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**AMENDED AND RESTATED DECLARATION OF SUBMISSION
OF PROPERTY
TO HORIZONTAL PROPERTY REGIME FOR WHITELINE LOFTS**

Recorder's Cover Sheet

Preparer Information: (name, address and phone number)

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(515) 244-0111

Taxpayer Information: (name and complete address)

Whiteline Lofts Owners Association, Inc.
120 S. W. 5th Street
Des Moines, IA 50309

Return Document To: (name and complete address)

Robin G. Maxon, Hopkins & Huebner, P.C., 2700 Grand Ave., Suite 111, Des Moines, IA 50312

Grantor:

Whiteline Lofts Owners Association, Inc.

Grantee:

N/A

Legal Description: See Exhibit 1

Previously Recorded Document: Book 11896, Page 222; Book 12696, Page 130

**AMENDED AND RESTATED DECLARATION OF SUBMISSION OF PROPERTY
TO HORIZONTAL PROPERTY REGIME FOR WHITELINE LOFTS**

THIS AMENDED AND RESTATED DECLARATION OF SUBMISSION OF PROPERTY TO HORIZONTAL PROPERTY REGIME FOR WHITELINE LOFTS (this "Declaration") is made and executed as of this 18th day of December, 2020, Whiteline Lofts Owners Association, Inc., an Iowa limited liability limited partnership (the "Association").

RECITALS:

WHEREAS, the Declaration of Submission to Horizontal Property Regime for Whiteline Lofts affecting certain real property situated in the City of Des Moines, Polk County, Iowa, more particularly described on Exhibit "1" attached hereto and incorporated herein (hereinafter referred to as the "Real Estate"), recorded October 11, 2006 in Book 11896, Page 222 in the Office of the Polk County Recorder, and was amended by that certain First Modification to Declaration of Submission to Horizontal Property Regime for Whiteline Lofts recorded June 23, 2008 in Book 12696, Page 130 in the Office of the Polk County Recorder, and further amended by that certain Second Modification to Declaration of Submission to Horizontal Property Regime for Whiteline Lofts recorded March 5, 2015 in Book 15489, Page 93 in the Office of the Polk County Recorder, and further amended by that certain Third Modification to Declaration of Submission to Horizontal Property Regime for Whiteline Lofts, filed on November 16, 2015 in Book 15808, Page 43 in the Office of the Polk County Recorder, and further amended by that certain Fourth Modification to Declaration of Submission to Horizontal Property Regime for Whiteline Lofts, filed on November 7, 2016 in Book 16258, Page 794 in the Office of the Polk County Recorder (collectively, the "Initial Declaration");

WHEREAS, Paragraph 31(b) of the Initial Declaration provides that the Initial Declaration may be amended only by a vote or agreement of the owners, representing an aggregate ownership interest of sixty-seven percent (67%) of the total votes in the Association and approval of fifty-one percent (51%) of all eligible mortgage holders;

WHEREAS, the Declarant named in the Initial Declaration, Whiteline Lofts, LLLP, no longer owns one (1) or more condominium units, and, as such, the Initial Declaration may be amended without the consent of the Declarant;

WHEREAS, owners holding an aggregate ownership interest of sixty-seven percent (67%) of the total votes in the Association have approved this Declaration in writing and resolved that the undersigned should execute this Declaration on behalf of the Association (a copy of the signatures of the owners holding at least sixty-seven percent (67%) of the total votes attached hereto as Exhibit 2);

WHEREAS, there are no eligible mortgage holders in existence at the time of this Amendment;

WHEREAS, the Association has the right to amend and substitute the Declaration as provided herein;

NOW, THEREFORE, the Initial Declaration is hereby amended and restated to declare that the Real Estate shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the Real Estate or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

1. **Definitions.** As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings.

“Act” means the Horizontal Property Act Chapter 499B, Code of Iowa.

“Agencies” means and collectively refers to the Federal National Mortgage Association (“FNMA”), the Government National Mortgage Association (“GNMA”), the Federal Home Loan Mortgage Corporation (“FHLMC”), the Department of Housing and Urban Development (“HUD”), the Veterans Administration (“VA”) the “Iowa Finance Authority” (“IFA”) and any other governmental or quasi-governmental agency and any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by such entities.

“Allocated Interest(s)” means, with respect to each Condominium Unit, the appurtenant undivided interest in the Common Elements, the Common Expense liability and votes in the Association allocated to said Condominium Unit.

“Articles” means the Articles of Incorporation of the Association, as the same may be amended, modified and/or restated from time to time.

“Assessments” means and includes all assessments for Common Expenses provided for in this Declaration. Assessments are classified as Common Expense Assessments, Special Assessments and Reimbursement Assessments, as provided in paragraph 20.

“Association” means Whiteline Lofts Owners’ Association, Inc., an Iowa nonprofit corporation, its successors and assigns, the Articles and Bylaws of which, along with this Declaration, shall govern the administration of the Project, and the members of which shall be all of the Owners.

“Board of Directors” or **“Board”** means the governing body of the Association.

“Budget” means the then-current annual budget for the operations of the Association prepared by the Board pursuant to the paragraph 20.c.

“Building” means the building(s) erected on the Real Estate.

“Bylaws” means the Bylaws of the Association as the same may be amended, modified and/or restated from time to time.

“Commercial Unit” means Unit 111 initially designated on the Condominium Survey as a “Commercial Unit.” Additionally, “Commercial Unit” shall include any Unit created by subdivision or combination of a Commercial Unit or Commercial Units, or by redesignation of another type of Unit as a Commercial Unit, pursuant to paragraph 4.

“Common Elements” means all of the Real Estate except the portions thereof which constitute Units, and shall include, without limitation, all parts of the Building or any facilities, improvements and fixtures located within a Unit which are or may be necessary or convenient to the support, existence, use, occupation, operation, maintenance, repair or safety of the Building or any part thereof or any other Unit therein. Without limiting the generality of the foregoing, the following shall constitute Common Elements:

- (1) All of the land and easements which are part of the Real Estate;
- (2) All foundations, columns, girders, beams and supports of the Building;
- (3) All deck areas, balconies, patios, fireplaces, doors and windows (subject to reservation for individual Owner use as Limited Common Elements, as hereafter defined and provided);
- (4) The exterior walls of the Building, the main or bearing walls within the Building, the main or bearing subflooring and the roof of the Building;
- (5) All entrances, exits, vestibules, halls, corridors, lobbies, lounges, stairways and fire escapes, if any, not within any Unit;
- (6) All driveways and parking areas (excluding Parking Units);
- (7) All other parts of the Project necessary in common use or convenient to its existence, maintenance and safety;
- (8) The roof deck; and,
- (9) Those areas within the definition of “General Common Elements” as set forth in the Act.

“Common Expenses” means expenditures made or liabilities incurred by or on behalf of the Association, together with allocations for reserves, and shall include, without limitation, the following items:

- (1) All sums lawfully assessed against the Owners by the Board;
- (2) Expenses of administration, maintenance, repair, alteration, renovation, reconstruction or replacement of, or for additions to, the Common Elements;
- (3) Expenses declared Common Expenses by provisions of this Declaration; and,
- (4) Any other expenses relating to the use and enjoyment of the Project agreed upon as Common Expenses by a vote of the Owners representing an aggregate ownership interest of at least fifty-one percent (51%) of the Common Elements.

“Condemnation Award” is defined as set forth in paragraph 30.b.

“Condominium Plans” is defined as set forth in paragraph 2.

“Condominium Instruments” is defined as set forth in paragraph 32.a.

“Condominium Unit” means the fee simple interest and title in and to a Commercial Unit, a Residential Unit or a Parking Unit as designated on the Condominium Survey, together with the undivided interest in the Common Elements, including such Owner’s interest in any Limited Common Elements appurtenant to such Unit and all other rights and burdens created by this Declaration.

“Declaration” means this Amended and Restated Declaration, together with any supplements or amendments hereto recorded in the Records.

“Eligible Mortgagee” is defined as set forth in paragraph 32.

“First Mortgage” means and includes a Mortgage on a Condominium Unit which has first and paramount priority under applicable law over all other Mortgages encumbering said Unit, and any other Mortgage or Construction Mortgage that encumbered the property described on Exhibit 1 at the time this Declaration was filed. **“First Mortgagee”** means and includes any holder, insurer or guarantor of a First Mortgage and any grantee, beneficiary, successor or assignee of a First Mortgage. A vendor under a Contract for Deed on a Unit shall be deemed a First Mortgagee unless said Unit is encumbered by a Mortgage.

“Garage” means the area depicted as the “Garage” on the Condominium Survey, which area contains, among other items, certain Parking Units.

“Guest” means, in the case of the Owner of a Residential Unit or a Parking Unit, any tenant and any family member, guest or invitee of the Owner or of such tenant, and in the case of the Owner of a Commercial Unit, any tenant, invitee or licensee of such Owner and any employee, family member, guest or invitee of the Owner or of such tenant.

“Guest Suite” means a Residential Unit purchased by the Association for use as a guest suite by the Owners. The Association, after receiving input from purchasers and approval from the Developer, intends to purchase a Unit for use as a Guest Suite, all costs related to the purchase of the Guest Suite and incidentals related to making it available for leasing to the Unit Owners will be a part of the Association Common Expenses and subsequent dues. If the Association determines the Guest Suite is unnecessary or impractical, then the Association may sell the unit for fair market value, if approved by a majority of the Unit Owners at a vote at the annual meeting.

“Index” shall mean the Consumer Price Index for Wage Earners and Clerical Workers (CPI-W) (1982-84=100) specified for “All Items” relating to Des Moines, Iowa, and issued by the Bureau of Labor Statistics of the United States Department of Labor. Any

reference to the "Index" in effect at a particular time shall mean the Index as then most recently published and/or announced. If the Index shall be converted to a different standard reference base or otherwise revised, any computation of the percentage increase in the Index shall be made with the use of such conversion factor, formula or table for converting the Index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice-Hall, Inc., or failing such publication, by any other nationally recognized publisher of similar statistical information as may be selected by the Association.

"Junior Mortgage" is defined as set forth in paragraph 27.

"Limited Common Elements" means those Common Elements which are limited to and reserved for the use of one or more but less than all of the Owners, as designated on the Condominium Survey, in this Declaration, including but not limited to: (i) the balconies, patios, fireplaces, deck areas, equipment rooms or spaces, and air conditioning and heating equipment associated with or providing service to a Condominium Unit; (ii) those portions of the Project treated as Limited Common Elements by operation of the Act.

"Lobby" means the portion of the Common Elements identified on the Condominium Survey as the "Lobby."

"Managing Agent" means the person or entity selected by the Board to perform the management and operational functions of the Association.

"Mortgage" means an interest in real estate created by contract or conveyance which secures payment or performance of an obligation. The term includes a mortgage, deed of trust, trust deed, security deed, contract for deed and any other consensus lien or title retention contract intended as security for an obligation. "Mortgagee" shall include any holder, grantee or beneficiary of a Mortgage, and any successor or assignee thereof, and any insurer or guarantor of a Mortgage.

"Owner" means the Person or Persons who own(s) a Condominium Unit in fee simple. If a Condominium Unit is sold under a contract for deed, the vendee shall be deemed the Owner of the Condominium Unit for purposes of this definition.

"Parking Lot" means the area depicted as the "Parking Lot" on the Condominium Survey, which area contains, among other items, certain Parking Units.

"Parking Unit" means any one of the Units located in the Garage or the Parking Lot initially designated on the Condominium Survey as a "Parking Unit."

"Person" means a natural person, corporation, partnership, limited liability company, association, trust or any other entity or combination thereof.

“Records” means the real property records of the City of Des Moines and County of Polk, Iowa.

“Reimbursement Assessment” is defined as set forth in paragraph 20.f.

“Residential Unit” means any one of the Units designated on the Condominium Survey as a “Residential Unit.” Additionally, “Residential Unit” means any such Unit created by subdivision or combination of a Residential Unit or Residential Units or portions thereof, redesignation of other type(s) of Unit(s) as a Residential Unit or any such Unit created by conversion of a portion of the Common Elements either by itself or in combination with part or all of another Unit(s) pursuant to paragraph 4.

“Rules” means any instruments, however denominated, which are adopted by the Association pursuant to paragraph 19.i for the regulation and management of the Project.

“Special Assessment” is defined as set forth in paragraph 20.e.

“Unit” means those spaces within the Building as depicted on the Condominium Survey and identified by an identifying number. A Unit shall consist of all air space and improvements within a space bounded by the center of demising walls between Units or between Units and Common Elements as shown on the Condominium Survey. In the case of walls, floors and ceilings that are designated as boundaries of a Unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallboard paint, concrete flooring and finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Unit. For Units that have had a new floor installed above the original floor everything above the unfinished surface of the original floor shall be part of the Unit.

For purposes of an Owner’s occupancy and use of a Residential Unit, that Unit’s boundaries are defined by the interior, unfinished surfaces of the walls, floors and ceilings which mark the perimeter boundaries of the Unit and, where found along such walls, floors and ceilings, the interior surfaces of built-in fireplaces with their dampers in the closed position and the interior surfaces of windows and doors in the closed position. The Unit includes both the boundaries above described, the air space so encompassed and all fixtures, improvements and interior partitions contained therein.

The boundaries of each Parking Unit shall be the perimeter boundaries as depicted on the Condominium Survey extended vertically from the floor or pavement beneath to a height of approximately eight (8) feet above said floor or pavement, and the interior unfinished surfaces of the floor (for Parking Units located in the Garage) or pavement (for Parking Units located in the Parking Lot) beneath the Parking Unit and the airspace within the boundaries described above.

Notwithstanding anything herein, no Common Element or Limited Common Element located within a Unit as described above shall be considered part of the Unit.

“Utilities” means those easements defined in paragraph 15.f.

2. **Condominium Plans.** “Plans” means the survey, floor plans and drawings of the Buildings and improvements, attached hereto as Exhibit 3 and by this reference made a part hereof. The plans and drawings attached as Exhibit 3 illustrate and provide Unit Owners a general description of the building, the number of stories, the number of condominiums, the condominium numbers, identification of each condominium’s location, approximate area, number of rooms, common areas. See Iowa Code §499B (2005).

The Condominium Plans designate each Unit as a Residential Unit, a Commercial Unit or a Parking Unit. Except as otherwise provided in this Declaration or as otherwise required by the Act, the Condominium Survey may not be amended or supplemented except with the vote or agreement of the Owners owning at least a 67% interest in and to the Common Elements. In interpreting any and all provisions of this Declaration, and in interpreting any deeds to or Mortgages of any Condominium Units, the **actual** physical boundaries of a Unit as constructed (or, in the case of Parking Units), the actual boundaries as shown on the Condominium Survey shall be conclusively presumed to be its boundaries.

3. **Required Elements of Declaration/Division Into Units**

- a. **Requirements of Act.** In compliance with certain of the requirements set forth in Section 499B.4 of the Act, the Association states as follows:
- (1) The land which is the subject of this Declaration constitutes the Real Estate which is legally described on Exhibit 1.
 - (2) The Building consists of one nine (9) story structure with a basement. The building is constructed of concrete, brick, masonry, steel and wood. It is anticipated that in addition to these materials, the completed project will also include gypsum board, wood, metal and other materials.
 - (3) The Condominium Plans depict the location and number of each Condominium Unit. The Condominium Survey and this Declaration shall govern for the purposes of the Act as meeting the following requirements.
 - (a) The dimensions, area and location of Common Elements or Limited Common Elements affording access to each Condominium Unit;
 - (b) The location of Common Elements and Limited Common Elements together with a description of which Condominium Units said Limited Common Elements are reserved for; and

- (c) The Unit number of each Condominium Unit, statements of its location, approximate area, number of rooms and other data necessary for its proper identification.
- (4) The description of the boundaries of each Unit created by this Declaration is set forth in the Condominium Plans and in the definition of the term "Unit" in paragraph 1. Each Unit's identifying number is shown on the Condominium Plans.
- (5) The description of any Limited Common Elements are shown on the Condominium Plans and as set forth in the definition of the phrase "Common Elements" and "Limited Common Elements" in paragraph 1 above.
- (6) Portions of the Project may be allocated subsequently as Limited Common Elements in accordance with paragraph 4.
- (7) Each Unit's Allocated Interest is shown on Exhibit 4 and governs in establishing each Unit's undivided interests in the Common Elements as set forth in paragraph 3.b, the allocation to each Unit of Common Expenses as set forth in paragraph 20.a and the allocation to each Unit of votes in the Association as set forth in paragraph 18.c.
- (8) Restrictions on the use and occupancy of Units are set forth throughout this Declaration.
- (9) The method by which the Declaration may be amended is set forth in paragraphs 7, 31 and 32.

4. **Right to Combine, Subdivide and Redesignate Units/Creation of Units, Common Elements and Limited Common Elements.**

- a. **Unit Owner Rights.** Each Owner of a Unit shall have the right to combine two or more horizontally adjacent Units, or to divide two or more Units. Except as provided in the foregoing sentence, there may be no other division or combination of Units or relocation of boundaries of adjacent Units by Owners. A combination or division of Units by an Owner shall require the consent of the Association, and shall be effected in accordance with the procedures set forth by the Board. The exercise of the rights granted in this paragraph 4.a shall be subject to the prior written consent of each Mortgagee having an interest in any such combined or divided Units. Any previously combined Units which are subsequently divided shall be divided so that the revised boundaries are the same as those that originally existed between such Units. If Units are combined, the undivided interest in the Common Elements appurtenant to the combined Unit shall be the sum of the undivided interests in the Units that were combined. Any previously

combined Units which are later divided shall be reinstated to the Allocated Interests which they had prior to the combination.

5. **Limited Common Elements.** Subject to the definition thereof the Limited Common Elements, except those specified under the Act, shall be designated herein, on the Condominium Survey. Any door, window, balcony, patio, deck or fireplace which is accessible from, associated with or which adjoin(s) a Unit and which is identified as a Limited Common Element on the Condominium Survey and designated as appurtenant to a particular Condominium Unit or Condominium Units shall, without further reference thereto, be used in connection with the Unit or Units to which it is appurtenant to the exclusion of the use thereof by the other Owners, except by invitation. Except as otherwise permitted by paragraph 4, the allocation of a Limited Common Element may not be altered without the consent of the Unit Owners and First Mortgagees whose Units are affected, and then only with the approval of the Board of Directors.

6. **Inseparability of a Condominium Unit.** An Owner's undivided interest in the Common Elements, including such Owner's interest in any appurtenant Limited Common Elements, shall not be separated from the Unit to which such interest is appurtenant, and shall be deemed to be conveyed or encumbered with the Unit even though the interest is not expressly mentioned or described in a deed or other instrument. Any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void.

7. **Description of Condominium Unit.**
 - a. **Subsequent to Recording.** Subsequent to the recording of the Declaration and the Condominium Survey, every deed, lease, Mortgage, and other instrument affecting title to a Condominium Unit shall legally describe a Condominium Unit by its identifying Unit number and percentage interest in the Common Elements followed by the identifying Parking Unit number, if applicable, and followed by the words "Whiteline Lofts, a Condominium, City of Des Moines and County of Polk, Iowa, in accordance with and subject to the Amended and Restated Declaration of Submission to Horizontal Property Regime for Whiteline Lofts, City of Des Moines and County of Polk, Iowa, recorded on December 18th, 2020, in Book _____ at Page _____ in the records of the Polk County Iowa Recorder." Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Unit, but also the undivided interest in the Common Elements appurtenant thereto and the right to the use of the Limited Common Elements appurtenant thereto. Each such description shall be construed to include a non-exclusive easement for ingress and egress throughout and for use of the Common Elements which are not Limited Common Elements; the right to the use of the appurtenant Limited Common Elements; and the other easements, obligations, limitations, rights, encumbrances, covenants, conditions and restrictions created in this Declaration.

- b. **Reference Includes Amendments.** The reference to the Condominium Survey and Declaration in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Condominium Survey or Declaration, without specific reference(s) thereto.
8. **No Partition.** The Common Elements shall be owned as tenants-in-common by all of the Owners and shall remain undivided, and no Owner or other Person shall bring any action for partition or division of the Common Elements. Similarly, no action shall be brought for partition of a Unit or a Condominium Unit between or among the Owners thereof. Each Owner, by virtue of his ownership of a Condominium Unit, hereby expressly waives any and all rights he may have to institute or maintain an action for partition or any other division of a Condominium Unit or the Common Elements, except as otherwise expressly permitted by this Declaration.
9. **Separate Taxation.** Each Condominium Unit shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, including ad valorem levies and special assessments. The lien for taxes assessed to any Condominium Unit shall be confined to that Condominium Unit. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium Unit. If such taxes or assessments for any year are not separately assessed to each Owner, but rather are assessed on the Project as a whole, then each Owner shall pay his proportionate share thereof in accordance with his ownership interest in the Common Elements, and in said event such taxes or assessments shall be a Common Expense. Without limiting the authority of the Board provided for elsewhere herein, the Board shall have the authority to collect from the Owners their proportionate share of taxes or assessments for any year in which taxes are assessed on the Project as a whole.
10. **Title.** A Condominium Unit may be held and owned by more than one Person as joint tenants or tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Iowa.
11. **Certain Work Prohibited.** No Owner shall undertake any work, improvements or alterations in his Unit which would jeopardize the soundness, or safety of the Building, impair the structural integrity, electrical systems, or mechanical systems or lessen the support of any portion of the Building, or impair an easement or hereditament thereon or thereto. No Owner shall enclose, by means of screening or otherwise, any balcony, deck or patio which is accessible from, associated with and which adjoins a Unit, nor shall any Owner enclose or otherwise partition any Parking Unit without having first obtained the prior written approval of the Board (which approval may be withheld for any reason) for such enclosure or partition and for the materials, plans and specifications for such enclosure or partition. Structural alterations shall not be made by an Owner to the exterior portions of his Unit or to the Building, nor shall an Owner make any changes to the water, gas or steam pipes, electric conduits, plumbing or other fixtures, nor shall an Owner remove any additions, improvements or fixtures from the Building, without in any

such case having first obtained the prior written approval of the Board (which approval may be withheld for any reason). No Owner may change the appearance of any of the Common Elements, including any Limited Common Elements appurtenant to such Owner's Unit, which are visible from the exterior of the Building or such Unit without the Board's approval, nor may any Owner in any way alter the appearance of any Parking Unit without the Board's approval.

12. **Liens Against Condominium Units — Removal Of Lien — Effect of Part Payment.**

- a. **Limitation on Units Affected.** No labor performed or materials furnished with the consent or at the request of an Owner of a particular Condominium Unit, or his agent, contractor or subcontractor, shall be the basis for the filing of a lien pursuant to applicable law against the Condominium Unit or other property of another Owner not expressly consenting to or requesting the same, except that express consent shall be deemed to be given by the Owner of any Condominium Unit to the Managing Agent or the Board in the case of emergency repairs. Labor performed or materials furnished for the Common Elements, if duly authorized by the Managing Agent or the Board in accordance with the Declaration or Bylaws, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for filing of a lien pursuant to applicable law against each of the Condominium Units in the Building.
- b. **Partial Release.** If a lien is effected against two or more Condominium Units, the Owners of the separate Condominium Units may remove their Condominium Units from said lien by payment of the amount attributable to each of the Condominium Units affected. The amount of the payments allocable to the affected Condominium Units shall be apportioned based upon their respective percentage interests in the Common Elements. Subsequent to payment, discharge or other satisfaction, the Condominium Unit shall be released from the lien paid, satisfied or discharged. Partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any Condominium Unit not so released or discharged.
- c. **Indemnity.** Each Owner shall indemnify and hold each of the other Owners and the Association harmless from and against liability or loss arising from any claim resulting from or any lien for labor performed or materials furnished in connection with any work on such Owner's Condominium Unit. At the written request of any Owner, or upon action by the Board of Directors on its own initiative, the Association shall enforce such indemnity by collecting from the Owner of the Condominium Unit on which the labor was performed or materials furnished the amount necessary to discharge any such lien assessed against the Condominium Unit of another Owner, and all costs incidental thereto, including reasonable attorney's fees. If not paid within ten days after the Association's request for payment, the Association may proceed to collect such amounts in the manner provided herein for collection of assessments for the purpose of discharging the lien.

13. **Use and Occupancy of Units.**

- a. **Residential and Commercial Units.** Except as otherwise permitted by this paragraph each Residential Unit shall be used for residential purposes only, and no such Unit shall be occupied for living or sleeping purposes by more persons than it was designed to accommodate safely. For the purposes of the foregoing sentence, each Residential Unit shall be deemed to have been designed to accommodate safely a maximum of two occupants per bedroom (with studio Units being deemed to have one bedroom for such purpose). No Residential Unit shall be used at any time for any business or commercial activity, except as follows: (i) the Owner or tenant thereof may use a portion of the Unit as a home office if and to the extent permitted by applicable law; and (ii) the Association shall have the right, but not the obligation, to purchase, own, or lease one or more Condominium Units for a manager's residence or office, an exercise suite, a building superintendent or engineer's residence or office or/and a Guest Suite as overnight sleeping accommodations upon terms and conditions approved, by the Board or for such other purposes as the Association may deem appropriate. Further, the Association and/or Managing Agent may maintain offices within the Common Elements. The Commercial Units shall be used for retail business and commercial purposes subject only to applicable zoning laws.
- b. **Parking Units.**
1. **Transferability of Parking Units.** The Parking Units are individual Condominium Units, which may be sold, leased or licensed by the Owner thereof, subject to the terms of this Declaration and applicable laws. Each Owner of a Parking Unit, shall have the right to sell, lease, license or otherwise transfer his/her Parking Unit(s) upon such terms as the Owner, in his/her sole and absolute discretion, deems appropriate, except any Purchaser, Future Owner, Licensee, Lessee or User of the Parking Unit must also be the Owner of a Residential or Commercial Unit.
 2. **Use and Operation of Parking Units.** Subject to paragraph 28, Parking Units shall be used for the parking and storage of automobiles, motorcycles, and similar vehicles. Parking Units in the Garage may also be used for bicycle parking and storage. The Association may adopt Rules restricting or regulating storage uses including, but not limited to, property which may be stored, storage locations and storage containers. The Rules may differ for Parking Units located in the Garage as opposed to Parking Units located in the Parking Lot.
- c. **General Provisions.** Each Owner shall be entitled to the exclusive ownership and possession of his Unit. The use of all Units shall be subject to: (i) all applicable governmental rules, regulations, laws, ordinances and restrictions, and

(ii) such reasonable usage and signage Rules as may be adopted by the Association from time to time.

14. Use of Common Elements and Limited Common Elements.

- a. **Use of Common Elements.** Subject to this Declaration and the Rules, each Owner and each owner's Guests may use the Common Elements in accordance with the purposes for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners or their Guests. Except as otherwise provided in this Declaration, the Owners of the Commercial Units and their respective Guests shall have the same rights as other Owners and their Guests with respect to the Common Elements, subject to such reasonable Rules as are deemed necessary by the Association to ensure security for the other Owners and their Guests.
- b. **Limited Common Elements.** Certain portions of the Common Elements are reserved for the exclusive use of certain Owners and their Guests, and such items and areas are referred to as Limited Common Elements. The Limited Common Elements shall be appurtenant to the Units to which they have been reserved pursuant to this Declaration, the Condominium Survey, or in a deed, and no reference thereto shall be required to be made in any subsequent deed or in any Mortgage, instrument of conveyance or other instrument describing any Unit.
- c. **Use of Limited Common Elements.** Subject to this Declaration and the Rules, only the Owner of a Unit, and such Owner's Guests, shall have the right to use the Limited Common Elements appurtenant to such Owner's Unit, without hindering or encroaching upon the lawful rights of the other Owners or their Guests.
- d. **Restrictions; Rules.** Subject to the procedures set forth in paragraph 19.i below, the Association and/or the Board may from time to time adopt Rules governing the use of the Common Elements, but such Rules shall be uniform and non-discriminatory in both intent and effect except as expressly allowed in this Declaration or as may be reasonably necessary to ensure security for owners and their Guests. Each Owner, by accepting a deed or other instrument of conveyance for a Unit, agrees to be bound by any Rules so adopted.
- e. **Lobby; Elevators; Hallways; Stairways.** The "Lobby" each "Elevator", each "Stairs" and each "Hallway" as shown on the Condominium Survey, which service the Units shall be Common Elements.

The Board shall have the right to adopt reasonable Rules governing use of the elevators, hallways and stairways. Use of the elevators, hallways and stairways of the Building, however, shall also be subject to the easements created pursuant to paragraph 15.

15. **Various Rights and Easements.**

- a. **Owners' Easements for Access, Support and Utilities.** Except as otherwise expressly provided in this Declaration, each Owner and each Owner's Guests shall have a non-exclusive easement for access between his Unit and the roads and streets adjacent to the Building and the roadways and driveways within the Real Estate. Further, each Owner and each Owner's Guests shall have a non-exclusive easement to use the halls on the floor on which such Owner's Unit is located, and to use the corridors, stairs, walkways and bridges within and adjacent to the Building which are shown on the Condominium Survey as Common Elements or Limited Common Elements appurtenant to such Owner's Unit, and to use the exterior access and other easements which are part of the Common Elements subject to the rights of the Board to adopt Rules governing access and use as set forth in paragraph 14. Notwithstanding the foregoing, provided all Owners of Residential Units or Commercial Units located on a particular floor of the Building (other than the first floor) consent thereto and pay all costs incurred in connection therewith, such Owners may restrict access to their floor (by elevator lock-off or otherwise) to the Owners of such Units and their Guests. The Board shall have the right to adopt such reasonable rules restricting use of the easements as it deems necessary to ensure the security for other Owners and their Guests. Each Owner shall have a non-exclusive easement in, on and over the Common Elements, including the Common Elements within the Unit of another Owner, for horizontal and lateral support of his Unit, for utility service to that Unit, including but not limited to water, sewer, gas, electricity, telephone and television service, and for the release of smoke arising from any fireplace within a Unit through the flue leading therefrom.
- b. **Association Rights.** The Association, the Board and the Managing Agent, and their respective agents and contractors, shall have a non-exclusive right and easement to make such use of and to enter into or upon the Common Elements, the Limited Common Elements and the Units as may be necessary or appropriate for the performance of the duties and functions which they are obligated or permitted to perform under this Declaration.
- c. **Recorded Easements.** The Real Estate is now or may hereafter be subject to the easements, licenses, and other recorded documents, or any of them, set forth on the Condominium Survey.
- d. **Easements for Encroachments.** If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Elements, or upon another Unit, the Owner of that Unit shall and does have an easement for such encroachment and for the maintenance of same. Such encroachments shall not be considered to be encumbrances either on the Common Elements or on a Condominium Unit for purposes of marketability of title or otherwise and shall

exist as long as the physical boundaries of the Unit are in substantial accord with the boundary that appears in the Condominium Survey. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Building, by error in the Condominium Survey, by settling, rising or shifting of the earth or other movement of any portion of the Real Estate, or by changes in position caused by repair or reconstruction of the Building or any part thereof

- e. **Easements for Units for Repair, Maintenance and Emergencies.** Some of the Common Elements are or may be located within a Unit or may be conveniently accessible only through a particular Unit. The Association, Board, Managing Agent and each Owner shall have a non-exclusive right and easement, which may be exercised for any Owner by the Association, the Board, or the Managing Agent, as his agent for access through each Unit and to all Common Elements, from time to time, during such reasonable hours as may be reasonably necessary for the maintenance, repair or replacement of any of the Common Elements located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit. When access to a Residential Unit or a Commercial Unit is required, at least twenty-four (24) hours prior notice shall be provided to the occupants of such Unit, except when said occupants have no objection to earlier entry and except in the case of an emergency. The cost to repair damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements, or as a result of repairs within another Unit, at the instance of the Association, the Board or the Managing Agent, shall be a Common Expense of all of the Owners. No diminution or abatement of Common Expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance or order of any governmental authority. Restoration or repair of the damaged improvements shall be to substantially the same condition as they existed prior to the damage. Notwithstanding the foregoing, if any such damage is the result of the activities of any Owner, or said Owner's Guests, then the Owner shall be responsible for all costs and losses incurred as a result of such damage, including any expenses incurred to avoid or repair such damage and any losses suffered by other Owners as a result of such damage.
- f. **Utilities.** There is hereby created a blanket easement upon, across and through the Common Elements and any Unit for the installation, replacement, repair and maintenance of utilities (the "Utilities"), including but not limited to water, sewer, gas, telephone, electricity, heating, ventilating, air conditioning, computer, cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the facilities, equipment and appurtenances on the Common Elements necessary to operate, repair, and maintain the Utilities. The foregoing easements shall also apply to the Parking Units, provided that no Utilities may be placed

within any Parking Unit in a manner that would unreasonably interfere with its use for the parking of an automobile, motorcycle or similar vehicle, and shall also apply to any Utilities located within any Commercial Unit located on the basement level of the Building. Owners of Commercial Units located on the first floor of the Building shall have an easement upon, across and through the Garage and up to the roof of the Building (as depicted on the Condominium Survey), in locations the Association, to erect and maintain Utilities that cannot reasonably be located within their respective Commercial Units, provided such Utilities shall comply with all applicable laws, codes and regulations, shall be located so as not to interfere with the intended use of any Common Elements, and otherwise shall comply with this Declaration. Further, the Association may grant easements over the Common Elements for the installation, operation, maintenance, repair, renovation and reconstruction of any Utilities necessary or desirable for the Building, without the need for any further approval from the Owners or any Mortgagee. The easements provided for in this paragraph 15.f. shall not affect, avoid, extinguish or modify any other recorded easement(s) affecting the Common Elements, nor shall these easements unreasonably interfere with the use and enjoyment of any Unit by the Owner thereof.

- g. Maintenance Easement.** An easement is hereby granted to the Association, its officers, directors, agents, employees, contractors and assigns, and to the Managing Agent, upon, across, over, in and under the Common Elements, together with the right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which the Association is obligated or permitted to perform pursuant to this Declaration, including the right to construct, reconstruct, relocate and maintain on the Common Elements maintenance and storage facilities for use by the Association.
- h. Emergency Easement.** A non-exclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons, and to any security personnel now or hereafter servicing the Real Estate (without implying any obligation on the part of the Association to provide for security), to enter upon all streets, roads and driveways and Common Elements located in the Real Estate in the performance of their duties.
- i. Garage Easement.** The Garage shall be subject to a non-exclusive easement in favor of all Owners and their respective Guests to allow access to the Common Elements, located in or adjacent to the Garage, provided all Persons shall exercise their rights pursuant to such easement in a manner which will not interfere with use of the Parking Units by the Owners thereof or their respective Guests.
- j. Easements Deemed Appurtenances.** The easements, uses and rights herein created for an Owner shall be appurtenant to the Condominium Unit of that Owner, and all conveyances of and other instruments affecting title to a Condominium Unit shall be deemed to grant and reserve the easements, uses and

rights provided for herein, even though no specific reference to such easements, uses and rights appears in any such conveyance.

16. **Owners' Maintenance Responsibility.** Except as otherwise provided in this Declaration, each Owner shall be responsible for the maintenance, repair, alteration, remodeling and replacement of said Owner's Unit. For purposes of maintenance, repair, replacement, alteration and remodeling, an Owner shall be deemed to own and shall have the right and obligation to maintain, repair, alter and remodel, the electrical and plumbing equipment that exclusively serves the Unit, the interior non-supporting walls, and the materials (such as, but not limited to, plaster, gypsum dry wall, paneling, wallpaper, paint, wall and floor tile, and flooring, but not including the sub-flooring) making up the finished surfaces of the perimeter walls, ceilings and floors within the Unit, and the interior surface of the perimeter doors and windows (including the interior glass surface but excluding the glass itself), and the interior finished surfaces of any patio, balcony, or deck railing which is a Limited Common Element appurtenant to such Unit. Subject to the immediately preceding sentence, repair and maintenance of the patios, balconies and decks and any other Limited Common Elements shall be performed solely by the Association, and the expense thereof shall be a Common Expense unless the repair or replacement is required as a result of the negligence of a Unit Owner or his Guests, in which event the Unit Owner shall be responsible for the expense. Further, repair or replacement of the electrical and plumbing systems, perimeter windows and doors of a Unit shall be performed solely by the Association, and the expense thereof shall be assessed to the Owner of the affected Unit as a Reimbursement Assessment, and shall be due within 30 days after notice to the affected Owner of the amount of such assessment.

No Owner shall make any changes or alterations of any type or kind to the exterior surfaces of the perimeter doors or windows to his Unit nor to any Common Elements (including, but not limited to, the exterior portions of his Unit and any windows, doors or balcony doors), nor shall any Owner make any changes or alterations to the interior surface of any patio, balcony or deck appurtenant to such Owner's Unit that is visible from the exterior of the Building without the prior consent of the Association.

The Owner shall not be deemed to own the Utilities running through his Unit which serve one or more other Units, except as a tenant in common with the other Owners. Each Owner shall have the obligation to replace any finishing or other materials removed with materials of similar quality or better quality than those which were removed. An Owner shall maintain and keep his Unit in good repair and in a clean, safe, attractive and sightly condition, including the fixtures and the surfaces of the doors and windows of the Unit. Also, an Owner shall keep in a neat and clean condition the fireplace within his Unit and the interior surfaces of any deck, balcony and/or patio areas adjoining and/or leading to his Unit which are Limited Common Elements appurtenant to such Owner's Unit. Except as previously provided, the Association shall be responsible for repair, replacement and maintenance of all Limited Common Elements. All fixtures, appliances and equipment installed within a Unit, commencing at a point where they connect to the Utilities, shall be maintained and kept in repair by the Owner thereof. The HVAC equipment serving the Unit shall be repaired and maintained solely by the Association,

however, the expense thereof shall be assessed to the Owner of the affected Unit as a Reimbursement Assessment and shall be due within 30 days after notice to the affected Owner of the amount of such assessment. Notwithstanding any contrary provision of this paragraph, however, Owners of Commercial Units shall be responsible for the repair, replacement and maintenance of all compressors, machinery and related equipment and pipes which provide service solely to their respective Units, irrespective of where such items are located. Each such Commercial Unit Owner shall have an easement over and upon the Common Elements (including elevators and stairways) for itself, its agents and contractors for access to said Utilities for the purpose of repair, replacement and maintenance thereof. If any Owner fails to carry out or neglects the responsibilities set forth in this paragraph, the Board or the Managing Agent may fulfill the same and charge such Owner therefor. Any expense incurred by an Owner under this paragraph shall be the sole expense of said Owner.

17. **Compliance With Provisions of Declaration Articles and Bylaws of the Association.** Each Owner shall strictly comply with, and shall cause each of his/her Guests to strictly comply with, all of the provisions of this Declaration, the Articles and Bylaws, and the Rules, decisions and resolutions of the Association or the Board, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action or actions to recover sums due, for damages and/or for injunctive relief, along with costs of suit and reasonable attorneys' fees, maintainable by the Managing Agent or Board of Directors in the name of the Association on behalf of the Owners, or, in a proper case, by an aggrieved Owner. Such failure also may result in the imposition of a Reimbursement Assessment pursuant to paragraph 20. No fine shall be levied unless the Association gives the Owner at least ten days prior written notice and an opportunity to be heard. Notwithstanding any contrary provision contained in this Declaration, in no event may the Association commence any action or proceeding seeking equitable relief, or seeking either an unspecified amount of damages or damages in excess of \$25,000.00, unless the following conditions are satisfied: (a) the decision to commence such action or proceeding shall be taken at an annual or special meeting of the Association; (b) a budget for such litigation, including all fees and costs and assuming trial and applicable appeals, shall have been prepared by the attorneys who will be engaged by the Association for such purpose, and shall have been mailed or delivered to all Owners and posted at the principal office of the Association at least 30 days prior to such meeting; and (c) at such meeting Owners representing an aggregate ownership interest of 75% or more of the Common Elements shall approve the decision to commence, and the proposed budget for, such action or proceeding, and shall concurrently approve the imposition of a Special Assessment to fund the costs of such action or proceeding in accordance with the approved budget. The Association shall be authorized to expend funds for such proceeding in excess of the amount contemplated by the approved budget only after an amended budget has been approved in accordance with the procedures specified in the this Declaration. The procedural requirements set forth in this paragraph, however, shall not apply to any action to collect or otherwise enforce Assessments and any related fines, late charges, penalties, interest or costs and expenses, including reasonable attorneys' fees, in an amount of \$25,000.00 or less. All of the costs and expenses of any action or proceeding requiring the approval of the Owners in

accordance with this paragraph shall be funded by means of a Special Assessment pursuant to paragraph 20.e below, and in no event may the Association use reserve funds or incur any indebtedness in order to pay any costs and expenses incurred for such purpose. Further, if the Association commences any action or proceeding against a particular Owner or particular Owners requiring the approval of the Owners in accordance with the foregoing, the Owner(s) who are being sued shall be exempted from the obligation to pay the Special Assessment(s) levied in order to pay the costs and expenses of such action or proceeding.

18. **The Association.**

- a. **General Purposes.** The Association is an Iowa non-profit corporation formed to manage the Common Elements and to perform its functions as provided in this Declaration in furtherance of the interests of the Owners.
- b. **Membership.** The Owner of a Condominium Unit shall automatically become a member of the Association. Said membership is appurtenant to the Condominium Unit of said Owner and shall automatically pass with fee simple title to the Condominium Unit. Each Owner automatically shall be entitled to the benefits and shall be subject to the burdens of such membership. If the fee simple title to a Condominium Unit is held by more than one Person, each such Person shall be a member of the Association. Memberships in the Association shall be limited to Owners of Condominium Units in the Project or, following termination of the Project, all former Owners entitled to distributions of proceeds under this Declaration or their respective heirs, personal representatives, successors or assigns.
- c. **Voting.** Each Owner shall be entitled to vote on all matters that are subject to a vote by the Owners. The size of each Owner's vote shall be equal to the Allocated Interests as shown on Exhibit 4. The vote for each particular Condominium Unit shall be cast as one collective vote, as the Owners of the Unit agree. If the Owners do not agree when called upon to vote, the Owners will be treated as having abstained. No votes allocated to any Condominium Unit(s) owned by the Association may be cast.
- d. **Board of Directors.** The affairs of the Association shall be managed by a Board of Directors in accordance with the provisions of this Declaration, the Articles and Bylaws.
 - (1) **Number of Directors.** The Board of Directors shall consist of five members.
 - (2) **Election of Directors.** Members of the Board of Directors shall be elected at the regular annual meeting of Association members by vote of the Owners for three-year terms. Those candidates for Director receiving the greatest percentage of the votes cast either in person or by proxy at the

regular annual meeting shall be elected. The Board of Directors shall designate Director terms in advance of an election as necessary to ensure that no greater than two Director terms will expire in any given year.

- e. **Managing Agent.** The Association may employ a Managing Agent to administer and manage the affairs of the Association. Any contract with a Managing Agent shall not exceed three years and shall provide for the right of the Association to terminate such contract without penalty at any time upon not more than 90 days notice.
- f. **Duty to Keep Association Records.** The Association shall keep books, records and financial statements sufficiently detailed to enable the Association to comply with the Act, including, but not limited to, financial records sufficiently detailed to provide a statement setting forth the amount of any unpaid Assessments currently levied against an Owner. The Association additionally shall cause an audited financial statement to be available annually within 120 days after the end of its then current fiscal year. In addition, the Association shall maintain current copies of this Declaration, the Condominium Survey, Articles, Bylaws and Rules, and of all amendments to any of said documents. The foregoing items shall be available for inspection by any Owner or prospective purchaser of a Unit upon advance arrangements during normal business hours.
- g. **Bylaws and Articles.** The purposes and powers of the Association and the rights and obligations with respect to Owners set forth in this Declaration may and shall be amplified, but not modified, by provisions of the Articles and Bylaws of the Association. The Amended and Restated Bylaws (the "Bylaws") are attached hereto as Exhibit 5.

19. **Certain Rights and Obligations of the Association.**

- a. **Association as Attorney-in-Fact for Owners.** The Association is hereby irrevocably appointed attorney-in-fact for the Owners, and each of them, manage, control and deal with the interest of each Owner in the Common Elements so as to permit the Association to fulfill all of its duties and obligations and to exercise all of its rights hereunder, and to deal with the Project upon its destruction or obsolescence as hereinafter provided. The acceptance by any Person of any interest in any Condominium Unit shall constitute an appointment of the Association as attorney-in-fact as provided above and hereinafter. The Association shall have all rights expressly granted by this Declaration, the Articles, the Bylaws or the Act, and shall have and may exercise all of the powers necessary to govern, manage, maintain, repair, rebuild, administer and regulate the Project and to perform all of the duties required of it subject to the restrictions set forth in this Declaration. Notwithstanding the foregoing provisions of this paragraph 19.a, but subject to the remaining provisions of this Declaration, unless Owners representing an aggregate ownership interest of 67% or more of the

Common Elements have given their prior written approval, the Association shall not be empowered or entitled to:

- (1) change the pro rata interest or obligations of any individual Condominium Unit for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;
- (2) partition any Condominium Unit or subdivide any Condominium Unit other than Units previously combined pursuant to paragraphs 4.a or 4.b;
- (3) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer (excluding the exercise of the Association's rights under paragraphs 14 and 15.0 any of the Common Elements; and
- (4) use hazard insurance proceeds for loss to the improvements (whether Units or Common Elements) for other than repair, replacement or reconstruction of such improvements.

b. **Common Elements and Limited Common Elements.** The Association shall provide for the care, operation, management, maintenance, repair and replacement of the Common Elements and Limited Common Elements, except as provided in paragraph 16. Without limiting the generality of the foregoing, said obligations shall include the keeping of such Common Elements and Limited Common Elements in good, clean, attractive and sanitary condition, order and repair; removing snow and any other materials from such Common Elements (except patios, balconies or decks of Units) which might impair access to the Project or the Units; keeping the Project safe, attractive and desirable; and making necessary or desirable alterations, additions, betterments or improvements to or on the Common Elements and Limited Common Elements.

c. **Other Association Functions.** The Association may undertake any activity, function or service in connection with the use and enjoyment of the Real Estate for the benefit of or to further the interests of all, some or any Owners on a self-supporting, special assessment or common assessment basis, but any assessments levied pursuant to this paragraph 19.c shall be subject to the limitations and provisions of paragraph 20. Such activities, functions or services may include the providing of police or similar security services, the providing of garbage and trash collection services, the providing of maid and cleaning service for individual Units.

d. **Labor and Services.** The Association may: (i) obtain and pay for the services of a Managing Agent to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Real Estate, whether such personnel are furnished or employed directly by the Association or by any Person with whom or with which it contracts; (ii) obtain and pay for legal and accounting services and other professional services necessary or desirable in connection with the operation of the Real Estate or the enforcement of this Declaration; and (iii)

arrange with others to furnish lighting, heating, water, trash collection, sewer service and other common services.

- e. **Property of Association.** The Association may pay for, acquire and hold or lease real property (for the purpose set forth in paragraph 18) and tangible and intangible personal property, and may dispose of the same by sale or otherwise. Subject to the Rules, each Owner and each Owner's Guests may use such property as may be designated by the Association for such use. Upon termination of condominium ownership of the Real Estate and dissolution of the Association, if ever, such property shall be deemed to be owned by the then Owners as tenants in common in the same proportion as their respective interests in the Common Elements. A transfer of a Condominium Unit, including a transfer resulting from a foreclosure pursuant to a Mortgage, shall transfer to the transferee the transferor's interest in such property without any reference thereto. Each Owner may use such property in accordance with the purposes for which it is intended so long as such use does not hinder or encroach upon the lawful rights of the other Owners.

- f. **Association Right to Lease and License Condominium Unit or Common Element.** The Association shall have the right to lease, license, grant easements or concessions or permit the use of any portion of the Common Elements or any Condominium Unit owned by the Association. The rights of the Association under this paragraph shall not be deemed an encumbrance or transfer within the meaning of paragraph 19.a.

- g. **Enforcement by Association.** Subject to the restrictions contained in paragraph 17, the Association may take judicial action against any Owner to enforce compliance with the Rules and all other obligations arising under this Declaration or to obtain damages and/or injunctive relief for noncompliance thereof, all to the extent permitted at law or in equity. Additionally, after not less than ten days' prior written notice and an opportunity by the Owner to be heard, the Association may levy reasonable fines against any Owner for his violations of this Declaration, the Bylaws and the Rules. In any action or proceeding commenced pursuant to this subparagraph, the Association shall have the right to recover reasonable attorneys' fees and costs from any Owner who violates this Declaration, the Bylaws or the Rules. The Association, however, shall not have the power to suspend any Owner's voting rights in the Association or the right of an Owner and said Owner's Guests to use the Amenities due to such Owner's failure to comply with any obligation arising under this Declaration.

- h. **Certificate.** The Board of Directors may, from time to time, record a certificate of the identity and the mailing addresses of the persons then comprising the Board of Directors, together with the identity and address of the Managing Agent, if any. Such certificate shall be conclusive in favor of any Person relying thereon in good faith regardless of the time elapsed since the date thereof.

- i. **Rules and Regulations.** The Association shall have the right to promulgate such reasonable rules and regulations (the "Rules") as it deems necessary or desirable to effectuate the intent and to enforce the duties and obligations set forth in this Declaration, the Articles and Bylaws. Any Rule so promulgated by the Association shall be effective thirty days after the date that written notice of such Rule is provided to the Owners. A Rule that becomes effective 30 days or more prior to the next following annual meeting of the Association may be challenged at, or at any time prior to, such annual meeting, or at a special meeting called for such purpose prior to the date of such annual meeting. Any Rule which becomes effective less than 30 days prior to the next following annual meeting of the Association may be challenged at, or at any time prior to, either such annual meeting or the next year's annual meeting, or at a special meeting called for such purpose prior to the date of the next year's annual meeting. Such challenge shall be in the form of a petition objecting to the Rule, and must be signed by Owners representing an aggregate ownership interest of 10% or more of the Common Elements. If a petition with sufficient signatures is delivered to the Association at least one day prior to the annual meeting at which such Rule must be challenged, enforcement of the challenged Rule shall be suspended until the meeting at which the challenge is to be presented, and the ratification or termination of the challenged Rule shall be an item of business at the applicable meeting. Provided a quorum is present at such meeting (or, in the absence of a quorum, any continuation of such meeting), the Rule shall be deemed ratified if it is approved by Owners representing a majority of the ownership interests present or voting by proxy at such meeting, and shall be deemed revoked if it is not supported by such a majority. Any Rule that has not been challenged by the annual meeting or meetings referenced in the third and fourth sentences of this paragraph, as applicable, may no longer be challenged in accordance with the foregoing procedures.
- j. **Acquisition/Encumbrance of Common Elements.** The Association may acquire, hold, encumber and carry in its own name any right, title or interest to real or personal property, which property shall be considered a Common Element, provided said property may be conveyed, subjected to a Mortgage or otherwise transferred only and after compliance with paragraph 19.a.
- k. **Assignment of Income.** The Association may assign its rights to future income, including the right to receive any type of assessment.

20. **Assessment for Common Expenses and Other Items.**

- a. **Common Expense Assessments.** All Unit Owners shall be obligated to pay the assessments imposed by the Association to meet the Common Expenses. Common Expenses shall be assessed against the Units pro rata in accordance with the Allocated Interests set forth on Exhibit 4, with the exception of the Parking Units which shall be assessed a reasonable fee as set forth in the Association's Rules. The Limited Common Elements shall be maintained in the same manner

as other Common Elements, and except as otherwise expressly provided in paragraph 16. Owners having exclusive use thereof shall not be responsible for any special charges or assessments for the repair or maintenance thereof (unless necessitated by the actions of a particular Owner or such Owner's Guests). Assessments for Common Expenses shall be due and payable monthly in advance on the first day of each calendar month.

- b. **Budget.** The Board of Directors shall cause to be prepared, at least ten (10) days prior to the commencement of each fiscal year, a budget for such fiscal year (a "Budget"). The Budget shall show, in reasonable detail, the categories and estimated amounts of expenses for Common Expenses, any expected income of the Association for the coming fiscal year, any expected surplus from the prior year and any existing surplus held by the Association. The Budget shall include an amount for contingencies and amounts deemed necessary or desirable for capital and/or replacement reserves to provide for the repair, renovation, reconstruction or replacement of, or for any additions to, the Common Elements, and such other expenditures permitted hereunder. Within 30 days after the adoption of any Budget by the Board of Directors, the Board shall: (i) mail by ordinary first class mail, by electronic means, or otherwise deliver a summary of the Budget to all Owners; (ii) cause a copy of the Budget to be posted at the principal office of the Association, and (iii) set a date for a meeting of the Owners to consider ratification of the Budget not less than 14 nor more than 60 days after mailing or other delivery of the summary. Such meeting may be concurrent with the annual meeting of Owners as provided in the Bylaws. Unless at that meeting a majority of all of the Owners present or voting by proxy reject the Budget, the Budget shall be deemed ratified, whether or not a quorum is present. No further approval of the Owners shall be required for any expenditures contemplated by the Budget irrespective of the amount thereof. If the Budget is rejected, the periodic Budget last ratified by the Owners shall constitute the Budget adopted by the Owners and shall remain in effect until such time as the Owners ratify a subsequent Budget proposed by the Board, it being the intention that at least annually a Budget shall be adopted by the Association either by affirmatively adopting the proposed Budget or ratifying the last periodic Budget.
- c. **Amount of Assessments.** Assessments for Common Expenses shall be based upon the cash requirements of the Association which shall be deemed to be such aggregate sum as the Board of Directors shall from time to time determine is to be paid by the Owners to provide for the payment of all estimated expenses of ownership, maintenance, repair, alteration, addition, improvement and operation of the Common Elements, as reflected in the Budget. Such sums shall include, but shall not be limited to, expenses of management; taxes and special assessments; premiums for insurance; landscaping and care of grounds; common lighting and heating and other common utility charges; trash and garbage collections; wages; common water and sewer charges; legal and accounting fees; management fees; fees and charges for the Amenities; expenditures for repair, replacement, renovation, reconstruction or alteration of, or for additions to, the

Common Elements; expenses and liabilities incurred by the Association or the Managing Agent on behalf of the Unit Owners under or by reason of this Declaration, the Articles of Incorporation, or the Bylaws; any deficit remaining from a previous period; the creation of a reasonable contingency reserve and working capital; and all other costs and expenses related to the Common Elements. Further, provision shall be made for an adequate reserve fund to provide for repair, reconstruction and replacement of the Common Elements and for a general operating reserve.

- d. **Assessments/Utilities.** In addition, the Assessments for Common Expenses shall include each Owner's pro rata share of common sewer, water, and building electricity expenses and charges. Charges for Utilities separately metered to Units shall be the separate responsibility of each Owner and shall not be deemed a Common Expense; provided, however, that the Association or the Managing Agent shall have the right (but not the obligation) to pay for such Utilities on behalf of a delinquent Owner, as an advance to such Owner for the purpose of preventing damage to any portion of the Project. The amount of any such advance shall be due upon demand from such Owner, together with interest on the amount advanced at the rate provided for delinquent assessments from the date of advance until paid.
- e. **Special Assessments.** The Board of Directors shall have the further right during any fiscal year, upon not less than 30 days' notice to, the Owners, to levy and assess against the Owners, in a manner similar to Assessments for Common Expenses, a special assessment ("Special Assessment") for such purpose or purposes as may be necessary or appropriate to maintain the Project to such standard as the Board deems appropriate. Special Assessments may include, without limitation, assessments for the cost of any construction, reconstruction, repair or replacement of any Common Elements, including fixtures and personal property, to the extent such cost is in excess of the amount contemplated by the approved Budget for such fiscal year. Within 30 days after the determination by the Board to levy any such special assessment, the Board shall set a date for a meeting of the Owners in accordance with the procedures set forth in the Bylaws. At such meeting, the proposed Special Assessment(s) may be vetoed by a vote of the Owners representing a majority of the Allocated Interests who are present or voting by proxy at a meeting to be called for this purpose, whether or not a quorum is present, and if not so vetoed the Special Assessment shall be deemed ratified. Notwithstanding the foregoing, however, Special Assessments imposed for the purposes described in paragraph 17 above shall be subject to the procedures and requirements set forth in said paragraph.
- f. **Reimbursement Assessments.** The Board of Directors may, subject to the provisions hereof, levy an assessment against any Owner of a Unit if the failure of the Owner or such Owner's Guests to comply with this Declaration, the Articles, the Bylaws or the Rules causes the Association to incur any expenses, liability or potential claim, including any such sums expended for attorneys' fees and any

sums expended to cause such compliance ("Reimbursement Assessment"). Except for Reimbursement Assessments imposed pursuant to paragraph 16 (which may be imposed without notice as costs are incurred), the Association shall not levy a Reimbursement Assessment until after first giving the Owner at least ten days prior written notice of the proposed levy and an opportunity for the Owner to be heard. The amount of the Reimbursement Assessment imposed pursuant to this paragraph shall be due and payable to the Association 30 days after notice to the Owner of the decision of the Board of Directors that the Reimbursement Assessment is owing. The Association shall have the power to enforce Reimbursement Assessments in accordance with the provisions of paragraph 24. If any such Reimbursement Assessment results from the need to provide reimbursement for any expenditure of funds by the Association, the amount of such assessment shall bear interest from the date the expenditure was made at a rate equal to the lesser of eighteen percent (18%) per annum or the maximum rate permitted by law. Any claim, controversy, or dispute over the imposition, amount or any other aspect of a Reimbursement Assessment shall be resolved by binding arbitration in accordance with paragraph 34.j.

- g. Failure to Fix Assessment.** The omission or failure to establish any Assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification, or release of the Owners from their obligations to pay the same.
 - h. Surplus Funds.** The Association shall not be required to credit any surplus funds of the Association remaining after payment of, or provision for, the Common Expenses against any future Assessments to be levied by the Association.
 - i. Late Charges/interest.** Assessments shall be due on the due date established by the Board from time to time. If any Assessment, fine or penalty shall remain unpaid after the due date thereof, the Association shall be entitled to collect from the defaulting Owner: (i) a late charge in an amount the Board determines from time to time to be sufficient to cover the extra costs and expenses involved in handling such delinquent payment; (ii) interest at the rate of eighteen percent (18%) per annum or the highest lawful rate, whichever is less on the amount of delinquent Assessment, fine or penalty from the due date thereof— and (iii) all costs and expenses incurred by the Association in connection with the collection of the same, including reasonable attorneys' fees. The rate of default interest specified above may be changed by the Board from time to time, but may not exceed the maximum rate permitted by law. Amounts charged under this paragraph shall constitute a lien as set forth in paragraph 24.
- 21. Assessment Reserves.** Upon each sale of a Residential Unit, a Commercial Unit and/or a Parking Unit, the purchaser shall deposit at closing with the Association an amount determined by the Association, which sum shall not exceed two times the amount of the monthly Common Expense assessment then allocable to such Unit. Such sum shall be non-refundable and held, without interest, by the Association or Managing Agent in a segregated account as a reserve for working capital, and may be used for such purposes

as the Association or the Board deems necessary or appropriate. Such payment shall not be considered an advance payment of regular assessments or relieve an Owner from making the regular monthly payment of the monthly Assessments as the same come due.

22. **Additions, Alterations and Improvements -General and Limited Common Elements.**

The Association may make such capital additions, alterations or improvements of or to the Common Elements during any fiscal year as may be provided for or contemplated pursuant to the Budget for such year approved in accordance with paragraph 20.b above. Further, if the Board determines that any alterations, additions or replacements of or to any Common Elements are required in excess of the amounts provided for or contemplated pursuant to the current year's Budget, such expenditure may be approved as a Special Assessment if approved in accordance with the procedures set forth in paragraph 20.e above. Such procedures, however, shall not apply to expenditures for repair or replacement upon any damage, destruction or condemnation governed by paragraphs 29 or 30.

23. **Insurance.**

a. **Required Coverages.** The Association shall obtain and maintain at all times, to the extent available upon commercially reasonable terms, policies of insurance, written with companies licensed to do business in Iowa having a B general policy holder'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., covering the risks set forth below, or if said ratings are no longer available, a comparable rating from a comparable rating agency. The types of coverages to be obtained, risks to be covered, and policy provisions shall at a minimum comply with the requirements of the Agencies, and further shall provide to the extent available upon commercially reasonable terms for the following:

- (1) **Casualty.** Property insurance on broad form covered causes of loss, under extended coverage and all risk endorsements. Said insurance shall insure the Common Elements (not including improvements or fixtures installed by an Owner or any furnishings, including carpeting and other floor coverings, wall coverings, draperies, oven, range, refrigerator, disposal, light fixtures and other items of personal property belonging to an Owner), together with all service equipment contained therein in an amount equal to the full replacement value at the time the insurance is purchased and at each renewal date, without deduction for depreciation. Such policy shall include an agreed amount endorsement, an inflation guard endorsement and building ordinance or law enforcement endorsement, to the extent same are available on commercially reasonable terms. All policies shall contain a standard non-contributory mortgage clause in favor of each First Mortgagee, which shall provide that the insurance proceeds shall be payable to the Association for the use and benefit of the Owners and the First Mortgagees, as their interests may appear. Such policy shall provide

for a maximum deductible amount equal to the lesser of \$10,000.00 as adjusted by the Index or 1.0% of the policy face amount.

- (2) Liability. Commercial general liability and property damage insurance covering all of the Common Elements, commercial space owned and leased by the Association, and public ways of the Project in such limits as the Board or Managing Agent may from time to time determine, but not in an amount less than \$1,000,000.00 per injury, per person, per occurrence, and with umbrella liability limits of \$2,000,000.00 per occurrence, covering all claims for bodily injury or property damage. Coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and death of persons in connection with the operation, maintenance or use of the Common Elements, legal liability arising out of lawsuits related to employment or independent contractor contracts of the Association and operation of automobiles on behalf of the Association. Such liability insurance shall name the Owners, the members of the Board of Directors, and the Managing Agent and their respective employees, agents and all persons acting as agents as additional insureds.
- (3) Boilers. If there are steam boilers in operation on the Real Estate, there must be in force boiler explosion insurance providing for coverage of not less than \$50,000.00 per accident per location.
- (4) Worker's Compensation. Worker's Compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association, in the amounts and in the forms now or hereafter required by law.
- (5) Fidelity Bond. Fidelity coverage against dishonesty of employees, the Managing Agent and any other Person receiving, controlling or disbursing funds of the Association, and against destruction or disappearance of money or securities and forgery. Said policy shall also contain endorsements covering any persons who serve the Association without compensation. The fidelity insurance coverage must at least equal the maximum amount of funds that will be in the custody of the Association or the Managing Agent at any time while the policy is in force, but in no event in an amount less than that required by the Agencies. Each policy shall include a waiver by the issuer of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions.
- (6) Others. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Real Estate, including insurance against loss or damage to plate or other glass and to any personal property of the Association.

- (7) Flood. If the Real Estate is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the Project in an amount which is the lesser of the maximum amount of insurance available under the National Flood Insurance Act of 1968 or the aggregate of the unpaid principal balances of the First Mortgages on the Condominium Units comprising the Building.

b. Policies and Procedures.

1. Deductibles; Requirements. Except as provided in paragraph 23.a above, insurance obtained by the Association may contain such deductible provisions as the Board may deem appropriate. If the insurance described is not available upon commercially reasonable terms, or if any policy of insurance is cancelled or expires without a replacement policy therefor having been obtained by it, the Association shall promptly cause notice of that fact to be delivered to all Owners. The Association may carry any other type of insurance it considers appropriate, in amounts it deems appropriate, to insure the interests of the Association or the Project.
2. Procedures for Claims. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims.

- c. Owner Policies**. Insurance policies issued to the Association do not eliminate the need for Unit Owners to obtain insurance for their own Unit. Each Owner shall carry an HO-6 homeowner's insurance policy, or another policy offering the same or greater coverage, for each Unit owned at the Owner's expense, provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of such additional insurance carried by an Owner. The Owner's insurance policy shall carry liability limits of at least \$100,000 and shall include fire legal liability coverage. Insurance coverage on improvements and fixtures installed by an Owner and on furnishings, including carpeting and other floor coverings, draperies, oven, range, refrigerator, wallpaper, disposal, light fixtures and other items of personal property belonging to an Owner, and public liability coverage within each Unit (including Parking Units) shall be the sole and direct responsibility of the Owner thereof, and the Board of Directors, the Association and/or Managing Agent shall have no responsibility therefor. Similarly, Owner shall be responsible for insuring any automobiles, motorcycles, or other vehicles, any bicycles, any parts and contents of any of the foregoing and any other personal property, which are parked or stored in any Parking Units, and the Board of Directors, the Association and/or Managing Agent shall have no responsibility therefor. Each Owner shall provide the Managing Agent with a current copy of a certificate of insurance verifying the

Owner has obtained an insurance policy meeting the requirements of this paragraph for each Unit owned by such Owner.

- d. **Required Valuations.** Prior to obtaining any policy of casualty insurance or renewal thereof pursuant to the provisions of paragraph 23.a., the Board or Managing Agent shall obtain an opinion from one or more qualified consultants knowledgeable in determining replacement cost, who shall reasonably estimate the full replacement value of the entire Building, without deduction for depreciation, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions of paragraph 23.a. Such determination of full replacement value shall be made annually, and each First Mortgagee, upon request, shall be furnished with a copy thereof within 30 days after receipt of such written appraisals. Such amounts of insurance shall be updated annually in accordance with the currently determined full replacement value.

- e. **Owner's Actions.** All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only with respect to the interest of any particular Owner that is guilty of a breach of warranty, a negligent or willful act or omission, or non-compliance with any provision of such policy, including payment of the insurance premium applicable to that Owner's interest. Furthermore, if a particular Owner permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of a policy would otherwise invalidate or suspend the entire policy, the insurance under any such policy attributable to the interests of all other insured Owners, First Mortgagees and other Persons who are named insureds and who are not guilty of any such act or omission shall not be invalidated or suspended and shall remain in full force and effect.

24. **Lien for Non-Payment of Assessments.**

a. **Lien.**

- (1) All due and unpaid Assessments chargeable to any Owner, including Special and Reimbursement Assessments, and all fines, late charges, penalties or interest assessed but unpaid in accordance with this Declaration, and all costs and expenses, including reasonable attorneys' fees, incurred in collecting such amounts, shall constitute a lien on such Owner's Unit with the priority granted to a condominium assessment lien pursuant to Section 499B of the Act.

- (2) To evidence such lien the Board of Directors or Managing Agent may (but shall not be obligated to) prepare a written notice setting forth the amount of such unpaid indebtedness, the amount of late charges and accrued interest, the name of the Owner of the Condominium Unit and a description of the Condominium Unit. If prepared, such notice shall be signed by one of the members of the Board of Directors or by the

Managing Agent, and shall be recorded in the Records. Such lien for Assessments shall attach upon the failure of payment of the Assessment on the date it became due.

- b. **Enforcement of Lien.** Such lien may be enforced at the election of the Association by:
- (1) Foreclosure of the lien against the defaulting Owner's Condominium Unit by the Association in like manner as a mortgage on real estate, upon the recording of a notice or claim thereof. During the period of such foreclosure action, the Owner shall also be required to pay to the Association when due all Assessments for the Condominium Unit. The Managing Agent, the Board of Directors and other Owners shall have the power to bid on the Condominium Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same;
 - (2) Such other action or proceeding as may be authorized by Iowa law;
 - (3) In any proceedings under this paragraph or under paragraph 25 below, the Owner shall be required to pay, and the obligation shall be deemed to include, all costs, expenses and reasonable attorneys' fees incurred in connection with collecting such Assessments. The Association shall be entitled to the appointment of a receiver during the pendency of any action brought under this paragraph or under paragraph 25 below to collect all sums alleged to be due from the Owner prior to or during the pending action.
- (c) **Encumbrancer's Rights.** Any encumbrancer holding a lien on a Condominium Unit may pay, but shall not be required to pay, any unpaid Assessments payable with respect to such Condominium Unit, and upon such payment the encumbrancer shall have a lien on such Condominium Unit for the amounts paid of the same rank as the encumbrancer's lien. Except as expressly provided under the Act any First Mortgagee who acquires a Condominium Unit by foreclosure or by a deed in lieu thereof shall acquire title to such Condominium Unit free and clear of any lien for unpaid Assessments, and shall only be responsible for Assessments arising after the date upon which such First Mortgagee receives a Deed to the Condominium Unit. All amounts not recovered by the Association under this paragraph shall remain a personal or individual obligation of the prior Owner of such Unit.
- (d) **Homestead Exemption.** Each Owner hereby agrees that the Association's lien on a Condominium Unit for Assessments as hereinbefore described shall be superior to any homestead exemption provided by applicable law, and each Owner hereby agrees that the acceptance of a deed or other instrument of conveyance for any Condominium Unit within the Building shall signify such grantee's waiver of the homestead exemption granted in said law.

- (e) **Release of Lien.** Any recorded lien for Assessments may be released by recording a Release of Lien executed by a member of the Board of Directors or by the Managing Agent on behalf of the Association.

25. **Owners' Obligations for Payment of Assessments.** The amount of the Assessments assessed against each Condominium Unit, plus all fines, late charges, penalties, interest, costs and expenses, including reasonable attorneys' fees, shall be the personal and individual debt of the Owner or Owners of such Unit at the time the Assessment is made or the other costs are incurred. Suit to recover a money judgment for unpaid Assessments, fines, late charges, penalties, interest, costs and expenses, including attorney's fees, shall be maintainable without foreclosing or waiving the lien securing the same. No Owner may exempt himself from liability for his contribution towards the Assessments by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Condominium Unit.

26. **Liability for Common Expenses Upon Transfer of Condominium Unit is Joint.**

- a. **Ascertainability of Unpaid Assessments; Financial Statements.** Upon written request for a statement of account by an Owner, Mortgagee, prospective Mortgagee or prospective grantee of a Unit, or by a holder of a security interest in a Unit, or by a Person authorized in writing to make such request, the Association or the Managing Agent shall deliver in accordance with the Act a copy of the most recent financial statement of the Association, if any, and a written statement of (i) the amount of any unpaid Assessments, including but not limited to any Special or Reimbursement Assessments, (ii) the amount of the current levied Assessments, (iii) the dates that Assessments are due, (iv) the amount of any advance payments made, (v) the amount of any prepaid items such as insurance premiums and reserves therefor, and (vi) deficiencies in reserve accounts. Such statements shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Any such statement shall be delivered within 14 days after the receipt of the request and shall be binding on the Association, the Board of Directors, and all Unit Owners. If no such statement is furnished upon request of an Owner or Mortgagee, or their respective designees, by personal delivery or by certified mail, first-class postage prepaid, return receipt requested, then the Association shall have no right to assert a lien upon the Unit for unpaid Assessments which were due as of the date of the request.

- b. **Grantee Liability.** The grantee of a Condominium Unit, except a First Mortgagee who acquires a Condominium Unit by foreclosure or a deed in lieu of foreclosure, shall be jointly and severally liable with the grantor for all unpaid Assessments against the latter up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

27. **Mortgaging a Condominium Unit — Priority.** Any Owner shall have the right from time to time to mortgage or encumber his Condominium Unit by deed of trust, mortgage or other security instrument. The Owner of a Condominium Unit may encumber his Unit with a Mortgage or Mortgages junior to the lien of the First Mortgage (collectively, the “Junior Mortgage”) on the following conditions: (a) any such Junior Mortgage shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for Assessments and other obligations created by this Declaration; and (b) the Mortgagee under any Junior Mortgage shall release, for the purpose of restoration of any improvements upon the encumbered Condominium Unit, all of his right, title and interest in and to the proceeds under all insurance policies upon said Condominium Unit which were effected or obtained by the Association. Such release shall be furnished forthwith by the holder of the Junior Mortgage upon written request of the Managing Agent or the Association, and if not furnished may be executed by the Association as attorney-in-fact for such holder of a Junior Mortgage.

28. **Restrictive Covenants and Obligations.**

- a. **No Imperiling of Insurance.** No Owner and no Owner’s Guests shall do anything or cause anything to be kept in or on the Project which might: (i) result in an increase in the premiums of insurance obtained for the Project unless the Owner pays the full amount of such increase upon demand of the Association; or (ii) cause cancellation of such insurance.
- b. **No Violation of Law.** No Owner and no Owner’s Guests shall do anything or keep anything in or on the Project which would be in violation of any statute, rule, ordinance, regulation, permit or other requirement of any governmental body.
- c. **No Noxious, Offensive, Hazardous or Annoying Activities.** No noxious or offensive activity shall be carried on upon any part of the Real Estate, nor shall anything be done or placed on or in any part of the Real Estate which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. No activity shall be conducted on any part of the Real Estate and no improvements shall be made or constructed on any part of the Real Estate which are or might be unsafe or hazardous to any Person or property. No sound shall be emitted from any part of the Real Estate which is unreasonably loud or annoying. No odor shall be emitted from any part of the Real Estate which is noxious or offensive to others. No light shall be emitted from any part of the Real Estate which is unreasonably bright or causes unreasonable glare. Nothing in this paragraph shall restrict any Commercial Unit Owner from conducting activities within such Owner’s Unit to the extent same are conducted in accordance with all applicable laws, ordinances and building codes.
- d. **No Unsightliness.** No unsightliness or waste shall be permitted on or in any part of the Real Estate. Without limiting the generality of the foregoing, no Owner shall keep or store anything (except in designated storage areas) on or in any of the Common Elements. No Owner shall hang, erect, affix or place anything upon

any of the Common Elements (except for decorative items located within his Unit or as may be authorized by the Board), and no Owner shall place anything on or in windows or doors of Units which would or might create an unsightly appearance or create an unsafe condition.

- e. **Restriction on Animals.** The Association may authorize or prohibit keeping of animals on the Real Estate by means of Rules promulgated by the Association. In no event, however, may any Owner keep animals on any part of the Real Estate for any commercial purposes, except that any Commercial Unit may be operated as a pet store or for similar uses in accordance with applicable laws.
- f. **Restriction on Signs.** Except as hereafter provided, no signs or advertising devices of any nature shall be erected or maintained on any part of the Real Estate without the prior written consent of the Board. The Board shall permit the placing of at least one sign of reasonable size and dignified form to identify the Real Estate and the Condominium Units therein. Further, each Owner of a Commercial Unit shall have the right to display and to attach to the Building one or more signs to identify the business conducted therein to the extent permitted in accordance with applicable laws and ordinances, subject to such uniform sign criteria as may be promulgated from time to time by the Association. Further, no modifications or additions to the signage criteria may be enforced to the extent that such enforcement would require the removal or alteration of any signage that complied with all applicable requirements at the time the sign was installed.
- g. **No Violation of Rules.** No Owner and no Owner's Guests shall violate any Rules adopted from time to time by the Association, whether relating to the use of Units, the use of Common Elements, or otherwise. The Board may impose a reasonable fine on any Owner for each violation by such Owner and his Guests after at least ten days' prior written notice of the intent to impose such fine and an opportunity to be heard.
- h. **Owner Caused Damages.** If any loss or damage shall be caused to any Person or property, including the Real Estate or any Unit therein, due to the act or neglect of any Owner or such Owner's Guest, such Owner shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the Association and the carrier of the insurance has waived its rights of subrogation against such Owner. The amount of any uninsured loss or damage may be collected by the Association from such Owner as an assessment against such Owner, by legal proceedings or otherwise, and such amount (including reasonable attorneys' fees) shall be secured by a lien on the Condominium Unit of such Owner as provided herein for Assessments.
- i. **Leasing Unit.** The right to lease, rent, sell, transfer, or convey any Condominium Unit may be subject to such reasonable and uniform objective standards relating to financial responsibility and/or character as may now be adopted by the Association in the form of rules and regulations.

- j. **Vehicle Restrictions.** The Association may authorize or prohibit certain vehicles from remaining upon the Real Estate by means of Rules promulgated by the Association.
 - k. **Parking of Vehicles.** Parking of any and all automobiles, motorcycles or similar vehicles and of any bicycles in the Parking Units shall be subject to such Rules as the Association may promulgate. Further, the Association shall have the right to regulate and establish reasonable Rules relating to the use and operation of the portions of the Parking Lot and Garage consisting of Common Elements. All Persons authorized to park in any Parking Units, having the right to use the Garage or Parking Lot, shall have a non-exclusive access easement over and upon the elevators, Lobby, hallways, stairs, corridors and other Common Elements as may be necessary for access between their respective Parking Units and any road, street or walkway adjacent to the Real Estate.
 - l. **Access Restrictions.** The Board may adopt Rules which prohibit or restrict access of the general public to or from portions of the Building as long as there is sufficient outside access complying with all applicable laws.
 - m. **Final Determination.** Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this paragraph 28 shall be made by the Board of Directors and shall be final.
29. **Association as Attorney-in-Fact – Damage and Destruction — Obsolescence.** This Declaration makes mandatory the irrevocable appointment of an attorney-in-fact to deal with the Real Estate upon its damage, destruction, repair, reconstruction or obsolescence. Title to any Condominium Unit is declared and expressly made subject to the following terms and conditions, and acceptance by any grantee of a deed from any Owner shall constitute appointment of the attorney-in-fact herein provided. All of the Owners and holders of any interest in the Real Estate irrevocably constitute and appoint the Association as their attorney-in-fact, in their name, place and stead, for the purpose of dealing with the Real Estate upon its damage, destruction, repair, reconstruction or obsolescence as hereinafter provided. As attorney-in-fact, the Association, by its duly authorized officers, shall have full and complete authorization, right and power to negotiate, settle and make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvement(s) as used in the succeeding paragraphs means restoring the improvement(s) to substantially the same condition in which they existed prior to the damage, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before. In no event shall any such reconstruction make any Commercial Unit less visible or viable than prior to such damage or destruction. Except as otherwise herein provided, the proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration, reconstruction or replacement unless the Owners and the First Mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

Assessments for Common Expenses shall not be abated during the period of insurance adjustment, repair and reconstruction.

- a. **Less Than Two-Thirds Destroyed; Fully Insured.** Upon damage or destruction to the Real Estate to the extent of not more than sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the total replacement cost thereof, not including land, due to fire or other casualty, the insurance proceeds, if sufficient to reconstruct the improvement(s), shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvement(s) shall be promptly repaired and reconstructed. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair and restoration of the improvement(s) using insurance proceeds for same.

- b. **Less Than Two-Thirds Destroyed; Not Fully Insured.** If the insurance proceeds are insufficient to repair and reconstruct the improvements(s), and if such damage is to the extent of not more than sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the total replacement cost of the Real Estate, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of an Assessment to be made against all of the Owners and their Condominium Units. Such deficiency Assessment shall be a Common Expense, shall not require the consent or approval of the Owners, shall be made pro rata according to each Owner's Allocated Interest and shall be due and payable within 30 days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds and such Assessment. The Assessment provided for herein shall be a debt of each Owner and a lien on his Condominium Unit and may be enforced and collected as provided for Assessments. In addition, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association, as attorney-in-fact. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order:
 - (1) for payment of taxes and special assessment liens in favor of any assessing entity;
 - (2) for payment of any unpaid Assessments having priority over a First Mortgage pursuant to the Act;
 - (3) for payment of the balance of the lien of any First Mortgage;
 - (4) for payment of unpaid Assessments;

- (5) for payment of Junior Mortgages and encumbrances in the order of and to the extent of their priority; and
- (6) the balance remaining, if any, shall be paid to the Owner.

c. **More Than Two-Thirds Destroyed; No Reconstruction Plan.** If the Real Estate is damaged or destroyed to the extent of more than sixty-six and two-thirds percent (66-2/3%) of the total replacement cost thereof, not including land, and if the Owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the Common Elements do not voluntarily, within 100 days thereafter, make provisions for reconstruction, which plan must have the approval or consent of at least seventy-five percent (75%) of the First Mortgagees (based upon one vote for each Unit encumbered), the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's duly authorized officers, the entire remaining Real Estate shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Condominium Survey, the Articles and the Bylaws. The insurance settlement proceeds shall be collected by the Association and such proceeds shall be divided by the Association according to each Owner's interest (as such interests appear on the policy or policies), and such divided proceeds shall be paid into separate accounts, each such account representing one of the Condominium Units. Each such account shall be in the name of the Association, and shall be further identified by the Condominium Unit designation and the name of the Owner. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds derived from the sale of the Real Estate. Such apportionment shall be based upon each Owner's percentage interest in the Common Elements. The total funds in each account shall be used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in paragraphs b.(1) through (6) of this paragraph. The provisions contained in this paragraph shall not hinder the protection given to a First Mortgagee under a mortgagee endorsement.

d. **More Than Two-Thirds Destroyed; Reconstruction Plan.** If the Real Estate is destroyed or damaged to the extent of more than sixty-six and two-thirds percent (66-2/3%) of the total replacement cost thereof, not including land, and if the Owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the Common Elements adopt, within 100 days thereafter, a plan for reconstruction, which plan must have the approval or consent of at least seventy-five percent (75%) of the First Mortgagees (based upon one vote for each Unit encumbered), then all of the Owners shall be bound by the terms and other provisions of such plan. The Association shall have the right to use, in accordance with such plan, all proceeds of insurance for such destruction or damage, as well as the proceeds of an assessment to be made against all of the Owners and their Condominium Units. Any assessment made in connection with such plan shall be a Common Expense and shall be made pro-rata according to

each Owner's Allocated Interest and shall be due and payable as provided by the terms of such plan, but not sooner than 30 days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements, using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the Assessment. The Assessment provided for herein shall be a debt of each Owner and a lien on his Condominium Unit and may be enforced and collected as provided herein for Assessments. In addition, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such Assessment within the time provided, and if not so paid the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraphs b.(1) through (6) of this paragraph.

- e. **Renewal Plan.** The Owners representing an aggregate ownership interest of eighty-five percent (85%), or more of the Allocated Interests may agree that the Condominium Units are obsolete and adopt a plan for the renewal and reconstruction of the Real Estate, which plan shall have the approval or consent of at least eighty-five percent (85%) of the First Mortgagees (based upon one vote for each Unit encumbered). If a plan for the renewal or reconstruction of the Real Estate is adopted, notice of such plan shall be recorded, and the expenses thereof shall be payable as a Special Assessment by all of the Owners pro-rata according to each Owner's percentage interest in the Common Elements. Any Owner not a party to such a plan for renewal or reconstruction may give written notice to the Association within 15 days after the adoption of such plan that his Condominium Unit shall be purchased by the Association for the fair market value thereof. The Association shall then have 15 days within which to cancel such plan. If such plan is not cancelled, the Condominium Unit(s) of such Owner(s) shall be purchased by the Association according to the following procedures. If any such Owner and the Association can agree on the fair market value thereof, then the sale of such Owner's Condominium Unit shall be consummated within 30 days thereafter. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the other shall be the "commencement date" from which all periods of time mentioned in this paragraph shall be measured. Within ten days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party) an independent appraiser. If one party fails to make such a nomination, the appraiser nominated by the other party shall, within five days after such failure, appoint and associate with him another independent appraiser. If the two appraisers designated by the parties, or selected pursuant to this paragraph in the event of the default of one party, are unable to agree upon the fair market value of the Unit prior to the expiration of ten days following the appointment of the second appraiser, they shall, within five days thereafter, appoint another independent appraiser to be umpire between them, if they can

agree on such person. If they are unable to agree upon such umpire within such five-day period, then each appraiser previously appointed shall nominate two independent appraisers, and from the names of the four persons so nominated one shall be drawn by lot by any judge of any court of record in Iowa, and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within ten days after the failure of the two appraisers to agree, which, in any event, shall not be later than 30 days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their disagreement, then the decision of the umpire, shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the Owner. The sale shall be consummated within 30 days thereafter, and the Association, as attorney-in-fact, shall disburse the proceeds of such sale as is provided in subparagraphs b.(1) through (6) of this paragraph.

- f. **No Renewal Plan.** The Owners representing an aggregate ownership interest of eighty-five percent (85%) or more of the Allocated Interests may agree that the Condominium Units are obsolete and that the same should be sold. Such agreement must have the approval or consent of at least eighty-five percent (85%) of the First Mortgagees (based upon one vote for each Unit encumbered). In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by a duly authorized officer of the Association, the Real Estate shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Condominium Survey, the Articles and the Bylaws. The sales proceeds shall be apportioned between the Owners on the basis of each Owner's Allocated Interest and such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium Unit. Each account shall be in the name of the Association, and shall be further identified by the Condominium Unit designation and the name of the Owner. The Association, as attorney-in-fact, shall use and disburse the total amount of each of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in subparagraphs b.(1) through (6) of this paragraph.

30. **Condemnation.**

- a. **Consequences of Condemnation.** If at any time or times during the continuance of condominium ownership pursuant to this Declaration, all or any part of the Real Estate shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance of any such proceeding, the provisions of this paragraph shall apply.
- b. **Proceeds.** All compensation, damages or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the Association for the use and benefit of the Owners and the Mortgagees, as their interests may appear.

- c. **Complete Taking.** If the entire Real Estate is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of any such proceeding, condominium ownership pursuant to this Declaration shall terminate. The Condemnation Award shall be apportioned among the Owners in proportion to their respective Allocated Interest, provided that if a standard different from the value of the Real Estate as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree, or otherwise, then in determining such share the same standard shall be employed to the extent it is relevant and applicable.
- d. **Partial Taking.** If less than the entire Real Estate is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of any such proceeding, the Condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner. As soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award among compensation, damages, and other proceeds, and shall apportion the amounts so allocated among the Owners as follows: (i) the total amount allocated to taking of, or injury to, the Common Elements shall be apportioned among the Owners in proportion to their respective Allocated Interest, (ii) the total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken or condemned, (iii) the respective amounts allocated to the taking of, or injury to, a particular Unit and/or improvements an Owner had made within his own Unit shall be apportioned to the particular Condominium Unit involved, and (iv) the amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Condemnation Award is already established in the negotiation, judicial decree or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Any distribution of the Condemnation Award made pursuant to this paragraph shall be made by checks payable jointly to the Owners and their Mortgagees.
- e. **Distribution.** The Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable, provided that in the event of a complete taking such distribution shall be made in the same manner as is provided in paragraph 29.b.
- f. **Mortgagee Notice.** The Association shall give timely notice to each First Mortgagee of the commencement of any condemnation or eminent domain proceedings and shall notify said First Mortgagees in the event of a taking of all or any part of the Common Elements, if the value of the Common Elements taken exceeds \$10,000.00.

- g. **Reorganization.** If a partial taking results in the taking of a complete Unit, the Owner thereof automatically shall cease to be a member of the Association, and such Owner's interest in the Common Elements shall thereupon terminate, and the Association, as attorney-in-fact for such Owner, may take whatever action is necessary and execute such documents as are necessary to reflect such termination. Thereafter the Association shall reallocate the ownership and assessment ratios determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception, and shall submit such reallocation to the Owners and Eligible Mortgagees of the remaining Condominium Units for amendment of this Declaration as provided in paragraphs 31.b and 32.a.

31. **Amendment and Termination of Declaration.**

- a. **Duration of Declaration.** All of the provisions contained in this Declaration shall continue and remain in full force and effect until condominium ownership of the Real Estate and this Declaration are terminated, revoked, or amended as hereinafter provided.
- b. **Amendment and Termination.**
- (1) Except as otherwise expressly allowed by this Declaration or the Act, any provision contained in this Declaration may be amended, or additional provisions may be added to this Declaration, only by a vote or written agreement of the Owners, as shown by the Records, representing an aggregate ownership interest of sixty seven percent (67%), or more, of the Allocated Interests. Without limiting the generality of the foregoing, such vote or written agreement of the Owners shall be required for any of the amendments referenced in paragraph 32.a below. The consent(s) of any Junior Mortgagees shall not be required under the provisions of this paragraph.
 - (2) Notwithstanding anything in subparagraph (1) to the contrary, no consent or agreement of Owners or Mortgagees shall be required in order to allow the Owners to exercise their respective rights under paragraph 4.
 - (3) All amendments to this Declaration must be prepared and recorded in the Records.
- c. **Effect of Provisions of Declaration.** Each provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration, shall:
- (1) Be deemed incorporated in each deed or other instrument by which any right, title or interest in the Real Estate or in any Condominium Unit is

granted, devised or conveyed, whether or not set forth or referenced in such deed or instrument;

- (2) By virtue of acceptance of any right, title or interest in the Real Estate or in any Condominium Unit by an Owner, be deemed accepted, ratified, adopted and declared as a personal covenant, shall be binding on such Owner and such Owner's heirs, personal representatives, successors and assigns and shall be deemed a personal covenant to, with and for the benefit of the Association but not to, with or for the benefit of any other Owner;
- (3) Be deemed a real covenant by and also an equitable servitude, running, in each case, as a burden with and upon the title to the Real Estate and each Condominium Unit and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of the Real Estate and each Condominium Unit; and
- (4) Be deemed a covenant, obligation and restriction burdening and encumbering the title to the Real Estate and each Condominium Unit in favor of the Association.

32. **Rights of First Mortgagees.** For purposes of this paragraph, First Mortgagees requesting notice from the Association regarding any occurrence referenced in this paragraph or any proposed action that requires the consent of a specified percentage of First Mortgagees shall be referred to as "**Eligible Mortgagees.**" Subject to paragraphs 4 and 31.b, but notwithstanding any other provisions in this Declaration to the contrary:

- a. **Amendments of Condominium Instruments.** No material amendment shall be made to the Declaration, Articles or Bylaws of the Association (collectively, the "**Condominium Instruments**") without prior written notice of such amendment to all Eligible Mortgagees, and without the approval of Eligible Mortgagees representing at least fifty-one percent (51%) of the votes of the Units that are subject to Mortgages held by Eligible Mortgagees. A change to any of the provisions governing the following in the Condominium Instruments shall be considered "material" for purposes of this paragraph 32.a: (i) voting rights; (ii) increases in Assessments for Common Expenses that raise the previously assessed amount by more than 25%, or changes in the provisions governing Assessment liens or the priority of Assessment liens; (iii) reductions in reserves for maintenance, repair, and replacement of Common Elements; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the Common Elements or rights to their use except as allowed in paragraphs 3.a and 4; (vi) redefinition of any Unit boundaries except as allowed in 3.a and 4; (vii) convertibility of Units into Common Elements or Limited Common Elements or vice versa except as allowed under 3a. and 4; (viii) hazard or fidelity insurance requirements; (x) imposition of any restrictions on the leasing of Units; (ix) imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit; (x) a

decision by the Association to establish self-management when professional management has previously been required by this Declaration or by any Eligible Mortgagee; (xi) restoration or repair of the Real Estate or Building (after damage or partial condemnation) in a manner other than that specified in the Condominium Instruments; or (xii) any provisions that expressly benefit First Mortgagees. Any addition, deletion or amendment shall not be considered material if it is for the purpose of correcting technical errors, clarification only or to comply with the requirements of any Agencies. If an Eligible Mortgagee fails to submit a response to any written proposal for any such material amendment within 30 days after it receives notice of the proposal by certified or registered mail, return receipt requested, such Mortgagee's approval shall conclusively be deemed to have been given.

- b. **Inspection; Notices of Meetings.** Any First Mortgagee shall be entitled to inspect the Condominium Instruments, books, records and financial statements relating to the Real Estate during normal business hours, and upon written request shall be entitled to: (i) receive an audited financial statement of the Association for the preceding fiscal year of the Association; and (ii) written notice of all meetings of the Association, as well as the right to designate a representative to attend all such meetings.
- c. **Other Notices.** The Association shall provide timely written notice to any Mortgagee (provided such Mortgagee has provided the Association with a written request for such notice and has notified the Association of its address and the unit number of the Unit on which it has, or insures or guarantees, the Mortgage) of: (i) any condemnation or casualty loss that affects either a material portion of the Real Estate or the Unit securing its Mortgage; (ii) any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Unit on which it holds the Mortgage; (iii) a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association which is not replaced by a policy satisfying the requirements of this Declaration prior to the effective date of such lapse, cancellation or modification; and (iv) any proposed action that requires the consent of a specified percentage of the First Mortgagees. No provision in the Condominium Instruments shall be construed to give a Unit Owner or any other party priority over the rights of any First Mortgagee of a Unit with respect to distribution by the Association of insurance proceeds or a condemnation award for losses to or a taking of Units and/or Common Elements.

The provisions of this paragraph 32 are in addition to any other rights of Mortgagees herein contained or provided under law. If any other paragraph of this Declaration requires the approval of a higher percentage of the First Mortgagees than are required by this paragraph 32, the percentage required by such other paragraph shall control.

33. **Protection of Encumbrancer.** Subject to the provisions of paragraph 27, no violation or breach of or failure to comply with any provision of this Declaration, and no action to

enforce any such provision, shall affect, defeat, render invalid or impair the lien of any First Mortgage or any other lien on any Condominium Unit taken in good faith and for value and perfected by recording in the Records, prior to the time of the recording of an instrument setting forth the following: (a) a description of the Condominium Unit; (b) the name or names of the Owner or Owners of fee simple title to the Condominium Unit; and (c) notice of such violation, breach or failure to comply or action to enforce, affect, defeat, render invalid or impair either the title or interest of the holder of any such First Mortgage or other lien or the title or interest acquired by any purchaser upon foreclosure of any such First Mortgage or other lien. Any such purchaser on foreclosure shall take subject to this Declaration; provided, however, that violation or breach of, or failure to comply with, any provisions of this Declaration which occurred prior to the vesting of fee simple title in such purchaser shall not be deemed breaches or violations hereof or failures to comply herewith with respect to such purchaser, his heirs, personal representatives, successors or assigns.

34. **Miscellaneous.**

- a. **Supplemental to Law.** The provisions of this Declaration shall be in addition and supplemental to the Act and to all other provisions of law.
- b. **Numbers and Genders.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.
- c. **Registration by Owner of Mailing Address.** Each Owner shall register his/her mailing address with the Association. All notices or demands intended to be served upon an Owner shall be delivered personally or sent by first class mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. If an Owner of a Residential Unit or a Commercial Unit fails to register his mailing address, such Owner's mailing address shall be deemed to be the mailing address of such Unit. If an Owner of a Parking Unit fails to register his mailing address, such Owner's mailing address shall be deemed to be (i) the address determined pursuant to the preceding sentences if such Owner also owns a Residential Unit or a Commercial Unit, or (ii) in other cases the address for such Owner as shown on the deed conveying such Owner's Parking Unit(s) or, if no such address is provided, notices may be delivered by posting on any wall, pillar or post adjacent to such Owner's Parking Unit. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, to 120 SW 5th, Des Moines, Iowa 50309, Attention: President, agent for service, until such address is changed by a notice of address duly recorded with the office of the Secretary of State of Iowa.
- d. **Successors and Assigns.** This Declaration shall be binding upon and shall inure to the benefit of the Association and each Owner, and the heirs, personal representatives, successors and assigns of each of them.

- e. **Severability.** All provisions of this Declaration are severable. Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.
- f. **Captions.** The captions and headings in this Declaration are for convenience only and shall not be considered in construing any provision of this Declaration.
- g. **No Waiver.** Failure to enforce any provision of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration no matter how many violations or breaches occur.
- h. **Conflict.** In the event of a conflict between the provisions of the Declaration and the Bylaws, the Declaration shall prevail except to the extent the Declaration is inconsistent with the Act.
- i. **Act and Paragraph References.** All references to particular sections of the Act shall be to the corresponding section of Chapter 499B of the Iowa Statutes. Unless the context otherwise clearly indicates, references in this Declaration to particular paragraphs or subparagraphs shall refer to the corresponding provision of this Declaration.
- j. **Arbitration.** Any claim, controversy, or dispute over the imposition, amount or any other aspect of a Reimbursement Assessment, or over such other matters as the Association and the affected party may mutually agree, shall be resolved by binding arbitration in accordance with Chapter 679A, Code of Iowa, as amended. Any such arbitration proceeding may be required by any aggrieved person upon written notice to the Association. The parties to such dispute shall agree upon a single arbitrator, who shall be an experienced operator or manager of condominium projects. If the parties are unable to agree upon an arbitrator within 15 days after the Association's receipt of the previously mentioned written notice, the presiding judge of the District Court for the County of Polk, upon application by a party to the dispute, shall appoint an arbitrator with the qualifications set forth above. Judgment upon the determination of the arbitrator shall be entered and enforced by the District Court for the County of Polk, and any such judgment shall be final and conclusive. Any and all discovery in conjunction with such arbitration shall be conducted in accordance with the discovery provisions of the Uniform Arbitration Act, as amended.

Dated this 17 day of December, 2020

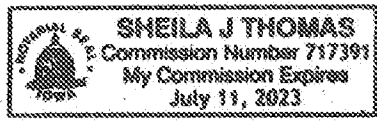
WHITELINE LOFTS OWNERS ASSOCIATION

By: Randall J. Kramer, VP
Randall J. Kramer, Vice President

STATE OF IOWA)
)ss.
COUNTY OF POLK)

The foregoing record was acknowledged before me on this 17th day of December, 2020 by Randall J. Kramer, Vice President of the Whiteline Lofts Owners Association, Inc.

Sheila J. Thomas
Notary Public in and for the State of Iowa



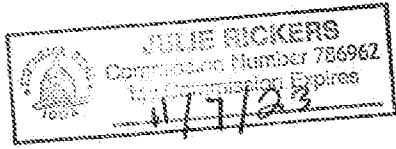
Dated this 15th day of December, 2020

WHITELINE LOFTS OWNERS ASSOCIATION

By: *Craig Maxon*
Craig Maxon, President

STATE OF IOWA)
)ss.
COUNTY OF POLK)

The foregoing record was acknowledged before me on this 15th day of December, 2020 by Craig D. Maxon, President of the Whiteline Lofts Owners Association, Inc.



Julie Rickers
Notary Public in and for the State of Iowa

EXHIBIT 1

Units 101 through 902, Basement Parking Units B1 through B14 and Outdoor Parking Units P1 through P56, Whiteline Lofts, a Condominium, City of Des Moines and County of Polk, Iowa, in accordance with and subject to the Declaration of Submission to Horizontal Property Regime for Whiteline Lofts, City of Des Moines and County of Polk, Iowa, recorded on October 11, 2006, in Book 11896 at Page 222 in the records of the Polk County Iowa Recorder.

EXHIBIT 2

WHITELINE DECLARATION APPROVAL FORM

DATE	UNIT #	PRINTED NAME	SIGNATURE	%
11/8/20	506	Craig Maxon	<i>Craig Maxon</i>	3.6532
11/9/20	202	Uriah Robert ^{Reel} _{Owner}	<i>Uriah Robert</i>	1.6078
11/9/20	603	Susan M. Schmitz	<i>Susan M. Schmitz</i>	2.2046
11/9/20	804	Randy Kuhn	<i>Randy Kuhn</i>	2.1608
11-9-20	402	WESSETTER	<i>Wessetter</i>	1.6075
11/09/2020	901	Karl W. Knock	<i>Karl W. Knock</i>	5.7451
11/9/2020	101/102	DARREN JETSA	<i>Darren Jetsa</i>	1.5186 3.8037
11/9/2020	304	Ashley Granger	<i>Ashley Granger</i>	.9862
11/9/20	601	Cui Dong	<i>Cui Dong</i>	1.5196
11/9/20	308	JAMES TARPEY	<i>James Tarpey</i>	1.2030
11/10	606	Tom Schulte	<i>Tom Schulte</i>	1.2517
11/10	105	Grace Harcharik	<i>Grace Harcharik</i>	1.3210
11/10	801	RENEE ELLEBROEK	<i>Renee Ellebroek</i>	3.1494
11/10	803	Eric Faust	<i>Eric Faust</i>	3.0031
11/10	308	Chmi Choe	<i>Chmi Choe</i>	1.2030
11/10	401	TYLER KURN	<i>Tyler Kurn</i>	1.5187
11/10	100	TONY KUNK	<i>Tony Kunk</i>	1.0565
11/11	404	Raquel Pelph	<i>Raquel Pelph</i>	.9862
11/12	207	Natalie McLinden	<i>Natalie McLinden</i>	1.2029
11/13/20	309	Hali VanVezzen	<i>Hali VanVezzen</i>	1.3403
11/13/20	903	Cardice Bennett	<i>Cardice Bennett</i>	2.2034
11/13/20	605 & 300	Grant Johnson	<i>Grant Johnson</i>	1.6660 1.0203
11/15/20	101/102	Brandin Brown	<i>Brandin Brown</i>	3.1422
11/15/20	307	JAMES L. SEEVERS	<i>James L. Seever</i>	1.2029
11/15/2020	104	Janelle Jacobsen	<i>Janelle Jacobsen</i>	1.3457

subtotal page 1

52.8032

WHITELINE DECLARATION APPROVAL FORM

DATE	UNIT #	PRINTED NAME	SIGNATURE	%
11/17	302	JEREMY WITTI		1.6074
11/18	904	Mark Bell		2.5092
11/20	501	Scott Matter		1.5186
11/20	502	Steph McManus	Stephen Markovet	1.6074
11/22	403	Michael Sch		1.2172
12-2	108	Jamie R. Bailey		.7933
12/02	203	Thomas Baldwin		1.2172
12/03	208	Hailey Workman	Hailey Workman	1.2041
12/03	405	Amanda Heider		.9758
12/2	205	BRUCE ANDERSON	Bruce Anderson	.9758
12/2	206	Chris Stone		1.0206
12/3	802	JENNY SWARTZ		2.7984
12/4	102	PAH BURNINGTON		1.6061
12/4	703	Wm. J. Ellis	Wm. E. D. Ellis	3.1668
		subtotal page 2		22.1279
		Total page 1		52.8032
		Total page 2		22.1279
		Grand Total		74.9311

Exhibit 4

Whitline Lofts		
Unit Information		
Unit Number	Gross Area (Sq Ft)	Allocated Interest of gross area square footage
101	2,372.0368	3.4222%
103	547.5417	0.7900%
104	932.7341	1.3457%
105	915.6386	1.3210%
106	732.2986	1.0565%
107	536.0145	0.7733%
108	549.8594	0.7933%
109	540.1325	0.7793%
110 (Fitness Center)	850.5868	1.2272%
201	1053.0721	1.5193%
202	1114.3857	1.6078%
203	843.6804	1.2172%
204	683.5449	0.9862%
205	676.3194	0.9758%
206	707.4323	1.0206%
207	833.7899	1.2029%
208	834.6215	1.2041%
209 (Guest Suite)	859.7294	1.2404%
301	1052.6734	1.5187%
302	1114.1324	1.6074%
303	843.6788	1.2172%
304	683.5537	0.9862%
305	676.3194	0.9758%
306	707.1682	1.0203%
307	833.7803	1.2029%
308	833.8316	1.2030%
309	859.6624	1.2403%
401	1052.6528	1.5187%
402	1114.2246	1.6075%
403	843.679	1.2172%
404	683.5537	0.9862%
405	676.3194	0.9758%
406	707.4323	1.0206%
407	833.7899	1.2029%
408	1697.2043	2.4486%
501	1052.5607	1.5186%
502	1114.132	1.6074%
503	1527.2327	2.2034%
504	1385.0278	1.9982%

506	2532.1719	3.6532%
601	1053.266	1.5196%
602	1113.2268	1.6061%
603	1528.0921	2.2046%
604	1038.7765	1.4987%
605	1154.7798	1.6660%
606	867.5816	1.2517%
607	859.6624	1.2403%
701	1052.6153	1.5186%
702	2636.4162	3.8037%
703	2195.0109	3.1668%
704	1739.1755	2.5092%
801	2182.934	3.1494%
802	1877.2762	2.7084%
803	2081.5365	3.0031%
804	1497.5787	2.1606%
901	3982.0747	5.7451%
902	4044.38	5.8350%
Total	69312.5831	100.00%