RESOLUTION 2015-101
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING A CONSTRUCTION AND PURCHASE AGREEMENT FOR THE CITY'S PURCHASE OF PARKING SPACES IN THE PROPOSED JEFFERSON STREET PARKING GARAGE

WHEREAS, a three-level parking garage is being proposed to be built in the City of Fort Collins at 363 Jefferson Street at the corner of Jefferson Street and Chestnut Street (the "Parking Garage"); and

WHEREAS, the Parking Garage is being developed by the Bohemian Companies, McWhinney Enterprises and Sage Hospitality (the "Developers") to serve a hotel the Developers are planning to build at the corner of Chestnut Street and Walnut Street adjacent to the Parking Garage (the "Hotel"); and

WHEREAS, the Developers have proposed that the Parking Garage be constructed as a public-private project with the City of Fort Collins (the "City"); and

WHEREAS, the Parking Garage is proposed to be built as a condominium project to initially include 3,200 square feet of retail space that would face and serve the Hotel and approximately 322 parking spaces; and

WHEREAS, it is proposed that the parking spaces be subdivided into condominium units, with the City purchasing the units having approximately two-thirds of the parking spaces to use for public parking (approximately 216 spaces) that will be located on the top two levels of the Parking Garage and with the Developers owning the condominium units for the retail space and the remaining parking spaces, mostly on the bottom level and some on the second level, to serve the parking needs of the Hotel and the retail space; and

WHEREAS, it is also being proposed that the City will have a 50-year option to acquire from the Developers a number of designated parking spaces on the bottom level to convert into a retail space condominium unit that would face Jefferson Street and in exchange the City would convey to the Developers a similar number of the City's parking spaces on the second level; and

WHEREAS, City staff and the Developers have negotiated a "Construction and Purchase Agreement" setting forth this proposed public-private project, a copy of which is attached as Exhibit "A" and incorporated herein by reference (the "Agreement"); and

WHEREAS, under the Agreement the City has the right to review and approve the final construction plans and cost estimates for the Parking Garage and would purchase its parking space condominium units from the Developers only after the construction of the Parking Garage is completed; and

WHEREAS, the City's obligation under the Agreement to purchase condominium units in the Parking Garage is subject to and contingent upon the City Council's future appropriation of the funds needed for the purchase; and

WHEREAS, since the City will be purchasing approximately two-thirds of the space in the Parking Garage, the Agreement provides that the purchase price will be the City's two-thirds proportionate share of the land costs, $2,018,835, plus two-thirds of the parties agreed-upon costs for the construction of the Parking Garage, for a total amount of land and construction costs currently estimated not to exceed $7.7 million; and

WHEREAS, since the Parking Garage is being proposed as a condominium project, the parties have also negotiated the "Condominium Declaration" that will establish the parties' condominium association, govern how the board of the association operates and maintains the Parking Garage, and sets out the financial obligations of the condominium owners for the association's costs to operate and maintain the Parking Garage, a copy of which Declaration is attached as Exhibit "F" to the Agreement; and

WHEREAS, since the City will own approximately two-thirds of the Parking Garage, it will have in most circumstances the controlling voting interest in the condominium association and on the association's board; and

WHEREAS, the Parking Garage and the parking spaces that the City will own in it provide additional public parking in the downtown area and are consistent with and will satisfy several of the objectives and policies in the City's "Downtown Strategic Plan," the City's "Parking Plan; Downtown and Surrounding Neighborhoods," and "City Plan" ("Downtown Objectives"); and

WHEREAS, City staff proposes to return to Council in late 2016 or early 2017 and present to Council for its consideration a plan for funding the City's purchase of the parking-space condominium units under the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS, as follows:

Section 1. That the City Council hereby makes any and all determinations and findings contained in the recitals set forth above.

Section 2. That the City Council hereby finds: (a) that the Agreement will serve the public purpose of providing public parking in the City's downtown area; (b) that the Agreement is necessary for the public's health, safety and welfare; (c) that the Parking Garage and the public parking that the City will provide in it meet and satisfy many of the City's Downtown Objectives; and (d) that entering into the Agreement will be in the best interest of the City and its citizens.

Section 3. That the City Council hereby approves the Agreement and authorizes the City Manager, in consultation with the City Attorney and consistent with this Resolution, to finalize the Agreement and its exhibits and to execute it on the City's behalf. In addition, the City Manager is authorized, in consultation with the City Attorney, to agree to amendments to the Agreement as the City Manager determines to be reasonably necessary and appropriate to protect the City's interests or to effectuate the purposes of this Resolution.

Section 4. That prior to the City closing on the purchase of the parking spaces under the Agreement, the City Manager is directed to present to Council for its consideration in late 2016 or early 2017 a plan for funding this purchase and, thereafter, to present to Council the ordinance needed to appropriate the funds for the purchase.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 17th day of November, A.D. 2015.

Mayor

ATTEST:

Deputy City Clerk

CONSTRUCTION AND PURCHASE AGREEMENT

Jefferson Street Parking Structure

THIS CONSTRUCTION AND PURCHASE AGREEMENT ("**Agreement**") is made and entered into this ___ day of _____, 2015 ("**Effective Date**"), by and between the **CITY OF FORT COLLINS, COLORADO**, a municipal corporation (the "**City**" or "**Purchaser**") and **WALNUT STREET 354 LLC**, a Colorado limited liability company ("**Developer**" or "**Seller**").

RECITALS:

A. The Developer is the owner of certain real property situated in the County of Larimer, State of Colorado, (the "**Property**") legally described as follows:

Lots 1,3,5,7 and 9, Block 12, Fort Collins, Colorado.

B. In Conjunction with the development of a downtown hotel, Developer and the City have agreed to cooperate in developing a public/private parking structure ("**Parking Structure**") on the Property as more particularly described herein.

C. The parties wish to set forth their agreements with respect to the development and ownership of the Parking Structure.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. <u>Construction of the Parking Structure</u>.

A. Developer will not begin construction of the Parking Structure until the City has given its approval of (a) the final plans and specifications for the construction of the Parking Structure, which plans and specifications are more particularly described on attached **Exhibit A** (the "**Final Plans**") and (b) Developer's final itemized cost estimate for construction of the Parking Structure ("**Itemized Costs**"). The City shall not be obligated to pay any costs incurred by the Developer in excess of the Itemized Costs without prior agreement in writing by the parties.

B. If the City has timely performed its obligations under this Agreement, Developer agrees to construct the Parking Structure in accordance with the terms of this Agreement, the Final Plans, and the Construction Schedule attached as **Exhibit B**.

C. Developer acknowledges that the City is a tax exempt entity under Colorado law. Developer will pursue an exemption from future state and local sales and use taxes and reimbursement for previously paid state and local sales and use taxes on the City's portion of all materials to be incorporated into the Parking Structure. If, despite making reasonable efforts to fulfill this obligation, Developer is unsuccessful in obtaining such savings or reimbursement, the City will have the right to continue to seek such savings or reimbursement and Developer agrees to cooperate fully with the City in this effort.

2. <u>Conveyance of City Parking Area to the City</u>.

A. Developer agrees to sell and the City agrees to purchase at least 210 parking spaces within the Parking Structure as herein provided, including an undivided interest in the land underlying the Parking Structure and air rights over the building (the "**City Parking Area**"). The City Parking Area is described on attached **Exhibit C**.

B. The City Parking Area will be part of a condominium community subject to a common ownership regime pursuant to the Colorado Common Ownership Interest Act (CCIOA) as established by Developer prior to conveying the City Parking Area. The location of the City Parking Area within the Parking Structure is depicted on attached **Exhibit D**. When surveys have been prepared for the Parking Structure in connection with recording the Declaration (as defined below in subsection D), the survey legal description and drawing shall be substituted for Exhibits C and D.

C. Within thirty (30) days following issuance of a certificate of occupancy for the Parking Structure, Developer shall convey the City Parking Area to the City pursuant to a special warranty deed (the "**Deed**") in substantially the form attached as **Exhibit E**. The City Parking Area will include all improvements and fixtures of a permanent nature located within the City Parking Area and the right to use common elements located on the Property. At Closing (as hereafter defined), Developer shall also assign (to the extent assignable) all warranties for work performed with respect to construction of any improvements to be conveyed by Developer to the City at Closing.

D. Closing on the conveyance of the City Parking Area ("**Closing**") shall be held at a mutually agreed date and time in the office of Land Title Guarantee Company ("**Title Company**"). At Closing, the City shall take title to and possession of the City Parking Area subject to a recorded Condominium Community Declaration ("**Declaration**") in substantially the form attached as **Exhibit F**, and such other documents as are reasonably necessary for the creation of a Condominium Community for the Parking Structure, including Articles of Incorporation of an association, Rules and Regulations and By-laws (collectively, the "**Condominium Community Documents**"). The City and Developer shall also execute and deliver at Closing such other instruments and documents as they deem reasonably necessary and/or desirable in order to consummate the Closing and establish the Condominium Community common ownership regime. The parties acknowledge that the Declaration and Condominium Community Documents are substantially complete but not reviewed and agreed to by the parties in final form. The parties agree to negotiate the Declaration and the Condominium Community Documents in good faith to final execution form for delivery at or before the Closing.

E. At Closing Developer and the City shall also execute an option agreement that will allow the City, at its discretion, to acquire from the Developer an area of parking on the first floor of the Parking Structure designated as a separate unit or units in the Condominium Community, for the construction of retail space (the "**Option Agreement**"). In exchange, the City will transfer to the Developer under the Option Agreement a similar number of parking spaces in the City Parking Area, which spaces shall also be designated as a separate unit or units

in the Condominium Community. The Option Agreement will be in substantially the form attached as **Exhibit G**, and shall be recorded following Closing and run with the designated units.

3. **Purchase Price**. The total purchase price of the City Parking Area will be **Two Million Dollars ($2,018,835)** plus two-thirds of the agreed-upon costs of construction of the Parking Structure, but not to exceed a total amount of _____ Dollars ($_____) ("**Purchase Price**"). The Purchase Price will be payable by chaser to Seller as follows:

A. No earnest money deposit is required in connection with this transaction, the mutuality of the promises of the parties hereto being deemed adequate consideration.

B. The entire amount of the Purchase Price, subject to closing costs and customary prorations, will be payable by Purchaser to Seller in immediately available funds at the time of Closing, as hereinafter set forth.

C. As additional consideration, the City has already paid $50,000 towards the initial design costs for the Parking Structure, which shall be credited to the City at Closing against the Purchase Price.

4. **Title Insurance/Evidence of Title.**

A. Within thirty (30) days following the Effective Date, Developer will provide to City a Title Insurance Commitment, together with copies of all documents of record related to exceptions identified in the Title Commitment (together referred to as the "**Title Commitment**") from the Title Company. The Title Commitment must show title to the Property and the City Parking Area in Developer, subject only to those exceptions shown on Schedule B-2 to the Title Commitment that are acceptable to the City. The parties will each pay half the cost of the Title Commitment and Title Insurance.

B. If the Title Commitment discloses title defects unsatisfactory to the City and subject to which the City need not take title to the City Parking Area, City may give Developer written notice of such defects by the date ten (10) calendar days after the Effective Date or the date ten (10) calendar days after City's receipt of the Title Commitment, whichever is later, and no later than ten (10) calendar days after notice of any title change or discovery of any title defect not disclosed by the Title Commitment. For a period of thirty (30) days after receipt by Developer of notice of title defects ("**Title Cure Period**") Developer shall act reasonably and in good faith to cure such defects, at its expense, without in any other manner affecting the terms of this Agreement; provided that Developer shall not be obligated to spend more than $5,000.00 in total to cure such title defects.

C. If any instrument or deposit is necessary in order to correct a defect in or objection to title, the following apply:

(1) Any instrument will be in a form and contain terms and conditions Title Company may reasonably require so as to be sufficiently satisfied and omit such defects or objection.

(2) Any deposit will be made with Title Company.

(3) Developer agrees to execute, acknowledge and deliver any required instrument and to make any required deposit.

D. If Title Company refuses to omit any title defect or objection prior to the end of the Title Cure Period, then the City, at its election, has the right to:

(1) accept such title as Developer is able to convey, without any reduction of the Purchase Price; or

(2) rescind this Agreement and, upon such rescission this Agreement will be null and void and of no further effect, and all parties to this Agreement will be released from all obligations hereunder.

E. If Developer is unable to convey title as provided in this paragraph 4 to City due to an act or omission of Developer, Developer is in default and continues to be liable under this Agreement.

F. Notwithstanding the foregoing,

(1) any title condition consisting of monetary liens, deeds of trust or other financial encumbrances against the Property or the City Parking Area must be removed by Developer at or prior to Closing, and Developer's failure to cause the removal of the same will constitute a default by Developer under this Agreement; and

(2) in the event Developer fails to cause the removal of a financial encumbrance against the Property or the City Parking Area prior to Closing, City has the right to pay amounts required to do so at Closing, and to receive a credit for such payment against the Purchase Price.

5. Survey/Legal Description. The parties each acknowledge that legal descriptions of the Property and of the City Parking Area are included in this Agreement. The parties intend that the referenced legal descriptions describe the Property and the City Parking Area except as otherwise expressly provided, and agree to work in good faith and cooperatively to correct or update such descriptions as necessary.

6. Platting/Subdivision. If the City Parking Area must be platted or subdivided, (either separately or in conjunction with other land) Developer, with the fullest cooperation of the City, shall cause such platting or subdivision requirement to be satisfied in accordance with all applicable laws, regulations and policies of the City of Fort Collins. Developer, with City's assistance, shall use reasonable efforts to complete the procedure as quickly as reasonably

possible in order to meet the requirements of the Construction Schedule; provided, however, the City acknowledges that any such platting or subdivision is within the City's control and Developer shall not be in default of this Agreement in the event the subdivision or platting is not accomplished timely in order to meet the requirements of the Construction Schedule. If platting or subdivision is required, Closing of the conveyance of the City Parking Area shall not occur until the subdivision or platting is complete.

7. **Taxes**. On or before Closing, the City will fully cooperate with Developer to obtain from the Larimer County Tax Assessor and the City Tax Assessor a waiver of taxes assessed against the City Parking Area for the period of ownership by the City.

8. **Developer's Representations and Warranties**. Developer represents and warrants to the City that the following statements are as of the Effective Date, and will be on the date of Closing, true and accurate:

A. There is no litigation or proceeding, including but not limited to any eminent domain proceeding, pending (or to Developer's knowledge threatened) against or relating to any part of the Property, nor does Developer know of or have reasonable grounds to know of any basis for any such action [*except for_____*].

B. Developer has not received notice of, and to the best of Developer's knowledge, there are no violations of any laws, orders, regulations or requirements of any governmental authority affecting the Property or any part thereof.

C. Developer has the unconditional right and power to execute and deliver this Agreement and to consummate the transaction(s) contemplated by this Agreement.

D. Developer has not received notice of default or breach by Developer of any of the covenants, conditions, restrictions, rights-of-way or easements affecting the Property or any portion thereof; no default or breach now exists or will exist on the date of Closing; and no event or condition has occurred and is continuing that, with or without notice and/or the passage of time, will constitute such a default or breach.

E. To the best of Developer's actual knowledge without further investigation or inquiry there has been no installation in or production, release, disposal, or storage on the Property of any hazardous material, hazardous waste, or other toxic or regulated substances, or any other activity that is known to or reasonably could have resulted in an environmental condition requiring investigation or remediation or the Property, and Developer represents that it has provided to the City all environmental reports and any other documentation in Developer's possession related to the Property.

9. **Inspections**.

A. Preliminary Inspection. The City or any designee of the City has the right to make inspections of the physical condition of the Property at Purchaser's expense. These inspections

may include, but are not limited to, environmental assessments, environmental protection, pollution or land use or zoning laws, and rules or regulations, including, but not limited to any laws relating to the disposal or existence of any hazardous substance or other regulated substance in or on the Property. If City does not provide Developer written notice of any unsatisfactory condition, as determined at City's sole discretion and signed by an authorized representative of the City, within sixty (60) days after the Effective Date, City waives any objection to the physical condition of the Property as it existed on or before sixty (60) days after the Effective Date. If the City provides written notice of any unsatisfactory condition to Seller within sixty (60) days after the Effective Date, and Developer does not cure such conditions within sixty (60) days after receipt by Developer of a notice of unsatisfactory condition, this Agreement may be terminated at the option of the City. City is responsible and will pay for any damage that occurs to the Property and the improvements located thereon as a result of these inspections.

B. Construction Inspection. In addition to inspections required by the City Code, the City shall have the right during construction of the Parking Structure to make periodic and reasonable inspections of the Parking Structure to ensure its consistency with the Final Plans. Should the City discover any variances from the agreed-upon plans, the City and Developer agree to work cooperatively to resolve such issues.

C. Final Inspection. The City shall have the right, after completion of the Parking Structure and prior to Closing, to make inspections of the physical condition of the Property and the Parking Structure and related improvements constructed thereon, at Purchaser's expense. These inspections may include, but are not limited to, compliance with the Final Plans (as may have been amended by agreement of the parties), environmental assessments, environmental protection, pollution or land use or zoning laws, and rules or regulations, including, but not limited to any laws relating to the disposal or existence of any hazardous substance or other regulated substance in or on the Property. Except as may be provided in paragraph 29 below, Developer shall have no responsibility or liability for conditions that existed prior to the initial inspection period described in subparagraph A above if the City failed to exercise commercially reasonable due diligence during the initial inspection period, or if the City was aware of an unsatisfactory condition and failed to object to it as provided in subparagraph A.

If City does not provide Developer written notice of any unsatisfactory condition, as determined at City's sole discretion and signed by an authorized representative of the City, prior to Closing, City waives any objection to the physical condition of the Property, the City Parking Area, and the improvements located thereon, except as otherwise provided in paragraph 29 below. If the City provides written notice of any unsatisfactory condition to Seller prior to Closing, and Developer does not cure such conditions within sixty (60) days after receipt by Developer of a notice of unsatisfactory condition, this Agreement may be terminated at the option of the City, or the City may proceed to Closing and accept the City Parking Area subject only to the warranties and protections of paragraph 29 below. The parties agree to extend the Closing date as reasonably necessary to allow Developer to cure any unsatisfactory condition.

10. Real Estate Broker Commissions. Each of the parties represents to the other that it has not incurred and will not incur any liability for brokerage fees or agent commissions in connection with this Agreement, and Developer and, to the extent permitted by law, City each

agree to indemnify and hold the other harmless from and against any and all claims or demands with respect to any brokerage fees or agents' commissions or other compensation asserted by any person, firm, or corporation in connection with this Agreement or the transactions contemplated hereby, insofar as any such claim is based upon any conversation or contract with Developer or City, respectively.

11. Remedies on Default. If either party fails to perform according to the terms of this Agreement, such party may be declared in default. The non-defaulting party may give written notice specifying such default to the defaulting party, and shall allow the defaulting party a period of thirty (30) days within which to cure the default unless a shorter time is necessary for public health and safety or as specified by the City Code. If the event the default is not corrected, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail itself of any other remedy at law or equity.

12. Notices. Any notice or other communication given by either party to the other relating to this Agreement must be hand delivered; sent by a commercial carrier; or sent by mail, addressed to the party at its respective address as set forth below. The notice or other communication will be effective on the date it is delivered or on the third business day after being sent, whichever comes first.

If to Developer:
[_____]
_____
[_____], CO [zip]

With a copy to:
_____
_____
[_____], CO [zip]

If to City:
Real Estate Services Manager
City of Fort Collins
Mailing Address:
P.O. Box 580
Fort Collins, CO 80522-0580
Hand Delivery:
300 LaPorte Avenue.
Fort Collins, CO 80521

With a copy to:
City Attorney's Office
City of Fort Collins
Mailing Address:
P.O. Box 580
Fort Collins, CO 80522-0580

Hand Delivery:
300 LaPorte Avenue
Fort Collins, CO 80521

13. **Assignment**. This Agreement, and the parties' rights and obligations herein, shall not be assigned by either of the parties hereto without the prior written consent of the other party. Any such assignment without the other party's prior written consent shall be deemed null and void and of no effect.

14. **Risk of Loss**. Developer shall bear all risk of loss with respect to the Property up to the date title is transferred in accordance with this Agreement. In the event of damage to any portion of the Property by fire or other casualty prior to the closing which damage either affects 25% or more of the usable facilities in the City Parking Area or reduces the value of the City Parking Area by 25% or more, then this Agreement may be terminated at the option of Purchaser. This option shall be exercised, if at all, by City's written notice thereof to Developer within thirty (30) calendar days after receipt of written notice of such fire or other casualty. Upon the exercise of such option to terminate, this Agreement shall become null and void, and neither party shall have any further liability or obligations hereunder, except as otherwise provided in this Agreement. Closing may be delayed for up to thirty (30) calendar days for City to decide whether to exercise this option. If City does not elect to terminate, Developer shall assign and transfer to City at the closing the City's pro-rata share of Developer's right, title and interest in and to all insurance proceeds or other compensation paid or payable to Developer on account of such fire or casualty together with the amount of the deductible relating thereto.

15. **Obligations Subject to Appropriation**. All financial obligations of the City arising under this Agreement that are payable after the current fiscal year are contingent upon funds for that purpose being annually appropriated, budgeted and otherwise made available by the Fort Collins City Council, in its discretion.

16. **Entire Agreement**. Except for the Agreement Between the City of Fort Collins, Colorado and Bohemian Companies LLC for Sharing of the Cost of the Preliminary Architectural Design Relating to the Possible Construction of a Multi-level Parking Garage dated June 23, 2015, as amended by Amendment #01 dated August 19, 2015, all previous negotiations and understandings between Developer and the City or their respective agents and employees with respect to the transaction set forth herein, are merged into this Agreement (including, without limitation, the exhibits attached hereto) and this Agreement alone fully and completely expresses the parties' rights, duties and obligations with respect to its subject matter. This Agreement may be amended only by subsequent written agreement between Developer and the City.

17. **No Merger**. The covenants, warranties, representations and/or indemnities expressly made in this Agreement shall survive the Closing and shall not be merged therein.

18. **Governing Law**. This Agreement shall be deemed to be a contract made under the laws of the State of Colorado and for all purposes shall be governed and construed in accordance with the laws of said State. Nothing herein shall be construed as a waiver of any of the requirements

of the Fort Collins City Code or Land Use Code, and the Developer agrees to comply with all such requirements to the extent they apply.

19. **Severability**. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected, and in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision will be added as a part of this Agreement that is as similar to the illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

20. **Construction**. The rule of strict construction shall not apply to this Agreement. This Agreement has been prepared by the City and its professional advisors and reviewed and modified by Developer and its professional advisors. Developer, the City, and their separate advisors believe that this Agreement is the product of all of their efforts, that it expresses their agreements, and that it should not be interpreted in favor of or against either Developer or the City merely because of their efforts in preparing it.

21. **Captions, Gender, Number, and Language of Inclusion**. The captions are inserted in this Agreement only for convenience of reference and do not define, limit, or describe the scope or intent of any provisions of this Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another. As used in this Agreement, the word "including" shall mean "including, but not limited to."

22. **Exhibits**. The following exhibits are incorporated into this Agreement in their entirety:

Exhibit A	Final Plans
Exhibit B	Construction Schedule
Exhibit C	Description of City Parking Area
Exhibit D	Site Plan of Parking Structure with location of City Parking Area indicated
Exhibit E	Form of Deed
Exhibit F	Declaration
Exhibit G	Form of Option Agreement

23. **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors, assigns, heirs and personal representatives.

24. **Time**. Time is of the essence of this Agreement and each and every provision hereof.

25. **Expenses**. In the event any party defaults in any of its covenants or obligations under this Agreement and a party not in default commences and prevails in any legal or equitable action against the defaulting party, the defaulting party expressly agrees to pay all reasonable expenses of the litigation, including a reasonable sum for attorneys' fees or similar costs of legal representation.

26. **Counterparts**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one instrument.

27. **Calculation of Time Periods; Business Day**. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a Business Day, in which event the period shall run until the end of the next day which is a Business Day. The last day of any period of time described in this Agreement shall be deemed to end at 5:00 p.m. Colorado time. As used herein, the term "**Business Day**" means any day that is not a Saturday, Sunday or legal holiday for the City.

28. **No Waiver**. The failure of either party to this Agreement 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 that such party may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any such terms, covenants or conditions.

29. **Written Warranty, Waiver, and Release**.

(a) LIMITED WARRANTY. THE DEVELOPER SHALL, AT ITS EXPENSE, MAKE ALL REASONABLY NECESSARY REPAIRS, REPLACEMENTS, AND CORRECTIONS OF ANY DEFECTIVE WORK OR MATERIALS IF WRITTEN NOTICE OF SUCH DEFECTIVE WORK OR MATERIALS IS GIVEN BY THE CITY TO THE DEVELOPER WITHIN ONE (1) YEAR AFTER THE COMPLETION OF THE PARKING STRUCTURE. THE FOREGOING WARRANTY SHALL NOT APPLY TO EQUIPMENT, SUCH AS HEATING, VENTILATING AND AIR CONDITIONING EQUIPMENT, OR OTHER SIMILAR ITEMS. THE DEVELOPER SHALL ASSIGN TO THE CITY ALL MANUFACTURERS' WARRANTIES WITH RESPECT TO SUCH EQUIPMENT.

(b) ORAL REPRESENTATIONS AND WARRANTIES. THE CITY HEREBY ACKNOWLEDGES THAT NO WARRANTIES OR REPRESENTATIONS AS TO THE CONDITION, DESIGN, OR CONSTRUCTION OF THE PARKING STRUCTURE HAVE BEEN MADE OR MAY BE MADE BY THE DEVELOPER, EXCEPT BY EXPRESS WRITTEN AGREEMENT SIGNED BY THE DEVELOPER. THE CITY HEREBY WAIVES AND RELEASES THE DEVELOPER FROM ALL ORAL WARRANTIES AND REPRESENTATIONS AND CLAIMS ARISING THEREFROM, BOTH KNOWN AND UNKNOWN.

(c) ACCEPTANCE OF PARKING STRUCTURE AS IS. EXCEPT AS OTHERWISE PROVIDED IN THE LIMITED WARRANTY SET FORTH IN SUBPARAGRAPH 29(a) ABOVE, ANY MANUFACTURERS' WARRANTIES PROVIDED TO THE CITY, AND THOSE ITEMS NOTED IN THE PUNCH LIST, UPON THE CLOSING OF THIS TRANSACTION, THE CITY SHALL BE DEEMED TO HAVE

ACCEPTED THE PARKING STRUCTURE AS IS, IN ITS CONDITION AS OF THE DATE OF CLOSING.

(d) IMPLIED WARRANTIES. THE DEVELOPER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF WORKMANLIKE CONSTRUCTION, HABITABILITY, DESIGN, CONDITION, QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ABSENCE OF RADON, OR OTHERWISE, EXCEPT AS EXPRESSLY SET FORTH IN THIS CONTRACT. THE DEVELOPER DISCLAIMS ALL SUCH WARRANTIES, AND THE CITY WAIVES ALL SUCH WARRANTIES AND RELEASES THE DEVELOPER, ITS MEMBERS, MANAGERS, AGENTS, AND EMPLOYEES, FROM ALL CLAIMS AND POSSIBLE CLAIMS, KNOWN OR UNKNOWN, FOR OR ARISING UNDER ANY SUCH WARRANTIES.

(e) WAIVER AND RELEASE. EXCEPT TO THE EXTENT OTHERWISE SPECIFICALLY PROVIDED IN THIS CONTRACT, THE CITY HEREBY WAIVES AND RELEASES THE DEVELOPER, ITS SUBSIDIARIES, AFFILIATES, MEMBERS, MANAGERS, AGENTS, AND EMPLOYEES, FROM ALL OBLIGATIONS, CLAIMS, AND LIABILITIES ARISING OUT OF THE CONDITION, DESIGN, OR CONSTRUCTION OF THE PARKING STRUCTURE OR ARISING THEREFROM OR CAUSED THEREBY, WHETHER KNOWN OR UNKNOWN, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS FOR CONSEQUENTIAL DAMAGES; EXEMPLARY OR PUNITIVE DAMAGES; LOSS OF USE; LOSS OF VALUE; LOSS OF OPPORTUNITY; INCONVENIENCE; LOSS OF INFLATIONARY INCREASES IN VALUE OR THE TIME VALUE OF MONEY; AND LOSS OR DAMAGE TO PERSONAL PROPERTY.

(signatures appear on the following page)

SIGNATURE PAGE
FOR
CONSTRUCTION AND PURCHASE AGREEMENT

IN WITNESS WHEREOF, Walnut Street 354 LLC has caused this instrument to be executed by its member who is thereunto duly authorized on this ____ day of _____, 2015.

WALNUT STREET 354 LLC,
a Colorado limited liability company

By: _____
Name: _____
Its: _____

SIGNATURE PAGE
FOR
CONSTRUCTION AND PURCHASE AGREEMENT

IN WITNESS WHEREOF, The City of Fort Collins, Colorado has caused this instrument to be executed by its officer who is thereunto duly authorized on this ____ day of _____, 2015.

THE CITY OF FORT COLLINS, COLORADO,
a Municipal corporation

By:_____
Name: Darin A. Atteberry
Its: City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Assistant City Attorney

EXHIBIT A
TO
CONSTRUCTION AND PURCHASE AGREEMENT

Final Plans

[To be attached upon completion and approval by the parties]

EXHIBIT B
TO
CONSTRUCTION AND PURCHASE AGREEMENT

Construction Schedule

[To be attached upon completion and approval by the parties]

EXHIBIT C
TO
CONSTRUCTION AND PURCHASE AGREEMENT

Description of City Parking Area

[To be attached upon completion and approval by the parties]

EXHIBIT D
TO
CONSTRUCTION AND PURCHASE AGREEMENT

Site Plan of Parking Structure with location of City Parking Area indicated

[To be attached upon completion and approval by the parties]

EXHIBIT E
TO
CONSTRUCTION AND PURCHASE AGREEMENT

Form of Deed

EXHIBIT F
TO
CONSTRUCTION AND PURCHASE AGREEMENT

Declaration

[Attached]

CONDOMINIUM DECLARATION
FOR
JEFFERSON STREET PARKING GARAGE CONDOMINIUMS

THIS DECLARATION is made and entered into this _____ day of _____, 2016, by WALNUT STREET 354, LLC, a Colorado limited liability company ("the Declarant").

RECITALS

A. The Declarant is the owner of the real property commonly known as 363 Jefferson Street, Fort Collins, Colorado and legally described as follows ("the Real Estate"):

LOTS 1, 3, 5, 7, and 9,
BLOCK 12,
CITY OF FORT COLLINS,
COUNTY OF LARIMER,
STATE OF COLORADO.

B. The Declarant desires to create condominium ownership of the Real Estate pursuant to the Colorado Common Interest Ownership Act (C.R.S. § 38-33.3-101, et seq.) in which portions of the Real Estate will be designated for separate ownership and the remainder of which will be for common ownership solely by the Owners of the separate ownership interests.

C. The Declarant has caused to be incorporated under the laws of the State of Colorado JEFFERSON STREET PARKING GARAGE CONDOMINIUM ASSOCIATION, a nonprofit corporation, for the purpose of exercising the functions herein set forth ("the Association").

ARTICLE I. SUBMISSION OF REAL ESTATE

The Declarant hereby publishes and declares that the Real Estate shall be and is hereby submitted to condominium ownership and shall be held, sold, conveyed, transferred, leased, sub-leased, and occupied subject to the following easements, covenants, conditions, and restrictions which shall run with the Real Estate and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in the Real Estate or any portion thereof, their heirs, personal representatives, successors, and assigns.

ARTICLE II. DEFINITIONS

In addition to the terms defined above and elsewhere in this Declaration, the following terms when used in this Declaration and capitalized shall have the meaning given:

Section 1: "Allocated Interests" shall mean and refer to the Common Expense Liability and votes in the Association.

Section 2: "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association filed with the Colorado Secretary of State and all properly adopted and filed amendments thereto.

Section 3: "Assessments" shall mean and refer to all assessments made by the Association against the Owners and their respective Units for payment of each Owner's pro rata share of the General Common Expenses, Garage Expenses, Retail Expenses, Special Assessments and Individual Assessments, as applicable.

Section 4: "Board" shall mean and refer to the duly elected Board of Directors of the Association.

Section 5: "Building" shall mean and refer to the building presently existing on the Real Estate.

Section 6: "Bylaws" shall mean and refer to any instruments, however denominated, which are adopted by the Board for the regulation and management of the Association, including amendments to those instruments.

Section 7: "CCIOA" shall mean and refer to the Colorado Common Interest Ownership Act (C.R.S. Section 38-33.3-101, et seq.) as presently adopted and as may be subsequently amended.

Section 8: "Common Elements" shall mean and refer to all portions of the Condominium Project other than the Units.

Section 9: "Common Expense Liability" shall mean and refer to the liability for Common Expenses allocated to each Unit pursuant to this Declaration.

Section 10: "Common Expenses" shall mean and refer to expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

Section 11: "Condominium Map" shall mean and refer to the Condominium Map of the Real Estate recorded in the office of the Clerk and Recorder of Larimer County, Colorado, and all recorded amendments thereto.

Section 12: "Condominium Project" shall mean and refer to the Real Estate and all Improvements constructed thereon.

Section 13: "Declaration" shall mean and refer to this Declaration, including any amendments hereto and also including, but not limited to, the Condominium Map.

Section 14: "Documents" shall mean and refer to this Declaration, the Condominium Map, and the Articles of Incorporation, Bylaws, and Rules and Regulations of the Association, as supplemented or amended from time to time.

Section 15: "Exchange Area" shall mean and refer to that portion of Garage Unit #2 designated as such on the Condominium Map. The Exchange Area shall be substantially the same

size as the Flex Area. Pursuant to a separate Option Agreement the owner of the Exchange Area shall have the right to exchange the Exchange Area for the Flex Area.

Section 16: "Exchange Unit" shall mean a refer to the Exchange Area if and to the extent it is converted to a Unit by amendment of this Declaration and the Condominium Map.

Section 17: "Flex Area" shall mean and refer to that portion of Garage Unit #1 designated on the Condominium Map as "Potential Retail/Office Flex Space."

Section 18: "Flex Unit" shall mean and refer to the Flex Area if and to the extent it is converted to a Unit by amendment of this Declaration and the Condominium Map.

Section 19: "Garage Expenses" shall mean and refer to all costs and expenses incurred by the Association in the maintenance, repair, replacement or improvement of all General and Limited Common Elements constituting the walls, floors and ceiling of the Garage Units and utilities serving only the Garage Units. Garage Expenses shall include snow removal, cleaning and striping.

Section 20: "Garage Unit" shall mean and refer to each of the Units designated on the Condominium Map as a "Garage Unit." The boundaries of the Garage Units shall be the interior unfinished side of the perimeter walls, floors and ceiling of each Garage Unit. If any duct, wire, conduit, bearing wall, bearing column, or any fixtures lie partially within and partially outside of the designated boundaries of a Garage Unit, any portion thereof serving only that particular Garage Unit shall be a Limited Common Element appurtenant to such Garage Unit and any portion thereof serving more than one Garage Unit or serving any portion of the Common Elements shall be a part of the Common Elements.

Section 21: "General Common Expenses" shall mean and refer to all costs and expenses incurred by the Association in the maintenance, repair, replacement and improvement of the common walls between the Garage Units and the Retail Units, the utilities serving the Garage Units and the Retail Unit, and that portion of the Real Estate lying outside the exterior walls of the Building.

Section 22: "Governmental Authority" shall mean and refer to any governmental entity, agency, authority, or district having jurisdiction over the Condominium Project.

Section 23: "Identifying Number" shall mean and refer to a symbol or address that identifies only one (1) Unit in the Condominium Project.

Section 24: "Individual Assessment" shall mean and refer to Assessments made by the Association pursuant to Article V, Section 5 of this Declaration.

Section 25: "Improvements" shall mean and refer to all improvements presently located or subsequently constructed on the Real Estate including, but not limited to, the Building.

Section 26: "Laws" shall mean and refer to all statutes, laws, ordinances, resolutions, rules, or regulations of any Governmental Authority applicable to the Condominium Project, including, but not limited to, CCIOA and the Colorado Revised Nonprofit Corporation Act.

Section 27: "Limited Common Elements" shall mean and refer to a portion of the Common Elements shown on the Condominium Map for the exclusive use of one or more Units but fewer than all of the Units. The drive lanes and ramps in the Garage Units and the access drives to the Garage Units from public streets shall be Limited Common Elements appurtenant to the Garage Units.

Section 28: "Majority Vote" shall mean and refer to the affirmative vote of Owners holding more than 50% of all votes allocated to the Owners as set forth on Exhibit A attached hereto and incorporated herein by reference.

Section 29: "Mortgagee" shall mean and refer to any Person who has a security interest in a Unit which has provided actual written notice of such interest to the Association. Recording of a mortgage, deed of trust, or other security interest in the office of the Clerk and Recorder of Larimer County, Colorado shall not be considered actual written notice to the Association of a security interest. "First Mortgagee" shall mean and refer to a Mortgagee that is the holder of a security interest which represents a first lien against a Unit, subject to any governmental lien having priority as a matter of law.

Section 30: "Notice" shall mean and refer to any notice required or desired to be given pursuant to the Documents. Unless otherwise provided in the Documents, all notices shall be in writing and may be personally delivered; mailed, certified mail, return receipt requested, sent by telephone facsimile with a hard copy sent by regular mail; sent by a nationally recognized, receipted overnight delivery service; or sent by electronic mail. Any such notice shall be deemed given when personally delivered; if mailed, three (3) delivery days after deposit in the United States mail, postage prepaid; if sent by telephone facsimile or electronic mail, on the day sent if sent on a business day during normal business hours of the recipient or on the next business day if sent at any other time; or if sent by overnight delivery service, one (1) business day after deposit in the custody of the delivery service. The addresses and telephone numbers for the mailing, transmitting, or delivering of notices shall be as set forth in the books and records of the Association. Notices of a change of address shall be given in the same manner as all other notices as hereinabove provided. If a notice is to be given to more than one Owner, the notice shall be given to all Owners at the same time and in the same manner.

Section 31: "Owner" shall mean and refer to the Person who owns in fee title a Unit but does not include a Person having an interest in a Unit solely as a Security Interest.

Section 32: "Ownership" shall mean and refer to the collection of rights to possession, use and enjoyment of a Unit, including the right to sell, transfer, encumber, lease, convey and gift the Unit to others in whole or in part, which rights are conferred on an Owner by a lawful claim of fee simple title to the Unit, subject to the covenants, conditions and restrictions contained in this Declaration.

Section 33: "Option Agreement" shall mean and refer to a written agreement recorded in the office of the Clerk and Recorder of Larimer County made and entered into by and between the Declarant and the Owner of Garage Unit #2 pursuant to which the Owner of Garage Unit #2 shall have the right to convert the Exchange Area to the Exchange Unit and exchange the Exchange Unit for the Flex Unit.

Section 34: "Person" shall mean and refer to a natural person, a corporation, a partnership, a limited liability company, an association, a trust, a governmental entity, or any other entity or combination thereof.

Section 35: "Purchaser" shall mean and refer to a Person, other than a Declarant, who, by means of a transfer, acquires a legal or equitable interest in a Unit, other than:

(a) A leasehold interest in a Unit of less than forty (40) years, including renewal options, with the period of the leasehold interest, including renewal options, being measured from the date the initial term commences; or

(b) A Security Interest.

Section 36: "Retail Expenses" shall mean and refer to all costs and expenses incurred by the Association in the maintenance, repair, replacement and improvement of all General and Limited Common Elements constituting the walls, floor and ceiling of the Retail Unit and the utilities serving only the Retail Unit. If the Flex Area is converted to a Unit (the Flex Unit), the term "Retail Expenses" as it applies to the Flex Unit shall mean and refer to all costs and expenses incurred by the Association in the maintenance, repair, replacement or improvement of all General and Limited Common Elements constituting the walls, floor and ceiling of the Flex Unit and the utilities serving only the Flex Unit.

Section 37: "Retail Unit" shall mean and refer to the Unit designated on the Condominium Map as "Retail/Office Space." If the Flex Area is converted to a Unit (the Flex Unit), the term Retail Unit shall mean and refer to the Retail Unit and the Flex Unit.

Section 38: "Rules and Regulations" shall mean and refer to all instruments, however denominated, which are adopted by the Board for the regulation and management of the Condominium Project, including any amendment to such instruments.

Section 39: "Security Interest" shall mean and refer to an interest in a Unit created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, and any other consensual lien or title retention contract intended as security for an obligation. "First Security Interest" shall mean and refer to a Security Interest in a Unit prior to all other Security Interests except the Security Interest for real property taxes and assessments made by Larimer County, Colorado, or other Governmental Authority having jurisdiction over the Condominium Project.

Section 40: "Special Assessment" shall mean and refer to Assessments made by the Association pursuant to Article V, Section 4 of this Declaration.

Section 41: "Super Majority Vote" shall mean and refer to the affirmative vote of Owners holding Sixty-Seven percent (67%) or more of all votes allocated to the Owners as set forth on Exhibit A attached hereto and incorporated herein by reference

Section 42: "Unit" or "Condominium Unit" shall mean and refer to a physical portion of the Common Interest Community which is designated for separate ownership or occupancy and the boundaries of which are contained within the windows, doors, unfinished perimeter walls, floors, and ceilings of each Unit as described and designated herein and determined from the Map. "Unfinished perimeter walls" shall mean the studs, supports, and other wooden, metal, concrete or similar materials that constitute the structural portion of the perimeter walls of a Unit. "Unfinished ceiling" shall mean the beams, joists, and other structural components of the ceiling of a Unit. "Unfinished floor" shall mean the beams, floor joists, plywood deck and other similar floor decking material that constitute the structural portion of the floor of a Unit. The unfinished perimeter walls, floors and ceiling of a Unit shall be referred to herein at the "Unit Boundaries" or "Boundaries of the Unit." All lathe, furring, wallboard, plasterboard, plaster, drywall, paneling, floor tiles, ceiling tiles, wall tiles, wallpaper, paint, finished hard wood flooring, carpeting, doors and door casing, window and window casing, and any other materials constituting any part of the finished surfaces of the perimeter walls, floors, and ceiling of the Unit shall be considered part of the Unit. "Unit" shall also include heating, air conditioning and ventilation fixtures and equipment serving only that Unit whether such equipment is wholly within, partially within or completely outside of the Unit Boundaries and other Limited Common Elements appurtenant to the Unit. "Unit" shall include plumbing fixtures, hardware and pipes within the Boundaries of the Unit; and electrical, telephone and cable lines and outlets within the Boundaries of the Unit. All plumbing, electrical, heating, ventilating, and air conditioning lines, systems, fixtures and equipment serving more than one Unit or serving a Unit and the General Common Elements shall not be part of the Unit but shall be General Common Elements. "Unit" shall also refer to a "Garage Unit," "Retail Unit," and a "Flex Unit."

ARTICLE III. CONDOMINIUM PROJECT

Section 1: Name. The name of the Condominium Project is JEFFERSON STREET PARKING GARAGE CONDOMINIUMS.

Section 2: County. The name of every county in which any part of the Condominium Project is situated is Larimer County, Colorado.

Section 3: Legal Description. A legal description of the Real Estate included in the Condominium Project is set forth in **Recital A** of this Declaration.

Section 4: Maximum Number of Units. The maximum number of Units that the Declarant reserves the right to create within the Condominium Project is _____.

Section 5: Boundaries of Units. The boundaries of each Unit are located as shown on the Condominium Map and as defined in Article II of this Declaration.

Section 6: Identification of Units. The identification number of each Unit is shown on the Condominium Map.

Section 7: Subdivision of Units. A Unit may be subdivided and re-subdivided into multiple Units in accordance with the provisions of CCIOA. Initially, the Units shall be Garage Unit #1, Garage Unit #2, Garage Unit #3, and the Retail Unit. The Retail Unit may subsequently be divided into two or more Retail Units. If the Owner of the Exchange Area elects to divide Garage Unit #2 into two Units by converting the Exchange Area to the Exchange Unit, Garage Unit #1 shall also be divided into two Units by converting the Flex Area to a Retail Unit (the Flex Unit) which Flex Unit may thereafter be divided into two or more Retail Units. The Exchange Unit shall be a "Garage Unit" and shall continue to be used solely for public or private parking of motor vehicles and bicycles.

Section 8: Allocation of Interests. Interests shall be allocated based on the number of square feet within each Unit, subject to the following:

(a) Allocation of Common Expense Liability. The Common Expense Liability shall be allocated among the Owners as follows:

(i) Allocation of General Common Expenses. General Common Expenses shall be allocated among all of the Units based on the ownership interest in the Common Elements allocated to each Unit as set forth on Exhibit A attached hereto, which shall be updated and amended to reflect the subdivision of any Unit.

(ii) Allocation of Garage Expenses. Garage Expenses shall be allocated among the Garage Units based on the ratio that the ownership interest in the Common Elements of each Garage Unit bears to the total ownership interest in the Common Elements of all Garage Units as set forth on Exhibit A attached hereto, which shall be updated and amended to reflect the subdivision of any Unit.

(iii) Allocation of Retail Expenses. Retail Expenses shall be determined and allocated separately to each Retail Unit. If the Flex Area is converted to a Unit (the Flex Unit), Retail Expenses shall be determined and allocated separately to the Flex Unit.

(b) Allocation of Votes. Each Owner shall be entitled to cast the number of votes allocated to such Owner's Unit as set forth on Exhibit A attached hereto, which shall be updated and amended to reflect the subdivision of any Unit.

Section 9: Recording Data. All easements and licenses to which the Condominium Project is presently subject are described on the Condominium Map. In addition, the Condominium Project may be subject to other easements or licenses granted by the Declarant pursuant to the terms of this Declaration.

Section 10: Limited Common Elements. The Limited Common Elements are described and designated as such on the Condominium Map.

Section 11: General Common Elements. The General Common Elements are described and designated as such on the Condominium Map. No General Common Elements may be conveyed to any Person, except as appurtenant to a Unit. No General Common Elements may be subsequently allocated as Limited Common Elements.

Section 12: Division of Real Estate into Units. The Real Estate, including the Improvements thereon, is hereby divided into four fee simple estates (Units). Each such estate shall consist of a separately designated Unit as herein defined and as indicated on the Condominium Map and the undivided interest in and to the Common Elements appurtenant to such Unit as set forth on Exhibit A attached hereto and incorporated herein by reference, which shall be updated and amended to reflect the subdivision of any Unit. Each Unit, the appurtenant undivided interest in the Common Elements, as well as all other appurtenances, rights, and burdens shall together comprise one Unit.

Section 13: Description of Unit. A Unit may be legally described as follows:

> Garage Unit No. _____ [or Retail Unit No. ___], JEFFERSON STREET PARKING GARAGE CONDOMINIUMS, according to the Declaration recorded _____, 2016, at Reception No. _____, and the Condominium Map recorded _____, 2016, at Reception No. _____ of the Larimer County, Colorado, records.

Such description shall be sufficient for all purposes to sell, convey, transfer, encumber, or otherwise affect not only the Unit but also the Limited Common Elements and the undivided interest in the General Common Elements appurtenant to said Unit and all other appurtenant property rights and shall incorporate all of the rights and burdens incident to ownership of a Unit and all of the limitations thereon as described in this Declaration. Each such description shall be construed to include a nonexclusive easement for ingress and egress to and from a Unit and the use of all General Common Elements appurtenant to such Unit. Reference to the Condominium Map and Declaration in any instrument shall be deemed to include any supplements or amendments thereto.

ARTICLE IV. ASSOCIATION

Section 1: Membership. Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Unit. Ownership of a Unit shall be the sole qualification for membership in the Association. The Association does not contemplate pecuniary gain or profit to its Members. The specific purposes for which the Association is formed are as follows: (a) to operate the Condominium Project; (b) to maintain, repair, replace, and improve the Common Elements; and (c) to do any and all permitted acts, and to have and exercise any and all powers, rights, and privileges which are granted to a Condominium Project under the Laws and the Documents.

Section 2: Authority. The business and affairs of the Condominium Project shall be managed by the Association. The Association shall be governed by the Documents as amended from time to time. The Board shall act in all instances on behalf of the Association.

Section 3: Powers of the Board. The Board shall have, subject to the limitations contained in this Declaration, the powers and duties necessary for the administration of the affairs of the Association and of the Condominium Project, which shall include, but not be limited to, the following:

(a) Adopt and amend Bylaws.

(b) Adopt and amend Rules and Regulations.

(c) Adopt and amend budgets for revenues, expenditures, and reserves, subject to approval of the Owners.

(d) Collect Common Expense assessments from the Owners.

(e) Hire and discharge independent contractors, employees, and agents.

(f) Institute, defend, or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Documents in the Association's name and on behalf of the Association on any matters affecting the Condominium Project.

(g) Make contracts and incur liabilities.

(h) Acquire, hold, encumber and convey in the Association's name, any right, title, or interest in or to real estate or personal property.

(i) Impose a reasonable charge for late payment of assessments and levy a reasonable fine for violation of the Documents.

(j) Provide for the indemnification of the Association's officers and the Board and maintain directors' and officers' liability insurance.

(k) Exercise any other powers conferred by the Documents.

All actions taken, powers exercised and approvals given by the Board under this Declaration shall require only a Majority Vote except where a Super Majority Vote is expressly required by this Declaration or the Laws.

Section 4: Budget. Within thirty (30) days after adoption by the Board of any proposed budget for the Association, the Board shall mail, by ordinary first class mail, or otherwise deliver, a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider approval of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting Owners holding a Super Majority Vote

approve the budget, the budget is rejected. In the event the proposed budget is rejected, the periodic budget last approved by the Owners shall be continued until such time as the Owners approve a subsequent budget proposed by the Board.

Section 5: Professional Management. The Association may utilize professional management in performing its duties hereunder. Any agreement for professional management of the Association's business shall have a maximum term of three (3) years and shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon sixty (60) days' prior written notice.

Section 6: Indemnification. To the fullest extent permitted by law, each officer and member of the Board of the Association and all committees established by the Board shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party or in which they may become involved by reason of their being or having been an officer or member of the Board of the Association or a member of a committee established by the Board, or any settlement thereof, whether or not they are an officer or a member of the Board of the Association or a member of a committee established by the Board at the time such expenses are incurred, except in cases where an officer or member of the Board or member of a committee established by the Board is adjudged guilty of willful malfeasance in the performance of his or her duties. In the event of a settlement, the indemnification shall apply only when the Board approves the settlement and reimbursement as being in the best interests of the Association.

Section 7: Rights of Action. Subject to the dispute resolution provisions hereinafter set forth, the Association, through the Board, on behalf of itself and any aggrieved Owner shall be granted a right of action against any and all Owners for failure to comply with the provisions of the Documents, or with decisions of the Board made pursuant to authority granted to the Association in the Documents and the Laws. Failure by the Board to enforce compliance with any provision of the Documents shall not be deemed a waiver of the right to enforce any provision thereafter, nor shall a decision by the Board not to engage in enforcement action give rise to a cause of action against the Board. If the Board elects not to take action to enforce the restrictions, conditions, covenants, reservations, liens and charges contained in the Documents, an Owner adversely affected by such failure to comply may bring an action provided that the costs and expenses of the enforcement action shall be borne by the Owner bringing the action, and shall not be assessed as a Common Expense. Any Owner that prevails in a civil action to enforce the Documents shall be entitled to reasonable attorney's fees and costs as provided for in this Declaration.

Section 8: Dispute Resolution. Any dispute arising out of or relating to the creation of the Condominium Project by this Declaration, or between the Declarant and the Association, or the Declarant and an Owner, or the Association and an Owner, or among Owners shall be resolved as set forth in this Section and as set forth in any policy adopted by the Board and approved by a Super Majority Vote of the Owners to compliment the processes described below (the "Dispute Resolution Policy"), subject to the right of the Association to take appropriate immediate action or pursue judicial remedies if any dispute involves an imminent threat to the peace, health or safety of the Condominium Project or the collection of Assessments. The Dispute Resolution Policy shall be retained with the records of the Association.

(a) Claims and Disputes. Except for the Association's right to take appropriate immediate action or pursue judicial remedies if any dispute involves an imminent threat to the peace, health or safety of the Condominium Project or to collect Assessments, any claim or dispute arising out of or relating to the following matters is subject to required alternative dispute resolution procedures, if the dispute is not resolved by mutual agreement of the parties:

(i) the creation and establishment of the Condominium Project; and/or

(ii) the interpretation, application or enforcement of this Declaration; including the rights, obligations and duties of any Person subject to the provisions of this Declaration; and/or

(iii) the design or construction of the Improvements within the Condominium Project (including the Building) and/or any alleged defect therein, including (but not limited to) any claim against the Declarant, its contractors, officers, employees, agents and board appointees; and/or

(iv) injury to an Owner's person, any other bodily injury, property damage or loss of use relating to an Owner's use or ownership of such Unit; and/or

(v) any violation of any provision of any of the Documents by any Person other than non-payment of Assessments.

Each of the items described in subsections (i), (ii), (iii), (iv) and (v) above shall be referred to as a "Dispute" or a "Claim." If a Claim or Dispute is not resolved by negotiation, it shall be submitted to a mutually acceptable mediation process. If the Claim or Dispute is not resolved through mediation, the Claim or Dispute shall be settled by either a binding arbitration process agreed to by all the parties to the Claim or Dispute or by filing a legal action in Larimer County, Colorado District Court. If the Claim or any other Dispute related to this Declaration or the construction of the Condominium Project is not resolved through binding arbitration, but instead through a legal action brought in Larimer County District Court, the parties to the Claim or Dispute hereby irrevocably waive any right they may have to a trial by jury in that legal action.

(b) Communication. The party seeking resolution of a Dispute (the "Initiating Party") shall first give written notice to the other involved parties, setting forth with reasonable particularity the nature of the Claim or Dispute and suggested alternatives for resolution (a "Dispute Notice"). Any settlement resolution proposed in a Dispute Notice shall be considered in good faith and shall not be admissible in any litigation or arbitration proceeding to prove liability for or invalidity of any Claim or its amount, nor shall statements made in compromise negotiations be admissible.

(c) Mediation. If the Claim cannot be resolved through direct communication and negotiation, the parties shall attempt in good faith to resolve the Claim by mediation through a mediator mutually acceptable to the parties. The mediation may be conducted in accordance with such procedures or methodology mutually agreed to by the parties to the Dispute. The parties may engage any qualified mediator mutually agreed to by the parties including: (i) using the

services of a dispute resolution service provider such as the Judicial Arbiter Group of Denver, Colorado ("JAG"), (ii) using the resources offered through the Colorado Judicial Branch, Office of Dispute Resolution, or (iii) any similar dispute resolution service provider willing to mediate disputes in the Fort Collins, Colorado area. The cost of the mediation shall be divided equally among the parties to the Dispute.

(d) Construction Defect Claims. Any Claim that arises out of or is related to the construction of the Building or any other improvements within the Condominium Project, including without limitation any claim for damages or loss to, or the loss of use of, real or personal property or personal injury caused by a defect in the design or construction of the Building or any other improvements within the Condominium Project, shall be subject to the applicable provisions of the Colorado Construction Defect Action Reform Act of 2003, C.R.S §§ 13-20-801 to -808, and C.R.S. § 38-33.3-303.5 as such Laws may be amended from time to time.

(e) Approval of Arbitration or Legal Action. Neither the Association nor the Board may commence any arbitration proceeding or legal action seeking equitable relief or seeking either an unspecified amount of damages or damages in excess of $20,000.00 unless the following conditions are satisfied:

(i) The decision to commence such arbitration proceeding or legal action shall be considered at an annual or special meeting of the Owners called for such purpose;

(ii) A budget for such action or proceeding, including all fees and costs assuming trial and applicable appeals, shall have been prepared by the attorneys who will be engaged by the Association for such purpose, and shall have been mailed or delivered to all affected Owners at least thirty (30) days prior to such meeting.

(iii) At such meeting the decision to commence, and the proposed budget for, such action or proceeding, and the imposition of a Special Assessment to fund the costs of such action or proceeding in accordance with the approved budget shall be approved by a Majority Vote.

(iv) The Association shall be authorized to expend funds for such action or proceeding in excess of the amount contemplated by the approved budget only after an amended budget has been approved in accordance with the procedures specified in subsections (ii) and (iii) above.

(v) All of the costs and expenses of any action or proceeding requiring the approval of the Owners in accordance with Subsections (ii) and (iii) above shall be funded by means of a Special Assessment. In no event may the Association use reserve funds or incur any indebtedness in order to pay any costs and expenses incurred for such purpose.

(vi) If the Association commences any action or proceeding against a particular Owner or particular Owners requiring the approval of the Owners in accordance with this

Subsection (e), the Owner or Owners who are being sued shall be exempted from the obligation to pay the Special Assessment levied for the purpose of paying the costs and expenses of such action or proceeding, but shall remain liable for costs and attorney's fees under the prevailing party provision contained in CCIOA and this Declaration. The Owner or Owners being sued by the Association shall not be counted in either the numerator or denominator when determining whether the proposed action, budget and Special Assessment are approved by the Owners as required by Subsection (ii) and (iii) above.

(vii) The requirements set forth in this subsection (e) shall not apply to any action or proceeding to collect or otherwise enforce Assessments and any related fines, late charges, penalties, interest or costs and expenses, including reasonable attorneys' fees. If any Owner fails to timely pay Assessments or any money or sums due to the Association, the Association may require reimbursement for collection costs and reasonable attorney's fees and costs incurred as a result of such failure without the necessity of commencing a legal proceeding.

(viii) The requirements of this Subsection (e) shall not apply to any action or proceeding commenced against the Association by any third party or any Owner that the Association is required to defend. The Board shall represent the Association in any such proceedings and shall keep the Owners informed of the proceedings as deemed appropriate by the Board in consultation with legal counsel.

(f) Amendment. Notwithstanding any provision to the contrary, this Section 8 shall not be amended or otherwise altered without the express written consent of the Declarant.

Section 9: Assumption of Development Agreement. Upon the recording of this Declaration, the Association shall assume all then existing and future obligations of the "Developer" under any Development Agreement between the Declarant and the City of Fort Collins with respect to the construction of the Condominium Project and shall defend, indemnify and hold harmless the Declarant from and against any and all loss, cost, expense, and liability, including attorney's fees arising out of, as a result of, or in connection with the failure of the Association to perform and pay the cost of the obligations herein assumed.

ARTICLE V. ASSESSMENT FOR COMMON EXPENSES

Section 1: Personal Obligation of Owners for Common Expenses. The Declarant, for each Unit owned, hereby covenants, and each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all Assessments imposed by the Association. Such Assessments, including fees, charges, late charges, attorney's fees, fines, and interest, charged by the Association shall be the personal obligation of the Owner at the time the Assessment or other charges became due. The personal obligation to pay any past-due sums due the Association shall not pass to a successor in title unless expressly assumed by such successor.

Section 2: Amount of Assessment. The amount of the Assessment for the estimated Common Expenses which shall be paid by the Owner of each Unit shall be determined as provided in Article III, Section 8 of this Declaration.

Section 3: Date of Commencement of Annual Assessments; Due Dates. The annual Assessments provided for herein shall commence as to all Units on the first day of the month following the conveyance of a Unit by the Declarant to a Purchaser. The first annual Assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the annual Assessment shall be sent to every Owner subject thereto. Annual assessments shall be payable in equal monthly installments.

Section 4: Special Assessments. In addition to the Assessments for Common Expenses, the Association may levy, in any assessment year, a special Assessment for the purpose of defraying, in whole or in part, payment of any operating deficit and/or unbudgeted cost; the cost of any construction, reconstruction, repair, or replacement of a capital Improvement upon the Common Elements, including fixtures and personal property related thereto. The Association may levy, in any assessment year, a Special Assessment against the Garage Units for the purpose of defraying, in whole or in part, payment of the cost of any construction, reconstruction, repair, or replacement of a capital Improvement to the Garage Units, including fixtures and personal property related thereto. The Association may levy, in any assessment year, a Special Assessment against the Retail Unit for the purpose of defraying, in whole or in part, payment of the cost of any construction, reconstruction, repair, or replacement of the Retail Unit, including fixtures and personal property related thereto. All Special Assessments shall be added to and become a part of the Assessments to which such Owner and such Owner's Unit are subject and shall be a lien against such Owner's Unit as provided in this Declaration and CCIOA.

Section 5: Individual Assessments. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance or repair of the Common Elements, any Improvements located thereon, a Garage Unit, or the Retail Unit is caused by the willful or negligent act, omission, or misconduct of any Owner or by the willful or negligent act, omission, or misconduct of any occupant of such Owner's Unit or any tenant, guest, invitee, employee, agent, contractor, or subcontractor of such Owner, the costs of such repair and maintenance shall be the personal obligation of such Owner, and any costs, expenses, and fees incurred by the Association for such maintenance, repair, or reconstruction shall be added to and become a part of the Assessments to which such Owner and such Owner's Unit are subject and shall be a lien against such Owner's Unit as provided in this Declaration and CCIOA. A determination of the willful or negligent act, omission, or misconduct of any Owner or any occupant of such Owner's Unit, or tenant, guest, invitee, employee, agent, contractor, or subcontractor of any Owner and the amount of the Owner's liability therefor shall be determined by the Board after notice to the Owner and the right to be heard before the Board in connection therewith.

Section 6: Record of Receipts and Expenditures. The Association shall keep detailed and accurate records in chronological order of all of its receipts and expenditures, specifying and itemizing the maintenance and repair of the Common Elements, and any other expenses incurred. Such records shall be available on request for examination by the Owners and others with an interest, such as prospective lenders.

Section 7: Notice to Security Interest. Upon the request of a Person holding a Security Interest against a Unit and upon payment of reasonable compensation therefor, the Association shall report to such Person any unpaid assessments or other defaults under the terms of any of the

other Documents which are not cured by the Owner within sixty (60) days after written notice of default given by the Association to the Owner.

Section 8: Certificate of Status of Assessments. Each Owner hereby expressly authorizes the Association, upon written request to the Association and upon payment of a reasonable fee, to furnish to an Owner or such Owner's designee, to a holder of a Security Interest or its designee, or to a closing agent handling the closing of the sale or financing of the Owner's Unit a statement, in recordable form, setting out the amount of the unpaid Assessments against the Unit. The statement shall be furnished within fourteen (14) business days after receipt of the request and is binding on the Association, the Board, and each Owner as of the date of its issuance.

Section 9: Common Expenses Attributable to Fewer than All Units. The following Common Expenses may be chargeable to fewer than all of the Units:

(a) If a Common Expense is caused by the misconduct of an Owner, the occupants of such Owner's Unit, or such Owner's tenants, guests, invitees, employees, agents, contractors, or subcontractors, the Association may assess that expense against that Owner and such Owner's Unit.

(b) Fees, charges, taxes, impositions, late charges, fines, collection costs, and interest charged against an Owner for nonpayment of Assessments or violation of the Documents are enforceable as Assessments only against such Owner and such Owner's Unit.

(c) Garage Expenses shall be assessed only against Garage Units.

(d) Retail Expenses shall be assessed only against the Retail Unit.

Section 10: Transfer Fees. The Association shall have the right to collect a reasonable fee on each transfer of an interest in a Unit to compensate the Association for the reasonable costs and expenses necessarily incurred by the Association in documenting the transfer in the books and records of the Association.

Section 11: Initial Reserve Fund. Upon the transfer of each Unit by the Declarant to the first purchaser of the Unit, the Association shall have the right to collect from the Purchaser of the Unit an amount reasonably determined by the Board to be necessary to establish a reasonable reserve fund.

ARTICLE VI. LIEN FOR NONPAYMENT OF COMMON EXPENSES

All Assessments, charges, and fees of the Association due and owing under this Declaration shall be a continuing lien upon the Unit against which such Assessments, charges and fees are made. A lien under this Section is prior to all other liens and encumbrances on a Unit, except: (1) liens and encumbrances recorded before the recordation of this Declaration; (2) to the extent provided by CCIOA, a First Security Interest in the Unit recorded before the date on which the Common Expense Assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. This Section does not prohibit an action to recover sums for which this Section creates a lien or prohibit the Association

from taking a deed in lieu of foreclosure. Sale or transfer of any Unit shall not affect the Association's lien. Any Assessment, charge, or fee provided for in this Declaration or any monthly or other installment thereof which is not fully paid within ten (10) days after the date due shall bear interest at a rate determined by the Board. In addition, the Board may assess a late charge thereon. Any Owner who fails to pay any Assessment, charge, or fee of the Association shall also be obligated to pay to the Association, on demand, all costs and expenses incurred by the Association, including reasonable attorney's fees, in attempting to collect the delinquent amount. The total amount due to the Association, including unpaid Assessments, fees, charges, fines, interest, late payment penalties, costs, and attorney's fees, shall constitute a lien on the defaulting Owner's Unit. The Association may bring an action, at law or in equity, or both, against any Owner personally obligated to pay any amount due to the Association or any monthly or other installment thereof and may also proceed to foreclose its lien against such Owner's Unit. An action at law or in equity by the Association against a delinquent Owner to recover a money judgment for unpaid amounts due to the Association or monthly or other installments thereof may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien.

ARTICLE VII. RESTRICTION ON USE

Section 1: Improvements on Exterior of Units. No exterior additions to, exterior alterations of, or exterior decoration of the Building, a Unit or the Common Elements shall be made unless approved in writing by the Board.

Section 2: Violation of Laws. Nothing shall be done or kept in any Unit or in or on the Common Elements, or any part thereof, which would be in violation of any Laws.

Section 3: Nuisance. No obnoxious or offensive activity shall be conducted within any Unit or on the Common Elements which unreasonably interferes with the then existing use of any other Unit. No activity shall be conducted within any Unit or upon the Common Elements which is or might be unsafe, unhealthy, or hazardous to any person.

Section 4: Use. All Garage Units shall be used for public or private parking of motor vehicles and bicycles. Retail Units shall be used for retail businesses or offices, except the following uses are expressly prohibited: _____.

Section 5: Signs. No signs shall be installed or permitted to remain on the exterior of any Unit or on the interior of a Unit if such sign is visible from the exterior of the Unit unless such sign is approved in writing in advance by the Board. No sign shall be installed on the Common Elements without the prior, written approval of the Board. One (1) for sale or for rent sign may be placed in the window of a Unit to be visible from the exterior of the Unit. The sign shall not exceed four (4) square feet.

Section 6: Window Coverings. All exterior window coverings visible from the exterior of any Unit must have the prior, written approval of the Board. Nothing shall be placed on or in the windows or doors of the Units which create an unsightly appearance from the exterior of such Units.

ARTICLE VIII. EASEMENTS

Section 1: Encroachments. A valid easement shall exist for the following encroachments and for the maintenance of the same: (a) in the event that any portion of the Common Elements encroaches upon any Unit or Units; or (b) in the event that any portion of a Unit encroaches upon any other Unit or Units or upon any portion of the Common Elements; or (c) in the event any encroachment shall occur in the future as a result of settling of the Building, alteration or repair to the Common Elements, or repair or restoration of the Building or a Unit after damage by fire or other casualty or condemnation or eminent domain proceedings. In the event that any one or more of the Units or the Building or other Improvements comprising part of the Common Elements are partially or totally destroyed and are then rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding, any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment shall exist. Such encroachments and easements shall not be considered or determined to be encumbrances, either on the Common Elements or on the Units, for purposes of marketability of title or other purposes. In interpreting any and all provisions of this Declaration, subsequent Unit deeds to, and/or mortgages of Units, the actual location of a Unit shall be deemed conclusively to be the property intended to be conveyed, reserved, or encumbered, notwithstanding any minor deviations, either horizontally, vertically, or laterally from the locations of such Units indicated on the Condominium Map.

Section 2: Blanket Easement. There is hereby created a blanket easement upon, across, over, and under the Common Elements for ingress and egress to and from each Unit from public streets adjacent to the Condominium Project and for installing, replacing, repairing, and maintaining all Common Elements, including the Building, and all utilities such as water, sewer, gas, telephone, electricity, and communication. By virtue of this easement, it shall be expressly permissible for the providing of electrical, communication wires, circuits, and conduits on, above, across, and under the floor, roof and exterior walls of the Units. No sewer lines, electrical lines, water lines, or other utilities may be installed or relocated on the Real Estate, except as initially programmed and approved by the Declarant or as subsequently approved by the Board. The Association, its officers, agents, employees, and assigns, shall have the right to make such use of the Common Elements as may be reasonably necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

Section 3: Emergency Easement. An easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or Persons to enter upon the Real Estate in the performance of their duties.

ARTICLE IX. TERMINATION OF MECHANIC'S LIEN RIGHTS AND INDEMNIFICATION

No labor performed or materials furnished and incorporated in a Unit with the consent of or at the request of the Owner, his or her agents, contractors, or subcontractors, shall be the basis for filing a lien against the Unit of any other Owner not expressly consenting to or requesting the same or against the Common Elements. To the extent permitted by law, each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against all liability arising from the claim of any lien against the Unit of any other Owner or against the Common Elements for construction performed or for labor, materials, services, or other products incorporated in the

Owner's Unit at such Owner's request. Notwithstanding the foregoing, any Mortgagee of a Unit who shall become the Owner of such Unit pursuant to a lawful foreclosure sale or the taking of a deed in lieu of foreclosure shall not be under any obligation to indemnify and hold harmless any other Owner or the Association against liability for claims arising prior to the date such Mortgagee becomes an Owner.

ARTICLE X. RESERVATION FOR ACCESS, MAINTENANCE, REPAIR, AND EMERGENCIES

Section 1: Access to Units. The Association shall have the irrevocable right to be exercised by the Association's Board, officers, custodian, managing agent, employees, and contractors, to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the Common Elements therein or accessible therefrom or at any hour for making emergency repairs, maintenance, or inspection therein necessary to prevent damage to the Common Elements or to another Unit.

Section 2: Damage to Unit. Damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Elements or as a result of emergency repairs within another Unit at the insistence of the Association shall be a Common Expense; provided, however, that if the damage is caused by negligent or tortuous acts of an Owner, or the Owner's agents, employees, invitees, or tenants, then such Owner shall be responsible and liable for all repairs and the cost thereof shall become said Owner's obligation, which shall be timely paid. Said obligation shall be an Assessment against said Owner's Unit and shall be subject to the provisions for collection elsewhere provided in this Declaration. All damaged Improvements shall be restored substantially to the extent reasonably practical to the same condition in which they existed prior to the damage. All maintenance, repairs, replacement and improvement of the Common Elements, whether located inside or outside of the Units, shall be the Common Expense of all of the Owners (unless necessitated by the negligence, misuse, or tortuous act of an Owner, or the Owner's agents, employees, invitees, or tenants, in which case such expense shall be charged to such Owner). However, the Association shall not be obligated to seek redress for such damages, and this covenant shall not abrogate the insurance provisions of this Declaration.

ARTICLE XI. MAINTENANCE AND SERVICE RESPONSIBILITY

Section 1: Owner. For maintenance purposes, an Owner shall be deemed to own, maintain and keep in good repair and condition at all times: (1) such Owner's Unit as defined in Article I and all Limited Common Elements appurtenant to such Unit, which shall include by example and not limitation, all improvements within the Unit Boundaries as defined in Article I, the windows, screens, exterior doors including window and door casings; (2) the interior non-supporting walls, floors, and ceilings of the Unit; (3) the materials such as, but not limited to, plaster, gypsum drywall, insulation, paneling, wallpaper, paint, ceiling, wall and floor tile and hard wood flooring, carpet, and other materials which make up the finished surfaces of the interior of the perimeter walls, ceiling, and floors of the Unit; (4) interior doors; all improvements and betterments installed by the Owner; (5) personal property of the Owner; exterior shutters, awnings, storm doors, storm windows, appurtenant to each Unit; (6) exterior heating, ventilating, or air conditioning fixtures and equipment serving the Unit; (7) exterior doors and windows of a Unit; and (8) all other fixtures and

equipment designated to serve a single Unit but located outside of the Boundaries of such Unit. Without limiting the generality of the foregoing, in the event of a casualty loss or damage, an Owner shall be responsible for the repair or replacement of any improvements that are not covered by the insurance required to be maintained by the Association pursuant to Article XV, Section 1(a). An Owner shall also maintain and keep in good repair at all times all plumbing lines and fixtures; heating, air-conditioning and ventilating systems and equipment; furnace and hot water heater; and electrical wires, conduits, systems, and fixtures serving only his or her Unit ("Individual Utilities") commencing at the point that the Individual Utilities leave the Common Utilities. An Owner shall not be deemed to own and shall have no obligation to maintain or repair utility pipes, wires, lines, conduits, or systems running through his or her Unit which serve one or more other Units ("Common Utilities"), which Common Utilities are General Common Elements to be maintained by the Association. Common Utilities shall not be disturbed or relocated by an Owner without the prior written consent and approval of the Board. An Owner shall do no act or work that will impair the structural soundness or integrity of the Building or impair the proper functioning of the Common Utilities, or impair any easement.

Section 2: Association. Except as hereinabove provided, the Association shall have the duty and responsibility for maintaining and repairing all of the Common Elements, including but not limited to maintaining and repairing the Limited Common Elements such as the drive lanes and ramps within the Garage Units and the access drives to the Garage Units from public streets. Maintenance of such Limited Common Elements shall include by example and not limitation the maintenance and repair of entry gates and ticket booths, the cleaning, restriping and sealing of the concrete surfaces, the repair of cracking or spalling of such surfaces, and snow removal. The cost of said maintenance and repair shall be a Common Expense allocated as provided in Article III, Section 8 of this Declaration.

ARTICLE XII. COMPLIANCE WITH PROVISIONS OF DOCUMENTS

Section 1: Compliance. Each Owner shall comply strictly with the provisions of the Documents and the decisions and resolutions adopted pursuant thereto as the same may be lawfully made and amended and/or modified from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due; for damages or injunctive relief, or both; and for reimbursement of all attorney's fees incurred in connection therewith, which action shall be maintainable by the Board or managing agent in the name of the Association on behalf of the Owners or, in a proper case, by an aggrieved Owner.

Section 2: Notice of Violation. In the event an alleged violation of the Documents is brought to the attention of the Board, the Board shall give written notice of violation to the Owner describing with reasonable particularity the alleged violation of the documents and granting the Owner a reasonable period of time, but not less than ten (10) days, within which to correct the violation. Notice of violation shall be given as provided in Article II, Section 30 of this Declaration.

Section 3: Penalties. The Board may levy reasonable fines for violation of the Documents, may impose charges for late payment of Assessments, and in the event of any litigation the Court

shall award to the prevailing party all costs and reasonable attorney's fees incurred in enforcing the Documents.

ARTICLE XIII. REVOCATION OR AMENDMENT OF DECLARATION

Except as otherwise provided in Article XVI hereinafter, this Declaration shall not be revoked unless all the Owners consent and agree to such revocation by instrument duly recorded. This Declaration shall not be amended except by a Super Majority Vote of the Owners; provided, however, the undivided interest in the Common Elements appurtenant to each Unit, as expressed in this Declaration, shall have a permanent character and shall not be altered without the consent of all of the Owners as expressed in an amended Declaration duly recorded.

ARTICLE XIV. ADDITIONS, ALTERATIONS, AND IMPROVEMENTS TO GENERAL COMMON ELEMENTS

Except for regularly scheduled maintenance, repair or replacement of the Common Elements, there shall be no capital additions, alterations, or improvements of or to the General Common Elements by the Association requiring an expenditure in any calendar year in excess of an amount equal to twenty-five percent (25%) of the Association's then-current annual budget without prior approval of the Owners by Super Majority Vote. The limitations set forth above shall not apply to any expenditures made by the Association for maintenance and repair of the Common Elements or for repair in the event of damage, destruction, or condemnation as provided in Articles XVI and XVII hereinafter.

ARTICLE XV. INSURANCE

Section 1: To be Obtained by the Association. The Association shall obtain and maintain at all times, to the extent obtainable at reasonable cost, policies involving standard premium rates established by the Colorado Insurance Commissioner and written with companies licensed to do business in Colorado and having a Best's Insurance Report rating of A & XV or better covering the risks set forth below. The Association shall not obtain any policy where: (i) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against a Mortgagee or Mortgagee's designee; or (ii) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the company's board, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent Mortgagees or Owners from collecting insurance proceeds. The types of coverage to be obtained and risks to be covered are as follows:

(a) All Risk Coverage. The Association shall obtain insurance providing all risk coverage or the nearest equivalent available for the full replacement cost, without deduction for depreciation, for all insurable improvements located on the general Common Elements, including all of the Units, and the other property of the Association in such amounts as it deems adequate to protect the property. The Association shall provide insurance on the Units that shall exclude all windows, screens, exterior doors, insulation, drywall and the finished surfaces of floors and ceilings within the Units (i.e., paint, wallpaper, paneling, other wall covering, title, carpet and any floor covering). The insurance obtained by the Association on the Units does not include improvements

and betterments installed by an Owner, personal property of the Owner, or liability for incidents occurring within the Units or through the Owner's personal actions. All policies shall contain a standard non-contributory mortgage clause in favor of each First Mortgagee, and their successors and assigns, which shall provide that the loss, if any thereunder, shall be payable to the Association for the use and benefit of such First Mortgagee, and their successors and assigns, as their interests may appear of record in the records of the office of the Clerk and Recorder of Larimer County, Colorado. The Association may also obtain any additional endorsements which it deems advisable and in the best interests of the Association by the Board.

(b) Casualty Insurance. The Association shall maintain broad form casualty loss insurance written on a special form or its equivalent on a replacement cost basis. If requested by a First Mortgagee or an insurer or guarantor of a first mortgage, such policy shall also include construction code endorsements such as demolition cost endorsement, a contingent liability from operation of building laws endorsement, and an increased cost of construction endorsement. Said casualty insurance shall insure any property, the nature of which is a Common Element, including all of the Units, any fixtures, equipment, or other property within the Units which are to be financed by a First Mortgagee, regardless of whether or not such property is a part of the Common Elements, together with all service equipment contained therein, in an amount equal to the full replacement value without deduction for depreciation. All policies shall contain a standard noncontributory mortgage clause in favor of each Mortgagee of a Unit which shall provide that the loss, if any, thereunder shall be payable to the Association for the use and benefit of the Owners and Mortgagees as their interests may appear. The Association shall hold any proceeds of insurance in trust for the use and benefit of the Owners and Mortgagees as their interests may appear. All Owners and all Mortgagees, if any, shall be beneficiaries of the policy in the same proportion as each Owner's appurtenant undivided interest in the Common Elements as set forth on Exhibit A attached hereto.

(c) Liability Insurance. The Association shall maintain public liability and property damage insurance in such limits as the Board may from time to time determine but not in an amount less than Two Million Dollars ($2,000,000) per injury, per person, per occurrence, and umbrella liability limits of Two Million Dollars ($2,000,000) per occurrence covering claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance, and other use of the Common Elements. Said policy shall also contain a "severability of interest" endorsement. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries, and death of persons in connection with the operation, maintenance, or use of the Common Elements and legal liability arising out of lawsuits. Such insurance shall also include protection against such other risks as are customarily covered with respect to condominiums similar in construction, location, and use.

(d) Workers' Compensation Insurance. The Association shall maintain workers' compensation and employers' liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(e) Officers' and Directors' Insurance. To the extent such insurance can be obtained at reasonable cost, the Association shall maintain officers and directors liability insurance and shall also maintain blanket fidelity bonds for all officers, directors, and employees of the Association and

all other persons handling or responsible for funds of or administered by the Association. If the managing agent has the responsibility for handling or administering funds of the Association, the managing agent shall be required to maintain fidelity bond coverage for its officers, employees, and agents handling or responsible for funds of or administered on behalf of the Association. Such fidelity bonds shall name the Association as an obligee and shall not be less than $50,000. Such bonds shall contain waivers by the issuers thereof of all defenses based upon the exclusion of persons serving without compensation from the definition of employees or similar terms or expressions. The premiums on all bonds required hereunder, except those maintained by the managing agent, shall be paid by the Association as a Common Expense.

(f) Other Insurance. The Association may obtain "all-in" insurance coverage and may obtain insurance against such other risks of a similar or dissimilar nature as shall be deemed appropriate, including Condominium Map or other glass insurance and insurance covering any personal property of the Association located on the Common Elements.

Section 2: Requirements of Insurance. All policies of insurance, to the extent obtainable, shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be cancelled or modified without at least thirty (30) days' prior written notice to all of the insureds, including the Association and all Mortgagees. If requested, duplicate originals of all policies and renewals thereof, together with proof of payment of premiums, shall be delivered to all Mortgagees at least thirty (30) days prior to expiration of the then current policies. The insurance shall be carried in blanket form naming the Association as the insured, as attorney-in-fact for all of the Owners, which policy or policies shall identify the interest of each Owner (Owner's name and Unit number designation) and First Mortgagee. The Association shall require the insurance company or companies providing the insurance coverage described herein to provide to each Owner a certificate of insurance in regard to such Owner's individual Unit.

Section 3: Attorney-in-Fact. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the Association, an authorized representative who shall have the exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish such purpose. All of the Owners hereby irrevocably constitute the Association as their true and lawful attorney-in-fact in their name, place, and stead for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses, the execution of all documents, and the performance of all other acts necessary to accomplish such purpose.

Section 4: To be Obtained by Owners. Insurance coverage on furnishings or other property belonging to an Owner and public liability coverage shall be the sole and direct responsibility of the Owner thereof, and the Board, Association, and/or the managing agent of the Association shall have no responsibility therefor.

Section 5: Prohibition of Certain Activities. Nothing shall be done or kept in any Unit or upon the Common Elements or any part thereof, which would result in the cancellation of the insurance maintained by the Association, or increase the rate of the insurance maintained by the

Association without the prior, written consent of the Board. Hazardous materials of any kind shall not be allowed within any Unit or upon the Common Elements.

ARTICLE XVI. DESTRUCTION, DAMAGE, OR OBSOLESCENCE

Section 1: Association as Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Condominium Project in the event of its destruction, damage, obsolescence, or condemnation, including the repair, replacement, and improvement of any Unit or Common Elements which has been so destroyed, damage, condemned, or become obsolete. Title to any Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association as their true and lawful attorney-in-fact in their name, place, and stead, for the purpose of dealing with the Condominium Project upon its damage, destruction, obsolescence, or condemnation as is hereinafter provided. As attorney-in-fact, the Association, by its president and secretary or other duly authorized officers and agents, shall have full and complete authorization, right, and power to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted. In the event that the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within thirty (30) days of either such event. At such meeting, a new attorney-in-fact shall be appointed to deal with the Condominium Project upon its destruction, damage, obsolescence, or condemnation. Said appointment must be approved by Majority Vote of the Owners. Repair and reconstruction of the Improvements as used in the succeeding paragraphs means restoring the Improvements to substantially the same condition in which they existed prior to the damage, with each Unit and the General and Limited Common Elements having substantially the same vertical and horizontal boundaries as before, and all Improvements being reconstructed or repaired in conformance with the Condominium Project's original architectural plan and scheme. The proceeds of any insurance collected shall be available to the Association for the purposes of repair, restoration, reconstruction, or replacement unless the Owners and First Mortgagees agree not to rebuild in accordance with the provisions hereinafter set forth.

Section 2: Insurance Proceeds Sufficient for Restoration. In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the Improvements, shall be applied by the Association as attorney-in-fact to such reconstruction and the Improvements shall be promptly repaired and reconstructed. The Association shall have full authority, right, and power as attorney-in-fact to cause the repair and restoration of the Improvements. Assessments for Common Expenses shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 3: Insurance Proceeds Insufficient for Restoration (Less Than 70 Percent). If the insurance proceeds are insufficient to repair and reconstruct the Improvements and if such damage is not more than seventy percent (70%) of the total replacement cost of all of the Units not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact using the proceeds of insurance and the proceeds of a Special Assessment to be made against all of the Owners and their Units. Such Special Assessment shall be a Common

Expense and made prorata according to each Owner's percentage share of Common Expenses and shall be due and payable within thirty (30) days after written notice thereof or as otherwise approved by the Board. The Association shall have full authority, right, and power as attorney-in-fact to cause the repair, replacement, or restoration of the Improvements using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the Special Assessment. The Special Assessment provided for herein shall be a debt of each Owner and a lien on his or her Unit. In addition thereto, the Association as attorney-in-fact shall have the absolute authority, right and power to sell the Unit of any Owner refusing or failing to pay such Special Assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Unit of the delinquent Owner shall be sold by the Association as attorney-in-fact pursuant to the provisions of this section. Assessments for Common Expenses shall not be abated during the period of insurance adjustment and repair and reconstruction. The delinquent Owner shall be required to pay to the Association the costs and expenses incurred in filing the notice, interest at a rate established by the Board on the amount of the assessment, and all reasonable attorneys' fees. The proceeds derived from the sale of such Unit shall be used and disbursed by the Association as attorney-in-fact in the following order: (a) for payment of the balance of the lien of any First Mortgagee; (b) for payment of taxes and special assessment liens in favor of any assessing entity and the customary expenses of sale; (c) for payment of unpaid Common Expenses and all costs, expenses, and fees incurred by the Association; (d) for payment of junior liens and encumbrances in the order of and to the extent of their priority; and (e) the balance remaining, if any, shall be paid to the Owner.

Section 4: Insurance Proceeds Insufficient for Restoration (More Than 70 Percent). If the insurance proceeds are insufficient to repair and reconstruct the Improvements and if such damage is more than seventy percent (70%) of the total replacement cost of all of the Units not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact using the proceeds of insurance and the proceeds of a Special Assessment to be made against all of the Owners and their Units; provided, however, that Owners by Super Majority Vote may agree not to repair or reconstruct the Improvements. In such event, the Association shall record a notice setting forth such fact or facts, and upon the recording of such notice by the Association, the entire Condominium Project shall be sold by the Association as attorney-in-fact pursuant to the terms of this section, free and clear of the provisions contained in this Declaration, the Condominium Map, Articles of Incorporation, and Bylaws. Assessments for Common Expenses shall not be abated during the period prior to sale. The insurance settlement proceeds shall be divided by the Association according to each Owner's interest in the Common Elements, and such divided proceeds shall be paid into separate accounts, each account representing one of the Units. Each account shall be in the name of the Association and shall be further identified by the Unit designation and name of the Owner. From each separate account, the Association as attorney-in-fact shall use and disburse the total account toward the partial or full payment of the lien of any First Mortgagee encumbering the Unit represented by such separate account. Thereafter, each account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire Condominium Project. Such apportionment shall be based upon each Owner's interest in the Common Elements. The total funds of each account shall be used and disbursed, without contribution, from one account to another by the Association as attorney-in-fact for the same purposes and in the same order as provided in Section 3 of this Article XVI. In the event that the damage is to be repaired or reconstruction is to be made, then the provisions of Section 3 of this Article XVI shall apply.

Section 5: Obsolescence (Renew/Reconstruct). The Owners by Super Majority Vote may agree that the Common Elements are obsolete and adopt a plan for the renewal and reconstruction. If a plan for the renewal or reconstruction is adopted, notice of such plan shall be recorded and the expense of renewal and reconstruction shall be payable by all of the Owners as a Common Expense, whether or not they have previously consented to the plan of renewal and reconstruction. The Association as attorney-in-fact shall have the absolute right and power to sell the Unit of any Owner refusing or failing to pay such Assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Unit of the delinquent Owner shall be sold by the Association. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at a rate established by the Board and all reasonable attorneys' fees. The proceeds derived from the sale of such Unit shall be used and disbursed by the Association as attorney-in-fact for the same purposes and in the same order as is provided in Section 3 of this Article XVI. Nothing contained in the foregoing shall be construed to prevent or prohibit the Association acting through the Board from renovating the Common Elements as part of scheduled or ongoing maintenance and repair.

Section 6: Obsolescence (Sell). The Owners by a Super Majority Vote may agree that the Units are obsolete and should be sold. In such instance, the Association shall record a notice setting forth such fact or facts, and upon the recording of such notice of the Association, the entire Condominium Project shall be sold by the Association as attorney-in-fact, free and clear of the provisions contained in this Declaration, the Condominium Map, the Articles of Incorporation, and the Bylaws. The sale proceeds shall be apportioned among the Owners on the basis of each Owner's interest in the Common Elements, and such apportioned proceeds shall be paid into separate accounts, each account representing one of the Units. Each account shall be in the name of the Association and shall be further identified by the Unit designation and name of the Owner. From each separate account, the Association as attorney-in-fact shall use and disburse the total account, without contribution from one account to another, for the same purposes and in the same order as provided in Section 3 of this Article XVI.

ARTICLE XVII. CONDEMNATION

If at any time during the continuance of the condominium ownership pursuant to this Declaration, all or any part of the Condominium Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply:

Section 1: Proceeds. All compensation, damages, or other proceeds therefrom ("the Condemnation Award") shall be payable to the Association. The Association shall represent the Owners in the condemnation proceedings or in the negotiation, settlements, and agreements with the condemning authority for acquisition of the Common Elements or any part thereof by the condemning authority. All of the Owners hereby irrevocably constitute and appoint the Association as their true and lawful attorney-in-fact, in their name, place, and stead, for the purpose of dealing with the Condominium Project upon such condemnation as herein set forth. In the event of a taking or acquisition of part or all of the Common Elements by a condemning authority, the Condemnation

Award shall be payable to the Association to be held in trust for the Owners and First Mortgagees as their interests may appear.

Section 2: Complete Taking.

(a) In the event the entire Condominium Project is taken or condemned or is sold or otherwise disposed of in lieu of or avoidance thereof, the condominium ownership pursuant to this Declaration shall terminate. The Condemnation Award shall be apportioned among the Owners on the same basis as each Owner's interest in the Common Elements; provided, however, that if a standard different from the value of the Condominium Project as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree, or otherwise, then in determining such shares, the same standard shall be employed to the extent it is relevant and applicable.

(b) On the basis of the principle set forth in the last preceding paragraph, the Association shall, as soon as practicable, determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner provided in Article XVI, Section 3 hereinabove.

Section 3: Partial Taking. In the event less than the entire Condominium Project is taken or condemned or is sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award as determined in this section. As soon as practicable, the Association shall reasonably and in good faith allocate the Condemnation Award between compensation, damages, or other proceeds and shall apportion the amounts so allocated among the Owners as follows: (a) the total amount allocated to taking of or injury to the Common Elements shall be apportioned among the Owners on the basis of each Owner's interest respectively in the Common Elements; (b) the total amount allocated to severance damages shall be apportioned to those Units which were not taken or condemned; (c) the respective amounts allocated to the taking of or injury to a particular Unit and to the Improvements an Owner has made within his or her own Unit shall be apportioned to the particular Unit involved; and (d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If the allocation of the Condemnation Award is already established in negotiations, judicial decree, or otherwise, then in allocating the Condemnation Award, the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be disbursed as soon as practicable in the same manner provided in Article XVI, Section 3 hereinabove.

Section 4: Reorganization. In the event a partial taking results in the taking of a complete Unit, the Owner thereof shall automatically cease to be a member of the Association; shall cease to hold any right, title, or interest in the remaining Common Elements; and shall execute any and all documents necessary to accomplish the same. Thereafter, the Association shall reallocate the ownership, voting rights, and assessment ratio in accordance with this Declaration at its inception and shall submit such reallocation to the Owners of remaining Units for amendment to this Declaration as provided in Article XIII hereinabove.

Section 5: Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article XVI hereinabove.

ARTICLE XVIII. GENERAL PROVISIONS

Section 1: Enforcement. Subject to the Dispute Resolution provisions of Article IV, Section 8 of this Declaration, enforcement of this Declaration shall be by appropriate proceedings at law or in equity against those Persons violating or attempting to violate any covenant, condition, or restriction herein contained. Such judicial proceeding shall be for the purpose of removing a violation, restraining a future violation, for recovery of damages for any violation, or for such other and further relief as may be available. Such judicial proceedings may be prosecuted by an Owner or by the Association. In the event it becomes necessary to commence an action to enforce this Declaration, the court shall award to the prevailing party in such litigation, in addition to such damages as the court may deem just and proper, an amount equal to the costs and reasonable attorney's fees incurred by the prevailing party in connection with such litigation. The failure to enforce or to cause the abatement of any violation of this Declaration shall not preclude or prevent the enforcement thereof or of a further or continued violation, whether such violation shall be of the same or of a different provision of this Declaration.

Section 2: Duration. This Declaration shall run with the Real Estate and all the Units, shall be binding upon all persons owning Units and any persons hereafter acquiring said Units, and shall be in effect in perpetuity unless amended or terminated as provided in this Declaration and CCIOA.

Section 3: Conflict. In the event of any conflict between the terms and provisions of this Declaration and the terms and provisions of the Articles of Incorporation, Bylaws, or Rules and Regulations of the Association, the terms and provisions of this Declaration shall control.

Section 4: Time. In computing any period of time prescribed or allowed by this Declaration, the date of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. For purposes of this Declaration, a day shall end at 5 p.m.

Section 5: Obligations Subject to Appropriation. If any Owner is a political subdivision of the State of Colorado, such Owner’s obligations hereunder shall be subject to annual appropriation of funds sufficient and intended for such purposes by such Owner’s governing body, in its sole discretion, as required by Article X, Section 20 of the Colorado Constitution.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed as of the day and year first above written.

WALNUT STREET 354, LLC,
a Colorado limited liability company

By: BOCO Holdings, LLC,
a Colorado limited liability company,
its Manager

By:_____
Joseph C. Zimlich, Manager

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by Joseph C. Zimlich, Manager of BOCO Holdings, LLC, a Colorado limited liability company, Manager of WALNUT STREET 354, LLC, a Colorado limited liability company.

Witness my hand and official seal.
My commission expires: _____.

_____
Notary Public

EXHIBIT A

Table of Interests

Unit No.	Ownership Interest and share of Common Expenses	Votes

EXHIBIT G
TO
CONSTRUCTION AND PURCHASE AGREEMENT

Form of Option Agreement

[Attached]

Upon recordation return to:
Real Estate Services
City of Fort Collins
P.O. Box 580
Fort Collins, CO 80522

OPTION AGREEMENT FOR EXCHANGE OF REAL PROPERTY

THIS AGREEMENT is made and entered into this ____ day of _____, 20__, by and between THE CITY OF FORT COLLINS, a Colorado municipal corporation, whose address is 300 LaPorte Avenue, Fort Collins, Colorado, 80521 ("City"), and _____, a Colorado _____, whose address is _____ ("Owner").

WITNESSETH:

For and in consideration of the promises of the parties in the Construction and Purchase Agreement dated _____, and other good and valuable consideration, the receipt and adequacy of which are hereby confessed and acknowledged, the parties agree to exchange certain real property at the option of the City subject to the terms and conditions set forth below.

1. Description of Real Property. The City is the owner of the real property described as _____ (the "City Unit"). The Owner is the owner of the real property described as _____ (the "Owner Unit"). The City Unit and Owner Unit are referred to together as the "Units". The Units include any improvements located therein, including all fixtures of a permanent nature and all other rights in and appurtenances to such Units.

2. Option Terms.

A. Subject to the terms and conditions of this Agreement, Owner grants to the City an option (the "Option") to exchange the City Unit for the Owner Unit. The term of the Option is 50 years.

B. The City may exercise the Option by delivery to Owner or Owner's representative, at the address set forth hereafter, a statement in writing signed by or on behalf of the City exercising the Option (the "Notice of Exercise"). Upon delivery of the Notice of Exercise, this Agreement shall become an agreement of purchase and sale of the Units between Owner and City.

3. Method of Conveyance. The Owner agrees to convey to the City, and the City agrees to acquire from the Owner, the Owner Unit subject to the terms and conditions as set forth herein, upon the City's exercise of its Option therefor. As consideration for such conveyance, the City agrees to convey to the Owner, and the Owner agrees to acquire from the City, the City Unit, subject to the terms and conditions set forth herein. Each Unit shall be conveyed at the time of

closing (the "Closing") by special warranty deed, free and clear of all liens and encumbrances, except and subject to the following:

A. All easements, covenants, reservations, restrictions, rights-of-way and other matters of record as of the date of the Closing (such exceptions, with recording information, to be appended to the Special Warranty Deed conveying such Unit);

B. Any restrictions, reservations or exceptions contained in any United States or State of Colorado patents of record;

C. All zoning and other governmental rules and regulations;

D. Statutory lien rights resulting from the inclusion of the Property in any special taxing district or improvement districts;

E. All oil, gas or other mineral reservations or exceptions of record;

F. General property taxes, assessments and charges, if applicable for the tax year of the subject closing (which shall be prorated as of the date of Closing) and said taxes, assessments and charges for all subsequent years; and

4. Title Insurance. Prior to Closing each party shall have the right to acquire a title insurance commitment for the Unit it is acquiring, and to inspect and object in its sole discretion to any defects in title disclosed by such title commitment. The title commitment obtained by either party must show that the other party has marketable title to its respective Unit, subject only to those items set forth in paragraph 3 above. In the event a party's title insurance commitment discloses title defects subject to which such party need not take title, or to which such party objects, written notice by such party shall be given to the other within fifteen (15) calendar days after receipt of the title insurance commitment (or any subsequent update or modification to such commitment). The other party shall cure such defect or objection within a reasonable amount of time, at its expense, without in any other manner affecting the terms of this Agreement. If any instrument or deposit is necessary in order to obviate a defect in or objection to title, the following shall apply: (a) any such instrument shall be in such form and shall contain such terms and conditions as may be reasonably required by the title insurance company so as to satisfy said company sufficiently for it to omit such defect or objection; (b) any such deposit shall be made with the title insurance company; and (c) the such party agrees to execute, acknowledge and deliver any such instrument and to make any such deposit. In the event said title insurance company refuses to omit any title defect or objection prior to the Closing, or in the event a party is unable through reasonable good faith efforts to cure any title objection, then the objecting party shall, at its election, have the right to accept such title as the other party is able to convey, without any additional consideration; or shall have the right to rescind this Agreement, and the parties shall be released from all obligations hereunder. Notwithstanding the foregoing, if one party is unable to convey marketable title to its Unit due to its own act or omission, such party shall be in default and shall continue to be liable hereunder. .

5. Inspection. Each party shall have the right to inspect the physical condition of the other party's Unit and the improvements located thereon, and any other matters which such party determines in its discretion may affect the other Unit or such party's intended use thereof, at such party's expense. Inspections may include, but shall not be limited to, inspections regarding compliance with any environmental protection, pollution or land use laws, rules or regulations. If a written notice of any unsatisfactory condition, as determined at the acquiring party's sole discretion, signed by such party, is not received by the other party on or before twenty (20) calendar days prior to Closing, the physical condition of such Unit and the improvements located thereon shall be deemed to be satisfactory to the acquiring party. If the acquiring party gives written notice of any unsatisfactory condition, signed by the acquiring party, to the other party on or before twenty (20) calendar days prior to Closing, the other party shall either cure such conditions or this Agreement may be terminated at the option of the party giving notice. Each party is responsible and shall pay for any material damage which occurs to the other party's Unit and the improvements located thereon as a result of such inspections.

6. "AS-IS" Nature of Sale. Except as otherwise stated herein, the parties agree that neither party has made, they do not make, and specifically negate and disclaim any representations, warranties, promises, covenants, agreements or guarantees of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, concerning their own Units and: (a) the value, nature, quality or condition of such Units; (b) the income to be derived from such Units; (c) the suitability of the Units for any and all activities and uses which the other party may conduct thereon; (d) compliance by either Unit, or of its operation and use, with all applicable statutes, laws, ordinances, rules or regulations of any governmental authority or body having jurisdiction; (e) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of either Unit; (f) the manner or quality of the construction or materials, if any, incorporated into the Units; (g) the manner, quality, state of repair or lack of repair of the Units; or (h) any other matter with respect to their respective Units. Each party further acknowledges and agrees that having been given the opportunity to inspect the other Unit before taking title to it, each party is relying solely on its own investigations and not on any information provided or to be provided by the other party. The parties further acknowledge and agree that to the maximum extent permitted by law, the exchange of the Units as provided for herein is made on an "AS IS" condition and basis with all faults. Notwithstanding the foregoing, each party represents to the other that it has no actual knowledge of any adverse material defects or facts which would be reasonably material to other party in determining whether to complete the transaction described in this Agreement.

7. Closing. Closing shall be held within sixty (60) days following delivery of the Notice of Exercise, at 2:00 p.m. at Land Title Company, 772 Whalers Way, Fort Collins, Colorado 80525, or at such other reasonable time, date or location as the parties may mutually agree upon.

8. Possession. Possession of each Unit shall be delivered to its acquiring party upon Closing.

9. Proration. Because the City is a public entity and not subject to taxation, any real property taxes, assessments and similar expenses imposed or accruing subsequent to the date of

closing on the City Unit shall be Owner's sole obligation. Closing fees shall be apportioned in accordance with local practice.

10. Remedies on Default. If either party fails to perform according to the terms of this Agreement, such party may be declared in default. The non-defaulting party may give written notice specifying such default to the defaulting party, and shall allow the defaulting party a period of thirty (30) days within which to cure the default. If the event the default is not corrected, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail itself of any other remedy at law or in equity.

11. Legal Fees and Costs. If either of the parties defaults in any of its covenants or obligations under this Agreement and the party not in default commences and prevails in any legal or equitable action against the substantially defaulting party, the defaulting party expressly agrees to pay all reasonable expenses of said litigation, including a reasonable sum for legal fees including attorneys' fees.

12. Governing Law. This Agreement is made in and shall be construed and interpreted in accordance with the laws of the State of Colorado.

13. Notices. Any notice or other communication given by either party hereto to the other relating to this Agreement shall be hand delivered or sent by registered or certified mail, return receipt requested, or by overnight commercial courier, addressed to such other party at their respective address as set forth below, and such notice or other communication shall be deemed given when so hand delivered, on the next day if sent by overnight courier, or on the third business day after when mailed.

If to City:

Real Estate Services Manager
City of Fort Collins
P.O. Box 580
Fort Collins, CO 80522

With a copy to:

City Attorney
City of Fort Collins
P.O. Box 580
Fort Collins, CO 80522

If to Owner:

With a copy to:

Either party may from time to time by written notice to the other designate another address for receipt of future notices.

14. Maintenance of the Property. Between the date of the Notice of Exercise and Closing, neither party shall cause or allow the creation of new encumbrances to title for its respective Unit, and shall maintain such Unit in its condition as of the date of the Notice of Exercise until Closing, subject to normal wear-and-tear and seasonal changes, and agrees not to commit or permit waste thereon.

15. Casualty. In the event that either Unit is substantially damaged by fire, flood, drought or casualty between the date of the Notice of Exercise and the date of Closing, this Agreement may, at the option of either party, be declared null and void and of no further force or effect; and the parties to this Agreement shall be released from all obligations hereunder.

16. Headings. Paragraph headings used herein are for convenience of reference and shall in no way define, limit or prescribe the scope or intent of any provision under this Agreement.

17. Terms Survive Closing. To the extent necessary to carry out all of the terms and provisions hereof, the said terms, obligations and rights set forth herein shall be deemed not terminated at the time of closing; nor shall they be necessarily merged with the various documents executed and delivered at such time.

18. Construction. Words of the masculine gender shall include the feminine and neuter gender and when the sentence so indicates, words of the neuter gender shall refer to any gender. Words in the singular shall include the plural and vice versa. This Agreement shall be construed according to its fair meaning, and as if prepared by both parties hereto, and shall be deemed to be and contain the entire understanding and agreement between the parties hereto. There shall be deemed to be no other terms, conditions, promises, understandings, statements or representation, expressed or implied, concerning this Agreement unless set forth in writing and signed by both parties hereto.

19. Time is of the Essence. It is agreed that time shall be of the essence of this Agreement and each and every provision hereof.

20. Recording; Binding Effect. The City will record this Agreement in the office of the Larimer County, Colorado, Clerk and Recorder. This Agreement and its terms and conditions will run with the Units and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

21. Assignment. This Agreement and the parties' rights and obligations hereunder shall not be assigned by either of the parties hereto without the prior written consent of the other party,

which consent shall not be unreasonably withheld. Any such assignment without the other party's prior written consent shall be deemed null and void and without any effect.

22. Authority. The persons who have executed this Agreement represent and warrant that they are duly authorized to execute this Agreement in their individual or representative capacity as indicated.

23. Facsimile Signatures. The parties agree that facsimile signatures shall be an acceptable means of executing this Agreement; however, Agreements executed with original signatures shall be provided to each party at closing.

24. Counterpart Signatures. This Agreement may be executed in as many counterparts as may be deemed necessary and convenient, and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument. In addition, this Agreement may be executed initially by facsimile counterpart copies, and upon receipt of the same, shall be deemed legally enforceable. Thereafter, original signatures shall be obtained and substituted for facsimiles.

25. Cooperation. The parties acknowledge that, due to the complexity of the transaction, certain necessary conveyances, easements, documents and other accommodations required to fulfill the intent hereof may have been omitted, overlooked, or may otherwise become necessary, and the parties agree to cooperate in good faith in executing such additional documentation or modifications of existing documentation to fulfill the parties' mutual intent hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

CITY:

THE CITY OF FORT COLLINS

By _____
Darin A. Atteberry, City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Assistant City Attorney

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this _____ day of , 20__, by Darin A. Atteberry, as City Manager of THE CITY OF FORT COLLINS, COLORADO, a Municipal Corporation.

WITNESS my hand and official seal.

My commission expires:

_____

Notary Public

OWNER:

_____

By: _____
[name, title]

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of_____, 20__, by_____, as _____, of_____, a Colorado_____.

WITNESS my hand and official seal.

My commission expires:

_____

Notary Public