

**MEMORANDUM**

**TO:** MAYOR AND CITY COMMISSION  
**FROM:** CITY ATTORNEY'S OFFICE  
**DATE:** December 3, 2018  
**RE:** **Heritage Plaza Parking Garage**

Attached hereto for your consideration are the documents that comprise the City's participation in the Heritage Plaza Parking Garage project ("Project"). Authorization is requested to approve the attached Purchase and Sale Agreement with BKP Five LLC, the Developer of the Project ("Developer"). That necessarily requires approval of the other documents attached, which are the formation and governing documents of the ownership entity. The material terms of the City's commitment are set forth below.

The Project. The Project consists of an 824-space parking garage that will be constructed on the Heritage Plaza parking area owned by Developer, whose principal is Wesley Beck. The Project site is between Kentucky Avenue and Tennessee Avenue, and North of Orange Street as depicted on Exhibit "A". The Project is proposed to be a condominium form of ownership where individual units or single spaces will be purchased by the City (399 spaces), Lakeland Regional Health Systems, Inc. (125 spaces), Mid Florida Credit Union (175 spaces) and BKP Five (125 spaces), the ("Project Participants"). Each Project Participant will pay its pro-rata share of the construction and development costs, which will total just over \$11,000,000, or \$15,736.77 per space. The Developer will contribute the land and administer the construction project in exchange for 125 spaces in the Project to provide parking for the existing tenants in the Heritage Plaza office building. An elevated crosswalk will connect the existing Heritage Office building with the Project. The City will contribute the existing Heritage Park on the south-east corner of the construction site. The common area, which will include ramps, elevators, lighting, landscaping, electrical, handicapped spaces, and other amenities will be owned and operated by the Heritage Park Plaza Condominium Association ("Association"). Operating costs, to include utilities, taxes, insurance and other ordinary expenses will be paid on a pro-rata basis by the Project Participants. Construction will likely begin within sixty (60) days of closing and take about ten (10) months.

Future Development. A development parcel that can accommodate a building of up to 35,000 feet, will remain after the construction of the Project. The Developer retains an option to lease or purchase 125 spaces from the City's total of 399 that will be dedicated to that building, when the parcel is

developed. Rent, if a lease arrangement, will be \$50.00 per space with an annual cost of living adjustment.

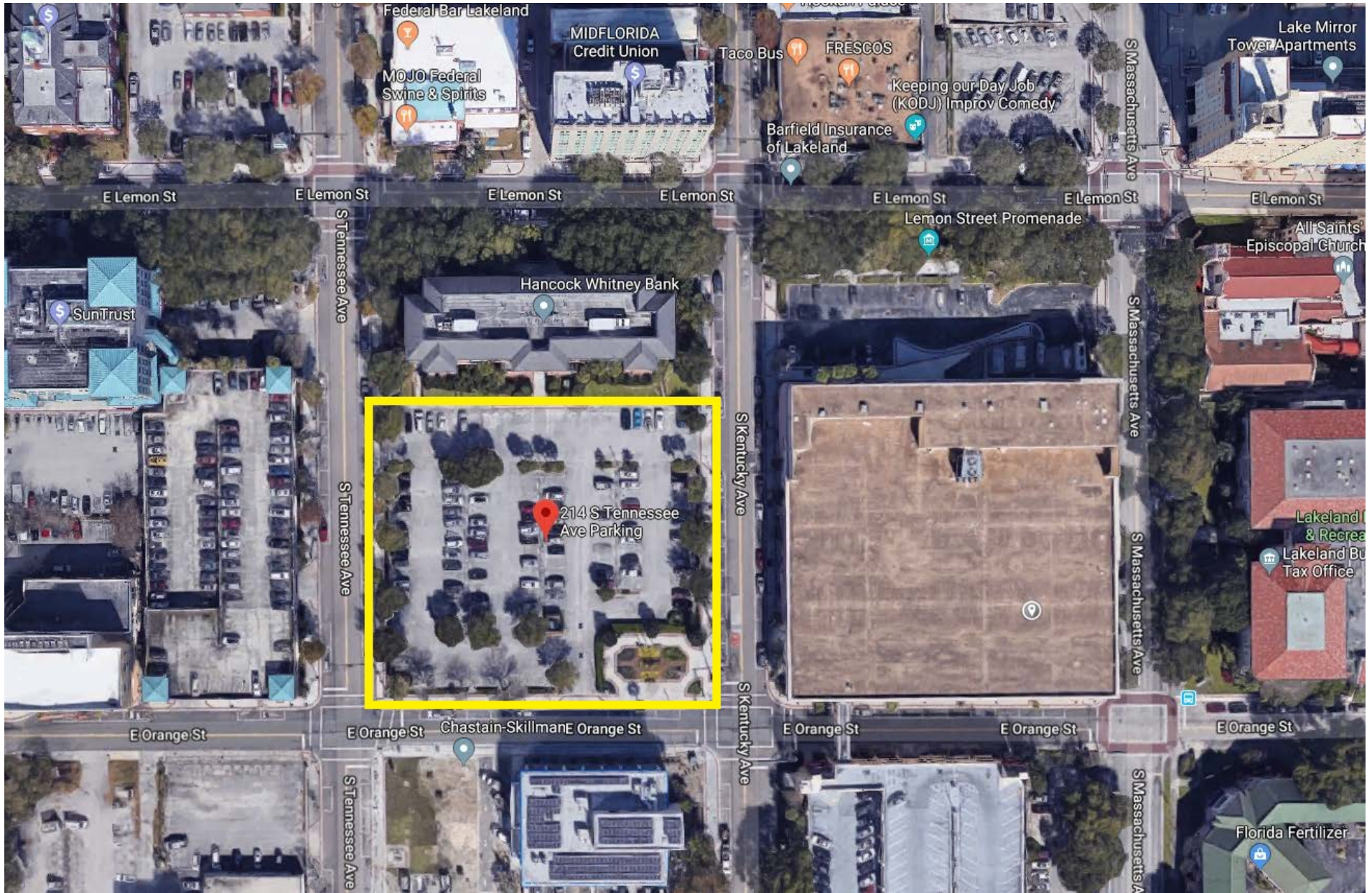
The attached documents make up the transactional agreements among the Project Participants and the formation documents for the condominium entity:

1. The Purchase and Sale Agreement. The City agrees to purchase 399 condominium units for \$15,736.77 each, for a total of \$6,278,970. Upon authorization, the City along with other Project Participants, will deposit their pro-rate share into an escrow account to be administered by an institutional escrow agent who will disburse upon payment request by the contractor, and certified by the Project architect. Upon completion of the construction period, the Developer will convey the units to each Project Participant.
2. Declaration of Condominium. Condominium form of ownership is provided by Fla. Stat. Ch. 718, and the documents attached reflect the provisions common to all condominium properties in Florida, with special provisions for this Project. They are typically managed by a Board of Directors and have a purpose that is generally management of common areas that are used by all unit owners. The Association holds title to the common elements, and the underlying real property, and is charged with their upkeep, and management of the Project, for the benefit of each unit owner. The Association has the ability to assess fees to the unit owners to pay for the expenses associated with maintenance of the common elements. No lien or right of foreclosure exists against the City.
3. Articles of Incorporation/Bylaws. These are the governing documents of the Association. They create a Board of Directors and each of the Project Participants will have a member. Decisions effecting the Project are made by vote of the directors on a pro-rata basis, based on the number of spaces that a Participating Party owns. Fundamental decisions relating to unwinding or reallocating shares would require three-fourths (3/4) of the pro-rata votes. They restrict the transfer of any Project Participant's units to an owner that has property in the downtown area that requires parking, or if to a non-property owner, the other Project Participants have a right of first refusal.

It is recommended that the appropriate City officials be authorized to execute any necessary documents and agreements and to close on the transaction to facilitate moving the Project forward.

attachment

EXHIBIT "A"



**HERITAGE PLAZA PARKING GARAGE CONDOMINIUM**  
**(a commercial condominium)**

**ANY PAYMENT IN EXCESS OF TEN PERCENT (10%) OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER.**

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement"), dated \_\_\_\_\_, 2018, is made by and between BKP Five, LLC, a Florida limited liability company ("Seller"), which has a mailing address of 4100 South Frontage Road, Building 101, Suite 101, Lakeland, Florida 33815, and the buyer named below (referred to as the "Buyer"), for the sale and purchase of the parking space condominium units described herein (hereinafter referred to collectively as the "Units" and each individual parking space referred to as a "Unit"):

Buyer's Name: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice Address: \_\_\_\_\_  
  
Lakeland, Florida 338\_\_\_\_

Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

Tax Identification Number: \_\_\_\_\_

A. Seller is the developer of a parking garage condominium project known as the Heritage Plaza Parking Garage Condominium (hereinafter referred to as the "**Condominium**"), located in Polk County, Florida, which will consist of Seven Hundred (700) or more parking space condominium units (the "**Project**").

B. Seller has promulgated a proposed Condominium plan for the sale, ownership and use of the Condominium Units and the common elements in the Project.

C. Seller is offering to sell the Units in the Project pursuant and subject to the proposed Declaration of Condominium (the "**Declaration**"), the proposed Condominium Plat (the "**Plat**"), the Articles of Incorporation (hereinafter the "**Articles**") and the Bylaws (the "**Bylaws**") of Heritage Plaza Parking Garage Condominium Association, Inc., a Florida not for profit corporation, formed for the purpose of operating, managing and maintaining the Parking Garage Condominium, and the Rules and Regulations of the Condominium and the Association (hereinafter the "**Rules and Regulations**"), and all amendments thereto, all of which shall collectively be hereinafter referred to as the "**Condominium Documents**."

D. Buyer desires to purchase from Seller and Seller desires to sell to Buyer the parking space Condominium Units described below, upon the terms and conditions contained herein.

In consideration of the mutual covenants and provisions herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. **Description of Unit.** Seller agrees to sell, assign and convey to Buyer, and Buyer agrees to purchase from Seller, in accordance with the terms and subject to the conditions contained in the Agreement, the following described property, as set forth in the Condominium Plat, all of which is situated in Polk County, Florida:

Parking Space Condominium Units \_\_\_\_\_ - \_\_\_\_\_, Heritage Plaza  
Parking Garage Condominium, according to the Declaration of  
Condominium and Condominium Plat thereof, to be recorded in the  
Public Records of Polk County, appurtenant thereto.

The location of the Units is more particularly identified on the site plan attached to this Agreement as **Exhibit A**.

2. **Purchase Price.** The total purchase price which Buyer agrees to pay and Seller agrees to accept for the Units is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (the "**Purchase Price**"), which shall be payable as follows:

a. Within three (3) business days after the Effective Date, Buyer shall deposit with Peterson & Myers, P.A. ("**Escrow Agent**"), the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) by check (subject to clearance) as an earnest money deposit toward the Purchase Price (the "**Escrow Deposit**"), which sum shall apply as part of the cash due to Seller at Closing; and

b. The balance of the Purchase Price required to close this transaction, after adjustments, credits and prorations required by this Agreement, shall be paid by Buyer to Seller by locally drawn cashier's check or wire transfer of immediately available funds in such amounts and upon such dates as specified in attached **Exhibit B**.

Buyer may obtain a receipt for such Deposit from Escrow Agent upon request therefor. All Escrow Deposits will be deposited by Escrow Agent in a non-interest bearing account.

All Escrow Deposits received from Buyer in excess of ten percent (10%) of the total Purchase Price of a Condominium Unit may be deposited into a special escrow account (the "**Special Escrow Account**") with Escrow Agent. As allowed by Florida Statute, Section 718.202(3), once the construction of the Condominium has begun, Seller shall be entitled to withdraw from the Special Escrow Account for construction purposes the additional escrowed funds. Escrow Agent may disburse these funds to Seller upon receipt of Seller's written certification that construction of the Condominium has commenced, and shall, thereafter, have no further liability to Buyer with respect to such funds or making such disbursement.

The Escrow Deposits shall be disbursed in accordance with the Florida Statutes and the terms of this Agreement. Upon proper disbursement of Escrow Deposit, Escrow Agent shall be discharged from all further liability and responsibility for such funds, and from all other further responsibility and liability under this Agreement.

3. **Required Statements.** The following statements are included in this Agreement in keeping with the Florida Condominium Act:

a. The Units have not been previously occupied except as may be disclosed within any attached addendum.

b. To the extent lawful, all implied warranties of fitness for a particular purpose, merchantability and habitability, and all warranties imposed by statutes (excepting only those imposed by the Florida Condominium Act to the extent they cannot be disclaimed) are specifically disclaimed. Buyer acknowledges that Seller's sole warranty is that imposed by statute, and that Seller has made no warranties or representations other than those imposed by statute in connection with either the Condominium property or the Units including, without limitation, the workmanship or materials therein except as specifically set forth herein. This Section shall survive the Closing contemplated hereunder, and the delivery of the deed to Buyer.

4. **Title Insurance.** Prior to Closing, Seller shall deliver to Buyer, at Buyer's expense, a title insurance commitment issued through a national title insurance company authorized to do business in Florida evidencing good fee simple title vested in Seller to the Units, subject only to the provisions of the Condominium Documents, real estate taxes assessed against the Units and Condominium property for the then current year, zoning regulations, and easements, restrictions and reservations of record (collectively, the "**Permitted Exceptions**"), in addition to mortgage liens which are to be released at Closing, and standard ALTA title insurance exceptions. After Closing, Seller shall cause to be delivered to Buyer a title insurance policy insuring a good fee simple title in Buyer to the subject Condominium Units, subject only to the Permitted Exceptions.

5. **Closing; Closing Expenses.**

a. Closing of the purchase and sale of the Units (the "**Closing**") shall take place upon substantial completion of the Units as evidenced by the recording of the Condominium Plat with the Certificate of Surveyor certifying substantial completion. Seller shall give Buyer at least five (5) business days notice of the anticipated date of Closing.

b. The Closing shall occur at the law office of Peterson & Myers, P.A., 225 East Lemon Street, Suite 300, Lakeland, Florida 33801, or such other location, or in some other manner or in escrow, as the Buyer and Seller may agree in writing. At Closing, Buyer shall make the any remaining payments due and outstanding as specified in Section 2.b. above, and simultaneously therewith Seller shall deliver to Buyer a special warranty deed conveying to Buyer fee simple title to the Units, subject to the Permitted Exceptions. Buyer shall not be allowed to take possession of the Units prior to Closing.

c. In the event that Buyer does not close on the date specified by the Seller through no fault of Seller, Buyer shall be deemed to be in default hereunder. Should Seller, in its sole and absolute discretion, agree in writing to reschedule the Closing after Buyer's default, or if Buyer is a corporation, partnership, or limited partnership, and fails to provide the documentation and/or information requested by Seller, Seller's attorney or the title insurance agent or underwriter, and, as a result, Closing is delayed, or if Closing is delayed for any other reason, except for a delay desired by Seller, Buyer agrees to pay at Closing a late charge equal to interest on the Purchase Price at the rate of twelve percent (12%) per annum from the date the Closing was originally scheduled to the date of actual Closing. All prorations will also be made as of the originally scheduled date of Closing. Buyer understands that Seller is not required to reschedule or permit a delay in Closing.

d. At Closing, Seller shall pay Seller's attorneys' fees incurred as a result of the Closing. All other closing expenses incurred at Closing, including but not limited to the cost of the owner's title insurance commitment and title insurance policy at the promulgated rate, Florida documentary stamps on the deed, Buyer's attorneys' fees, the cost of recording of the deed in the Public Records of Polk County, Florida, mortgagee title insurance premium, mortgage loan closing costs, and other expenses incurred at Closing, shall be paid by Buyer. Assessments for common expenses for the Condominium Association and like expenses shall be due as of the closing date and paid by Buyer. Also at Closing, Buyer shall pay to the Condominium Association, as a working capital contribution, an amount equal to one-quarter of the annual assessments assessed against the Units. Ad valorem real property taxes, if any, for the year of Closing shall be paid by Buyer. Certified, confirmed and ratified special assessment liens affecting the Units as of the date of Closing for which the improvements have been substantially completed shall be paid by Buyer. Proposed liens as of the date of Closing shall be assumed by Buyer.

6. **Default; Failure to Close.**

a. **Buyer's Failure to Close.** In the event that Buyer is obligated under the terms of this Agreement to consummate the transaction evidenced by this Agreement but fails to consummate this Agreement and take title to the Units, or if Buyer fails to make any of the payments due hereunder, as scheduled, or otherwise defaults hereunder, then Seller may declare this Agreement terminated, and may retain the Escrow Deposit and any other monies paid by Buyer to Seller under this Agreement as liquidated damages for such default. The provisions for liquidated damages are not a penalty, the parties understanding that Seller will have sustained damages if Buyer defaults, which damages will be substantial but will not be capable of determination with mathematical precision and, therefore, as aforesaid, the provision for liquidated and agreed upon damages has been incorporated in this Agreement as a provision beneficial to both parties. Notwithstanding the foregoing, Seller shall be entitled to any rights or remedies afforded by law or in equity in the event of a breach by Buyer of any indemnity obligations or any other obligations which survive the termination of the Agreement or the Closing.

b. **Seller's Failure to Close.** If the Closing is not concluded due to Seller's failure or refusal to convey the Units in accordance with this Agreement, and Buyer is ready, willing, and able to purchase the Condominium Units in accordance with this Agreement, Buyer may elect to either (i) terminate this Agreement upon written notice to Seller, whereupon the Escrow Deposit shall be paid to Buyer, or (ii) seek specific performance of Seller's obligations under this Agreement; provided, however, that Buyer must file suit for specific performance within ninety (90) days after the scheduled date of Closing, failing which Buyer shall automatically be deemed to have waived the right to seek specific performance and shall only be entitled to the remedy described in item (i) of this sentence. These shall be the sole remedies of Buyer in the event of Seller's default.

7. **Condemnation.** In the event Seller receives a written notice from any governmental or quasi-governmental authority with powers of eminent domain to the effect that a condemnation of all or part of the Units is pending or contemplated, Seller shall notify Buyer within ten (10) days of the receipt of such notice. Buyer may, within five (5) days after receipt of such notice, terminate this Agreement by delivery of written notice to Seller, whereupon Buyer shall receive back the Escrow Deposit, together with any interest accrued thereon (if any). If Buyer shall fail to give such notice then there shall be no reduction in the Purchase Price, and Seller shall assign to Buyer at Closing all of Seller's right, title and interest in and to any award made or to be made in the condemnation proceedings, or if such payment has already been received by Seller, the Purchase Price shall be reduced by an amount equal to the amount of the net proceeds that are actually received by the Seller.

8. **Assignment.** Seller reserves the right to sell or assign its interest and capacity as developer of the Condominium. This reserved right may include a sale of the Condominium property and an assignment of developer's rights under the Declaration of Condominium, Articles of Incorporation and Bylaws for the Condominium Association, and under this Agreement. Such a described transfer of interest shall be deemed not materially adverse to Buyer. Buyer shall have no right to assign this Agreement without Seller's consent, which consent may be withheld or conditioned in Seller's sole discretion, except, however, that Buyer may assign this Agreement to an affiliate, subsidiary or parent company of Buyer. This Agreement and all the terms and conditions hereof shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.

9. **Limitation on Warranties, Obligations and Representations of Seller.** Only to the extent the same apply to the Units, Seller gives all warranties imposed by the Florida Condominium Act, as most recently amended prior to the complete execution hereof. To the extent lawful, however, all other warranties, including, but not limited to, all implied warranties of fitness for a particular purpose, merchantability, habitability and all warranties imposed by statute, excepting only those imposed by the Florida Condominium Act, as most recently amended prior to the complete execution of this Agreement, are specifically disclaimed.

Buyer acknowledges and agrees that no representations or warranties have been made by Seller, its agents or anyone acting for or on behalf of Seller other than as specified in this Agreement, and that none shall be implied or have been relied upon by Buyer in the execution of this Agreement, other than the statutory warranties provided under Florida Statute, Section 718.203, as it exists on the date hereof.

No other warranties shall be implied or have been relied on by Buyer in the execution of this Agreement. Buyer acknowledges and agrees that Seller did not induce Buyer to execute this Agreement by promising Buyer would receive any economic benefit as a result of the efforts of Seller or any other party from the rental of the Units or by providing of any future services or amenities or otherwise. Seller does not guarantee or warrant that Buyer will realize any economic benefit from the execution of this Agreement, or the purchase of the Units.

10. **Notices.** All notices hereunder or required by law shall be in writing, and shall be deemed properly delivered when and if (i) personally delivered to the addressee, (ii) one day after being placed in the possession of a nationally recognized overnight courier (such as Federal Express), (iii) by facsimile or electronic mail, or (iv) when received or when delivery is refused after being deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the parties hereto at their respective addresses set forth on the first page of this Agreement, or as they may hereafter specify by written notice delivered in accordance herewith. For purposes of this Agreement, notices to Escrow Agent shall be delivered as follows: Peterson & Myers, P.A., 225 East Lemon Street, Suite 300, Lakeland, Florida 33801, Attn.: David A. Miller, Esq.

11. **Broker.** Buyer and Seller each represent and warrant to the other no real estate brokers are involved in the sale of the Units. Each party agrees to indemnify and hold harmless the other party from and against any and all costs, expenses, liabilities, or claims for any brokerage or other professional service fee, compensation, commission, or charge claimed by any broker, finder, agent, or other similar party, as a result of such party's acts or actions. Such indemnification shall include reasonable attorneys' fees in connection with defending same at trial and appellate levels, by reason of any action of the indemnifying party.

12. **Escrow Agent.** If either party shall declare the other party in default under this Agreement and such party makes demand (the "**Demand**") upon Escrow Agent for possession of the Escrow Deposit, said party must provide the other party with a copy of such Demand made upon Escrow



Agent. Escrow Agent shall not disburse the Escrow Deposit in accordance with the Demand unless and until the demanding party delivers to Escrow Agent evidence (e.g., returned receipt from U.S. Postal Service) of the other party's receipt of the Demand and Escrow Agent has not received written objection to such demand within the five (5) business days following said party's receipt of the copy of such Demand. If any dispute or difference arises between Buyer and Seller, or if any conflicting demands shall be timely made upon Escrow Agent, or if the Escrow Agent is in doubt as to its duties or liabilities under the provisions of this Agreement, it may, in its sole discretion, continue to hold such funds until the parties mutually agree to disbursement thereof, or until a judgment of a court of competent jurisdiction shall determine the rights of the parties hereto, or Escrow Agent may deposit such funds with the Clerk of the Circuit Court of Polk County, Florida, pursuant to interpleader procedure, whereupon after notifying all parties concerned with such action and paying all costs imposed by the Clerk as a result of such deposit, all liability on the part of Escrow Agent shall terminate except to the extent of accounting for any monies theretofore delivered out of escrow.

Seller and Buyer acknowledge and agree that the duties of the Escrow Agent are purely ministerial and are limited to the safekeeping of the Deposit(s) made pursuant to this Agreement, including interest earned thereon (if any), and the disposition of same in accordance with the terms of this Agreement. If all or any part of the Deposit(s) delivered to the Escrow Agent is in the form of a check or in any form other than cash, the Escrow Agent shall deposit same as required but shall not be liable for the non-payment thereof nor responsible to enforce collection thereof. The Escrow Agent shall not be deemed to have knowledge of any matter unless and until the Escrow Agent receives actual written notice thereof, and the Escrow Agent shall not be charged with constructive notice whatsoever. Escrow Agent may resign as the Escrow Agent at any time upon delivery of ten (10) days' prior written notice to the Seller and the Buyer. Seller and Buyer agree that the Escrow Agent shall not be liable to any party or person for any reason unless the Escrow Agent willfully, purposefully, and wrongfully breaches the terms of this Agreement in the misdelivery of any property held in escrow. Seller and Buyer each, jointly and severally, hereby agree to indemnify and hold harmless the Escrow Agent from and against any and all claims, liabilities, damages, fees, charges, costs, expenses penalties, losses, actions, suits, or proceedings at law or in equity, of any kind or nature, which the Escrow Agent incurs, may incur, or with which it may be threatened directly or indirectly, arising from or in any way connected with its acting as the Escrow Agent under this Agreement, including without limitation reasonable attorneys' fees at trial and appellate levels, and the Escrow Agent shall have a lien on and right of setoff against any property or monies held in escrow for the foregoing indemnification. Buyer hereby acknowledges that Peterson & Myers, P.A. represents Seller in the purchase of the Property and is also acting as Escrow Agent. Buyer hereby agrees and consents that Escrow Agent may represent Seller if any dispute or enforcement action that arises regarding this Agreement or any other matter. Buyer further acknowledges and consents that Peterson & Myers, P.A.'s representation of Seller shall not be limited in any manner or by any means.

13. Miscellaneous.

a. Attorneys' Fees. If either party commences an action against the other to enforce any of the terms of this Agreement or because of the breach by either party of any of the terms hereof, the losing or defaulting party shall pay to the prevailing party its reasonable attorneys' fees, costs, and expenses incurred in connection with the prosecution or defense of such action. The term "**prevailing party**" means the party obtaining substantially the relief sought, whether by compromise, settlement, or judgment. All of the provisions of this Section 14.a. shall survive the Closing or termination of this Agreement.

b. Construction, Interpretation. No provisions of this Agreement shall be construed by any court or other judicial authority against any party hereto by reason of such party being deemed to have drafted or structured such provisions. Words of any gender used in this Agreement shall be held and

construed to include any other gender; any words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise. The captions in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement. If a court of competent jurisdiction holds any provision of this Agreement invalid or ineffective with respect to any person or circumstance, the holding shall not affect the remainder of this Agreement or the application of this Agreement to any other person or circumstance.

c. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior understandings, oral or written promises, conditions, representations, understandings, or terms of any kind as conditions or inducements to the execution hereof. This Agreement may only be amended in a writing signed by both parties. This Agreement binds and inures to the benefit of the parties and their respective successors, legal representatives, heirs and permitted assigns.

d. Recording. This Agreement shall not be recorded in the public records.

e. Time of Essence. Time is of the essence of this Agreement and this transaction. Any reference herein to time periods of less than six (6) days shall in the computation thereof exclude Saturdays, Sundays and legal holidays, and any time period provided for herein which shall end on a Saturday, Sunday or legal holiday shall extend to the next full business day.

f. Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together shall constitute one and the same instrument. A counterpart signature page to this Agreement that is executed by a party and transmitted via facsimile transmission or electronic mail (PDF) has the same force and effect as an original.

g. Governing Law. This Agreement shall be construed, and the rights and obligations of Seller and Buyer hereunder shall be determined, in accordance with the laws of the State of Florida. Venue for any action relating to this Agreement shall be Polk County, Florida.

h. Effective Date. The “**Effective Date**” shall be the date when the last one of Buyer and Seller has executed this Agreement.

i. WAIVER OF JURY TRIAL. BUYER AND SELLER WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY EACH PARTY AND EACH PARTY HEREBY REPRESENTS AND WARRANTS THAT NO PERSONS OR ENTITIES ACTING ON BEHALF OF THE OTHER PARTY HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. EACH PARTY ACKNOWLEDGES TO THE OTHER THAT IT HAS READ AND UNDERSTANDS THE MEANING AND EFFECT OF THIS WAIVER PROVISION.

j. Radon Gas. Pursuant to and in accordance with Section 404.056(5) of the Florida Statutes, Seller and Buyer hereby acknowledge and are aware that radon gas is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the county health department.

14. **Special Provisions.**

a. **Condominium Documents.** Buyer agrees to purchase the Units pursuant to the terms and conditions of this Agreement and the Condominium Documents. By acceptance of the deed, Buyer shall be deemed to have approved and ratified the Condominium Documents, and the provisions thereof, and agreed that the documents and charges thereunder are fair and reasonable. Buyer shall further be deemed to have agreed to be bound by all the terms, conditions and rules and regulations specified in the Condominium Documents, including the provisions regarding architectural control and use restrictions and to be liable for and pay Buyer's proportionate share of common expenses, including, but not limited to, management fees and expenses, if any.

b. **Impact Fees.** Buyer shall pay all impact fees (including, without limitation, for governmental services, schools, roads, parks, water and sewer) imposed against the Units and shall pay all other permitting fees imposed against the Units. Seller may now or hereafter possess impact fee credits applicable to the Condominium Units, which, if assigned to Buyer, could be applied by Buyer against impact fees payable to the governmental authorities or other appropriate governmental authorities in connection with the Units (the "**Impact Fee Credits**"). At Closing, Seller hereby agrees to sell and Buyer hereby agrees to purchase the Impact Fee Credits owned by Seller and assignable to Buyer to the fullest extent that the Impact Fee Credits, upon assignment by Seller to Buyer, may be credited or applied against Buyer's obligation to pay impact fees in connection with the Units. The purchase price for any such Impact Fee Credits shall be the amount of any such Impact Fee Credits assigned to Seller on a dollar for dollar basis at the same cost as Buyer would otherwise be charged by governmental authorities. At Closing, Seller shall deliver to Buyer an assignment of the Impact Fee Credit in a form reasonably satisfactory to Buyer and the appropriate governmental authority. If additional Impact Fees are due by Buyer to the appropriate governmental authority in excess of the Impact Fee Credits assigned to Buyer by Seller at the closing, Buyer agrees to purchase the additional Impact Fee Credits from Seller in lieu of paying the additional Impact Fee Credits directly to the appropriate government authority. Buyer's obligation to purchase any Impact Fee Credits shall be contingent on confirmation by the appropriate governmental authority that such Impact Fee Credits are owned by Seller and assignable to Buyer. If such impact fees are assessed against the Project in the whole, Buyer shall pay its proportionate share.

[signature pages follow]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement.

**SELLER:**

BKP Five, LLC,  
a Florida limited liability company

*Witnesses:*

By: Beckryger Capital Partners, LLLP,  
a Florida limited liability partnership,  
its sole Member

By: Beck Kryger Capital Partners, Inc.  
A Florida corporation,  
Its general partner

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Wesley Beck, its President

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Date Executed: \_\_\_\_\_, 2018

**ANY PAYMENT IN EXCESS OF TEN PERCENT (10%) OF THE PURCHASE PRICE MADE TO SELLER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY SELLER.**

**BUYER:**

*Witnesses:*

\_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Date Executed: \_\_\_\_\_, 2018

This instrument prepared by and  
after recording return to:

David A. Miller  
Peterson & Myers, P.A.  
225 E. Lemon Street, Suite 300  
Post Office Box 24628  
Lakeland, FL 33802-4628

**DECLARATION OF CONDOMINIUM FOR  
HERITAGE PLAZA PARKING GARAGE CONDOMINIUM  
(A COMMERCIAL CONDOMINIUM)**

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FOR  
HERITAGE PLAZA PARKING GARAGE CONDOMINIUM

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EXHIBITS

- A. Legal Description
- B. Plot Plan and Survey
- C. Articles of Incorporation
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**DECLARATION OF CONDOMINIUM FOR  
HERITAGE PLAZA PARKING GARAGE CONDOMINIUM**

**ARTICLE I  
ESTABLISHMENT OF CONDOMINIUM; PURPOSE; CONDOMINIUM NAME**

BKP FIVE LLC, a Florida limited liability company, for itself, its successors, grantees, and assigns, makes, declares, and publishes its intention to submit and hereby submits the property described in attached **Exhibit "A"** to condominium ownership and use in accordance with Chapter 718, Florida Statutes, as enacted upon the date of recordation hereof (the "Condominium Act").

The property described in **Exhibit "A"** is intended to be developed as a commercial parking garage known as the Heritage Plaza Parking Garage, which parking garage is not related to or associated with a residential development but instead is a parking garage located in downtown Lakeland, Florida and is designed to be used in connection with commercial activities in Lakeland, Florida.

A condominium plat of the condominium is recorded in Condominium Book \_\_\_\_, Page \_\_\_\_, of the Public Records of Polk County, Florida. **Exhibit "B"** attached hereto is a survey of said Property and a plot plan of the Condominium. The identification, location and dimensions of each Unit and the Common Elements appears on **Exhibit "B"**. Together with this Declaration, **Exhibit "B"** includes sufficient detail to identify the Common Elements and each Unit, and provides accurate representations of their locations and dimensions in accordance with the Condominium Act.

All the restrictions, reservations, covenants, conditions, easements and limitations of record contained herein shall constitute covenants running with the land or equitable servitudes upon the land, as the case may be, shall run perpetually unless terminated as provided herein, and shall be binding upon all Unit Owners, as hereinafter defined. In consideration of receiving and by acceptance of a grant, devise or mortgage, all grantees, devisees or mortgagees, their heirs, personal representatives, successors and assigns, and all parties claiming by, through or under such persons, agree to be bound by the provisions hereof, the Articles of Incorporation and the Bylaws of the Association, as hereinafter defined. Both the benefits provided and the burdens imposed shall run with each Unit and the interests in Common Elements as defined herein.

The name of this Condominium is Heritage Plaza Parking Garage Condominium, a commercial condominium.

**ARTICLE II  
DEFINITIONS**

The terms used in this Declaration and all Condominium Documents as hereinafter defined, shall have the meanings ascribed to them in Chapter 718, Florida Statutes, on the date this Declaration is recorded, unless otherwise expressly defined in this Declaration. As used in this Declaration and all Condominium Documents, and in all amendments thereto, unless the context otherwise requires, the following definitions shall apply:

"Affiliate" means, as to any Person: (i) each other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified and (ii) any officer, director, manager, or general partner of such Person. A Person shall be deemed to be controlled by another person if such other person beneficially owns or holds directly or indirectly, 10% or more of the voting control or equity interests of such Person.

“Alterations” shall mean only alterations which take place within the Building or alterations to the outside surface of the Building.

“Applicable Laws” mean all laws, rules, orders, ordinances, regulations (including but not limited to, federal, state and local laws applicable to environmental protection and hazardous substances) and requirements now or hereafter enacted or promulgated by the United States of America, State of Florida, Polk County or City of Lakeland and any other county, municipality or governmental agencies or entities now or hereafter having jurisdiction over the Property.

“Articles” mean the Articles of Incorporation of the Association, as the same may be amended from time to time.

“Assessment” means a share of the funds required for the payment of Common Expenses which from time to time are assessed against any Unit Owner in accordance with the provisions of this Declaration.

“Association” means Heritage Plaza Parking Garage Condominium Association, Inc., the Florida not-for-profit corporation which is responsible for the operation of the Common Elements of the Condominium.

“Board” or “Board of Directors” means the board of directors responsible for the administration of the Association.

“Building” means the structure within which the Units are located.

“Bylaws” mean the Bylaws of the Association, as the same may be amended from time to time.

“City Block” means the land lying within the following boundaries in Lakeland, Florida: north boundary being Lemon Street, south boundary being Orange Street, west boundary being Tennessee Avenue, and the east boundary being Kentucky Avenue.

“Common Elements” means that portion of the Condominium Property not included in the Units including, but not limited to, land on which the improvements are located and that portion of the Condominium Property outside of the footprint of the foundation of the Building, concrete, stairways, elevators, walls, structural components of the parking garage, drive aisles, signage, roofs, access gates and access control devices, the façade of the Building, pipes, wires, conduit, utility lines, infrastructure supporting or providing Utility Services, and facilities, easement of support, handicap parking spaces, and any other part of the Condominium Property that is not a Unit.

“Common Expenses” mean any and all costs, expenses and liabilities incurred by or on behalf of the Association, in the performance of its duties, including, without limitation, costs, expenses and liabilities for (i) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Elements; (ii) providing facilities, services and other benefits to Owners within the Common Elements; (iii) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (iv) levying, collecting and enforcing the Assessments, charges and liens imposed by the Association pursuant hereto; (v) regulating and managing the Condominium; (vi) operating the Association; (vii) obtaining insurance for the Condominium Property and for officers and directors; (viii) real property taxes and assessments and other maintenance expenses attributable to the Units acquired or leased by the Association; (ix) any unpaid share of Common Expenses in Assessments extinguished by a foreclosure of a superior lien or deed in lieu of foreclosure; and (x) any other valid



expenses or debts of the Condominium as a whole or the Association, which are assessed against the Unit Owners and reserves for any such costs, expenses and liability.

“Common Surplus” means the excess of all receipts of the Association, including but not limited to Assessments, rents, profits and revenues on account of the Common Elements, over the amount of the Common Expenses.

“Condominium” means the Heritage Plaza Parking Garage Condominium (a commercial condominium).

“Condominium Act” means Chapter 718, Florida Statutes, as enacted upon the date of recordation of this Declaration.

“Condominium Property” means and includes all lands that are subjected hereunder to condominium ownership, whether or not contiguous, together with all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

“Condominium Documents” means this Declaration, the Articles of Incorporation, Bylaws, and rules and regulations adopted by the Association( if any), and any amendments thereto.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Convey”, “Conveyed”, or “Conveyance” means a sale, exchange, assignment, conveyance, gift, devise, transfer, or other disposition during lifetime or at death (voluntarily or involuntarily by operation of law or otherwise) of any portion of a Unit. Convey does not include a grant, mortgage, pledge, or other creation of any security interest, lien, or other encumbrance, in or against any portion of a Unit in favor of a Mortgagee.

“County” means Polk County, Florida.

“Declaration” or “Declaration of Condominium” means this instrument as it may from time to time be amended.

“Developer” means BKP Five LLC, a Florida limited liability company, and its successors and/or assigns.

“Developer Option Units” has the meaning ascribed to it in Article XVIII.D.

“Developer Units” means those Units within the Condominium that are owned by the Developer.

“Emergency Situation” means (i) a situation which immediately impairs or threatens immediate impairment of the structural support of the Building; (ii) a situation causing or threatening to cause injury to a person or persons or substantial damage to the Property or personal property in, on or about the Property.

“Facilities” means equipment rooms and equipment, elevators, and all components of domestic water, fire protection, sanitary waste, storm water, electrical, life safety, central stand-by power, trash removal, electronic security, mechanical and other systems forming a part of the Building and designed or utilized to furnish utility and other services to any portion of the Building, including but not limited to:

annunciators, batteries, boxes, brackets, cables, chutes, coils, computers, conduits, controls, control centers, devices, ducts, elevator cars, elevator shafts and rails, equipment, fans, fixtures, generators, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, switches, switch-boards, valves, wiring and the like.

“Governmental Authority” shall mean any nation or government, any state or local government political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

“Interest Rate” means the lesser of: (i) twelve percent (12%) per annum, or (ii) the highest rate allowed by applicable law.

“Material Adverse Impact” means an event or occurrence on the Property or the Building having a material adverse effect (in an amount exceeding \$10,000.00) on a Unit Owner’s use of its Unit(s), excluding Emergency Situations.

“Mortgagee” means a bank, any Unit Owner who finances a purchase of a Unit with seller financing, savings and loan association, insurance company, mortgage company, real estate investment trust, recognized institutional type lender or agency of the United States Government, or other person or entity, if such person or entity holds a mortgage encumbering a Unit.

“Non-Developer Units” means those Units within the Condominium other than Developer Units.

“Owner” means Unit Owner.

“Person” shall mean any natural person, corporation, association, joint venture, partnership, limited liability company, company, association, trust, Governmental Authority or other entity.

“Plat” means the Plat for the Condominium which shall be recorded in the public records of Polk County as **Exhibit “B”** to this Declaration, as the same may be amended or supplemented from time to time, and any condominium plat which is attached to an amendment to this Declaration.

“Property” means the real property located in Polk County, Florida, that is more particularly described on **Exhibit “A”** attached hereto, together with improvements located thereon.

“Proportionate Share” means a ratio, the numerator of which is the sum of all Units owned by an applicable Unit Owner, and the denominator of which is the total number of all the Units of the Condominium.

“Unit” means a portion of the Condominium that is created by this Declaration and is designated for separate and exclusive ownership. A Unit has boundaries that are described in this Declaration and depicted on the Plat. A Unit is designed and intended to be used for the parking of motorized vehicles and attendant uses and any other use shall require the approval of the Association. For purposes of this Declaration, the handicap parking spaces located in the Condominium are not included in the definition of Units, but instead are part of the Common Elements. In addition, a Unit does not include any Common Elements, even if such Common Elements are running through a Unit which are utilized for or service another Unit, or the Common Elements.

“Unit Owner” means the owner of a Unit as shown by the real estate records in the office of the Clerk of Polk County, Florida, whether such Unit Owner be the Developer, one or more persons, firms, associations, corporations or other legal entities. “Unit Owner” shall not mean or refer to a Mortgagee or other lienholder, its successors or assigns, unless and until such Mortgagee or lienholder has acquired title pursuant to foreclosure or deed in lieu of foreclosure; nor shall the term “Unit Owner” mean or refer to any lessee or tenant of a Unit.

“Utility Service” as used in this Declaration, the Articles and the Bylaws, shall include, but not be limited to, electric, power, gas, hot and cold water, trash and sewage disposal.

### **ARTICLE III APPURTENANCES TO UNITS, POSSESSION, USE AND ENJOYMENT**

A. Appurtenances to Units. There shall pass with each Unit as appurtenances thereto the following:

1. An undivided share in the Common Elements;
2. An exclusive easement for the use of the air space occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time;
3. An undivided share in the Common Surplus; and
4. Membership of the Unit Owner in the Association.

B. Possession of a Unit. Each Unit Owner is entitled to the exclusive possession of his Unit subject to the provisions of this Declaration. Each Unit Owner shall be entitled to use the Common Elements, in accordance with the provisions of this Declaration and the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of other Unit Owners.

C. Description of a Unit. Each Unit is identified by a specific numerical designation as set forth in attached **Exhibit “B”**. Each Unit shall be as graphically depicted on attached **Exhibit “B”**, as supplemented by the following:

1. Upper Boundaries. The upper boundary of the Unit shall be the horizontal plane parallel to the underside of the unfinished surface of the ceiling, or, if there is no ceiling, fifteen (15) feet above the tallest improvement within a Unit, but in all events below the lower boundary of any unit above such Unit.

2. Lower Boundaries. The lower boundary of each Unit shall be the horizontal plane of the unfinished upper surface of the floor of the Unit to the extent that the floor falls within the perimetrical boundaries of the Unit.

3. Perimetrical Boundaries. The perimetrical boundaries shall, be as applicable: (i) the vertical planes formed by the interior undecorated unfinished surfaces of all structural walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries; or (ii) where there is no wall and the Unit consists in whole or in part of unenclosed space, the vertical plane lying on the survey line defining the Unit as shown on **Exhibit “B”** hereof, as amended or supplemented, perpendicular to the upper and lower boundaries.

D. Transfer Restrictions. Ownership of the Units is subject to transfer restrictions set forth in this Declaration.

E. Use. The Condominium is a commercial parking garage and the Units shall not be used for anything other than the parking of vehicles without express written consent from all Members of the Association. The ownership and use of the Units shall be subject to applicable zoning classification for the Condominium Property and this Declaration, the Bylaws, the Articles, and rules and regulations of the Association.

F. Use Restrictions. Use of the Condominium Property shall be in accordance with the following provisions so long as the Condominium exists and these restrictions shall be for the benefit of and enforceable by all Unit Owners in this Condominium:

1. No Unlawful or Offensive Use. No immoral, improper, offensive or unlawful use shall be made on the Condominium Property nor any part thereof, and all laws, ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies pertaining to maintenance, replacement, modification or repair of the Condominium Property shall be the same as is elsewhere herein specified.

2. Rules and Regulations. Reasonable rules and regulations concerning the use of the Condominium Property may be made and amended from time to time by the Association in the manner provided by its Articles of Incorporation and Bylaws. Copies of such regulations and amendments shall be furnished by the Association to all Unit Owners upon request.

3. Signs. Except for signs expressly permitted in Article XIV, no signs or other displays may be maintained on any part of the Common Elements or Units without the Association's prior written consent. Notwithstanding the foregoing sentence, the Developer may install, display and maintain signs on the Common Elements and its Units for the benefit of one or more of any tenant or occupant of a building located within the City Block.

4. No Timeshare Estate. Timeshare estates and/or timeshare interests, as defined by Florida Statutes Section 721.05 (2018), may not be created in any Unit by any person, entity or Unit Owner.

#### **ARTICLE IV COMMON ELEMENTS**

A. Proportionate Share. The undivided share in the Common Elements, Common Expenses and Common Surplus appurtenant to each Unit in the Condominium is a ratio the numerator of which is one (1) and the denominator of which is the total number of Units in the Condominium, as such number of Units may be modified from time to time in accordance with the terms of this Declaration relating to the subdivision or combination of such Units.

B. Appurtenant to Units. The undivided share in the Common Elements, which is appurtenant to a Unit, shall not be separated therefrom and shall pass with the title to the Unit whether or not separately described. All Unit Owners have non-exclusive rights to use and benefit from the Common Elements. A share in the Common Elements appurtenant to a Unit can only be conveyed or encumbered together with the applicable Unit.

C. No Partition of Common Elements. The shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements may be brought, except as provided in the Articles, Bylaws, and this Declaration.

## ARTICLE V CONDOMINIUM ASSOCIATION

A. Management by Association. The management and operation of the Condominium shall be vested in the Association. The Association has been organized as a Florida not-for-profit corporation and a copy of its Articles of Incorporation are attached hereto as **Exhibit "C"**.

B. Authority. No Unit Owner, except an officer or director of the Association, shall have any authority to act for the Association.

C. Membership in the Association. All Unit Owners automatically shall be members of the Association, and a Unit Owner's membership shall terminate when he no longer owns his Unit.

D. Voting Rights. Each Unit Owner shall be entitled to one vote for each Unit owned by the Unit Owner. All votes shall be cast by the Owner in accordance with the provisions of the Bylaws and Articles of the Association. All actions of the Association, unless otherwise provided in the By-Laws, shall require an affirmative majority vote.

E. Powers and Duties of the Association. The powers and duties of the Association shall include those set forth in the Articles, the Bylaws, the Condominium Act, and this Declaration and shall include, but are not limited to, the following:

1. The power to levy and collect Assessments from Unit Owners and to lease, maintain, repair and replace the Common Elements.

2. The keeping of accounting records in accordance with good accounting practices and the Condominium Act which records shall be open to inspection by Unit Owners or their authorized representatives at reasonable times and written summaries of which shall be supplied at least annually to Unit Owners or their authorized representatives.

3. The power to enter into contracts with others for the maintenance, management, operation, repair, replacement and servicing of the Common Elements.

4. The power to adopt reasonable rules and regulations for the maintenance and conservation of the Common Elements, and for the health, comfort, safety and welfare of the Unit Owners, all of whom shall be subject to such rules and regulations. Notwithstanding the foregoing, any such rule or regulation shall not be inconsistent with this Declaration.

5. The power to obtain and maintain adequate insurance to protect the Association, the Board and/or the Common Elements.

6. The power to purchase Units and to acquire, hold, lease, mortgage and convey same; provided however that such action shall require the affirmative vote of more than fifty percent (50%) of the votes entitled to be cast in person or by proxy at a duly called meeting of the Association.

F. Limitation of Association's Authority. Except as provided by statute in case of condemnation or substantial loss to the Condominium, and unless at least three-fourths (3/4) of the Mortgagees, if any (based upon one vote for each first mortgage held by a Mortgagee), and Unit Owners holding at least three-fourths (3/4) of all votes vested in the Unit Owners have given their prior written approval (which 3/4 must include the votes available to the Developer for such approval to be valid), the Association shall not be entitled to do the following:

1. By act or omission seek to abandon or terminate the Condominium;
2. Change the pro rata interest or obligations of any individual Unit for the purpose of (a) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (b) determining the pro rata share of ownership of each Unit in the Common Elements;
3. Combine, partition or subdivide any Unit;
4. By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Unit Owners shall not be deemed a transfer within the meaning of this clause); or
5. Use hazard insurance proceeds for losses to any portion of the Condominium for purposes other than the repair, replacement or reconstruction of such portion; provided, however, if after repair, replacement or reconstruction of such portion, there are surplus insurance proceeds, such proceeds shall be deposited to the operating account of the Association.

G. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THIS DECLARATION SHALL NOT CONSTITUTE A GENERAL OBLIGATION OR A PLEDGE OF THE FAITH AND CREDIT OF THE CITY OF LAKE LAND, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL PROVISION OR LIMITATION, ANDY OBLIGATIONS OF THE CITY OF LAKE LAND SHALL BE PAYABLE SOLELY FROM NON-AD VALOREM REVENUES LEGALLY AVAILABLE FOR PAYMENTS OF ITS OBLIGATIONS HEREUNDER subject to the prior satisfaction of funding requirements for essential governmental services of the city of LAKE LAND AND to the extent AND subject to a prior pledge thereof for the payment of other obligations of the City of Lakeland, and expressly excluding any revenues of the City of Lakeland accounted for in an enterprise fund under governmental accounting principles except to the extent that any such revenues derived from any enterprise fund are deposited into the City of Lakeland's General Fund. No Owner shall ever have the right, directly or indirectly, to require or compel the exercise of the ad valorem taxing power of the City of Lakeland or any other political subdivision of the State of Florida or taxation in any form on any real or personal property for any purpose, including, without limitation, for the payment of obligations of the City of Lakeland with respect hereto, or to maintain or continue any activities of the City of Lakeland which generate user service charges, regulatory fees or other non-ad valorem revenues. The Owners agree that the Owners shall not have a general foreclosure right that entitles the Owners to a deficiency judgment or to retain the City of Lakeland's equity in its ownership interest in the City of Lakeland's Units, if any. The Owners agree that: (i) the Declaration is not intended to create a mortgage of or a security interest in the City of Lakeland's ownership interest in the Units as proscribed by *Nohrr v. Brevard County Educational Facilities Authority*, 247 So. 2d 304 (Fla. 1971), and (ii) the Owners may not exercise any foreclosure-type remedies under any circumstances against the City of Lakeland, as prohibited under *State v. Brevard County*, 539 So. 2d 461 (Fla. 1989), notwithstanding any provisions to the contrary in this Declaration.

**ARTICLE VI**  
**BUILDING SERVICES WITHIN THE COMMON ELEMENTS**

A. Services Provided to Common Elements. The Association shall provide the following services for the benefit of the Unit Owners and the Condominium:

1. Utilities. The Association shall coordinate the supply of electricity to the Common Elements.

2. Roof and Storm Drains. The Association shall operate, maintain, repair and replace when necessary the roof of the Building and all storm drains.

3. Elevators. The Association shall maintain, repair, inspect and replace all elevators and all shafts, equipment and other components related thereto, as a part of the Common Elements.

4. Trash Removal. The Association shall provide trash removal service to remove the trash from the Building and may request that Unit Owners place their trash only in a designated area.

5. Landscaping and Sidewalk Repair. The Association shall provide landscaping and maintenance and repair, when necessary, to those portions of the sidewalks, approaches and entrances to the Building.

6. Maintenance of the Common Elements and the Building. The Association shall maintain, clean, repair and replace, when necessary, the Common Elements and will maintain the Building and Common Elements in a condition that is equal to or better than the standards used in maintaining buildings located within the City Block.

7. Fire Protection System. The Association shall operate, maintain, repair and replace when necessary the Common Elements and Facilities located within the Building required to furnish the fire protection system for the Building in accordance with local fire codes and published standards.

8. Access Gates and Control Devices. The Developer or the Association may install gate(s) or other access control devices to control ingress and egress to and from the Units at such locations as determined desirable by the Board of the Association in their sole discretion, except the Board or the Developer may not install access control devices limiting access to Units located on the first and second floor of the Building if a governmental agency owns any Units on said first or second floor without first obtaining the prior written consent such governmental agency. The Association shall operate, maintain, repair, and replace such gates and access control devices.

B. Expenditures for Services and Emergency Situations. The Association shall operate, as part of the Association's budgeted expenses, the Facilities and furnish all services necessary for the Building's intended use as a commercial parking garage. The Association may also expend such sums as reasonably required to remedy an Emergency Situation. All replacements and necessary refurbishments provided for herein shall be of similar or better quality than the original quality of the items being replaced or refurbished .

**ARTICLE VII  
ARTICLES OF INCORPORATION / BYLAWS**

Except as otherwise may be expressly provided herein, the administration of the Association and the operation of the Condominium Property shall be governed by the Articles of Incorporation and the Bylaws of the Association, copies of which are respectively attached hereto as **Exhibit “C”** and **Exhibit “D”**. No modification of or amendment to the Articles of Incorporation and/or the Bylaws shall be deemed valid unless duly adopted as provided in the Articles of Incorporation and/or the Bylaws and set forth in or annexed to a duly recorded amendment to this Declaration executed in accordance with the provisions of the Condominium Act.

**ARTICLE VIII  
MAINTENANCE**

A. Maintenance by Unit Owners. Each Unit Owner shall be responsible for the maintenance of the Unit Owner’s Unit.

B. Maintenance by the Association and the Developer. The Association shall maintain and repair the Common Elements. The Association shall be responsible for the repair of all concrete in the Building and restriping of parking spaces as determined necessary or desirable in the reasonable discretion of the Association.

**ARTICLE IX  
PROPORTIONATE SHARE OF COMMON EXPENSES AND COMMON SURPLUS**

A. Common Expenses. Common Expenses shall be assessed against Unit Owners in an amount equal to said Unit Owner’s Proportionate Share of the Common Expenses.

B. Common Surplus. Common Surplus, if any, shall be owned by Unit Owners in an amount equal to said Unit Owner’s Proportionate Share of the Common Surplus.

**ARTICLE X  
ASSESSMENTS**

A. Assessments. The Association shall have the power to determine and fix the sums necessary to pay for the Common Expenses, including the expense allocable to services being rendered by a management company with whom the Association may contract. Unless specifically waived by the Association, the Assessments shall include monies required for the payment of hazard and liability insurance premiums. The Assessment shall initially be payable in advance, monthly, on the first day of each month; however, the Board shall have the power to establish other collection procedures. In addition, the Association shall have the power to levy special assessments against Units in their respective percentages if a deficit should develop in the payment of Common Expenses during any period. The Board may, but shall not be required to, include sums to establish reasonable reserves against future contingencies in each annual Assessment.

B. Special Assessments. The Association may determine and fix special assessments against Unit Owners to pay for the costs and expenses incurred by the Association in maintaining the Common Elements.

C. Liability for Assessments. A Unit Owner, regardless of the manner in which he acquired title to his Unit, including without limitation a purchaser at a judicial sale, shall be liable for all



Assessments while it is the Unit Owner. A grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the latter for its share of the Common Expenses up to the time of the conveyance, except that the liability for prior Assessments of first mortgagees acquiring title through foreclosure or a deed in lieu of foreclosure shall be limited to a period of Assessments not exceeding six (6) months, subject to any limitations required by Applicable Law. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by abandonment of the Unit against which the Assessment was made.

D. Interest and Late Fees. Assessments and installments thereof not paid when due shall bear interest from the tenth (10th) day after the due date until paid at the Interest Rate. If the delinquent installment(s) of Assessments and any charges thereon are not paid in full when due, the Association, at its option may, in accordance with the requirements of the Condominium Act if applicable, declare all of the unpaid balance of the annual Assessment to be immediately due and payable without further demand and may enforce the collection thereof and all charges thereon in the manner authorized by law and this Declaration. In addition to the payment of interest as provided for herein, if an Assessment is not paid within ten (10) days after becoming due, the Unit Owner shall pay to the Association an administrative late fee in an amount equal to the greater of (i) \$25 or (ii) five percent (5%) of each installment of the late Assessment.

E. Lien Rights. The Association shall have a lien upon each Unit, not owned by a Governmental Authority, to secure the personal obligation of each Unit Owner thereof for any unpaid Assessment and interest thereon. Such lien also shall secure reasonable attorneys' fees incurred by the Association incident to the collection of such Assessment or enforcement of such lien. As to first mortgages of record, the lien shall be evidenced by a claim recorded in the public records of Polk County, Florida, in the manner provided by the Condominium Act, and shall be effective from and as of the time of such recording. As to other than first mortgages of record, the lien shall relate back to the recording of the original Declaration of Condominium creating the Unit. The Association may take such action as it deems necessary to collect Assessments by either an *in personam* action or lien foreclosure, or both, and may settle and compromise the same if in the best interest of the Association. Said liens shall have the priorities established by the Condominium Act.

F. Foreclosure of Liens. Liens for Assessments may be foreclosed by suit brought in the name of the Association in like manner as a foreclosure of a mortgage on real property. In any such foreclosure, the court, in its discretion, may require the Unit Owner to pay a reasonable rental for the Unit and the court may appoint a receiver to collect the Assessments which are the subject of said proceeding. The Association may bid on the Unit at foreclosure sale and apply as a cash credit against its bid all sums due the Association secured by the lien being enforced, and the Association may acquire and hold, lease, mortgage and convey any Unit so acquired by it subject to the Association having the approval to do so as specified in this Declaration. No right of foreclosure shall exist against Units owned by a Governmental Authority.

G. Application to Mortgagee. Any unpaid share of Common Expenses for which a first mortgage mortgagee is relieved from liability under the provisions of this Declaration shall be deemed to be a Common Expense, collectible from all Unit Owners, including such acquirer, its successors and assigns. A first mortgage mortgagee may not, during the period of its ownership of such Unit, whether or not such Unit is used by the mortgagee, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership. Nothing contained herein shall abridge or limit the rights or responsibilities of Mortgagees as set forth in the Condominium Act.

H. Assignment of Claims for Unpaid Assessments. The Association, acting by and through its Board, shall have the right to assign its claim for any unpaid Assessments and the lien securing said

claim to the Developer or to any Unit Owner, group of Unit Owners or any third party. The Developer shall have the right to assign its claim for any unpaid Assessments and the lien securing said claim to the Association or to any Unit Owner, group of Unit Owners or any third party.

I. Relief from Payment. Except as otherwise set forth in this Declaration, no Unit Owner may be excused from the payment of his Proportionate Share of Common Expenses, unless all affected Unit Owners are likewise proportionately excused from such payment.

J. Applicability to Governmental Authorities. Notwithstanding anything in this Declaration to the contrary, Units owned by a Governmental Authority will not be subject to any lien in favor of the Association. In addition, nothing in this Declaration will be construed to pledge ad valorem revenues of any Governmental Authority. Units owned by a Governmental Authority will not be subject to any foreclosure action commenced by the Association. However, if a Governmental Authority fails to pay an Assessment, such Governmental Authority shall owe interest on the amount of the delinquent Assessment at the highest rate permitted by law.

## **ARTICLE XI TERMINATION OF CONDOMINIUM**

Subject to the provisions of this Declaration concerning total or substantial destruction, the Condominium Property may be removed from the provisions of this Declaration at any time by an instrument signed by the president or vice president and secretary of the Association with the formalities of a deed and duly recorded in the public records of Polk County, Florida, which such instrument must also include a certification confirming the following conditions precedent to such termination were satisfied: (i) an affirmative vote of at least seventy-five percent (75%) of the votes of the Unit Owners at a duly noticed meeting of the Unit Owners in accordance with the provisions of the Bylaws, (ii) unanimous written consent of all of the first mortgage holders, and (iii) written consent of the Developer. In the event of termination, the rights of owners of mortgages or other liens and the procedure for liquidation of the Condominium assets as provided herein with respect to total or substantial destruction shall apply and shall be under the supervision and control of the Board.

## **ARTICLE XII LIMITATION OF LIABILITY**

A. Common Expenses. The liability of each Unit Owner for Common Expenses shall be limited to the amounts assessed against it from time to time in accordance with the Condominium Act, this Declaration, the Articles and the Bylaws. The liability of each Unit Owner shall be limited to the amounts assessed against it from time to time in accordance with this Declaration.

B. Limitation of Liability. A Unit Owner's liability for any damages caused by the Association in connection with the use and maintenance of the Common Elements is limited to the extent of its Proportionate Share, and in no event shall said liability exceed the value of its Unit. Each Unit Owner shall be liable for injuries or damages resulting from an accident in his own Unit in which the Unit Owner is responsible .

C. Liability Exceeding Insurance Coverage. In any legal action in which the Association or the Developer may be exposed to liability in excess of insurance coverage protecting it and the Unit Owners, the Association shall give notice of the exposure within a reasonable time to all affected Unit Owners, and Unit Owners shall have a right to intervene and defend.

D. Limited Liability of Board of Directors of the Association.

1. The members of the Board of Directors and officers, in their capacity as such, shall not be personally liable for monetary damages for any action taken, or any failure to take any action, unless he or she has breached or failed to perform the duties of his office described in the Bylaws; provided, however, that the provisions of this section shall not apply to the responsibility or liability of a Board of Directors' member or officer pursuant to any criminal statute, or to the liability of a Board of Directors' member or officer for the payment of taxes pursuant to local, state, or federal law.

2. Absent breach of fiduciary duty, lack of good faith or self-dealing, actions taken as an Board of Directors, members, or officers of the Association or any failure to take any action shall be presumed to be in the best interest of the Association.

3. To the extent permissible under Florida law, expenses incurred by a Board of Directors, member, or officer in defending a civil or criminal action, suit or proceeding shall be paid by the Association in advance of the final disposition of such action, suit or proceeding upon the request of the Board of Directors, member, or officer, after the Association has received an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Association.

**ARTICLE XIII  
CONSTRUCTION LIENS**

A. Liens on Condominium Property. With the exception of liens that are provided for herein, no liens of any nature shall arise or be created subsequent to the recording of this Declaration against the Condominium Property (as distinguished from individual Units) without the unanimous consent of the Unit Owners. No labor performed or materials furnished to the Common Elements shall be the basis for a lien thereon unless authorized by the Association, in which event, the same may be the basis for the filing of a lien against all Units in the proportions for which the Unit Owners thereof are liable for Common Expenses.

B. Liens on Units. Unless a Unit Owner has expressly requested or consented to work being performed or materials being furnished to his Unit, such labor or materials may not be the basis for the filing of a lien against same.

C. Construction Liens. Each Unit Owner shall remove, within thirty (30) days after the filing thereof, any construction lien (collectively referred to as "Construction Lien") on its Unit or any portion thereof, on any other Unit Owner's Unit, or on any portion of the Property, arising by reason of any work or materials ordered or any act taken, suffered or omitted by such Unit Owner. In the event a Unit Owner fails to remove or sufficiently bond against any such Construction Lien within such thirty (30) day period, the Board of Directors may take such action as it deems necessary to remove such Construction Lien. The Board of Directors shall be entitled to reimbursement from such Unit Owner for all costs and expenses incurred by such party in removing or attempting to remove such Construction Lien and shall have a lien against the portion of the Property owned by such Unit Owner to secure the repayment of any such costs or expenses as provided herein. Notwithstanding the foregoing, such Unit Owner shall not be required to remove such Construction Lien so long as within said thirty (30) day period such Unit Owner (a) shall first deliver to the Board of Directors cash or a surety bond with a responsible surety company reasonably acceptable to the Board of Directors in an amount equal to one hundred fifty percent (150%) of the Construction Lien claim and all interest and penalties thereon, and (b)

shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to the Board of Directors of such contest.

D. Release of Liens. In the event a lien against a Unit becomes effective, each owner thereof may release his Unit from the lien by paying the proportionate amount attributable to his Unit. Upon such payment, it shall be the duty of the lienor to release the lien of record from such Unit.

#### **ARTICLE XIV EASEMENTS**

The following easements are hereby created (in addition to any easements created under the Condominium Act and any easements affecting the Condominium Property and recorded in the Public Records of the County:

A. Pedestrian Traffic. A non-exclusive easement in favor of all Units shall exist for pedestrian traffic over, through and across sidewalks, paths and walks and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as may from time to time be paved and intended for such purposes. Such easements shall be for the use and benefit of the members of the Association, as well as the invitees, tenants, guests, employees and agents of such members. Unit Owners shall have, as an appurtenance to their Units, a perpetual easement for ingress and egress to and from their Units over and upon all Common Elements intended for such purposes. In addition, an easement exists for temporary pedestrian access across any Unit provided such access does not interfere with or adversely affect an Unit Owner's use and enjoyment of his Unit.

B. Support. A non-exclusive easement of support is hereby created for the benefit of all Unit Owners in every portion of a Unit which contributes to the support of the Building.

C. Common Elements. Non-exclusive easements are hereby created for the benefit of all Unit Owners through appropriate areas of Units for conduit ducts, plumbing, wiring, and other facilities for the furnishing of Utility Services to the Building, other Units, and the Common Elements. Each Unit Owner has and shall have a non-exclusive easement in, over and through the Common Elements to use such Common Elements for their intended purposes, subject to the right of the Association to implement rules and regulations governing the use and enjoyment thereof. Non-Exclusive easements over parts of the Common Elements are granted and shall exist for access, right of way, drainage and utilities as described on the Plat.

D. Encroachments. The Condominium Property is subject to non-exclusive easements for encroachments presently existing or which may hereafter be caused by settlement or movement of the Building, which easements shall continue until such encroachments no longer exist. If the Condominium Property is destroyed and then rebuilt, encroachments due to construction shall be permitted and a valid easement for said encroachments shall exist. If any portion of the Common Elements encroaches upon any Unit, or any Unit encroaches upon the Common Elements, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements contained in the Condominium Property, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

E. Utilities. The Condominium Property is subject to such non-exclusive easements for utilities as may be determined by the Developer or the Association to be necessary or required to properly and adequately serve the Condominium Property as it exists from time to time. Each of said easements, whether heretofore or hereafter created, shall constitute covenants running with the land of the Condominium and, notwithstanding any other provision of this Declaration, may not be substantially

amended or revoked in such a way as to unreasonably interfere with its proper and intended use and purpose and shall survive the termination of the Condominium.

F. Inspection by Governmental Agencies. Each Unit is subject to a non-exclusive easement for ingress and egress granted in favor of persons, materials and equipment by over, on, across and through each Unit in the Building and the Common Elements, to the extent reasonably necessary to permit inspection of the Property by governmental agencies, insurance company personnel and agents and rating agencies for fire and security protection, fire and liability insurance and fire and security rating purposes.

G. Repair. Each Unit Owner and the Association shall be entitled to, and are hereby granted, upon reasonable advance notice to the other Unit Owners, a non-exclusive easement and right of access to each Unit and the Common Elements from time to time as may be reasonably necessary to perform repair work to any Unit or Common Element for which such Unit Owner or the Association is responsible or entitled to make, including the temporary erection of scaffolding or lateral supports and ingress and egress for, and the temporary presence of, demolition and construction equipment, machinery, and personnel; provided, that such easements shall not permit any Unit Owner to unreasonably interfere with the use and enjoyment of any other Unit or Common Elements, except as may otherwise be agreed in writing by the Owner(s) of the Units affected thereby and by the Association with respect to any Common Elements affected thereby; and provided further, that the Unit Owner performing or causing to be performed any such repair work shall (i) be responsible for, and shall indemnify the Owner(s) of the affected Unit(s) and the Association against, all damage or loss to the other Units or Common Elements or personal injury or loss of life that may result from the performance of such repair work, and (ii) prior to commencing any such repair work that may affect any other Unit or the Common Elements, provide to the Owner(s) of the affected Unit(s) evidence that (a) any special coverages or endorsements to the policy of property damage insurance maintained by the Association that are reasonably necessary to provide coverage to the Condominium Property in the course of such repair work have been obtained, and (b) the Unit Owner(s) and its contractors are insured against liability arising as a result of such repair work in reasonable and customary amounts in light of the nature and extent of the repair work to be performed. If entry is necessitated by a Unit Owner's failure to comply with its obligations with respect to the operation, maintenance, repair, reconstruction, or replacement of any other Unit, Common Elements, Facilities, or other areas, Improvements, or facilities that are the subject of any of the easements granted under this Declaration, then the other Unit Owner(s) or the Association must comply applicable notice provisions in this Declaration.

H. Easements and Encumbrances of Record. The Property shall be conveyed subject to all other easements and encumbrances of record in the public records of Polk County, Florida, including without limitation those identified in attached **Exhibit "E"**.

I. Signage. The Developer reserves unto Developer and the Association the right to install directional signage on or within the Condominium Property, including the right to install, maintain, repair and replace such signage. The Developer reserves unto Developer an exclusive, perpetual easement in favor of the Developer for building signs, including the installation, maintenance, repair and replacement of such signs on the exterior of the Building for the Building, Developer, a Unit Owner, any tenant of a Unit Owner, and any tenant or occupant of a building located within the City Block. No signs may be placed on the exterior of the Building unless approved by Developer in its sole discretion. Each Unit Owner may install one sign in its Unit to provide identification for the user of the Unit (whether such sign is a name, parking space number, etc.), but such signage must be consistent with rules and regulations of the Association as the same may be in effect from time to time.

J. Mortgagees. Any holder of a mortgage, its officers, agents, and employees, shall be entitled to, and are hereby granted, a blanket, perpetual and non-exclusive easement to enter the Condominium Property or any part thereof to inspect the condition and repair of the Common Elements or any Units so encumbered by a mortgage held by it. This right shall be exercised only during reasonable hours, and then, whenever practicable, only after advance notice to and with permission of the Board of Directors (as to Common Elements) and the Unit Owners whose Units are to be inspected. Except in the event of emergencies, the rights accompanying the easements provided for in this paragraph shall be exercised only during reasonable hours and then, whenever practicable, only after advance notice to and with permission of the Unit Owner(s) directly affected thereby.

## **ARTICLE XV INSURANCE/CASUALTY**

A. Insurance Obtained by the Association. The Association shall obtain and keep in full force and effect at all times hazard, fire, flood (if required) and extended coverage insurance, vandalism and malicious mischief insurance insuring all of the insurable improvements within the Common Elements subject to a reasonable deductible together with general liability and other commercial insurance, in such amounts, covering such risks and with such insurance companies as the Association deems necessary. The premiums for such coverage and other expenses in connection with said insurance including the amount of any deductible shall be assessed against the Unit Owners as part of the Common Expenses. The named insured shall be the Association, individually and as agent for the Unit Owners, without naming them, and as agent for their Mortgagees. Provision shall be made for the issuance of Mortgagee endorsements and memoranda of insurance to Mortgagees. Such policies shall provide that payments for losses thereunder by the insurer shall be made to the Association hereinafter described, and all policies and endorsements thereon shall be deposited with the Association. The Association shall have the right to assess Unit Owners for any extra cost of any insurance to the Association as a result of the Unit Owners' use or activity on the Property. The allocation of such extra cost shall be determined by the Association's insurance provider, which determinations shall be conclusive and binding on the Parties.

B. Minimum Coverage. The Association shall provide the following minimum coverage:

1. The Building and improvements upon the Property shall be insured in an amount equal to the maximum insurable replacement value and all personal property included in the Common Elements shall be insured for its maximum insurable replacement value, said value to be determined annually by the Board. At a minimum, such coverage shall afford protection against:

a. Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and

b. Such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use as the Building including, but not limited to, vandalism and malicious mischief.

2. Public liability insurance in such amounts with such coverage as shall be required by the Board, including, but not limited to, off-premises employee coverage, employer liability, contractual and all written contract liability, water damage, illegal liability with cross liability endorsements to cover liability of all Unit Owners as a group to each Unit Owner, bodily injury including death of persons or other property damage arising out of a single occurrence. Coverage for personal injury shall be at least in an amount of \$1,000,00 per occurrence, and coverage for

general liability shall be at least in an amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

3. Workers' compensation insurance meeting all the requirements of the laws of Florida, if applicable.

4. Directors and officers liability insurance, if available.

5. Flood insurance, if the same shall be necessary to the laws of the United States or federally insured related mortgage lenders to make mortgage loans on Units.

6. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse funds of the Association in the amounts required by Chapter 718 of the Florida Statutes or as otherwise provided by law. As used in this paragraph, the term "persons who control or disburse funds of the Association" includes, but is not limited to, those individuals authorized to sign checks and the president, secretary, and treasurer of the Association.

7. Such other insurance as the Board shall determine from time to time to be desirable including without limitation such insurance as may be required by the Mortgagee which holds a first mortgage encumbering a Unit or insures to the holder thereof the payment of the same or for hazardous or flammable activity, if any.

C. Assessments for Insurance Premiums. Premiums upon insurance policies purchased by the Association shall be assessed by the Association against the Unit Owners as part of the Common Expenses; provided, however, as previously set forth, any portion of the insurance premium which is charged in excess of the normal amount because of the insurance rating of a Unit based on its use, shall be the sole responsibility of the Unit Owner responsible for said excess amount. Any Unit Owner who is responsible for an excess insurance premium being charged hereby agrees to pay said excess amount.

D. Selection of Insurer. All persons beneficially interested in the insurance coverage obtained, purchased and maintained by the Association, as provided in this Declaration, shall be bound by the Association's selection of its insurer and the amount of insurance coverage carried and kept in force by the Association.

E. Benefit of Insurance. All insurance policies purchased by the Association shall be for the benefit of the Association, the Unit Owners and their Mortgagees, as their interests may appear, as provided in this Declaration, and shall provide that all proceeds covering casualties and losses shall be paid to the Association. The Association is hereby constituted an appointed agent for all Unit Owners with authority to negotiate and settle the value and extent of any and all losses covered under any policy of casualty insurance, and the Association is granted full right and authority to execute in favor of any insurer, a release of liability arising out of any occurrence coverage by any policy or policies of casualty insurance and resulting in loss of or damage to insured property. Any fees and costs associated with holding the policies or insurance proceeds shall be assessed against and collected from the Unit Owners as a Common Expense. The Association directors and officers shall be liable only for its or their willful misconduct, bad faith or gross negligence and then only for such money as may come into possession of the Association. If and when insurance proceeds are paid to the Association for any casualty loss, the holders of any mortgage or mortgages encumbering a Unit shall not have the right to determine or participate in the determination of repair or replacement of any loss or damage and shall not have the right to elect to apply insurance proceeds to the reduction of indebtedness secured by such mortgages unless the insurance proceeds represent a distribution to the Owners of the Unit and the mortgagees thereof, after

such insurance proceeds have been first applied to the repair, replacements or reconstruction of any loss or damage or unless such casualty insurance proceeds are authorized to be distributed to the Owners of the Unit and mortgagees thereof by reason of loss of or damage to personal property constituting a part of the Common Elements and as to which a determination is made not to repair, replace or restore such personal property. The duty of the Association shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein and for the benefit of the Unit Owners and their Mortgagees to be held, managed, and disbursed as follows:

1. The proceeds paid to the Association for loss or damage to the property constituting the Common Elements only shall be applied to the repair, replacement or reconstruction of said loss or damage. If such insurance proceeds exceed the cost of repair, replacement or reconstruction of such Common Elements, the excess shall be paid by the Association to the Owners of all Units in the damaged Building and their respective mortgagees as their interest may appear in appurtenance to each Unit in the Common Elements. If the insurance proceeds shall be insufficient to pay the cost of the repair, replacement or reconstruction of such Common Elements, the Association shall pay, from any Association Reserve Fund which may have been established, the difference between the total cost of repairing, replacing or reconstructing such loss or damage and the amount of the insurance proceeds. If such Association Reserve Fund has not been established or is insufficient to pay such difference, the Association shall assess the amount of the difference against and collect said sum from the Unit Owners of such Building as a Common Expense.

2. The proceeds paid to the Association for a loss or damage to the Building, constituting Common Elements and one or more Units thereof, shall be first applied to the repair, replacement or reconstruction of Common Elements, then to the repair, replacement or reconstruction of any Unit or Units in the Building which have been destroyed or damaged. If such insurance proceeds exceed the cost of the repair, replacement or reconstruction of such Units, the excess shall be paid to the Owners of the damaged or destroyed Units and their respective mortgagees in the Building as their interest may appear in shares or proportions equal to the undivided interest appurtenant to each such Unit in the Building in the Common Elements. If the insurance proceeds shall be sufficient to pay for the repair, replacement or reconstruction of the damaged or destroyed Common Elements but shall be insufficient to pay the cost of the repair, replacement or reconstruction of the damaged or destroyed Unit or Units in the Building, the Association shall collect from the Unit Owners of the Building, according to each Unit Owner's proportionate share to be applied toward the total cost of repairing, replacing or reconstructing all of such damaged or destroyed Common Elements and Units. If the insurance proceeds shall be insufficient to pay the cost of the repairs, replacement or reconstruction of the Common Elements to which the Association is required first to apply such proceeds before applying any part thereof to the repair, replacement or reconstruction of Unit(s) the difference between the total cost of repairing, replacing or reconstructing the Common Elements and the amount of the insurance proceeds shall be collected from the Unit Owners according to each Unit Owner's proportionate share by the Association against and in such event, the cost of repairing, replacing or reconstructing the Unit or Units destroyed or damaged shall be assessed by the Association against and collected from the Owner(s) of such damaged or destroyed Unit(s).

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



the reduction of a mortgage debt any insurance proceeds except those proceeds paid to the Unit Owner and Mortgagee pursuant to the provisions of this Declaration.

F. Estimates of Repair. Within sixty (60) days after a loss or damage to Condominium Property covered by casualty insurance, the Association shall obtain estimates of the cost of repairing, replacing or reconstructing the same including the cost of professional fees and any construction bond which the Board may require. If, from such estimates, it shall appear that the insurance proceeds payable for such loss or damage will be insufficient to pay the cost of such repair, replacement or reconstruction, the additional money required to pay the total cost thereof, whether it is to be paid by one or more Unit Owners, shall be deposited with the Association not later than thirty (30) days from the day on which the Association receives the insurance proceeds.

G. Collection and Disbursement of Insurance Proceeds. In the event of a destruction or casualty loss to any of the improvements, all insurance proceeds payable under the Association's policies shall be collected by the Association treasurer and held by the Association in trust to be used for the immediate repair and reconstruction of the damaged improvements under the supervision and control of the Board. Said funds shall be disbursed upon written draw requests signed by the president or vice president of the Association as reconstruction progresses. In the event the proceeds are not sufficient to pay the cost of reconstruction, the Association may, but shall not be required to, supply sufficient additional funds as a part of the Common Expenses of the Association. In the event that the Association decides not to supply the additional funds, the Condominium will be terminated as set forth in the next paragraph. The Association's insurance carrier shall not have a right of subrogation against a Unit Owner, but if it is determined that the damage was proximately caused by the negligence of a Unit Owner, the Unit Owner may be assessed a sum sufficient to reimburse the Association for any deficiency in insurance proceeds and the Association shall have a lien for that amount, plus interest at the maximum rate allowed by law from the date of the assessments, and reasonable attorney's fees, to the same extent that it has a lien for any unpaid assessments under the Condominium Act. Any surplus of insurance proceeds shall be returned to the Association and added to the common surplus.

H. Destruction and Termination of Condominium. In the event the Condominium is to be terminated as provided in this Declaration, then all Owners of Units shall convey all their right, title and interest to their respective Units to the Association, to be held in trust. The Association shall collect all insurance proceeds payable as a result of the destruction, shall collect all assets of the Association which are allocable to the Units in this Condominium and which may remain after the Association pays its liabilities, and shall effect a public or private sale of the Condominium property, by whatever means the Association shall deem best, for the highest and best price, for cash or terms, as soon as practicable consistent with local real estate market conditions. Upon conveyance of title to the purchaser and after payment of the fees, appraiser's fees, and other costs of the sale, the Association shall apportion the remaining funds in his hands among the Units in accordance with the Common Expenses percentages. The Association shall distribute each Unit's share of such apportioned funds first to the record owners of any mortgages or other liens encumbering such Unit in an amount sufficient to pay off such mortgages or other liens, and the remainder, if any, to the record title Owner(s) of such Unit. The apportioned funds shall be distributed at the time of conveyance of title to the purchaser, and the record owner of any mortgages or other liens upon the Units shall simultaneously execute releases of said mortgages or other liens, even if the share of a particular Unit in the funds is insufficient to pay all liens in full; in that event the lienholders who had priority against the title to the Unit shall have priority of payment of the Unit's share of the Common Surplus, if any. None of these actions shall relieve the Unit Owner of his personal liability for any deficiency which may be caused by any liens to which his Unit is subject at the time of his conveyance to the Association. Mortgagees and other lienholders will evidence their acceptance and consent to the foregoing provisions by the acceptance of their mortgage or perfection of their lien. The

provisions of this paragraph may be enforced by injunction, suit for specific performance or by other appropriate remedy upon suit filed by the Association in a court of competent jurisdiction.

I. Insurance for Units. Unit Owners shall obtain their own individual insurance policies to insure against damage and liability to the individual Units and personal property located therein not covered by the insurance described above.

## **ARTICLE XVI RECONSTRUCTION AND REPAIR AFTER CASUALTY**

Whether, and the manner in which, any or all of the Condominium Property damaged or destroyed by casualty shall be repaired, reconstructed or replaced, shall be determined as follows:

A. Damage to Building. If the Building shall be damaged or destroyed, repair or reconstruction thereof or termination of the Condominium shall be in accordance with the following:

1. If the Building is totally destroyed or so damaged that no Unit therein is suitable, the Building and none of the improvements comprising Common Elements shall be reconstructed and the Condominium shall be terminated unless the Unit Owners to which seventy-five percent (75%) of the Common Elements are appurtenant agree in writing within sixty (60) days after the date of such destruction to reconstruct the same and unless the then applicable zoning and other regulatory laws and ordinances shall allow the same to be reconstructed or unless a policy or policies of casualty insurance covering the same shall require reconstruction thereof as a condition precedent to the payment of proceeds thereunder.

2. If some, but not all, of the Building is damaged and/or destroyed and one or more of the Units in the Building remain suitable, the damaged or destroyed Common Elements and/or Units shall be repaired or reconstructed so that the Building and/or Units therein shall be restored to substantially the same condition as existed prior to such damage or destruction unless within sixty (60) days after the casualty it is determined by agreement in the manner elsewhere herein provided that the condominium shall be terminated.

B. Damage to Common Elements. Damaged or destroyed improvements constituting part of the Common Elements shall be repaired, reconstructed and/or replaced unless in the event of total destruction of the Units or by agreement after partial destruction, the Condominium shall be terminated.

C. Standard of Repairs. Repairs or reconstruction of Condominium Property shall be substantially completed in accordance with the plans and specifications pursuant to which the same was originally constructed; provided, however, that the Board of the Association may authorize reasonable variations from the original plans and specifications as may appear to them to be necessary or desirable.

D. Responsibility of Unit Owners. If the damage or destruction shall be limited only to one or more Units for which the responsibility of maintenance and repair is that of the affected Unit Owners, then such Unit Owners shall be responsible for carrying out the repairs or reconstruction thereof. In all other instances of damages or reconstruction, the Association shall be responsible for carrying out the repair and reconstruction thereof.

E. Disbursement of Repair Costs. All funds for the payment of repair and reconstruction costs, consisting of insurance proceeds and/or funds collected by the Association from Unit Owners, shall be disbursed toward payment of such costs in the following manner:

1. The portion of insurance proceeds representing damage for which the responsibility of repair and reconstruction is upon one or more, but less than all, Unit Owners shall be paid by the Association to or on behalf of the affected Unit Owners at the Association's discretion and if any of such Units are mortgaged, to the affected and their mortgagees jointly.

2. The construction fund shall be disbursed in payment of such costs, in the manner required by the Board of the Association, and upon approval of an architect registered to practice in Florida, if an architect is employed by the Association to supervise the work.

3. It shall be presumed that the first monies disbursed in payment of the costs of reconstruction and repair shall be from the insurance proceeds. If there is a balance in the construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial Owners and their mortgagees as provided in the agreement.

F. Total or Substantial Destruction. In the event of a total or substantial destruction of all of the Condominium improvements, the improvements shall be restored in compliance with the final plans and specifications for the Condominium or such restored improvements shall be of a comparable value to the improvements as they existed immediately prior to the destruction, unless all of the Unit Owners vote to terminate this Condominium except that until fifty percent (50%) of the Units have been sold Developer shall have the unqualified right to require the damaged Units be rebuilt.

## **ARTICLE XVII CONDEMNATION**

A. Condemnation Awards. For purposes of this Declaration, the taking of portions of the Condominium Property by the exercise of the power of eminent domain or purchase in lieu thereof ("Taking") shall be treated as a casualty. The awards for a Taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Association even if the awards may be payable to Unit Owners. If any Unit Owner fails to deposit the award with the Association, the Board, in its discretion, may impose Assessments according to each Unit Owner's proportionate share against a defaulting Unit Owner in the amount of the Unit Owner's award, or the amount of that award may be set off against the sums hereafter made payable to that Unit Owner. If the Condominium is terminated after a Taking, the proceeds of the awards and Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds as if the Condominium is terminated after a casualty. If the Condominium is not terminated after a Taking, the size of the Condominium will be reduced and the property damaged by the Taking will be made usable in the manner provided below. The proceeds of the awards and Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds after a casualty by the Association unless elsewhere provided in this Article.

B. Termination of Condominium. The determination whether or not to continue the Condominium after a Taking will be made in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty.

C. Utilization of Award.

1. If the Taking reduces the size of a Unit and the remaining portion of the Unit can be used for its purpose of parking a motor vehicle (in the reasonable opinion of the Board of the Association), the award for the Taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

- a. To rebuild the Unit, and
- b. The balance of the award for the Unit, if any, shall be distributed to the Unit Owner and to each mortgagee of the Unit, the remittance being made payable jointly to the Unit Owner and such mortgagees.

2. If the Taking is of the entire Unit or so reduces the size of a Unit that it cannot be made habitable (in the sole opinion of the Board of the Association), then the award for the Taking of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

- a. The award for the Taking shall be paid to the extent available: first, to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions for a specific Unit exceed the market value of such Unit immediately prior to the Taking. The balance, if any, shall be applied to repairing and replacing the Common Elements.
- b. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible for use by all of the Unit Owners in the manner approved by the Board. If the cost of such work shall exceed the balance remaining of the fund from the award for the Taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.
- c. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares among the reduced number of Units.

D. Assessments if Award is Insufficient. If the balance of the award for the Taking (after payments to the Unit Owner and such Unit Owner's mortgagees as above provided) is not sufficient to alter the remaining portion of the Unit for use as part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all of the Unit Owners who will continue as Unit Owners after the changes in the Condominium effected by the Taking. The Assessments shall be made in proportion to the applicable percentage shares of those Unit Owners after all adjustments to such shares effected by reason of the Taking.

E. Dispute Resolution. If the market value of a Unit prior to the Taking cannot be determined by agreement among the Unit Owner, mortgagees of the Unit, and the Association within thirty (30) days after notice of a dispute by any affected party, such value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit. A judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code. The cost of arbitration proceedings shall be assessed against all Unit Owners, including Unit Owners who will not continue after the Taking, in proportion to the applicable percentage shares of such Unit Owners as they exist prior to the adjustment to such shares affected by reason of the Taking.

F. Award for Taking Common Elements. Awards for the Taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board. If the cost of such work shall exceed the balance of the funds from the awards for the Taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements, if any shall be distributed to the Unit Owners in proportion to the shares in which they own the Common Elements after adjustments to these shares by reason of the Taking. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Unit Owner and the mortgagees of the Unit.

G. Amendment to Declaration. The changes in Units, the Common Elements and in the ownership of the Common Elements and the adjustment to the shares in the Common Expenses and Common Surplus that are effected by the Taking shall be evidenced by an amendment to this Declaration approved by, and executed at the direction of, a majority of the Board.

### **ARTICLE XVIII TRANSFER RESTRICTIONS**

No Owner shall Convey, voluntarily or involuntarily, by operation of law or otherwise, any portion of his Unit except in accordance this Article XVIII. Any attempted Conveyance of a Unit, or any portion thereof, in violation of this Article is void.

A. Conveyance in Connection with Transfer of Interest in a Building. An Owner may Convey all of its Units to a transferee if the transferee is also purchasing or otherwise acquiring Owner's legal title (whether such legal title is fee simple or leasehold) in and to a building owned or leased by Owner within a one mile radius of the Condominium and the Units are used by Owner or Owner's tenant(s) in connection with such Owner or Owner's tenant's occupancy in such building.

B. General Restriction. No Owner may Convey his Units in any single transaction in an amount less than all of its Units unless a conveyance of less than all of the Owner's Units is approved in writing by the Board or the Developer. All Conveyances to any third party other than a then existing Owner must be approved in writing by the Board of the Association, whose approval will not be unreasonably withheld, conditioned, or delayed.

C. Right of First Refusal. Except for a Conveyance described in subparagraph A above and subject to the rights granted in subparagraphs D and E below, if any Owner or such Owner's personal representative, trustee, or other successor (collectively referred to as the "Selling Owner") desires to Convey to any third person all or any portion of his Units (the "Offered Units"), the Selling Owner may do so only after first offering the Offered Units to the remaining Owners, in accordance with the following provisions:

1. The Selling Owner shall give written notice (the "Notice") to the Board and to every other Owner setting forth, in substance, (i) that the Selling Owner intends or desires to Convey the Offered Units, (ii) the name and address of the proposed transferee, (iii) the amount of the Selling Owner's Offered Units, (iv) the total price to be received by the Selling Owner for the Offered Units, and (v) and the payment terms and conditions of the sale price of the Offered Units. The Selling Owner shall also promptly provide to the Board and each other Owner all other information reasonably requested by any of them relating to the identity and financial affairs of the proposed transferee. The "Option Commencement Date" for purposes of Article XVIII.C. shall be last date the Notice is received by the Board and every other Owner.

2. The remaining Owners (each an “Offeree”) shall have the first option to purchase their Proportionate Share (but not less than their Proportionate Share) of the Offered Units upon the following terms. The option granted herein to each of the Offerees is exercised by such Offerees by giving written notice to the Selling Owner of the Offeree’s intention to exercise the option, which notice must be given within thirty (30) days after the Option Commencement Date. If an Offeree does not elect to buy its Proportionate Share of the Offered Units, then the Offerees who do elect to purchase their Proportionate Share of the Offered Units may then purchase such share of the Units declined by the declining Offeree in a prorata amount based upon the Units owned by each of the Offerees electing to purchase the Offered Units. In no event may any Offeree purchase less than its Proportionate Share of the Selling Owner’s Offered Units. The price for the Offered Units shall be for the same amount and payable under the same terms as set forth in the Notice.

3. If the option to purchase the Offered Units is not exercised by the Offeree(s), as set forth above, the Selling Owner will be permitted to Convey the Offered Units not purchased by the Offerees to the proposed transferee upon the terms and conditions as stated in the Notice. However, if the Selling Owner does not Convey the Offered Units (or Offered Units not purchased by the Offerees in accordance with Article XVIII.B.2 above) to the proposed transferee upon the terms and conditions of the Notice within one hundred fifty (150) days after the Option Commencement Date, the Offered Units shall again become subject to the restrictions of this Article XVIII. After the Conveyance, the restrictions set forth in this Article XVIII shall attach to the Offered Units and the Offered Units shall remain subject to the transfer restrictions set forth herein.

D. Right of First Refusal Granted to Developer Notwithstanding anything herein to the contrary, if the Owner of Units \_\_\_\_\_ desires to Convey to any third person all or any portion of such Units (the “Developer Option Units”) the Selling Owner may do so only after first offering the Developer Option Units to the Developer, in accordance with the following provisions:

1. The Selling Owner shall give written notice (the “Developer Option Notice”) to the Board and to the Developer setting forth, in substance, (i) that the Selling Owner intends or desires to Convey the Developer Option Units, (ii) the name and address of the proposed transferee, (iii) the total price to be received by the Selling Owner for the Developer Option Units, and (iv) and the payment terms and conditions of the sale price of the Developer Option Units. The Selling Owner shall also promptly provide to the Board and the Developer all other information reasonably requested by either of them relating to the identity and financial affairs of the proposed transferee. The “Option Commencement Date” for purposes of Article XVIII.D. shall be last date the Developer Option Notice is received by the Board and the Developer.

2. The Developer shall have the first option to purchase the Developer Option Units upon the following terms. The option granted herein to the Developer is exercised by the Developer giving written notice to the Selling Owner of the Developer’s intention to exercise the option, which notice must be given within sixty (60) days after the Option Commencement Date. The price for the Developer Option Units shall be for the same amount and payable under the same terms as set forth in the Developer Option Notice.

3. If the option to purchase the Developer Option Units is not exercised by the Developer, as set forth above, the Selling Owner must then offer the Developer Option Units for sale subject to the provisions of the right of first refusal set forth in Article XVIII.C. above. However, if the Selling Owner does not Convey the Developer Option Units to the Owners or transferee in accordance with Article XVIII.C. above, then the Developer Option Units shall

again become subject to the restrictions of this Article XVIII. After the Conveyance, the restrictions set forth in this Article XVIII shall attach to the Developer Option Units and the Developer Option Units shall remain subject to the transfer restrictions set forth herein.

E. Option to Purchase Developer Option Units. In addition to the Right of First Refusal granted in Article XVIII.D above, Developer anticipates that Developer or its Affiliate will receive from the initial purchaser of the Developer Option Units an option to purchase the Developer Option Units in accordance with the terms and conditions set forth in a separate instrument executed by the Developer (or its applicable Affiliate) and the initial purchaser of the Developer Owned Units. The terms and conditions of the option are or will be part of the sale of the Developer Option Units by Developer to the initial purchaser.

## **ARTICLE XIX LEASING**

A. Leasing. A Unit Owner may lease or sublease its Unit at any time and from time to time provided that: (1) no Unit may be leased or subleased without a written lease or sublease; (2) a copy of such lease or sublease is provided to the Association; and (3) the rights of any lessee or sublessee of the Unit shall be subject to, and each such lessee or sublessee shall be bound by, the covenants, conditions and restrictions set forth in the Declaration, Articles, Bylaws and rules and regulations of the Association, and a default thereunder shall constitute a default under the lease or sublease; provided, however, that the foregoing shall not impose any direct liability on any lessee or sublessee of a Unit to pay any Common Expense assessments on behalf of the Unit Owner of that Unit.

B. Compliance by Lessee or Sublessee. Each Unit Owner shall promptly, diligently and in good faith enforce the easements, covenants, conditions and restrictions set forth in the Declaration, Articles, Bylaws and any rules and regulations against any lessee, sublessee or other occupant of its Unit that fails to comply therewith. The Board of Directors, and each Unit Owner, shall have the right, but shall not be obligated, to take such action (including legal proceedings) as it deems appropriate and desirable against any Unit Owner and/or its lessee, sublessee or other occupant to enforce the provisions of this Declaration, and all costs (including actual attorneys' fees) of so doing together with interest thereon at the Interest Rate, shall be charged and assessed against the Unit Owner who (or whose lessee, sublessee, or other occupant) has failed to fulfill the obligations imposed herein as an Assessment against the defaulting Unit Owner, which Assessment shall constitute a lien against the Unit until paid.

C. First Right to Lease Developer Option Units. Developer (or an Affiliate of Developer) may construct a second office building (the "Second Building") adjacent to the Condominium, which Second Building will either be located on Kentucky Avenue or Orange Street. If Developer (or its Affiliate) builds the Second Building, Developer (or its applicable Affiliate) shall have the right to lease the Developer Option Units upon the terms and conditions set forth in a separate writing issued by Developer to the Owner of the Developer Option Units, which terms and conditions are or will be part of the sale of the Developer Option Units by Developer to such Owner and which terms and conditions are restrictions on the Developer Option Units that run with the Developer Option Units and inure to the benefit of the Developer and are binding upon the Owner of the Developer Option Units, and their respective heirs, successors, personal representatives and assigns.

## **ARTICLE XX TAXES**

A. Payment of Taxes. Each Unit Owner shall pay, or cause to be paid prior to delinquency, all taxes, assessments, impositions and charges (in their entirety and without any deduction or offset

whatsoever) with respect to its Unit, its undivided share in the Common Elements, and any personal property owned or leased by such Unit Owner in the Property (any or all of the foregoing hereafter sometimes called "Taxes"), provided that if the Taxes or Assessments or any part thereof may be paid in installments, the party may pay each such installment as and when the same becomes due and payable. Nothing contained in this subsection shall prevent any party from contesting at its cost and expense any such taxes and assessments with respect to its Unit in any manner such party elects, so long as such contest is maintained with reasonable diligence and in good faith and stays enforcement of any lien against its Unit. At the time as such contest is concluded (allowing for appeal to the highest appellate court), the contesting party shall promptly pay all such taxes and assessments determined to be owing, together with all interest, penalties and costs thereon. The failure of a Unit Owner to pay any bill, Assessment, imposition or charge for Taxes in its entirety (without any demand or setoff whatsoever) when the same is due and payable shall constitute a default hereunder and, in addition to the other rights and remedies provided in this Declaration and the Act, the provisions of Article X will apply.

B. Real Property Taxes. It is intended that real estate taxes and assessments are to be separately assessed and taxed to each Unit Owner for its Unit and its corresponding undivided share in the Common Elements, as provided in the Condominium Act. For the year in which this Declaration is first recorded, real estate taxes shall be apportioned between Developer and each Unit Owner on a calendar year basis. In the event that real estate taxes for any year are not separately assessed against each Unit Owner, but rather are assessed against the Property as a whole, then each Unit Owner shall pay its proportionate share thereof in accordance with its respective undivided share in the Common Elements, and, in said event, such taxes shall be a Common Expense. The Board of Directors shall have authority to advance Association funds in payment of all or a portion of such taxes pending receipt from the respective Unit Owners of their proportionate share thereof.

C. Payment Default. In the event any Unit Owner does not pay the Taxes for which the Unit Owner is responsible as aforesaid in their entirety when the same are due and payable, before any penalty for non-payment becomes applicable, the other Unit Owners or the Association shall have the right, but not the obligation, to pay the same, provided that the defaulting Unit Owner shall have been given at least thirty (30) days prior written notice of the intention to make such payment. The amount of Taxes paid by a Unit Owner or the Association on behalf of a defaulting Unit Owner shall be reimbursed to the payor on demand; and until reimbursed, the amount paid shall bear interest at the Interest Rate, which interest amount shall be included in the payment to be made by the defaulting Unit Owner. If the Association shall have paid the Taxes, the amount of the reimbursement and payment due the Association shall be deemed an assessment and shall be a lien upon the Unit of the defaulting Unit Owner until paid.

D. Contest. Any Unit Owner shall have the right to contest or review in legal proceedings, in good faith, any Taxes for which the Unit Owner is responsible as aforesaid, provided that (i) the contest or review operates to suspend the collection of the Taxes in question and prevents the sale of the Unit in order to satisfy the unpaid Taxes, (ii) such Unit Owner gives the other Unit Owners and the Association notice of the intended contest at least ten (10) days before the Taxes would become delinquent, and (iii) such Unit Owner pays the entire tax bill in its entirety (without any demand or setoff whatsoever) when the same is due and payable. If any such contest or review is commenced and/or is proceeding and if and so long as the requirements of the this paragraph are met, neither the other Unit Owner or the Association shall have the right to pay the contested Taxes as is otherwise provided for above.

E. Exempt Unit Owners. It is acknowledged that certain Unit Owners may be exempt from the payment of real property taxes for reasons including, but not necessarily limited to, being a governmental entity or an entity exempt from Federal income tax under an applicable section of the United States Internal Revenue Code. Subject to the applicable taxing authority reducing or eliminating Taxes assessed against an exempt Unit Owner's undivided interest in the Common Elements, such



exempt Unit Owner will not be obligated to pay a proportionate share of Taxes assessed against Common Elements that are not separately assessed against each Unit Owner.

## **ARTICLE XXI MORTGAGES AND RIGHTS OF MORTGAGEES**

A. General. A Unit Owner may not voluntarily encumber or subject his or its Unit to any lien, other than the lien of a Mortgage. Whether or not they expressly so state, all such Mortgages and the obligations secured thereby shall be deemed to provide, generally, that the Mortgage, and the rights and obligations of the parties thereto, shall be subject to the terms and conditions of the Condominium Act and this Declaration and shall be deemed to provide specifically, but without limitation, that the Mortgagee shall have no right (a) to participate in the adjustment of losses with insurers or in the decision as to whether or not or how to repair or restore damage to or destruction of the Property, or (b) to accelerate the mortgage debt or to have any other remedies by virtue of waste or alleged waste or other conditions occurring anywhere on the Property other than within the affected Unit. When such a Mortgage is delivered to the Mortgagee, the Unit Owner shall simultaneously provide executed or conformed copies to the Board of Directors. Upon receipt of such copy of a Mortgage, the Secretary of the Board of Directors shall instruct the insurer of the Property to add the name of the Mortgagee to the mortgagee loss payable provision of the hazard insurance policy covering the Property and to provide such Mortgagee with a Certificate of Insurance showing that the Mortgagee's name has been so added. The Secretary of the Board of Directors shall maintain a register of such Mortgages, showing the names and addresses of the Mortgagees and the amount secured thereby. The Board of Directors may impose charges on Unit Owners for performing the services described in this Article.

B. Reports and Notices. Upon the specific written request of a Mortgagee or its servicer, insurer or guarantor (all of which are deemed to be Mortgagees for purposes of notices and rights to information when they have made such requests) to the Board of Directors, the Mortgagee shall be entitled to receive some or all of the following as designated in the request:

1. Notice of the decision of the Association to take any action which requires the consent of a specified percentage of Mortgagees;
2. Notice of any default by the owner of the Unit which is encumbered by the Mortgage, where such default is not cured by the Unit Owner within thirty (30) days after the giving of notice by the Association to the Unit Owner of the existence of the default;
3. The right to examine the books and records of the Association at any reasonable time; or
4. Notice of lapse, cancellation or material modification of any Association insurance policies.

The request of a Mortgagee or its servicer shall specify which of the above items it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Board of Directors. The Board of Directors need not inquire into the validity of any request made by a Mortgagee hereunder.

C. Condemnation and Insurance Proceeds. No provision of this Declaration shall give a Unit Owner, or any other party, priority over any rights of the Mortgagee of a Unit pursuant to a Mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for loss to or taking of one or more Units and/or Common Elements.

**ARTICLE XXII  
WARRANTIES**

Developer does not warrant to the Association or the Unit Owners the construction of, or any part of, the Condominium Property, Common Elements, or Units, save and except any express written warranties delivered by Developer in writing to the Unit Owners and/or warranties provided for under Florida Statutes. TO THE MAXIMUM EXTENT ALLOWED BY LAW, DEVELOPER DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS AS TO THE UNIT, BUILDING AND SUCH APPURTENANCES UPON THE CONDOMINIUM PROPERTY.

As to any implied warranty which cannot be disclaimed entirely, as a result of federal or state law, all secondary, incidental and consequential damages are specifically excluded and disclaimed (claim of secondary, incidental and consequential damages being clearly unavailable in the case of implied warranties which are disclaimed entirely above.)

In the event a competent court of law decides any disclaimer hereunder to be ineffective the parties agree that any action brought under warranty must be brought within one (1) year from the date of issuance of a temporary certificate of occupancy as to the Building itself and the Common Elements (excluding the Unit) and as to the Unit, within a period of one (1) year from the date of issuance of a certificate of occupancy hereunder.

In no event will Developer be liable for any consequential damages, including but not limited to inability to possess the Unit, suitability, uninhabitability, inconvenience or loss of time. The parties agree that Developer will have no liability for any loss or damage due to any radon gas or other hazardous materials or substances, whether natural or artificial, which may be located within the soil or subsurface rock within the Condominium.

**ARTICLE XXIII  
AMENDMENT TO DECLARATION**

This Declaration may be amended at any regular or special meeting of Unit Owners called or convened in accordance with the Bylaws by the affirmative vote of more than seventy-five percent (75%) of the total number of votes entitled to be cast (which 75% must include the votes available to the Developer in order for such approval to be valid). All amendments shall be evidenced by a certificate executed as required by the Condominium Act and recorded in the public records of Polk County, Florida. Any amendments to this Declaration shall also comply with the following requirements:

1. Subject to the provisions herein relating to Alterations, no amendment shall change the configuration or the size of any Unit in any material fashion, materially alter or modify the appurtenances to such Unit, nor change a Unit Owner's undivided share in the Common Surplus, unless the record owner thereof and all record owners of liens thereon join in the execution of such amendment.

2. No amendment shall materially impair or prejudice the rights and priorities of any Mortgagee without the prior written consent of such Mortgagee; provided however that such Mortgagee's consent shall not be unreasonably withheld, conditioned or delayed.

3. Any amendment which would affect the surface water management system, including any water management portions of the Common Elements, shall not be passed without the prior written approval of all applicable governmental agencies and water management districts.

In the event any Unit Owner exercises a right it has in this Declaration to amend the Declaration, such amendment shall be evidenced by a certificate recorded in the public records of Polk County, Florida.

**ARTICLE XXIV  
GENERAL PROVISIONS**

A. Severability. If any provision of this Declaration, the Articles, the Bylaws or the Condominium Act, or any section, sentence, clause, phrase or word, or the application thereof, in any circumstances is held invalid, the validity of the remainder of this Declaration, the Articles, the Bylaws, or the Condominium Act, and the application of any such invalid provision, section, sentence, clause, phrase, or word in other circumstances shall not be affected thereby. The invalidity in whole or in part of any covenant or restriction or any Article, sub-article, sentence, clause, phrase or word, or other provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association and the rules and regulations set forth by the Association shall not affect the validity of the remaining portions thereof..

B. Notices. Notices to Unit Owners shall be sent by certified mail, to their mailing address specified with the Polk County Property Appraiser's Office, unless the Unit Owner has, by written notice to the Association and the Developer, specified a different address. Notices to the Association and the Developer shall be delivered by certified mail, return receipt requested, to Developer or the Association, as applicable, at their respective following mailing addresses:

To Association:  
Heritage Plaza Parking Garage Condominium Association, Inc.  
4100 Frontage Road South  
Building 100, Suite 101  
Lakeland, Florida 33815

To Developer:  
BKP Five, LLC  
Attn: Wesley Beck  
4100 Frontage Road South  
Building 100, Suite 101  
Lakeland, Florida 33815

All notices shall be deemed and considered sent when mailed. Any party may change his or its mailing address by written notice to the other party.

C. No Waiver. The failure of the Association, the Developer or any other party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which the Association, the Developer or that party may have hereunder, at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions. No waiver by the Association, the Developer or any party of any default under this Declaration shall be effective or binding on the Association, the Developer or such party unless made in writing by the Association, the Developer or such party, and no such waiver shall be implied from any omission by the Association, the Developer or a party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers or any default under any provision of this Declaration shall not be deemed to be a waiver of any subsequent default in the performance or the same provision or any other term or provision contained in this Declaration.

D. Remedy; Attorney's Fees; Fines. Each Unit Owner, his invitees and tenants, shall be governed by and conform to this Declaration, the Articles, the Bylaws and the rules and regulations of the Association and/or the Developer. Failure to do so shall entitle the Association or any other Unit Owner to recover damages or obtain injunctive relief or both, but such relief shall not be exclusive of other remedies provided by law. The remedy for violations provided by the Condominium Act shall be in full force and effect. In addition thereto, should the Association or Developer find it necessary to institute legal action, upon a finding by a court in favor of the Association or the Developer, as applicable, the defendant Unit Owner shall reimburse the Association or the Developer, as applicable, for its costs of suit, including reasonable attorney's fees at both trial and appellate level, incurred by it in bringing such action. The Association may levy against any Unit Owner a fine not in excess of \$100.00 per violation for each day that such Unit Owner continues to violate any of the requirements of this Declaration after the Association has given notice of such violation and an opportunity for hearing to the Unit Owners in accordance with the requirements of the Condominium Act. No fine for a single continuing violation shall exceed \$1,000 in the aggregate. Limitations or caps on fines specified herein shall automatically increase to the extent the Condominium Act is amended to provide for greater amounts. Should the Association find it necessary to institute legal action, upon a finding by a court in favor of the Association, the defendant Unit Owner shall reimburse the Association for its costs of suit, including without limitation reasonable attorney's fees at both trial and appellate level, incurred by it in bringing such action.

E. Interpretation. Whenever the context so requires, the use of any gender shall be deemed to include all genders, the use of the plural shall include the singular and the singular shall include the plural. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Condominium.

F. Exhibits. All exhibits referred to in this Declaration are incorporated herein by reference and made a part of this Declaration as though fully and completely set forth in the Declaration.

G. Covenants Running With the Land. Except as otherwise specifically set forth herein, all the easements, rights, covenants, agreements, reservations, restrictions and conditions herein contained touch and concern the land and shall run with the land and shall inure to the benefit of and be binding upon Developer, the Unit Owners of any Unit, and each subsequent holder of any interest in any portion of the Property and their grantees, Mortgagees, heirs, successors, personal representatives and assigns with the same full force and effect for all purposes as though set forth at length in each and every conveyance of a Unit in the Condominium or any part thereof. Reference in the respective deeds of conveyance, or in any mortgage or other evidence of obligation, to the easements and covenants herein described shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees of such parcels as fully and completely as though said easements and covenants were fully recited and set forth in their entirety in any such documents. Each present and future owner, lessee, occupant and Mortgagee of a Unit shall be subject to and shall comply with the provisions of the Act, this Declaration, the Plat, the Articles, the Bylaws and the rules and regulations and with the covenants, conditions and restrictions as set forth in this Declaration, the Plat, the Articles, the Bylaws, the rules and regulations and the deed to such Units; provided that nothing contained herein shall impose upon any lessee or Mortgagee any obligation which the Act or one or more of such documents, or both, make applicable only to Unit Owners (including, without limitation, the obligation to pay assessments for Common Expenses). The acceptance of a deed or mortgage to any Unit, or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of the Act, this Declaration, the Plat, the Articles, the Bylaws, the rules and regulations and the covenants, conditions and restrictions set forth in the deed to such Unit are accepted and ratified by such grantee or lessee, and are deemed unobjectionable by the Mortgagee. All of such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such

provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

H. Undertaking to Perform Obligations. Each grantee of any portion of or interest in the Condominium and each Mortgagee which succeeds to the fee simple ownership of any portion of the Condominium, shall be deemed, by the acceptance of a deed or mortgage, to agree to perform each and every undertaking created hereunder attributable to the portion of the Condominium in which such grantee or Mortgagee has acquired an interest.

I. No Partnership. None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Unit Owners in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each party shall be considered a separate owner, and no party shall have the right to act as an agent for another party, unless expressly authorized to do so herein or by separate written instrument signed by the party to be charged.

J. Independent Contractors. Each Unit Owner declares and agrees that it is engaged in a business which is independent from that of any other Unit Owner and shall perform its obligations hereunder as an independent contractor and not as the agent, employee or servant of any other Unit Owner. No Unit Owner nor any personnel furnished by any Unit Owner shall be deemed employees or agents of any other Unit Owner or entitled to any benefits available under any plans for such other Unit Owner's employees.

K. Choice of Law. This Declaration shall be governed and construed in accordance with the Applicable Laws of the State of Florida.

L. Estoppel Certificates. Each Unit Owner and the Association agrees that from time to time, upon not less than ten (10) days prior written request from any other party or a Mortgagee, it will deliver a statement in writing certifying (a) that this Declaration is unmodified and in full force and effect (or if there have been modifications that this Declaration is in full force and effect as modified, and identifying the modifications), and (b) whether or not any Unit Owner is in default under any provisions under this Declaration, and if such a default exists, the nature of such default.

M. Mortgage Subordination. Any mortgage affecting any portion of the Property shall at all times be subject and subordinate to the terms of this Declaration and any party foreclosing any such mortgage or acquiring title by deed in lieu of foreclosure shall acquire title subject to all of the terms and provisions of this Declaration.

N. Anti-Merger Clause. In the event title to the Condominium Property is vested or hereafter becomes vested in one owner, the rights, privileges and easements declared, created and established herein shall not merge by operation of law nor terminate, but shall remain in full force and effect. Should the intended creation of any easements described in this Declaration fail by reason of the fact that, at the time of creation, there may be no grantee in being having the capacity to take and hold such easement, then such grant of easement shall be considered as having been granted directly to the Association for the purpose of allowing the original party or parties to whom the easements were originally granted the benefit of such easement and the Unit Owners and their mortgagees designate the Association as their lawful attorney-in-fact to execute any instrument on their behalf as may thereafter be required or deemed necessary for the purpose of creating such easement.

O. Damage to Common Elements. Each Unit Owner shall be liable to the Association for any damage to the Common Elements of any type or to any equipment thereon which may be sustained

by reason of the negligence of a Unit Owner or his tenants, employees, agents, guests or invitees, to the extent not covered by insurance. Each Unit Owner does further, by the acceptance of his deed, agree to indemnify each and every other Unit Owner, and to hold him harmless, from any claim of any person for personal injuries or property damage occurring within his Unit, unless said injury or damage shall occur by reason of the negligence of any other Unit Owner temporarily visiting the Unit of the indemnifying Unit Owner. Each Unit Owner further agrees to defend, at his expense, any and all remaining Unit Owners who may be sued by any person on a claim for personal injury or property damage alleged to have been sustained within the Unit of the indemnifying Unit Owner.

P. Disclaimer and Exculpation. Notwithstanding anything contained herein or in the Articles of Incorporation, Bylaws, any rules or regulations of the Association or any other document governing or binding the Association (collectively, the "Association Documents") the Association shall not be liable or responsible for, or in any manner be a guarantor or insurer of, the health, safety or welfare of any Unit Owner, occupant or user of any portion of the Condominium Property, including, without limitation, Owners and their guests, invitees, agents, servants, tenants, subtenants, contractors or subcontractors or for any property of such persons. Without limiting the generality of the foregoing: (a) it is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of the Condominium Property have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the Condominium Property and the value thereof; (b) the Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, the State of Florida, Polk County and/or any other jurisdiction or the prevention of tortious activities; (c) any provisions of the Association documents setting forth the uses of Assessments which relate to health, safety and/or welfare shall be interpreted and applied only as limitations on the uses of Assessment Funds and not as creating a duty to protect or further the health, safety and/or welfare of any person(s), even if Assessment funds are chosen to be used for any such reason.

Q. Indemnification. The Association agrees to indemnify and hold Developer harmless from and against any and all claims, suits, actions, causes of actions, and/or damages arising from any suits, actions, loss of life and/or damage to property sustained on or about the Condominium Property and from and against all cost, expenses, counsel fees, expenses and liabilities incurred by Developer of any action or proceeding brought thereof, and from and against any order, judgments, and/or decrees which may be entered thereon; provided however that the obligation to indemnify by a Governmental Authority will be subject to monetary limits specified in Section 768.28, Florida Statutes, as applicable. The Association also agrees to indemnify Developer for any expense and reasonable attorney's fees that Developer may incur in bringing any suit or action, if Developer prevails in such action for the purposes of enforcing Developer's rights under this Declaration, for compelling the specific enforcement of the terms and conditions contain herein, to be kept or performed by the Association or Unit Owners. The costs and expenses of fulfilling the covenants of indemnification set forth in this paragraph shall be a Common Expense. This paragraph shall not require the Association to indemnify and hold Developer harmless against claims, suits, negligence, or breaches of its contractual obligation, or statutory, or express written warranties, to purchasers of Units

[Remainder of this page intentionally left blank]

This Declaration of Condominium has been duly executed on this \_\_\_\_ day of \_\_\_\_\_, 2018.

BKP FIVE LLC,  
a Florida limited liability company

By: BecKryger Capital Partners, LLLP,  
a Florida limited liability limited  
partnership, its sole Member

By: Beck Kryger Capital Partners, Inc.,  
a Florida corporation,  
its general partner

By: \_\_\_\_\_  
Wesley Beck, its president

STATE OF FLORIDA  
COUNTY OF POLK

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Wesley Beck, the President of Beck Kryger Capital Partners, Inc., a Florida corporation, the general partner of BecKryger Capital Partners, LLLP, a Florida limited liability limited partnership, which is the Member of BKP Five LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or [ ] has produced \_\_\_\_\_ as identification.

{Notary Seal must be affixed}

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Print Name of Notary Public)

Notary Public, State of Florida

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

Commission No.: \_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

(to be attached)



**EXHIBIT "B"**  
**Plot Plan And Survey**

Plot plan and survey for the Property to be attached

**EXHIBIT "C"**

**ARTICLES OF INCORPORATION**

(documents to be attached)

**EXHIBIT “D”**

**BYLAWS**

(document to be attached)

**EXHIBIT "E"**  
**EASEMENTS AND ENCUMBRANCES**

**ARTICLES OF INCORPORATION  
OF  
HERITAGE PLAZA PARKING GARAGE CONDOMINIUM ASSOCIATION, INC.  
(a Florida not for profit corporation)**

The undersigned Incorporator, desiring to form a corporate not for profit under Chapter 617, Florida Statutes, delivers for filing the following Articles of Incorporation for Heritage Plaza Parking Garage Condominium Association, Inc. (the “Association”):

Article I  
Name and Principal Office

Section 1. The name of the Association shall be Heritage Plaza Parking Garage Condominium Association, Inc.

Section 2. The principal office and mailing address of the Association is 4100 Frontage Road South, Suite 100, Lakeland, Florida 33815.

Article II  
Purpose and Powers

Section 1. The purpose for which the Association is formed is to administer the operation and management of Heritage Plaza Parking Garage Condominium (the “Condominium”), a commercial condominium located in Polk County, Florida. All capitalized terms used in these Articles of Incorporation, if not defined, shall have the meanings ascribed to such terms that are contained in the Declaration of Condominium for the Condominium (“Declaration”), or Chapter 718, F.S., or the Bylaws for the Association (“Bylaws”), and such meanings are incorporated into these Articles of Incorporation by reference as if set forth herein. To the extent that a provision in these Articles of Incorporation conflicts with the Declaration, the Declaration shall govern. “Developer” means BKP Five LLC, a Florida limited liability company, its successors, and/or assigns. “Member” means a member of the Association.

Section 2. The Association shall have all of the powers, rights, and privileges that a corporation organized under the Florida Not For Profit Corporation Act may now or hereafter have or exercise, provided that such powers, rights, and privileges do not conflict with the terms of these Articles, the Bylaws, the Declaration, or applicable provisions of Chapter 718, F.S., and provided further that the Association shall have all the powers, rights, and privileges reasonably necessary or convenient to operate, maintain, and manage the Condominium pursuant to the Declaration and Bylaws, as amended from time to time, other documents or agreements that may exist from time to time pertaining to the Condominium, and Chapter 718, F.S. In addition, the Association shall have the following specific powers and duties:

(a) Power to Manage Condominium Property, Contract, and Sue. The Association may contract and sue with respect to the exercise or non-exercise of its powers, duties, and functions. For this purpose, the powers of the Association include, but are not limited to, the maintenance, repair, reconstruction, improvement, management, administration and operation of the

Condominium Property.

(b) Assessments; Management of Common Elements. The Association has the power to make and collect Assessments as to each Unit and to lease, maintain, repair, replace, alter, add to, improve, administer, and operate the Common Elements and Limited Common Elements as provided in the Declaration and applicable law. The Association may pay ad valorem taxes and Governmental Special Assessments which are liens against any part of the Condominium other than the Units and assess the Members therefor. The Association also may contract for utilities for the Condominium and for commonly metered Utility Service and assess Members for same. The Association may use the proceeds of the Assessments in the exercise of its powers and duties, and enforce levy of the Assessments as to each Unit through lien and foreclosure or by such other action as may be allowed by the Declaration or applicable law.

(c) Right of Access to Units. The Association has the irrevocable right of access to each Unit during reasonable hours, when necessary in its discretion for the maintenance, repair, or replacement of any Common Elements or Limited Common Elements or of any portion of a Unit to be maintained by the Association pursuant to the Declaration, or as necessary in the event of an emergency or to prevent damage to the Common Elements, the Limited Common Elements, or a Unit.

(d) Title to Property. The Association has the power to acquire title to or otherwise, own, operate, hold, convey, lease, grant possessory or use interests in, and mortgage Association Property for the use and benefit of its Members on terms the Board of Directors of the Association ("Board") may deem reasonable. The power to acquire personal property shall be exercised by the Board in its discretion. The Association may purchase Units for any purpose and hold, lease, mortgage, or convey such Units on terms and conditions approved by the Board. Subject to any applicable statutory limitation, the Association, through its Board, has the limited power to convey a portion of the Common Elements to a condemning authority for the purposes of providing utility easements, right-of-way expansion, or other public purposes, whether negotiated or as a result of eminent domain proceedings.

(e) Purchase of Units. The Association has the power to purchase Units and to acquire, hold, lease, mortgage, and convey them. There shall be no limitation on the Association's right to purchase a Unit at a foreclosure sale resulting from the Association's foreclosure of its lien for unpaid Assessments as to the Unit, or to take title by deed in lieu of foreclosure.

(f) Easements. Except as may be prohibited or as otherwise proscribed by the Declaration, the Board has the authority, without the joinder of any Member, to grant, modify, or move any easement if the easement constitutes part of or crosses the Common Elements, the Limited Common Elements, or Association Property.

(g) Insurance. The Association shall use its best efforts to obtain and maintain adequate insurance to protect the Association, the Association Property, the Common Elements, the Limited Common Elements, and the Condominium Property required to be insured by the Association. The Association also may obtain and maintain other insurance including, but not limited to, liability insurance for the directors and officers, insurance for the benefit of the

Association employees, and flood insurance for Common Elements, the Limited Common Elements, Association property and, if deemed appropriate, for Units.

(h) Commingling. All funds shall be maintained separately in the Association's name. Reserve and operating funds of the Association may not be commingled for purposes of investment. No manager or business entity required to be licensed or registered under Section 468.432, F.S., and no agent, employee, officer, or director of the Association shall commingle any Association funds with his funds or with funds from any other condominium association or community association.

(i) Bylaws; Rules and Regulations. The Association has the power to establish the Bylaws for the operation of the Condominium; provide for the administration of the Association; and enforce the provisions of the Declaration, these Articles, and the Bylaws. The Association has the power to adopt Rules and Regulations concerning the Units, Common Elements, Limited Common Elements, and Association Property.

(j) Enforcement. Except as otherwise provided herein, the Association has the power to enforce by legal means the applicable provisions of Chapter 718, F.S., and the Condominium Documents.

(k) Employment of Service Personnel. The Association has the power to employ personnel and enter into agreements reasonably necessary for the performance of services required for the proper exercise of the rights, duties, powers, and functions of the Association.

(l) Contracts for Services. The Association has the power to enter into contracts the Board deems desirable and reasonable, for the provision of services to the Association or the Members, including but not limited to contracts for telephone, water, sewer, gas, security, and pest control services.

(m) Contract for Management and Maintenance. The Association has the power to contract for the management and maintenance of the Condominium and to authorize a management firm to act as the managing entity of the Condominium and, accordingly, perform all of the functions and duties of the Association in its capacity as the managing entity pursuant to the Declaration, Chapter 718, F.S, and any other applicable laws.

(n) Other Authority. The Association has the power to exercise such other power and authority to do and perform every act and thing necessary and proper in the conduct of its business for the accomplishment of its purposes as set forth in these Articles and as permitted by the applicable Florida Statutes.

(o) Restriction on City's Ownership Interests. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NEITHER THESE ARTICLES OR THE BYLAWS SHALL CONSTITUTE A GENERAL OBLIGATION OR A PLEDGE OF THE FAITH AND CREDIT OF THE CITY OF LAKELAND, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL PROVISION OR LIMITATION, ANDY OBLIGATIONS OF THE CITY OF LAKELAND SHALL BE PAYABLE

SOLELY FROM NON-AD VALOREM REVENUES LEGALLY AVAILABLE FOR PAYMENTS OF ITS OBLIGATIONS HEREUNDER SUBJECT TO THE PRIOR SATISFACTION OF FUNDING REQUIREMENTS FOR ESSENTIAL GOVERNMENTAL SERVICES OF THE CITY OF LAKELAND AND TO THE EXTENT AND SUBJECT TO A PRIOR PLEDGE THEREOF FOR THE PAYMENT OF OTHER OBLIGATIONS OF THE CITY OF LAKELAND, AND EXPRESSLY EXCLUDING ANY REVENUES OF THE CITY OF LAKELAND ACCOUNTED FOR IN AN ENTERPRISE FUND UNDER GOVERNMENTAL ACCOUNTING PRINCIPLES EXCEPT TO THE EXTENT THAT ANY SUCH REVENUES DERIVED FROM ANY ENTERPRISE FUND ARE DEPOSITED INTO THE CITY OF LAKELAND'S GENERAL FUND.

No Member shall ever have the right, directly or indirectly, to require or compel the exercise of the ad valorem taxing power of the City of Lakeland or any other political subdivision of the State of Florida or taxation in any form on any real or personal property for any purpose, including, without limitation, for the payment of obligations of the City of Lakeland with respect hereto, or to maintain or continue any activities of the City of Lakeland which generate user service charges, regulatory fees or other non-ad valorem revenues. The Members agree that neither the Members nor the Association shall have a general foreclosure right that entitles the Members or the Association to a deficiency judgment or to retain the City of Lakeland's equity in its ownership interest in the Association or its Units, if any. The Members agree that: (i) neither these Articles nor the bylaws are intended to create a mortgage of or a security interest in the City of Lakeland's interest in its Units as proscribed by *Nohrr v. Brevard County Educational Facilities Authority*, 247 So. 2d 304 (Fla. 1971), and (ii) neither the Members nor the Association may exercise any foreclosure-type remedies under any circumstances against the City of Lakeland, as prohibited under *State v. Brevard County*, 539 So. 2d 461 (Fla. 1989), notwithstanding any provisions to the contrary in these Articles or the bylaws.

### Article III

#### Qualification of Members and the Manner of their Admission

Section 1. The Incorporator constitutes the sole Member(s) of this Association until the recording of the Declaration naming the Association as the condominium association. On recording of the Declaration, the Developer shall own all of the memberships in the Association. When the purchase price is paid and the deed to a Unit is issued and recorded, the Unit Owner automatically becomes a Member. If additional phases are added to the Condominium, Developer initially shall hold all new memberships created, and when the purchase price is paid and the deed to a Unit is issued and recorded, the Unit Owner automatically becomes a Member.

Section 2. Ownership of a Unit shall be a prerequisite to exercising any rights, powers, and privileges as a Member. A Unit may be owned by one or more individuals or by a corporation, partnership, trust, or any other appropriate entity with the power to hold title.

Section 3. Membership shall terminate on the termination of the Condominium, or on transfer of a Member's ownership in the Unit (for that Unit only if more than one is owned), provided the transfer is accomplished in accordance with all provisions of the Declaration. The transferor's membership automatically shall transfer and be vested in the new Unit Owner succeeding to the ownership interest in the Unit, subject to a lien for all unpaid Assessments as to the Unit. The Association may rely on a recorded deed as evidence of transfer of a Unit and terminate



the transferor's membership and recognize the membership of the transferee.

Article IV  
Term of Existence

The Association shall have perpetual existence.

Article V  
Incorporator

The name and address of the Incorporator to these Articles is as follows:

Wesley Beck  
4100 Frontage Road South  
Building 100, Suite 101  
Lakeland, Florida 33815

Article VI  
Officers

The officers of the Association shall consist of a president, vice president, secretary, treasurer, and such other officers as the Board may from time to time deem appropriate. The officers of the Association shall be elected at the first meeting of the Board, and elected annually by the Board at each annual meeting of the Board thereafter. Any officer may be removed at any meeting by the affirmative vote of a majority of the directors of the Board, either with or without cause, and any vacancy in any office may be filled by the Board at any Board meeting. Any two (2) offices may be held by the same person at any time, except the offices of President and Secretary must be held by two (2) separate people.

The names of the officers who shall serve until the election of their successors are:

<u>Name</u>	<u>Office</u>
Wesley Beck	President
Tony Delgado	Vice President
Danielle Drummond	Secretary
Steve Moseley	Treasurer

Article VII  
Board of Directors

Section 1. The affairs of the Association shall be managed and conducted by a Board consisting of at least three (3), and not more than seven (7), natural persons who are 18 years of age or older.

Section 2. The initial Board shall consist of four (4) persons. The names and addresses of the initial Board who shall hold office until their successors have been elected and qualified are as follows:

Wesley Beck	4100 Frontage Road South Building 100, Suite 101 Lakeland, Florida 33815
Tony Delgado	228 South Massachusetts Avenue Lakeland, Florida 33801
Danielle Drummond	1324 Lakeland Hills Blvd. Lakeland, Florida 33805
Steve Mosley	129 South Kentucky Suite 6 Lakeland, Florida 33801

Provisions regarding the election, removal, and filling of vacancies on the Board shall be stated in the Bylaws.

Article VIII  
Bylaws

The power to adopt the Bylaws shall be vested in the Board. Thereafter, the Bylaws may be amended, altered, modified, or rescinded by the action or manner specified in the Bylaws.

Article IX Amendments to  
Articles

Section 1. Amendments to these Articles of Incorporation shall be made in the following manner:

(a) The Board shall adopt a resolution setting forth the proposed amendment and, if Members have been admitted, direct that it be submitted to a vote at a meeting of the Members, which may be either the annual or a special meeting. If no Members have been

admitted, the amendment shall be adopted by a unanimous vote of the directors then authorized to vote and the provisions for adoption by Members shall not apply.

(b) Written notice setting forth the proposed amendment or a summary of the changes to be effected shall be given to each Member of record entitled to vote within the time and in the manner provided in these Articles for the giving of notice of meetings of Members. If the meeting is an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

(c) At such meeting, a vote of the Members entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving an affirmative vote of at least seventy-five percent (75%) of the Members.

Section 2. Any number of amendments may be submitted to the Members and voted on by them at one meeting.

Section 3. Notwithstanding anything in these Articles to the contrary, no amendment shall make any change in the qualifications for membership without approval in writing of all of the Members and the consent of all record holders of mortgages on any Condominium Property or Association Property. No amendment shall be made that is in conflict with any applicable provisions of Chapter 718, F.S. or the Declaration. No amendment which affects the rights and privileges provided to Developer in Chapter 718, F.S., or the Declaration shall be effective without written consent of Developer.

## Article X Voting

Section 1. Each Member is entitled to vote pursuant to the terms and conditions of the Declaration and the Bylaws.

Section 2. Votes may be cast either in person or by proxy, subject to the provisions of the Bylaws and Chapter 718, F.S. Any person appointed as proxy may, but need not be, an officer or director of the Association, or affiliated with Developer, its successors, or assigns.

Section 3. For purposes of these Articles, the Bylaws, the Declaration, or any other document of the Association or Condominium, the term “all Members” when used with reference to voting shall mean the total of all Members entitled to vote and shall not mean just those Members present at the meeting in person or by proxy. No vote appurtenant to a Unit shall be cast at any meeting unless the Member(s) owning the Unit is registered on the membership book of the Association.

## Article XI Additional Provisions

Section 1. No officer, director, or Member shall be personally liable for any debt or other

obligation of the Association except as provided in the Declaration.

Section 2. The Association shall not be operated for profit. No dividend shall be paid, and no part of the income of the Association shall be distributed to its Members, directors, or officers. The Association may pay compensation in a reasonable amount to its Members, directors, or officers for services rendered, may confer benefits on its Members in conformity with its purposes, and on dissolution or final liquidation may make distributions to its Members as permitted by a court of competent jurisdiction. No such payment, benefit, or distribution shall be deemed to be a dividend or distribution of income.

Section 3. When the context of these Articles permits, the use of the plural shall include the singular and the singular shall include the plural, and the use of any gender shall be deemed to include all genders.

Section 4. If voting rights of any Member are suspended pursuant to the provisions of the Declaration or the Bylaws, then the vote(s) of such Member shall not be counted and the total number of authorized votes shall be reduced accordingly during the period of such suspension.

Section 5. Should any paragraph, sentence, phrase, or portion of any provision of these Articles or of the Bylaws or rules and regulations be held invalid or held inapplicable to certain circumstances, it shall not affect the validity of the remaining parts, the remaining instruments, or the application of such provisions to different circumstances.

Section 6. Every director and officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees reasonably incurred by or imposed upon him, in connection with any proceedings or any settlement thereof, to which he may be a party, or in which he may become involved by reason of his being or having been a director or officer of the Association, whether or not he is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that all settlements must be approved by the Board as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

Section 7. The Association shall accept any and all deeds of conveyance delivered to it by Developer.

Article XII  
Registered Agent

The name and address of the initial registered agent, and the address of the initial registered office for the service of process on the Association within Florida are:

Wesley Beck  
4100 Frontage Road South  
Building 100, Suite 101

Lakeland, Florida 33815

The address of the principal office of the Association within Florida is:

4100 Frontage Road South  
Building 100, Suite 101  
Lakeland, Florida 33815

In witness whereof the subscribing Incorporator has set his hand and seal, and caused these Articles of Incorporation to be executed this \_\_\_\_ day of December, 2018. I submit this document and affirm that the facts stated herein are true. I am aware that any false information submitted in a document to the Department of State constitutes a third degree felony as provided for in Section 817.155, Florida Statutes.

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Wesley Beck

ACCEPTANCE OF REGISTERED AGENT

Having been named as Registered Agent and to accept service of process for the above stated corporation at the place designated in Article XII of the foregoing Articles of Incorporation, I hereby accept the appointment as Registered Agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes related to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as Registered Agent.

---

Name: Wesley Beck  
Registered Agent

Date: December \_\_\_\_, 2018

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of  
Heritage Plaza Parking Garage Condominium Association, Inc.  
(A Not-For-Profit Corporation)**

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**Bylaws  
of  
Heritage Plaza Parking Garage Condominium Association, Inc.**

(A Not-For-Profit Corporation organized under the laws of the State of Florida)

**ARTICLE I  
GENERAL**

Section 1. Name, Term and Principal Office. The name, term of existence, and principal office of Heritage Plaza Parking Garage Condominium Association, Inc. (“Association”), shall be as set forth in the Articles of Incorporation.

Section 2. Rights, Powers, and Duties. The Association and its Members, Directors, and Officers shall have the rights, powers, duties, and functions as set forth in these Bylaws, the Articles of Incorporation, and, as applicable, Chapter 718, Florida Statutes, as amended from time to time.

Section 3. Members. The members of the Association (“Members”), their qualifications, manner of admission, and transfer of membership shall be as set forth in the Articles of Incorporation.

Section 4. Definitions. Each capitalized term used in these Bylaws shall have the meaning ascribed to such term in the Declaration of Condominium for Heritage Plaza Parking Garage Condominium, (A commercial Condominium) (“Declaration”), and Chapter 718, Florida Statutes, and is incorporated by reference in these Bylaws as if set forth herein.

**ARTICLE II  
OFFICERS**

Section 1. Title of Officers. The officers of the Association shall consist of a president, a vice president, a secretary, a treasurer, and such other officers as the Board from time to time may deem appropriate.

Section 2. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members and the Board. He shall have the general powers and duties usually vested in the office of President, including the power to appoint committees from among the Members or Directors from time to time as he may deem appropriate to assist in the conduct of the affairs of the Association. He shall execute such deeds, contracts, and other instruments in the name and on behalf of the Association (and under its corporate seal when a seal is required) except when such documents are required by law to be otherwise executed and except when the signing and execution of the documents shall be delegated by the Board to another officer or agent of the Association.

Section 3. Vice President. The Vice President(s) shall be vested with all the powers and required to perform all the duties of the President in his absence, and such other duties as may be prescribed by the Board. In the event there is more than one Vice President, the Board may



prescribe the order in which the Vice Presidents shall assume control in the absence of the President.

Section 4. Secretary. The Secretary shall attend all meetings of the Board and all meetings of the Members and record all votes and the minutes of all meetings and proceedings, including resolutions, in a minute book to be kept for that purpose, and shall perform like duties for any committees when so required. He shall have charge of the minute book and such records and papers as the Board may direct, maintain the mortgage roster (from information provided by mortgage holders and Members), and perform all duties incident to the office of Secretary, including the sending of notices of meetings to the members of the Board and committees, and such other duties as may be prescribed by the Bylaws or by the Board or the President. He also shall have custody of the corporate seal and when authorized by the Board shall affix the same to any instrument requiring it and attest the same when appropriate. He shall compile and keep up to date, at the principal office of the Association, a complete list of the Members and their last known post office addresses, and the names and addresses of any proxy holders or voting trustees. The Secretary shall make the minute book available for inspection by the Members and Directors at all reasonable times. The Board also may designate an assistant secretary who shall perform the functions of the Secretary when the Secretary is absent.

Section 5. Treasurer. The Treasurer shall have responsibility for the Association's funds and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association and shall deposit all monies, checks, and other valuable effects in the name and to the credit of the Association in such depositories as from time to time may be designated by the Board. He shall disburse the funds of the Association as from time to time may be ordered by the Board or by the President, shall make proper vouchers for such disbursements, and shall render to the President and Directors, at the regular meetings of the Board or whenever they or any of them shall require, an account of his transactions as Treasurer and/or the financial condition of the Association. He shall, in addition, keep all books and records of accounts as may be required by Chapter 718, Florida Statutes, or any other applicable law. The accounting records of the Association shall be open to inspection by the Members at all reasonable times, and a summary of the records shall be provided to each Member along with the notice of the annual meeting required in these Bylaws.

Section 6. Manner of Selection and Removal. Officers need not be Directors or Members. Officers of the Association shall be elected at each annual meeting of the Board by the affirmative vote of a majority of Directors when a quorum is present, and shall hold office at the pleasure of the Board. Any officer may be removed, either with or without cause, and any vacancy in any office may be filled at any meeting of the Board by the affirmative vote of a majority of the Directors at which a quorum is present. The Board may appoint other officers and grant them the duties it deems appropriate.

Section 7. Compensation. The Association may not pay the officers compensation for their service.

Section 8. Resignations. Any Director or officer may resign his office at any time, in writing, which resignation shall take effect upon its receipt by the Association, unless some later

time be fixed in the resignation, and then from that date. The acceptance of a resignation shall not be required to make it effective.

### **ARTICLE III** **BOARD OF DIRECTORS**

Section 1. Initial Board and Term of Office. The members of the initial Board shall be as set forth in the Articles of Incorporation. The term of office of each Board member shall be as set forth in Article V, Section 5, of these Bylaws. The Board may, from time to time, increase the number of Directors of the Board as they deem to be in the best interests of the Association, provided that such determination shall not affect the term of a duly qualified and seated Director of the Board, and further provided that the Board shall consist of not less than three (3) nor more than seven (7) persons. All decisions of the Board shall be made by majority decision of the voting Directors, unless specifically provided otherwise herein.

Section 2. Powers and Duties. The Board shall have and may exercise all lawful powers and duties necessary for the proper conduct and administration of the affairs of the Association and for the exercise of its rights, powers, duties, and functions. The Board is authorized to adopt and amend rules and regulations, not inconsistent with Chapters 617 or 718, Florida Statutes, the Declaration, the Articles of Incorporation, and these Bylaws governing the Units and appurtenances, the Common Elements, and all the facilities owned or controlled by the Association. The Board may do or cause to be done all other lawful acts and things which are not prohibited by law, the Declaration, the Articles of Incorporation, these Bylaws, or otherwise, specifically directed or required to be done or exercised by the Members. When appropriate, the Board may make reasonable delegation of its authority to officers and/or employees of the Association.

The powers of the Board shall specifically include, but not be limited to, the following:

- A. To levy and collect regular and special Assessments.
- B. To use and expend the Assessments collected to maintain, care for and preserve the Units, the Common Elements, and the Condominium Property, except those portions thereof which are required to be maintained, cared for and preserved by the Members unless Assessments have been levied specifically for that purpose in the Declaration,
- C. To purchase the necessary equipment required in the maintenance, care and preservation referred to above.
- D. To enter into and upon the Units when necessary, with as little inconvenience to the Members as possible, in connection with said maintenance, care and preservation.
- E. To insure and keep insured the Condominium Property in the manner set forth in the Declaration against loss from fire and/or other casualty and the Association and the Members against public liability, and to purchase such other insurance as the Board may be required to purchase or deems advisable.

F. To collect delinquent Assessments by suit or otherwise, abate nuisances and enjoin or seek damages from the Members for violations of these Bylaws, the Articles, the Declaration, and the rules and regulations promulgated by the Board.

G. To employ and compensate such personnel as may be required for the maintenance and preservation of the Condominium Property.

H. To make reasonable rules and regulations for the occupancy of the Units and the use of the Common Elements, including developing rules and regulations for the exclusive use of designated parking spaces by the Members, their employees, agents, business invitees, and guests.

I. To contract for management of the Condominium and to delegate to such other party all powers and duties of the Association except those specifically required by the Declaration to have the specific approval of the Board or the Members.

J. To carry out the obligations of the Association under any easements, restrictions or covenants running with any land submitted to Condominium ownership.

K. To contract for commonly metered Utility Service and levy and collect for same.

Section 3. Manner of Selection and Removal. Until control of the Association is turned over to the Members, the Developer shall be entitled to elect the Directors who will manage the affairs of the Association. Directors need not be Members. Subject to the provisions of these Bylaws securing the rights of the Developer to appoint a portion of the Directors and Section 4 of Article III, each Director shall be elected by the Members in such a manner as to achieve staggered terms of service. The Developer shall be entitled to vote as a Member for a Director only when permitted by the provisions of Section 718.301, Florida Statutes. An election of Directors shall be held at the annual Members' meeting at which a quorum is present. Except for Directors appointed in accordance with Section 4 of Article III, each Director shall be elected by a majority vote of the Members (in person or by proxy) present at the meeting at which a quorum is established.

Nominations for each Director vacancy to be filled by election at the next annual Members' meeting shall be made in accordance with the provisions of Section 718.112(2)(d)3, Florida Statutes. If there is no nominee for election to a directorship or if no nominee is elected for such position at the annual meeting, then as soon as practicable thereafter, such directorship shall be filled by appointment of the Board on approval of at least seventy-five percent (75%) of the remaining members of the Board. In the event of a vacancy on the Board by reason of death, resignation, or otherwise (except an increase in the number of Directors on the Board), a majority of the Board, even if the remaining Directors constitute less than a quorum, is authorized to fill the vacancy, such successor to hold office as a Director continuing until the next election of Directors by the Members. In the event of a vacancy on the Board by reason of an increase in the number of Directors on the Board, a majority of the Board is authorized to fill the vacancy only for a term of office as a Director continuing until the next election of Directors by the Members. If after a written request of any Member that a vacancy be filled, the Board fails or refuses to fill the vacancy for a period of ninety (90) days from the receipt of such notice,

then the vacancy shall be filled by the Members at a duly called meeting in the same manner as the election of Directors provided in these Bylaws.

Section 4. Unit Owner Appointed Directors. Each Unit Owner owning at least 125 Units shall be entitled to appoint a Director to the Board. In the event of a vacancy (or upcoming vacancy) on the Board with respect to a Unit Owner's appointed Director, the Secretary of the Board shall notify the applicable Unit Owner in writing of such vacancy (or upcoming vacancy) and said Unit Owner shall have the right to appoint a replacement to fill such vacancy. If the Unit Owner fails to appoint a replacement within thirty (30) days of receipt of notice of the vacancy and such vacancy results in the Board having less than a total of three Directors, then the remaining Directors shall appoint a replacement to fill the vacancy for the remainder of the term of the Director who vacated the seat on the Board.

Section 5. Compensation. The Association will not pay Board members compensation for Board services.

Section 6. Committees. The Board may appoint Committees as deemed appropriate in carrying out its purpose.

Section 7. Accounting Records. The Association shall maintain accounting records for the Condominium according to generally accepted accounting principles, consistently applied, which shall be open to inspection by Members or their authorized representatives at a reasonable time and written summaries of which shall be supplied at least annually to Members or their authorized representatives. Such records shall include, but are not limited to, a record of all receipts and expenditures and an account for each Unit which shall designate the name and address of the Member, the amount of each Assessment, the dates and amounts in which the Assessments come due, the amounts paid upon the account and the balance due. Notwithstanding anything herein to the contrary, the Association's duties in this regard shall be governed by relevant provisions of the Condominium Act, including Section 718.111(13), Florida Statutes.

Section 78. Common or Interested Directors. Each member of the Board shall exercise his or her powers and duties in good faith and with a view to the interest of the Association. No contract or other transaction between the Association and any of its Directors, or between the Association and any corporation, firm, or association (including Developer) in which any of the Directors of the Association are Directors or officers or are pecuniarily or otherwise interested, is either void or voidable because any such Director is present at the meeting of the Board or any committee thereof which authorizes or approves the contract or transaction, or because his or her vote is counted for such purpose, so long as any of the conditions specified in any of the following subparagraphs exist:

(a) the fact of the common directorate or interest is disclosed or known to the Board or noted in the minutes, and the Board authorizes, approves, or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or

(b) the fact that the common directorate or interest is disclosed or known to the Members of the Association and the Members' ratify the contract or transaction in good faith by a vote sufficient for the purpose; or

(c) the contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

Any common or interested Director may be counted in determining the presence of a quorum at any meeting of the Board or committee thereof, which authorizes, approves or ratifies any contract or transaction but shall not vote on the specific issue or issues in which he or she has a common interest in the outcome.

#### **ARTICLE IV** **BOARD OF DIRECTORS MEETINGS**

**Section 1. Quorum.** At all meetings of the Board, a majority of Directors shall be necessary and sufficient to constitute a quorum for the transaction of business. The order of business of all meetings of the Board shall be as prescribed in an agenda furnished each Director by the President.

**Section 2. Annual Meetings.** Annual meetings of the Board shall be held as soon as practicable after the annual meeting of the Members at such place as shall be designated by the Board. Regular meetings of the Board may be held at such time and place permitted by law and from time to time as may be determined by a majority of the members of the Board when a quorum is present. Notice of regular and special meetings of the Board shall be given to each Director personally, by electronic mail, by facsimile, or by United States mail sent to each Director at least three (3) days prior to the date of the meeting. The Board may, by resolution duly adopted, establish regular monthly, quarterly, or semi-annual meetings for which separate notice to the Directors shall not be required.

**Section 3. Special Meetings.** Special meetings of the Directors may be called by the President or on the written request of any Director. All meetings of the Board and any committee of the Board at which a quorum of the members of that committee is present shall be open to the Members, who may speak at such meetings on all designated agenda items. The Board may adopt reasonable rules and regulations governing the frequency, duration, and manner of Member statements.

**Section 4. Notice Requirements.** Adequate notice of all meetings of the Board, which notice shall specifically incorporate an identification of agenda items, shall be mailed, delivered, or electronically transmitted to all Members and posted conspicuously on the Condominium Property at least forty-eight (48) continuous hours before the meeting or delivered to all Members, except in an emergency. Any item not included on the notice may be taken up on an emergency basis by the vote of at least a majority plus one of the members of the Board. Such emergency action shall be noticed and ratified at the next regular meeting of the Board. However, written notice of any meeting at which non-emergency special assessments, or at which amendment to a Rule or Regulation regarding Unit use will be considered, shall be mailed or delivered to the Members not less than fourteen (14) days prior to the meeting. Evidence of

compliance of this fourteen-day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the Association. Notice of any meeting in which regular Assessments against Members are to be considered for any reason specifically shall contain a statement that regular Assessments will be considered and the nature of any such Assessments.

Section 5. Waiver of Notice. Any Director may waive notice of a meeting before, at, or after the meeting and the waiver shall be deemed equivalent to the giving of notice to the Director. Attendance at the meeting shall constitute waiver of notice of the meeting, except when the Director's attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

Section 6. Telephonic Meetings. Members of the Board may participate in any meeting of the Board by means of a telephone conference. When a telephone conference is used, a telephone speaker shall be used so that the discussion may be heard by the Directors and the Members present in an open meeting. Directors utilizing telephone conference calls may be counted toward obtaining a quorum and may vote over the telephone.

## **ARTICLE V** **MEMBER MEETINGS**

Section 1. Quorum. Members present in person or represented by proxy, entitled to cast more than fifty percent (50%) of the votes of all Members shall constitute a quorum. When a quorum is present at any meeting, a majority of the votes entitled to be cast at the meeting or represented by written proxy shall decide any question brought before the meeting, unless the question is one on which by express provision of Chapter 718, Florida Statutes, the Declaration, the Articles of Incorporation, or these Bylaws, a different vote is required, in which case the express provision shall govern and control. If any meeting of Members cannot be organized because a quorum is not present, the meeting may be adjourned by a majority of the Members present in person, until a quorum is present.

Section 2. Proxy Voting Requirements. All Members may vote by proxy unless prohibited by Chapter 718, Florida Statutes, the Articles of Incorporation, or these Bylaws.

Section 3. Proxy. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy is revocable at any time at the pleasure of the Member executing it.

Section 4. Designation of Voting Representative. If a Unit Owner is a corporation, partnership, limited liability company, or such other entity, or more than one person, the person entitled to cast the votes for the Unit shall be designated by a certificate signed by all of the record owners of the Unit and filed with the Secretary of the Association. Such certificate shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Unit concerned. A certificate designating the person entitled to cast the votes of a Unit may be revoked by any record owner thereof.

Section 5. Annual Meeting, Vacancy Caused by Expiration of Term, and Terms. There shall be an annual meeting of the Members. Except as provided in these Bylaws, a vacancy on the Board caused by the expiration of a Director's term shall be filled by electing a new Board member at such meeting and the election shall be by closed ballot; however, if there is only one candidate for election to fill the vacancy, no election is required. Unless earlier removed, each Director shall hold office for three (3) years plus or minus such time so that such term actually shall terminate on the date of the third annual membership meeting following the date of the meeting at which the subject Director was elected ("full three-year term"); provided, however, that the Board may determine that any Director to be elected at a forthcoming meeting shall have a specified shorter term in order to maintain the staggering of such terms. The total number of Directors elected each year shall be as nearly equal as possible.

Section 6. Method of Calling Meetings. All annual and special meetings of the Association shall be held in Polk County, Florida, or at such other place as may be permitted by law and from time to time as fixed by the Board and designated in the notices of meetings. The order of business at all meetings shall be as prescribed in the agenda prepared by the Board and submitted to the Members with the notice of each meeting.

Annual meetings of the Members shall be held on such date and at such time as the Board may select from time to time. Notice of the meeting shall incorporate the agenda, and shall be hand-delivered or sent by United States mail to each Member listed in the membership book of the Association at the address shown in the membership book at least fourteen (14) days prior to the meeting ("Member of Record"). Unless a Member waives in writing the right to receive notice of the annual meeting by mail, the notice of the annual meeting shall be sent by mail to each Member. Additionally, the notice of an annual meeting must be posted in a conspicuous place on the Condominium Property at least fourteen (14) continuous days before the annual meeting.

Special meetings of the Members, for any purpose or purposes, whether or not specifically required by these Bylaws, the Articles of Incorporation, or the Declaration may be called by the President, Vice President, Secretary, a majority of the Board, or by a Member(s) holding at least ten percent (10%) of the votes of the Members. No business shall be transacted at any special meeting except as stated in the notice of the meeting unless by consent of all Members represented at the meeting either in person or by proxy. Notice of all special meetings shall be given by the Secretary to Members of record, or if the Secretary shall fail to do so, by the President or any member of the Board, not less than fourteen (14) days prior to the date of the meeting, stating the date, time, and place of the meeting, and the purpose or purposes. The Members may waive notice of a special meeting and shall be deemed to have waived notice by being present at the meeting.

When a Unit is owned by more than one person, the Association shall provide notice, for meetings and all other purposes, to that one address which the Developer initially identifies for that purpose and thereafter as one or more of the Members shall so advise the Association in writing, or if no address is given, or the Members do not agree, to the address provided on the deed of record. An officer of the Association, or the management company, or other person providing notice of the Association meeting, shall provide an affidavit or United States Postal

Service Certificate that the notice was mailed or hand-delivered in accordance with Section 718.112(2)(d)3, Florida Statutes, to each Member at the address last furnished to the Association.

Section 7. Class of Members. The Association shall have one (1) class of voting membership. Owners of Units in the Condominium Property will be members of the Association, and each Unit Owner shall be entitled to one vote for each Unit owned. When more than one person holds an undivided interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as the owners of each Unit shall determine, but in no event shall more than one vote be cast with respect to any Unit.

Section 8. Miscellaneous Provisions. Members of the Board shall be elected by written ballot. Proxies may be used in electing the Board, either in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, if permitted by Chapter 718, Florida Statutes. The election shall be conducted as required by Chapter 718, Florida Statutes. The Association and Members shall comply with any rules established by the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation (the "Division") for voting procedures and secrecy of ballots. Elections shall be decided by the plurality of ballots cast. No Member shall permit any other person to vote his ballot, and any such ballots improperly cast shall be deemed invalid. A Member who needs assistance in casting the ballot for reasons stated in Section 101.051, Florida Statutes may obtain assistance in casting a ballot. Any Member violating this provision may be fined by the Association in accordance with Section 718.303, Florida Statutes. The regular election shall occur on the date of the annual meeting.

Section 9. Approval; Written Agreement. Any action which may be taken by the membership pursuant to a duly called meeting may be taken by written agreement without a meeting provided that: a proposal of action to be taken by the Members is mailed to every Member together with a request for approval or disapproval; and, the Members responding to the proposal ("Responding Members") hold at least a majority of the votes of the Unit Owners. A proposed action must be approved by a majority of the votes attributable to the Responding Members unless the proposed action is one which by express provision of Chapter 718, Florida Statutes, the Declaration, the Articles of Incorporation, or these Bylaws requires a different vote, in which case the express provision as it pertains to voting percentages shall govern and control.

Section 10. Waiver of Notice. Members may waive notice of specific meetings as allowed in these Bylaws, the Declaration, or any applicable statute.

Section 11. Member Participation. Members have the right to participate in meetings of Members with reference to all designated agenda items. However, the Association may adopt reasonable rules and regulations governing the frequency, duration, and manner of Member participation.

Section 12. Taping Meetings. Any Member may tape record or videotape a meeting of the Members subject to reasonable rules adopted by the Board in accordance with procedures established by the Division.



**ARTICLE VI**  
**BUDGET MEETING**

The Board shall determine an annual budget for the Association and shall mail a copy of the proposed annual budget to the Members not less than fourteen (14) days prior to the Board meeting at which the budget will be considered together with a written notice of the time and place of that meeting. The meeting shall be open to all Members. An officer of the Association, or other person providing notice of such meeting, shall execute an affidavit evidencing compliance with such notice requirement, and such affidavit shall be filed among the official records of the Association. The meeting shall be open to all Members. The adoption of the budget at such meeting shall require a majority vote of the Board.

If the Board fails for any reason to adopt a budget and authorize an Assessment prior to the beginning of the new fiscal year, the budget and Assessment for the previous year shall be increased by fifteen percent (15%) and shall continue in effect until a new budget is adopted.

If the annual Assessment proves to be insufficient, the budget and Assessments may be amended at any time by the Board. Unpaid Assessments for the remaining portion of the year for which an amended Assessment is made shall be payable in as many equal installments as there are installment payment dates remaining in the budget year as of the date of the amended Assessment. The budget shall not be amended for emergency or special nonrecurring expenses.

If the Board adopts in any fiscal year an annual budget which requires Assessments against the Unit Owners which exceeds one hundred and fifteen percent (115%) percent of Assessments for the preceding fiscal year, the Board shall conduct a special meeting of the Unit Owners to consider a substitute budget if the Board receives, within twenty-one (21) days after adoption of the annual budget, a written request for a special meeting from a Member. The special meeting shall be conducted within sixty (60) days after adoption of the annual budget. At least fourteen (14) days prior to such special meeting, the Board shall hand deliver to each unit owner, or mail to each unit owner at the address last furnished to the association, a notice of the meeting. An officer or manager of the association, or other person providing notice of such meeting shall execute an affidavit evidencing compliance with this notice requirement, and such affidavit shall be filed among the official records of the association. Unit Owners may consider and adopt a substitute budget at the special meeting. A substitute budget is adopted if approved by a majority of all voting interests. If there is not a quorum at the special meeting or a substitute budget is not adopted, the annual budget previously adopted by the Board shall take effect as scheduled. Any determination of whether assessments exceed one hundred and fifteen percent (115%) percent of assessments for the prior fiscal year shall exclude any authorized provision for reasonable reserves for repair or replacement of the Condominium Property, anticipated expenses of the Association which the Board does not expect to be incurred on a regular or annual basis, or Assessments for betterments to the Condominium Property.

If the developer controls the board, assessments shall not exceed one hundred and fifteen (115%) percent of assessments for the prior fiscal year unless approved by a majority of all voting interests.

**ARTICLE VII**  
**ANNUAL BUDGET**

Section 1. Basic Requirements. The proposed annual budget shall be detailed and shall show the amounts budgeted by accounts and expense classifications, including, if applicable, but not limited to, those expenses listed in Section 718.504(20), Florida Statutes.

Section 2. Reserve Accounts. The Board shall have the right to assess Units to establish a reserve fund for deferred maintenance or the future replacement of or additions to the common elements, and such reserve fund shall be held in trust by the Board or its designated nominee.

Section 3. Use of Reserve Funds. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts and shall be used only for authorized reserve expenditures, unless their use for other purposes is approved in advance by a majority vote of the Board.

**ARTICLE VIII**  
**ASSESSMENTS**

The Association shall collect from the Members their respective shares of the Assessments pursuant to the Declaration, in accordance with the procedure prescribed in the Declaration. A Member's proportionate share of Assessments shall constitute a personal obligation of the Member. Assessments shall be made not less frequently than quarterly in an amount which is not less than that required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. Any Assessment, unpaid for more than twenty (20) days after the due date, shall bear interest from the due date until paid at the rate of twelve (12%) per annum or such other amount as may be set from time to time by the Board or as otherwise set forth in the Declaration; provided, however, that the rate charged shall not exceed the maximum rate under applicable usury laws, if any. If permitted under Chapter 718, Florida Statutes, and at the discretion of the Board, an administrative late fee for each delinquent Assessment, or any installments on them, in an amount then allowed by applicable law, shall be due and payable by the delinquent Member in addition to interest. Any costs of collection, including reasonable collection agency fees and reasonable attorneys' fees incurred in collection of a delinquent Assessment shall be paid by the Member and shall be secured by a lien in favor of the Association on the respective Unit. With respect to the City's units, assessments shall only be payable from non-ad valorem revenues of the City and shall not be subject to any lien or levy which includes any right of foreclosure.

The Association may accelerate Assessments of a Member who is delinquent in payment of any Assessment. Accelerated Assessments shall be due and payable as of the date the claim of lien is filed. Accelerated Assessments shall include the amounts due for the remainder of the budget year in which the claim of lien was filed.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THESE BYLAWS SHALL NOT CONSTITUTE A GENERAL OBLIGATION OR A PLEDGE OF THE FAITH AND CREDIT OF THE CITY OF LAKELAND, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY

CONSTITUTIONAL PROVISION OR LIMITATION, ANDY OBLIGATIONS OF THE CITY OF LAKELAND SHALL BE PAYABLE SOLELY FROM NON-AD VALOREM REVENUES LEGALLY AVAILABLE FOR PAYMENTS OF ITS OBLIGATIONS HEREUNDER SUBJECT TO THE PRIOR SATISFACTION OF FUNDING REQUIREMENTS FOR ESSENTIAL GOVERNMENTAL SERVICES OF THE CITY OF LAKELAND AND TO THE EXTENT AND SUBJECT TO A PRIOR PLEDGE THEREOF FOR THE PAYMENT OF OTHER OBLIGATIONS OF THE CITY OF LAKELAND, AND EXPRESSLY EXCLUDING ANY REVENUES OF THE CITY OF LAKELAND ACCOUNTED FOR IN AN ENTERPRISE FUND UNDER GOVERNMENTAL ACCOUNTING PRINCIPLES EXCEPT TO THE EXTENT THAT ANY SUCH REVENUES DERIVED FROM ANY ENTERPRISE FUND ARE DEPOSITED INTO THE CITY OF LAKELAND'S GENERAL FUND. No Member shall ever have the right, directly or indirectly, to require or compel the exercise of the ad valorem taxing power of the City of Lakeland or any other political subdivision of the State of Florida or taxation in any form on any real or personal property for any purpose, including, without limitation, for the payment of obligations of the City of Lakeland with respect hereto, or to maintain or continue any activities of the City of Lakeland which generate user service charges, regulatory fees or other non-ad valorem revenues. The Members agree that the Members and the Association shall not have a general foreclosure right that entitles the Members to a deficiency judgment or to retain the City of Lakeland's equity in its ownership interest in the Association or the Units, if any. The Members agree that: (i) these bylaws are not intended to create a mortgage of or a security interest in the City of Lakeland's interest in its Units as proscribed by Nohrr v. Brevard County Educational Facilities Authority, 247 So. 2d 304 (Fla. 1971), and (ii) neither the Members nor the Association may exercise any foreclosure-type remedies under any circumstances against the City of Lakeland, as prohibited under State v. Brevard County, 539 So. 2d 461 (Fla. 1989), notwithstanding any provisions to the contrary in these bylaws.

## **ARTICLE IX** **AMENDMENT OF BYLAWS**

Section 1. Method. Amendments to these Bylaws shall be made in the following manner:

(a) The Board shall adopt a resolution setting forth the proposed amendment and, if Members have been admitted, directing that it be submitted to a vote at either the annual or a special meeting of the Members. If no Members have been admitted, the amendment shall be adopted by a vote of the majority of Directors and the provisions for adoption by Members shall not apply.

(b) Written notice setting forth the full text of the proposed amendment, as described in Section 2 below, shall be given to each Member of Record entitled to vote within the time and in the manner provided in these Bylaws for the giving of notice of meetings of Members. If the meeting is an annual meeting, the proposed amendment or summary may be included in the notice of annual meeting.

(c) At such meeting having a quorum in attendance by Members present in person or by proxy, a vote of the Members entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted on receiving at least a majority of the votes entitled to be cast by the Unit Owners in person or by proxy at such meeting.

Section 2. Procedure. No Bylaw shall be revised or amended by reference to its title or number only. Proposals to amend existing Bylaws shall contain the full text of the Bylaws to be amended; new words shall be inserted and the text underlined, and the words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words to be added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Bylaw \_\_\_\_ for present text."

Section 3. Nonmaterial Errors. Nonmaterial errors or omissions in the amendment process will not invalidate an otherwise properly promulgated amendment.

Section 4. Specific Prohibitions. No amendment shall make any change in the qualification for membership without approval in writing of all Members and the consent of all record holders of mortgages on any Condominium Property or on property held by the Association. No amendment shall be made that is in conflict with Chapter 718, Florida Statutes, or the Declaration. No amendment which affects the rights and privileges provided to the Developer in Chapter 718, Florida Statutes, or the Declaration shall be effective without the prior written consent of the Developer.

## **ARTICLE X** **TRANSFER FEES**

No charge shall be made by the Association or any body thereof in connection with the sale, mortgage, lease, sublease, or other transfer of a Unit. Limitations on the transfer of an interest in or the entirety of a Unit are described in the Declaration.

## **ARTICLE XI** **FIDELITY BONDS**

The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse funds of the Association. As used in this Article, the term "persons who control or disburse funds of the Association" means those individuals authorized to sign checks, and the President, Secretary and Treasurer of the Association. The Association shall bear the cost of the insurance or bonding.

## **ARTICLE XII** **REMOVAL**

A member of the Board may be recalled and removed from office with or without cause by the Member that appointed the Director. Additionally, a special meeting of the Members or the Developer to recall a Director may be called for this purpose. No Director shall continue to serve on the Board if, during his term of office, his membership in the Association, or the membership of the Member that appointed him, is terminated for any reason whatsoever.

**ARTICLE XIII**  
**ARBITRATION**

In the event of a dispute as defined in Section 718.1255, Florida Statutes, the disputing parties must arbitrate their dispute(s) in accordance with the provisions of Section 718.1255, Florida Statutes.

**ARTICLE XIV**  
**DEFAULT**

Section 1. Delinquent Payment. In the event a Member does not pay any sum, charge or Assessment required to be paid to the Association within ten (10) days from the due date, the Association, acting through its Board, may enforce its lien for Assessments or take such other action to recover the sum, charge or Assessment to which it is entitled in accordance with the Declaration and the laws of the State of Florida, provided however that no right of foreclosure exists with respect to the City's ownership interest.

Section 2. Foreclosure. If the Association becomes the Owner of a Unit by reason of foreclosure, it shall offer said Unit for sale, and at such time as a sale is consummated, it shall deduct from the proceeds of said sale all sums of money due it for Assessments and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorneys' fees, and any and all expenses incurred in the resale of the Unit which shall include, but not be limited to, advertising expenses, real estate brokerage fees and expenses necessary for the repairing and refurbishing of the Unit. All monies remaining after deducting the foregoing items of expenses shall be returned to the former Unit Owner.

Section 3. Violation. In the event of a violation of the provisions of the Declaration, the Articles or these Bylaws, which violation is not corrected within ten (10) days after notice from the Association to the Member to correct said violation, the Association may take such action as it may deem appropriate, including the institution of legal action, to correct the violation. The Association shall not impose a fine (a late charge shall not constitute a fine) unless and until the violator is served with a written notice stating: (a) that the violator may, within ten (10) days from the date of the notice, request a hearing regarding the fine and be provided with a statement of the date, time and place of the hearing; (b) a statement of the provisions of the Declaration, Bylaws or rules which have been violated; (c) a short and plain statement of the matters asserted by the Association; and (d) that all rights to have the fine considered are waived if a hearing is not requested within ten (10) days of the date of the notice.

If a hearing is requested, it shall be before the Board or a committee appointed by the Board to hear violations, if established, and the alleged violator shall be given a reasonable opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. The minutes of the meeting shall contain a written statement of the results of the hearing.

Nothing contained in this Article shall be construed to require the Association to furnish notice to any Member of his failure to pay any Assessment, sum or other charge due to the

Association. In the event such legal action is brought against a Member and results in a judgment for the plaintiff, the defendant shall pay the plaintiff's reasonable attorneys' fees and court costs.

Section 4. Consent. Each Member, for himself, his heirs, successors and assigns, agrees to the foregoing provisions regardless of the harshness of the remedy available to the Association and regardless of the availability of any other equally adequate procedures. It is the intent of all Members to give to the Association such powers and authority which will enable it to operate on a business-like basis, to collect those monies due and owing to it from Members, and to preserve each Member's right to enjoy his Unit(s) free from unreasonable restraint and nuisance.

## **ARTICLE XV** **COMMON ELEMENTS: LIMITED POWER TO CONVEY**

The Association has the power to convey a portion of the Common Elements to a condemning authority for the purpose of providing utility easements, right-of-way expansion, or other public purposes, whether negotiated or as a result of eminent domain.

## **ARTICLE XVI** **ADDITIONAL PROVISIONS**

Section 1. Miscellaneous. Should any paragraph, sentence, phrase, or portion of any provision of these Bylaws ("Provision") be held invalid or held inapplicable to certain circumstances, it shall not affect the validity of the remaining parts or the application of such Provision to different circumstances. If any Provision of these Bylaws conflict with any applicable law, statute, rule, regulation, or ordinance, the Provision shall be deemed to comply with said conflicting law. If any Provision of these Bylaws conflicts with the Declaration, the Provision shall be deemed to comply with the Declaration.

Section 2. Indemnification. Every officer and Director shall be indemnified by the Association against all expenses and liabilities, including reasonable attorneys' fees, incurred and imposed in connection with any proceedings to which he may be a party, or in which he may become involved by reason of his being or having been an officer or Director, whether or not he is an officer or Director at the time the expenses are incurred. The officer or Director shall not be indemnified if he is adjudged guilty of gross negligence or willful misconduct or shall have breached his fiduciary duty to the Members. The Association shall not be liable, however, for payment of a voluntary settlement unless it is first approved by the Board. The foregoing rights shall be in addition to and not exclusive of all other rights to which the Director or officer may be entitled.

Section 3. Corporate Seal. The Association shall have a seal in circular form with two (2) concentric circles having within their circumference the words "Heritage Plaza Parking Garage Condominium Association, Inc., a Florida not-for-profit corporation," and the year of incorporation in the center of that circle.

Section 4. Construction. Wherever the masculine singular form of the pronoun is used in these Bylaws, it shall be construed to include the masculine, feminine or neuter, singular or plural, wherever the context so requires. Should any of the provisions of these Bylaws be void

or be or become unenforceable at law or in equity, the remaining provisions of this instrument shall nevertheless be and remain in full force and effect.

Section 5. Posting of Notices. If there is no Condominium Property available for posting notices, it shall be sufficient for notices to be mailed, delivered or electronically submitted to those entitled to such notice within the applicable time periods as set forth in Article IV Section 4 and Article V Section 6.

Section 6. Statutory Requirements. Any provision required by Section 718.112(2), F.S. to be included in the bylaws of a condominium association and is not specifically referenced herein shall be deemed to be included in these Bylaws.

The foregoing Bylaws were adopted at the first meeting of the Board of Directors.