorder, located in the South Half of Section 21, Township 1 South, Range 2 West, Salt Lake Base and Meridian, located in Magna, Utah, more particularly described as follows:

Beginning at a the Northwest corner of 7600 West Street per the North Meadows Phase 2 Subdivision Plat as recorded in the Office of the Salt Lake County Recorder as Entry#10526016 in Book 2008 at Page 244, said point being North 0°05'07" East 481.23 feet and South 89°52'17" West 16.67 feet from the South ¼ Corner of Section 21, T1S, R2W, S.L.B.& M. (Basis of Bearing: S89°54'03"W along the Section line between the South ¼ Corner and the Southwest Corner of Section 21) and running;

thence South 0°03'08" West 36.24 feet along said West right-of-way line to a point of curvature with a non-tangent curve, said point being on the east line of that certain property as described in the Special Warranty Deed as Entry#12740339 in Book 10658 at Page 6082;

thence along the said east line the following four (4) courses: 23.45 feet along the arc of a 15.00 foot radius curve to the left through a central angle of 89°34'53" (Long Chord Bears North 44°42'19" West 21.14 feet), North 0°08'06" East 50.00 feet to a point of curvature with a non-tangent curve, 23.54 feet along the arc of a 15.00 foot radius curve to the left through a central angle of 89°54'58" (Long Chord Bears North 45°02'31" East 21.20 feet), North 0°04'58" East 382.41 feet to the south line of the Kennecott Copper Corporation Property;

thence along the Kennecott Copper Corporation Property the following 9 Courses:

thence South 86°53'10" East 726.94 feet to a point of curvature;

thence 73.66 feet along the arc of a 800.00 foot radius curve to the left through a central angle of 05°16'31" (Long Chord Bears South 89°31'26" East 73.63 feet);

thence North 87°50'18" East 595.79 feet;

thence South 85°54'02" East 48.03 feet;

thence North 84°00'03" East 67.83 feet;

thence North 89°56'27" East 528.89 feet;

thence South 79°25'00" East 37.37 feet;

thence North 84°48'34" East 77.16 feet;

thence North 89°56'27" East 475.58 feet to the west right-of-way line of 7200 West Street;

thence along the said west right-of-way the following two (2) courses: South 0°09'19" East 66.50 feet, South 0°09'32" East 328.50 feet to the northeast corner of Parcel 14-21-127-039;

thence West 1718.67 feet along the north line of said Parcel 14-21-427-039 to and along Parcel 14-21-127-013 to and along Parcel 14-21-147-016 to the west line of said Parcel 14-21-147-016;

thence South 2.73 feet along the west line of said Parcel 14-21-147-016;

thence South 89°51'02" West 305.18 along Parcel 14-21-142-006;

thence South 0°05'53" East 13.46 feet along the west line of said property;

thence South 89°52'17" West 606.31 feet to and along the North line of said North Meadows Phase 2 Subdivision to the point of beginning.

**LESS AND EXCEPT THE FOLLOWING TWO DESCRIPTIONS**

A parcel of land located in the Southeast Quarter of Section 21, Township 1 South, Range 2 West, Salt Lake Base and Meridian, located in Magna, Utah, more particularly described as follows:

Beginning at a point on the westerly right-of-way line of 7200 West Street, said point being North 0°09'32" West 495.11 feet along the section line and South 89°50'28" West 39.96 feet from the Southeast Corner of Section 21, T1S, R2W, S.L.B.& M. (Basis of Bearing: S89°54'03"W along the Section line between the South ¼ Corner and the Southwest Corner of Section 21) and running;

Thence West 670.16 feet;

Thence North 0°09'19" West 302.31 feet to a point of curvature;

thence 47.79 feet along the arc of a 40.50 foot radius curve to the left through a central angle of 67°36'51" (Long Chord Bears North 56°04'49" East 45.07 feet) to a point of reverse curvature;

thence 22.19 feet along the arc of a 25.00 foot radius curve to the right through a central angle of 50°50'46" (Long Chord Bears North 47°41'46" East 21.46 feet) to a point of compound curvature;

thence 48.00 feet along the arc of a 163.50 foot radius curve to the right through a central angle of 16°49'18" (Long Chord Bears North 81°31'48" East 47.83 feet);

thence North 89°56'27" East 326.82 feet to a point of curvature;

thence 122.13 feet along the arc of a 163.50 foot radius curve to the right through a central angle of 42°47'54" (Long Chord Bears South 68°39'36" East 119.31 feet);

thence South 47°15'39" East 50.37 feet to a point of curvature;

thence 99.14 feet along the arc of a 198.50 foot radius curve to the left through a central angle of 28°37'00" (Long Chord Bears South 61°34'09" East 98.11 feet) to a point of reverse curvature;

thence 9.53 feet along the arc of a 24.50 foot radius curve to the right through a central angle of 22°17'21" (Long Chord Bears South 64°43'59" East 9.47 feet) to the westerly right-of-way line of 7200 West Street;

thence South 0°09'32" East 220.93 feet along said westerly right-of-way line of 7200 West Street to the point of beginning.

**AND**

A parcel of land located in the Southeast Quarter of Section 21, Township 1 South, Range 2 West, Salt Lake Base and Meridian, located in Magna, Utah, more particularly described as follows:

Beginning at a point on the westerly right-of-way line of 7200 West Street, said point being North 0°09'32" West 890.11 feet along the section line and South 89°50'28" West 39.95 feet from the Southeast Corner of Section 21, T1S, R2W, S.L.B.& M. (Basis of Bearing: S89°54'03"W along the Section line between the South ¼ Corner and the Southwest Corner of Section 21) and running;

Thence South 0°09'19" East 44.39 feet;

Thence South 26°23'43" West 13.28 feet;

Thence South 0°06'30" East 51.30 feet;

Thence South 10°05'11" West 11.30 feet to a point of curvature;

thence 29.99 feet along the arc of a 24.50 foot radius curve to the right through a central angle of 70°07'58" (Long Chord Bears South 82°37'22" West 28.15 feet) to a point of compound curvature;

thence 42.99 feet along the arc of a 163.50 foot radius curve to the right through a central angle of 15°04'01" (Long Chord Bears North 54°47'39" West 42.87 feet);

Thence North 47°15'39" West 50.37 feet to a point of curvature;

Thence 148.27 feet along the arc of a 198.50 foot radius curve to the left through a central angle of 42°47'54" (Long Chord Bears North 68°39'36" West 144.85 feet);

Thence North 0°03'33" West 10.46 feet;

Thence North 89°56'27" East 242.54 feet to the point of beginning.

**EXHIBIT B**

Association Bylaws

# BYLAWS
# OF
# COLONY FARMS HOMEOWNERS' ASSOCIATION

## ARTICLE I

NAME AND LOCATION. The name of the corporation is Colony Farms Homeowners' Association ("**Association**"). The principal office of the Association shall be located at 295 West Center St. Provo, UT 84601 (or at such other location as the Board hereafter may designate), but meetings of Owners and Board Members may be held at such places within the State of Utah as may be designated by the Board.

## ARTICLE II
## DEFINITIONS

Section 1. "Act" shall mean and refers to the Community Association Act, Utah Code Ann. § 57-8a-101, *et seq.*, as amended.

Section 2. "Association" means and refers to Colony Farms Homeowners' Association, a Utah non-profit corporation, and its successors and assigns.

Section 3. "Board" means and refers to the Board of Directors of the Association, with all powers as stated in the Declaration, the Articles of Incorporation of the Association, and these Bylaws.

Section 4 "Bylaws" means *and refers to these Bylaws of Colony Farms Homeowners' Association.*

Section 5. "Declaration" means and refers to the *Declaration of Covenants, Conditions, and Restrictions for Colony Farms Homeowners' Association*, which has been or will be recorded in the Salt Lake County Recorder's Office, as the Declaration may be amended in accordance with its terms and provisions.

Section 6. "Directors" means and refers to those individuals who are members of the Board. The singular Director shall refer to the singular of the Directors.

Section 7. "Owner" means and refers to any person or entity owning a Unit or Garage Lot within the Project, as such ownership is evidenced by the official records of the Salt Lake County Recorder's office. The term "Owner" shall include Unit Owner(s) and Garage Owner(s) but shall not include a Mortgagee unless such Mortgagee acquires ownership other than for security purposes.

Section 8. All other capitalized terms used herein shall have the same meaning as stated elsewhere in these Bylaws or in the Declaration.

## ARTICLE III
## MEMBERSHIP IN ASSOCIATION; MEETING OF OWNERS; VOTING

Section 1. Membership in Association. Every Owner and the Declarant shall be members of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Unit or Garage Lot. Each membership shall be appurtenant to the Unit or Garage Lot to which it relates and shall be transferred automatically by conveyance of that Unit or Garage Lot. Ownership of a Unit or Garage Lot within the Project cannot be separated from the Association membership appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of a Unit or Garage Lot shall constitute a devise, encumbrance, conveyance or other disposition, respectively, of such Owner's membership in the Association and the rights appurtenant thereto. Membership in the Association may not be transferred except in connection with a transfer of ownership of a Unit or Garage Lot. As set forth below, there shall be two (2) classes of members. The number of Members in the Association may increase if the Project is expanded as allowed in the Declaration.

A. Class A. Each Owner of a Unit, which is an Assessable Unit, shall be a Class A Member of the Association. If the Garage Owner is the Declarant, Class A Membership for the Garage Owner shall commence when its Class B Membership terminates. If the Garage Owner is not the Declarant, Class A Membership for the Garage Owner shall commence immediately and automatically upon becoming the Garage Owner. Each Class A Membership shall be held jointly by all Owners of such Unit or Garage Lot. The number of votes allotted to each Owner and Garage Owner shall be determined n the following manner:

1. An Owner of a one (1) bedroom Unit shall be allotted one-half of a vote.

2. An Owner of a two (2) bedroom Unit shall be allotted three-quarters of a vote.

3. An Owner of a three (3) or more bedroom Unit shall be allotted one full vote.

4. An Owner of Commercial Space comprised of less than 1,000 square feet shall be allotted one-half of a vote.

5. An Owner of Commercial Space comprised of more than 1,000 square feet shall be allotted one full vote for each 1,000 square feet owned. There shall be no fractional votes for Commercial Spaces over 1,000 square feet (ie., if a Commercial Space is 2,500 square feet, the Owner shall be allotted 2 votes).

6. The Garage Owner is allotted one (1) vote per Garage Lot owned.

B. Class B. Declarant shall be the only Class B Member of the Association and shall be entitled to cast the number of votes specified in the Declaration for each Unit and Lot owned by

Declarant in the Project, as set forth in the Declaration. Declarant shall be entitled to exercise such votes without regard to whether any Units have been built on such Lot and without regard to whether Declarant is exempt from the obligation of paying assessments for the Unit or Lot. Declarant will continue to be a Class B Member of the Association so long as Declarant owns any Lot or Unit in the Project. After Declarant no longer owns any Lot or Unit in the Project, Declarant will remain a Class B Member until the later to occur of (i) ninety (90) days following the date when Declarant transferred the last remaining Lot or Unit owned by Declarant, or (ii) ninety (90) days following the date when all of the Units within the Project have received a certificate of occupancy from the municipal authority having jurisdiction over the Project. If, after Declarant's Class B Membership shall terminate, Declarant owns any Garage Lot in the Project, Declarant shall become a Class A Member with respect to each Garage Lot owned by Declarant. Notwithstanding the foregoing, Declarant may, at any time, deliver to the Association written notice that Declarant is withdrawing as a Class B Member of the Association. If Declarant provides such notice while Declarant owns any Lot or Unit in the Project, Declarant shall become a Class A Member with respect to each Unit owned by Declarant.

Section 2. Voting.

A. Pursuant to the terms of the Declaration, Class A Members shall have no voting rights in the Association and Declarant shall have administrative control of the Association so long as Declarant is a Class B Member of the Association, unless governing laws (State or Federal) require that Class A Members be allowed to vote on the topic or matter at issue. During the time in which Declarant is a Class B Member, all matters requiring a vote of the Members or otherwise submitted to a vote of the Members shall be determined solely by the Class B votes (i.e., solely by the Declarant's votes).

B. When Declarant is no longer a Class B Member, then (i) the Class B membership shall cease being a class of membership; (ii) there shall no longer be any Class B votes of the Association; and (iii) Class A votes shall become activated and shall be allowed to vote on all matters of the Association requiring votes of Members.

C. After Declarant is no longer a Class B Member, all matters submitted to a vote of the Association shall be decided by the votes of the Owners. A change in the ownership of a Unit or Garage shall be effective for voting purposes from the time the deed or other instrument effecting such change is recorded, or, in connection with Owners who are vendees under an installment purchase contract, upon the full execution of the installment purchase contract. Thereafter, the new Owner shall give the Board written notice of such change of ownership and provide satisfactory evidence thereof. The vote for each Unit or Garage Lot must be cast as one vote, and fractional votes shall not be allowed. In the event that a Unit or Garage Lot is owned by more than one Owner and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Unit or Garage Lot, it will thereafter be conclusively presumed for all purposes that he, she or it was acting with the authority and consent of all other Owners of the same Unit or Garage Lot unless objection thereto is made at the time the vote is cast. In the event more than one Owner attempts to

cast the vote for a particular Unit or Garage Lot, the vote for that Unit or Garage Lot shall be deemed void and shall not be counted.

Section 3. Annual Meeting. The first annual meeting of the Association shall be held in June following the date of incorporation of the Association, and each subsequent regular, annual meeting of the Association shall be held in June of each year thereafter. The Board may change the date of the annual meeting provided it gives reasonable advance notice to all Owners. Notwithstanding any other provision of these Bylaws, during the time Declarant is a Class B Member of the Association, Declarant may act on behalf of the Association without a meeting of the Association.

Section 4. Special Meetings. Special meetings of the Association may be called at any time by the Board, or upon written request of the Owners who are entitled to vote thirty percent (30%) of all of the total votes.

Section 5. Notice of Meetings. Written notice of each meeting of the Association shall be given by, or at the direction of, the Secretary or person authorized by the Board to call the meeting, by mailing a copy of such notice, postage prepaid, at least ten (10) days, and no more than sixty (60) days, before such meeting to each Owner entitled to vote, addressed to the Owner's address last appearing on the books of the Association, or supplied by such Owner to the Association for the purpose of notice. In lieu of mailing, such notice may also be given by email to Owners who have consented to receive notices by email and have provided the Association with an email address for notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. Those present at the meeting may vote to continue the meeting to any date within 30 days. Notice of the continued meeting will be given by mail, and at the subsequent continued meeting, a quorum will consist of those Owners present. The President of the Association will give notice of any meetings, and will chair meetings of the Owners.

Section 6. Quorum. The presence at the meeting of Owners entitled to cast, or of proxies entitled to cast, at least fifty-one percent (51%) of the total number of votes shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Owners entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented. Unless otherwise stated in the Declaration, the Articles of Incorporation, or these Bylaws, an action supported by majority of the votes cast at any meeting where a quorum is present shall be the action of the Association.

Section 7. Proxies. At all meetings of the Association, each Owner entitled to cast a vote may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and automatically cease upon conveyance by the Owner of his or her Unit.

## ARTICLE IV
## BOARD; SELECTION; TERM OF OFFICE

Section 1. Nomination, Tenure, and Removal. The Declarant shall appoint the initial Directors and decide who serves on the Board while Declarant is a Class B Member of the Association. When Declarant is no longer a Class B Member, the Owners shall at the next annual Association meeting, or at such earlier meeting as may be called for the purpose, elect three (3) Directors from among the Owners. Each of the three elected Directors shall draw lots to divide themselves into terms of one, two and three years. At each successive annual meeting, provided a quorum is present, the Owners shall elect a Director to replace the Director whose term has expired or is then expiring. Each newly elected Director shall serve for a three year term. If a quorum is not present at the annual meeting, the other Directors shall select a new Director. Nomination for election to the Board may be made by the Directors. Nominations may also be made from the floor at the annual meeting. During the period that Declarant is a Class B Member of the Association, Declarant may remove a Director with or without cause. After the Declarant is no longer a Class B Member, Directors may be removed with or without cause by a vote of the Owners owning a majority of the Units and Garage Lots. If any Director resigns, is removed, dies, or is otherwise unwilling or unable to serve during his or her term, the remaining Directors may appoint another Owner to fill the remainder of such term.

Section 2. Election. Election to the Board shall be by secret written ballot. At such election the Owners or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. There shall be no cumulative voting.

Section 3. Number of Directors. The Board shall consist of not less than three (3) Directors and not more than five (5) Directors. An odd number of Directors shall be required at all times. The initial number of Directors shall be three (3). When the Declarant is no longer a Class B member, the Owners may, at an annual meeting or a special meeting, vote to change the number of Directors. In the event the number of Directors is increased, such additional Directors shall draw lots for terms. The term of one of the additional Directors shall expire at the next annual meeting of the Association to be held after the vote to increase the number of Directors; the term of the other additional Director shall expire at the successive annual meeting of the Association.

## ARTICLE V
## MEETINGS OF THE BOARD OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board shall be held as frequently as the Board deems appropriate, but at least annually, at such place and hour as may be fixed from time to time by resolution of the Board. Should such meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two Directors, after not less than three (3) days' notice to each Director.

Section 3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 4. Written Action. Nothing in these Bylaws shall prevent the Board from acting without a meeting by means of a writing describing the action to be taken and signed by the Directors.

ARTICLE VI
POWERS AND DUTIES OF THE BOARD; APPLICABILITY OF THE ACT

Section 1. Powers. The Board shall have power to:

A. Adopt and publish rules and regulations governing the use of the common areas within the Project as described in the Declaration or as shown on the Plat Map ("**Common Areas**"), and the personal conduct of the Owners and their guests thereon, and to establish penalties for the infraction thereof;

B. Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Owners by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

C. Declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board; and

D. Employ managers, independent contractors, or such other persons as the Board deems necessary to exercise the powers, duties and authority vested in the Association, and to delegate to such persons such powers as are necessary to accomplish the Association purposes for which such persons have been employed.

Section 2. Duties. It shall be the duty of the Board to:

A. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Owners at the annual meeting of the Association, or at any special meeting when such statement is requested in writing by the Owners who are entitled to vote twenty-five percent (25%) of the total votes;

B. Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

C. To:

1. Fix the amount of the annual assessment against each Unit and Garage Unit at least fifteen (15) and no more than sixty (60) days in advance of each annual assessment period, and fix the amount of any special assessments against each Unit;

2. Send written notice of each annual assessment to every Owner subject thereto at least fifteen (15) and no more than sixty (60) days in advance of each annual assessment period and similar notice for imposition of each special assessment; and

3. Foreclose the lien (at the option of the Board) against any Unit and Garage Building for which assessments are not paid within ninety (90) days after due date or to bring an action at law (at the option of the Board) against the Owner personally obligated to pay the same.

D. Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

E. Procure and maintain insurance in a manner not inconsistent with applicable law;

F. Establish a reserve fund and conduct a reserve fund analysis in accordance with the provisions relating to reserve funds in the Act;

G. Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

H. Cause all Common Areas and Facilities, as identified in the Declaration, to be properly maintained and managed by the Association.

Section 3. Legal Action Involving Declarant. Neither the Board nor any other person or entity acting, or purporting to act, on behalf of the Association shall file, commence, or maintain any lawsuits or legal proceedings of any nature against Declarant, the individual managers, owners, members, or officers of Declarant, Declarant's contractors, or any other person or entity involved in the construction of the Units or Garage Buildings unless and until all of the "DISPUTE RESOLUTION: MANDATORY BINDING ARBITRATION" provisions set forth in the Declaration have been satisfied.

Section 4. Applicability of the Act. The provisions of the Act shall apply and govern the Association's rights with respect to levying of assessments, collection of assessments, and remedies that apply in the event of non-payment of assessments.

## ARTICLE VII
## OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a President, a Vice-President, a Secretary, a Treasurer, and such other officers as the Board may from time to time by resolution create. Following the expiration or termination of the Period of Declarant's Control, all officers of the Association must be Owners of Units or Garage Lots in this Project.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Association.

Section 3. Term. The officers of the Association shall be elected annually by the Board and

each shall hold office for one (1) year unless they shall sooner resign, or shall be removed, or are otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special officers created pursuant to Section 4 of this Article. Directors may also be officers of the Association.

Section 8. Duties. The duties of the officers are as follows:

President

A. The President shall preside at all meetings of the Owners and the Board; shall see that orders and resolutions of the Board are carried out; shall sign all written instruments of the Association, and shall co-sign all checks and promissory notes.

Vice-President

B. The Vice-President shall act in the place and stead of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him or her by the Board.

Secretary

C. The Secretary shall record the votes and keep minutes of all proceedings of the Board and of the Owners; at the direction of the President, serve notice of meetings of the Board and of the Owners; keep appropriate current records showing the Owners of the Association together with their addresses; and perform such other duties as required by the Board.

Treasurer

D. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by the Board; shall sign all checks and promissory notes of the Association; keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be presented to the ownership at its regular annual meeting, and deliver a copy of each to the Owners.

## ARTICLE VIII
## COMMITTEES

The Board may appoint Committees as it deems necessary or appropriate to carry out the purposes of the Association.

## ARTICLE IX
## BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Owner. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any Owner at the principal office of the Association, where copies may be purchased at reasonable cost.

## ARTICLE X
## ASSESSMENTS

Section 1. Exempt Units/Lots. "Exempt Unit(s)" or "Exempt Lot(s)" shall have the meaning given in the Declaration describing the time in which such Units or Lots are exempt from the obligation to pay Assessments to the Association.

Section 2. Association May Impose Assessments. As set forth in the Declaration, Declarant, for each Unit owned by Declarant which is not exempt from the requirement to pay assessments, and each Owner, other than Declarant, by being an Owner of a Unit or Garage Lot (if the Garage Owner is the Declarant, after the Declarant is no longer a Class B member) is obligated to pay assessments to the Association. The Board shall fix the date by which assessments must be paid. Prompt and full payment of the assessments is secured by a continuing lien upon each Owner's Lot, Unit(s), Garage Lot and Garage Building. Any assessment which is not paid when due shall be delinquent. The Board has the authority to establish late fees and interest applicable to delinquent assessments and collect the same from any Owner whose assessment is delinquent. The remedies available to the Association are set forth in the Declaration and the Act. The amount the Association is entitled to recover in connection with the remedies it pursues shall include, without limitation, interest, costs, late fees, fines, and reasonable attorney's fees. No Unit Owner may waive or otherwise escape liability for the assessments, late fees, and interest provided for herein or provided in the Declaration by nonuse of the Common Areas or abandonment of his or her Unit.

## ARTICLE XI
## AMENDMENTS

Section 1. These Bylaws may be amended at a regular or special meeting of the Association, by a vote, in person or by proxy, of the Owners entitled to cast sixty-seven percent (67%) of the total votes; provided, however, that no amendment to these Bylaws shall be adopted that is inconsistent with or contradicts any provisions of the Declaration unless and until the Declaration is also amended, in accordance with the amendment requirements of the Declaration, to resolve such inconsistency or contradiction. The President may prepare amendments to these Bylaws and to the Declaration and submit the same to the Owners for approval. If such amendments are approved as provided herein, the President may execute, certify, and record such amendments as appropriate.

Section 2. Notwithstanding Section 1, above, nothing in these Bylaws shall prevent the Board from amending these Bylaws as permitted by the Nonprofit Act.

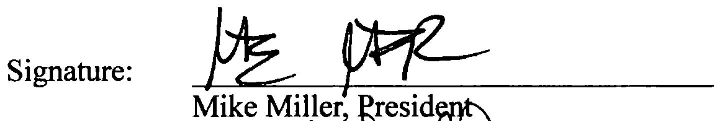
## ARTICLE XII
## MISCELLANEOUS

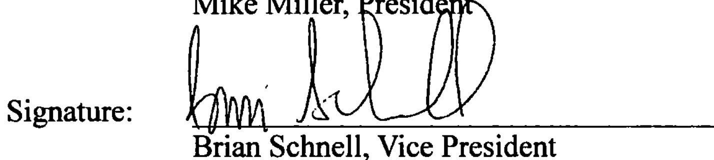
Section 1. Fiscal Year. The fiscal year of the Association shall begin on January 1 and end on December 31 of every year, except that the first fiscal year shall begin on the date of incorporation.

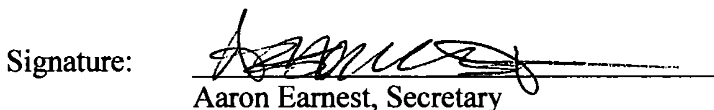
Section 2. Conflict. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

Section 3. Severability. In the event that any term, provision, or section of these Bylaws is determined by a court of competent jurisdiction to be invalid otherwise unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision of these Bylaws, the Declaration, or the Articles of Incorporation.

In witness whereof, we, the undersigned initial three (3) Directors of the Association have hereunto set our hands as of the 29 day of November, 2018.

Signature: 
Mike Miller, President

Signature: 
Brian Schnell, Vice President

Signature: 
Aaron Earnest, Secretary