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A201500084611

08/21/2015 3:55 PM  
KATHERINE SWEENEY BELL  
MARION COUNTY IN RECORDER

FEE: \$ 229.50

PAGES: 73

By: SC

2015 AUG 21 A 8:07

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**DECLARATION OF  
CONDOMINIUM OWNERSHIP**

**FOR THE**

**ESPLANADE ANNEX  
CONDOMINIUM REGIME**

A201500084610

CROSS REFERENCE

The Plans have simultaneously been filed and recorded with the Recorder of Marion County, Indiana as Instrument No. \_\_\_\_\_ on the 21 day of August, 2015.



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**DECLARATION OF CONDOMINIUM OWNERSHIP FOR  
THE ESPLANADE ANNEX CONDOMINIUM REGIME**

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## DECLARATION OF CONDOMINIUM OWNERSHIP FOR THE ESPLANADE ANNEX CONDOMINIUM REGIME

Lippitt, LLC (*Declarant*) makes this Declaration of Condominium Ownership for the Esplanade Annex Condominium Regime (*Declaration*) effective this 19<sup>th</sup> day of August, 2015.

WHEREAS

A. Declarant is the sole owner of the fee simple title to the real estate described in Exhibit A, attached and incorporated by reference.

B. Declarant, by execution of this Declaration, desires to create a condominium regime on the Real Estate, subject to the condominium law of the State of Indiana and the terms and conditions of this Declaration.

THEREFORE, Declarant declares:

1. Definitions. The following terms, as used in this Declaration, the By-Laws or the Articles, unless the context clearly requires otherwise or the terms are otherwise defined in the By-Laws or Articles, shall mean the following:

(a) "*Act*" means the condominium law of the State of Indiana, *Ind. Code 32-25-1-1 et seq.*, as amended. The Act is incorporated herein by reference.

(b) "*Applicable Date*" means the earliest of: (i) ten (10) years after the date of recording this Declaration, (ii) the first day of the first month following the date that Declarant conveys the last Condominium Unit to an unrelated third person, or (iii) the date that Declarant in its sole discretion specifies by written notice to the Owners.

(c) "*Articles*" means the Articles of Incorporation of the Association filed with the Secretary of the State of Indiana.

(d) "*Assessment*" shall have the meaning described in the By-Laws.

(e) "*Association*" means The Esplanade Annex Owners Association, Inc., an Indiana nonprofit corporation, being the association of Co-owners of *Esplanade Annex* more particularly described in paragraph 12 of this Declaration.

(f) "*Board of Directors*" and "*Board*" means the governing body of the Association, being the initial Board referred to in the By-Laws or subsequent Board elected by the Co-owners in accordance with the By-Laws.

(g) "*Building*" means the structure on the Real Estate in which the Condominium Units are located and the parts of Common Areas and Limited Common Areas within or attached to the Building that are submitted and subjected to the Act and this Declaration. The Building does not include the Garages. The Building is more particularly described and identified on the Plans and in paragraph 3 of this Declaration.

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(h) “*By-Laws*” means the By-Laws of the Association providing for the administration and management of the Property, a true copy of which is attached to this Declaration as Exhibit C and incorporated by reference.

(i) “*Common Areas*” means the common areas and facilities defined in paragraph 6 of this Declaration.

(j) “*Common Expenses*” means expenses of administration of the Association and expenses for the upkeep, maintenance, repair and replacement of the Common Areas and Limited Common Areas, except the Garages, to the extent provided herein, and all sums lawfully assessed to the Owners by the Association, or as declared by the Act, this Declaration or the By-Laws.

(k) “*Condemnation Award*” has the meaning ascribed in paragraph 11(b) of this Declaration.

(l) “*Condominium Unit*” means each one of the units in *Esplanade Annex*, each individual unit being more particularly described and identified on the Plans and in paragraphs 4 and 5 of this Declaration, together with the interest in the Limited Common Areas, except a Garage Unit, and the undivided interest in the Common Areas appertaining to each such unit.

(m) “*Constitutional Majority*” means those Owners entitled to cast in the aggregate at least sixty-five percent (65%) of the Percentage Votes as described in this Declaration.

(n) “*Co-owners*” mean the Owners of all the Condominium Units.

(o) “*Declarant*” means Lippitt, LLC, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title to any portion of the Property pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

(p) “*Esplanade Annex*” means the name by which the Property and Regime shall be known, and refers to the Property and Regime, as further described in paragraph 3 below.

(q) “*Garages*” mean the structures located, or to be located, at the Property and depicted above the label “Garage Plan” on the Plans. The Garages do not include the Building and are more particularly described and identified on the Plans and in paragraph 3 of this Declaration.

(r) “*Garage Expenses*” means expenses of the Association related to the upkeep, insurance, maintenance, repair and replacement of the Garages, to the extent provided herein.

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(s) “*Garage Units.*” The existing individual garage units within the Garage, labeled A, B, C and D, and the individual garage units in the Garage Declarant will construct on Parcel 2 and add to the Regime by a supplemental Declaration.

(t) “*Insurance Trustee*” means a bank with trust powers that the Board may designate for the custody and disposition, as herein or in the By-Laws provided, of insurance proceeds and condemnation awards.

(u) “*Limited Common Areas*” mean the limited common areas and facilities described and defined in paragraph 7 of this Declaration.

(v) “*Majority of Mortgagees*” mean those Mortgagees who hold first mortgages on Condominium Units to which are allocated at least more than fifty percent of the Percentage Vote applicable to Mortgaged Units.

(w) “*Majority of Owners*” means the Owners entitled to cast in the aggregate more than fifty percent of the Percentage Vote as described in this Declaration.

(x) “*Mortgaged Unit*” means a Condominium Unit that is subject to the lien of a mortgage held, insured, or guaranteed by a Mortgagee.

(y) “*Mortgagee*” means the holder of a first mortgage lien on a Condominium Unit that has requested notice in accordance with the provisions of section 12.01 of the By-Laws.

(z) “*Owner*” means a Person who owns the fee simple title to a Condominium Unit.

(aa) “*Percentage Interest*” means the percentage of undivided interest in the fee simple title to the Common Areas and facilities appertaining to each Condominium Unit as described in paragraph 8, using square footage figures listed in Exhibit B of this Declaration.

(bb) “*Percentage Vote*” means that percentage of the total vote of all the Condominium Units that is appurtenant to each respective Condominium Unit, which Percentage Vote accrues to the respective Owners of the Condominium Units, and is equal to the Percentage Interests calculated as described in Exhibit B. However, regarding a vote of the Owners with a Garage Unit attached to their Condominium Unit on matters related exclusively to the Garages, “*Percentage Vote*” means, with respect to the vote appurtenant to each Garage Unit, the percentage the square footage of each respective Garage Unit bears to the total square footage of the Garage in which the Garage Unit is located.

(cc) “*Person*” means an individual, firm, corporation, partnership, association, limited liability company, limited liability partnership, limited liability limited partnership, trust, or other legal entity, governmental agency or authority, or any combination thereof.

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(dd) “Plans” means (1) the floor and building plans and elevations of the Building, Condominium Units, Garage 1, and Garage 2 (once constructed), located, and to be located, on the Real Estate, and (2) a site plan depicting the Real Estate, Garage 1, Parcels 1 and 2, and the Building (herein called “Site Plan”) prepared by A3 Design, P.C., and certified by David B. Gibson, a licensed architect, recorded simultaneously with this Declaration in the office of the Recorder of Marion County, Indiana, all of which are incorporated by reference.

(ee) “Property” means the Real Estate and appurtenant easements, the Condominium Units, the Building, the Garages, and all other improvements, and property of every kind and nature, real, personal or mixed, tangible and intangible, located on, or appertaining to, the Real Estate, excluding the personal property of Owners.

(ff) “Real Estate” means the land described in Exhibit A.

(gg) “Regime” means “The Esplanade Annex Condominium Regime” created by this Declaration pursuant to the Act.

(hh) “Restoration” means construction, reconstruction, building or rebuilding of the Building, the Condominium Units, the Garages, the Common Areas, and the Limited Common Areas to not less than the same condition in which they existed immediately prior to any loss, damage or destruction with the same type of architecture and using, when appropriate, new materials of like kind and quality.

2. Declaration. Declarant declares that the Property shall be a Condominium as defined in, and in accordance with, the Act. See *Ind. Code* § 32-25-2-7.

3. Description of Building and Garages. The Regime consists of a single two-story Building with a basement, and currently one separate four-unit Garage, called “Garage 1” on the Plans. The Declarant plans to construct an additional Garage, called “Garage 2” on Parcel 2. Once Garage 2 is complete, Declarant will record a Supplemental Declaration of Condominium Ownership with Floor Plans for Garage 2 and a new schedule of square footage for Garage 2 and its Garage Units. Among other things, construction of Garage 2 depends on securing government approval. Percentage Interest and Percentage Vote will be adjusted by the square footage of any Garage Units in Garage 2 that become attached to a Condominium Unit in the same manner described in Exhibit B. The Building, Real Estate, Common Areas and Limited Common Areas, Garage 1, and Garage 2 are together called the “Esplanade Annex.” The Building contains two Condominium Units on the first floor; two Condominium Units on the second floor; and two Condominium Units in the basement. Descriptions of the Condominium Units contained in the Building and Garage 1 are stated in Exhibit B, attached and incorporated by reference. Garage 1 consists of four (4) Garage Units on a single level labeled on the Floor Plans as Garage Units A, B, C, and D. Garage 2 will consist of additional Garage Units on a single level that once constructed will be labeled on amended Floor Plans as Garage Units E, F, and so on, with one letter representing each new Garage Unit. Once Garage 2 is complete, Declarant will record a Supplemental Declaration that will include an additional description of Garage 2 in an amended Exhibit B.

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Legal Description.

- (a) Each Condominium Unit is identified on the Plans by "Unit [followed by the unit's number]."
- (b) Each Garage Unit is identified on the Plans by "Garage Unit Letter".
- (c) The legal description for each Condominium Unit shall consist of the number for the Condominium Unit as shown on the Plans, the letter for each Garage Unit, if applicable, and shall be stated as "Condominium Unit (followed by a number) and, if applicable, Garage Unit (followed by a letter) in The Esplanade Annex Condominium Regime."

5. Description of Condominium Units.

(a) Cube; Appurtenances. Each Condominium Unit shall consist of all space within its boundaries, as hereafter defined, and all portions of the Building within which the Condominium Unit is located. A Condominium Unit shall include all fixtures, facilities, utilities, equipment, appliances, and structural components designed and intended solely and exclusively for the enjoyment, use and benefit of the Condominium Unit in which they are located, or to which they are attached. A Condominium Unit shall not include common areas, fixtures, facilities, utilities, equipment, appliances, and structural components that are designed or intended for the use, benefit, support, safety or enjoyment of any other Condominium Unit; that may be necessary for the safety, support, maintenance, use, and operation of the Building; or that are designed or employed for common use. All fixtures, equipment and appliances designed or intended for the exclusive enjoyment, use and benefit of a Condominium Unit shall constitute a part of such Condominium Unit, whether or not they are located within or partly within the boundaries of such Condominium Unit. The interior sides and surfaces of all doors and windows in the perimeter walls of a Condominium Unit, whether or not located within or partly within the boundaries of a Condominium Unit; the drywall or other wall covering attached to the wall and ceiling framing, all interior walls, except load-bearing walls; and all the floors and ceilings within the boundaries of a Condominium Unit are part of the Condominium Unit.

(b) Boundaries. The boundaries of each Condominium Unit and Garage shall be as depicted on the Plans. The horizontal boundaries shall run from the upper surfaces of the interior, unfinished surfaces of the lowest floors or sub-floors in the Condominium Unit or Garage to the interior unfinished surfaces of the highest ceilings in the Condominium Unit or Garage. The vertical boundaries shall be the interior, unfinished wall surfaces of the common exterior walls and interior load-bearing walls, including the drywall or other wall covering material, and the windows and doors of each Condominium Unit or Garage. If any horizontal, vertical or other boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor or ceiling surface of the Condominium Unit or Garage because of inexactness of construction, settling after construction, Restoration, or for any other reason, the boundaries of each Condominium Unit or Garage shall conform for purposes of ownership, occupancy, possession, maintenance, decoration, use and enjoyment with the actual existing construction. In such case, permanent appurtenant easements for exclusive use shall exist in



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favor of the Owner of each Condominium Unit or Garage in and to such space lying outside of the actual boundaries of the Condominium Unit or Garage, but within the appropriate wall, floor or ceiling surfaces of the Condominium Unit or Garage.

(c) Garage Units. If one or more Garage Units is transferred with a Condominium Unit in the original deed from Declarant, or Declarant transfers one or more Garage Units to an Owner after Declarant transfers a Condominium Unit to an Owner, that Condominium Unit shall have that or those Garage Units attached to it. Once attached to a Condominium Unit:

- (i) title to the Garage Unit(s) shall appertain to title to the associated Condominium Unit
- (ii) the Garage Unit(s) shall not thereafter detach from title to the Condominium Unit; and
- (iii) title to the Garage Unit(s) shall transfer with title to the Condominium Unit whether or not the Garage Unit is specifically identified in a subsequent deed of the Condominium Unit

Each Garage Unit shall consist of all space within the boundaries thereof, as hereinafter defined, and all portions of the Garage within which the Garage Unit is located. The Garage Unit shall include all fixtures, facilities, utilities, equipment, appliances, and structural components designed and intended solely and exclusively for the enjoyment, use and benefit of the Garage Unit in which they are located, or to which they are attached. The Garage Unit shall not include common areas, exterior walls, and fixtures, facilities, utilities, equipment, appliances, and structural components that are designed or intended for the use, benefit, support, safety or enjoyment, in whole or in part, of any other Garage Unit; that may be necessary for the safety, support, maintenance, use, and operation of the Garage; or that are designed or employed for common use. All fixtures, equipment and appliances designed or intended for the exclusive enjoyment, use and benefit of a Garage Unit shall constitute a part of that Garage Unit, whether or not they are located within or partly within the boundaries of that Garage Unit. The doors, overhead garage doors, and windows, if any, in the perimeter walls of a Garage Unit, whether or not located within, or partly within, the boundaries of a Garage Unit; all interior walls, except load-bearing walls; the drywall or other wall covering attached to the wall and ceiling framing, and all parts of the floors and ceilings within the boundaries of a Garage Unit that are not common areas, are part of the Garage Unit.

6. Common Area and Facilities. Except to the extent otherwise provided, classified or defined in this Declaration as part of a Condominium Unit or Limited Common Area, "Common Areas" means (a) the land portion of the Real Estate, (b) the foundations, columns, girders, beams, supports, roofs and exterior walls (studs and out) of the Building and the Garages, (c) yards, gardens, open spaces, landscaping, sidewalks, and driveways, (d) central power, telephone, gas, water, and sanitary sewer lines or mains serving the Condominium Units, (e) exterior lighting fixtures and electrical service lighting the exterior of the Building, the Garages and Common Areas, unless separately metered to a particular Condominium Unit, (f) master television cable or antenna or other telecommunication system with connecting wiring

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and outlets to one or more Condominium Units, if any, (g) pipes, ducts, insulation, electrical wiring and conduits and public utilities lines that serve more than one Condominium Unit, (h) subfloors, structural ceilings, and structural and load-bearing walls, including all exterior perimeter and other load-bearing walls, interior load bearing walls, and walls between adjoining Condominium Units, (i) all areas labeled as "Common Areas", if any, on the Plans, and (j) all hallways, foyers, stairs, structures, structural components, facilities and appurtenances located outside the boundaries of the Condominium Units.

7. Use of Limited Common Areas and Facilities. Limited Common Areas and those Condominium Units to which use thereof is limited are as follows:

- (a) The entranceways through which access to a Condominium Unit is obtained shall be limited to the use of the Condominium Units served by such entranceway.
- (b) Except as next stated, the stairs, stairways, entrances and exits of the Building shall be limited to the use of the Condominium Units located in the Building.
- (c) The sidewalk or stairs connecting any Limited Common Area to a specific Condominium Unit and exclusively serving (a) particular Condominium Unit(s) shall be limited to the exclusive use of the Condominium Unit(s) to which it provides direct access.
- (d) Air conditioning equipment, including condensing units and coils, if any, attached to, or located in or on, the Building are limited to the use of the Condominium Units to which they are connected.
- (e) The exterior sides and surfaces of doors, windows and frames surrounding the same in the perimeter walls in each Condominium Unit shall be limited to the exclusive use of the Condominium Unit to which they appertain.
- (f) Structural separations between Condominium Units or the space that would be occupied by such structural separations may become Limited Common Areas for the exclusive use of the Owner or Owners of the Condominium Units on either side thereof as provided in paragraph 21.
- (g) Each Garage Unit assigned to a specific Condominium Unit either at the time of transfer of title to the Condominium Unit Owner or thereafter shall be limited to the use of the Condominium Unit to which it is assigned.
- (h) Any other areas, if any, designated and shown on the Plans as Limited Common Areas shall be limited to the Condominium Unit or Condominium Units to which they appertain as shown on the Plans.

Each Limited Common Area shall be limited in use to the Owner(s) of, and shall be appurtenant to, the Condominium Unit(s) to which it is assigned, and may not be transferred separately from an Owner's interest in a Condominium Unit.

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Ownership of Common Areas; Percentage Interest; Percentage Vote; Garage Voting. Each Owner shall have an undivided interest in the Common Areas equal to his Condominium Unit's Percentage Interest. An Owner of a Condominium Unit without a Garage Unit attached shall not have any undivided interest in the Garages. The Percentage Interest in the Common Areas appertaining to each Condominium Unit is described in Exhibit B. Except as otherwise provided or permitted herein, the Percentage Interest appertaining to each separate Condominium Unit in the Common Areas shall be permanent, and shall not be altered except in compliance with all requirements of the Act. Except as next stated, the Percentage Interest appertaining to each Condominium Unit shall also be the Percentage Vote of the Owner thereof in all matters with respect to the Regime and the Condominium Association on which the Co-owners are entitled to vote. However, only the Co-owners of Condominium Units with Garage Units attached may vote on budgets, reserves, assessments, and other matter exclusively pertaining to the Garages. Those respective Co-owners' vote on Garage matters shall equal the percentage the square footage of the respective Co-owners' Garage Unit(s) bears to the total square footage of the Garages. The square footage of each Garage Unit and the Garages is stated in Exhibit B.

9. Encroachments and Easements for Common Areas.

(a) If by reason of the location, construction, Restoration, settling or shifting of the Building or a Garage, any Common Area, or any Limited Common Area, now encroaches or hereafter encroaches, on any other Condominium Unit or Garage Unit, then an easement shall exist and run to the Co-owners and the Association for the maintenance, use and enjoyment of such Common Area or Limited Common Area.

(b) Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in any of the other Condominium Units and serving his Condominium Unit.

(c) Each Owner shall have the right of ingress and egress over, upon, and across the Common Areas necessary for access to his Condominium Unit and Garage Unit, if applicable, and any Limited Common Area designated for use in connection therewith, and shall have the right to the vertical, horizontal, and lateral support of his Condominium Unit and Garage Unit, if applicable. Such rights shall be appurtenant to and pass with the title to each Condominium Unit.

10. Casualty and Restoration. In the event of damage to or destruction of the Property by fire or other cause, the following provisions shall apply:

(a) Except as hereinafter provided, the Association shall promptly repair all damage to the Building and Garages caused by fire or other agent. However, repair and reconstruction shall not be required in the event of "Complete Destruction of the Building," as hereafter defined, and shall only be done in accordance with this Declaration. "Complete Destruction of the Building" means a determination made by a vote of two-thirds of all Owners at a special meeting of the Association called for the purpose of making such determination, that total destruction of the Building has occurred.

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A special meeting of the Association shall be called and held within ninety (90) days after any fire or any other loss for the purpose of making the determination of whether or not there has been a complete destruction of the Building. If a special meeting is not called and held within the ninety (90) day period, or if the determination of whether or not there has been a complete destruction of the Building has not been made within such ninety (90) day period, then it shall be conclusively presumed that there was not Complete Destruction of the Building, and the Association shall proceed with repair and reconstruction. If one or both Garages is or are damaged or completely destroyed, but the Building is not completely destroyed, the Association shall repair or rebuild the affected Garage(s). If the one or both the Garages and the Building are completely destroyed, and the Owners decide not to reconstruct the Building, the Garages shall not be reconstructed.

(b) If the Owners determine at the special meeting of the Association that the Building has been completely destroyed, the Owners shall at the same special meeting vote to determine whether or not to reconstruct the Building. The decision to reconstruct the Building must be carried by a vote of at least two-thirds of the Owners.

(c) If the Association repairs or reconstructs the Building or Garage(s), the Association shall restore the Condominium Units or Garage(s) to substantially the same condition they were in immediately prior to the damage or destruction, reconstructing substantially the same type of architecture.

(d) Regarding damage to the Property other than the Garages, the Association shall use the proceeds of insurance, if any, to pay the costs of repair or reconstruction of the Property. The Co-owners shall pay the costs of repair or reconstruction of the Property other than the Garages in excess of insurance proceeds and the uninsured costs of repair or reconstruction of the Property other than the Garages. The Co-owners shall pay a prorated share of such uninsured or underinsured costs in the proportion the Percentage Interest each Co-owner's Condominium Unit bears to the total Percentage Interest of all Condominium Units, excluding any applicable Garage Unit square footage. Any amounts payable by the Co-owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein and in the Act.

(e) Regarding damage to the Garages, the Association shall use the proceeds of insurance, if any, to pay the costs of repair or reconstruction of the affected Garage(s). Each Co-owner with a Garage Unit in the damaged Garage attached to his Condominium Unit shall pay a prorated share of the costs of repair or reconstruction of the Garage in excess of insurance proceeds and the uninsured costs of repair or reconstruction of the Garage in proportion to the square footage of each Co-owner's Garage Unit(s) to the total square footage of the affected Garage. Any amounts payable by the Co-owners with a Garage Unit attached for the damaged Garage shall be assessed to those Co-owners only, as part of the Garage Expenses, and shall constitute a lien from the time of assessment as provided herein and in the Act.

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(f) In the case of Complete Destruction of the Building, if less than two-thirds of the Owners vote in favor of reconstructing the Building, the Building shall not be reconstructed. The Property shall be removed from the Act under *Ind. Code 32-25-8-16* of the Act. In accordance with *Ind. Code 32-25-8-16* of the Act:

(i) the Property shall be owned in common by the Co-owners;

(ii) the undivided interest in the Property owned in common that shall appertain to each Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Areas;

(iii) any liens affecting any of the Condominium Units shall be transferred in accordance with the existing priorities to the percentage of the undivided interest of the Owner in the Property; and

(iv) the Property shall be subject to an action for partition at the suit of any Owner, in which event, the net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one (1) fund and shall be divided among all the Owners in a percentage equal to the percentage of undivided interest owned by each Owner in the Property; provided that the share of any Owner whose interest was mortgaged shall be reduced by first paying out of the respective share of such Owner the amount of any liens on the undivided interest in the Property owned by such Owner.

(g) Immediately after a fire or other casualty or disaster causing damage to any property for which the Board has the responsibility of maintenance and repair, the Board shall obtain reliable and detailed estimates of the cost to replace the damaged property in condition as good as that before the casualty. Those costs may include professional fees and premiums for bonds the Board employs.

(h) The proceeds of insurance collected on account of any such casualty, and the sums received by the Board from collections of assessments against Owners on account of such casualty, shall constitute a construction fund, which shall be disbursed, if the Building or Garage(s) are to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner:

(i) If the amount of the estimated cost of reconstruction and repair is less than fifty thousand dollars (\$50,000) plus the inflation adjustment amount described in subparagraph (iii) below, then the construction fund shall be disbursed in payment of such costs on order of the Board; provided, however, that upon request of a Mortgagee that is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereinafter provided in the following subparagraph (ii).

(ii) If the estimated cost of reconstruction and repair is more than Fifty Thousand Dollars (\$50,000) plus the inflation adjustment amount described in subparagraph (iii) below, then the construction fund shall be disbursed in payment

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of the costs on approval of an architect qualified to practice in Indiana and employed by the Board to supervise such work, and payment shall be made from time to time as the work progresses. The architect shall furnish a certificate containing a brief description of the services and materials furnished by the contractors, subcontractors, material men, architects, engineers and other persons who have rendered services or furnished materials, supplies, or equipment in connection with the work stating: (1) that the sums requested by them in payment are justly due and owing, and that the sums do not exceed the value of the services and materials furnished; (2) that there is no other outstanding indebtedness known to the architect for the services, equipment and materials described; and (3) that the costs as estimated by the architect for the work remaining to be done subsequent to the date of the certificate do not exceed the amount of the construction fund remaining after payment of the sum so requested.

(iii) To account for inflation, the \$50,000 base figure described in subparagraphs (i) and (ii) above shall be increased by a factor of three percent (3%) each calendar year beginning January 1, 2017, or, at the Board's option in any year, by the percentage change in the Personal Consumption Expenditure Price Index published by the United States Bureau of Economic Analysis, U.S. Department of Commerce (PCEPI) from the previous twelve-month period, and if the PCEPI is discontinued, by any substantially similar index or replacement index.

(i) Encroachments upon or in favor of Condominium Units that may be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceedings or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the original plans and specifications for the Building, or otherwise as the Building was originally constructed. Such encroachments shall be allowed to continue in existence as long as the Building stands.

(j) If there is any surplus of money in the construction fund after the reconstruction or repair of the damage is complete and all costs paid, the Board shall apply such sums in accordance with paragraph 8.05(b) of the By-Laws. The action of the Board to repair or reconstruct damage shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage.

11. Condemnation. If during the existence of the Regime, all or a part of the Property is taken or condemned by any Person with the power of eminent domain, or sold or otherwise disposed in lieu of or in avoidance thereof, the following provisions shall apply:

(a) Representation. The Association, or the Insurance Trustee, if appointed by the Association, shall represent the Co-owners in the condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or part thereof, by the condemning authority. Each Owner hereby appoints the Association, the Insurance Trustee, or their designee, as the case may be

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(hereafter called "*Owners' Condemnation Agent*"), as attorney-in-fact for the purposes described in this subparagraph.

(b) Proceeds. All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "*Condemnation Award*," shall be payable to the Owners' Condemnation Agent, as trustee for all Owners according to their respective interests therein.

(c) Total Taking. If the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Regime shall terminate. The Condemnation Award shall be apportioned among the Co-owners in accordance with their respective Percentage Interests and paid into separate accounts, each such account representing one Condominium Unit. Each such account shall remain in the name of the Association, and shall be further identified by the legal description of the Condominium Unit and the name of the Owner. From each separate account the Owners' Condemnation Agent shall use and disburse the total amount of such accounts, without contribution from one account to the other, first to the payment of such Owner's pro-rata share of the expenses of the Owners' Condemnation Agent, next to valid tax and special assessment liens on the Condominium Unit in favor of any governmental taxing or assessing authority, next to payment of any Assessments made pursuant to this Declaration or the By-Laws, next to other holders of liens or encumbrances on the Condominium Unit in the order of priority of their liens, and the balance remaining, if any, to each respective Owner.

(d) Partial Taking. If less than the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Regime shall not terminate. Each affected Owner shall be entitled to a share of the Condemnation Award determined in the following manner. As soon as practical the Owners' Condemnation Agent shall, reasonably and in good faith, allocate the Condemnation Award among compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the affected Owners as follows:

(i) The total amount allocated to the taking of or injury to the Common Areas and Limited Common Areas shall be apportioned among the Owners in proportion to their respective Percentage Interests.

(ii) Amounts allocated exclusively to Garage Units shall be allocated only to Owners with Garage Units attached whose Garage Units are the subject of partial taking, in proportion to the affected Garage square footage to total affected Garage square footage.

(iii) The total amount allocated to severance damages shall be apportioned among the Owners of those Condominium Units that were not taken or condemned.

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(iv) The respective amounts allocated to the taking of or injury to a particular Condominium Unit and/or improvements an Owner has made within his own Condominium Unit shall be apportioned to the Owner of the particular Condominium Unit involved.

(v) The total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Owners' Condemnation Agent determines to be equitable in the circumstances.

If an allocation of the Condemnation Award is already established in negotiations, judicial decree, or otherwise, then in allocating the Condemnation Award the Owners' Condemnation Agent shall employ the allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by the Owners' Condemnation Agent by checks payable jointly to the respective Owners and their respective Mortgagees, provided that, with respect to an Owner whose Condominium Unit was taken or condemned, there shall first be deducted therefrom and paid or applied by the Owners' Condemnation Agent as appropriate the Owner's pro-rata share of the expenses of the Owners' Condemnation Agent, the amounts of any valid tax or special assessment lien in favor of any governmental taxing or assessing authority and any Assessments made pursuant to this Declaration or the By-Laws.

(e) Reorganization. In the event a partial taking results in the taking of a complete Condominium Unit, or a portion of a Condominium Unit is taken that renders the remaining portion unusable as a residence, the Owner thereof shall automatically cease to be an Owner and a member of the Association, but shall still be entitled to his compensation. Thereafter, the Board shall reallocate to the remaining Owners, pro-rata, the Percentage Interest and Percentage Vote of such Owner. Such reallocation shall be submitted by the Board to the Owners of the remaining Condominium Units for approval by a Constitutional Majority thereof and appropriate amendment of this Declaration, but any such amendment to be effective must be approved by a Majority of Mortgagees. If the disenfranchised Owner had a Garage Unit that was not taken, the orphaned Garage Unit shall become a common area, subject to the use and control of the Board. At that time or any time thereafter that the Garage Unit does not attach to a Condominium Unit, an Owner may purchase, or otherwise acquire the orphaned Garage Unit, from the Association, on terms acceptable to the Board and the Owner. The Board shall then record with the Marion County Recorder a conveyance of the affected Garage Unit to the affected Condominium Unit. The affected Garage Unit shall then attach to the affected Condominium Unit. The Board shall adjust the Percentage Interest and Percentage Vote of the affected Owner and the other Co-owners accordingly, and record with the Marion County Recorder a revised statement of Percentage Interest and Percentage Vote.

(f) Restoration and Repair. Despite anything to the contrary in this paragraph 11, if less than the entire Property is taken or condemned, or sold or otherwise disposed in lieu of or in avoidance thereof, and any Condominium Unit, Common Area or Limited Common Area may reasonably be restored or repaired, as determined by an independent licensed architect or engineer employed by the Board for making such determination, the



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amount, if any, of the Condemnation Award allocable to the taking of or injury to the Common Areas and Limited Common Areas and to severance damages shall be applied to the cost of Restoration or repair of such Common Area and/or Limited Common Area, and the amount, if any, allocable to the taking of or injury to a particular Condominium Unit that may be restored or repaired shall be applied to the cost of such Restoration or repair. If any amount of the Condemnation Award then remains, such amount shall be allocated and disbursed in accordance with subparagraph (d), entitled "Partial Taking" above. If the amount of the Condemnation Award is insufficient to cover the cost of any such Restoration or repair, Sections 10(b) and 10(c), regarding liability for uninsured and underinsured cost of repair and reconstruction, shall apply.

(g) Alternative Valuation in Event of Specific Allocation. In the event the amount of the Condemnation Award is determined in negotiations, judicial decree or otherwise according to the value of individual Condominium Units as separately determined, the Condemnation Award shall be apportioned, with respect to such Condominium Units, according to the values so determined and not in accordance with the respective Percentage Interests of the Owners; but if the value of the Common Areas and/or Limited Common Areas is determined separately, the amount of the Condemnation Award attributable thereto shall be allocated among the Owners in accordance with their respective Percentage Interests.

12. Association of Owners.

(a) Subject to the rights of Declarant described in paragraph 18 of this Declaration, entitled "Initial Management", the Association shall maintain, repair, keep up, replace, administer, manage and operate the Property. Each Owner shall upon becoming an Owner of a Condominium Unit automatically become a member of the Association, and shall remain a member until his ownership ceases. Membership shall transfer to a new Owner upon transfer of the related Condominium Unit.

(b) The Initial Board as defined in the By-Laws shall serve until the Applicable Date. After the Applicable Date, the Association shall elect a Board annually in accordance with and as prescribed by the By-Laws. After the Applicable Date, the Board elected by the Association shall serve for the period provided in the By-Laws, and each Owner may cast his Percentage Vote for the election of the Board. Each Person serving on the Initial Board, whether as an original member or as a member appointed by Declarant to fill a vacancy, shall be qualified to act as a member of the Board regardless of whether that Person is an Owner. Not such Person serving on the Initial Board shall be deemed or considered a member of the Association or an Owner for any other purpose, unless he actually is an Owner and thereby a member of the Association.

(c) The Board shall be the governing body of the Association, representing all the Owners in providing for the management, administration, operation, maintenance, repair, replacement and upkeep of the Property, excluding the Condominium Units, except to the extent herein or in the By-Laws otherwise provided.

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13. Covenants and Restrictions.

(a) The covenants and restrictions applicable to the use and enjoyment of the Condominium Units, the Common Areas and Limited Common Areas are stated in the By-Laws. These covenants and restrictions exist for the mutual benefit and protection of the present and future Owners, and shall run with the land, and inure to the benefit of and be enforceable by any Owner or by the Association. Present and future Owners and the Association shall be entitled to injunctive relief against any violation or attempted violation of the covenants and restrictions, and shall be entitled to damages for any injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation.

(b) Despite anything to the contrary stated herein or in the By-Laws, Declarant may use and maintain any Condominium Unit(s) owned or leased by Declarant and such other portions of the Property, except Condominium Units owned by Persons other than Declarant, that Declarant considers appropriate in its sole discretion to aid in the sale of Condominium Units; to promote or effect sales of Condominium Units; or to conduct any related business or activity, including without limitation to use any such Condominium Unit(s) as models, sales offices, management offices, and business offices. Declarant may in its sole discretion determine and re-determine periodically which Condominium Units and which parts and portions of the Property may be so used. Until Declarant designates otherwise, any such portions of the Property so used or maintained by Declarant shall not be or become part of the Common Areas. If Declarant designates such portions of the Property as Common Areas, Declarant may remove such portions from the Common Areas at any time.

14. Amendment of Declaration. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(a) Notice. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered.

(b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board or by the Owners having in the aggregate at least a majority of the Percentage Vote.

(c) Meeting. The resolution concerning a proposed amendment may only be adopted by the designated vote at a meeting duly called and held in accordance with the By-Laws.

(d) Adoption. Except as otherwise provided herein, any proposed amendment to this Declaration must be approved by a Majority of Owners, subject, however, to Declarant's powers under Section 3.02 of the By-Laws.

(e) Restrictions on Amendments. The consent of (i) all the Owners, despite Section 3.02 of the By-Laws, and the approval of all Mortgagees, shall be required to terminate the Regime, unless expressly provided otherwise herein; and (ii) a Constitutional Majority of the Owners, despite Section 3.02 of the By-Laws, and the approval of a Majority of Mortgagees, unless required to conform to the Act, shall be

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required to amend any provisions of the Declaration, By-Laws or equivalent organizational documents of the Regime to:

- 1) materially change the voting rights of any Owner or its Percentage Interest, except to the extent the addition of Garage 2 to the Regime modifies Percentage Interests and Percentage Votes as herein described;
- 2) materially change, or impose disparate increases in, Assessments or modify the Declaration or By-Laws with respect to the subordination of liens for delinquent Assessments to first mortgage liens;
- 3) partition, subdivide or otherwise change the boundaries of any Condominium Unit;
- 4) except as provided in paragraph 20, impose any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his or her Condominium Unit; or
- 5) amend any provision of the Declaration, By-Laws or the equivalent organizational documents of the Regime that are expressly stated to be for the benefit of Mortgagees.

Despite Section 3.02 of the By-Laws, the consent of at least sixty-five percent of the Voting Interest of the Owners with a Garage Unit attached in the affected Garage, and the approval of a Majority of Mortgagees with liens on a Garage Unit in the affected Garage, unless otherwise required to conform to the Act, shall be required to partition, subdivide or otherwise change the boundaries of any Garage Unit in the affected Garage.

(f) Recording. Each amendment requiring the consent of Declarant shall contain Declarant's signed consent. Otherwise, each amendment to the Declaration shall be executed by the President and Secretary of the Association. All amendments shall be recorded in the office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.

(g) Amendments by Declarant Only. Despite any contrary statements in this Declaration, Declarant may, acting alone and without the consent or approval of the Co-owners, the Association, the Board, any Mortgagees or any other Person, amend or supplement this Declaration from time to time (i) if such amendment or supplement is necessary to conform this Declaration to the Act, as amended from time to time, (ii) if such amendment or supplement is made to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency or any other public, quasi public or private entity that performs, or may in the future perform, functions similar to those currently performed by such entities, (iii) to induce any such agencies or entities to make, purchase, sell, insure or guarantee first mortgages, or (iv) if such amendment or supplement is made to correct clerical or typographical errors. In

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furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to vote in favor of, make, or consent to any amendments described in this subparagraph 14(g) on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage or other instrument affecting a Condominium Unit, and the acceptance thereof, shall be a grant and acknowledgement of, and the consent to, the reservation of the power to Declarant to vote in favor of, make, execute and record any such amendment. The right of Declarant to act pursuant to rights reserved or granted under this subparagraph 14(g) shall terminate after the Applicable Date. After the Applicable Date, the Association may exercise the same powers to amend or supplement the Declaration as granted to Declarant in this subparagraph 14(g).

15. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Condominium Units shall be subject to and shall comply with this Declaration, the Act, the By-Laws appended hereto, and the rules and regulations as adopted by the Board as each may be amended or supplemented from time to time (hereafter the *Rules and Regulations*.) The acceptance of a deed of conveyance or the act of occupancy of any Condominium Unit shall constitute an agreement that this Declaration, the Act, the By-Laws and the Rules and Regulations as each may be amended or supplemented from time to time (the *Condominium Documents*) are accepted and ratified by each Owner, tenant or occupant. All terms of the Condominium Documents shall be covenants running with the land, and shall bind any person having at any time any interest or estate in a Condominium Unit or the Property as though the Condominium Documents were recited at length in each deed, conveyance, mortgage or lease of any Condominium Unit. All Persons who may occupy, use, enjoy or control a Condominium Unit or Condominium Units or any part of the Property in any manner shall be subject to the Condominium Documents applicable thereto as each may be amended or supplemented from time to time.

16. Granting of Easements. Prior to the Applicable Date, Declarant, and after the Applicable Date, the Board, may grant easements, and release, modify and amend easements, encumbering the Common Areas and Limited Common Areas on terms and conditions and for consideration they deem appropriate

17. Reservation of Rights to the Use of the Common Areas Declarant reserves easements over, across, upon, along, in, through and under the Common Areas, including, to the extent necessary, the Limited Common Areas, to install, maintain, repair, replace, relocate and otherwise service utility and telecommunication equipment, facilities and installations to serve the Property, to provide access to and ingress and egress to and from the Property of any part of the Property, to make improvements to and within the Property, and to provide for public and quasi-public services to the Property. These easements shall be transferable, and Declarant may periodically grant similar easements, rights or privileges to other Persons for the same purposes. By example, and not limitation, Declarant, and others to whom Declarant may grant similar easements, rights or privileges, may use the Common Areas and, to the extent necessary, the Limited Common Areas, to supply utility and telecommunication services to the Property, and to permit public and quasi-public vehicles, including police, fire and other emergency vehicles, trash and garbage collection, postal service vehicles and privately owned delivery vehicles, and

their personnel, to enter upon and use the drives and streets, the Common Areas and, to the extent necessary, the Limited Common Areas of the Regime in the performance of their duties.

18. Initial Management.

(a) Until the Applicable Date, the Board shall consist of Persons selected by Declarant. The Board either has or may hereafter execute a management agreement with Declarant or an entity affiliated with Declarant for a term that will expire not later than the Applicable Date. Declarant or its designee may provide supervision, fiscal and general management and maintenance of the Common Areas and, to the extent the same is not otherwise the responsibility of Owners of Condominium Units, the Limited Common Areas. Declarant or its designee may, in its discretion, perform all other duties and obligations of the Association. The management agreement must be terminable by Declarant or its designee without cause and without payment of a termination fee with at least thirty days prior written notice, after which the Association shall assume or resume performance of all Declarant's or its designee's management duties, obligations and functions. Despite anything to the contrary stated herein, while a management agreement remains in effect, Declarant or its affiliate shall have the exclusive right to manage the Property and to perform all the functions of the Association.

(b) The Board may extend the management agreement with Declarant or its affiliate beyond the Applicable Date; provided the management agreement includes a right of termination without cause that the Association may exercise without penalty or a termination fee at any time after the Applicable Date with at least ninety (90) days prior written notice. Both the term and termination provisions apply only to professional management contracts and not to any other types of service contracts.

19. Declarant's Liability for Assessments. Despite anything in this Declaration or the By-Laws to the contrary, until the Applicable Date, Declarant shall pay all Regular Assessments and Special Assessments that the Board adopts and imposes in accordance with Sections 6.02 (Regular Assessments) and 6.03 (Special Assessments) of the By-Laws on Condominium Units that Declarant owns. Until the Applicable Date, Declarant shall pay all deficits that may arise if the Regular Assessments and Special Assessments that the Board adopts and imposes in accordance with Sections 6.02 and 6.03 of the By-Laws are less than the Common Expenses.

20. Sale, Lease or Other Transfer of Condominium Unit by Owners.

(a) Lease. It serves the best interests of all the Owners that persons residing in *Esplanade Annex* have similar proprietary interests in their Condominium Units. For the purpose of maintaining the character of *Esplanade Annex*, no Owner, other than Declarant, shall lease his Condominium Unit or enter into any other rental or letting arrangement for his Condominium Unit unless each lease or other arrangement is written, and contains an initial term of at least six (6) months. Each lease shall be made explicitly subject to the terms of this Declaration, the By-Laws, and the Rules and Regulations. Any Owner may lease to any other Owner any Garage Unit attached to an Owner's Condominium Unit for any term and on any terms the Owner deems acceptable, except that the use of any leased Garage Unit shall comply with this Declaration and the By-Laws. A lease term may survive the Owner's transfer of his interest in his Condominium

Unit, only if the lease or a memorandum of the lease identifying the Condominium Unit, the Garage Unit, and stating the term of the lease, is recorded in the office of the Recorder of Marion County, Indiana. The Board may implement substantive and procedural rules regarding tenant qualifications and Board approval of prospective tenants prior to leasing a Condominium Unit to a person, except that no rule shall discriminate against any person or class of persons in violation of law, including without limitation discrimination based on family status, race, gender, ethnicity, religion, creed, and country of origin.

(b) Sale. The Association shall have no option to purchase, or right of first refusal to purchase, any Condominium Unit that an Owner wishes to sell, and an Owner may sell his Condominium Unit free of any such restriction.

21. Combining Units. Two or more adjoining Condominium Units may be used by the Owner(s) thereof as if they were one Condominium Unit. In that event, all walls, floors or other structural separations between any two such Condominium Units, or any space that would be occupied by such structural separations but for the utilization of the two Condominium Units as one Condominium Unit, may, for as long as the two Condominium Units are utilized as one, be utilized by the Owner(s) of the adjoining Condominium Units as Limited Common Areas except to the extent that any such structural separations are necessary or contain facilities necessary for the support, use or enjoyment of other parts of the Building of which they are a part, and provided that the Percentage Interest appertaining to each Condominium Unit shall continue in effect as if such Condominium Units were not combined. If any opening between the two Condominium Units that would have been occupied by a structural separation except for the joint utilization of the two Condominium Units shall be closed at the request of the Owner(s) of one or both such adjoining Condominium Units, the Owners of each of the two adjoining Condominium Units shall share equally the expense of the closure, and the structural separations between the two Condominium Units shall then become Common Areas.

22. Right of Action. Subject to Paragraph 28, the Association and any aggrieved Owner shall have a right of action against any Owner or Owners who fail to comply with the Condominium Documents, or any resolution or decision of the Association or its Board that is made pursuant to authority granted to the Association or its Board in the Condominium Documents. An aggrieved Owner shall have a right of action against the Association for the Association's failure to comply with the Condominium Documents, or any decision or resolution of the Association that is made pursuant to authority granted to the Association or its Board in the Condominium Documents.

23. Costs and Attorneys' Fees. The Declarant or the Association may recover its costs and reasonable attorneys fees incurred because of failure of an Owner to make any payments required by this Declaration, the By-Laws or the Act; or to comply with any provision of the Declaration, the Act, the By-Laws, or the Rules and Regulations as each may be amended from time to time, whether suit is filed or not.

24. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or Limited Common Areas or by abandonment of his Condominium Unit.

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25. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration or the By-Laws shall not impair or affect the validity, enforceability or effect of the rest of this Declaration or the By-Laws.

26. Form of Words. The masculine, feminine, neutral, singular, and plural forms of words are interchangeable in this Declaration as the context requires.

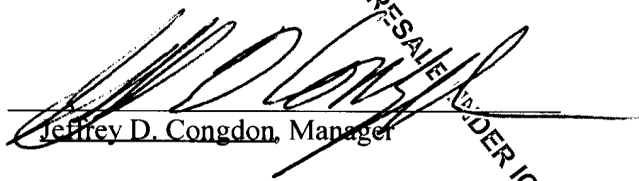
27. Floor Plans. The Plans describing and stating the layout, location, identification numbers, and dimensions of the Condominium Units, Garage Units, and the Property are called "Floor Plans" herein, and are incorporated into this Declaration by reference.

28. Exculpation. This instrument is executed and delivered on the condition that despite anything contained in this Declaration to the contrary, all representations, covenants, undertakings and agreements Declarant makes herein (*Representations*) are not personal Representations of Declarant, and are made and intended not as personal Representations of Declarant, or for the purpose or with the intention of binding Declarant personally, but are made and intended for the purpose of binding only the Real Estate. No personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforceable against, Declarant or any of its managers, members, officers or shareholders personally, as a consequence of this Declaration or any Representations of Declarant contained in this Declaration, either express or implied. As a condition of acquiring an interest in a Condominium Unit, each Person who acquires any interest in a Condominium Unit, including without limitation Owners, Mortgagees and all other mortgagees, waives and releases Declarant and its affiliates, and the employees, members, managers, shareholders, partners, officers, directors, consultants, and attorneys of Declarant and its affiliates from all personal liability if any for any Representations.

29. No Expansion. Except to the extent the addition of Garage 2 on Parcel 2 is considered an expansion of the Regime, *Esplanade Annex* is not an expandable condominium as defined in the Act. This paragraph shall not prevent the addition of Garage 2 to the Regime on Parcel 2.

IN WITNESS:

Lippitt, LLC

By:   
Jeffrey D. Congdon, Manager

STATE OF INDIANA     )  
  ) SS:  
COUNTY OF MARION    )

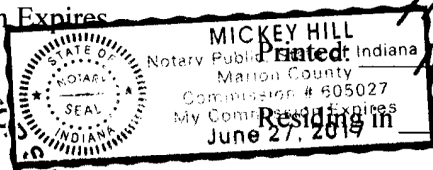
Before me, a notary public in and for said county and state personally appeared Jeffrey D. Congdon, and acknowledged his signature on this document, or signed this Declaration in my

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presence this 19 day of August, 2015, and being first duly sworn, stated that in executing this Declaration, making the Property a condominium regime, and creating all effects and taking all actions described in this Declaration, he is acting within the authority of the member of Lippitt, LLC, and with the authority granted him by the operating agreement of Lippitt, LLC.

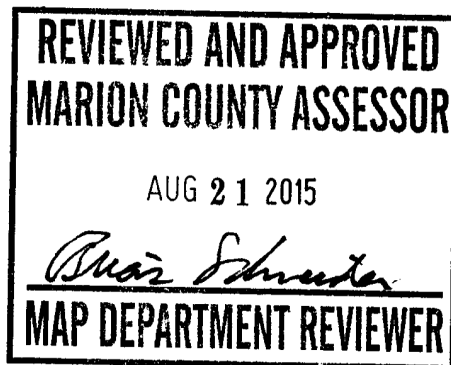
My Commission Expires

6-27-17



*Mickey Hill*  
Mickey Hill  
Residing in Marion County

I affirm under penalty for perjury that I redacted each social security number in this document.  
Max Rettig



Prepared by G. Max Rettig, Attorney-at-law, 4622 W. 72nd St., Indianapolis, IN 46268





**EXHIBIT A**

**LEGAL DESCRIPTION OF THE REAL ESTATE**

Parcel 1:

Lot 14 in Osgood's Meridian Park Addition, as per plat thereof, recorded in Plat Book 13, page 156, in the office of the Recorder of Marion County, Indiana

and

Parcel 2:

Lot Numbered 15 in Osgood's Meridian Park Addition in the City of Indianapolis, as per plat thereof recorded in Plat Book 13, page 156 in the Office of the Recorder of Marion County, Indiana.

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**EXHIBIT B**

**DESCRIPTION OF CONDOMINIUM UNITS AND GARAGE UNITS**

The Esplanade Annex Condominium Regime, 3034 North Pennsylvania Street, Indianapolis, Indiana contains six (6) separate Condominium Units, and four (4) separate Garage Units.

The Condominium Units are described as follows:

<u>Unit</u>	<u>Square Footage</u>	<u>Percentage of Total Condominium Square Footage</u>
1	1,634	19.7629%
2	1,637	19.7992%
3	1,636	19.7871%
4	1,638	19.8113%
5	861	10.4130%
6	862	10.4257%

The Garage Units are described as follows:

<u>Unit</u>	<u>Square Footage</u>	<u>Percentage of Garage</u>
A	272	25.1619%
B	268	24.7919%
C	271	25.0694%
D	270	24.9769%

Condominium Unit Square Footage and Garage Square Footage are expressed separately in this chart.

Once Garage Units are assigned or attached to Condominium Units, the Garage Unit square footage shall be added to the respective Condominium Unit square footage, and the square footage of each Condominium Unit (some with Garage Units; some without) must then be expressed as a ratio of total Condominium Unit square feet (8,268 s/f) plus total Garage Unit square feet (1,081 s/f), for a grand total of 9,349 square feet, to calculate each Condominium Unit's **Percentage Interest** in Common Areas and **Percentage Vote**.

Square footage figures are based on gross square footage. See Unit Mix Chart on the Floor Plans for more detail.

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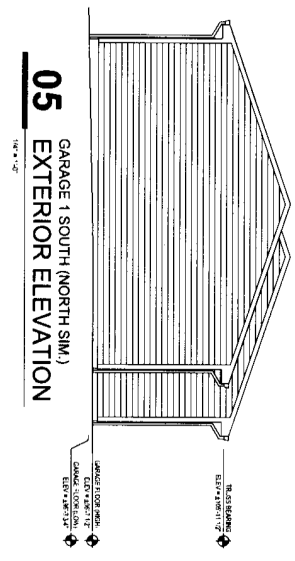
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**EXHIBIT C  
CODE OF BY-LAWS OF**

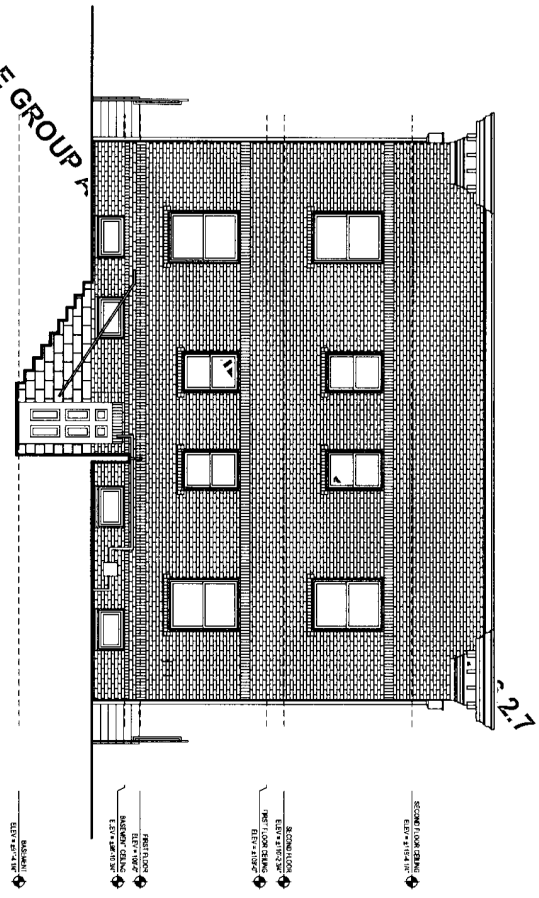
**THE ESPLANADE ANNEX OWNERS ASSOCIATION, INC.**

**for the**

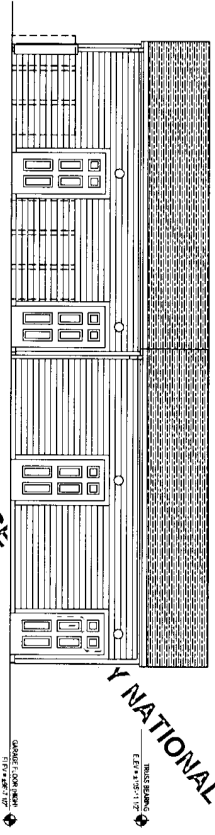
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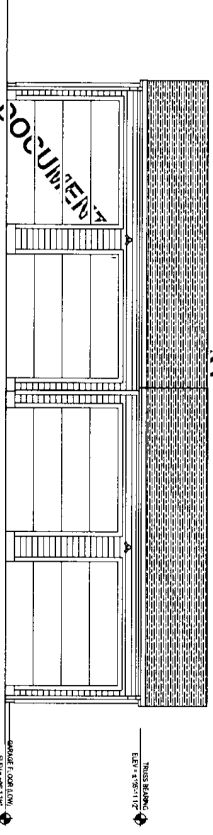
**05** GARAGE 1 SOUTH (NORTH SIM.)  
EXTERIOR ELEVATION  
1/4" = 1'-0"



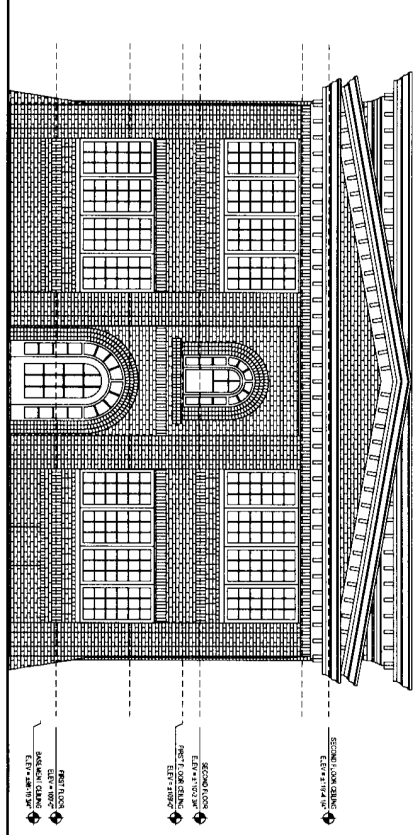
**02** WEST  
EXTERIOR ELEVATION  
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**04** GARAGE 1 EAST  
EXTERIOR ELEVATION  
1/4" = 1'-0"



**03** GARAGE 1 WEST  
EXTERIOR ELEVATION  
1/4" = 1'-0"



**01** EAST  
EXTERIOR ELEVATION  
1/4" = 1'-0"

EXTERIOR  
ELEVATIONS  
**A2.2**

MARK	DATE	DESCRIPTION
PROJECT	08.27.15	CONDO LEGAL DOCUMENTS
DESIGNER		
REVISION		

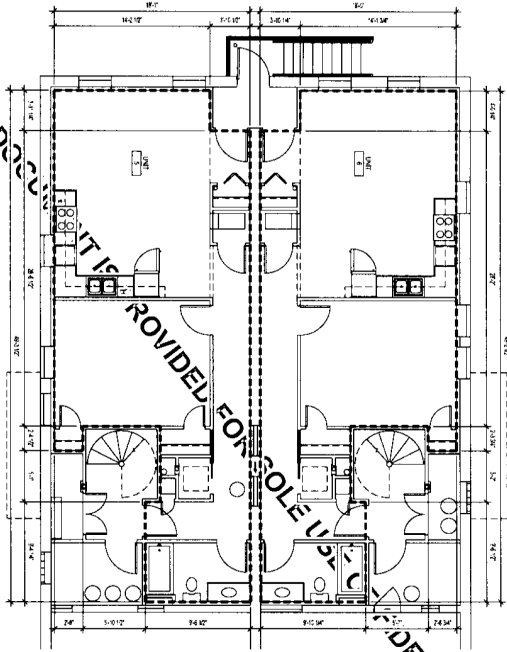
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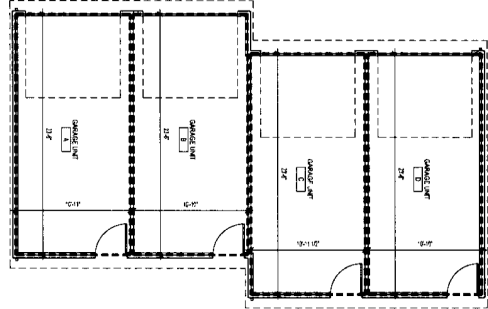
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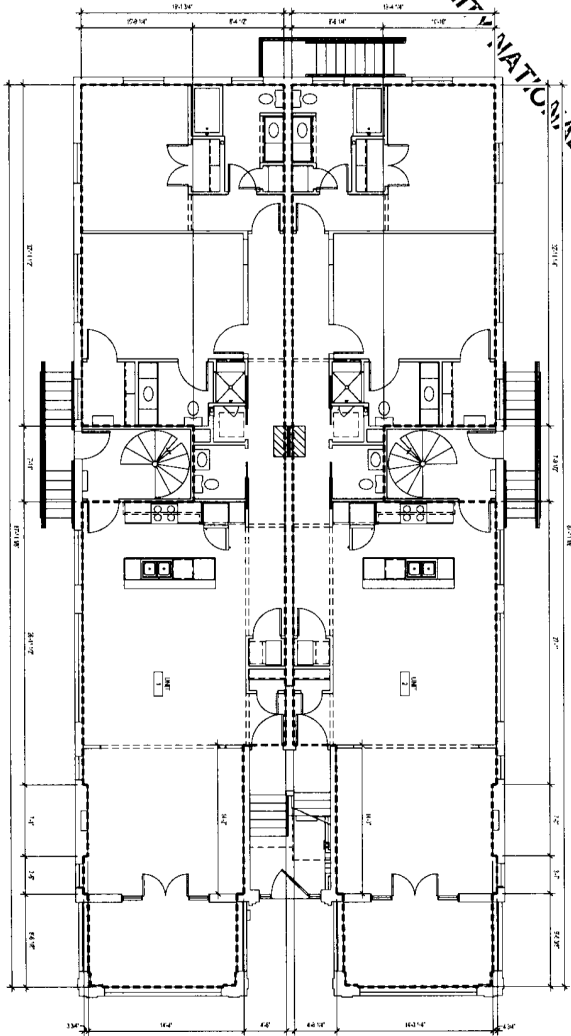
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**02** BASEMENT FLOOR PLAN



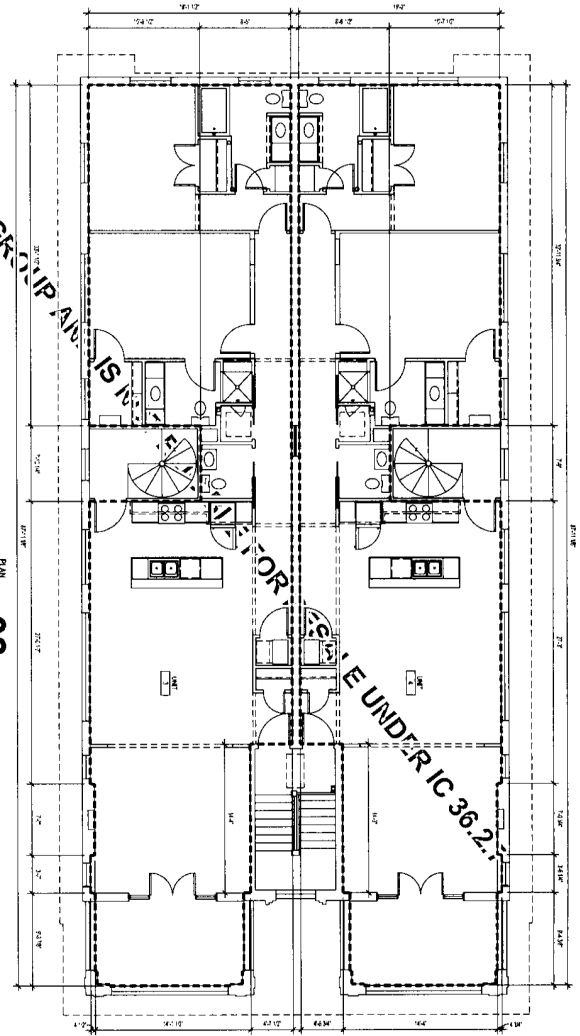
**04** GARAGE 1 PLAN



**01** FIRST FLOOR PLAN



**03** SECOND FLOOR PLAN



FLOOR PLANS  
**A1.1**

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**CODE OF BY-LAWS OF  
THE ESPLANADE ANNEX OWNERS ASSOCIATION, INC.  
for the  
THE ESPLANADE ANNEX CONDOMINIUM REGIME**



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**CODE OF BY-LAWS OF  
THE ESPLANADE ANNEX CONDOMINIUM REGIME  
AND OF  
THE ESPLANADE ANNEX OWNERS ASSOCIATION, INC.**

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**CODE OF BY-LAWS OF  
THE ESPLANADE ANNEX CONDOMINIUM REGIME  
AND OF  
THE ESPLANADE ANNEX OWNERS ASSOCIATION, INC.**

ARTICLE I. IDENTIFICATION, DEFINITIONS AND APPLICABILITY

Section 1.01 Identification and Adoption. Esplanade Annex Owners Association adopts these By-Laws simultaneously with the execution of a certain Declaration of Condominium Ownership that created Esplanade Annex Condominium Regime (*the Declaration*), to which Declaration these By-Laws are attached and made a part. The Declaration is incorporated herein by reference. All the covenants, rights, restrictions, liabilities, and terms described in the Declaration shall apply to, and govern the interpretation, of these By-Laws. Except as otherwise provided in Section 1.02, the definitions and terms used in the Declaration shall have the same meaning in these By-Laws, including without limitation paragraph 1 of the Declaration. These By-Laws shall apply to the Property and the administration and conduct of the affairs of the Association. These By-Laws also constitute the By-Laws of the Association. These By-Laws and hereafter called “the *By-Laws*.”

Section 1.02 Additional Definitions. Despite any other definition in the Declaration, the following terms used in these By-Laws shall have the following meanings:

- (a) “*Articles*” means the Articles of Incorporation of the Association.
- (b) “*Assessment*” means all sums lawfully assessed against the Owners or as declared or authorized by the Act or the Organizational Documents.
- (c) “*Directors*” means all the members of the Board, and “*Director*” means any individual member of the Board.
- (d) “*Garage Expenses*” means expenses of the Association related to the upkeep, insurance, maintenance, repair and replacement of the Garages as provided herein.
- (e) “*Initial Board*” means those individuals appointed by Declarant as Directors pursuant to the power granted to Declarant by Section 3.02, acting in their capacity as the Board.
- (f) “*Managing Agent*” means a reputable and competent professional property management agent employed by the Board pursuant to Section 3.06.
- (g) “*Majority Vote*” means a majority of the Percentage Vote present and voting at any duly constituted meeting of the Members.
- (h) “*Member*” means a member of the Association and “*Members*” means more than one member of the Association.
- (i) “*Organizational Documents*” means the Declaration, the Articles, the By-Laws and the Rules and Regulations.

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(j) “*Regular Assessment*” means the Assessment levied pursuant to Section 6.02.

(k) “*Rules and Regulations*” means the rules and regulations governing *Esplanade Annex* that the Board adopts as herein provided.

(l) “*Special Assessment*” means the Assessment levied pursuant to Section 6.03.

(m) “*Statute*” means the Indiana Nonprofit Corporation Act of 1991, as the same may be amended from time to time.

Section 1.03 Individual Application. All the Owners, future Owners, tenants, future tenants, their guests and invitees, and any other Person who uses or occupies a Condominium Unit or any part of the Property shall be subject to the covenants, restrictions, terms and conditions stated in the Organizational Documents and the Act.

ARTICLE II. MEETINGS OF ASSOCIATION

Section 2.01 Purposes of Meetings. After the Applicable Date, at least annually, and at other necessary or expedient times, meetings of the Co-owners shall be held to elect the Board (subject to Section 3.02), to approve annual budgets, to provide for the collection of Common Expenses and Garage Expenses and for other purposes that may be required by or described in the Organizational Documents, the Act or the Statute.

Section 2.02 Annual Meetings. After the Applicable Date, the annual meeting of the Members shall be held on a date in October of each calendar year that the Board specifies by written notice to the Owners each year sent at least thirty days in advance of the meeting. At the annual meeting, the Owners shall (subject to Section 3.02) elect the Board in accordance with these By-Laws and transact other business that may properly come before the meeting.

Section 2.03 Special Meetings. The Board, any Director, or any Owner may call a special meeting of the Members by a written petition or by resolution of the Board. The petition shall be presented to the President or Secretary of the Association, and shall state the purpose for which the meeting is called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

Section 2.04 Notice and Place of Meetings. All meetings of the Members shall be held at any suitable place in Marion County, Indiana that the Board designates. The Secretary shall deliver or mail to each Member entitled to vote at the meeting written notice stating the date, time and place of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called not less than ten (10) days prior to the date of the meeting. The notice shall be mailed or delivered to the Owners at the addresses of their respective Condominium Units and not otherwise. The Secretary shall deliver or mail a copy of each written notice to each Mortgagee who (a) requests in writing that notices be delivered to it, and (b) has furnished the Association with its name and address in accordance with Section 12.01 of these By-Laws.



Attendance at any meeting in person by agent or by proxy shall constitute a waiver of notice of the meeting.

Section 2.05. Voting.

- (a) Number of Votes. Each Owner shall have a vote equal to his Percentage Interest for each Condominium Unit he owns on each matter coming before the meeting, except for Garage-related matters. Despite any contrary language in these By-laws, if any, only the Owners of Condominium Units with Garage Units may vote on matters pertaining exclusively to the Garages, and only the Owners of Condominium Units with Garage Units within a Garage may vote on matters pertaining exclusively to that Garage. Each Owner shall have a vote on Garage matters equal to the proportion the square footage of the Garage Unit each Owner owns to the total square footage of the Garages for matters pertaining to both Garages. Each Owner shall have a vote on Garage matters equal to the proportion the square footage of the Garage Unit each Owner owns to the total square footage of the Garage in which his Garage Unit is located for matters pertaining to just that Garage. If the Board in its sole discretion determines that a matter pertains to the Garages and the remainder of the Property, the Owners shall vote on the matter in proportion to their Percentage Interests.
- (b) Multiple Individual Owners. Only one Person may cast a vote applicable to a Condominium Unit. When more than one Person is the Owner of a Condominium Unit, the Persons constituting the Owner shall deliver to the Secretary, at the time those Persons acquire title to a Condominium Unit, or as soon thereafter as practical, an irrevocable proxy appointing one of those Persons as the voting representative for the Condominium Unit. The proxy shall remain in effect until the time that: a.) all Persons who own the Condominium Unit designate in writing another voting representative, and deliver the written designation to the Secretary; b.) a voting representative relinquishes his appointment in writing, becomes incompetent or dies, c.) a voting representative's appointment is terminated by order of a court of competent jurisdiction, or d.) an Owner who designated the voting representative no longer owns a Condominium Unit. An appointed voting representative may grant a proxy to another Person to vote in his place at any meeting or meetings pursuant to paragraph (d) of this Section 2.05. The proxy shall not constitute a permanent relinquishment of the proxy grantor's right to act as voting representative for the Condominium Unit.
- (c) Voting by Business Entity or Trust. When a trust or business entity is an Owner, or is otherwise entitled to vote, the trustee may cast the vote on behalf of the trust, and the agent or other representative of the business duly empowered by the board of directors, the members, the partners, or other Persons with authority to designate the agent of the business entity, may cast the vote of the business entity. An officer or other agent of the business entity or a trustee of the trust shall deliver to the Secretary a certificate prior to the commencement of the meeting. The certificate shall identify the Person authorized to vote on behalf of the business entity or trust, shall verify that the Person has been duly

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authorized under the entity's or trust's governing documents to represent the entity or trust, and shall be signed by one or more Persons who in the Secretary's opinion are authorized to certify the facts under the entity's or trust's governing documents or by law.

(d) Proxy. An Owner may vote either in person or by his duly authorized and designated attorney-in-fact. Where voting by proxy, the Owner shall designate his attorney-in-fact in writing, and deliver the designation to the Secretary prior to the commencement of the meeting.

(e) Pledges. If the vote of an Owner or Owners has been pledged by mortgage, security agreement, conditional assignment, or other instrument, an executed copy of which has been delivered to the Secretary, only the pledgee may cast the vote of the Owner or Owners on those matters on which the Owner's or Owners' vote is pledged.

(f) Quorum. Except as otherwise expressly provided in the Declaration, these By-Laws, the Act or the Statute, to constitute a quorum at a meeting of the Members, at least two Owners must be present and at least twenty percent (20%) of the Percentage Vote of the Owners must be represented at a meeting.

Section 2.06 Conduct of Meetings.

- (a) Annual Meeting. The President shall act as the chairman of all annual meetings of the Association if he is present. If the President is not present, the following officers shall act as chairman of the meeting in the following priority: Vice President, Secretary, Treasurer. If none of those officers is present, a chairman shall be selected by a Majority Vote. At all annual meetings, the chairman shall call the meeting to order at the duly designated time and business will be conducted in the following order:
- (b) Reading of Minutes. The Secretary shall read the minutes of the last annual meeting and the minutes of any special meeting held subsequent thereto, unless reading is waived by a Majority Vote.
- (c) Treasurer's Report. The Treasurer shall report to the Owners concerning the financial condition of the Association and answer relevant questions of the Owners concerning the Common Expenses, the Garage Expenses, the financial report for the prior and current years, and the proposed budgets for the following year.
- (d) Budgets. The proposed budgets for the current fiscal year shall be presented to the Owners for approval or amendment.
- (f) Election of Board of Directors. Prior to the Applicable Date, the nomination and election of the Board shall be governed by Section 3.02. After the Applicable Date, nominations for the Directors may be made by any Owner. Nominations must be written and presented to the Secretary at least seven (7) days prior to the date of the annual meeting.

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Voting for the Board shall be by paper ballot. The ballot shall contain the name of each Person nominated to serve as a Director. Each Owner may cast the total number of votes to which he is entitled for the nominees for whom he may vote; however, he may not cumulate his votes. Those Persons receiving the highest number of votes shall be elected to the Board. Each voting Owner shall sign his ballots.

- (g) Other Business. Other business may be brought before the meeting only by decision of the Board or upon a written request of an Owner submitted to the Secretary of the Association at least seven (7) days prior to the date of the meeting. However, the requirement of a written request may be waived at the meeting if agreed by a Majority Vote of Owners.
- (i) Adjournment.
- (k) Special Meeting. The President shall act as chairman of any special meetings of the Association if he is present. If the President is not present, the following officers shall act as chairman of the meeting in the following priority: Vice President, Secretary, Treasurer. If none of those officers is present, a chairman shall be selected by a Majority Vote. The chairman shall call the meeting to order at the designated time. At the meeting, the Association shall consider only matters for which the meeting was called, as described in the notice of the special meeting.

**ARTICLE III. BOARD OF DIRECTORS**

Section 3.01 Management. The affairs of the Association and *Esplanade Annex* shall be governed and managed by the Board. The Board shall be composed of three (3) individuals. After the Applicable Date, the number of Directors may periodically be increased or decreased by resolution adopted by not less than a majority of the Board. The number of Directors after the Applicable Date shall not be less than three (3) or more than five (5). No reduction in the number of Directors shall result in the removal of a Director from office prior to the expiration of his term. If the Board increases the number of Directors after the Applicable Date, the Members shall elect the additional Director(s) by a Majority Vote according to a procedure the Board establishes by resolution. No individual shall be eligible to serve as a Director unless he is, or is deemed in accordance with the Declaration to be, an Owner, excluding an individual appointed by Declarant as provided in Section 3.02.

Section 3.02 Initial Board of Directors. The initial members of the Board shall be Jeffrey D. Congdon, Linda S. Congdon and Christopher A. Congdon. Despite anything to the contrary stated in Organizational Documents, the Act or the Statute: (a) the Initial Board shall hold office until the Applicable Date, and (b) the Declarant shall appoint a Person to fill any vacancy or vacancies that occurs in the Initial Board prior to the Applicable Date. A Person may serve on the Initial Board, whether as an original member or as a member appointed by Declarant to fill a vacancy, regardless of whether he is an Owner. By acceptance of a deed to a Condominium Unit, or by acquisition of an interest in a Condominium Unit by any other lawful manner, each

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Owner shall be deemed to appoint Declarant as the Owner's agent, attorney-in-fact, and proxy to exercise all the Owner's rights to vote as Declarant determines on all matters on which Members are entitled to vote under the Organizational Documents, the Act, the Statute or otherwise. This appointment is coupled with an interest and irrevocable until the Applicable Date. The incompetence of an Owner subsequent to the deemed appointment shall not terminate or otherwise affect the appointment.

Section 3.03 Additional Qualifications. After the Applicable Date, the Board shall consist only of Owners. When more than one individual owns a Condominium Unit, or the Owner is not a natural Person, then one of the individuals from the multiple Owners, or an owner, manager, officer, or the trustee of an Owner, shall be eligible to serve on the Board. However, no Condominium Unit may be represented on the Board by more than one Person at a time.

Section 3.04 Term of Office and Vacancy. The Initial Board shall serve until the Applicable Date. Either before, or as soon as practical after the Applicable Date, the Owners shall hold a meeting to elect the successor Board. The successor Board may not serve until the Applicable Date. At the first election one Director shall be elected for a three (3) year term, one Director for a two (2) year term, and one Director for a one (1) year term. For the first election, the Directors shall select which board seats shall bear which staggered terms by random drawing. Thereafter, each Director shall be elected for a term of three (3) years. If there are more than three Directors, the three-two-one progression shall start over beginning with the fourth director slot. Each Director shall hold office throughout the term of his election, and thereafter until his successor is elected and qualified. Subject to Section 3.02 regarding the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining Directors or by vote of the Owners if a Director is removed in accordance with Section 3.05. A Director filling a vacancy shall serve until the next annual meeting of the Members and until his successor is elected and qualified. At the first annual meeting following any the vacancy, a Director shall be elected for the balance of the term of the Director so removed or otherwise vacated.

Section 3.05 Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by a Majority Vote of Owners at a special meeting of the Members called for that purpose. The removed Director's successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Members, and until his successor is duly elected and qualified.

Section 3.06 Duties of the Board of Directors. The Board shall provide for a.) the administration of *Esplanade Annex*, and the maintenance, upkeep and replacement of the Common Areas and Limited Common Areas, and the Garages, unless the Garage matter is otherwise the responsibility or duty of Owners, and b.) the collection and disbursement of the Common Expenses and Garage Expenses. The Board may employ a Managing Agent on behalf of the Association on terms the Board finds, in its discretion, reasonable and customary. However, no agreement for professional management of the Property, or any other contract

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providing for services may exceed three (3) years. All property management agreements must provide for immediate termination without any termination fee for good cause by either party, and for termination by either party without cause and without any termination fee on ninety (90) days or more written notice. The duties of the Board, with the assistance of the Managing Agent, if applicable, include without limitation:

- (a) protection, surveillance and replacement of the Common Areas and Limited Common Areas, and the Garages, unless otherwise the responsibility or duty of Owners; however, this duty shall not require the Association, the Board or any Managing Agent to provide any on-site or roving guards, security service, or security system for protection or surveillance;
- (b) procuring utilities used for *Esplanade Annex*, removal of garbage and waste, and snow removal from the Common Areas;
- (c) landscaping, painting, decorating, furnishing, maintaining and repairing the Garages, the Common Areas and, when applicable, the Limited Common Areas;
- (d) surfacing, paving and maintaining sidewalks;
- (e) washing and cleaning exterior window surfaces in the Common Areas;
- (f) assessment and collection from the Owners of the Owners' pro rata shares of the Garage Expenses and Common Expenses;
- (g) determination of whether improvements are to the Common or Limited Common Areas;
- (h) preparation of the proposed annual budgets;
- (i) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year;
- (j) keeping a current, accurate and detailed record of receipts and expenditures affecting the Property, specifying and itemizing Garage Expenses and Common Expenses; payment vouchers for all expenditures shall, prior to payment, be approved by a Director or any other person to whom the Board may delegate that authority, including the Managing Agent;
- (k) procuring and maintaining for the benefit of the Owners, the Association and the Board the insurance coverage required by Section 8.01 and other insurance coverage the Board, in its sole discretion, may deem necessary or advisable;
- (l) making available to Owners and Mortgagees current copies of the Organizational Documents and any other books, records and financial statements of the Association; and

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(m) interpreting, applying and enforcing all terms, covenants, restrictions, rules and regulations contained in the Organizational Documents.

(n) The Board shall also make available to prospective purchasers of Condominium Units current copies of the Organizational Documents and the most recent annual financial statement, if it has been prepared. "Available" means available for inspection upon request during normal business hours or under other reasonable circumstances. Upon the written request of the United States Department of Housing and Urban Development, the Veterans Administration, or any other governmental or quasi-governmental agency or authority with lawful authority to make a request, the Board shall also prepare and furnish within a reasonable time an audited financial statement for the Association for the immediately preceding fiscal year.

Section 3.07 Powers of the Board of Directors. The Board shall have all powers reasonable and necessary to accomplish the performance of its duties. These powers include without limitation, the power to:

- (a) employ a Managing Agent to assist the Board in performing its duties, subject to Section 3.06;
- (b) purchase for the benefit of the Owners equipment, materials, labor and services as necessary in the judgment of the Board;
- (c) employ legal counsel, architects, contractors, accountants and others who in the judgment of the Board are necessary or desirable for the business and affairs of *Esplanade Annex*;
- (d) employ, designate, discharge and remove personnel in the judgment of the Board necessary for the maintenance, upkeep, repair and replacement of the Common Areas and, when applicable, the Limited Common Areas;
- (e) include the costs of all the above as Garage Expenses or Common Expenses and to pay all of the costs therefrom;
- (f) open and maintain a bank account or accounts in the name of the Association; and
- (g) adopt, revise, amend and alter periodically Rules and Regulations with respect to use, occupancy, operation and enjoyment of the Property.

Section 3.08 Limitation on Board Action. After the Applicable Date, the authority of the Board to enter into contracts shall be limited to contracts involving a total expenditure of less than five percent (5%) of the annual budgets then in effect without obtaining the prior approval of a Majority Vote of Owners, except that in the following cases the approval shall not be necessary:

- (a) contracts for replacing or restoring portions of the Garages, Common Areas or Limited

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Common Areas damaged or destroyed by fire or other cause when the cost thereof is payable from insurance proceeds;

- (b) proposed contracts and proposed expenditures expressly stated in the proposed annual budgets and approved by the Owners at the annual or other meeting; and
- (c) expenditures necessary to deal with emergency conditions when the Board reasonably believes there is insufficient time to call a meeting of the Owners.

Section 3.09 Compensation. No Director shall receive any compensation for his services as a Director. The Managing Agent shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

Section 3.10 Meetings. All meetings of the Board may be held in person, or by telephone conference, webcam, web cast, or other electronic means by which each Director may communicate with each other member. All meetings may be held synchronously or asynchronously.

- (a) Organization Meeting. After the Applicable Date, the Board shall meet each year within ten (10) days following the date of the annual meeting of the Members at the time and place fixed at the annual meeting, for the purpose of organization, election of officers and consideration of any other business properly brought before the meeting. No notice shall be necessary to any newly elected Directors for the meeting if a quorum is present.
- (b) Regular Meetings. The Board may hold regular meetings at times and places a majority of the Directors may determine. The Secretary shall give notice of regular meetings of the Board to each Director by telephone, electronic mail, United States mail, or personal delivery at least five (5) days prior to the date of the meeting.
- (c) Special Meetings. The President or any Director may call special meetings of the Board. The Director who calls a special meeting shall give written notice thereof to the Secretary, who shall then give notice to the Directors by telephone, electronic mail, United States mail, or personal delivery at least three (3) days prior to the date of a special meeting. The notice of the meeting shall contain a statement of the purpose of the meeting, and shall state the time and place within Marion County, Indiana, of the meeting.

Section 3.11 Waiver of Notice. Before any meeting of the Board, any Director may waive notice of a meeting in writing. Waiver of notice is equivalent to giving and receiving notice. The presence of any Director at a meeting or his subsequent consent to actions taken at the meeting shall constitute that Director's waiver of notice of the time, place and purpose of the meeting. If all Directors are present at any meeting of the Board, no notice shall be required, and any business may be transacted at the meeting.

Section 3.12 Action Without a Meeting. Any action or authorization that requires a meeting of

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the Board may be done without a meeting, if all Directors sign a written consent authorizing the action or granting the authority, and the written consent is filed with the minutes of the proceedings of the Board.

Section 3.13 Quorum. At all meetings of the Board a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of the majority of the Directors present at a meeting at which a quorum is present shall be the decision of the Board.

Section 3.14 Non-Liability of Directors. The Directors shall not be liable to the Owners or any other Persons for any mere error or mere mistake of judgment exercised in discharging their duties and responsibilities as Directors. Directors may be liable for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify, hold harmless, and defend each Director for all liability to any Person arising from contracts made by the Board on behalf of *Esplanade Annex* or the Association, except contracts made in bad faith or contrary to the Declaration or these By-Laws. The Directors shall have no personal liability for any contract they make on behalf of *Esplanade Annex* or the Association, except contracts made in bad faith or contrary to the Declaration or these By-Laws. In all matters, the Board is acting for the Association as its agent. Every contract the Board or the Managing Agent makes on behalf of *Esplanade Annex* shall state that the Board and the Managing Agent, as the case may be, are acting as agent for the Association, and the Directors shall have no personal liability for or related to the contract. Nothing in the foregoing description shall create personal liability of the Owners for contracts and actions of the Board. If an Owner is nevertheless held or found personally liable for a contract of the Association or an act of a Director or the Board, or for indemnification of a Director, the Owner's liability is limited to a percentage of the total liability or obligation equal to the Owner's Percentage Interest.

Section 3.15 Additional Indemnity of Directors. The Association shall indemnify, hold harmless and defend any individual made a party to any action, suit or proceeding because he is or was a Director. The indemnity and defense extend to reasonable expenses, including attorney fees, that the indemnitee actually and necessarily incurs in the defense of any such action, suit or proceeding, or any appeal thereof. The indemnity obligation does not apply to a Director's liability for gross negligence or misconduct in the performance of his duties. The Board may in its discretion purchase directors' liability insurance with terms and limits the Board in its discretion may determine. The Association shall reimburse any Director for the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if the Owners find by a Majority Vote of Owners that the Director was not guilty of willful misconduct, bad faith or gross negligence. A Director shall not be liable for negligence or misconduct in the performance of his duties when, acting in good faith, the Director relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent or any officer or employee thereof, or any accountant, attorney or other Person employed by the Association to render advice or service, unless the Director had actual knowledge of the falsity or incorrectness thereof. A Director shall not be liable for negligence or misconduct for the sole reason that he failed or neglected to attend a meeting or meetings of the Board.



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Section 3.16 Transactions Involving Affiliates. No contract or other transaction between the Association and one or more of its Directors, or between the Association and any Person (including Declarant or any officer, director, member, manager or shareholder of Declarant), of which one or more of the Directors are directors, officers, members, managers, partners, or employees or in which are economically, monetarily, or otherwise interested, shall be void or voidable, solely because the Director or Directors are present at the meeting of the Board that authorizes or approves the contract or transaction, or because his or their votes are counted for such purpose if:

- (a) the contract or transaction is between the Association and Declarant or any affiliate of Declarant entered into prior to the Applicable Date; or
- (b) the fact of the affiliation or interest is disclosed or known to the Board or a majority thereof or noted in the minutes, and the Board authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote of the interested Director; or
- (c) the fact of the affiliation or interest is disclosed or known to the Co-owners, or a majority thereof, and they approve or ratify the contract or transaction in good faith by a vote sufficient for the purpose; or
- (d) the contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

Affiliated or interested Directors may be counted in determining the presence of a quorum of any meeting of the Board thereof that authorizes, approves or ratifies any contract or transaction.

Section 3.17 Bonds. The Association may maintain fidelity bonds for all officers, directors and employees of the Association, and for all other persons who handle, or are responsible for, funds of or funds administered by the Association. When the Managing Agent has the responsibility for handling or administering funds of the Association, the Managing Agent may in the Board's discretion be required to maintain fidelity bond coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The fidelity bond shall name the Association as an obligee, and shall be in an amount the Board determines, but not more than one hundred twenty percent of the estimated maximum of funds, including reserve funds, in the custody of the Association or Managing Agent, as the case may be, at any given time during the term of each bond. The bonds shall contain waivers by the issuers of the bonds of all defenses based on the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The expense of all the bonds shall be a Common Expense.

ARTICLE IV. OFFICERS

Section 4.01 Officers of the Association. The principal officers of the Association shall be the

President, Vice President, Secretary and Treasurer, all of whom the Board shall elect. The Directors may appoint an Assistant Treasurer, an Assistant Secretary, and any other officers that may be necessary in the judgment of the Board. Any two (2) or more offices may be held by the same person, except that the offices of the President and Secretary shall not be held by the same person.

Section 4.02 Election and Removal of Officers. The Board shall elect officers of the Association annually at the annual meeting of the Board. All officers must be Owners at the time of their election. The Board may remove any officer with or without cause, and elect or appoint his successor at any regular meeting or special meeting of the Board called for such purpose, both by an affirmative vote of a majority of all Directors.

Section 4.03 The President. The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Association and the Board, and shall have and discharge all the general powers and duties usually vested in the office of president or chief executive officer of an association or a stock corporation organized under the laws of Indiana. The President may appoint committees from among the Owners to assist in the affairs of the Association, and to perform other duties the Board may periodically prescribe.

Section 4.04 The Vice President. The Vice President shall perform all duties incumbent upon the President during the absence or disability of the President. The Vice President shall also perform other duties that these By-Laws may prescribe, or that the Board or the President may periodically impose on him.

Section 4.05 The Secretary. Secretary shall attend all meetings of the Association and the Board, and shall keep or cause to be kept a true and complete record of the proceedings of their meetings. The Secretary shall perform all other duties incident to the office of the Secretary, and other duties that the Board may periodically prescribe. The Secretary shall ensure all notices of the Association and the Board are delivered in accordance with these By-Laws.

Section 4.06 The Treasurer. The Treasurer shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Association. The Treasurer shall also perform all other duties incident to the office of Treasurer. The Treasurer shall be the legal custodian of all money, notes, securities and other valuables of the Association. The Treasurer shall immediately deposit all funds of the Association coming into his possession in a reliable bank or other depository that the Board designates. All bank account or accounts containing funds or property of the Association shall be registered and titled exclusively in the name of the Association. The Treasurer may permit the Managing Agent to handle and account for money and other assets of the Association to the extent appropriate as part of the Managing Agent's duties.

Section 4.07 Assistant Officers. The Board may periodically designate and elect an Assistant Secretary and an Assistant Treasurer. The Assistant Secretary and an Assistant Treasurer shall have the powers and duties of the officers they assist. The Board may delegate to the Assistant Secretary and the Assistant Treasurer other powers and duties that these By-Laws or the Board

may prescribe.

## ARTICLE V. MANAGEMENT

### Section 5.01 Maintenance, Repairs and Replacements.

- (a) Condominium Units. Each Owner shall maintain, repair, decorate, and replace as necessary his own Condominium Unit, appurtenant Limited Common Areas, and Garage Unit, except as may otherwise be provided herein. Each Owner shall promptly perform all maintenance and repair within his Condominium Unit that if neglected would adversely affect the Property. In addition, each Owner shall maintain, repair and replace as necessary all equipment serving his Condominium Unit and Limited Common Areas, except to the extent otherwise provided herein. By example and not limitation, each Owner shall, with respect to his Condominium Unit, clean, maintain, repair, and replace as necessary, at his own expense, all partitions, interior walls, ceilings, floors, doors, the exterior and interior of screens and windows, appliances, garbage disposals, dishwashers, stoves, ranges and refrigerators, telephones, air conditioning and heating equipment that serve only the Owner's Condominium Unit (whether located wholly or partially inside or outside the Condominium Unit), lavatories, toilets, baths, showers, interior grouting and caulking, and all other accessories appurtenant to the Condominium Unit or belonging to the Owner thereof.
- (c) Owner Maintenance Exceptions. Despite anything herein to the contrary, the Association shall (i) maintain water, gas, telephone, cable television, plumbing and electric lines and facilities that serve individual Condominium Units and are located within exterior walls of the Condominium Units, including any lines or facilities in the area from below the floor to above the ceiling, if they are situated within an extension of the exterior walls of the Condominium Unit; (ii) paint, caulk or tuck point the exterior of Building and Garages; seal, paint, repair and replace windows (including frames) in the exterior perimeter walls of the Building and Garages; and (iii) resurface, repair or replace sidewalks, roofs and other facilities and appurtenances. The foregoing applies to usual and ordinary maintenance, repair and replacement. Despite any contrary statements in these By-laws, the cost of any maintenance, repair or replacement necessitated by the willful or negligent misuse of the Property by an Owner shall be assessed against the Condominium Unit with respect to which such maintenance or repair is performed. The Board or its agent shall deliver a statement for the amount thereof promptly to the then Owner of the Condominium Unit, the Assessment shall become due and payable, and shall be a continuing lien and obligation of said Owner in all respects as provided in Section 6.07.
- (d) Owner Maintenance Assumed by Association. If maintenance or repair of any Condominium Unit, including any attached Garage Unit, is, in the discretion of the Board, reasonably necessary to protect the Common Areas or Limited Common Areas, or to preserve the appearance or value of the Property, or otherwise serves the general

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welfare of the Co-owners, the Board may undertake the maintenance or repair. However, the Association shall not undertake maintenance or repair without a resolution by the Board and reasonable written notice to the Owner of the affected Condominium Unit. The Association shall assess the cost of any such maintenance or repair against the Condominium Unit on which such maintenance or repair is done. The Board or its agents shall deliver a statement for the amount thereof promptly to the then Owner of the Condominium Unit, and the Assessment shall become due and payable and a continuing lien and obligation of said Owner in all respects as provided in Section 6.07.

- (e) **Air Conditioning Units.** Each Owner shall, at his expense, maintain, repair and replace as necessary the air conditioning condensing unit, line sets, coils, air handlers, and other air conditioning equipment, if any, that serves his Condominium Unit.
- (f) **Common Areas, Limited Common Areas, and Garage Maintenance.** The Association shall furnish all maintenance, repairs and replacements to the Common Areas and Limited Common Areas, except as otherwise provided in the Declaration or these By-Laws, as part of the Common Expenses. The Association shall furnish all maintenance, repairs and replacements to the Garages, except as otherwise provided in the Declaration or these By-Laws, as part of the Garage Expenses. The Board may adopt Rules and Regulations concerning maintenance, repairs, use and enjoyment of the Common Areas and Limited Common Areas that are consistent with the terms and provisions of the Declaration and these By-Laws.

Section 5.02 Right of Entry. The Board, the Managing Agent, and any other Person authorized by the Board or the Managing Agent may, at reasonable times and with reasonable prior notice (except in cases of emergency, in which event no notice shall be required), enter each individual Condominium, each Garage Unit, the Garages, the Common Areas, and the Limited Common Areas for inspections, maintenance and repairs.

Section 5.03 Alterations and Additions. No Person may make any alterations or additions to the Common Areas of the Garages, other Common Areas, or Limited Common Areas without the prior written approval of the Board, nor may any Owner make any alteration or addition within the boundaries of his Condominium Unit that would affect the safety or structural integrity of the Building.

Section 5.04 Real Property Taxes. Real property taxes shall be separately assessed to each Condominium Unit as provided in the Act. If for any year real property taxes are not separately assessed and taxed to each Condominium Unit, but are assessed and taxed on the Property as a whole, then each Owner shall pay his proportionate share thereof in accordance with his respective Percentage Interest. If real property taxes not separately assessed to each Condominium Unit can be allocated among the land and improvements, then the tax for the land shall be allocated to the Owners on a proportionate Percentage Interest basis, and the tax on the improvements shall be allocated to the Owners on a proportionate value basis as the Board determines.

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Section 5.05 Utilities. Each Owner shall pay his own utilities and services for his own Condominium Unit and Limited Common Areas. The Association shall pay utilities that are separated metered and exclusively serve the Common Areas. The cost of utilities and services that serve the Common Areas shall be assessed as a Common Expense. Each Owner with a Garage Unit attached shall pay for his own utilities and services for his Garage Unit that are separately metered or assessed to or for his Garage Unit. The cost of utilities and services that serve the Garages generally that are not separately metered or assessed to a Garage Unit shall be assessed as a Garage Expense.

Section 5.06 Limitation of Liability. The Association shall not be liable for any failure of water supply or other services to be obtained by the Association, if any, or paid for as a Common Expense or Garage Expense, or for injury or damage to person or property caused by the elements or by the Owner of any Condominium Unit, or any other Person, or resulting from electricity, water, snow or ice that may leak or flow from any portion of the Common Areas or Limited Common Areas or from any pipe, drain, conduit, appliance, machinery or equipment. The Association shall not be liable to any Owner for loss or damage, by theft or otherwise, of property that is stored or placed on any of the Common Areas or Limited Common Areas. No diminution or abatement of Assessments for Common Expenses or Garage Expenses shall be claimed or allowed for inconvenience or discomfort arising from making repairs or improvements to the Common Areas or Limited Common Areas, or from any action taken by the Association to comply with any law, ordinance, order or directive of any municipal or other governmental authority.

Section 5.07 Negligence. Each Owner shall be liable for the expenses of any maintenance, repair or replacement rendered necessary by his negligence or by that of his guests, employees, agents or lessees, to the extent that such expense is not reimbursed by insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Condominium Unit or its appurtenances or of the Common Areas or Limited Common Areas.

Section 5.08 Costs and Attorneys' Fees. The Association may recover from the responsible Owner the Association's reasonable attorneys fees incurred because of the failure of the Owner to make any payments required by, or to comply with any provision of, the Declaration, the Act, these By-Laws, or the Rules and Regulations, as each may be amended from time to time, whether or not suit is filed.

ARTICLE VI. ASSESSMENTS

Section 6.01 Annual Budgets.

- (a) At least 30 days before the date of each annual meeting of the Association, the Board shall cause to be prepared two proposed annual budgets for the forthcoming fiscal year. One budget, hereafter called the "Building Budget," shall estimate the total amount of the Common Expenses for the forthcoming fiscal year for the Property, but excluding the

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Garages. The other budget, hereafter called the “*Garage Budget*,” shall estimate the total amount of Garage Expenses, segregated between Garage 1 and Garage 2. The Board shall furnish a copy of the proposed Building Budget to each Owner at or prior to the time the notice of the annual meeting is delivered to the Owners. The Board shall furnish a copy of the proposed Garage Budget to each Owner of each Condominium Unit who has a Garage Unit attached to his Condominium Unit at or prior to the time the notice of the annual meeting is delivered to the Owners.

(b) The annual Building Budget and Garage Budget shall be submitted to the Owners at the annual meeting of the Association for adoption, and, if adopted, shall be the basis for the Regular Assessments for the forthcoming fiscal year. At the annual meeting of the Owners, the Building Budget may be approved in whole or in part or may be amended in whole or in part by a Majority Vote of the Co-owners, and the Garage Budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Co-owners who have at least one Garage Unit attached to their Condominium Units. However, beginning with the budgets for fiscal year 2017: 1.) no Owner approval shall be required for the Building Budget, if the proposed annual Building Budget does not exceed the current year’s Building Budget by more than five percent, and 2.) no Owner approval shall be required for the Garage Budget, if the proposed annual Garage Budget does not exceed the current year’s Garage Budget by more than five percent. Budgets not exceeding the prior year’s budget by more than five percent are deemed automatically approved.

(c) If the Owners fail to approve an annual Building Budget or Garage Budget, whether before or after the annual meeting of the Association, the Owners shall, as a temporary budget, continue to pay Regular Assessments based on the last approved Building Budget or Garage Budget, or, at the option of the Board, based on not more than one hundred and five percent of the last approved Building Budget or Garage Budget. If the Owners fail to approve an annual Building Budget or Garage Budget, and the failure continues for one year or more, the Board may impose Regular Assessments based on budget increases of not more than five percent per fiscal year.

(d) The Board may in its discretion at any time during a fiscal year re-allocate budget line items to other budget line items within the respective Building Budget and Garage Budget; provided the re-allocation does not increase the total amount of the respective budgets.

(e) The annual Building Budget, the annual Garage Budget, the Regular Assessments, and all sums assessed by the Association shall be established by using any reasonable method of accounting, including compilation, applied on a consistent basis. The annual Building Budget and Garage Budget and the Regular Assessments shall include the amounts required for funding the reserve accounts required by Sections 6.04 and 6.05. The failure or delay of the Board to prepare a proposed annual Building Budget or Garage Budget,

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and to furnish a copy thereof to the respective Owners shall not constitute a waiver or release in any manner of the obligations of the respective Owners to pay the Common Expenses and Garage Expenses, as herein provided, whenever determined.

Section 6.02 Regular Assessments.

- (a) The annual Building Budget as adopted by the Owners shall contain a proposed assessment against each Condominium Unit based on the estimated cash required for the Common Expenses for the Property, excluding the Garages, during the fiscal year of the budget and required reserve amounts as stated in the budget. Each Condominium Unit shall be assessed its share of the Common Expenses allocated to the Condominium based on the Percentage Interest of each Condominium Unit, excluding from the calculation of Percentage Interest the square footage of any Garages attached to any Condominium Units.
- (b) The annual Garage Budget as adopted by the Owners with Garage Units attached to their Condominium Units shall contain a proposed assessment against each Condominium Unit to which a Garage Unit is attached based on the estimated cash required for the Garage Expenses, segregated between Garage 1 and Garage 2, in the fiscal year of the budget and required reserve amounts as stated in the budget. Each Condominium Unit to which a Garage Unit is attached shall be separately assessed its share of the Garage Expenses in proportion to the square footage each Garage Unit bears to the total square footage of the Garage in which the Garage Unit is located. Garage Expenses shall be assessed only to the Condominium Units to which the individual Garage Units appertain. Garage Expenses for each Garage shall be assessed respectively to the Condominium Units with Garage Units in the respective Garages. No Garage Expenses shall be allocated or assessed to a Condominium Unit with no Garage Unit attached to it.
- (c) Despite any contrary language in these By-laws, if any, the Owners of Condominium Units with Garage Units attached shall pay all expenses of maintaining, repairing, and rebuilding their respective Garages. The Board in its sole discretion may allocate Common Expenses and Garage Expenses inextricably entangled and associated with both the Garages and the remainder of the Property between Owners of Condominium Units without Garage Units attached and Owners of Condominium Units with Garage Units attached as fairly, reasonably, and logically as possible under the circumstances, including, for example, property and liability insurance premiums due on a policies that do not segregate the Garages and the rest of the Property.
- (d) Immediately following the adoption of the annual Building Budget and Garage Budget, the Board shall give each Owner written notice of the assessment(s) against his respective Condominium Unit.
- (e) The assessments against the Condominium Units based on the Building Budgets and Garage Budgets approved or automatically approved are herein called "Regular

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Assessments.” If the Regular Assessment for a particular fiscal year is initially based on a temporary budgets, the Regular Assessment shall be revised within fifteen (15) days following adoption of the final annual budgets by the Owners, to reflect the Assessment against each Condominium Unit based on the annual budgets as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual Building Budget and Garage Budget, including reserve funds as herein provided. The Regular Assessment against each Condominium Unit shall be paid in advance in equal monthly installments, commencing on the first day of the first month of each fiscal year and monthly thereafter to and including the first day of the last month of the fiscal year. However, monthly assessment installments for 2016 shall commence on the first day of the first calendar month after the date of transfer of the first Condominium Unit to a person other than Declarant. Payment of the monthly installments of the Regular Assessment shall be made to the Board or the Managing Agent, as directed by the Board; provided, however, Owners may elect to pay or pre-pay monthly assessments quarterly, semi-annually, or annually, in advance. At the election and option of the Board, the Regular Assessment may be made payable by the Owners in advance in equal quarterly installments rather than monthly installments. With regard to a Regular Assessment for a fiscal year of the Association that is initially based on temporary budgets:

- (i) if the Regular Assessment based on the final annual budgets adopted by the Owners exceeds the amount of the Regular Assessment based on the temporary budgets, that portion of the excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment that is due shall be paid with the next payment, and all payments thereafter during the fiscal year shall increase so that the Regular Assessment as finally determined are paid in full with remaining installment payments due in the fiscal year; or
  - (ii) if the Regular Assessment based on the temporary budgets exceeds the Regular Assessment based on final annual budgets adopted by the Owners, the excess shall be a credit against the next payments of the Regular Assessment coming due until the entire amount of the excess has been absorbed; provided, however, that if an Owner had paid his Regular Assessment either semi-annually or annually in advance, then the foregoing adjustments shall be made by a cash payment to the Owner on the first day of the second month following the determination of the Regular Assessment based on the annual budgets finally adopted by the Owners.
- (f) The Regular Assessment for each Condominium Unit for the current fiscal year of the Association shall become a lien on each respective Condominium Unit effective the first day of each fiscal year of the Association; although the final determination of the amount of the Regular Assessment may not have been made by that date. If an Owner pays his Regular Assessment for the current fiscal year in whole or in part based on a temporary budgets, and thereafter, but before the annual budgets and Regular Assessment are finally



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determined, approved and adjusted, that Owner sells, conveys or transfers his Condominium Unit or any interest therein, that Owner and his successor owner of the Condominium Unit shall not be relieved or released from payment of the Regular Assessment for the Condominium Unit as finally determined. That Owner and his successor shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments, furnished by the Association pursuant to Section 12.03 prior to the final determination and adoption of the annual budgets and Regular Assessment for the year in which the statement is made, shall state that the assessments are subject to adjustment upon determination and adoption of the final budgets and Regular Assessment for the year, and that all Persons to whom the statement is delivered or who may rely thereon shall be bound by such final determinations. Installments of Regular Assessments shall be due and payable automatically on their due dates without any notice from the Board or the Association, and the Board or the Association need not provide any notice or statements to Owners for payment of assessments.

- (g) Despite anything herein to the contrary, each Owner shall pay to Declarant, in addition to the Initial Assessment, a pro rata portion of his first Regular Assessment upon closing and delivery of a deed to his Condominium Unit. The pro rata assessment shall be calculated on the number of days from and including the date of closing through the last day of the month (or quarter if the Board has so determined) to which the Regular Assessment pertains. This obligation shall terminate on the Applicable Date.

Section 6.03 Special Assessments. Periodically, Common Expenses or Garage Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. In that event, the Board shall call a Special Meeting with notice to Owners to consider a Special Assessment. The Owners shall be allowed the opportunity to be heard, but shall not have the right of approval of the Special Assessment, unless otherwise provided in these By-Laws, the Declaration or the Act. The Board by majority vote may then fix, declare and impose Special Assessments. Upon a resolution of the Board imposing the Special Assessment, the Special Assessment shall become a lien on each Condominium Unit in accordance with the Percentage Interest of each Condominium Unit. Special assessments for Garage Expenses shall be allocated only to, and shall become a lien only on, Condominium Units with Garage Units attached to them. Without limiting the generality of the foregoing provisions, the Board may impose Special Assessments periodically to pay for capital expenditures or to pay for the cost of any repair or reconstruction of damage the extent insurance proceeds are insufficient therefore under the circumstances described herein and in the Declaration.

Section 6.04 Reserve for Repairs and Replacements. The Board shall establish and maintain two reserve funds, one for repairs and replacements to the Property, excluding the Garages (the Building Reserve Fund), and one for repairs and replacements to the Garages (the Garage Reserve Fund.) Once the Board determines to begin collecting reserves for Garage 2, the Board shall subdivide the Garage Reserve Fund into two accounts, one for Garage 1 and one for Garage

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2. All contributions remaining in the Reserve Fund for Garage 1 at that time shall be the opening balance of the reserve account for Garage 1. The reserve account for Garage 2 shall begin at either zero, or the amount of reserves the Board has collected for the Garage 2 reserve account. The Board shall allocate to and fund the Building Reserve Fund at least annually with an amount equal to the greater of ten percent of the Regular Assessments associated with the Property or the amount determined by the Board to be necessary to meet the costs of periodic maintenance, repair, renewal and replacement of the Common Areas and Limited Common Areas other than the Garages and Garage Units. The Board shall allocate to and fund the Garage Reserve Fund at least annually with an amount equal to the greater of ten percent of the Regular Assessments associated with the Garages or the amount determined by the Board to be necessary to meet the costs of periodic maintenance, repair, renewal and replacement of the Garages. The Board shall segregate the reserve portion of Regular Assessments for Garage 1 into the reserve account for Garage 1. The Board shall segregate the reserve portion of Regular Assessments for Garage 2 into the reserve account for Garage 2. Repairs and maintenance items for the Property include without limitation painting, caulking or tuck pointing the exterior of the Building and Garages; sealing, painting, repairing and replacing windows (including frames), if any, in the perimeter walls of the Building and Garages; and resurfacing, repairing or replacing sidewalks, roofs and other facilities and appurtenances. In determining the amount, the Board shall take into consideration the expected useful life of the Building, Garages, Common Areas, Limited Common Areas and other components, projected increases in the cost of materials and labor, earned interest on the reserve funds, and the advice of Declarant, the Managing Agent and any consultants the Board may employ. The Building Reserve Fund shall be conclusively deemed a Common Expense. The Garage Reserve Fund shall be conclusively deemed a Garage Expense. The reserve funds shall be deposited in one or more special accounts with a lending institution, the accounts of which are insured by an agency of the United States of America, or may in the discretion of the Board be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The reserve for replacements may be expended only in payment for the periodic maintenance, repair, renewal or replacement of the Garages, Common Areas, Limited Common Areas, equipment, and other components of the Property. The Building Reserve Fund shall fund only maintenance and repairs to the Property, excluding the Garages. The segregated account in the Garage Reserve Fund for Garage 1 shall fund only maintenance and repairs to Garage 1. The segregated account in the Garage Reserve Fund for Garage 2 shall fund only maintenance and repairs to Garage 2. The Board shall review the adequacy of the reserve funds at least annually. The proportionate interest of any Owner in the reserves for replacements is an appurtenance to his Condominium Unit, and shall not be separately withdrawn, assigned or transferred, or otherwise separated from the Condominium Unit to which it appertains, and shall transferred with each respective Condominium Unit.

Section 6.05 Initial Assessment for Reserve(s.) On the date that Declarant conveys to an Owner a Condominium Unit without a Garage Unit attached, the Owner shall pay to the Association one thousand dollars (\$1,000.00) for the Building Reserve Fund. On the date that Declarant conveys to an Owner a Condominium Unit with a Garage Unit attached, the Owner shall pay to the Association the sum of one thousand dollars (\$1,000.00) for the Building

Reserve Fund and five hundred dollars (\$500.00) for each attached Garage Unit for the Garage Reserve Fund. The Declarant shall deposit the initial assessments in the appropriate reserve that the Association maintains pursuant to Section 6.04 for repairs, maintenance, and replacements.

Section 6.06 General Operating Reserve. The Board may establish and maintain a reserve fund for non-recurring general operating expenses by the allocating and paying to the reserve fund at least annually amounts the Board in its discretion determines reasonable under the circumstances. Payments to the fund are a Common Expense. The Board shall deposit contributions in a separate account with a bank, the accounts of which are insured by an agency of the United States of America. The Board may also invest contributions in obligations of the United States of America or in obligations fully guaranteed as to principal by the United States of America. Funds from the general operating reserve may be only used to pay non-recurring operating expenses. The proportionate interest of any Owner in any reserve fund for general operating expenses is an appurtenance to his Condominium Unit, and shall not be separately withdrawn, assigned or transferred, or otherwise separated from the Condominium Unit to which it appertains, and shall be transferred with each respective Condominium Unit.

Section 6.07 Failure of Owner to Pay Assessments. No Owner may, by waiver of the use or enjoyment of the Common Areas, by abandonment of his Condominium Unit, or otherwise, exempt himself from paying Assessments; from contributing to the expenses of administration, maintenance, and repair of the Common Areas and, in the proper case, the Limited Common Areas, the Garages, and the Building; or from contributing to any other expense properly imposed. Each Owner shall be personally liable for the payment of all Assessments assessed to him or his Condominium Unit. When an Owner is composed of more than one person, the liability of those persons shall be joint and several. If any Owner fails, refuses or neglects to make any payment of any of his Assessments when due, a lien for the unpaid Assessment on the Owner's Condominium Unit may be filed and foreclosed by the Board for and on behalf of the Association as provided by law; provided, however, any lien for delinquent Assessments or other charges that the Association has on a Condominium Unit is subordinate to a first mortgage on the Condominium Unit, if the mortgage was recorded before the delinquent Assessment was due. Upon the failure of an Owner to make timely payments of any Assessment when due, the Board may in its discretion accelerate the entire balance of the unpaid Assessments for the remainder of the current fiscal year, and declare the balance and interest thereon immediately due and payable, despite any other provisions in these By-laws to the contrary. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Condominium Unit shall be jointly and severally liable for the payment to the Association of reasonable rental for the Condominium Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Condominium Unit, and to collect rents and other profits therefrom for the benefit of the Association to be applied to the unpaid Assessments. The Board may also file suit to recover a money judgment for any unpaid Assessment, and interest thereon as hereafter provided, without foreclosing or waiving the lien securing the same. Any payment for Assessments not made when due shall bear interest at the rate of eighteen percent per annum from the date(s) the Assessments become due until the dates the Assessments are paid. In any

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action to recover an Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, may recover costs and expenses of the action incurred, including without limitation reasonable attorneys fees, from the Owner of the respective Condominium Unit. The Board may suspend the voting rights of a Member during any period when the Member is in default in the payment of any Assessment levied by the Association.

**Section 6.08 Waiver of Lien Upon Foreclosure.** Despite anything to the contrary contained in the Organizational Documents, any sale or transfer of a Condominium Unit to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any Person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Assessment as to such installments that became due more than six (6) months prior to the sale, transfer or conveyance, but extinguishment of the lien shall not relieve the prior Owner from personal liability therefore. A sale, transfer or conveyance shall not relieve the Condominium Unit or the purchaser at a foreclosure sale, auction, or other sale, or a grantee in the event of conveyance in lieu thereof, from liability for any Assessments thereafter becoming due, or from any lien for Assessments thereafter attaching. If a lien for Assessments is divested in the manner described in this section 6.08, the unpaid share of the Assessments underlying the divested lien shall be deemed a Common Expense, collectible from all Owners, including the Person acquiring the Condominium Unit from which the lien divestiture occurred, as provided in the Act.

**Section 6.09 Initial Budgets and Assessments.** Despite anything to the contrary contained in the Organizational Documents, in the Act, in the Statute, or otherwise, until the Applicable Date, the Initial Board shall establish and impose the annual budgets and all Assessments without meetings of or concurrence of the Co-owners. Until the Applicable Date, the agency, power of attorney and proxy granted to the Declarant by each Owner pursuant to Section 3.02 shall apply to and include each Owner's right to vote on and approve the annual budgets and any Assessments.

## ARTICLE VII. RESTRICTION, ENTRY AND RULES AND REGULATIONS

**Section 7.01 Restrictions on Use.** The following restrictions on the use and enjoyment of the Condominium Units, Common Areas, Limited Common Areas and the Property shall apply to *Esplanade Annex*:

- (a) The Condominium Units and Garage Units shall be limited to residential use by their Owners. However, an Owner may use a Condominium Unit restricted to residential use for a home office as defined and limited by the applicable home occupation zoning ordinance, or equivalent, and further restricted as follows. Only light office use shall be allowed. The activity must occur completely within the Condominium Unit; and shall generate no noise or obnoxious use. No signs are allowed anywhere on the Property pertaining to the business use in any manner, including any sign that identifies the business. No clients, employees, customers, or others having business with the Owner shall visit or locate at the Condominium Unit. No inventory shall be kept at the

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Condominium Unit. No vehicles associated with the home occupation other than the Owners' personal vehicle(s) shall be driven to or from, or parked at the Property. No manufacturing activity, assembly, warehousing, or other industrial-type use is allowed. The Board shall have full discretion to determine whether the use complies with these restrictions.

- (b) No Condominium Unit or Garage Unit may be partitioned or subdivided, except in compliance with the Declaration.
- (c) No buildings shall be erected or located on the Real Estate other than the Building and Garages described or designated in the Declaration, or shown on the Plans, without the consent of the Board.
- (d) Nothing shall be done or kept in any Condominium Unit or in the Garages, the Common Areas or Limited Common Areas that will cause an increase in the rate of insurance on the Building, the Garages, or the Property, or the contents thereof. No Owner shall permit anything to be done or kept in his Condominium Unit or in the Common Areas or Limited Common Areas that will result in a cancellation of insurance on the Building, the Garages, the Property, or any part of the Common Areas or contents thereof, or that would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating entity.
- (e) No nuisance shall be permitted, and no waste shall be committed, in any Condominium Unit, Common Areas or Limited Common Areas.
- (f) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows or placed on the outside walls or roof of the Building or the Garages. No Owner shall place or affix any sign, awning, canopy, shutter, or radio or television antenna, satellite dish, other signal receiver, dish, or antennae, or other attachment or thing on the exterior walls or roofs or any other parts of the Building or Garages, or anywhere on the Property, without the prior consent of the Board. No Owner, nor anyone acting on the an Owner's behalf or at his direction, shall penetrate the roof of the Building or the Garages without the prior consent of the Board. No Owner shall paint or decorate the exterior of any Condominium Unit, or any portion thereof, in any color not previously approved in writing by the Board.
- (g) Nothing shall be done or permitted in any Condominium Unit that impairs the structural integrity of the Building or Garages, that structurally changes the Building or Garages, or that affects the exterior appearance of Building, the Garages, or the Property, except as otherwise provided in the Organizational Documents. No Condominium Unit or Garages shall be used in any unlawful manner or in any manner that might cause injury to the reputation of *Esplanade Annex* or that might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants of Condominium Units or neighboring property, including without limitation noise from fireworks, the use of any loud speakers, electrical

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equipment, amplifiers or other equipment or machines, from loud persons, or from barking dogs.

- (h) The Common Areas and Limited Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on any part of the Common Area or Limited Common Areas.
- (i) All Owners, guests, tenants or invitees; and all occupants and other Persons entitled to use any Condominium Unit, the Common Areas, and Limited Common Areas or any part thereof, shall observe and be governed by the Organizational Documents governing the operation, use and enjoyment of the Condominium Units, the Garages, the Common Areas and Limited Common Areas; including without limitation rules relating to keeping animals, parking or storing vehicles or trailers, and other matters regarding the use of the Garages, the Common Areas and Limited Common Areas.
- (j) No Owner shall plant trees or other plants, conduct landscaping, or do any gardening in any of the Common Areas or Limited Common Areas, except with the written permission of the Board.
- (k) All garbage, trash and refuse shall be stored in appropriate containers inside the Condominium Unit, and shall be kept therein until sundown of the evening before scheduled trash collection, unless deposited in a trash dumpster maintained by the Association. Garbage, trash and refuse shall be placed in sealed disposable plastic bags or other containers approved by the Board for scheduled trash collection, and shall be placed at locations for trash collection that the Board designates.
- (l) No "for sale," "for rent" or "for lease" signs or other advertising display shall be maintained or permitted on the Property without the prior written consent of the Board, except that the Declarant and the Association may place or display such signs on or for unsold or unoccupied Condominium Units.
- (m) Common Areas and Limited Common Areas shall be used only for the purposes for which they are designed and intended, and shall be used subject to the Organizational Documents.

**Section 7.02 Right of Board to Adopt Rules and Regulations.** The Board may promulgate Rules and Regulations regarding the operation of the Property, including without limitation the use of the Common Areas and Limited Common Areas. The Board may adopt or amend Rules and Regulations by a majority vote of the Board. The Board shall cause copies of the Rules and Regulations and all amendments thereto to be delivered promptly to all Owners.

**Section 7.03 Enforcement.** Until the Applicable Date, the Declarant, and thereafter the Association, may enforce the restrictions and regulations adopted pursuant to this Article. The

Board may recover its reasonable costs, including attorneys' fees from an Owner that the Board incur in enforcing the rules or regulations.

#### ARTICLE VIII. INSURANCE

Section 8.01 Coverage. The Board, on behalf of the Co-owners, shall obtain and maintain, and cause the Association to pay the premiums for, the following insurance coverage underwritten by insurance companies authorized to do business in Indiana:

- (a) Casualty or physical damage insurance in an amount equal to the full replacement cost of all Buildings and Improvements and all personal property owned by the Association, with "agreed amount" and "inflation guard" endorsements, or equivalent, without deduction or allowance for depreciation, as the Board may determine annually with the assistance of the insurance company providing the coverage, with coverage insuring at least the following:
  - (i) loss or damage by fire or other hazards covered by a standard extended coverage endorsement and coverage for Common Expenses and Garage Expenses with respect to Condominium Units and Garage Units that come due during a period of repair or construction;
  - (ii) other risks customarily covered with respect to properties similar in construction, location and use, including without limitation vandalism, malicious mischief, windstorm, water damage, machinery explosion or damage, other explosion, collapse, and any other risk coverage the Board may periodically determine necessary, including at the option of the Board, earthquake and flood coverage for storm, overflow of water, and storm and sewer backup coverage.
- (b) Comprehensive public liability insurance with limits the Board may consider appropriate, including without limitation water damage, legal liability, hired automobile, non-owned automobile, and all other liability incident to the ownership and/or use of the Property or any portion thereof. Policy limits shall equal at least one million dollars (\$1,000,000) for bodily injury, including deaths of persons and property damage arising from a single occurrence. Coverage under the insurance policy shall include without limitation legal liability of the insured for property damage, bodily injury and death of persons in connection with the operation, maintenance or use of the Common Areas and Limited Common Areas other than Garage Units, and legal liability arising from lawsuits related to employment contracts and employment practices of the Association.
  - (i) The liability insurance policy shall not relieve the insurer from liability for loss occurring while a hazard is increased, whether or not within the knowledge or control of the Board, or because of any breach of any warranty or condition or any other act or neglect of the Board or any Owner or any other Person whose actions, inactions or omissions are attributed to, or attributable to, the Board or any Owner, hereafter

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called a “*derivative Person*”.

(ii) The liability insurance policy may not be cancelled or substantially modified, whether or not the Board requests, unless the insurer gives at least thirty (30) days prior written notice to the Board, the Insurance Trustee (if one is appointed and acting), all Owners, all Mortgagees and every other Person with an interest who has requested such notice of the insurer.

(c) Worker’s compensation and employer’s liability insurance regarding employees of the Association in amounts and form necessary to comply with any applicable law.

(d) Any other policies of insurance, including insurance for other similar or dissimilar risks that the Board may deem appropriate.

Section 8.01 shall not be construed to limit the power or authority of the Board to obtain and maintain insurance coverage in addition to any insurance coverage described herein, in amounts and forms that the Association or the Board may deem appropriate from time to time.

Section 8.02 Definition. As used in Section 8.01, “*all Buildings and Improvements*” means, without limitation, the Common Areas, Limited Common Areas, including the Garages but not the Garage Units once attached to a Condominium Unit, and the partition walls, fixtures, pipes, wires, conduits and installations installed in Condominium Units on the date of initial sale by Declarant, as shown on the Plans, and replacements thereof; but does not include any fixtures, alterations, installations or additions in or to a Condominium Unit or Garage Unit made by an Owner of that Condominium Unit or Garage Unit, and not shown on the Plans.

Section 8.03 Form. Casualty insurance shall name as the insured the Association for the use and benefit of the Owners according to the loss or damage to their respective Percentage Interests and payable in case of loss to the Insurance Trustee, if one is appointed and acting, and if not, to the Association. To the extent the following terms of insurance are commercially available at reasonable cost, every policy of insurance shall:

- (a) provide that the liability of the insurer shall not be affected by, and that the insurer shall not claim, any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for any Owner;
- (b) contain no terms relieving the insurer from liability for loss occurring while a hazard is increased, whether or not within the knowledge or control of the Board, or because of any breach of warranty or condition or any other act or neglect of the Board or any Owner or any other derivative Person;
- (c) provide that the policy may not be cancelled or substantially modified, whether or not the Board requests, except by the insurer giving at least thirty (30) days’ prior written notice to the Board, the Insurance Trustee, all Owners, all Mortgagees, and every other Person



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in interest who has requested notice from the insurer;

- (d) contain a waiver by the insurer of the right of subrogation to any right of the Board, the Association or Owners against the Board, any Owner, and any invitee of any Owner;
- (e) provide that, despite any term of the policy giving the insurer an election to restore damage in lieu of a cash payment, the insurer may not elect restoration, if the Owners do not elect to restore pursuant to Paragraph 10 of the Declaration;
- (f) contain a standard mortgagee clause that:
  - (i) provides that any reference to a mortgagee in the policy shall mean and include any Mortgagee, whether or not named therein and, when applicable, name as mortgagee Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, the United States Department of Housing and Urban Development, or their respective servicers, successors and assigns;
  - (ii) provides that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Board or any Owner, or any other derivative Persons;
  - (iii) waives any provision invalidating a mortgagee clause because of the failure of any Mortgagee to notify the insurer of any hazardous use or vacancy; the requirement that the Mortgagee pay any premium thereon; and any contribution clause;
  - (iv) provides that without affecting any protection afforded by the mortgagee clause, any proceeds payable under the policy shall be payable to the Insurance Trustee; and
  - (v) provides that the policy is primary in the event an Owner has other insurance covering the same loss.
- (g) All liability and property damage insurance policies shall name as the insured the Board as trustee for each individual Owner, the Association, the Board, the Managing Agent, the Co-owners, all other persons entitled to occupy any Condominium Unit, and any Person acting on behalf of the Association, and shall provide for payment of any proceeds to the Insurance Trustee. Promptly after acquiring each insurance policy, the Board shall deliver to each Owner a current certificate of such insurance. Each Owner may also maintain additional public liability insurance for his Condominium Unit.

**Section 8.04 Allocation of Insurance Proceeds.** In the event of damage or destruction by fire or other cause to any part of the Property covered by insurance for the Board, the Co-owners, or their Mortgagees, the following provisions shall apply:

- (a) Common Areas and Limited Common Areas. Proceeds for damage to Common Areas

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and Limited Common Areas shall be allocated among the Co-owners in accordance with their respective Percentage Interests, except that proceeds for damage to the Garages or Garage Units shall be allocated among the affected Owners with Garage Units attached to their Condominium Units.

- (b) Condominium Units. Available insurance proceeds for damage to Condominium Units shall be allocated as follows:
  - (i) If the Building is restored, insurance proceeds shall be allocated to each Condominium Unit in the proportion that the cost of Restoration of each Condominium Unit bears to the cost of Restoration of all damaged Condominium Units, such cost to be determined by the Board. In determining such cost, the Board shall not take include the cost of repairing any items specifically excluded from insurance coverage pursuant to Section 8.02.
  - (ii) If the Building is not restored, insurance proceeds shall be allocated to each Condominium Unit in the proportion the replacement cost of each Condominium Unit bears to the replacement cost of all the Condominium Units, as determined in the discretion of the Board, excluding replacement costs of Owner improvements not covered by Association insurance, also determined in the discretion of the Board. If and to the extent that insurance proceeds are allocated to each Condominium Unit in the claim adjustment, the Board may allocate the proceeds according to that allocation.
  - (iii) If a mortgage endorsement has been issued with respect to a particular Condominium Unit, the amount of the insurance proceeds allocated to the Owner of such Condominium Unit shall be held in trust for the Mortgagee and the Owner as their interests may appear. However, a Mortgagee may not determine or participate in the determination of whether or not any damaged property shall be restored or repaired, and a Mortgagee may not apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the Owner and Mortgagee pursuant to these By-Laws.
- (c) Garages. Available insurance proceeds for damage to Garage shall be allocated as follows:
  - (i) If one or both Garages is or are restored, insurance proceeds shall be allocated to each Garage in the proportion that the cost of Restoration of each Garage bears to the cost of Restoration of both damaged Garages, such cost to be determined by the Board. In determining such cost, the Board shall not include the cost of repairing any items specifically excluded from insurance coverage pursuant to Section 8.02. If and to the extent that insurance proceeds are allocated to each Garage or to each Garage Unit in the claim adjustment, the Board may allocate the proceeds according to that allocation.
  - (ii) If a mortgage endorsement has been issued with respect to a Garage, the amount of the

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insurance proceeds allocated to the Garage shall be held in trust for the Mortgagee and the Owner as their interests may appear. However, a Mortgagee may not determine or participate in the determination of whether or not any damaged property shall be restored or repaired, and a Mortgagee may not apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the Owner and Mortgagee pursuant to these By-Laws.

- (d) Garage Units. Available insurance proceeds for damage to Garage Units shall be allocated as follows:
  - (i) If one or both Garages is or are restored, insurance proceeds shall be allocated to each Garage Unit in the proportion that the cost of Restoration of each Garage Unit bears to the cost of Restoration of all damaged Garage Units, such cost to be determined by the Board. In determining such cost, the Board shall not include the cost of repairing any items specifically excluded from insurance coverage pursuant to Section 8.02. If and to the extent that insurance proceeds are allocated to each Garage or to each Garage Unit in the claim adjustment, the Board may allocate the proceeds according to that allocation.
  - (ii) If a Garage is not restored, insurance proceeds shall be allocated to each Garage Unit within the Garage not being restored in the proportion the replacement cost of each Garage Unit in the Garage bears to the replacement cost of all the Garage Units in the Garage, as determined in the discretion of the Board, excluding replacement costs of Owner improvements not covered by Association insurance, also determined in the discretion of the Board.
  - (iii) If a mortgage endorsement has been issued with respect to a particular Garage Unit, the amount of the insurance proceeds allocated to the Owner of such Garage Unit shall be held in trust for the Mortgagee and the Owner as their interests may appear. However, a Mortgagee may not determine or participate in the determination of whether or not any damaged property shall be restored or repaired, and a Mortgagee may not apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the Owner and Mortgagee pursuant to these By-Laws.

**Section 8.05 Distribution of Insurance Proceeds.** Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the Owners and their Mortgagees as their respective interests appear, in the following manner:

- (a) Expense of Trust. All expenses of the Insurance Trustee shall be first paid or provision made therefore.
- (b) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be applied to the cost thereof pursuant to Article IX. The Association shall retain any proceeds remaining after paying those costs.

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The Association shall add the excess proceeds to the reserve for replacements established pursuant to Section 6.04. However, with respect to a Condominium Unit in which there was damage to items excluded from insurance coverage pursuant to Section 8.02, the Owner of the Condominium Unit shall receive from those remaining proceeds his pro-rata share thereof determined according to his Percentage Interest.

- (c) Failure to Reconstruct or Repair. If the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed in accordance with *Ind. Code 32-25-8-12* of the Act.
- (d) Identification of Owners; Interests; Mortgagees. In making distributions to Owners and their mortgagees, the Insurance Trustee may rely on the Board's identification of the names of the Owners and their respective shares of the distribution, and, with respect to the names of mortgagees, may rely on a written statement from a title insurance company that has examined the mortgage records of the office of the Recorder of Marion County, Indiana of the names of the holders of mortgages of record.

Section 8.06 Association as Owner's Agent. The Association, acting by its Board, is the appointed agent for each Owner, for each owner of a mortgage or other lien on a Condominium Unit, and for each owner of any other interest in the Property, to negotiate all claims arising under insurance policies purchased by the Board, and to execute and deliver releases upon the payment of claims.

Section 8.07 Individual Policies - Recommendation of Declarant. Any Owner or Mortgagee may obtain, at his own expense, additional insurance, including a condominium unit-owner's endorsement or policy, for improvements and betterments to a Condominium Unit made or acquired at the expense of the Owner. The insurance shall state that it is without contribution regarding the insurance the Board maintains. The insurance shall contain the same waiver of subrogation provision as that described in Section 8.03(d). If an insured loss occurs on the Property, and the amount of insurance proceeds that would otherwise be payable to the Insurance Trustee is reduced due to proration of insurance purchased pursuant to this Section, the Owner shall assign the proceeds of the personally-purchased insurance, to the extent of the amount of the reduction, to the Insurance Trustee to be distributed per Section 8.05. The Declarant recommends that each Owner obtain, in addition to the insurance hereinabove provided to be obtained by the Board, a policy insuring against loss or damage to personal property located or used at, or incidental to the occupancy of, the Condominium Unit, vandalism or malicious mischief, theft, personal liability, and other covered perils or risks the Owner's insurer may propose, recommend, or offer. The policy should include a "condominium unit-owner's endorsement" covering losses to improvements and betterments to the Condominium Unit made or acquired at the expense of the Owner.

Section 8.08 Certificates. The Association shall cause to be issued to each Owner and each Mortgagee, who so requests, a certificate of insurance confirming the insurance carried by the Association.

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ARTICLE IX. DAMAGE OR DESTRUCTION

Section 9.01. Procedure for Restoration or Repair. In the event of damage or destruction to the Property by fire, other cause, or as a result of condemnation, and Restoration or repair of the Property is required or authorized pursuant to Paragraph 10 or Paragraph 11 of the Declaration, the Restoration or repair shall be undertaken in accordance with this Article.

Section 9.02 Estimate of Cost. Promptly after the occurrence of the damage or destruction to the Property that the Association has the responsibility to restore or repair, the Board shall obtain reliable and detailed estimates of the cost to restore or repair. In the event of damage after the Applicable Date to any structure exceeding \$50,000.00, the Board shall retain the services of an architect to supervise the Restoration or repair and the disbursement of the construction funds. The \$50,000 threshold shall increase each year on January 1, beginning January 1, 2017, by a factor of 3%, or at the Board's option the change in the Personal Consumption Expenditures Price Index, beginning January 1, 2016. See sub-section 10.h.(iii.) of the Declaration.

Section 9.03 Plans and Specifications. Any Restoration or repair must be either substantially in accordance with the Plans or according to plans and specifications approved by a Majority Vote of Owners, and if the damaged Property contains any Condominium Units, by all the Owners of the damaged Condominium Units, which approval shall not be unreasonably withheld.

Section 9.04 Sealed Bids. After the Applicable Date, the Board shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor, who the Board may require to provide a full performance and payment bond for the Restoration or repair of the damaged Property.

Section 9.05 Responsibility. If the damage is only to those parts of a Condominium Unit for which the responsibility of maintenance and repair is that of an Owner, then the Condominium Unit Owner shall be responsible for the cost of Restoration and repair unless the damage is specifically covered by the insurance purchased by the Board, in which event the Association shall be responsible for said costs.

Section 9.06 Construction Funds. The funds for payment of the costs of Restoration or repair shall consist of the proceeds of insurance held by or payable to the Insurance Trustee; amounts from the reserve for replacements that are authorized by the Board for the purpose of Restoration or repair; and funds collected by the Board from Special Assessments against Owners. These funds shall be deposited with the Insurance Trustee, which shall apply or disburse them in payment of the costs of Restoration or repair as provided in this Article.

Section 9.07 Certificates. The Insurance Trustee may rely on a certificate from the Board to determine whether or not the damaged Property is to be restored or repaired, and on a certificate from the architect employed by the Board to supervise the Restoration or repair; or, if Restoration or repair is undertaken prior to the Applicable Date, from Declarant or the Board, with respect to the payments to be made to contractors undertaking the Restoration and/or repair.

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Section 9.08 Insurance Trustee. The Insurance Trustee shall not be liable for payment of insurance premiums, the renewal or the sufficiency of insurance policies, or for the failure to collect any insurance proceeds or condemnation awards. The Insurance Trustee shall receive proceeds or awards that are paid, and hold them in trust as described herein and in the Declaration for the benefit of the Co-owners and their Mortgagees as provided herein and in the Declaration. If at any time there is no Insurance Trustee acting or appointed by the Board, the Association shall assume all rights and duties of the Insurance Trustee, and the name "Association" shall replace "Insurance Trustee" in each place where "Insurance Trustee" appears in these By-Laws.

Section 9.09 Insurance. The Board shall require all contractors and subcontractors, and all Persons furnishing any work, materials, services, or equipment for any Restoration or repair to produce, prior to commencement of any work, delivery, or services, originally-signed certificates of insurance, naming the Association as a certificate holder, and confirming that each Person furnishing work, materials, services, or equipment has in force throughout the duration of the Person's engagement proper general liability insurance, commercial vehicle insurance, and workers' compensation insurance in amounts and coverage satisfactory to the Board, but in no event less than the law requires. The Board in its discretion may require other types of insurance, proof of other types of insurance, and other types of proof of insurance.

**ARTICLE X. FISCAL MANAGEMENT**

Section 10.01 Fiscal Year. Unless changed by resolution of the Board, the fiscal year of the Association shall be the calendar year, and shall begin on January 1, and end on December 31.

Section 10.02 Books of Account. Books of account of the Association shall be kept under the direction of the Treasurer in accordance with good accounting practices, and shall include a current, accurate and detailed record of receipts and expenditures affecting the Property, specifying and itemizing the Common Expenses and Garage Expenses. Cash balances shall reconcile to receipts and expenses at all times.

Section 10.03 Inspection. All books, records and accounts, and all vouchers accrediting the entries made thereupon, shall be available for examination by an Owner or any duly authorized agent or attorney of an Owner at any time during normal business hours for purposes reasonably related to his interest as an Owner.

Section 10.04 Auditing. If directed by a Majority Vote of Owners with respect to a given year, the books and accounts of the Association shall be reviewed by an independent certified public accountant at the close of that fiscal year. The accountant's report shall be prepared in accordance with any reasonable auditing standards the Owners may determine by Majority Vote.

Section 10.05 Annual Financial Statement. Prior to the annual meeting of the Association, the Board shall cause to be prepared and delivered to the Co-owners an annual financial statement, certified to by the Treasurer, showing all income and all disbursements of the Association during the previous fiscal year. If the Owners have mandated a review of the books and accounts by a

certified public accountant, the financial statement shall be based on the report prepared pursuant to Section 10.04 to the extent practical. The requirements of this Section 10.05 shall be satisfied, if the Board causes to be delivered to each Owner at any time prior to the annual meeting of the Association either the annual financial statement or a copy of the report prepared pursuant to Section 10.04, as the case may be.

Section 10.06 Execution of Association Documents. With the prior authorization of the Board, the President or Vice President shall sign all notes and contracts on behalf of the Association, and officers, agents, or other individuals that the Board may periodically authorize shall sign all Association checks and other orders to draw Association funds.

#### ARTICLE XI. AMENDMENTS TO BY-LAWS

Section 11.01 Procedure. Subject to any contrary, overriding or superseding provisions stated herein or in the Declaration, these By-Laws may be amended in the same manner, and subject to the same limitations and requirements as amendments to the Declaration, as described in Paragraph 14 of the Declaration. Amendments to these By-Laws shall be considered as amendments of the Declaration and shall be recorded in the office of the Recorder of Marion County, Indiana, as required by the Declaration and the Act. Despite anything to the contrary contained herein or in the Declaration, the Organizational Documents shall not be amended prior to the Applicable Date without the consent and approval of Declarant.

Section 11.02 By-Laws. The Board, acting by majority vote, may periodically execute By-Laws and properly amended or restated By-Laws. Upon recording in the office of the Recorder of Marion County, Indiana, those By-Laws shall be conclusive evidence of all amendments contained therein, and may thereafter be referred to in lieu of the original By-Laws and the various amendments thereto.

#### ARTICLE XII. MORTGAGES

Section 12.01 Notice to Association. Any Owner who grants a first mortgage lien on his Condominium Unit or the Mortgagee shall notify the Secretary of the mortgage lien, and shall provide the name and address of the Mortgagee. The Secretary shall maintain a record of the Mortgagee's name, address, and Mortgage account number or equivalent. All notices to the Mortgagee required by the Organizational Documents or the Act shall thereafter be mailed to the Mortgagee at the most recent address contained in the record. Unless an Owner, the Mortgagee, or other Person gives to the Secretary notice of a particular mortgage and the name and address of Mortgagee, no notice to that Mortgagee required by the Organizational Documents or the Act shall actually be required, and no Mortgagee may vote on any matter to which it otherwise would be entitled to vote by the Organizational Documents, the Act, or by proxy granted to the Mortgagee in connection with the mortgage.

Section 12.02 Notices To Mortgagees. The Association shall promptly provide to any Mortgagee of which the Association has received notice per Section 12.01 of these By-Laws notice of any of the following:

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- (a) any proposed termination of the Esplanade Condominium Regime or any condemnation or casualty loss that affects either a material portion of *Esplanade Annex* or the Condominium Unit that secures its mortgage
  - (b) any delinquency in the payment of Regular or Special Assessments owed by the Owner of any Condominium Unit on which said Mortgagee holds a mortgage, if the delinquency continues for more than sixty (60) days
  - (c) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association
  - (d) any proposed action that requires the consent of Mortgagees, a specified percentage of Mortgagees; and
  - (e) any proposed amendment of the Organizational Documents effecting a change in (i) the boundaries of any Condominium Unit or the exclusive easement rights appertaining thereto, (ii) the interests in the Common Areas or Limited Common Areas appertaining to any Condominium Unit or the liability for Common Expenses or Garage Expenses appertaining thereto, (iii) the Percentage Vote appertaining to a Condominium Unit or (iv) the purposes for which any Condominium Unit or Garage Unit or the Common Areas are restricted

Section 12.03 Notice of Unpaid Assessments. On request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual or other legal right to purchase a Condominium Unit, the Association shall furnish to such Person a statement of the amount of unpaid Assessments on the relevant Condominium Unit. The statement shall bind the Association and the Co-owners. Any Mortgagee or transferee of the Condominium Unit shall not be liable, nor shall the Condominium Unit conveyed be subject to a lien, for any unpaid Assessments in excess of the amount stated in the statement, or the amount the Assessments may be adjusted upon adoption of the final annual budgets, as described in Section 6.02.

Section 12.04 Financial Statements. Upon the request of any Mortgagee, the Association shall provide to the Mortgagee the most recent financial statement prepared on behalf of the Association pursuant to Section 10.05 of these By-Laws.

ARTICLE XIII. MISCELLANEOUS

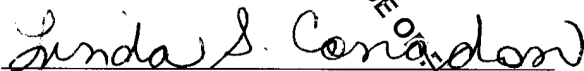
Section 13.01 Membership Certificates. Each Member shall be entitled to receive a certificate from the Association, signed by the President or Vice President, and Secretary or Assistant Secretary, stating that he is a Member of the Association. The certificates shall not be transferable, and a Member's certificate shall become void upon a Member's sale or transfer of his Condominium Unit. The Board shall determine the form and style of membership certificates.




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Section 13.02 Personal Interests. Except as next stated, no Member shall be entitled to or receive any compensation or other income from the Association. However, a Member who is an officer, director or employee of the Association may receive fair and reasonable compensation for his services as officer, director or employee, and may be reimbursed actual expenses incurred in the performance of his duties, all as the Board may determine. A Member may receive principal and interest on money lent or advanced to the Association as provided in the Statute.

The undersigned, being all the members of the Initial Board, hereby adopt the foregoing Bylaws as the By-Laws of Esplanade Annex Owners Association, Inc. effective the 19 day of August, 2015.

  
Linda S. Congdon, Director

  
Jeffrey D. Congdon, Director

  
Christopher A. Congdon, Director