

**PUBLIC OFFERING STATEMENT**  
**OF**  
**IMMOKOLEE COMMONS CONDOMINIUM**

**Public Offering Statement # \_\_\_\_\_**

**Delivered to: \_\_\_\_\_**

**Date of Delivery: \_\_\_\_\_**

**Delivered By: \_\_\_\_\_**

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**OF**  
**IMMOKOLEE COMMONS CONDOMINIUM**

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**EXHIBITS**

- Exhibit I. Declaration of Plan for IMMOKOLEE COMMONS CONDOMINIUM**
- Exhibit II. Purchase and Sale Agreement**

**Exhibit III. Warranty Deed**

**Exhibit IV. Limited Warranty Certificate**

**Exhibit V. Unit Inspection Form**

**Exhibit VI. 90 - Day Warranty Inspection Form**

**Exhibit VII. Budget**

**EVERY PROSPECTIVE PURCHASE SHOULD READ THIS DOCUMENT CAREFULLY  
FOR HIS OWN PROTECTION BEFORE SIGNING AN AGREEMENT OF SALE**

**PUBLIC OFFERING STATEMENT FOR IMMOKOLEE COMMONS CONDOMINIUM**

**NAME OF CONDOMINIUM: IMMOKOLEE COMMONS CONDOMINIUM**

**LOCATION OF CONDOMINIUM: IMMOKOLEE DRIVE, PORTSMOUTH, RHODE ISLAND**

**NAME OF DECLARANT: IMMOKOLEE COMMONS, LLC**

**ADDRESS OF DECLARANT: 1364 SMITH STREET  
NORTH PROVIDENCE, RHODE ISLAND**

**EFFECTIVE DATE OF  
PUBLIC OFFERING STATEMENT: March 2, 2022**

**Rhode Island Law requires that the original seller of Condominium Units disclose fully and accurately the characteristics of the Units being offered for sale. This Public Offering Statement is the means by which such disclosure is to be made.**

**(The following statements are made in compliance with the requirements of Section 34-36.1-4.03 and 34-36.1-4.04 of the Rhode Island Uniform Condominium Act [the "Condominium Act"]).**

**A. WITHIN TEN (10) DAYS AFTER RECEIPT OF THIS PUBLIC OFFERING STATEMENT, THE PURCHASER, BEFORE CONVEYANCE, MAY CANCEL ANY AGREEMENT OF SALE HE HAS HERETOFORE EXECUTED FOR THE PURCHASE OF A UNIT IN IMMOKOLEE COMMONS CONDOMINIUM (THE "CONDOMINIUM") FROM THE DECLARANT. IF THE PURCHASER ELECTS TO CANCEL THE AGREEMENT OF SALE FOR THE PURCHASE OF A UNIT PURSUANT TO THE IMMEDIATELY PRECEDING SENTENCE, HE OR SHE MAY DO SO BY HAND DELIVERING NOTICE OF CANCELLATION TO THE DECLARANT (IN WHICH CASE A RECEIPT SHOULD BE OBTAINED) OR BY MAILING THE NOTICE BY POSTAGE PREPAID UNITED STATES MAIL, RETURN RECEIPT REQUESTED. ANY SUCH CANCELLATION OF THE AGREEMENT OF SALE IS WITHOUT PENALTY AND ANY EARNEST MONEY DEPOSITS MADE BY THE PURCHASER BEFORE ANY SUCH CANCELLATION WILL BE REFUNDED PROMPTLY BY THE DECLARANT.**

**B. IF THE DECLARANT FAILS TO PROVIDE A PUBLIC OFFERING STATEMENT (AND ALL AMENDMENTS THERETO) TO A PURCHASER BEFORE CONVEYING A UNIT, THAT PURCHASER MAY RECOVER FROM THE DECLARANT, IN ADDITION TO ANY OTHER RELIEF, DAMAGES AS PROVIDED IN SECTION 34-36.1-4.08 OF THE CONDOMINIUM ACT, CONSISTING OF AN AMOUNT EQUAL TO TEN (10%) PERCENT OF THE SALE PRICE OF THE UNIT.**

**C. IF A PURCHASER RECEIVES THIS PUBLIC OFFERING STATEMENT MORE THAN TEN (10) DAYS BEFORE SIGNING THE AGREEMENT OF SALE, SUCH PURCHASE CANNOT CANCEL THE AGREEMENT OF SALE PURSUANT TO THE FOREGOING PROVISIONS.**

**The purchaser should inspect the Unit and Common Elements and obtain professional advice to be sure he or she has a clear understanding of what is being purchased.**

## **SUMMARY OF IMPORTANT CONSIDERATIONS**

**Following are important matters to be considered in acquiring a Condominium Unit. They are highlights only. The narrative sections should be examined to obtain detailed information.**

- 1. The Condominium will be governed by a Unit Owners Association. Each Unit Owner will have a vote on certain decisions of the Association and will be bound by all decisions of the Association including those with which he disagrees. See Narrative Section L of this Public Offering Statement.**
- 2. Certain decisions of the Association will be made by the Executive Board. See Narrative Section L of this Public Offering Statement and Article 4 of the Association By-Laws.**
- 3. The expenses of operating the Association will be paid by the Unit Owners on the basis of an annual budget. Each Unit Owner will pay an annual assessment which may be payable in monthly installments. A Unit Owner cannot reduce the amount of his assessments by refraining from use of the Common Elements. See Narrative Section N of this Public Offering Statement.**
- 4. If a Unit Owner fails to pay an assessment (or installment thereof) when due, the Association will have a lien against his Condominium Unit. Certain other penalties may also be applied. See Narrative Section N of this Public Offering Statement.**
- 5. The Declarant must pay assessments on unsold Condominium Units. See Narrative Section N of this Public Offering Statement.**
- 6. The Declarant will retain control of the Association until the earlier of (i) sixty (60) days after conveyance of eighty (80%) percent of the Eight (8) Units which may be created to Unit Owners other than the Declarant; (ii) two (2) years after the Declarant has ceased to offer Units for sale in the ordinary course of business (iii) two (2) years after any Special Declarant Rights to add any new Units was last exercised; or ten (10) years after the date of recording this Declaration. See Narrative Section L of this Public Offering Statement.**
- 7. A Managing Agent will perform the routine operations of the Association. See Narrative Section L and Section 4.2 of the Association By-Laws.**
- 8. The Declarant may rent unsold Condominium Units. The right of any other Unit Owners to rent his Unit is subject to certain restrictions (minimum term of one (1) year, not for transient or hotel purposes, not less than the entire Unit, required lease provisions). See Narrative Section J of this Public Offering Statement and Section 7.3 of the Declaration.**

**9. The Declarant may expand or contract the condominium or convert convertible land or space without the consent of any Unit Owner. See Narrative Section C of this Public Offering Statement and Article 9 of the Declaration.**

**10. The Units by and large are restricted to residential use. See Narrative Section K of this Public Offering Statement and Article 7 of the Declaration.**

**11. The Unit Owner may not alter the structure of his Unit or modify the exterior of his Unit without the approval of the Covenants Committee. See Narrative Section D of this Public Offering Statement and Sections 7.5 and 7.6 of the Association By-Laws.**

**12. The Association will obtain certain insurance benefiting the Unit Owner, but the Unit Owner should obtain other insurance on his own. See Narrative Section O of this Public Offering Statement and Article 9 of the Association By-Laws.**

**13. The Unit Owner will pay real estate taxes on his Condominium Unit. See Narrative Section P of this Public Offering Statement.**

**14. The Condominium is not subject to development as a time share condominium. See Narrative Section J of this Public Offering Statement and Section 7.1(k) of the Declaration.**

**15. The Condominium is subject to the Conditions of Final Approval of the Zoning Board of the Town of Portsmouth which limits the development to a maximum of eight (8) two (2) bedroom units, imposes buffers and set-backs, and other requirements as set forth in Exhibit E-1 to Exhibit E of the Declaration of Plan attached hereto. One of the requirements imposed requires the Association to provide for maintenance and cleaning of the catch basin and drain line located within the existing appurtenant drainage easement located on the adjacent property owned by George L. Kirk, Jr. with an address of 157 Immokolee Drive, Portsmouth, Rhode Island and being further identified as Portsmouth Assessors Map 36, Lot 10.**

## INTRODUCTION

**IMMOKOLEE COMMONS, LLC**, a Rhode Island limited liability company, ("Declarant"), presents its proposal for condominium ownership of certain real estate located in the Town of Portsmouth, County of Newport, State of Rhode Island, on Immokolee Drive. The Declarant proposes to construct in the first phase one (1) residential structure on the property containing two (2) Units. Declarant also proposes to construct in subsequent phases an additional six (6) Units but reserves the right not to construct any or all of said additional six (6) Units. The land and structures will constitute a condominium known as **IMMOKOLEE COMMONS CONDOMINIUM** ("Condominium"). Condominium Units will be offered by the Declarant for sale to the public.

This Public Offering Statement consists of two (2) parts, a narrative portion and an Exhibit portion. The Exhibits include legal documents which are required for the creation and operation of the Condominium, a projected budget for the Condominium, and copies of the unit Inspection Form and the Limited Warranty Certificate. The narrative portion of the Public Offering Statement is intended to summarize the significant features of the Exhibits and also to present other information of interest to the prospective purchaser.

Consequently, the Exhibits of this Public Offering Statement should be reviewed in depth, and if there should be any inconsistency between information in this part of the Public Offering Statement and information in the Exhibits, the Exhibits will govern. All of the Declarant's sales and other representatives are prohibited from changing any of the terms and conditions of the aforementioned documents or attempting to interpret their legal effect. Unless in writing and signed or initialed by the Declarant any such document changes shall have no force, effect or validity and shall not be binding upon the Declarant.

All Capitalized terms used in this Public Offering Statement and not expressly defined in this Statement shall have the same meanings as are ascribed to those terms in the Condominium Act or the Declaration and Association By-Laws, or both.

**A. THE CONDOMINIUM CONCEPT.** The term "Condominium" refers to a form of property ownership. Property which is owned as a Condominium contains two (2) distinct types of property – Units and Common Elements. Units are portions of a Condominium which are set aside for individual ownership. In the case of a residential Condominium such as **IMMOKOLEE COMMONS CONDOMINIUM**, the Units are the separate living quarters. Common Elements, on the other hand, are all portions of the Condominium which are not included within the Units. The Common Elements constitute the land and those portions of the structures which support, enclose or service the Units. Each Unit Owner owns an "undivided interest" in the Common Elements. An undivided interest is a fractional or percentage share of ownership of all of the Common Elements. In this Condominium, the undivided interest is a percentage and is hereinafter referred to as "Allocated Interests". The ownership of an undivided



interest gives the Unit Owner the right to participate in the control and management of all the Common Elements but such ownership carries with it the obligation of each Unit Owner to pay his share of the normal expenses of operating and maintaining all of the Common Elements. It is the ownership of an undivided interest in the Common Elements which sets condominium ownership apart from other forms of property ownership.

Certain Common Elements are designated "Limited Common Elements". A Limited Common Element is a portion of the Common Elements assigned to a particular Unit. The Unit Owner of the Unit to which a Limited Common Element is assigned has an exclusive right to use the Limited Common Element.

Certain Common Elements may be designated as "Reserved Common Elements". A Reserved Common Element is a portion of the Common Elements set aside for use by less than all of the Unit Owners not by the condominium instruments but, rather, by the Executive Board of the Association. For example, the Executive Board may reserve a portion of the Common Elements for use as storage space by designated Unit Owners. The Executive Board may, therefore, modify or terminate a Unit Owner's right to restricted use of a Reserved Common Element.

#### **B. CREATION OF THE CONDOMINIUM.**

1. **Method.** The Condominium will be created by recording the Condominium Instruments attached as Exhibit 1 to this Public Offering Statement. If the Declarant makes additional amendments (not shown here) after a purchaser signs a contract to purchase a condominium Unit but before settlement, the Declarant will send copies of the amendment to the purchasers as recorded, within ten days after the recordation date.

2. **The Declaration.** The essential function of the Declaration is to describe property rights within the Condominium. The Declaration is more detailed than this Public Offering Statement about the Units and the Common Elements (including the Limited Common Elements). The Declaration creates the Condominium, establishes the boundaries of the Units and assigns the common element interest in the common elements appertaining to each Unit. In addition, the Declaration established special property rights within the Condominium, such as limited common elements and easements (both discussed in following sections). Although the Declarant intends to sell all the Units, the Declaration reserves for the Declarant the right to rent any Units not sold.

The Declaration also contains definitions, describe certain easements and contains various other provisions. Technically, the By-laws and the Plats and Plans described below are integral parts of the Declaration. The Declaration will be recorded among the Land Evidence Records of the Town of Portsmouth. A copy of the Declaration is attached to this Public Offering Statement as part of Exhibit 1.

3. **The By-Laws.** The essential function of the By-Laws is to provide for the manner in which the Condominium is to be governed. The Termination of Control by Declarant of Association is described, and so is the manner in which the Condominium will subsequently be governed by the Unit Owners Association, its

Executive Board, and committees and a Managing Agent to be selected by the Board. There are various other provisions including, among other things, restrictions on the use of the Units and Common Elements, the manner of setting the Association's budget, enforcing the collection of assessments and insurance requirements. The By-Laws are attached as Exhibit B to the Declaration in this Public Offering Statement.

4. **Plats and Plans.** The essential function of the Plats and Plans is to graphically depict the Condominium. The Plats show the location of the buildings and improvements on the land. The Plans show the location of the Units in the buildings and set forth the elevations of the Unit boundaries. Photo-reduced copies of the Plats and Plans are included as Exhibit G to the Declaration in this Public Offering Statement, but you can examine full-size copies at the Condominium, at the office of the Declarant or at the office of the Town Clerk of the Town of Portsmouth when recorded.

5. **Amendments.** Under the Condominium Act, some amendments to the condominium instruments can be made by the Declarant or certain Unit owners unilaterally. Other amendments require the written consent of Unit Owners with two-thirds of the votes in the Unit Owners Association. The consent of the Declarant, Mortgagees and/or particular Unit Owners is required for certain amendments by Article 11 of the Declaration and Article 13 of the By-Laws.

C. **GENERAL DESCRIPTION OF THE CONDOMINIUM.** The Condominium is located on a parcel of land containing approximately 2.95 acres owned by the Declarant in the Town of Portsmouth. The entire 2.95 acre site is being dedicated to the Condominium by the Declaration. However, Declarant has reserved the right to convert or withdraw part of the Common Elements.

The Declarant has divided the site into section or phases. Phases are subject to change by Declarant. The Declarant will construct two (2) Units initially in Phase I. Later, the Declarant intends to convert a portion of the Common Elements to use for Buildings containing Units. These conversions will be done in the remaining Phases in successive stages. In Phase I, the Declarant plans to construct one (1) building containing two (2) Units. Declarant intends to provide at least one (1) garage and one (1) surface parking space in Phase I for each Unit.

Subsequent Phases are planned to include three (3) buildings compatible in size, quality of construction and architectural style with the building being constructed in Phase I and will have one (1) garage for two cars for each Unit. The Limited Common Elements created in subsequent phases will be of the same general types and sizes as the Limited Common Elements within Phase I. The total number of Units planned for all phases will be eight (8) Units. The maximum number of Units per acre is (2.71) Units per acre. The Declarant does not intend to rent any of these Units but may do so if market conditions so warrant.

As Units are added to the Condominium, the Percentage Interest appurtenant to each Unit will be reduced. Assuming the construction of eight (8) Units the change in Percentage Interest which will occur for each type of Unit is as follows:

<b>Completion of PHASE I 50%</b>	<b>Maximum 8 Units 12.5%</b>	<b>Change  75%</b>
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**All Units constructed in future phases will be subject to the same restrictions in the Declaration affecting use, occupancy, selling or leasing of Units.**

**The Buildings or other improvements constructed after Phase I are expected to be located generally as shown on the "RECORD OF SURVEY MAP – PHASE 1 IMMOKOLEE COMMONS CONDOMINIUM OWNER OF RECORD: IMMOKOLEE COMMONS LLC 1364 Smith Street, North Providence, RI 02911 PROJECT APPLICANT: IMMOKOLEE COMMONS LLC 1364 Smith Street, North Providence, RI 02911 PROJECT LOCATION: 65 Immokolee Drive AP 36 Lot 60 Portsmouth, RI 02871 JOHN BRAGA & ASSOCIATES, INC. Civil Engineers – Land Surveyors PO Box 944 Portsmouth, R.I. 02871-0919 Phone (401) 683-0101" recorded on March 2, 2022; (Exhibit G to Declaration); however, the Declarant cannot guarantee or assure the exact location of Buildings or other improvements in future phases. The proportion of Limited Common Elements to Units constructed after the first phase will be substantially similar to the proportion established by the first two (2) Units. All assurances made in this Paragraph C are made by the Declarant and can be relied upon only if the Declarant exercises the development rights reserved.**

**It is the definite intention of the Declarant to complete all Phases of the project as planned: the Declarant is under no obligation to do so, however, and development may stop at any stage short of completion of all the Phases and the land may be put to other uses and/or sold. Should the development not be carried out as intended, the Condominium will, nevertheless, constitute a complete community, albeit a smaller one than originally planned. Phase I began construction in 2021, and is scheduled to be completed in March, 2022. As each Phase is completed, another Phase is scheduled to commence construction. Completion of all Phases is scheduled for 2023. However, this schedule depends on the sale of the Units. In any event, the addition of subsequent Phases, if any, must occur within ten (10) years of the date of the recording of the Declaration.**

**The Declarant has also reserved the right to contract the Condominium at any time within ten (10) years of the date of the recording of the Declaration, without the consent of any Unit Owner. The Condominium may be contracted by withdrawing from the Condominium any portion described as Withdrawable Land in Exhibit F to the Declaration and shown on the Record of Survey Map, except that no land may be withdrawn after a Unit located therein has been conveyed to a Unit Owner. Subject to this limitation and to applicable land use restrictions, any land or buildings within the Withdrawable Land may be sold and/or put to any use whether or not originally contemplated by the plan of condominium development.**

**The Declarant has also reserved the right to convert a part of the Common Elements by exercising certain retained rights, without the consent of any Unit Owner, into Units, Common Elements and Limited Common Elements. The Declarant may**

exercise his rights to convert the Convertible Land within ten (10) years of the date of the recording of the Declaration: however, if the Declarant does nothing prior to the expiration of his conversion rights, the Convertible Land remains Common Elements of the Condominium. The land constituting the Convertible Land is described in Exhibit F to the Declaration. Any substantial changes in the plan approved by the Town of Portsmouth will require its approval.

The Units in the Condominium are restricted to residential use except that the Declarant may use Units owned or leased by the Declarant as models, management offices, sale offices or customer service offices. The restrictions on the uses of Units are set forth in Article 7 of the Declaration.

A garage for each Unit is part of the Unit.

The Declaration, a copy of which is attached as Exhibit I to this Public Offering Statement, is the legal document which creates the Condominium. The Declaration becomes effective when recorded in the Town Clerk's Office of the Town of Portsmouth in Newport County, State of Rhode Island. The Declaration establishes the boundaries of the Condominium as a whole as well as the boundaries of and percentage of Allocated Interest appertaining to each Unit. In addition, the Declaration establishes special property rights within the Condominium, such as Limited Common Elements and easements (both discussed in following sections).

The Declarant's right to expand, convert and contract the Condominium are created by the Declaration. Expansion, conversion or contraction is accomplished by the Declarant's amendment of the Declaration. The form of amendment which will be used to add Phase Two and subsequent Phases is attached as Exhibit II to this Public Offering Statement. Other amendments of the Declaration may be accomplished by the vote of at least sixty-seven (67%) percent of all Unit Owners, except that amendments will require the approval of the Declarant until Termination of Control by Declarant of Association.

**D. INDIVIDUAL UNITS.** Generally speaking, each Unit will consist of the space bounded by the walls, floor and ceiling of the Unit. The Unit will also include any floor covering (carpet, tile, etc.), wallboard and wall covering, exterior doors and windows, the mechanical room with any portions of heating and air-conditioning apparatus which serve only that Unit, and any portion of the plumbing, electrical and mechanical systems serving only that Unit. Units with two (2) bedrooms will be offered. Although the number of Units in a specific building may vary slightly, the Unit will be substantially the same.

All Units which may be constructed in any Phase will be substantially complete prior to the closing of any Units purchased in that Phase to the extent required by Section 34-36.1-4.20 of the Act.

**Declarant has reserved the right to change the floor plan for Units in subsequent phases. Consequently, the above description of the square footages and Units in subsequent phases may change from time to time.**

**The Declarant, at the request of a Purchaser of certain adjoining Units on the same floor, may agree to remove, modify or relocate the partition between such Units. Such an agreement would not, however, relocate the boundaries of the two (2) Units, reduce the number of Units (by combining the two (2) adjoining Units) or affect the Common Element Interest of the two (2) Units. In addition, purchasers may, after settlement, with the permission of the Executive Board, combine two (2) adjoining Units if they wish to do so.**

**E. COMMON ELEMENTS. The Common Elements constitute all of the Condominium other than the Units. The following items are the major Common Elements of the Condominium: all of the land, the airspace around and above the Units, the supporting structure of the buildings, exterior walls, walls separating Units, portions of plumbing, electrical, heating, mechanical and air conditioning systems serving more than one Unit, lobbies, hallways, stairs, surface and parking areas.**

**A deck, porch, bulkhead and steps attached to a Unit is a Limited Common Element which means that the right to exclusive use of the Limited Common Element is reserved to the Unit Owner of that Unit. The driveway of each Unit is a Limited Common Elements for the exclusive use as a parking space by the Unit Owner.**

**As indicated above, each Unit has an appurtenant Allocated Interest. The Allocated Interest assigned to each Unit is based on the number of units. The Allocated Interest is calculated by dividing 1.0000 by the eight (8) Units in the Condominium. The Allocated Interest appertaining to each Unit is listed in Exhibit C to the Declaration which is attached to this Public Offering Statement.**

**If the Condominium is expanded by addition of Units in subsequent Phases, the Allocated Interest of all Units will be recalculated on the basis of the eight (8) Units. This recalculation will reduce the percentage of Allocated Interest appertaining to each Unit.**

**The water charges for the Unit will be billed to the Unit Owner.**

**The electrical system for the buildings is designed for individual metering. Each Unit Owner can, therefore, control the electricity used in the Unit and electricity charges for each Unit will be billed to and paid by each Unit Owner. The electricity charges for the Common Elements will be a Common Expense included in the monthly assessment.**

**Each Unit has an individual heating system and may have an individual cooling system. Each Unit Owner will be responsible for the cost of fuel for such systems.**

**F. THE DECLARANT.** The Declarant, Immokolee Commons, LLC, is a Rhode Island limited liability company. James R. Barrows and Jason Pannone are members of Immokolee Commons, LLC

James is a graduate of State University of New York at Plattsburgh and Bryant University in 1981 and 1985 respectively. James is a Certified Public Accountant and has been involved in the real estate industry since 1986. James began his real estate career with Wildfield Associates, Inc. as the Vice President of Finance. The company was responsible for building Northgate Condominiums and Clarke Farm Condominiums in Narragansett, RI. In addition, the company was involved with the construction of North Farm Condominiums in Bristol, RI and Cutting Cottages Condominiums on Block Island, RI. In 1991 James joined LeBlanc Homes, Inc. as Vice President of Finance. LeBlanc Homes has built thousands of homes and condominiums throughout Rhode Island, Connecticut and Massachusetts. In 1996 LeBlanc Homes was acquired by Pulte Homes, Inc., the largest home builder in the country. James served as co-President of the Rhode Island office until 2001 when he formed Belmont Homes, Inc in Connecticut. Belmont Homes, Inc. built single-family homes in Northeast Connecticut. In 2008 James entered the public accounting realm and in 2015 opened Barrows & Co., Inc. (Now Barrows Greenfield & Co., Inc.), a Rhode Island Certified Public Accounting firm in which he serves as president.

Jason is a graduate of the University of Rhode Island and is the Vice President and a Principal of Bentley Builders, LLC located in Warwick, RI. Jason has worked over 20 years in the construction industry and brings a wealth of knowledge to the team building Immokolee Commons Condominiums. Some of the projects that Jason has worked on and overseen are the Rhode Island Fire Academy in Exeter, RI, the RI Department of Transportation maintenance facility in Portsmouth, RI, the Dr. Johannes Virks Building in Cranston, RI, the South Killingly Fire Station in Killingly, CT, the office renovation work for Pannone, Lopes, Devereaux & O'Gara in Johnston, RI, the office renovations for KPMG in Providence, RI, renovations to the Glaxo Smith Kline building in Lincoln, RI, building upgrades at Women and Infants Hospital in Providence, RI, South County Hospital in Wakefield, RI and Butler Hospital in Providence, RI. In addition, Jason has worked on and overseen construction at the Community College of RI in Warwick, RI, Brown University in Providence, RI and the University of Rhode Island in Kingston, RI. Jason has also been instrumental in the building of the Faces Of the Rainforest exhibit at Roger Williams Park Zoo in Providence, RI and the Fairfield Inn & Suites in South Kingstown, RI and Somerset, MA.

**G. TERMS OF THE OFFERING.** Offering prices for all Units in the Condominium have been tentatively established at this time and will be subject to change at any time prior to execution of Purchase Agreements for individual Units. Different purchasers may pay different prices for similar Units at the sole discretion of the

**Declarant. The initial offering prices for the various Units may be obtained from the Declarant.**

**A Unit purchaser may apply for financing from any lender or may pay all cash at settlement. The Declarant is not obligated to assist a purchaser in obtaining financing.**

**In addition, the initial Purchaser will be required to make a non-refundable initial capital contribution to the Association in the amount of Two Hundred Fifty and 00/100 (\$250.00) Dollars. The general purpose of the contribution is to provide for certain prepaid items, initial equipment, supplies, organization costs, and other start-up costs, working funds and for such other purposes as the Executive Board may determine.**

**At closing, the purchaser will be required to pay, in addition to the purchase price of the Condominium Unit and any additional options, the closing costs which are identified in the Purchase Agreement. Owner's title insurance will be available to the purchaser at additional cost.**

**A copy of the Purchase and Sale Contract used by the Declarant is attached hereto as Exhibit II and a copy of the Warranty Deed to be given to a Purchaser is attached hereto as Exhibit III. Any deposit made in connection with the purchase of a Unit will be held in an escrow account until closing and will be returned to the purchaser if the purchaser cancels the contract pursuant to 34-36.1-4.08 of the General Laws of Rhode Island which provides as follows: "Unless a purchaser is given the public offering statement more than ten (10) days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within ten (10) days after first receiving the public offering statement." The name and address of the escrow agent is Immokolee Commons, LLC, 1364 Smith Street, North Providence, Rhode Island.**

**All deposits shall be credited against the purchase price at closing, paid over to the Declarant upon a breach of the Purchase and Sale Contract by the purchaser or returned to purchaser in the event the contemplated transaction shall not be completed by the Declarant for any reason.**

**Although closing may be delayed by events not within the Declarant's control, closing will ordinarily occur within seven (7) days after the Unit is ready for occupancy. The purchaser's deposit will be held in an escrow account until settlement. If delivery of the Unit is not made within the period set forth in the Purchase Agreement due to circumstances within Declarant's control, the purchaser may terminate the contract or proceed with the purchase when the Unit is complete. If delivery is not made within the period set forth in the Purchase Agreement due to circumstances beyond Declarant's control, the delivery date shall be extended for a period of not more than 120 days and purchaser may not cancel the contract. If the purchaser fails to make timely and proper application for a loan or fails to complete settlement on a Unit as required, the**

**Declarant may cancel the Purchase Agreement and keep all sums deposited by the purchaser in connection with the Purchase Agreement.**

**H. ENCUMBRANCES.** The Condominium will be subject to the normal utility easements for water, sewer, electric and telephone lines. In addition, the Condominium will be subject to certain easements created by the Declaration and by the Condominium Act. These easements are:

**1. Easement for Encroachments.** By virtue of this easement, Unit Owners and the Association are protected in the event that a Unit or Common Element encroaches upon another Unit or Common Element.

**2. Easement to Facilitate Sales.** The Declarant may use any Units in the Condominium owned or leased by Declarant as models, management offices, sales offices or customer service offices and may place advertising signs anywhere on the Condominium. Declarant also may reserve parking spaces for sales, construction, management and customer service purposes. This easement continues until the Declarant has conveyed all Units in the Condominium to Unit Owners other than the Declarant.

**3. Easement for Ingress and Egress.** Each Unit Owner has a right of access to the Common Elements, subject to rules, regulations and restrictions established by the Association.

**4. Easement for Access to Units.** Authorized representatives of the Association, including the Declarant and the Managing Agent, may enter any Unit to the extent necessary to correct conditions threatening other Units or the Common Elements, to make repairs to Common Elements which are accessible only from the Unit, or to correct conditions which constitute violations of the Declaration, By-Laws or Rules and Regulations. Notice must be given to the Unit Owner prior to entry except in emergencies when a Unit may be entered without notice. In the event of violation of the Declaration, By-Laws and Rules and Regulations, the violation may be corrected without the consent of the Unit Owner, and the Unit Owner may be charged with the resulting expense.

**5. Easement for Support.** Each Unit Owner has the benefit of a restriction upon any action of a neighboring Unit Owner, or of the Association with respect to the Common Elements, which would endanger the stability or safety of his Unit.

**6. Easement to Facilitate Conversion and Expansion.** Pursuant to Section 34-36.1-2.16 of the Condominium Act, the Declarant has a transferable easement over and on the Common Elements for the purpose of making improvements on the submitted land and on any additional land, and for the purpose of doing all things reasonably necessary and proper in connection therewith.



**7. Utility Easements.** The land is subject to utility easements shown on the Record of Survey Map and described in Exhibit E to the Declaration. These easements include the usual easements for telephone, electric, sewer, gas and water pipes, wires and service lines. Additional utility easements may be granted by the Declarant or the Association.

**8. Encumbrances on Title.** The land is subject to the encumbrances shown on Exhibit E to the Declaration. Prior to Termination of Special Declarant Rights, the Declarant, may, and subsequent thereto the Executive Board may, grant such easements, licenses and servitudes as may be necessary or beneficial to the proper operation of the Condominium. The Condominium is presently subject to the liens of a mortgage securing a loan by which the Declarant acquired the property and is financing the construction of improvements. The Declarant is required by law to release the lien of any loans on any Unit to be conveyed. Each Unit will be conveyed to a Purchaser free of any liens other than those placed by the Purchaser and those which are for taxes or assessment which are not yet due and payable.

**I. RESTRICTIONS ON TRANSFER.** There are no restrictions on the transfer or resale of a Unit by the Unit Owner.

**J. RESTRICTIONS ON LEASING.** There are restrictions on the leasing of a Unit by the Unit Owner. No Unit may be leased more than once each calendar year other than Units owned by the Declarant or by certain Mortgagees. No Unit may be leased for hotel or transient purposes. No portion of a Unit (less than the entire unit) may be leased for any period. All leases must be written and must provide that failure to comply with the Declaration, Association By-Laws, and Rules and Regulations constitutes a default under the lease. No Unit may be subject to a timesharing or similar form of ownership on a periodic or revolving basis.

**K. USE OF UNITS AND COMMON ELEMENTS.** The Units shall be occupied and used by the respective Unit Owners. Article 7 of the Declaration imposes various additional restrictions on the use of the Units and Common Elements which are summarized as follows:

- 1. No more than two persons may occupy a bedroom.**
- 2. Nothing shall be done or kept that would increase the rate of insurance or cause cancellation of insurance and no waste will be committed.**
- 3. No immoral, improper, offensive or unlawful use shall be permitted and all valid laws, rules, regulations shall be complied with.**
- 4. No Unit Owner shall obstruct, place anything on or in the Common Elements and nothing shall be altered or constructed in or removed from the Common Elements, without the approval of the Executive Board.**

5. Trailer, trucks (except pick-ups), campers, recreational vehicles, boats and other large vehicles may not be parked on the Property, except for temporary loading or unloading; no vehicles without current registration plate may be kept; and only light maintenance, not repairs, of vehicles is permitted.

6. No animals, livestock, poultry or reptiles of any kind may be kept, except dogs, cats or caged birds. Such pets must be registered with the Association and kept in accordance with the Declaration and Rules and Regulations.

7. No signs can be displayed, except signs posted by Declarant for promotional or marketing purposes and a single small non-illuminated name sign on the door to a Unit. These provisions do not apply to a Mortgagee in possession of a Unit as a result of a foreclosure, judicial sale or a proceeding in lieu of foreclosure.

8. No Unit Owner may place anything on the Common Elements.

9. The Unit Owner shall maintain his Unit in good order and repair, including cleaning and replacing glass panes in any door or window.

10. The Unit Owner shall be responsible for the cleanliness of the garage, patio, porch and deck serving such Unit.

11. Each Unit and Common Element shall be occupied and used in accordance with the Rules and Regulations attached to the Association By-Laws and as may be adopted from time to time by the Executive Board.

The restrictions on use and the Rules and Regulations are set forth in the Declaration and Association By-Laws and the Purchaser should examine those documents for the exact wording of those provisions.

L. UNIT OWNERS ASSOCIATION. The IMMOKOLEE COMMONS CONDOMINIUM Association is the organization responsible for governing the Condominium. Each Unit Owner is entitled to the number of votes determined by multiplying one (1) times the Allocated Interest for such Unit.

All of the normal operations of the Association will be accomplished under the direction initially of a three (3) member Executive Board which will eventually become a five (5) member Executive Board. The Unit Owners will participate directly in the important policy decisions of the Association (e.g., whether the Association should reject the annual budget proposed by the Executive Board).

The Executive Board may employ a Managing Agent to act in its behalf in the performance of all duties and services as it may lawfully delegate. A Managing Agent will be a qualified person, firm or corporation. The Executive Board will decide whether it shall manage the Association or whether it shall employ a Managing Agent. The Executive Board may change its method of management at any time.

**A Managing Agent for the Condominium has not yet been selected, but the Executive Board appointed by the Declarant will act on behalf of the Association to initially employ a Managing Agent if it decides to employ a Managing Agent.**

**Initially, there shall be three (3) members of the Executive Board who will be appointed by the Declarant. The purpose of the Declarant's retaining control of the Executive Board in the early stages of the Condominium's existence is to ensure the stability of the Association and to administer the Condominium's affairs until the new Unit Owners become familiar with the project. The Declarant may retain control of the Executive Board until Termination of Control of Declaration of Association as defined in Section 2.2(v) of the Declaration, provided, however, that not later than sixty (60) days after conveyance of twenty-five (25%) percent of the eight (8) Units which may be created to Unit Owners other than the Developer, two additional members of the Executive Board must be elected by Unit Owners other than the Developer. After termination of the Declarant's control of the Executive Board, Members of the Executive Board will be elected by the Unit Owners.**

**The Executive Board elects the officers of the Association. The officers are a President, Vice President, Secretary, Treasurer and any other officers the Executive Board Members deem necessary. The President and Vice President must be Unit Owners or persons designated by the Declarant during its control period.**

**The Executive Board also appoints a three member Covenants Committee whose function it is to regulate the external appearance, use and maintenance of the Common Elements. The Covenants Committee has the authority to prevent a Unit Owner from taking actions which are inconsistent with the general plan for design, appearance, use or maintenance of the Common Elements. Decisions of the Covenants Committee may be appealed to the Executive Board. The Covenants Committee may also interpret the condominium instruments, Rules and Regulations and resolutions when requested to do so.**

**The operation of the Association is governed by the Association By-Laws. The By-Laws will be recorded in the Portsmouth Land Evidence Records along with the Declaration at the time the Condominium is created. In addition to provisions for an Executive Board, Managing Agent and officers as discussed above, the By-Laws provide for annual and special meetings, common expense assessments, insurance, and numerous other matters affecting the occupancy and operation of the Condominium. A copy of the By-Laws is attached as Exhibit B to the Declaration.**

**The By-Laws may be amended by agreement of the Unit Owners casting not less than sixty-seven (67%) percent of the votes in the Association, except that during the period when the Declarant controls the Executive Board, no amendment may be made without the Declarant's approval and no amendment affecting the rights of a first Mortgagee shall be made without the Mortgagee's consent.**

**M. SURROUNDING AREA.** The Condominium's geographic position makes the Condominium easily accessible from most places in Rhode Island. The Portsmouth area enjoys a reputation for its recreational assets. The Condominium is less than ten (10) minutes by automobile from major regional shopping centers located at Middletown and Newport, Rhode Island. Various small shopping centers and individual stores are located within a fifteen (15) minute drive.

The Condominium is favorably located in relation to travel time to downtown Providence. You can be downtown in approximately forty (40) minutes.

The Condominium is served by Portsmouth Public Schools. Churches and many recreational facilities are located nearby. Beaches are located within a fifteen minute drive.

The zoning of the immediate neighborhood of the Condominium, established by the Town of Portsmouth, is residential and/or commercial.

**N. FINANCIAL MATTERS.** As indicated above in the Unit Owners Association section, Unit Owners will be assessed to obtain the funds necessary to meet the budget of the Association. The assessments will be made on an annual basis but payment of the assessments will be on a monthly basis. On the first day of each month each Unit Owner will pay an installment of one-twelfth (1/12) of the amount of the annual assessment.

The amount assessed against each Unit will be based on the Common Expense Liability appertaining to the Unit. Each Unit Owner will be responsible for payment of that percentage of the total annual budget which is equal to the Allocated Interest appertaining to his Unit. For example, if a Unit has a .2000 Allocated Interest the Unit Owner will be assessed an amount equal to twenty (20%) percent of the total annual budget. The Declarant will pay full Common Expense assessments on all unsold completed Units in each Phase, commencing when such Phase is added to the Condominium.

The budget will cover all anticipated Common Expenses for the upcoming fiscal year. The budget will also include whatever amount the Executive Board considers necessary as an adequate reserve to provide for unforeseen contingencies, working capital and repair or replacement of Common Elements.

The Declarant has prepared budgets for the first year of the Condominium's operation and for the operation of the eight (8) Units. A copy of the budget is attached to this Public Offering Statement as Exhibit VII. The budget figures are, of course, estimates and the Declarant cannot be certain that sufficient funds have been budgeted to cover all Common Expenses that may be incurred. The figures were obtained, however, with the assistance of a condominium management company and the Declarant believes that the figures represent the best estimates obtainable. In the event that insufficient funds are budgeted for any given fiscal year, the Executive Board

may levy a special assessment to make up the budget deficit. Any special assessment will be payable by Unit Owners either in a lump sum or in installments, as the Executive Board determines.

The Declarant has estimated that with the construction of the First Phase I, the Condominium assessments as shown in Exhibit VII will be sufficient to meet the Common Expenses of the Condominium.

The Association has not been funded so a current balance sheet would reflect the Assets are -0- and the Liabilities are -0-. Also, for the same reason, there is no current budget for the Association.

Although normal Common Expenses are apportioned among all Unit Owners, certain Common Expenses will be payable in their entirety by individual Unit Owners. If any additions, alterations or improvements to the Common Elements are requested by certain Unit Owners and result in benefit to only those Unit Owners, the cost of the addition, alteration or improvement may be charged on an individual basis to the benefited Unit Owners.

A Unit Owner must pay directly all of the costs of maintenance and repair for his own Unit. The charges for utilities are separately metered to each Unit. The electricity charges for the Common Elements will be Common Expenses. The charges for water and sewage will be billed to the individual Unit Owners by the utility and the Town.

All of the amounts assessed against a Unit give rise to a lien on that Unit. Recording of the Declaration constitutes record notice and perfection of the lien. The Unit Owner cannot dispose of his Unit free of the lien until the lien is satisfied by payment of the assessments secured by the lien. The Association may obtain payment of past due assessments by foreclosure of the lien (resulting in a forced sale of the Unit) or by suing the Unit Owner. If any assessments are past due, the Executive Board may accelerate the payments (i.e. declare immediately due and payable the total amount assessed against the Unit Owner for that fiscal year but not yet paid). Each Unit Owner is personally liable for all amounts assessed against a Unit.

O. **INSURANCE.** The Executive Board will obtain insurance to protect the Association and, to a certain limited extent, the Unit Owners as individuals.

Each building, including the Units, will be covered by fire and property damage insurance. The coverage will be fire insurance with extended coverage in an amount equal to the full replacement cost of the building, subject to reasonable deductible limits. This coverage will not insure decorations, furnishings, fixtures or personal property supplied to or installed by a Unit Owner.

The Association and Unit Owners will be insured against liability arising from ownership or use of the Common Elements. This coverage will not insure Unit Owners against liability arising from an accident or injury occurring within a Unit or liability

arising from the willful or negligent act or omission of a Unit Owner. The coverage shall be at least ONE MILLION (\$1,000,000.00) DOLLARS for death and bodily injury and for property damages.

The Executive Board will also maintain appropriate worker's compensation insurance and such other insurance as the Executive Board of the Association shall determine.

The Declarant strongly recommends that each Unit Owner obtain insurance coverage on his personal property and liability exposure not covered by the Association policy. The Unit Owner may also wish to insure any improvements to his Unit to the extent that the improvements increase the value of his Unit beyond the limit of coverage provided by the policy maintained by the Association. The Unit Owner should consult his insurance agent (who can contact the Executive Board or the Managing Agent if necessary) before purchasing such additional insurance.

**P. TAXES.** Real property taxes of the Town are levied separately against individual Units and each Unit Owner will be responsible for the payment of the taxes on his own Unit. The assessed value of Units is presently unknown since the Town Tax Assessor cannot assess Units until construction is complete.

As of the effective date of this Public Offering Statement, real property in the Town of Portsmouth is assessed at one hundred (100%) percent of its fair market value and taxed at the rate in effect per ONE THOUSAND (\$1,000.00) DOLLARS assessed value. The Unit Owner can estimate the annual real property tax on his Unit by dividing the purchase price of his Unit by one thousand (1,000), multiplying by ONE HUNDRED (100%) percent and then multiplying the result by the tax rate.

**Q. ZONING AND BUILDING CODES.**

Approval of the development plan was granted by the Planning Board for the Town of Portsmouth and the construction of the Condominium must be in conformance with the plans approved by the Planning Board and its Conditions of Final Approval. No change may be made in the plans without the specific approval of the Planning Board and, to the extent that such change would require a change in the Zoning Ordinance, by the Town Council, and, to the extent wetlands are involved, by the Rhode Island Department of Environmental Management.

**R. WARRANTIES.** Each Unit will be covered only by the statutory warranty set forth in Section 34-36.1-4.14 of the Act. All other warranties are expressly disclaimed to the extent permitted by law. The details of the warranty on the Unit and Common Elements are set forth in the Limited Warranty Certificate attached hereto as Exhibit IV. The Declarant gives no warranty with respect to consumer products sold with the Unit except as required by the statutory warranty. The Declarant will transfer to the Unit Owner at settlement manufacturer's warranties, if any, on appliances sold with the Unit. The text of all written warranties on appliances and other equipment

**sold by Declarant with the Unit is available at the sales office for review by prospective purchasers.**

**In summary, the Declarant warrants that the Unit and Common Elements in the Condominium are suitable for the ordinary uses of real estate of its type, and that any improvements made or contracted for by the Declarant are free from defective materials and constructed in a workmanlike manner. The Declarant is not responsible for any items of maintenance relating to Units or Common Elements.**

**With respect to a Unit, the above warranty expires two (2) years after the Unit is conveyed to a Purchaser, and with respect to the Common Elements, the above warranty expires two (2) years after the first Unit in the Condominium is conveyed to a Purchaser.**

**No claim arising out of any of the warranties set forth in the Limited Warranty Certificate may be brought unless, prior to the expiration of the appropriate two-year warranty period, the Purchaser has delivered notice to the Declarant of alleged breaches of these warranties.**

**The above warranty shall not apply if the defective part of the Unit or Common Elements has been subjected to misuse or damage by accident or has not been afforded reasonable care. The liability of Declarant is limited to replacing or repairing any defective parts or materials which do not comply with this warranty and in no event shall such liability exceed the replacement cost of the Unit. Declarant shall not be liable for consequential damages arising from any breach of this warranty.**

**The Declarant and the Purchaser of a Unit will execute the Limited Warranty Certificate limiting the period of limitation on the above warranty to two (2) years.**

**Of course, the Declarant will make available to each Unit Purchaser any warranty on any item of equipment or appliance that has been purchased new from the Declarant if such warranty has been provided to the Declarant by the manufacturer thereof.**

**EXCEPT AS SET FORTH ABOVE, THE UNIT AND ALL PERSONAL PROPERTY ARE BEING SOLD "AS IS", WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BY WAY OF ILLUSTRATION AND NOT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR HABITABILITY.**

**S. UNIT INSPECTION. Not less than seven (7) days prior to settlement on a Unit, the Declarant must notify the Unit purchaser that his Unit is ready for inspection. The purchaser will then be permitted to inspect his Unit and note any defects. The Declarant will correct any legitimate defects prior to settlement. If the purchaser fails to inspect his Unit, he must accept it in an "as is" condition.**

**The Unit Inspection Form, on which the purchaser will note defects and indicate acceptance of his Unit, is attached to this Public Offering Statement as Exhibit V. The procedure for inspection is set forth in the Unit Inspection Form.**

**T. AMENITIES.** The Unit Owner will be responsible for a share of the cost of maintenance of these facilities. The areas may be used subject to the rights and regulations established by the documents and the Association.

**U. SPECIAL FEES.** There are no special fees due from the purchaser at closing, other than the non-refundable initial capital contribution to the Association referred to in Paragraph G hereof.

**V. TITLE.** The Developer will provide a Warranty Deed, as provided in the Purchase and Sale Agreement. The Condominium is subject to the following:

- 1. Unrecorded easements, discrepancies or conflicts in boundary lines, shortage in area and encroachments which an accurate and complete survey would disclose;**
- 2. Taxes assessed but not yet due and payable, including supplemental tax imposed by the Town of Portsmouth;**
- 3. Unfiled mechanics' or materialmen's liens;**
- 4. Easements and Restrictions described in the Declaration.**
- 5. Zoning Decision recorded in Land Evidence Book 1943 at Page 268.**
- 6. Any unrecorded leases or month-to-month tenancies.**

**W. FINANCING.** The Developer is not offering any financing for the purchasers of Condominiums at IMMOKOLEE COMMONS CONDOMINIUM.

**X. LEGAL MATTERS.** There are no unsatisfied judgments or pending suits against the Association, and no pending suits material to the Condominium of which the Developer has any knowledge.

**Y. FINANCIAL ARRANGEMENTS.** A loan has been obtained from \_\_\_\_\_ to provide for the completion of all improvements labeled "MUST BE BUILT" on the plans for the Condominium.

**Z. GENERAL INFORMATION.** Any information or data regarding the Condominium not presented in this Public Offering Statement or contained in the Exhibits must not be relied upon. No person has been authorized by the Declarant to make any representation not expressly contained herein. This presentation may not be changed or modified orally.



**The Declarant reserves the right to change the terms of this Public Offering Statement as they affect potential purchasers not then under contract, provided, however, that any such change shall not affect the Allocated Interests, Common Expense Liability or vote or the substance of the Public Offering Statement with respect to prior purchasers or purchasers under contract.**

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FOR  
IMMOKOLEE COMMONS CONDOMINIUM

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**DECLARATION OF PLAN  
FOR  
IMMOKOLEE COMMONS CONDOMINIUM**

Bk: 2118 Pg: 1  
INST: 00000840

IMMOKOLEE COMMONS, LLC, a Rhode Island limited liability company (hereinafter referred to as the "Declarant"), owner of the real estate described in **Exhibit A** attached hereto, (hereinafter referred to as the "Property"), located in the Town of Portsmouth, County of Newport, State of Rhode Island, hereby makes the following Declaration of a Plan for a Condominium Project pursuant to the provisions of Chapter 36.1 of Title 34, General Laws of Rhode Island, 1956, as amended, which is the Rhode Island Condominium Act, (hereinafter referred to as the "Act" or "Condominium Act").

**ARTICLE 1**  
**SUBMISSION**

1.1. **Submission to Condominium.** The Declarant hereby submits the Property to the Condominium Act. A record of survey map of the Property, consisting of 2 sheets, entitled "RECORD OF SURVEY MAP – PHASE 1 IMMOKOLEE COMMONS CONDOMINIUM OWNER OF RECORD: IMMOKOLEE COMMONS LLC 1364 Smith Street, North Providence, RI 02911 PROJECT APPLICANT: IMMOKOLEE COMMONS LLC 1364 Smith Street, North Providence, RI 02911 PROJECT LOCATION: 65 Immokolee Drive AP 36 Lot 60 Portsmouth, RI 02871 JOHN BRAGA & ASSOCIATES, INC. Civil Engineers – Land Surveyors PO Box 944 Portsmouth, R.I. 02871-0919 Phone (401) 683-0101" (hereinafter referred to as "Record of Survey Map") as required by the Act, has heretofore been recorded with the Town Clerk of the said Town of Portsmouth and is not altered or amended hereby. The maximum number of Units in the Condominium is 8 Units. A reduced copy of the Record of Survey Map is attached hereto as **Exhibit G**. A reduced copy of the Final Submission Overall/Open Space Plan IMMOKOLEE COMMONS CONDOMINIUM is attached hereto as Exhibit H.

**ARTICLE 2**  
**DEFINITIONS AND PROVISIONS OF ACT**

2.1. **Terms Defined in the Act.** Capitalized terms not otherwise defined herein or in the Record of Survey Map shall have the meanings specified or used in the Act.

2.2. **Terms Specifically Defined.** The following terms are used or defined in general terms in the Act and shall have specific meanings herein when capitalized as follows:

(a) "Act" or "Condominium Act" means the provisions of Chapter 36.1 of Title 34, General Laws of Rhode Island, 1956, as amended, which is the Rhode Island Condominium Act.

(b) "Allocated Interests" means the undivided interest in the Common Elements, the Common Expense Liability, and votes in the Association allocated to each Unit.

(c) "Association" means "IMMOKOLEE COMMONS CONDOMINIUM ASSOCIATION", an unincorporated association of the owners of Units from time to time.

(d) "Association By-Laws" means the By-Laws of the Association attached hereto as **Exhibit B**, as the same may be amended from time to time.

(e) "Building" means the one (1) structure now constructed on the Property containing Two (2) Units and the structures to be constructed containing the remaining six (6) Units.

(f) "Common Elements" means all portions of the Property other than the Units as further defined in Section 4.1.

(g) "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves, and shall include, without limitation, all costs, expenses and other liabilities (a) incurred in the administration, maintenance, repair or replacement of Common Areas and the Limited Common Areas; (b) incurred by the Executive Board members pursuant to the exercise of their duties and obligations under this Declaration, the By-Laws and the Act; (c) determined to be Common Expenses by the provisions of this Declaration, the By-Laws or the Act.

(h) "Common Expense Liability" means the liability for Common Expenses allocated to each Unit pursuant to Section 2.07 of the Act.

(i) "Common Profits" means the excess of all receipts of assessments and other payments to the Association, including insurance proceeds and condemnation awards after the deduction of all Common Expenses, repair and replacement expenses, and amounts reserved for payment of Common Expenses.

(j) "Condominium" means the Condominium described in Section 1.1.

(k) "Convertible Land" means the land described in the Declaration which comprises a portion of the common areas, and within which additional units and/or limited common elements may be created.

(l) "Declarant" shall mean IMMOKOLEE COMMONS, LLC, a Rhode Island limited liability company.

(m) "Declaration" shall mean this Declaration, including all schedules and exhibits attached hereto, as the same may be amended from time to time.

(n) "Executive Board" shall mean those persons selected from time to time as members of the Executive Board of the Association pursuant to this Declaration and the By-Laws.

(o) "Expandable Condominium" means a condominium to which additional land may be added, in accordance with the provisions of the Declaration and the Act.

(p) "Identifying Number" means a symbol or address that identifies only one Unit.

(q) "Limited Common Elements" means a portion of the Common Elements allocated by the Declaration in Section 4.2 for the exclusive use of one unit, or by operation of Section 2.02(2) or (4) of the Act.

(r) "Mortgagee" means an institutional lender holding a first mortgage or first deed of trust ("Mortgagee") encumbering a Unit in the Condominium which has notified the Association of its status and has requested all rights under the Condominium instructions. For purposes of Article 13 only, when any right is to be given to a Mortgagee, the Executive Board shall also give such right to the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmer's Home Administration, the Government National Mortgage Association and any other public or private secondary mortgage market entity participating in purchasing or guarantying Mortgages if the Board has notice of such participation.

(s) "Property" means the land, together with all buildings and improvements now or hereafter located thereon, as is described and delineated in **Exhibit A** attached hereto, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

(t) "Rules and Regulations" means the reasonable Rules and Regulations adopted from time to time by the Executive Board relating to the ownership and use of the Property.

(u) "Special Declarant Rights" means rights reserved, pursuant to the Act, for the benefit of the Declarant to (i) complete improvements indicated on the Record of Survey Map filed with the Declaration; (ii) to exercise any Development Rights; (iii) to maintain sales offices, management offices, signs advertising the Condominium and models; (iv) to use easements through the Common Elements for the purpose of making improvements within the Condominium or with real estate which may be added to the Condominium; (v) to make the Condominium part of a larger condominium or a planned community; (vi) to make the Condominium subject to a master association; or (vii) to appoint or remove any Officer of the Association or any master association or any Executive Board member during any period of Declarant control.



(v) "Termination of Control by Declarant of Association" means time when all Units have been conveyed by Declarant.

(w) "Termination Date of Special Declarant Rights" means Ten (10) years after the date of recording this Declaration.

(x) "Unit" means a physical portion of the Property designated for separate ownership or occupancy, the boundaries of which are described in Section 3.3. References to Unit or Units herein includes any and all Units which the Declarant has reserved the right to create.

(y) "Unit Owner" means the Declarant or other person who owns a Unit but does not include a person having an interest in a Unit solely as security for an obligation.

2.3. Provisions of the Act. The provisions of the Act shall apply to and govern the operation and governance of the Condominium except to the extent that contrary provisions, not prohibited by the Act, are contained in the Declaration or Record of Survey Map.

### ARTICLE 3 BUILDINGS AND UNITS

3.1. Building. The location and dimension of each Building on the Property are depicted on the Record of Survey Map.

3.2. Units. The location of each Unit and its dimensions are shown on the Record of Survey Map, and its percentage of undivided interest in the Common Elements within the Property is set forth in **Exhibit D**. The Allocated Interests in the Common Elements shall not be separated from the Unit to which it appertains.

3.3. Unit Boundaries. The boundaries of each of the Units with respect to the floors, ceilings, walls, doors and windows thereof shall be as follows: (a) Floors: The plane of the unfinished and undecorated upper surface of the wood or concrete floor; (b) Ceilings: The plane of the lower surface of the unfinished surface of the ceiling or roof or roof rafters, joints or trusses thereof; (c) Vertical Boundaries: As to exterior perimeter walls, the plane of the interior surface of the wall studs or concrete block facing the Unit; as to doors, the exterior surface thereof; and as to windows; the exterior surface of the glass and the window frames. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the Unit, and all other portions of the walls, floors, or ceilings are a part of the Common Elements. In addition, each Unit shall include the space and water heating apparatus and air conditioning equipment appurtenant to such Unit, whether or not the same are located in the Unit; the electrical wiring, outlets, and receptacles commencing with and including the electric meter box (including any exterior

lighting fixtures) appurtenant to the Unit; and the gas and plumbing fixtures, pipes and valves within the perimeters of the Unit and serving only such Unit. A Unit shall not include any load-bearing members of walls and partitions located within the perimeter of such Unit or any pipes, wires, ducts, flues, chutes, conduits, common utility lines and structural components within the perimeter of such Unit but utilized by, or serving, another Unit or Units or a part of the Common Elements.

If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements. Subject to the provisions of the preceding sentence, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

Any shutters, awnings, window boxes, doorsteps, stoops, porches, patios, and all exterior doors and windows or other fixtures and all interior stairs designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

Each unit shall have an easement in common with the other Unit to use all pipes, wires, cables, conduits, public utilities lines, and other Common Elements located in the Common Elements or Limited Common Elements, or located in another Unit and serving the Unit.

Each Unit is subject to an easement in common with the Owners of the other Units to use pipes, wires, cables, conduits and public utility lines for water, electric, telephone, gas, sewer and other utility purposes and Common Elements serving the other Units and located in such Unit.

Each Unit shall be subject to an easement in favor of the Executive Board and its employees, agents and grantees to enter or cause to be entered any Unit when deemed necessary for the protection of any Common Elements, or of any Limited Common Elements, or to prevent damage to the Common Elements, or to the Limited Common Elements, or to any Unit or Units, or in emergencies. Each Unit Owner shall be deemed to have expressly granted such rights of entry and access by accepting and recording the deed to his Unit.

3.4. Additions, Alterations or Improvements, Relocation of Unit Boundaries and Subdivision of Unit. Additions, alterations or improvements, relocation of Unit boundaries and subdivision of Units is permitted subject to compliance with the provisions therefore in Section 7.4 of the Association By-Laws and in Sections 2.11, 2.12, and 2.13 of the Act. Each Owner shall have the right to change the interior of his Unit. Any changes or improvements to the exterior of the building or roof must be approved by the Unit Owners.

3.5 Maintenance Responsibilities. The maintenance and operation of any improvements to the Common Elements shall become the responsibility of the Association. All maintenance, replacement and repair to the Limited Common Elements and the Unit required of a Unit Owner shall be done by the Unit Owner at the Unit Owner's expense. Each Unit Owner shall promptly perform such maintenance, repair, and replacement work within his Unit which the failure to do so would affect any part of the Condominium Property. Once the Executive Board has made a reasonable determination that a Unit Owner has failed to perform all or any part of the maintenance, repair and replacement work as described herein and has given reasonable notice of such determination to that particular Unit Owner, then the Executive Board may perform such work and assess such Unit Owner for the cost of any such maintenance, repair or replacement work in the same manner as set forth in Article 6 of the By-laws.

3.6 Utilities. Each Unit Owner shall be solely responsible for utilities separately metered to his Unit. Heat is supplied by a separate furnace for each Unit. Water charges are separately metered to each Unit.

#### ARTICLE 4 COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

4.1. Common Elements. The Common Elements consist of all portions of the Property other than the Units, including without limitation, all elements of the Buildings not included in any Unit, such as roofs, siding, gutters and downspouts; the land on which the Building is located; driveways, lawns and gardens; all installations of power, lights, gas, water, storm and sanitary plumbing not included in any Unit; and all other parts of the Property necessary or convenient to its existence, maintenance and safety or normally in common use. The portion of these Common Elements which are designated as Limited Common Elements is described in Section 4.2.

4.2. Limited Common Elements. The Limited Common Elements consist of the Common Elements, such as, but not limited to, driveways, utility lines, decks, porches, patios and steps, designated as "Limited Common Elements" on the Record of Survey Map filed with the Declaration, or any Amendment thereof, or designated in **Exhibit C** attached hereto as being reserved for the use of a certain Unit to the exclusion of the other Unit, or defined as such in Section 2.02(2) and (4) of the Act.

4.3. Reserved Common Elements. Reserved Common Elements are those parts of the Common Elements which the Executive Board may designate from time to time for use by less than all of the Unit Owners or by non-owners of any Unit for specified periods of time or by only those persons paying fees or satisfying other reasonable conditions for use as may be established by the Executive Board. Parking Spaces may be designated as Reserved Common Elements. Such designation by the Executive Board shall not be construed as a sale or disposition of such portions of the Common Elements.

ARTICLE 5  
ALLOCATED INTEREST, SHARE OF COMMON EXPENSE  
LIABILITY AND COMMON PROFIT, AND VOTING RIGHTS

5.1. Allocated Interest. Attached to this document as **Exhibit D** is a list of the Units by their Identifying Numbers and the Allocated Interest appurtenant to each Unit, as determined on the basis of the total number of the Units. Interest for each Unit will be equal. If and when Units are added to the Condominium, Allocated Interest will be reallocated using the same formula set forth above.

5.2. Shares of Common Expense Liability and Common Profits. Each Unit Owner shall be liable for his proportionate share of Common Expense Liability and shall be entitled to his proportionate share of Common Profits.

5.3. Voting Rights. Notwithstanding anything to the contrary contained in this Declaration, the number of votes in the Association to which each Unit Owner or Owners is entitled to vote shall be equal to the Allocated Interest of the Unit. For purposes of this Section, the Declarant shall be deemed the Unit Owner as to any Unit that has not been sold by the Declarant. See Section 3.10 of the Association By-laws for provisions regarding Dispute Resolution in the event of a vote whereby the Unit Owners are in disagreement.

ARTICLE 6  
EASEMENTS AND TITLE MATTERS

6.1. Easements. In additions to and in supplementation to the easements provided for by Sections 2.15, 2.16 and 2.17 and other provisions of the Act and Section 3.3 of the Declaration, the easements set forth in this Article 6 are hereby created.

6.2. Encroachments. If any encroachments of the Common Elements or any other Unit shall occur as a result of (a) construction to the Building, or (b) settling of a Building, or (c) alteration or repair to the Common Elements made by or with the consent of the Executive Board, or (d) repair or restoration of a Building or a Unit after damage by fire or other casualty, or (e) condemnation, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the affected Unit stands.

6.3. Declarant's Use for Sales Purposes. The Condominium shall be subject to an easement in favor of the Declarant pursuant to Section 2.15 of the Act. The Declarant reserves the right to use any Units owned or leased by the Declarant as models, management offices, sales offices (for this and other projects) or customer service offices. The Declarant reserves the right to relocate the same from time to time within the Property; upon relocation, the furnishings thereof may be removed. The Declarant further reserves the right to maintain on the Property such advertising signs as may comply with applicable governmental regulations, which may be placed in any location on the Property and may be relocated or removed, all at the sole discretion of the Declarant. The Declarant shall have the right to restrict the use of certain Common Element parking spaces for sales



purposes and to use such spaces for sales purposes. Further, the Declarant shall have the right to erect temporary offices on Common Elements for models, sales, management, customer service and similar purposes. This easement shall continue until the Declarant has conveyed all Units in the Condominium to Unit Owners other than the Declarant.

6.4. Governmental, Utility and Other Easements. The Units and Common Elements shall be, and are hereby, made subject to easements in favor of the Declarant (until Declarant shall have satisfied all of its obligations under the Declaration or any other document and all commitments in favor of any Unit Owner and the Association), the Association, appropriate utility and service companies and governmental agencies or authorities for such utility and service lines and equipment, including security systems, as may be necessary or desirable to serve any portion of the Property. The easements provided for by this Section 6.4 shall include, without limitation, rights of Declarant, the Association, any providing utility, any service company, and any governmental agency or authority and any of them to install, lay, maintain, repair, relocate and replace gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, telephone wires and equipment, television equipment and facilities (cable or otherwise), security systems, electrical wires, conduits and equipment and ducts and vents and any other appropriate equipment and facilities over, under, through, along and on the Units and Common Elements. Notwithstanding the foregoing provisions of this Section 6.4, unless approved in writing by the Unit Owner or Owners affected thereby, any such easement through a Unit shall be located either in substantially the same location as such facilities or similar facilities existed at the time of first conveyance of the Unit by the Declarant to a grantee other than the Declarant, or so as not to materially interfere with the use or occupancy of the Unit by its occupants. Any public body rendering police and fire services shall have an easement over and upon the Common Elements for the purpose of providing police and fire protection services and to enforce all applicable police and fire regulations.

6.5 Declarant's Easements.

(a) Declarant reserves an easement (until the Termination Date of Special Declarant Rights and until Declarant shall have satisfied all of its obligations under the Declaration or any other document, and all commitments in favor of any Unit Owner and the Association) to use portions of the Common Elements and any Units owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Property.

(b) Declarant reserves an easement (until the Termination Date of Special Declarant Rights and until Declarant shall have satisfied all of its obligations under the Declaration or any other document, and all commitments in favor of any Unit Owner and the Association) on, over and under those portions of the Common Elements not located within the Building for the purpose of maintaining and correcting drainage of surface, roof or storm water. The easement created by this Section 6.5 expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil or to take any other action reasonably

necessary, following which the Declarant shall restore the affected property as closely to its original condition as practicable.

(c) Until the Termination Date of Special Declarant Rights and for a period of two (2) years thereafter the Declarant shall have an easement through the Units for any access necessary to complete any renovations or modifications to be performed by Declarant.

(d) Until the expiration of any warranty period for any Unit, the Declarant reserves in favor of the Declarant or the Executive Board, the right of access to any Unit to perform warranty-related work (for the benefit of the Unit being entered, other Units or the Common Elements) whether or not the Unit Owner consents or is present at the time.

6.6. Easements for Ingress and Egress Through Common Elements, Access to Units.

(a) Each Unit Owner is hereby granted an easement in common with each other Unit Owner for ingress and egress through all Common Elements (other than Limited Common Elements), subject to such reasonable rules, regulations and restrictions as may be imposed by the Association. Each Unit is hereby burdened with and subjected to an easement for ingress and egress through all Common Elements by persons lawfully using or entitled to the same.

(b) To the extent necessary, each Unit shall have an easement for structural support over every other Unit in the Building, the Common Elements and the Limited Common Elements and each Unit and the Common Elements, including the Limited Common Elements, shall be subject to an easement for structural support in favor of every other Unit in the Building, the Common Elements and the Limited Common Elements.

6.7. Common Element Easement in Favor of Association. The Common Elements (including, but not limited to, the Limited Common Elements) shall be and are hereby made subject to an easement in favor of the Association and the agents, employees and independent contractors thereof for the purpose of the inspection, upkeep, maintenance, repair and replacement of the Common Elements (including, but not limited to, the Limited Common Elements).

6.8 Common Element Easement in Favor of Unit Owner. The Common Elements (including, but not limited to, the Limited Common Elements) shall be and are hereby made subject to the following easements in favor of the Units benefited:

(a) For the installation, repair, maintenance, use, removal and/or replacement of pipes, ducts, heating and air conditioning systems, electrical, telephone and other communication wiring cables and all other utility lines and conduits which are a part of or serve any Unit and which pass across or through a portion of the Common Elements.

(b) For the installation, repair, maintenance, use, removal and/or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are a part of or serve any Unit but which encroach into a part of a Common Element adjacent to such Unit; provided that the installation, repair, maintenance, use, removal or replacement of any such item does not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of the Building or impair or structurally weaken the building.

(c) For driving and removing nails, screws, bolts and other attachment devices into the Unit side surface of the stone, block, brick or other masonry walls bounding the Unit and the Unit side surface of the studs which support the dry wall or plaster perimeter walls bounding the Unit, the bottom surface of floor joists above the Unit and the top surface of the floor joists below the Unit to the extent such nails, screws, bolts and other attachment devices may encroach into a part of a Common Element adjacent to such Unit; provided that any such action will not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of the Building or impair or structurally weaken the building.

(d) For the maintenance of the encroachment of any lighting devices, outlets, medicine cabinets, exhaust fans, ventilation ducts, registers, grills and similar fixtures which serve only one Unit but which encroach into any part of any Common Elements or Limited Common Elements on the date this Declaration is recorded or was thereafter installed by Declarant prior to the Termination Date of Special Declarant Rights or within two (2) years after the date thereof.

6.9. Units and Limited Common Elements Easement in Favor of Association. The Units and the Limited Common Elements are hereby made subject to the following easements in favor of the Association and its agents, employees and independent contractors:

(a) for inspection of the Units and Limited Common Elements in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible;

(b) for inspection, maintenance, repair and replacement of the Common Elements or the Limited Common Elements situated in or accessible from such Units or Limited Common Elements, or both;

(c) for correction of emergency conditions in one or more Units or Limited Common Elements, or both, or casualties to the Common Elements, the Limited Common Elements and/or the Units.

6.10 Reservation of Easements. The Declarant reserves the right, until Declarant has conveyed all Units in the Condominium to Unit Owners other than the Declarant, to grant to any third party any license or easement in, on, over or through the Property, in addition to and not in limitation of those set forth above, which license or easement is

determined by the Declarant, in its reasonable judgment, to be necessary for the development or improvement of the Property. Any such license or easement granted hereunder may be recorded by the Declarant at its sole cost and expense. The Association, at the request of the Declarant, shall execute and deliver in recordable form any instrument or document necessary or appropriate to confirm the grant of such license or easement.

6.11. Term of Easements. All easements, rights and restrictions described and mentioned in this Declaration are easements appurtenant, running with the land and the property, including (by way of illustration but not limitation) the Units and the Common Elements and (except as expressly may be otherwise provided herein or in the instrument creating the same) shall continue in full force and effect until the termination of this Declaration, as it may be amended from time to time.

6.12. Offsite Drainage Easement. There is an existing appurtenant drainage easement located on the adjacent property owned by George L. Kirk, Jr. with an address of 157 Immokolee Drive, Portsmouth, Rhode Island and being further identified as Portsmouth Assessors Map 36, Lot 10. A catch basin and drain line are located thereon. The Association is responsible for the maintenance and cleaning of said catch basin and drain line

6.13. Title Matters. In addition to those easements described in this Article 6, title to the Property is subject to the additional restrictions, easements, and title exceptions set forth on **Exhibit E** attached hereto.

6.14. Covenant Against Partition. Both Common and Limited Common Elements shall remain undivided and appurtenant to designated Unit. No owner of any Unit or any other person shall bring an action for partition or division thereof except as may be provided for in the Act.

## ARTICLE 7 USE RESTRICTIONS

7.1 Restrictions on Use of Units and Common Elements. The occupancy and use of the Units and Common Elements shall be subject to the following restrictions:

(a) Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance for the Property without the prior written consent of the Executive Board. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of insurance on the Property or any part thereof of which would be in violation of any law, regulation or administrative ruling.

(b) No immoral, improper, offensive or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations or requirements or any governmental agency having jurisdiction thereof



relating to any portion of the Property shall be complied with, by and at the sole expense of the Unit Owner or the Executive Board, whichever shall have the obligation to maintain or repair such portion of the Property, and, if the latter, then the cost of such compliance shall be a Common Expense.

(c) No Unit Owner shall obstruct any of the Common Elements nor shall any Unit Owner place or cause or permit anything to be placed on or in any of the Common Elements without the approval of the Executive Board. Nothing shall be altered or constructed in or removed from the Common Elements except with the prior written consent of the Executive Board.

(d) Trailers, campers, recreational vehicles, boats and other large vehicles, except pick-up trucks, may not be parked on the Property, except for temporary loading and unloading. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept upon any of the Common Elements. Vehicle repairs other than ordinary light maintenance are not permitted on the Property.

(e) The maintenance, keeping, boarding and/or raising of animals, livestock, poultry or reptiles of any kind, regardless of number, shall be and is prohibited within any Unit or upon the Limited Common Elements, except that the keeping of small, orderly domestic pets (e.g. dogs, cats, or caged birds) is permitted subject to the Rules and Regulations adopted by the Executive Board; provided, however, that such pets are not to be kept or maintained for commercial purposes or for breeding; and provided, further, that any such animal causing or creating a nuisance or unreasonable disturbance or noise may be permanently removed from the Property upon ten days written notice from the Executive Board. Such animals shall not be permitted upon the Common Elements, except in the Unit Owner's Limited Common Area. Any Unit Owner who keeps or maintains any animal upon any portion of the Property shall be deemed to have indemnified and agreed to hold the Association, each Unit Owner and the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Condominium.

(f) No signs of any character shall be erected, posted or displayed upon, in, from or about any Unit or Common Element which is visible from outside the Unit or Common Element without the prior written approval of the Executive Board. The foregoing provisions of this paragraph shall not apply to a Mortgagee in possession of a Unit as a result of a foreclosure, judicial sale or a proceeding in lieu of a foreclosure.

(g) The Unit Owner shall be responsible for maintaining such Unit in good order and repair, at the expense of such Unit Owner, including, but not limited to, cleaning and replacing glass panes in any window or door serving such Unit.

(h) No Unit Owner shall permit or cause any waste in the Common Elements or Units.

(i) The Unit Owner shall be responsible for the cleanliness of the garages, patio, deck and porch, if any, serving such Unit.

(j) No Unit shall be subject to or used for any timesharing, cooperative, licensing or other arrangement that would entail weekly, monthly, or any other type of revolving or periodic occupancy by multiple Unit Owners, cooperators, licensees, or timesharing participants.

7.2. Rules and Regulations. Each Unit and the Common Elements shall be occupied and used in compliance with the Rules and Regulations, not in conflict with the provisions of the Declaration, which may be promulgated and changed from time to time by the Executive Board. Copies of the then current Rules and Regulations and any Amendments thereto shall be furnished by the Executive Board to each Unit Owner by the Association promptly after the adoption of such Rules and Regulations and any amendments thereto.

7.3 Restrictions on Leasing. No Unit shall be rented for transient or hotel purposes. No Unit shall be rented more than once each calendar year. No portion of any Unit (other than the entire Unit) shall be leased for any period. No Unit Owner shall lease a Unit other than on a written form of lease: (i) requiring the lessee to comply with the Declaration and Rules and Regulations; (ii) providing that failure to comply constitutes a default under the lease; and (iii) providing that the Executive Board has the power to terminate the lease or to bring summary proceedings to evict the tenant in the name of the lessor thereunder after forty-five days prior written notice to the Unit Owner, in the event of a default by the lessee in the performance of the lease. The Executive Board may suggest or require a standard form lease for use by Unit Owners. Each Unit Owner shall, promptly following the execution of any lease of a Unit, forward a conformed copy thereof to the Executive Board. The foregoing provisions of this section, except the restriction against use for hotel or transient purposes, shall not apply to the Declarant, or to a Mortgagee in possession of a Unit as a result of a foreclosure, judicial sale or a proceeding in lieu of foreclosure.

7.4 Conditions of Final Approval of the Zoning Board of Review of the Town of Portsmouth. The Condominium is subject to the Conditions of Final Approval of the Zoning Board of Review of the Town of Portsmouth as set forth in Exhibit E-1 to Exhibit E of the Declaration of Plan attached hereto.

## ARTICLE 8 THE ASSOCIATION AND EXECUTIVE BOARD

8.1. The Association. The responsibility for the administration, maintenance, repair, replacement, improvement and operation of the Condominium established by this Declaration shall be exercised by the Association in accordance with the provisions of the Act and of this Declaration and the Association By-Laws.

8.2. The Executive Board. The provisions of the Association By-Laws shall govern the number, election, removal, powers and duties of the Executive Board. In addition, the Executive Board shall have all the powers and duties granted to it by the Act.

8.3. Disputes. In the event of any dispute or disagreement between any Unit Owner relating to the Property, or any question of interpretation or application of the provisions of this Declaration (including the Record of Survey Map), the Association By-Laws or the Rules and Regulations, the ultimate determination with respect thereto shall be made pursuant to Section 3.10 of the Association By-laws. All costs of obtaining such a judgment shall be borne by the disputants, or in the absence of disputants, by the Association as a Common Expense.

8.4. Abating and Enjoining Violations by Unit Owners. The violation of any Rules and Regulations adopted by the Executive Board, the breach of any provision contained in the Association By-Laws or the breach of any provision of this Declaration or the Act by any Unit Owner, shall give the Executive Board and any aggrieved Unit Owner the right, in addition to any other rights to which it may be entitled to enjoin, abate or remedy by appropriate legal proceedings either at law or in equity, the continuance of any such breach.

8.5. Insurance. The Executive Board shall obtain and maintain insurance as provided in the Association By-Laws, if appropriate.

## ARTICLE 9 DEVELOPMENT RIGHTS

9.1 Reservation of Rights. The Declarant reserves to itself and for the benefit of its successors and assigns, pursuant to Sections 36.1-1.03(11), 36.1-1.03(23), and 36.1-2.05(a)(8) of the Act, the right to add real estate to the Condominium, to create units, common elements or limited common elements within the Condominium, to subdivide or convert units into common elements, to convert convertible land, to add additional land, to convert convertible space, to withdraw real estate from the Condominium and any and all other Development Rights as are now allowed or in the future may be allowed by the Act. The Declarant also reserves to itself and for the benefit of its successors and assigns, pursuant to Sections 36.1-1.03(11), 36.1-1.03(23) and 36.1-2.05(a)(8) of the Act, the right to complete all improvements shown on the Plats and the Plans, to exercise the Development Rights set forth above, to maintain models and sales offices and to exercise the easements as set forth in Articles 6 hereof, to make the Condominium part of a larger condominium, to make the Condominium subject to a master association, to appoint or remove any officer or executive board member during any period of Declarant's control of the Association and any and all other Special Declarant Rights as are now allowed or in the future may be allowed by the Act. The real estate subject to Development Rights and Special Declarant's Rights is all of the Additional Land, Convertible Land and Withdrawable Land which is not at the time submitted as units. Development Rights and Special Declarant Rights must be exercised within ten years from the date this Declaration was

recorded or such earlier time as the right to do so expires pursuant to the terms hereof or the Act, as applicable, or is terminated by the Declarant. Development Rights may be exercised at different times with respect to different parcels of real estate.

9.2 Exercise of Rights. The exercise of the Development Rights and/or Special Declarant Rights reserved herein shall be in accordance with and governed by the provisions of the Act including without limitation Section 36.1-2.10.

9.3 Convertible Land. The Declarant hereby explicitly designates as convertible Land that land described in Exhibit F attached hereto. The Declarant hereby explicitly reserves an option until the tenth anniversary of the recordation of this Declaration to convert all or any portion of the Convertible land from time to time in compliance with Section 36.1-2.10 of the Condominium Act without the consent of any Unit Owner or Mortgagee. The option to convert may be terminated prior to such anniversary only upon the filing of an amendment to the Declaration by the Declarant. The Declarant reserves the right to convert any or all portions of the Convertible Land at any time, at different times, in any order, without limitation; provided, however, that the Convertible Land shall not exceed the area described in Exhibit F hereto. There are no other limitations on the option to convert except as set forth in this Article.

9.4 Convertible Land Assurances. If the Convertible Land is converted, the Buildings on the Convertible Land will be located approximately as shown on the Record of Survey Map. Any Buildings to be constructed within the Convertible Land will be compatible in size, quality of construction, and architectural style with the Buildings on other portions of the Property. The Declarant may construct or convert certain additional structures containing recreational facilities and other amenities serving the Condominium. The Declarant expressly reserves the right to create convertible space and Limited Common Elements within the Convertible Land and to designate Common Elements therein which may be subsequently assigned as Limited Common Elements. The type of such elements may be attics, roofs, balconies, porches, patios, terraces, electrical and mechanical rooms and systems including heating and cooling apparatus, parking and recreational facilities, and all other elements which can appropriately be designated as Common Elements or Limited Common Elements. The size of such Limited Common Elements shall be limited to the size of the existing improvements now located on the Property except for: the balconies, porches, patios, terraces, and fences, which shall not exceed the normal size for such appurtenances; the electrical and mechanical rooms and systems including the heating and cooling apparatus, which shall not exceed the normal size for same necessary to serve the Property; and the parking, and recreational facilities which shall not exceed the size necessary to serve the Property. The allocation of Allocated Interests in the Convertible Land shall be computed as required by Section 36.1-2.07 of the Condominium Act on the basis of area of each unit, as defined in Section 5.1 hereof.

9.5 Withdrawable Land. The Declarant hereby explicitly reserves an option until the tenth anniversary of the recordation of this Declaration to contract the Condominium from time to time in compliance with Section 36.1-2.10 of the Condominium Act without the consent of any Unit Owner or Mortgagee. The option to contract may be terminated prior



to such anniversary only upon filing of an amendment to the Declaration by the Declarant. The Declarant reserves the right to withdraw any or all portions of the Withdrawable Land at any time, at different times in any order, without limitation; provided, however, that the Withdrawable Land shall not exceed the area described in Exhibit F hereto. There are no other limitations on the option to contract or withdraw.

9.6 Additional Land. The Declarant hereby explicitly reserves an option until the tenth anniversary of the recordation of this Declaration to expand the Condominium from time to time in compliance with Section 36.1-2.10 of the Condominium Act without the consent of any Unit Owner or Mortgagee. The option to expand may be terminated prior to such anniversary only upon the filing by the Declarant of an amendment to this Declaration. The Declarant reserves the right to add any or all portions of the Additional Land at any time, at different times, in any order, without limitation; provided, however, that the Additional Land shall not exceed the area described in Exhibit F hereto. There are no other limitations on the option to expand except as set forth in this Article.

9.7 Additional Land Assurances. Location of improvements on the Additional Land shall be as shown on the Record of Survey Map. Such improvements are already constructed and will remain, except for repairs, in the same condition. The Declarant expressly reserves the right to designate Common Elements therein which may be subsequently assigned as Limited Common Elements. Declarant makes no assurances as to type, size or maximum number of such Common Elements or Limited Common Elements. The allocation of Allocated Interests in the Additional Land shall be computed as required by Section 36.1-2.07 of the Condominium Act on the basis of area of each Unit, as defined in Section 5.1 hereof. If the Declarant does not add, or adds and then subsequently withdraws, any portion of the Additional Land, the Declarant shall nevertheless have the right to own, use and operate the land withdrawn without restriction.

9.8 Convertible Space. The Declarant may designate as convertible space all or any portion of the Buildings on the additional land when added to the Condominium. The conversion of such convertible space shall be made pursuant to Section 36.1-2.10 of the Condominium Act.

9.9 Transfer of Special Declarant Rights.

(a) No Special Declarant Rights created or reserved under the Condominium Act or as provided for in the Declaration may be transferred except by an instrument evidencing the transfer recorded in the land records where the Declaration is recorded. The instrument is not effective unless executed by the transferor and transferee.

(b) Upon transfer of any Special Declarant Rights, the liability of a transferor Declarant is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warrant obligations imposed upon him by the Condominium

Act. Lack of Privity (direct contractual relationship) does not deprive any Unit Owner of standing to bring an action to enforce any obligation of the transferor.

(2) If the successors to any Special Declarant Rights is an affiliate of a Declarant, the transferor is jointly and severally liable with the successor for any obligation or liability of the successor which relates to the Condominium.

(3) If a transferor retains any Special Declarant Rights, but transfers other Special Declarant Rights to a successor who is not an affiliate of the Declarant, the transferor is also liable for any obligations and liabilities relating to the retained Special Declarant Rights, imposed on a Declarant by the Condominium Act or by the Declaration arising after the transfer.

(4) A transferor has no liability for any act or omission, or any breach of contractual or warranty obligation arising from the exercise of a Special Declarant Right by a successor Declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in the Mortgage, in case of foreclosure of the Mortgage (or deed in lieu of foreclosure), tax sale, judicial sale, sale by a trustee under a deed of Trust, or sale under Bankruptcy Code or receivership proceedings, of any Units owned by a Declarant in the Condominium, Additional Land or Convertible Land, a person acquiring title to all the Units, Additional land or Convertible Land being foreclosed or sold, but only upon his request, succeeds to all Special Declarant Rights related to such Units or land, or only to any rights reserved in the Declaration to maintain models, sales offices, customer service offices and signs. The judgment or instrument conveying title shall provide for transfer of only the Special Declarant Rights requested.

(d) Upon foreclosure (or deed in lieu of foreclosure), tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings, of all Units and other land in the Condominium owned by a Declarant: (1) the Declarant ceases to have any Special Declarant Rights, and (2) the Termination Date of Special Declarant Rights as provided in the Declaration becomes the date of such event unless the judgment or instrument conveying title provides for transfer of all Special Declarant Rights held by that Declarant to a successor Declarant.

(e) The liabilities and obligations of persons who succeed to Special Declarant Rights are as follows:

(1) A successor to any Special Declarant Rights who is an affiliate of a Declarant is subject to all obligations and liabilities imposed on any Declarant by the Condominium Act or by the Declaration.

(2) A successor to any Special Declarant Rights, other than a successor described in paragraphs (3) or (4) of this subsection, who is not an affiliate of the Declarant, is subject to all obligations and liabilities imposed by the Condominium Act or the Declaration:

(A) on a Declarant which relate to his exercise or non-exercise of Special Declarant Rights; or

(B) on the transferor, other than:

(i) misrepresentations by any previous Declarant;

(ii) warranty obligations on improvements made by any previous Declarant, or made before the Condominium was created;

(iii) breach of any fiduciary obligation by any previous Declarant or appointees to the Executive Board; or

(iv) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(3) A successor to only a right reserved in the Declaration to maintain models, sales offices, customer service offices and signs, if he is not an affiliate of the Declarant, may not exercise any other Special Declarant Rights, and is not subject to any liability or obligation as a Declarant, except the liability arising as a result thereof.

(4) A successor to all Special Declarant Rights held by the transferor who is not an affiliate of that Declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to Units under subsection (c), may declare the intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all Special Declarant Rights to any person acquiring title to any Unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successors may not exercise any of those rights other than any right held by the transferor to control the Executive Board in accordance with the provisions of the Condominium Act and the Declaration until the Termination Date of Special Declarant Rights, and any attempted exercise of those rights is void. So long as a successor Declarant may not exercise Special Declarant Rights under this subsection, he is not subject to any liability or obligation as a Declarant other than liability for the successor's acts and omissions under Section 36.1-3.03(d) of the Condominium Act.

(f) Nothing in this Article subjects any successor to a Special Declarant Rights to any claims against or other obligations of a transferor Declarant, other than claims and obligations arising under the Condominium Act or the Declaration.

## ARTICLE 10 CONDEMNATION

### 10.1.Units.

(a) If a Unit is acquired by eminent domain, or if part of a Unit is acquired by eminent domain leaving the Unit Owner with a remnant which may not practically or lawfully be used for any purpose permitted by the Declaration, the award must compensate the Unit Owner for his Unit and its interest in the Common Elements, or Limited Common Elements, whether or not any Common Elements or Limited Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, that Unit's Allocated Interests are automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, and the Association shall promptly prepare, execute, and record an Amendment to the Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this subsection is thereafter a Common Element.

(b) Except as provided in subsection (a), if part of a Unit is acquired by eminent domain, the award must compensate the Unit Owner for the reduction in value of the Unit and its interest in the Common Elements or Limited Common Elements, whether or not any Common Elements or Limited Common Elements are acquired. Upon acquisition, unless the decree otherwise provides:

(1) that Unit's Common Expense Liability is reduced in proportion to the reduction in the size of the Unit, and

(2) the portion of the Allocated Interests divested from the partially acquired Unit are automatically reallocated to that Unit and the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interests.

10.2.Common Elements. If part of the Common Elements is acquired by eminent domain, the portion of the award attributable to the Common Elements taken must be paid to the Association.

10.3.Limited Common Elements. If part of the Limited Common Elements is acquired by eminent domain, the portion of the award attributable to the Limited Common Elements taken must be awarded to the Owner of the Unit to which such Limited Common Element was allocated at the time of acquisition.

## ARTICLE 11 AMENDMENT TO DECLARATION

11.1.Amendment to Declaration. Pursuant to Section 2.17 of the Act and except as provided therein and in the Declaration for amendments which may be executed by the Declarant, this Declaration may be amended only by the vote of at least Sixty-seven (67%) Percent of all Unit Owners, cast in accordance with the provisions of the By-Laws; provided, however, no amendment may modify this Article or the rights of any person



hereunder and no amendment may be made without the required consents as set forth in Section 11.2 hereof.

11.2. Required Consent. No amendment of the Declaration may be made without the prior written approval of the required percentage of Mortgagees where such approval is provided for in Section 13.4 of the Declaration or where such approval is required elsewhere in the Declaration or by the Condominium Act. No amendments to the Declaration shall diminish or impair the rights of Mortgagees under the Declaration without the prior written consent of all Mortgagees, nor diminish or impair the rights of the Declarant under the Declaration without the prior written consent of the Declarant.

11.3. Construction as to Rights of Mortgagees. Except as specifically provided in the Declaration, no provision of the Declaration shall be construed to grant any Unit Owner, or to any other Person, any priority over any rights of Mortgagees.

11.4. Effective Date of Amendments. A copy of each amendment shall be certified by the President and Secretary of the Association as having been duly adopted and shall be effective when recorded in the Office of the Town Clerk in the Town of Portsmouth.

## ARTICLE 12 NO OBLIGATIONS

12.1. Declarant Obligations. Nothing contained in the Declaration shall be deemed to impose upon the Declarant or its successors or assigns any obligation of any nature to build, renovate or provide any improvements except to the extent required by the Condominium Act. The Units created are to be conveyed in an "AS IS" condition.

## ARTICLE 13 RIGHTS OF MORTGAGEES

13.1. Subject to Declaration. Whether or not they expressly so state, any mortgage or other lien which constitutes a lien on a Unit and the obligation secured thereby shall be deemed to provide, generally, that the mortgage or other lien instrument and the rights and obligations of the parties thereto shall be subject to the terms and conditions of the Act, the Declaration, the Plats and Plans, Association By-Laws, and any Rules and Regulations, and, shall be deemed to provide, specifically, but without limitation, that the obligation secured by such mortgage or lien shall be prepayable, without premium or penalty, upon the happening of a termination of the condominium form of ownership of the Property, or determination not to restore or replace the affected Unit, and that the mortgagee or lienholder shall have no right to:

(a) Participate in the adjustment of losses with insurers or in the decision as to whether or not or how to repair or restore damage to or destruction of the Property; or

(b) Receive or apply the proceeds or insurance to the reduction of the mortgage debt or otherwise, except in the event and to the extent either of a distribution of such proceeds to Unit Owners pursuant to 36.1-3.13(h) of the Act or of insurance proceeds of the cost of repair or restoration being received by the Owner of the Unit encumbered by such mortgage; or

(c) Accelerate the mortgage debt or be entitled to exercise any other remedies by virtue of waste or alleged waste or other conditions occurring anywhere in the Property other than within the Unit encumbered by such mortgage or lien.

13.2. Register. A Unit Owner who mortgages his Unit shall notify the Executive Board of the name and address of his mortgagee and shall file a conformed copy of the note and mortgage with the Executive Board. Upon receipt of such copy of a mortgage encumbering a Unit, the Secretary of the Association shall instruct the insurer of the Property to add the name of such mortgagee to the mortgagee loss payable provision of the hazard insurance policy covering the Property and to provide such mortgagee with a certificate of insurance showing that such mortgagee's name has been so added. The Secretary shall maintain a register of mortgages, showing the name and address of the holder thereof and the amount secured thereby and whether it is a mortgagee.

### 13.3. Rights of Mortgagees.

13.3.1. Upon the specific written request of a Mortgagee as defined in Section 2.2(r) of the Declaration or its servicer to the Executive Board, the Mortgagee shall be entitled to receive some or all of the following as designated in the request:

(a) Copies of budgets, notices or assessments, or any other notices or statements provided under this Declaration by the Executive Board to the Owner of the Unit covered by the mortgage;

(b) Any audited or unaudited financial statements of the Executive Board which are prepared for the Executive Board and distributed to the Unit Owners. The holder of any mortgage on a Unit shall be entitled to have an audited statement prepared at its own expense if one is not otherwise available;

(c) Copies of notices of meetings of the Unit Owners and the right to be represented and to speak at any such meetings by a designated representative;

(d) Notice of substantial damage to or destruction of any Unit (in excess of \$1,000) or any part of the Common Elements (in excess of \$10,000);

(e) Notice of the commencement of any condemnation or eminent domain proceedings with respect to any part of the Property;

(f) Notice of any default of the owner of the Units which is subject to the mortgage, where such default is not cured by the Unit Owner within thirty (30) days after the giving of notice by the Association to the Unit Owner of the existence of the default;

(g) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(h) Notice of any decision by the Executive Board to change the Managing Agent, if a Managing Agent has been employed by the Executive Board;

(i) Any condemnation or casualty loss that affects either a material part of the Condominium or the Unit securing the Mortgagee's mortgage;

(j) Such other financial data as such Mortgagee shall reasonably request;  
or

(k) Any proposed action which would require the consent of a specific percentage of first mortgagees as set forth in Section 13.4 below.

13.3.2. The request of a Mortgagee or its servicer shall specify which of the above items it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Executive Board. The Executive Board need not inquire into the validity of any request made hereunder by a Mortgagee. The Executive Board may refuse to honor any request where, after reasonable inquiry, it shall determine that the person making such request is not entitled to the material so requested and may establish reasonable rules to implement this Section 13.3.2.

13.3.3. Failure to comply with the requirements set forth above shall in no way invalidate the otherwise proper actions of the Association and the Executive Board.

13.3.4. Any Mortgagee shall have the right, exercisable upon written request to the Executive Board, to examine the books and records of the Association at any reasonable time.

13.4. Approval of Mortgagees. Subject to the limitations imposed by Section 34-36.1-2.19 of the Act, the Association shall not take any of the following actions without the prior written approvals as hereinafter set forth:

(a) The prior written approval of holders of first mortgages of Units representing at least sixty-seven (67%) percent of the votes of Units subject to first mortgages shall be required to terminate the condominium status of the Property for reasons other than substantial destruction or condemnation of the Property;

(b) The prior written approval of at least two thirds (2/3) of the holders of first mortgages on Units (based upon one vote for each first mortgage owned) shall be required for any of the following:

(1) the termination or abandonment of the condominium status of the Property except for termination or abandonment as a result of condemnation or substantial loss to the Units and/or Common Elements;

(2) a change in the schedule of Allocated Interests set forth in **Exhibit D** allocated to each Unit;

(3) the partition or subdivision of any Unit, or the Common Elements;

(4) the abandoning, encumbering, selling or transferring of the Common Elements (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this subsection);

(5) the use of hazard insurance proceeds for losses to any Property (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of such Property;

(c) The prior written approval of holders of first mortgages of Units representing at least fifty-one (51%) percent of the votes of Units subject to first mortgages shall be required to make an amendment of a material nature to the Declaration. A change of the provisions of the Declaration, specifically including the By-Laws, directly relating to any of the following shall for this purpose be considered material:

(1) Voting rights;

(2) Assessments, assessment liens or subordination of assessment liens;

(3) Reductions in reserves for maintenance, repair and replacement of the Common Elements;

(4) Responsibility for maintenance and repairs;

(5) Reallocation of interests in the General or Limited Common Elements, or rights to their use;

(6) Redefinition of any unit boundaries;

(7) Convertibility of Units into Common Elements or of Common Elements into Units;

(8) Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project;

(9) Insurance or Fidelity Bonds;

(10) Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;

(11) Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration;

(12) Actions to terminate the legal status of the Condominium after substantial destruction or condemnation occurs;

(13) Provisions that expressly benefit holders, insurers or guarantors or Mortgages held by Mortgagees;

(14) Leasing of Units;

(15) Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;

(d) Notwithstanding anything to the contrary in this Section 13.4 written approvals of holders of first mortgages on Units shall not be required for an amendment to this Declaration made pursuant to Section 3.4 hereof.

13.5. Liability for Use and Charges. Any Mortgagee who obtains title to a Unit pursuant to the remedies provided in a mortgage for foreclosure of such mortgage shall not be liable for such Unit Owner's unpaid assessments or charges which accrue prior to the acquisition of title to such Unit by the Mortgagee, except to the extent otherwise provided for in the Act and except to the extent that such Mortgagee is liable as a Unit Owner for the payment of such unpaid assessment or charge that is assessed against the Mortgagee as a result of all Unit Owners being reassessed for the aggregate amount of such deficiency.

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

13.7. Non-Material Amendments; Presumptive Approval. Any addition or amendment to the condominium instruments shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. A Mortgagee or any other mortgagee who is notified of additions or amendments and who does not deliver or post to the Executive Board a negative response within thirty (30) days shall be deemed to have approved such request.



13.8. Construction. The Declarant intends that the provisions of this Article comply with the requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association with respect to condominium mortgage loans and, except as otherwise required by the provisions of the Act, all questions with respect thereto shall be resolved consistent with that intention.

#### ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1. Person to Receive Service. The Agent for Service of Process of the Property shall be the President of the Association whose name and address shall be on file at the Office of the Association.

14.2. Units Subject to Declaration, By-Laws, Rules and Regulations. All present and future Unit Owners, tenants, and occupants of Units shall be subject to, and shall comply with the provisions of this Declaration, the Articles of Association of the Association, the By-Laws and Rules and Regulations adopted pursuant thereto, as these instruments may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit shall constitute an acceptance of the provisions of such instruments, as they may be amended from time to time, by such owner, tenant or occupant. The provisions contained in such instruments shall be covenants running with the land and shall bind any person having at any time interest or estate in such Unit, as though such provisions were recited and fully stipulated in each deed, conveyance, or lease thereof.

14.3. Invalidity. The invalidity of any provision of this Declaration shall not affect in any manner the validity or enforceability of the remainder of this Declaration, and the other provisions of this Declaration shall continue in effect as if such invalid provision had never been included herein.

14.4. Provisions of the Act. The provisions of the Act shall apply to and govern the operation and governance of the condominium created by this Declaration, except to the extent that contrary provisions, not prohibited by the Act, are contained in the Declaration.

14.5. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration, or the intent of any provision thereof.

14.6. Sales, etc. by Declarant. The Declarant shall have the unrestricted right to sell, assign, mortgage, lease or otherwise transfer any Unit or interest therein or appertaining thereto which he owns on such terms and conditions as he may determine.

14.7. Reservation of Control of Association. Until the Termination of Control by Declarant of Association, the Declarant reserves the right, exercised in his sole discretion, to elect certain members of the Executive Board as more fully set forth in the By-Laws.

14.8. Compliance and Enforcement.

(a) Compliance. Each Unit Owner and other person having an interest in the Property or any part thereof shall comply with all of the provisions of this Declaration, the By-Laws and the Rules and Regulations. All of the terms, easements, covenants, conditions and restrictions contained in this Declaration affecting the Property shall be enforceable equitable servitudes and shall run with the land and with every part thereof and interest therein.

(b) Enforcement. In addition to any other right or remedy provided herein or by law, if any Unit Owner or other person having an interest in the Property or any part thereof violates any provision of this Declaration, the By-Laws or the Rules and Regulations, the Declarant, the Association or any Unit Owner or other person having an interest in the Property or any part thereof may bring an appropriate action against the defaulting party to enforce specific compliance with the provision of this Declaration, the By-Laws or the Rules and Regulations, or to recover damages for such violation, including costs and reasonable attorney's fees, or both; provided, however, that in no event shall the Declarant or the Association be under any duty to enforce compliance with the provisions of this Declaration, the By-Laws or the Rules and Regulations.

(c) Expenses. Each Unit Owner shall be liable for costs and expenses of any maintenance, repair, replacement or reconstruction of the Property or any part thereof or of any increase in insurance rates resulting from his act, neglect or carelessness, to the extent insurance proceeds are insufficient for such purpose.

(d) No Waiver, etc. Failure to enforce any provisions of this Declaration or the Association By-Laws or Rules and Regulations, shall in no event be deemed a waiver of the right to do so thereafter, irrespective of the number of violations which may have occurred. All rights, remedies and privileges granted to the Declarant, the Association, the Unit Owner or other person pursuant to this Declaration, the By-Laws or the Rules and Regulations, shall be cumulative, and the exercise of any one or more shall not be deemed to be an election of remedies nor shall such exercise preclude the exercise of any other and additional rights, remedies or privileges. No Unit Owner shall avoid compliance with the provisions of this Declaration, the By-Laws and Rules and Regulations of the Association through nonuse, abandonment or lease of his Unit or his interest in the Property.

14.9 Common Expenses and Assessment During Construction. Common Expenses shall not include any costs, expenses or liabilities incurred in the course of any new construction or initial improvements by the Declarant, all of which shall be at the expense of the Declarant. The Association shall not make, and the Declarant shall not be required to pay, any assessments with respect to any uncompleted Unit, provided, that for the

purposes of this Section a Unit shall be deemed to be completed when it is submitted under the provisions of the Condominium as a Unit in the Condominium.

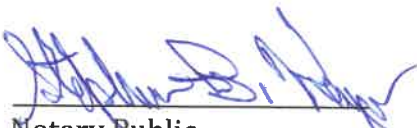
WITNESS its hand by its duly authorized Member this 28<sup>th</sup> day of February, 2022.

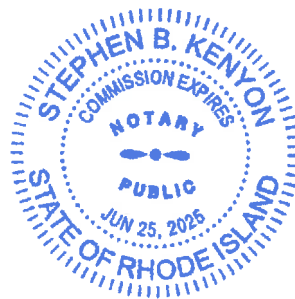
IMMOKOLEE COMMONS, LLC

By:   
James R Barrows, Member

STATE OF RHODE ISLAND  
COUNTY OF NEWPORT

In Portsmouth on the 28<sup>th</sup> day of February, 2022, before me personally appeared James R. Barrows, Member of IMMOKOLEE COMMONS, LLC, to me known and known by me to be the party executing the foregoing instrument, and he acknowledged said instrument, by him executed, to be his free act and deed, individually and in his capacity as aforesaid and the free act and deed of IMMOKOLEE COMMONS, LLC.

  
Notary Public  
Print Name: Stephen B. Kenyon  
Commission Expires: 6-27-25





### EXHIBIT A TO DECLARATION OF PLAN

That certain lot or parcel of land, together with all buildings and improvements thereon situated, located in the Town of Portsmouth, County of Newport, State of Rhode Island, being more particularly described as follows:

BEGINNING at the point of intersection of the boundary line between land now or formerly of Kirsten S. Ziari, and the granted premises with the easterly line of Immokolee Drive, and thence running eastwardly a distance of 394 feet to a point; thence turning an exterior angle of  $188^{\circ} 58'$ , and running eastwardly 48.08 feet; thence turning an interior angle of  $203^{\circ}$  and running northeastwardly 30.83 feet to a point, bounded NORTHERLY partly by land now or formerly of Shawn A. Ziari, et ux, by land now or formerly of Louis L. Dees and Elizabeth J. Dees, and by land now or formerly of Eugene F. Laparle, Jr. and Paulette Laparle; thence turning an interior angle of  $72^{\circ} 38'$  and running southwardly 38.25 feet to a point; bounded EASTERLY by said land now or formerly of Eugene F. Laparle, Jr. and Paulette Laparle; thence turning an exterior angle of  $90^{\circ}$  and running eastwardly a distance of 258.75 feet to a point, bounded NORTHERLY partly by said land of Eugene F. Laparle, Jr. and Paulette Laparle, and by land now or formerly of Pamela N. Kirk, Trustee; thence turning an interior angle of  $86^{\circ}$  and running southwardly 113.68 feet to a point, bounded EASTERLY by land now or formerly of George L. Kirk Jr.; thence turning and running southwestwardly in an arc with a radius of 30 feet a distance of 42.06 feet to a point; and thence running westwardly 285.83 feet to a point; thence turning at an interior angle  $173^{\circ} 51'$  and running westwardly again, to a point, bounded SOUTHERLY by land now or formerly of Fox Run Condominium; thence turning and running northwestwardly in an arc with a radius of 30 feet a distance of 47.12 feet to a point; and thence running northwardly 112.94 feet to a point in the easterly line of Immokolee Drive, bounded WESTERLY to land now or formerly of Fox Run Condominium, designated on the hereinafter mentioned plat as a proposed road; thence turning an interior angle of  $172^{\circ} 40'$  and continuing in the easterly line of Immokolee Drive, 30.2 feet to the point and place of beginning, said last course forming an interior angle of  $101^{\circ} 30'$  with said first mentioned course.

BY-LAWS  
OF  
IMMOKOLEE COMMONS CONDOMINIUM ASSOCIATION

ARTICLE 1  
APPLICABILITY, DEFINITIONS, AND COMPLIANCE

1.1. Applicability. These By-Laws shall apply to IMMOKOLEE COMMONS CONDOMINIUM ASSOCIATION, (hereinafter sometimes called the "Association"), to the Members thereof as hereinafter defined, and to the property in the Town of Portsmouth, County of Newport, State of Rhode Island, known as the IMMOKOLEE COMMONS CONDOMINIUM, (sometimes referred herein to as "Condominium Project") more particularly described in the Declaration of Plan for IMMOKOLEE COMMONS CONDOMINIUM, duly recorded herewith. These By-Laws provide for the governance of the Condominium Project pursuant to the requirements of the Condominium Act.

1.2. Definitions. Insofar as the terms used in these By-Laws are defined in the said Declaration, they shall have the same meaning provided for therein, unless otherwise stated or unless the context demands otherwise, or if not defined therein, the meanings specified for such term in the Condominium Act. The following terms when used herein shall have the meanings set forth below:

(a) The term "Member" as used in these By-Laws shall mean and include the Unit Owner of a Unit, his heirs, devisees, personal representatives and successors in title. Initially, the Declarant, being the sole owner of the Units, shall be the sole member. Thereafter, any person on becoming a Unit Owner, shall automatically become a Member of the Association and be subject to these By-Laws. Such Membership shall terminate without any formal action whenever such person ceases to own a Unit, but such termination shall not relieve or release any such former Unit Owner or Member from any liability or obligations incurred under or in any way connected with the IMMOKOLEE COMMONS CONDOMINIUM during the period of such ownership and membership, or impair any rights or remedies which the Executive Board of the Association or others may have against such former Unit Owner and Member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

EXHIBIT B TO  
DECLARATION OF PLAN

(b) The term "Membership" in the Association as used in these By-Laws shall be limited to Unit Owners of Units in the Condominium Project, provided that whenever title to a Unit is vested in two (2) or more persons, whether as Tenants by the Entirety, Joint Tenants, Tenants in Common or otherwise, such co-Owners shall be entitled jointly to only the vote hereinafter defined for each Unit so owned by them at any meeting, whether annual or special, at which Members are entitled to vote as hereinafter provided.

1.3. Compliance. These By-Laws, to the extent permitted by law, shall apply automatically to all Unit Owners and to all tenants and all persons controlling, occupying or using a Unit.

## ARTICLE 2 THE ASSOCIATION

2.1. Composition. The Association is hereby organized as an incorporated body. The Members and the Membership of the Association shall consist of those persons as defined in Section 1.2 of these By-Laws.

2.2. Purpose. The purpose of the IMMOKOLEE COMMONS CONDOMINIUM ASSOCIATION is to be the Association to which reference is made in the Declaration of the IMMOKOLEE COMMONS CONDOMINIUM located in the Town of Portsmouth, County of Newport, State of Rhode Island, and to provide an entity for the furtherance of the interests of the Unit Owners. The Association shall have the responsibility of administering the Condominium, establishing the means and methods of collecting assessments and charges, arranging for the management of the Condominium and performing all other acts that may be required or permitted to be performed by the Association pursuant to the Act and the Declaration. Except as to those matters which the Act specifically requires to be performed by the vote of the Association, the foregoing responsibilities shall be performed by the Executive Board as more particularly set forth in these By-Laws. The Association shall also be responsible for the maintenance and cleaning of the catch basin and drain line located within the existing appurtenant drainage easement located on the adjacent property owned by George L. Kirk, Jr. with an address of 157 Immokolee Drive, Portsmouth, Rhode Island and being further identified as Portsmouth Assessors Map 36, Lot 10.

2.3. Principal Office. The principal office of the Association shall be located initially at 1364 Smith St., North Providence, Rhode Island 02911, but thereafter may be located at such other suitable and convenient place or places as are permitted by law and designated by the Executive Board.

ARTICLE 3  
MEETING OF MEMBERS

3.1. Place of Meetings. All meetings of the Members of the Association, both annual and special, shall be held at the principal office of the Association, or at such other suitable and convenient places as may be permitted by law, fixed by the Executive Board, and designated in the notices of such meetings.

3.2. Annual Meetings.

(a) The first annual meeting of Members shall be held on the first (1st) Saturday of December, or such earlier date as may be determined by the Declarant. Subsequent annual meetings shall be held on the first (1st) Saturday of December in each succeeding year, or at such other time (not more than Sixty (60) days before or after such date) as may be designated by the Executive Board. At each annual meeting, there shall be elected a Executive Board in accordance with the provisions of Article 4 of these By-Laws. The Members may also transact such other business as may properly come before the meeting.

(b) The Secretary shall hand-deliver or mail notice of annual meetings to each Member of the Association (regardless of whether he is entitled to vote at such meeting) directed to his last known post office address as shown on the records of the Association, by United States mail, first-class, with postage prepaid. Such notice shall be hand-delivered or mailed not less than Ten (10) days nor more than Sixty (60) days before the date of such meeting, and shall state the date, time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or By-Laws, any budget changes, and any proposal to remove a Director or Officer. The mailing of such notice as in this sub-Section provided shall be deemed notice duly served.

3.3. Special Meetings.

(a) Special meetings may be called by the President and the President shall call a special meeting of the Association if so directed by resolution of the Executive Board or upon a petition signed and presented to the Secretary by Unit Owners of not less than thirty percent (30%) of the aggregate Allocated Interests. The notice of any special meeting shall state the time, place, and purpose thereof. Such meeting shall be held within forty-five (45) days after receipt by the President of said resolution or petition,

unless the Act or the By-Laws require otherwise. No business shall be transacted at a special meeting except as stated in the notice.

(b) Within sixty (60) days after conveyance of twenty-five percent (25%) of the Units which may be created, i.e., two (2), to Unit Owners other than the Declarant, the Transition Meeting of the Association and Transition Election shall be held at which two (2) additional persons who are Unit Owners shall be elected to the Executive Board so that the numbers of Executive Board Members shall increase from three to five. Only Unit Owners other than the Declarant may vote at such Transition Election. The term of each member of the Executive Board so elected at the Transition Election and each successor to each such Executive Board Member shall expire on the first day of January of each even numbered year following the year in which such Executive Board Member is elected. Until the Termination of Control by Declarant of Association, each such successor shall be elected only by Unit Owners other than the Declarant.

(c) Within five (5) days prior to the Termination of Control by Declarant of Association or at such earlier date as the Declarant in its sole discretion shall specify, a special meeting of the Association shall be held at which all of the members of the Executive Board appointed by the Declarant shall resign, and the Unit Owners, including the Declarant if the Declarant owns one or more Units, shall thereupon elect successor members of the Executive Board to act in the place and stead of those resigning. The members of the Executive Board so elected shall serve until the first day of January of the next odd-numbered year and the term of the successors to each such Member shall expire on the first day of January of each odd-numbered year.

3.4. Adjournment of Meetings. If at any meeting of the Association a quorum is not present, Unit Owners entitled to cast a majority of the votes represented at such meeting may adjourn the meeting to a time not less than forty-eight (48) hours after the time for which the original meeting was called.

3.5. List of Members. The Secretary shall compile and keep up to date at the principal office of the Association, or such place as shall be from time to time designated by the Executive Board, a complete list of Members and their last known post office addresses as shown on the records of the Association. Such list shall also show opposite each Member's name the number or other appropriate designation of the Unit owned by him. Such list shall be open to inspection by Members and other persons lawfully entitled to inspect the same at all reasonable times during regular business hours.

3.6. Voting. The number of votes in the Association to which each Unit Owner or Owners is entitled to vote shall be computed by multiplying the number one (1) by the Allocated Interest for each Unit owned by the Unit Owner or Owners. Where the ownership of a Unit is in more than one person, then:

(i) the Person who shall be entitled to cast the vote of such Unit shall be the Person named in a certificate executed by all of the owners of such Unit and filed with the Secretary; such certificate shall be valid until revoked by a subsequent certificate

similarly executed;

(ii) in the absence of such named Person from the meeting, the Person who shall be entitled to cast the vote of such Unit shall be the Person owning such Unit who is present;

(iii) if more than one Person owning such Unit is present, then such vote shall be cast only in accordance with their unanimous agreement pursuant to Section 3.10. of the Act. There shall be deemed to be unanimous agreement if any one of the multiple owners casts the vote allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit.

Except where a greater number is required by the Condominium Act or the Declaration, a Majority Vote is required to adopt decisions at any meeting of the Association. If the Declarant owns or holds title to one or more units, the Declarant shall have the right at any meeting of the Association to cast the votes to which such Unit or Units are entitled.

No Unit Owner may vote at any meeting of the Association or be elected to or serve on the Executive Board if payment of the assessment on his Unit is delinquent more than thirty days and the amount necessary to bring his account current has not been paid at the time of such meeting or election. There shall be no cumulative voting.

"Majority Vote" means a vote by those Unit Owners owning Units to which more than fifty percent of the aggregate Allocated Interests actually voted in person or by proxy at a duly convened meeting at which a quorum is present. Any specified percentage vote of the Unit Owners shall mean a vote by the Unit Owners owning Units to which such percentage of Allocated Interests appertain with respect to the total Allocated Interests. Any specified percentage vote of the Mortgagees shall mean a vote by

the Mortgagees of Units to which such percentage of the total number of votes appertain.

No votes allocated to a Unit owned by the Association may be cast.

3.7. Proxies. Votes may be cast in person or by proxy. Proxies must be duly executed in writing, shall be witnessed and dated, shall be valid only for the particular meeting designated therein, and must be filed with the Secretary before the time appointed for each meeting in the notice thereof. If a Unit is owned by more than one person, each such Unit Owner may vote or register protest to the casting of votes by the other Unit Owners through a duly executed proxy. A Unit Owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports



to be revocable without notice. Except with respect to proxies in favor of a holder of a mortgage on the Unit, a proxy terminates one year after its date, unless it specifies a shorter term.

3.8. Quorum.

(a) Except as set forth below, the presence in person or by proxy of Unit Owners of thirty percent (30%) or more of the aggregate Allocated Interests at the commencement of a meeting shall constitute a quorum at all meetings of the Association.

(b) If a meeting is adjourned pursuant to Section 3.4 above, the quorum at such second meeting shall be deemed present throughout any meeting of the Association if persons entitled to cast twenty percent (20%) of the votes which may be cast at the election of the Executive Board are present in person or by proxy at the beginning of the meeting.

3.9. Conduct of Meetings. The President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a book all resolutions adopted at the meeting as well as a record of all transactions occurring there at. The President may appoint a person to serve as parliamentarian at any meeting of the Association. The then current edition of Robert's Rules of Order shall govern the conduct of all meetings of the Association when not in conflict with the Declaration, these By-Laws or the Act. All votes shall be tallied by tellers appointed by the President.

3.10. Dispute Resolution. If, due to the size of the project and the votes of the Unit Owners, an agreement cannot be reached, then the Unit Owners MUST SUBJECT SAID DISPUTE TO ARBITRATION.

ARTICLE 4  
EXECUTIVE BOARD

4.1. Number and Qualification. The affairs of the Association shall be governed by an Executive Board. Prior to the Transition Election provided for by Section 3.3 above, the Executive Board shall be composed of three (3) natural persons who shall be appointed by the Declarant. After the Transition Election, the Executive Board shall be composed of five (5) natural persons. All members of the Executive Board shall be Unit Owners or designees of the Declarant.

4.2. Delegation of Powers; Managing Agent. The Executive Board may employ for the Condominium a "Managing Agent" at a compensation established by the Executive Board. The Managing Agent shall perform such duties and services as the Executive

Board shall authorize, including, but not limited to, all of the duties listed in the Act, the Declaration and these By-Laws; provided, however, where a Managing Agent does not have the power to act under the Act, the Declaration or these By-Laws, such duties shall be performed as advisory to the Executive Board. The Executive Board may delegate to the Managing Agent all of the powers granted to the Executive Board by the Act, the Declaration, and these By-Laws other than the following powers:

- (1) to adopt the annual budget, any amendment thereto or to assess any Common Expenses;
- (2) to adopt, repeal or amend Rules and Regulations;
- (3) to designate signatories on Association bank accounts;
- (4) to borrow money on behalf of the Association;
- (5) to acquire and mortgage Units;
- (6) to designate Reserved Common Elements;
- (7) to allocate Limited Common Elements.

Any contract with the Managing Agent must provide that it may be terminated with cause on no more than thirty (30) days' written notice and without cause and without penalty or any termination fee on no more than ninety (90) days' written notice. The term of any such contract may not exceed three (3) years. The Managing Agent shall be a bona fide business enterprise, unaffiliated with the Declarant, which manages common interest residential communities. Such firm or its principals shall have a minimum of two years experience in real estate community management and shall employ persons possessing a high level of competence in the technical skills necessary to proper management of the Condominium. The Managing Agent must be able to advise the Executive Board regarding the administrative operation of the Condominium and shall employ personnel knowledgeable in the areas of condominium insurance, accounting, contract negotiation, labor relations and condominium regulation.

The Executive Board shall impose appropriate standards of performance upon a Managing Agent. Unless a Managing Agent is instructed otherwise by the Executive Board:

- (1) the accrual method of accounting shall be employed and expenses required by these By-Laws to be charged to more than one but less than all Unit owners shall be accounted for separately;



(2) two or more persons shall be responsible for handling cash to maintain adequate financial control procedures;

(3) cash accounts of the Association shall not be commingled with any other accounts;

(4) no remuneration shall be accepted by the Managing Agent from vendors, independent contractors or others providing goods or services to the Association whether in the form of commissions, finders fees, service fees or otherwise; any discounts received shall benefit the Association;

(5) any financial or other interest which the Managing Agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Executive Board; and

(6) a monthly financial report shall be prepared for the Association containing;

(a) an "income statement" reflecting all income and expense activity for the preceding month on an accrual basis;

(b) an "account activity statement" reflecting all receipt and disbursement activity for the preceding month on a cash basis;

(c) an "account status report" reflecting the status of all accounts in an "actual" versus "projected" (budget) format;

(d) a "balance sheet" reflecting the financial condition of the Association on an unaudited basis;

(e) a "budget report" reflecting any actual or pending obligations which are in excess of budgeted amounts by an amount exceeding the operating reserves or ten percent of a major budget category (as distinct from a specific line item in an expanded chart of accounts); and

(f) a "delinquency report" listing all Unit owners who are delinquent in paying condominium assessments and describing the status of any actions to collect such assessments.

Until the Termination of Control by Declarant of Association, the Executive Board may not employ a Managing Agent for a term exceeding one year. The Association and the Executive Board may use "self-management" at any time.

#### 4.3. Election and Term of Office.

(a) At the annual meetings of the Association, subject to Article 8 of the Declaration, the election of members of the Executive Board shall be held. The term of office of any Executive Board member to be elected (except as set forth in Sections 3.3, 4.4, and 4.5 hereof) shall be fixed at two (2) years, commencing on January 1st of even-numbered as to two members and on January 1st of odd-numbered years as to three members as provided in Section 3.3 hereof. The members of the Executive Board shall hold office until the earlier to occur of the election of their respective successors or their death, adjudication of incompetency, removal, or resignation. An Executive Board member may serve an unlimited number of terms and may succeed himself.

(b) Persons qualified to be members of the Executive Board may be nominated for election only as follows:

(1) Any Unit Owner may submit to the Secretary at least thirty (30) days before the meeting at which the election is to be held a nominating petition signed by the Unit Owners owning at least three (3) Units and a statement that the person nominated is willing to serve on the Executive Board. The Secretary shall mail or hand deliver the submitted items to every Unit owner along with the notice of such meeting;

(2) Nominations may be submitted from the floor at the meeting at which the election is held for each vacancy on the Executive Board for which no more than one person has been nominated by petition.

In all elections for Executive Board Members, each Unit Owner shall be entitled to cast for each vacancy to be filled at such election the number of votes allocated to the Unit. Those candidates for election receiving the greatest number of votes cast in such elections shall be elected, and, if the Executive Board Members are being elected to unequal terms, the candidates receiving the highest number of votes shall be elected to the longest term.

#### 4.4. Removal or Resignation of Members of the Executive Board.

(a) Except with respect to members appointed by Declarant, at any regular or special meeting of the Association duly called and subject to the notice requirements set forth in subsection (b) below, any one or more of the members of the Executive Board may be removed with or without cause by Unit Owners entitled to a majority of all votes in the Association. A successor may then and there be elected to fill the vacancy thus created for the remainder of the term of the member being replaced. In case of multiple vacancies, the person receiving the greatest number of votes shall be elected for the longest term. Notwithstanding the foregoing, prior to the Termination of Control by Declarant of Association, any Executive Board Member elected by only the Unit Owners other than the Declarant pursuant to Section 3.3 hereof, may be removed

and a replacement elected only by a majority of all votes of Unit Owners other than the Declarant.

(b) Any Unit Owner proposing removal of an Executive Board Member shall give notice thereof to the Secretary. Any member whose removal has been proposed by a Unit Owner shall be given at least twenty (20) days' notice by the Secretary of the time, place and purpose of the meeting and shall be given an opportunity to be heard at the meeting.

(c) A member of the Executive Board may resign at any time and shall be deemed to have resigned upon transfer of title to his Unit, if, as a result of such transfer, such member of the Executive Board has no ownership interest in any Unit.

(d) Declarant shall have the right to remove and replace any or all members appointed by the Declarant at any time and from time to time.

#### 4.5. Vacancies.

(a) Except with respect to members appointed by the Declarant, members elected by the Unit Owners other than the Declarant and serving prior to Termination of Control by Declarant of Association pursuant to Section 3.3 and vacancies caused by the removal of an Executive Board member by a vote of the Unit Owners as set forth in Section 4.4 above, all vacancies in the Executive Board shall be filled by a vote of a majority of the remaining members of the Executive Board. Such vote shall be conducted at a special meeting of the Executive Board held for such purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum. Any person so elected shall be a member of the Executive Board for the remainder of the term of the member being replaced. In the case of multiple vacancies, the person receiving the greatest number of votes shall be elected for the longest term.

(b) Prior to Termination of Control by Declarant of Association, any vacancy created by the death, adjudication of incompetency, removal or resignation of a member of the Executive Board elected by only the Unit Owners other than the Declarant pursuant to Section 3.3 hereof shall be filled by the vote of only Unit Owners other than the Declarant. Except in the case of vacancy by removal and simultaneous replacement election pursuant to Section 4.4 above, the vote to fill a vacancy hereunder shall be conducted at a special meeting of the Association to be held for such purpose within thirty (30) days after the occurrence of such vacancy. The Secretary shall give each Unit Owner at least ten (10) days prior notice of this special meeting, stating the time, place and purpose thereof. Any person so elected shall be a member of the Executive Board for the remainder of the term of the member being replaced.

#### 4.6. Organizational Meeting. The first meeting of the Executive Board following

each annual meeting of the Association (hereinafter referred to as the "Organizational Meeting") shall be held within ten (10) days thereafter at such time and place fixed by the President (even if he is the outgoing President) at the meeting at which such Executive Board shall have been elected. No notice shall be necessary to the newly elected members of the Executive Board in order legally to constitute such meeting, providing a majority of the whole Executive Board shall be present at such meeting.

4.7. Regular Meetings. Regular meetings of the Executive Board may be held at such time and place as shall be determined from time to time by a majority of the members, but such meetings shall be held at least once every two (2) months. Notice of regular meetings of the Executive Board shall be given to each member, by mail or telegraph, at least ten (10) business days prior to the day named for such meeting.

4.8. Special Meetings. Special meetings of the Executive Board may be called by the President on at least three (3) business days' notice to each member, given by mail or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Executive Board shall be called by the President or Secretary in like manner and on like notice on the written request of at least two (2) members of the Executive Board.

4.9. Waiver of Notice. Any member may at any time, in writing, waive notice of any meeting of the Executive Board, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any meeting of the Executive Board shall constitute a waiver of notice by him of the time, place and purpose of such meeting. If all members are present at any meeting of the Executive Board, no notice shall be required and any business may be transacted at such meeting.

4.10. Quorum of the Executive Board. At all meetings of the Executive Board, a majority of the members shall constitute a quorum for the transaction of business and the votes of a majority of the members present at a meeting at which a quorum is present shall constitute the decision of the Executive Board. If at any meeting of the Executive Board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any reconvened meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice. One or more members of the Executive Board may participate in and be counted for quorum purposes at any meeting by means of conference telephone or similar communication equipment pursuant to which all persons participating in the meeting can hear each other.

4.11. Compensation. No member of the Executive Board shall receive any compensation from the Association for acting as such, but may be reimbursed for any reasonable expenses incurred in the performance of his duties.

4.12. Conduct of Meetings. The President shall preside over all meetings of the

Executive Board and the Secretary shall keep a minute book of the Executive Board meetings, recording therein all resolutions adopted by the Executive Board and a record of all transactions and proceedings occurring at such meetings. Such minute records shall be kept at the office of the Association and may be examined, at any time by any member who may make copies of any provisions. The Secretary shall, upon request of such member, for a reasonable charge, supply such member with copies of such minutes as such member shall designate certified by such Secretary as being true and correct. The then current edition of Robert's Rules of Order shall govern the conduct of the meetings of the Executive Board when not in conflict with the Declaration, these By-Laws or the Act.

4.13. Action Without Meeting. Any action by the Executive Board required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Executive Board shall individually or collectively consent in writing to such action. Any such written consent shall be filed with the minutes of the proceedings of the Executive Board.

4.14. Validity of Contracts with Interested Executive Board Members. No contract or other transaction between the Association and one or more of its Executive Board members or between the Association and any corporation, firm, or association in which one or more of the Executive Board members of the Association are directors or officers, or are financially interested, shall be void or voidable because such Executive Board member or members are present at any meeting of the Executive Board which authorized or approved the contract or transaction or because his or their votes are counted, if the circumstances specified in either of the following subparagraphs exists:

(a) The fact that an Executive Board member is also such a director or officer or has such financial interest is disclosed or known to the Executive Board and is noted in the minutes thereof, and the Executive Board authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such Executive Board member or members; or

(b) The contract or transaction is made in good faith and is not unconscionable to the Association at the time it is authorized, approved or ratified.

4.15. Inclusion of Interested Executive Board Members in the Quorum. Any Executive Board member holding such director or officer position or having such financial interest in another corporation, firm or association may be counted in determining the essence of a quorum at a meeting of the Executive Board or a committee thereof which authorizes, approves or ratifies a contract or transaction of the type described in Section 4.14 hereof.

4.16. Powers. The Executive Board shall have and exercise all lawful powers and duties necessary for the proper conduct and administration of the affairs of the

Association and the operation and maintenance of a first class condominium project, and may do or cause to be done all such other lawful acts and things as are not by law or by the Declaration directed or required to be done or exercised by Members or Unit Owners, or by others. These powers and duties shall include, but not be limited to, the following:

(1) The operations, maintenance, renewal and protection of the Common Elements and Limited Common Elements and general supervision and surveillance of all of the property of the Association.

(2) The adoption of an annual budget and any amendment thereto and the assessment of Common Expenses.

(3) By majority vote of the Executive Board, to adjust or increase the amount of any annual assessment and monthly installments, and to levy and collect in addition thereto, special assessments in such amounts as the Executive Board may deem proper, whenever the Executive Board is of the opinion that it is necessary so to do in order to meet increased operating or maintenance costs, or additional capital expenses, or because of emergencies; provided, however, that all such increased or special assessments shall be made or levied against such Unit Owners and the Units owned by them respectively, in the same proportions or percentages as provided in the Declaration.

(4) To use and expend any sums collected from such assessments or levies for the operation, maintenance, renewal and protection of the Common Elements, and of the Limited Common Elements, and of the Association Property, as herein provided and contemplated.

(5) To require all Officers and employees of the Association handling or responsible for funds of the Association, or funds in its possession or under its control, to furnish adequate fidelity bonds, in form, penalties and with corporate surety satisfactory to the Executive Board. The premiums on such bonds shall be paid by the Association as part of the Common Expenses.

(6) To pay all taxes and assessments levied or assessed against any property of the Association, exclusive of any taxes or assessments levied against any Unit or otherwise properly chargeable to the Unit Owners thereof.

(7) To employ and dismiss such clerks, stenographers, workmen, janitors, gardeners, watchmen and other personnel, and to purchase or arrange for such services, machinery, equipment, tools, material and supplies as in the opinion of the Executive Board may from time to time be necessary for the proper operation and maintenance of the Condominium Project, except the portions thereof required to be maintained by Unit Owners.



(8) To enter or cause to be entered any Unit in any building when deemed necessary for or in connection with the operation, maintenance, repair, renewal or protection of any Common Areas and Facilities or of any Limited Common Elements or to prevent damage to the Common Elements, or to the Limited Common Elements, or to any Unit or Units, or in emergencies, provided that such entry and work shall be done with as little inconvenience as possible to the Unit Owners and occupants of such Units. Each Unit Owner shall be deemed to have expressly granted such rights of entry by accepting and recording the deed to his Unit.

(9) To collect delinquent levies or assessments made by the Association through the Executive Board against any Units and the respective Unit Owners thereof, together with such costs and expenses incurred in connection therewith, including, but not limited to court costs and Attorneys' fees, whether by suit or otherwise, to abate nuisances, and enforce observations of the Rules and Regulations that may be adopted from time to time, by injunction or such other legal action or means as the Executive Board acting with the advice of Legal Counsel may deem necessary or appropriate.

(10) To employ or retain Legal Counsel, Engineers and Accountants and to fix their compensation whenever such professional advice or services may be deemed necessary by the Executive Board for any proper purposes of the Association, including, but not limited to, those hereinbefore or hereinafter referred to in these By-Laws.

(11) To cause such operating accounts, and escrow and other accounts, if any, to be established and opened as the Executive Board may deem appropriate from time to time and as may be consistent with good accounting practices.

(12) To cause a complete audit of the books and accounts of the Association to be made by a Public Accountant or Certified Public Accountant at the end of each fiscal year, and at such other time or times as may be deemed necessary. The Executive Board shall also prepare at the end of each fiscal year and furnish to the Unit Owners a report of the business and affairs of the Association, showing its transactions and reflecting fully and accurately its financial condition.

(13) To make and enforce compliance with such reasonable Rules and Regulations relative to the operation, use and occupancy of the Buildings, Units and Common Elements and Limited Common Elements and to amend the same from time to time as the Executive Board shall deem necessary or appropriate, which Rules and Regulations when approved by appropriate resolutions, shall be binding on the Unit Owners, their successors in title, and assigns. A copy of such Rules and Regulations and copies of any amendments thereof shall be delivered or mailed to each Unit Owner promptly upon the adoption thereof. The initial Rules and Regulations, which shall be effective until so amended by the Executive Board, are set forth in Schedule A attached hereto.



(14) The Executive Board may borrow funds for any authorized purpose including, but not limited to, the purchase of Units under the provisions contained in the Declaration and these By-Laws or for the payment of Common Expenses.

(15) All agreements, contracts, deeds, mortgages, leases, checks and other instruments shall be executed by such Officers or Member or Members of the Executive Board as may be authorized by the Executive Board.

(16) The Executive Board shall be required to obtain and maintain, to the extent obtainable, the casualty, liability and other forms of insurance in connection with the Property and any property of the Association, the Unit Owners, the Association and its members, directors, officers, employees, agents and managers as more fully provided in the Declaration.

(17) To cause to be repaired, reconstructed, restored or replaced the Property or any portion thereof damaged, destroyed, or taken by condemnation to the extent that insurance proceeds, condemnation awards and other amounts actually received by the Association are sufficient for the purpose in accordance with the Declaration.

(18) To carry out, or cause to be carried out, any other obligations of the Association set forth in the Declaration and the Act as they may be amended from time to time.

4.17. Limited Liability of the Executive Board. The Executive Board, and its members in their capacity as members, officers and employees:

(a) Shall not be liable for the failure of any service to be obtained by the Executive Board and paid for by the Association, or for injury or damage to persons or property caused by the elements or by another Unit Owner or person on the property, or resulting from electricity, gas, water, rain, dust or sand which may leak or flow from the outside or from any part of the building, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place unless in each such instance such injury or damage has been caused by the willful misconduct or gross negligence of the Association or the Executive Board;

(b) Shall not be liable to the Unit Owners as a result of the performance of the Executive Board members' duties for any mistake of judgment, negligence or otherwise, except for the Executive Board members' own willful misconduct or gross negligence;

(c) Shall have no personal liability in contract to a Unit Owner or any other person or entity under any agreement, check, contract, deed, lease, mortgage, instrument or transaction entered into by them on behalf of the Executive Board or the Association in

the performance of the Executive Board members' duties;

(d) Shall not be liable to a Unit Owner, or such Unit Owner's tenants, employees, agents, customers, or guests for loss or damage caused by theft of or damage to personal property left by such Unit Owner or his tenants, employees, agents, customers or guests in a Unit, or in or on the Common Elements or Limited Common Elements, except for the Executive Board members' own willful misconduct or gross negligence;

(e) Shall have no personal liability in tort to a Unit Owner or any other person or entity, direct or imputed, by virtue of acts performed by or for them, except for the Executive Board members' own willful misconduct or gross negligence in the performance of their duties; and

(f) Shall have no personal liability arising out of the use, misuse or condition of the Buildings, or which might in any other way be assessed against or imputed to the Executive Board members as a result of or by virtue of their performance of their duties, except for the Executive Board members' own willful misconduct or gross negligence.

4.18. Indemnification. Each member of the Executive Board in his capacity as an Executive Board member, officer or both, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding in which he may become involved by reason of his being or having been a member and/or officer of the Executive Board, or any settlement of any such proceeding, whether or not he is an Executive Board member, officer or both at the time such expenses are incurred, except in such cases wherein such Executive Board member and/or officer is adjudged guilty of willful misconduct or gross negligence in the performance of his duties; provided that, in the event of a settlement, this indemnification shall apply only if and when the Executive Board (with the affected member abstaining if he is then an Executive Board member) approves such settlement and reimbursement as being in the best interests of the Association. The indemnification by the Unit Owners set forth in this Section 4.18 shall be paid by the Association on behalf of the Unit Owners and shall constitute a Common Expense and shall be assessed and collectible as such. Such right of indemnification shall not be deemed exclusive of any other rights to which such Executive Board member and/or officer may be entitled as a matter of law or agreement or by vote of the Unit Owners or otherwise.

4.19. Covenants Committee.

(a) Purpose. The Executive Board shall establish a Covenants Committee, consisting of three members appointed by the Executive Board, each to serve for a term of two years, in order to assure that the Condominium shall always be maintained in a manner: (1) providing for visual harmony and soundness of repair; (2) avoiding

activities deleterious to the aesthetic or property values of the Condominium; (3) furthering the comfort of the Unit Owners, their guests and tenants; and (4) promoting the general welfare and safety of the condominium community.

(b) Powers. The Covenants Committee shall regulate the external design, appearance, use and maintenance of the Common Elements. The Covenants Committee shall have the power to impose reasonable application fees as well as the costs of reports, analyses, or consultations required in connection with improvements or charges proposed by a Unit Owner. The Covenants Committee shall have the power to impose reasonable fines upon, and issue a cease and desist request to a Unit Owner, his guests, invitees, or lessees whose actions are inconsistent with the provisions of the Condominium Act, the Declaration, the Rules and Regulations or resolutions of the Executive Board (upon petition of any Unit Owner or upon its own motion). The Covenants Committee shall from time to time, as required, provide interpretations of the Declaration, Rules and Regulations and resolutions pursuant to the intents, provisions and qualifications thereof when requested to do so by a Unit Owner or the Executive Board. Any action, ruling, or decision of the Covenants Committee may be appealed to the Executive Board by any party deemed by the Executive Board to have standing as an aggrieved party and the Executive Board may modify or reverse any such action, ruling or decision.

(c) Authority. The Covenants Committee shall have such additional duties, power and authority as the Executive Board may from time to time provide by resolution. The Executive Board may relieve the Covenants Committee of any of its duties, powers and authority either generally or on a case-by-case basis. The Covenants Committee shall carry out its duties and exercise its powers and authority in the manner provided for in the Rules and Regulations or by resolution of the Executive Board.

## ARTICLE 5 OFFICERS

5.1. Officers. The Officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer. All officers shall be Unit Owners or the designated representative of a corporation, partnership or other legal entity which is a Unit Owner. Not more than Two (2) offices may be held by the same person.

5.2. Election. The Officers of the Association shall be elected annually by the Executive Board at the organizational meeting of each new Executive Board and shall hold office until their successors are elected or appointed by the Executive Board and qualify.

5.3. Removal. Each Officer shall hold office at the pleasure of the Executive Board and may be removed with or without cause, and his successor elected at any annual, or

at any special meeting of the Executive Board called for such purpose, upon the affirmative vote of a majority of the Members of the Executive Board.

5.4. President.

(a) The President shall be the Chief Executive Officer of the Association and shall preside at all meetings of the Members and of the Executive Board.

(b) The President shall execute and seal deeds, contracts and other instruments, in the name and on behalf of the Association, except when such documents are required or permitted by law to be otherwise executed, and except when the signing and execution thereof shall be delegated by the Executive Board to another Officer or Agent of the Association.

5.5. Vice President. The Vice President shall take the place of the President and perform the duties of the President whenever the President shall be absent or unable to act. The Vice President shall also perform such other duties as shall from time to time be imposed by the Executive Board or by the President.

5.6. Secretary.

(a) The Secretary shall attend all meetings of the Executive Board and all meetings of the Members and record all votes and the minutes of all meetings and proceedings in a minute book to be kept for that purpose and shall perform like duties for the Committees when required. He shall have charge of the minute book, and such records and papers as the Executive Board shall direct, and perform all duties incident to the Office of Secretary, including the sending out of notices of meetings of the Members, Executive Board and Committees, and such other duties as may be described by these By-Laws, by the Executive Board and by the President.

(b) In the absence or disability of the Secretary, a Clerk or Secretary pro tem shall be appointed by the Executive Board to perform the duties and exercise the powers of the Secretary, and shall perform such duties as may be prescribed by the Executive Board.

5.7. Treasurer.

(a) The Treasurer shall have responsibility for the Association funds and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies, checks, and other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Executive Board.

(b) The Treasurer shall disburse the funds of the Association as may from time to

time be ordered by the Executive Board, making proper vouchers for such disbursements, and shall render to the President and the Executive Board, at the regular meetings of the Executive Board, or whenever they or either of them so require, an account of his transactions as Treasurer and of the financial condition of the Association.

ARTICLE 6  
BUDGET PROCEDURE ASSESSMENT AND COLLECTION

6.1. Fiscal Year. The fiscal year of the Association shall be January 1st through December 31st unless otherwise determined by the Executive Board.

6.2. Preparation and Approval of Budget.

(a) At least sixty (60) days before the beginning of each fiscal year, the Executive Board shall adopt a budget for the Association containing an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units as to which it is the responsibility of the Association to maintain, repair and replace, and the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be declared to be Common Expenses by the Condominium Act, the Declaration or a resolution of the Association and which will be required during the ensuing fiscal year for the administration, operation, maintenance and repair of the Property and the rendering to the Unit Owners of all related services. The budget shall reflect the separate assessment of Limited Common Expenses. Such budget shall also include such reasonable amounts as the Executive Board considers necessary to provide working capital, a general operating reserve and reserves for contingencies and replacements.

(b) Within thirty (30) days after adoption of the proposed budget, the Executive Board shall send to each Unit Owner a summary of the budget in a reasonably itemized form which sets forth the amount of the Common Expenses and any special assessment payable by each Unit Owner. Such budget shall be available for inspection at the Association Office. Such budget shall constitute the basis for determining each Unit Owner's assessment for the Common Expenses of the Condominium.

(c) The Executive Board shall also, within thirty (30) days after the adoption of any proposed budget, set a date for a meeting of the Unit Owners to consider ratification of the proposed budget to be held not less than fourteen (14) nor more than thirty (30) days after the mailing of the summary. Unless at that meeting a Majority of all the Unit Owners rejects the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Executive Board. The total amount of such



budget shall be assessed against all of the Units and the respective Unit Owners thereof, in the proportionate Allocated Interests applicable to the several Units owned by them as set forth in the Declaration.

(d) The Executive Board shall make reasonable efforts to meet the deadlines set forth above, but compliance with such deadlines shall not be a condition precedent to the effectiveness of any budget.

6.3. Assessment and Payment of Common Expenses. Subject to the provisions of subsection 6.2 hereof, the total amount of the estimated funds required from assessments for the operation of the Property set forth in the budget adopted by the Executive Board shall be assessed against each Unit Owner in proportion to his respective Allocated Interest, except for Limited Common Expenses which shall be assessed against each Unit Owner benefited in proportion to the relative Allocated Interest of such units inter se, and shall be a lien against such Unit Owner's Unit as provided in Section 6.12 of these By-Laws. On or before the first day of each fiscal year, and the first day of each of the succeeding eleven months in such fiscal year, each Unit Owner shall be obligated to pay to the Executive Board or the Managing Agent (as determined by the Executive Board), one-twelfth (1/12th) of such assessment. Within ninety days after the end of each fiscal year, the Executive Board shall supply to all Unit Owners, and to each Mortgagee requesting the same, an itemized accounting of the Common Expenses for such fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget adopted by the Executive Board for such fiscal year, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall, at the discretion of the Executive Board, be placed in reserve accounts, be placed in a special account to be expended solely for the general welfare of the Unit Owners, or be credited according to each Unit Owner's Allocated Interest to the next monthly installments due from Unit Owners under the current fiscal year's budget, until exhausted. Any net shortage shall be assessed promptly against the Unit Owners in accordance with their Allocated Interests after such notice of a proposed additional budget and ratification thereof as provided in Section 6.2 hereof, and shall be payable either: (1) in full with payment of the next monthly assessment due; or (2) in not more than six equal monthly installments, as the Executive Board may determine.

6.4. Reserves. The Executive Board shall build up and maintain reasonable reserves for working capital, operations, contingencies and replacements. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against such reserves. If the reserves are inadequate for any reason, including non-payment of any Unit Owner's assessment, the Executive Board may at any time levy a further assessment, which shall be assessed against the Unit Owners according to their respective Allocated Interests, and which may be payable in a lump sum or in installments as the Executive Board may determine.

6.5. Further Assessments. The Executive Board shall serve notice of any such further assessment on Unit Owners pursuant to Sections 6.3 or 6.4 and shall hold a meeting of Unit Owners to consider ratification of the proposed assessment as provided in Section 6.2 hereof. Such further assessment shall become effective with the next monthly payment which is due more than ten days after the ratification of such further assessment. All Unit Owners so notified shall be obligated to pay the adjusted monthly amount or, if such further assessment is not payable in installments, the amount of such assessment. Such assessment shall be a lien as of the effective date as set forth in Section 6.3 hereof.

6.6. Initial Capital Payment.

(1) Upon taking office, the first Executive Board elected or designated pursuant to these By-Laws shall determine the budget, as defined in this section, for the period commencing thirty days after such election and ending on the last day of the fiscal year in which such election occurs. Assessments shall be levied and become a lien against the Unit Owners during such period as provided in Section 6.3 hereof.

(2) The Declarant, as the agent of the Executive Board, will collect from each initial purchaser at the time of settlement an "initial capital payment" in the amount of Two Hundred Fifty (\$250.00) Dollars. The Declarant will deliver the funds so collected to the Executive Board to provide the necessary working capital for the Association and for reserves. Such funds may be used for certain prepaid items, initial equipment, supplies, organizational costs and other start-up costs, and for such other purposes as the Executive Board may determine, and the balance of the funds shall be allocated to the reserves for the purposes set forth in Section 6.4 hereof.

6.7. Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Executive Board to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his allocable share of the Common Expenses as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Unit Owner shall continue to pay each monthly installment at the monthly rate established for the previous fiscal year until notice of the monthly payment which is due more than ten days after such new annual or adjusted budget shall have been delivered.

6.8. Accounts. All sums collected by the Executive Board with respect to assessments against the Unit Owners or from any other source may be commingled into a single fund or held for each Unit Owner in accordance with his Allocated Interest.

6.9. Payment of Common Expenses. Each Unit Owner shall pay the Common Expenses, including Limited Common Expenses, assessed by the Executive Board pursuant to the provisions of Article 6 hereof. No Unit Owner may be exempted from



liability for the assessment of Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Unit. No Unit Owner shall be liable for the payment of any part of the Common Expenses assessed against his Unit subsequent to the date of recordation of a conveyance by him in fee of such Unit. Prior to or at the time of any such conveyance, all liens, unpaid charges and assessments shall be paid in full and discharged. The purchaser of a Unit shall be jointly and severally liable with the selling Unit Owner for all unpaid assessments against the latter for his proportionate share of the Common Expenses up to the time of such recordation, without prejudice to the purchaser's right to recover from the selling Unit Owner amounts paid by the purchaser therefore; provided, however, that any such purchaser shall be entitled to a statement setting forth the amount of the unpaid assessments against the selling Unit Owner within five business days following a written request therefore to the Executive Board and such purchaser shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments in excess of the amount therein set forth; and provided, further, that each Mortgagee who comes into possession of a Unit by virtue of foreclosure or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any claims for unpaid assessments or charges against such Unit which accrue prior to the time such Mortgagee comes into possession thereof, except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all units including the mortgaged Unit.

6.10. Collection of Assessments. The Executive Board shall take prompt action to collect any assessments due from any Unit Owner which remain unpaid for more than thirty days from the due date for payment thereof. Any assessment, or installment thereof, not paid within ten days after due shall accrue a late charge in the amount of ten dollars, or such other amount as may be established from time to time by the Executive Board.

6.11. Statement of Common Expenses. The Executive Board shall promptly provide any Unit Owner, contract purchaser or Mortgagee so requesting the same in writing with a written statement of all unpaid assessments for Common Expenses and any other assessments due from such Unit Owner. The Executive Board may impose a reasonable charge for the preparation of such statement to cover the cost of preparation.

6.12. Collection of Assessments and Liens. All sums assessed for the share of the Common Expenses or any other assessment chargeable to a Unit or fines imposed against a Unit Owner shall be a debt of the Unit Owner at the time assessed and shall be collectible as such as provided by the Act. Such debt shall be the personal obligation of the Unit Owner. Any such sum assessed or fine imposed that is unpaid when due shall constitute a lien as set forth in the Act and shall have the priority as set in the Act. Said lien shall be in addition to any other remedy which may be available at law.

The lien provided for above may be foreclosed in accordance with the provisions

of the Act, and the court shall add to the amount due, reasonable Attorneys' fees and costs and expenses of the action, all of which shall be deemed a part of the cost and expense which the Unit Owner has agreed to pay and are hereby included in such lien. The Association, through the Executive Board or its duly authorized President or other representative, may purchase at the sale, take title in its own name, lease, mortgage and dispose of same.

6.13. Obligations.

(a) Each Unit Owner shall perform promptly and at his own risk, cost and expense, all maintenance and repair work with respect to each Unit owned by him and shall maintain his Unit in good order and condition, and each Unit Owner shall be liable for damages, liabilities, costs, detriments and expenses, including Attorneys' fees, caused by or arising out of his failure to perform promptly any such maintenance and repair work.

(b) Each Unit Owner shall be obligated to reimburse the Association for any expenditures incurred by it in repairing or replacing any part or parts of the Common Elements damaged solely by his negligence, or by the negligence of his tenants, agents, or guests, promptly upon receipt of the statements therefore from the Association.

6.14. Default. In the event a Unit Owner shall fail to pay any assessment levied against him and any Unit owned by him as provided in Section 6.12, or shall fail to reimburse the Association for any maintenance or repair work performed by it as provided in Section 6.13, within thirty (30) days after the same shall become due and payable and a statement showing the amounts due on account of either or both of said items, as the case may be, shall have been mailed by the Secretary to such Unit Owner by United States mail, first class, with postage prepaid, directed to such Unit Owner at his last known post office address as the same appears on the records of the Association, then and in either or both of such events, the Association, acting by and through its Executive Board, shall be entitled to proceed to foreclose the lien created on such Unit by this Article 6, in the same manner as provided in Section 6.12 for the foreclosures of liens for delinquent assessments, or to proceed with a legal action to collect the sum due. Nothing herein contained shall be deemed to impair the right of the Association to proceed personally against any such delinquent Unit Owner for the recovery of a personal judgment against him, or for such other relief, legal or equitable, as may be deemed appropriate.

6.15. Acceleration of Assessment Installments Upon Default. If a Unit Owner shall be in default in the payment of an installment upon an assessment, the Executive Board may accelerate the remaining installments of the assessment upon notice thereof to the Unit Owner, and thereupon the unpaid balance of the assessment, together with interest, shall come due upon the date stated in the notice, but not less than Ten (10) days after delivery thereof to

the Unit Owner, or not less than Twenty (20) days after the mailing of such notice to him by registered or certified mail, whichever shall first occur.

6.16. Assessments for Emergencies. Assessments for expenses for emergencies which cannot be paid from the annual assessments for Common Expenses shall be made only after notice of the need therefore to the Unit Owners concerned. After such notice of a proposed additional budget, the assessment shall become effective, and it shall be due after thirty (30) days notice thereof in such manner as the Executive Board may require.

6.17. Interest and Cost of Collection. Any past due assessment for Common Expenses or installment thereof, or any other amount due to the Association from a Unit Owner, shall bear interest at the rate of Eighteen (18%) Percent per annum or at such other rate set by the Executive Board. The cost of collection including a reasonable attorney's fee, shall also be the obligation of a Unit Owner.

ARTICLE 7  
MAINTENANCE, REPAIR AND REPLACEMENT  
OR RECONSTRUCTION

7.1. By the Association. The Association shall be responsible for the maintenance, repair and replacement (unless, if in the opinion of 4/5ths of the Executive Board such expense was necessitated by the negligence, misuse or neglect of a Unit Owner) of all of the Common Elements as defined herein or in the Declaration, whether located inside or outside of the Units, the cost of which shall be charged to all Unit Owners as a common expense, provided, however, that each Unit Owner shall perform normal maintenance on the Limited Common Elements appurtenant to his Unit and any portion of the remaining Common Elements which the Executive Board pursuant to the Rules and Regulations has given him permission to utilize, including without limitation the items enumerated in Section 7.2.

7.2. By the Unit Owner. Each Unit Owner shall keep his Unit and its equipment, appliances and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance and condition of his Unit. In addition, each Unit Owner shall be responsible for all damages to all other Units or to the Common Elements resulting from his failure or negligence to make any of the repairs required by this Section. Each Unit Owner shall perform his responsibility in such manner as shall not unreasonably disturb or interfere with the other Unit Owners. Each Unit Owner shall promptly report to the Executive Board any defect or need for repairs for which the Association is responsible.

7.3. Manner of Repair and Replacement. All repairs and replacements shall be

substantially similar to the original construction and installation and shall be of first-class quality, but may be done with contemporary building materials and equipment.

7.4. Additions, Alterations or Improvements by the Unit Owners. Unit Owners may make structural addition, alteration or improvement in or to his Unit without the prior written consent of the Executive Board. If any application to any governmental authority for a permit to make any such structural additions, alteration or improvement in or to any Unit requires execution by the Association, then the application shall be executed on behalf of the Association by an authorized Officer, without however incurring any liability on the part of the Executive Board, the Association or any of them to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having claim for injury to person or damage to property arising therefrom. Either Unit may be subdivided or may be altered to include more than one use as long as said change has complied with municipal regulations and condominium restrictions. The Secretary shall record any necessary amendment to the Declaration to effect such action as provided in Sections 2.13 of the Condominium Act.

## ARTICLE 8 COMPLIANCE AND DEFAULT

8.1. Relief. Each Unit Owner shall be governed by, and shall comply with, all of the terms of the Declaration and the Condominium Act as any of the same may be amended from time to time. In addition to the remedies provided in Section 3.16 of the Condominium Act, a default by a Unit Owner shall entitle the Association, acting through its Executive Board to the following relief:

(a) Additional Liability. Each Unit Owner shall be liable for the expense of all maintenance, repair or replacement rendered necessary by his act, neglect or carelessness or the act, neglect or carelessness of any member of his family or his tenants, employees, agents or licensees, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Executive Board. Such liability shall include any increase in casualty insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its rights of subrogation.

(b) Costs and Attorneys' Fees. In any proceedings arising out of any alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be determined by the Court.

(c) No Waiver of Rights. The failure of the Association, the Executive Board or of a Unit Owner to enforce any right, provision, covenant or condition which may be granted

by the Declaration or the Condominium Act shall not constitute a waiver of the right of the Association, the Executive Board or the Unit Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association, the Executive Board or any Unit Owner pursuant to any term, provision, covenant or condition of the Declaration or the Condominium Act shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by the Declaration or the Condominium Act or at law or in equity.

(d) Interest. In the event of a default by any Unit Owner in paying any sum assessed against his Unit other than for common expenses which continues for a period in excess of fifteen days, interest at a rate of Eighteen (18%) Percent per annum or at such other rate set by the Executive Board shall be due and payable on the principal amount unpaid from the date due until paid.

## ARTICLE 9 INSURANCE

9.1. Power of Attorney. The Association is hereby irrevocably appointed as attorney-in-fact for each Unit Owner and for each holder of a mortgage or other lien upon a Unit and for each Owner of any other interest in the Property for the purpose of purchasing and maintaining insurance as set forth in Section 9.3 below including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.

9.2. Insurance Trustee. The Executive Board shall have the option, in its sole discretion, of naming as an insured, on behalf of the Association, an Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement. The duty of the Insurance Trustee shall be to receive, hold or otherwise properly dispose of, in accordance with Section 3.13 of the Condominium Act, proceeds of insurance designated in the Insurance Trust Agreement in trust for Unit Owners and their mortgagees as their interests may appear.

9.3. Types and Amounts. In addition to and in supplementation of the insurance required under Section 34-36.1-3.13 of the Act, commencing not later than the time of the conveyance of the first Unit to a Person other than the Declarant, the Association shall, to the extent reasonably available, obtain and maintain the types and amounts of insurance set forth below in sub-sections of this Section 9.3. Except as otherwise provided, the premiums for all such insurance policies shall be a Common Expense.

### 9.3.1 Hazard Insurance.



(a) Hazard Insurance, with an endorsement for extended coverage, or such other fire and casualty insurance as the Executive Board may determine provides equal or greater protection for the Unit Owners and their mortgagees, if any, in each case complying with the applicable requirements of Section 9.4 hereof. Such hazard insurance shall, if and to the extent reasonably available, provide coverage of the Common Elements (including the Limited Common Elements), including fixtures and building service equipment and common personal property and supplies belonging to the Association, and the Units; but excluding any improvements or fixtures subsequently added by the Unit Owner and all other personal property of the Unit Owner. Such insurance shall, if so required by the Federal National Mortgage Association and if and to the extent reasonably available, also cover fixtures, equipment and other personal property inside a Unit if such fixtures, equipment or personal property are financed by a mortgage purchased by the Federal National Mortgage Association. If such insurance is so provided, the Association shall require such Unit Owner to pay the additional cost incurred by the Association in so insuring such Unit Owner's fixtures, equipment or other personal property. Such hazard insurance shall insure against all risks of direct physical loss commonly insured against. If such hazard insurance no longer becomes available in the future, the Association shall obtain such comparable insurance as is then available. The amount of any such hazard insurance obtained pursuant to this Section shall be equal to the full insurance replacement value of the insured property, without deduction for depreciation (i.e., one hundred percent (100%) of current "replacement cost" exclusive of land, foundation, excavation and other items normally excluded from coverages, but including all Building service equipment), with an "agreed amount endorsement" or its equivalent, if available, or an "inflation guard endorsement", if available, and construction code endorsements, if applicable and to the extent required by the Federal National Mortgage Association. Notwithstanding the foregoing, in no event shall the aggregate amount of the insurance obtained be less than the amount of the initial principal sum of all Mortgages in effect from time to time.

(b) Such hazard insurance shall afford protection against at least the following:

- (1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement;
- (2) all other perils which are customarily covered with respect to projects similar in construction, location, and use, including all perils normally covered by the standard "all risk" endorsement, where such is available;
- (3) such other risks as the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation may require by reason of their holding one or more Mortgages.

(c) Such hazard insurance policy may, at the option of the Association, contain a "deductible" provision in an amount to be determined by the Executive Board but not to exceed Ten Thousand Dollars (\$10,000.00).

9.3.2. Comprehensive Liability Insurance.

(a) Comprehensive Liability Insurance policies, complying with the requirements of Section 9.4 hereof, insuring the Unit Owners, in their capacity as Unit Owners and Association

Members and any Managing Agent retained by the Association, against any liability to the public or to the other Unit Owners, their tenants or invitees, relating in any way to the ownership, operation, maintenance and/or use of the Common Elements and any part thereof, the public ways of the project, any other areas under the Association's supervision, and Units owned by the Association.

(b) Such insurance policy shall contain a "severability of interest endorsement" or equivalent coverage which precludes the insurer from denying the claim of a Unit Owner of the negligent acts of the Association or another Unit Owner.

(c) Limits of liability shall be at least One Million Dollars (\$1,000,000.00) covering all claims for personal injury and/or property damage arising out of a single occurrence.

(d) Coverage under this policy shall include legal liability arising out of lawsuits related to employment contracts of the Association.

9.3.3. Fidelity Bonds.

(a) Fidelity bonds or insurance coverage against dishonest acts on the part of such persons (including by way of illustration and not limitation, Association Members, Officers, Executive Board Members, trustees, managers, agents, employees and volunteers), handling or responsible for funds belonging to or administered by the Association. In the event the Association has delegated some or all of the responsibility for the handling of funds to the Managing Agent, such bonds or insurance coverage shall include officers, employees and agents of such Managing Agent.

(b) Such fidelity bond or insurance shall name the Association as the named insured and shall be written in an amount sufficient to cover the maximum funds that will be in the custody of the Association or its Managing Agent at any time while the bond is in force which is in no event less than one-half (1/2) times the Association's estimated annual operating expenses, including reserves, or the amount required by the Mortgagees, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greatest.

(c) In connection with such coverage, an appropriate endorsement to such policy or bond in order to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.



(d) Such fidelity bond or insurance shall also:

(1) name the Association as an Obligee;

(2) contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions;

(3) provide that same may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days prior written notice to the Association and all Mortgagees.

9.3.4. Workmen's Compensation Coverage. Such workmen's compensation insurance as required by law.

9.3.5. Indemnification Insurance. Insurance to satisfy the indemnification obligation of the Association and all Unit Owners set out in Section 4.18 hereof, if and to the extent available at the election of the Executive Board.

9.3.6. Other Insurance. The Association may carry any other insurance it deems appropriate to protect the Association or the Unit Owners.

9.4. Required Provisions. Insurance obtained by the Association shall be in accordance with the following provisions:

(a) All policies shall be written with a company licensed to do business in the State of Rhode Island and, for the Hazard Insurance Policy described in Section 9.3.1 hereof, such company must hold a rating of Class VI or better by Best's Insurance Reports (or a rating of Class V, provided it has general policy holder's rating of at least "A"), or by an equivalent rating bureau should Best's Insurance Reports cease to be issued.

(b) Exclusive authority to adjust losses under policies hereafter in force on the Property shall be vested in the Executive Board or its authorized representative.

(c) With respect to the insurance policies issued to the Association and covering all or any part of the Property, the Association shall endeavor to cause such policies to provide that:

(1) the enforceability of such policies is not affected by any waiver of subrogation as to any and all claims against the Association, any Managing Agent, the Unit Owners and their respective tenants, employees, agents, customers, and guests, such subrogation being hereby waived;

(2) such policies cannot be cancelled, invalidated or suspended by means of the

conduct of any one or more Unit Owners, all defenses based upon co-insurance or acts of the insured being waived by the insurer, and in no event may cancellation, material modification, invalidation or suspension for any reason be effected without at least thirty (30) days' prior written notice to the Association, any Insurance Trustee, each Unit Owner and all Mortgagees whose names and addresses are on file with the insurer;

(3) such policies cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee or the Association or of any Managing Agent without a prior demand in writing that the Association or any Managing Agent, as the case may be, cure the defect within a reasonable period of time;

(4) any "no other insurance" clause in such policies shall not prohibit Unit Owners from obtaining insurance on their individual Unit provided such insurance policy conforms with the requirements of this Article 9.

(5) the name of the insured under each policy required pursuant to this Article 9 shall be stated in form and substance substantially as follows: "IMMOKOLEE COMMONS CONDOMINIUM ASSOCIATION for the use and benefit of the individual owners or their authorized representatives, of the units contained in the IMMOKOLEE COMMONS CONDOMINIUM". The policies may alternatively be issued in the name of an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual owners, as provided for in Section 9.2 hereof.

(6) loss payable under each policy required pursuant to this Article 9 shall be in favor of the Association or Insurance Trustee (if an Insurance Trustee has been appointed by the Executive Board pursuant to Section 9.2 hereof) for each Unit Owner and each such Unit Owner's Mortgagees as their interests may appear. Policies shall contain the standard mortgage clause, or equivalent endorsement (without contribution) or shall otherwise be endorsed to fully protect all Mortgagees' interests. If the Federal National Mortgage Association holds one or more Mortgages, the policies must name as mortgagee either the Federal National Mortgage Association or the servicers for the Mortgages it holds; such servicer's name shall be followed by the phrase "its successors and assigns."

(7) coverage may not be prejudiced by: (i) any act or negligence of one or more Unit Owners when such act or neglect is not within the control of the Association; or (ii) any condition regarding any portion of the Property over which the Association has no control.

(8) all policies of property insurance shall provide that, despite any provisions giving the insurer the right to elect to restore damage in lieu of a cash settlement, such options shall not be exercisable (i) without the prior written approval of the Executive

Board (or any Insurance Trustee), or (ii) when in conflict with the provisions of any Insurance Trust Agreement to which the Association may be a party or with any requirement of law.

(9) insurance coverage obtained and maintained by the Association pursuant to the requirements of this Article 9 may not be brought into contribution with insurance purchased by Unit Owners or their mortgagees.

(10) insurance coverage obtained and maintained by the Association pursuant to the requirements of this Article 9 shall provide that no assessment may be made against Mortgagees or may become a lien on the mortgaged premises superior to the lien of any Mortgagees.

(11) any Insurance Trust Agreement will be recognized.

(12) each Unit Owner is an insured person under the policy with respect to liability arising out of its interest in the Common Elements or membership in the Association.

(13) If, at the time of a loss under a policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

#### 9.5. Unit Owner's Insurance.

(a) Individual Insurance Policies. Each Owner (and the holder of any mortgage thereon) may obtain additional insurance (including a "Condominium Unit-Owner's Endorsement" for improvements and betterments to the Unit made or acquired at the expense of the Owner) at his own expense. Such insurance shall be written by the same carrier as that purchased by the Association pursuant to this Article or shall provide that it shall be without contribution as against the same. Such insurance shall contain the same waiver of subrogation provision as that set forth in Section 9.4 of this Article. The Declarant recommends that each Owner obtain, in addition to the insurance hereinabove provided to be obtained by the Association, a "Condominium Homeowners Policy", or equivalent, to insure against loss or damage to personal property used or incidental to the occupancy of his Unit, additional living expense, plate glass damage, vandalism or malicious mischief, theft, personal liability and the like. Such policy should include a "Condominium Unit Owner's Endorsement" covering losses to improvements and betterments to the Unit made or acquired at the expense of the Owner.

(b) Any Unit Owner who obtains individual insurance policies covering any portion of the Property, other than: (i) personal property belonging to such Owner; or (ii) the individual Unit of such Unit Owner, shall be required to file a copy of such individual policy or policies with the Association within thirty (30) days after purchase of such

insurance.

(c) The Executive Board shall have the power to require all Unit Owners to carry such types of insurance on their Units as the Executive Board may reasonably require, including, without limitation, insurance on all portions of the Unit.

9.6 Review. The Executive Board shall review annually the amount and terms of insurance obtained by it and shall undertake such action, including appraisals, as may be necessary to determine that such insurance conforms to the provision of this Article. The Executive Board shall have exclusive authority to negotiate and adjust losses under all insurance policies obtained by it.

ARTICLE 10  
REPAIR AND RECONSTRUCTION AFTER FIRE  
OR OTHER CASUALTY

10.1. When Repair and Reconstruction are Required. Except as otherwise provided in Section 10.4, in the event of damage to or destruction of all or any part of the building as a result of fire or other casualty, the Executive Board shall arrange for and supervise the prompt repair and restoration of the affected structure or improvement, and the Executive Board shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration. Notwithstanding the foregoing, each Unit Owner shall have the right to supervise the redecorating of the Unit.

10.2. Procedure for Reconstruction and Repair.

(a) Cost Estimates. Immediately after a fire or other casualty causing damage to any portion of a Building, the Executive Board shall obtain reliable and detailed estimates of the cost of repairing and restoring such portion to a condition as good as that existing before such casualty.

(b) If the proceeds of insurance are not sufficient to defray such estimated costs of reconstruction and repair, or if upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the amount necessary to complete such reconstruction and repair shall be deemed a common expense and a special assessment therefore shall be levied.

10.3. Disbursements of Construction Funds.

(a) Construction Fund and Disbursement. The proceeds of insurance collected on account of casualty, and the sums received by the Executive Board from collections of assessments against Unit Owners on account of such casualty, shall constitute a

construction fund which shall be disbursed in payment of the costs of reconstruction and repair pursuant to Section 10.1.

(b) Surplus. The first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds and, if there is a balance in the construction fund after the payment of all of the costs of the reconstruction and repair for which the fund is established, such balance shall be divided among all Unit Owners in proportion to their Allocated Interests and shall be distributed in accordance with the priority of interests at law or in equity in each Unit.

(c) Common Elements. When the damage is to both Common Elements and Units, the insurance proceeds shall be applied first to the cost of repairing the Common Elements and thereafter to the cost of repairing the Units.

10.4. When Reconstruction Is Not Required. If the Executive Board elects not to repair damage to the building and to terminate the Condominium pursuant to Section 2.18 of the Condominium Act, the net assets of the Condominium, together with the net proceeds of insurance policies, if any, shall be divided by the Executive Board among all Unit Owners in proportion to their respective Allocated Interests, after first paying out of the share of each Unit Owner, to the extent sufficient therefore, the amount of any unpaid liens on the Unit in the order of priority of such liens.

## ARTICLE 11 EXECUTION OF DOCUMENTS

11.1. Contracts, etc., How Executed. Unless the Executive Board shall otherwise determine, the (i) President or the Treasurer and (ii) Secretary or any Assistant Secretary may enter into any contract or execute any contract or other instrument, the execution of which is not otherwise specifically provided for, in the name and on behalf of the Association. The Executive Board, except as in these By-laws otherwise provided, may authorize any other or additional officer or officers, agent or agents, of the Association to enter into any contract or execute and deliver any contract or other instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances. Unless authorized so to do by these By-laws or by the Executive Board, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement, or to pledge its credit, or to render it liable pecuniarily for any purpose or to any amount.

11.2. Checks, Drafts, etc. All checks, drafts bills of exchange or other orders for the payment of money, obligations, notes, other evidences of indebtedness, bills of lading, warehouse receipts and insurance certificates of the Association, shall be signed or endorsed by any Two (2) officers of the Association or by such officer or officers,

employee or employees, of the Association as shall from time to time be determined by resolution of the Executive Board.

ARTICLE 12  
INDEMNIFICATION OF OFFICERS AND DIRECTORS  
OR OTHER CASUALTY

12.1. Indemnification of Officers and Directors. The Association shall indemnify every Manager or Officer, his heirs, executors and administrators, against all loss, costs and expense, including counsel fees, reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a Manager or Officer of the Association, except as to matters to which he shall be finally adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct. In the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been guilty of gross negligence or willful misconduct in the performance of his duty as such Manager or Officer in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which such Manager or Officer may be entitled. All liability, loss, damage, costs and expense incurred or suffered by the Association by reason or arising out of or in connection with the foregoing indemnification provisions shall be treated and handled by the Association as Common Expenses; provided, however, that nothing in this Article 12 shall be deemed to obligate the Association to indemnify any Member or Unit Owner, who is or has been a Member or Officer of the Association, with respect to any duties or obligations assumed or liabilities incurred by him as a Member or Unit Owner.

ARTICLE 13  
AMENDMENT

13.1. Amendments to By-Laws. The provisions of these By-laws may be amended only by vote of not less than Sixty-Seven (67%) percent of Unit Owners cast in person or by proxy, at any annual or special meeting duly held in accordance with the provisions of these By-laws; provided the notice of such meeting shall set forth the proposed amendment and the purpose thereof, and provided further, that no amendment affecting the rights of mortgagees of any Unit shall be made without the mortgagees consent.

13.2. Approval of Mortgagees. No amendment of these By-Laws impairing or affecting the rights, priorities, remedies or interests of a first mortgagee shall be adopted without the prior consent of the requisite percentages of first mortgagees as set forth in Section 14.4 of the Declaration.



ARTICLE 14  
GENERAL PROVISIONS

14.1. Severability. The provisions of these By-laws shall be deemed independent and severable and the invalidity, partial invalidity or unenforceability of any provision or portion hereof shall not affect the validity or enforceability of any other provision or portion thereof unless the deletion of such invalid or unenforceable provision shall destroy the uniform plan for development and operation of the Condominium which the Declaration (including the Plats and Plans) and these By-laws are intended to create.

14.2. Conflicts. The Act and the Declaration shall control in the event of any conflict between the provisions thereof and the provision of these By-laws. The Act, the Declaration and these By-laws shall control in the case of any conflict between the provisions thereof and the provisions of the Rules and Regulations.

14.3. Notices. All notices, demands, bills, statements, or other communications required or permitted under these By-laws shall be in writing and shall be deemed to have been duly given if personally delivered or sent by United States mail, postage prepaid (or otherwise as the Act may permit), or if notification is of a default or lien, sent by registered or certified mail, return receipt requested, postage prepaid, (a) if to a Unit Owner, at the single address which the Unit Owner shall designate in writing and file with the Secretary or, if no such address is designated, at the address of the Unit of such Unit Owner, or (b) if to the Association, the Executive Board or to the Managing Agent, at the principal office of the Association or at such other address as shall be designated by notice in writing to the Unit Owners pursuant to this Section. If a Unit is owned by more than one Person, each Person who so designates a single address in writing to the Secretary shall be entitled to receive all notices hereunder.

14.4. Headings. The headings preceding the various Sections of these By-laws and the Table of Contents are intended solely for the convenience of readers of the By-laws and in no way define, limit or describe the scope of these By-laws or the intent of any provision thereof.

14.5. Gender. The use of the masculine gender in these By-laws shall be deemed to include the feminine and neuter genders, and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires.

14.6. Construction. These By-laws are intended to comply with all of the applicable provisions of the Condominium Act and shall be so interpreted and applied.



## SCHEDULE A TO BYLAWS

### RULES & REGULATIONS OF IMMOKOLEE COMMONS CONDOMINIUM ASSOCIATION

#### GENERAL

1. In addition to the provisions of the Declaration, including, without limitation, Article 7 of the Declaration, the following Rules and Regulations (Regulations), together with such additional Rules and Regulations as may hereafter be adopted by the Executive Board, shall govern the use of the Property comprising the IMMOKOLEE COMMONS CONDOMINIUM and the conduct of all residents thereof.

2. Wherever in these Regulations reference is made to "Unit Owners", such term shall apply to the owner of any Unit, to his family, tenants whether or not in residence, servants, employees, agents, visitors and to any guests, invitees or licensees of such Unit Owner, his family or tenant of such Unit Owner. Wherever in these Regulations reference is made to the Association, such reference shall include the Association and the Managing Agent when the Managing Agent is acting on behalf of the Association.

3. The Association reserves the right to alter, amend, modify, repeal or revoke these Regulations and any consent or approval given hereunder at any time by resolution of the Association or the Executive Board.

4. Nothing in these Rules and Regulations shall be considered to prohibit the Declarant from using the easements and rights retained by it to construct and sell Units and improvements in all phases of the condominium.

#### RESTRICTIONS ON USE.

5. No part of the Property shall be used for any purpose other than residential housing for a single family, their servants and guests.

6. No exterior of any Unit or the windows or doors thereof or the lighting that would affect the exterior appearance or any other portions of the Common Elements of the Condominium shall be painted, decorated or changed by any Unit Owner in any manner without prior written consent of the Covenants Committee.

7. No Unit Owner shall make or permit any objectionable odor or noxious or offensive activity that will disturb or annoy the occupants of any other Unit or do or permit anything to be done therein which will interfere with the rights, comfort or convenience of other Unit Owners, their tenants, or guests.

8. Each Unit Owner shall keep his Unit and garages, porches, patios and decks in a good state of preservation and cleanliness and shall not sweep or throw, or permit to be swept or thrown therefrom, any dirt or other substance.

9. All garbage and refuse from the Units shall be deposited with care in the receptacles intended for such purpose only at such times and in such manner as the Executive Board may direct.

10. Water closets and other water apparatus in the Buildings shall not be used for any purposes other than those for which they were constructed, nor shall any sweepings, rubbish, rags, paper, ashes, or any other article be thrown in the same. Any damage resulting from misuse of any water closet or other apparatus shall be paid for by the Unit Owner.

11. No playing or lounging shall be permitted, nor shall baby carriages, velocipedes, bicycles, playpens, wagons, toys, benches, chairs or other articles of personal property be left unattended in parking areas, sidewalks or lawns or elsewhere on the Common Elements.

12. No Unit Owner or occupant of a Unit shall make or permit any disturbing noises to be made in the building or on the Common Elements by himself, his family, friends, tenants, servants, or other invitees; or do or permit anything to be done by such persons that would interfere with the rights, comforts, or conveniences of other Unit Owners or occupants. No Unit Owner or occupant shall play or allow to be played any musical instrument, radio, TV, hi-fi, tape recorder, or the like on the Premises between the hours of 11:00 p.m. and the following 8:00 a.m. if the same shall disturb or annoy other Unit Owners or occupants of the building.

13. Draperies, curtains or venetian blinds must be installed by each Unit Owner on all windows of his Unit and must be so maintained thereon at all times.

14. No clothes line, clothes rack or any other device may be used to hang any items on any window nor may such devices be used anywhere on the Common Elements except in such areas as may be specifically designated for such use by the Executive Board. Porches or patios shall not be used as storage areas. No porch or patio shall be enclosed or covered by a Unit Owner without the prior consent in writing of the Executive Board.

15. No Unit Owner shall use or permit to be brought into the buildings any inflammable oils or fluids such as gasoline, kerosene, naphtha, benzene or other explosives or articles deemed extra hazardous to life, limb or property without in each case obtaining written consent of the Managing Agent or the Executive Board.

#### PET RULES

16. Section 7.1(e) of the Declaration provides for certain restrictions governing the maintenance, keeping, boarding and/or raising of animals, livestock, poultry or reptiles and by this reference is included herein.

17. A pet may be maintained in a Unit with the approval of the Executive Board so long as it is not a nuisance. Actions which will constitute a nuisance include, but are not limited to, abnormal or unreasonable crying, barking, scratching or unhygienic offensiveness.

18. Pet Owners are fully responsible for personal injuries and/or property damage caused by their pets.

19. Pets must be leashed; leashes may not exceed six feet in length.

20. Owners of pets walked upon the Common Elements must promptly clean up their pet's droppings in all areas.

#### PARKING AND STORAGE

21. All personal property placed in any portion of the Common Elements, including, without limitation, any storage areas, shall be at the sole risk of the Unit Owner and the Association shall in no event be liable for the loss, destruction, theft or damage to such property. Any Unit Owner may use any storage area, if any, without charge for the storage of items permitted by the Executive Board.

22. Should an employee of the Association at the request of a Unit Owner move, handle or store any articles in storage areas or remove any articles therefrom or handle, move, park or drive any automobile placed in the parking areas, then, and in every such case, such employee shall be deemed the agent of the Unit Owner. The Association shall not be liable for any loss, damage or expense that may be suffered or sustained in connection therewith.

23. Unless otherwise authorized by the Association, the parking areas may not be used for any purpose other than parking automobiles or pick-up trucks. No buses, trucks (other than pick-ups), trailers, boats, recreational or commercial vehicles shall be parked in the parking areas or in driveways except in such areas, if any, specifically designated for such parking by the Executive Board. All vehicles must have current license plates and be in operating condition. No vehicles shall be parked on the Condominium with conspicuous "For Sale" signs attached.

24. All Unit Owners shall observe and abide by all parking and traffic regulations as posted by the Association or by municipal authorities. Vehicles parked in violation of any such regulations may be towed away at the Unit Owner's sole risk and expense.

25. Parking so as to block sidewalks or driveways shall not be permitted. If any vehicle owned or operated by a Unit Owner, any member of his family, tenants, guests, invitees or licensees shall be illegally parked or abandoned on the Condominium, the Association shall be held harmless by such Unit Owner for any and all damages or losses that may ensue, and any and all rights in connection therewith that the owner or driver may have under the provisions of state or local laws and ordinances are hereby expressly waived. The Unit Owner shall

indemnify the Association against any liability which may be imposed on the Association as a result of such illegal parking or abandonment and any consequence thereof.

26. The Unit Owner shall not cause or permit the blowing of any horn from any vehicle in which his guests, family, tenants, invitees, or employees shall be occupants, approaching or upon any of the driveways or parking areas serving the Buildings, except as may be necessary for the safe operation thereof.

27. A Unit Owner shall not use, nor shall he permit his family, guests, tenants, or invitees to use parking spaces of other Unit Owners. The Association reserves the right to remove such vehicles at the expense of the respective owners thereof.

#### ENTRY INTO UNITS

28. The Association or Managing Agent may cause a master key system to be used for Units in the Condominium; however each Unit Owner shall provide to the Association or the Managing Agent, and the Association or Managing Agent shall have the right to keep, a working copy of any key(s) required to gain entry to any Unit. These key(s) ("emergency keys") shall be coded in such a way as to prevent identification by unauthorized persons and secured by the Association or Managing Agent in a locked box for use only if entry to such unit is necessitated by the fact or threat of fire, flood, or any other condition which may adversely affect the Common Elements or other Units. The Association or Managing Agent shall establish and implement, subject to prior approval of the Executive Board, procedures and controls to insure the proper use of such emergency keys. In no event shall such keys be removed from the locked box and used to facilitate entry to a Unit for purposes other than those noted above. Unit Owners may provide to the Association or Managing Agent an additional working copy of any key(s) to a Unit for casual or non-emergency entry ("convenience keys"). Such keys shall be similarly coded and secured and released only upon written authorization of the Unit Owner. No Unit Owner shall alter any lock or install additional locks, on any doors of a Unit without the prior written consent of the Executive Board.

29. The agents of the Executive Board or the Managing Agent, and any contractor or workman authorized by the Executive Board or the Managing Agent, may enter any Unit with the written permission of the Unit Owner at any reasonable hour of the day (except in case of emergency in which case entry may be immediate and without such permission) for the purpose of exercising and discharging their respective powers and responsibilities, including, without limitation, inspection of such Unit for the presence of any vermin, insects or other pests and for the purpose of taking such measures as may be necessary to control or exterminate any such vermin, insects or other pests.

30. Employees and agents of the Association are not authorized to accept packages, keys, money (except for Condominium assessments) or articles of any description from or for the benefit of a Unit Owner. If packages, keys (whether for a Unit or an automobile), money or articles or any description are left with the employees or agents of the Association, the Unit

Owner assumes the sole risk therefor and the Unit Owner, not the Association, shall be liable for injury, loss or damage of any nature whatsoever directly or indirectly resulting therefrom or connected therewith. The Association does not assume any responsibility for loss or damage in such cases. Deliveries requiring entrance to a Unit Owner's Unit will be accepted without the prior written permission of the Unit Owner accompanied by a written waiver of all liability in connection with such deliveries.

#### DAMAGES

31. Any damage to a Building, Limited Common Elements, or other Common Elements or equipment caused by a Unit Owner or such Unit Owner's pets shall be repaired at the expense of the Unit Owners.

#### MOVING

32. Except as otherwise authorized by the Executive Board or Managing Agent, move-ins and move-outs are restricted to the hours between 9:00 a.m. and 5:00 p.m.

#### ASSOCIATION

33. All charges and assessments imposed by the Association are due and payable on the first day of each month, unless otherwise specified. Payment shall be made at the Managing Agent's office by check or money order, payable to the IMMOKOLEE COMMONS CONDOMINIUM ASSOCIATION. Cash will not be accepted.

34. Complaints regarding the management of the Condominium or regarding actions of other Unit Owners shall be made in writing to the Managing Agent or the Executive Board. No Unit Owner shall direct, supervise or in any manner attempt to assert control over or request favors of any employee of the Managing Agent or the Association.

#### MISCELLANEOUS

35. All persons shall be properly attired when appearing in any of the following portions of the Property, Limited Common Elements, recreational facilities, and any portion of the Common Elements.

36. All radio, television or other electrical equipment of any kind or nature installed or used in each unit shall fully comply with all rules, regulations, requirements or recommendations of the Board of Fire Underwriters and the public authorities having jurisdiction, and the Unit Owner alone shall be liable for any damage or injury caused by any radio, television or other electrical equipment in such Unit.

37. The planting of plants, flowers, trees, shrubbery and crops of any type is prohibited anywhere on the Common Elements, including the Limited Common Elements, without the

prior written consent of the Executive Board. No fences may be erected around or on the Common Elements, including the Limited Common Elements.

38. Solicitors are not permitted in the Buildings. If any Unit Owner is contacted by a solicitor on the Property, the Managing Agent must be notified immediately.

39. Neither the Executive Board, the Association, nor any Unit Owner or the Declarant shall be considered a bailee of any personal property stored on the Common Elements (including property located in storage areas on the Common Elements), including the Limited Common Elements, whether or not exclusive possession of the particular area is given to a Unit Owner for storage purposes, and shall not be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence, except to the extent covered by insurance in excess of any applicable deductible.

40. Each Unit Owner shall keep his Unit heated to a least 55 degrees.

DESCRIPTION OF LIMITED COMMON ELEMENTS DELINEATED  
ON RECORD OF SURVEY MAP FOR PARTICULAR UNITS

- A. A Parking space or spaces for each Unit is assigned by use of the Unit Identification Number on the Record of Survey Map.
- B. Front Porches and Entrance Stairs and Hallways are Limited Common Elements.
- C. Decks attached to a Unit shall be for the use of that Unit.
- D. The area adjacent to a Unit designated as a Limited Common Element on the Record of Survey Map is assigned by use of the Unit Identification Number on the Record of Survey Map to such Unit.
- E. The electric meter for each Unit is a Limited Common Element.

**EXHIBIT C TO DECLARATION OF PLAN**



PERCENTAGE OF ALLOCATED INTEREST IN THE COMMON ELEMENTS  
AND COMMON EXPENSES LIABILITY

UNIT #	ALLOCATED INTEREST
1A	50%
1B	<u>50%</u>
TOTAL	100%

**EXHIBIT D TO DECLARATION OF PLAN**

TITLE REPORT

The Property is subject to and has the benefit of the following:

1. Unrecorded easements, discrepancies or conflicts in boundary lines, shortage in area and encroachments which an accurate and complete survey would disclose.
2. Unfiled mechanics' or materialmen's liens.
3. Taxes assessed but not yet due and payable, including any supplemental tax imposed by the Town of Portsmouth, if any.
4. Zoning Decision recorded in Land Evidence Book 1943 at Page 268. (See Exhibit E-1 attached hereto)
5. Any unrecorded leases or month-to-month tenancies.

**EXHIBIT E TO DECLARATION OF PLAN**



## Town of Portsmouth

### ZONING BOARD OF REVIEW

2200 East Main Road / Portsmouth, Rhode Island 02871

Bk: 1943 Pg: 262  
INST: 00004320

(401) 683-3611

**Petition of Immokolee Commons, LLC**  
**65 Immokolee Drive**  
**Map 36, Lot 60**  
**Zoned: R-20**

Bk: 2118 Pg: 73  
INST: 00000840

### DECISION

This matter was heard before the Portsmouth Zoning Board of Review on October 24 and November 14, 2019, on petitioner's application for a special use permit under Article V, Section A.10 and Article VII, Section C, and dimensional variances to the development standards of Article VII, Section C.10(o), subsections (1) and (2), for an eight (8) unit condominium development consisting of four (4) duplex structures with a total of sixteen (16) sleeping units.

Petitioner was represented by John R. Gowell, Esquire. Members participating in the decision were Vice Chairman John G. Borden, Secretary Benjamin Furriel, Eric Raposa, Sue Horwitz and William Wladyka.

The Board heard the presentation of Mr. Gowell, testimony of Don Huggins of the developer Immokolee Commons, architect Christopher Velleca, civil engineer John Braga, P.E., and real estate appraiser James A. Houle in support of the petition, and considered the exhibits submitted with the petition and during the course of the hearing.

It was noted that the Portsmouth Planning Board issued a favorable Advisory Opinion dated October 15, 2019, which was submitted as part of the record.

Mr. Gowell summarized the proposed development and the approvals and relief sought by petitioner. In addition to a special use permit for the development, petitioner sought dimensional relief from the standards of Article VII, Section C.10.(o), subsections (1) and (2).

Subsection (1) requires that where more than one building is erected on a lot it shall be separated from any other buildings by a minimum of 100' and all buildings shall be set back a minimum of 55' from the centerline of any interior way and 30' from any parking area. Petitioner requested:

- a 41' variance to allow a 59' distance between Buildings 2 and 3
- a 57.7' variance to allow a 42.3' distance between Buildings 3 and 4
- a 7.7' variance to allow a 47.3' distance between Building 1 and the interior way centerline
- a 39' variance to allow a 16' distance between Building 2 and the interior way centerline

- a 19.5' variance to allow a 35.5' distance between Building 3 and the interior way centerline
- a 7.9' variance to allow a 47.1' distance between Building 4 and the interior way centerline
- a 20' variance to allow a 10' distance between Building 1 and the parking area
- a 20' variance to allow a 10' distance between Building 2 and the parking area
- a 20' variance to allow a 10' distance between Building 3 and the parking area

In addition, subsection (2) requires that no row of attached buildings shall contain less than three (3) or more than eight (8) units. Petitioner requested a variance to allow four (4) buildings containing two (2) units.

Christopher Velleca testified that he is a registered architect for the project with Federal Hill Group, LLC, Architects. Mr. Velleca testified as to his education and experience and the Board voted unanimously to accept him as an expert in architecture. A letter by Mr. Velleca dated August 1, 2019, summarizing the grounds for a special use permit, was submitted as Exhibit A. A revised set of plans was submitted as Exhibit B. Mr. Velleca described the property and the proposed development and referred to renderings that were presented to the Board. He stated that the site is very long and narrow and presents a number of constraints and challenges. He explained how the size, scale and massing of the proposed buildings would be more in keeping the neighboring area consisting of single family homes. Larger buildings with three (3) units would be out of character. Mr. Velleca testified that it would be more than an inconvenience to petitioner to comply strictly with the development standards in the ordinance.

Petitioner's next witness was James A. Houle of James A. Houle & Associates. The Board voted unanimously to accept Mr. Houle as an expert in real estate. Mr. Houle's real estate report with attached curriculum vitae was submitted as Exhibit C. Mr. Houle explained his review of the petition, the property site and buildings and past uses, the surrounding neighborhood and uses, the zoning ordinance, and the comprehensive community plan. Mr. Houle summarized his analysis, findings and conclusions, which are set forth in detail in his written report. Mr. Houle testified that in his expert opinion, the subject site and neighborhood are well-suited and appropriate for the proposed use. The project provides for a transition between the Fox Run Condominiums which have three buildings containing 14 units, and the detached single family uses to the north. He testified that all recent condominium developments in the Town have received similar relief from the development standards.

Mr. Houle testified that the proposal will not be detrimental to the surrounding area; it will be compatible with the neighboring land uses; it will not create a nuisance or hazard in the neighborhood; adequate protection is afforded to the surrounding properties by the use of open space and plantings; safe vehicular access and adequate parking are provided; control of noise, smoke, odors, lighting and any other objectionable features are provided;

and welfare of the community are protected. Mr. Houle concluded that, in his professional opinion, the proposal meets and exceeds all the applicable requirements for granting a special use permit. He further testified that all the standards for granting dimensional relief were satisfied.

Don Huggins of the petitioner, Immokolee Commons, LLC testified concerning the project. Mr. Gowell introduced a site plan as Exhibit D. Mr. Huggins explained the proposal and answered questions from the Board.

John Braga, P.E. testified concerning the site plan and engineering issues, the parking plan, traffic flow, and drainage. The Board voted unanimously to accept Mr. Braga as an expert in civil engineering. Mr. Braga testified that the Fire Chief had approved of the access and parking plan. He answered a number of questions from members of the Board.

The Vice Chairman asked if any abutters or interested parties wished to be heard. James Nott testified that he was an owner of 96 Immokolee Drive as co-trustee. He raised concerns about the location of the driveway on adjacent land and the lack of a landscaping plan. Betsy Dees, 105 Immokolee Drive, raised some questions about the number of units per building, trees, and underground water. Kirsten Towers, 81 Immokolee Drive asked questions about screening and the lack of a landscaping plan. Mr. Huggins stated that a landscaping plan would be provided.

The hearing was continued to November 14, 2019. Mr. Gowell submitted a revised site plan showing no encroachment of the access way onto abutting property, a landscaping plan, a lighting plan, and an updated letter from the Fire Chief dated November 12, 2019. Mr. Houle, Mr. Velleca and Mr. Braga responded to additional questions from Board members. Abbuter Kirsten Towers asked additional questions concerning the access drive and landscaping, and about the possibility of privacy fencing along the area abutting her home. George Kirk, Jr., 157 Immokolee Drive, raised some issues concerning the drainage plan and runoff and the use of an existing drainage easement.

Before voting on the petition, the Board imposed the following conditions to any grant of a special use permit:

1. The arborvitae trees as shown on the landscaping plan will be a minimum height of 6' at time of planting;
2. Privacy fencing shall be installed and maintained from the boundary of Assessor's Map 36, Lot 58 running westerly to the beginning of the proposed tree plantings closest to Immokolee Drive, with observance of the corner vision clearance provision of the Zoning Ordinance;



3. The homeowners' association covenants shall provide for the maintenance and cleaning of the off-site catch basin and drain line, which are located within the drainage easement on the Kirk property abutting to the southeast;
4. As stated in the Fire Chief's 11/12/19 letter, the access road/driveway will be a total of 18-20 feet wide, and the surface will be composed of one or more materials that can support the loads imposed by fire apparatus; and
5. As stated in the Fire Chief's 11/12/19 letter, the access road will have an approved turnaround located at the furthest end as represented on the most recent plan; this area must have restrictions in place to prevent the use of the turnaround area for parking.

The Board then considered the petition and the evidence presented. On a vote of 4-1 (with Mr. Furriel voting to deny), the Board determined that the land is zoned R-20 and the proposed residential use is appropriate and allowed in such a zoning district by special use permit. The Board determined that the proposal is compatible with the neighboring properties and uses. The Board found that the conditions imposed by the Board mitigate any negative impact on surrounding properties. The Board concluded, based on the evidence presented including the expert report and testimony of Mr. Houle, that the desired use will not be detrimental to the surrounding area; that it will be compatible with neighboring land uses; that it will not create a nuisance or a hazard in the neighborhood; that adequate protection is afforded to the surrounding property by the use of open space and planting; that safe vehicular access and adequate parking are provided; control of noise, smoke, odors, lighting and any other objectionable feature is provided; that solar rights of abutters are not impacted; that the proposed special use will be in conformance with the purposes and intent of the comprehensive plan and the zoning ordinance of the Town of Portsmouth and that the health, safety and welfare of the community are protected.

With regard to the requested dimensional relief from the development standards set forth in Article VII, Section C.10.(o), subsections (1) and (2), the Board considered the petition and on a vote of 4-1 found that the requests for dimensional relief were reasonable and not excessive. The Board determined that petitioner was constrained by the shape and configuration of the site. The Board found that the proposal, with the conditions imposed, will have no negative impact on any abutters or the neighborhood. The Board determined that petitioner had requested the minimum relief necessary and that the hardship that necessitated the request for relief was not the result of prior action of petitioner but was due to the unique characteristics of the land and structures in question. The Board determined that granting the requested relief would not alter the general character of the surrounding area or impair the purpose or intent of the ordinance or the Comprehensive Community Plan, and that denial of the relief requested would result in more than a mere

Accordingly, the Board voted 4 to 1 to grant petitioner's application for a special use permit under Article V, Section A.10 and Article VII, Section C, and dimensional variances to the development standards of Article VII, Section C.10(o), subsections (1) and (2), for an eight (8) unit condominium development consisting of four (4) duplex structures with a total of sixteen (16) sleeping units, in accordance with the plans as submitted, subject to all the conditions imposed by the Board.

Portsmouth Board of Review  
By:

Dated: 16 December 2019

Secretary

IF NOT UTILIZED, THIS PERMIT EXPIRES AND IS NULL AND VOID ONE  
YEAR FROM THE DATE HEREOF

RECEIVED  
PORTSMOUTH, RI  
Dec 19, 2019 01:12P  
JENNIFER M. WEST  
TOWN CLERK



CONVERTIBLE AND WITHDRAWABLE LAND

That certain lot or parcel of land, together with all buildings and improvements thereon situated, located in the Town of Portsmouth, County of Newport, State of Rhode Island, being more particularly described as follows:

BEGINNING at the point of intersection of the boundary line between land now or formerly of Kirsten S. Ziari, and the granted premises with the easterly line of Immokolee Drive, and thence running eastwardly a distance of 394 feet to a point; thence turning an exterior angle of  $188^{\circ} 58'$ , and running eastwardly 48.08 feet; thence turning an interior angle of  $203^{\circ}$  and running northeastwardly 30.83 feet to a point, bounded NORTHERLY partly by land now or formerly of Shawn A. Ziari, et ux, by land now or formerly of Louis L. Dees and Elizabeth J. Dees, and by land now or formerly of Eugene F. Laparle, Jr. and Paulette Laparle; thence turning an interior angle of  $72^{\circ} 38'$  and running southwardly 38.25 feet to a point; bounded EASTERLY by said land now or formerly of Eugene F. Laparle, Jr. and Paulette Laparle; thence turning an exterior angle of  $90^{\circ}$  and running eastwardly a distance of 258.75 feet to a point, bounded NORTHERLY partly by said land of Eugene F. Laparle, Jr. and Paulette Laparle, and by land now or formerly of Pamela N. Kirk, Trustee; thence turning an interior angle of  $86^{\circ}$  and running southwardly 113.68 feet to a point, bounded EASTERLY by land now or formerly of George L. Kirk Jr.; thence turning and running southwestwardly in an arc with a radius of 30 feet a distance of 42.06 feet to a point; and thence running westwardly 285.83 feet to a point; thence turning at an interior angle  $173^{\circ} 51'$  and running westwardly again, to a point, bounded SOUTHERLY by land now or formerly of Fox Run Condominium; thence turning and running northwestwardly in an arc with a radius of 30 feet a distance of 47.12 feet to a point; and thence running northwardly 112.94 feet to a point in the easterly line of Immokolee Drive, bounded WESTERLY to land now or formerly of Fox Run Condominium, designated on the hereinafter mentioned plat as a proposed road; thence turning an interior angle of  $172^{\circ} 40'$  and continuing in the easterly line of Immokolee Drive, 30.2 feet to the point and place of beginning, said last course forming an interior angle of  $101^{\circ} 30'$  with said first mentioned course.

Excepting Units 1A and 1B.

**EXHIBIT F TO DECLARATION OF PLAN**

**Reduced copy of Survey Map**

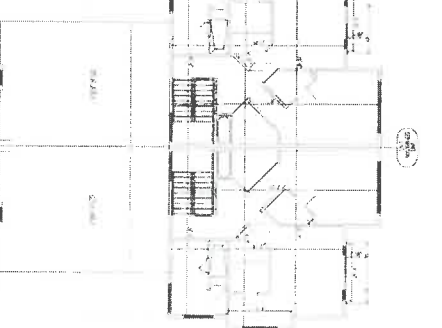
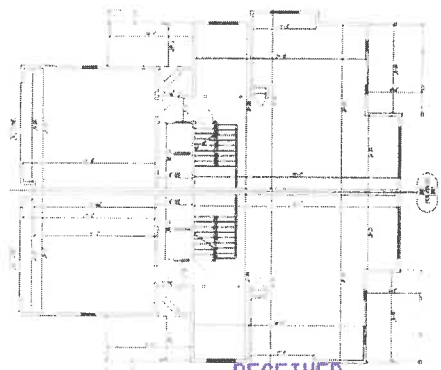
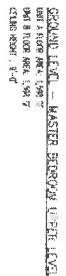
**to be**

**attached**

**(2 pages)**

**EXHIBIT G TO DECLARATION OF PLAN**

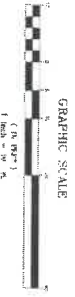




GROUND LEVEL - MASTER BEDROOM LOW & LEVEL  
 UNIT A RICH AREA 970 SF  
 UNIT B RICH AREA 970 SF  
 UNIT C AREA 970 SF

41. **Answer: D**irectly. The Customer Interview is used at the beginning of the project to determine the customer's needs and expectations. The project manager should ask the customer to provide a list of requirements and expectations. The project manager should then ask the customer to provide a list of requirements and expectations. The project manager should then ask the customer to provide a list of requirements and expectations. The project manager should then ask the customer to provide a list of requirements and expectations.

42. **Answer: C**ontract. The contract is the legal document that defines the relationship between the project manager and the customer. The contract should be signed by both parties before the project begins. The contract should include the project goals, the project timeline, the project budget, and the project risks. The contract should also include the terms and conditions of the project, such as the payment schedule and the ownership of the project deliverables.

[illegible]

RECORD OF SURVEY MAP - PHASE  
BUILDING NO. 1

MARKER LOCATIONS COMMON TO ADJACENT PLATS

OWNER: JOE BLANCH  
1000 S. 10TH ST.  
TULSA, OK 74106

FILED: APR 21, 1994  
TULSA COUNTY, OKLAHOMA  
TULSA COUNTY CLERK

BY: J. M. GIBSON, J. M. GIBSON  
TULSA COUNTY CLERK

RECORD LOCATION  
TULSA COUNTY CLERK  
TULSA COUNTY CLERK

JAN PERKA & ASSOCIATES, INC.  
2011 CHERRY ST. BOX 344  
PORTLAND, OR 97208-0344  
PHONE (503) 255-0024

JB&A

IMMOKOLEE COMMONS CONDOMINIUM  
SCHEDULE OF PURCHASE AND SALE AGREEMENT

1. NAMES AND ADDRESSES:

(a) Seller: IMMOKOLEE COMMONS, LLC

(b) Notice Address: 1364 Smith Street  
North Providence, RI 02911

(c) Purchaser: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(d) Notice Address: \_\_\_\_\_

2. UNIT (THE "UNIT") BEING PURCHASED:

(a) Legal Address: Unit #\_\_\_\_, IMMOKOLEE COMMONS CONDOMINIUM

(b) Allocated Interest in Common Elements as set forth in Exhibit D of the Declaration for the Unit.

3. PRICE AND TERMS:

(a) Basic Purchase Price	\$_____
(b) Extras and Options	\$_____
(c) Total Purchase Price	\$_____
(d) Reservation Deposit Previously Paid	\$_____
(e) Deposit Paid This Date	\$_____
(f) Total Deposit	\$_____
(g) Balance Due at Closing (subject to adjustments as stated herein)	\$_____

4. CLOSING DATE (THE "CLOSING DATE"): \_\_\_\_\_

5. PUBLIC OFFERING STATEMENT: Purchaser acknowledges receipt of a full and complete copy of the Public Offering Statement for the IMMOKOLEE COMMONS CONDOMINIUM, including all attachments and exhibits thereto on \_\_\_\_\_, 20\_\_.

6. BROKER \_\_\_\_\_ to be paid a commission of \$ \_\_\_\_\_ by Seller.

THIS SCHEDULE AND THE TERMS OF THE PURCHASE AND SALES AGREEMENT AND EXHIBIT A, WHICH IS ATTACHED, CONSTITUTE THE ENTIRE AGREEMENT (THE "AGREEMENT") BETWEEN SELLER AND PURCHASER.

Executed by Purchaser this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Witness: \_\_\_\_\_ Purchaser: \_\_\_\_\_

Witness: \_\_\_\_\_ Purchaser: \_\_\_\_\_

Accepted by Seller this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

IMMOKOLEE COMMONS, LLC

By: \_\_\_\_\_

EXHIBIT II TO PUBLIC OFFERING STATEMENT

## IMMOKOLEE COMMONS CONDOMINIUM

### PURCHASE AND SALE AGREEMENT

THIS AGREEMENT for the purchase of a condominium unit at 65 Immokolee Drive, Portsmouth, Rhode Island, is made and entered into by and between IMMOKOLEE COMMONS, LLC, a Rhode Island partnership (hereafter "Seller"), and the Purchaser, whose name and address is set forth on the schedule attached as a face sheet, in accordance with the terms and conditions set forth herein.

#### 1. DEFINITIONS:

1.1. The Property is the Condominium Unit set forth on the Schedule in the IMMOKOLEE COMMONS CONDOMINIUM to be created pursuant to Chapter 36.1 of the Title 34 of the General Laws of Rhode Island, 1956 as Amended (the "Act") by Declaration of Plan of IMMOKOLEE COMMONS CONDOMINIUM (the "Declaration") to be recorded in the Land Evidence Records of the Town of Portsmouth, County of Newport, State of Rhode Island, together with the Allocated Interest for such Unit in the Common Elements and the IMMOKOLEE COMMONS CONDOMINIUM and with the rights to the Limited Common Elements and with all other rights appurtenant to such Unit, all as more particularly described in the Declaration. Said Unit is further described on that plat consisting of two (2) sheets entitled "RECORD OF SURVEY MAP – PHASE 1 IMMOKOLEE COMMONS CONDOMINIUM OWNER OF RECORD: IMMOKOLEE COMMONS LLC 1364 Smith Street, North Providence, RI 02911 PROJECT APPLICANT: IMMOKOLEE COMMONS LLC 1364 Smith Street, North Providence, RI 02911 PROJECT LOCATION: 65 Immokolee Drive AP 36 Lot 60 Portsmouth, RI 02871 JOHN BRAGA & ASSOCIATES, INC. Civil Engineers – Land Surveyors PO Box 944 Portsmouth, R.I. 02871-0919 Phone (401) 683-0101" (hereinafter referred to as "Record of Survey Map") as required by the Act, has heretofore been recorded with the Town Clerk of the said Town of Portsmouth and is not altered or amended hereby. Included in the sale as a part of the Unit are the existing fixtures and improvements.

1.2. The Purchase Price is set forth in the Schedule.

1.3. Terms of Payment. The Purchase Price shall be paid as set forth in the Schedule in cash or bank check or certified check.

#### 2. PURCHASE AND SALE:

Seller hereby agrees to sell to Purchaser and Purchaser hereby agrees to purchase from Seller the Property for the Purchase Price paid in accordance with the Terms of Payment, upon the terms and conditions hereinafter set forth, and subject to prior sale before receipt by Seller of this Agreement properly executed by Purchaser.



3. SELLER'S OBLIGATIONS: Seller hereby agrees:

3.1. To convey to the Purchaser by Warranty Deed, in the form of **Exhibit A** attached hereto, good and marketable title in fee simple to the Property, subject to the conditions, agreements and easements that are set forth in the Declaration of Plan for IMMOKOLEE COMMONS CONDOMINIUM and **Exhibit E** thereto, and the Warranty Deed.

3.2. To remedy any defects or unfinished work in accordance with the Limited Warranty Certificate attached hereto as **Exhibit B**, but such defects or unfinished work shall not delay the closing as provided in Section 5.5 hereof.

3.3. To deliver at the Closing full possession of the Unit, free of all tenants and occupants.

4. PURCHASER'S ACKNOWLEDGEMENTS, REPRESENTATIONS AND OBLIGATIONS:

4.1. Purchaser. The term "Purchaser" herein, or any pronoun used in place thereof, shall mean and include the masculine and the feminine, the singular or the plural number and jointly and severally, individuals, firms or corporations and their and each of their respective successors, executors, administrators, and assigns according to the context hereof. This Agreement shall be equally binding and inure to the benefit of the legal representatives and successors in interest of the parties hereto. All obligations of Purchaser hereunder, where there may be more than one (1) Purchaser, shall be joint and several.

4.2. Deposit. The binder payment and down payments shall be deposited by Seller in an escrow account of the Broker designated for escrow of funds for IMMOKOLEE COMMONS CONDOMINIUM.

4.3. Declaration of Plan. The Purchaser acknowledges receipt of a copy of the Public Offering Statement and of a copy of the proposed Declaration of Plan for IMMOKOLEE COMMONS CONDOMINIUM, including the Association By-laws and other Exhibits attached thereto and of the Record of Survey Map and acknowledges that they have been delivered to him more than ten (10) days before the execution of this Purchase and Sale Agreement, and represents that he or she understands their contents, agrees that their provisions are fair and will be of benefit to all parties thereto, their heirs and assigns, and expressly covenants and agrees to be bound by the covenants contained in said Declaration, which shall constitute covenants running with the land. Such covenants include, among other things, a requirement that each property owner pay his or her pro rata share of Common Expenses; a provision that the Seller selects the initial Executive Board; and general easements, equitable restrictions, limitations on use, and affirmative obligations to pay assessments.

4.4. Mortgage Contingency. Notwithstanding any other provisions of this Agreement, and, unless the Purchaser waives this mortgage contingency in writing, this Agreement is subject to the issuance of a commitment letter by an institutional mortgage lender or mortgage broker ("Lender") to the Purchaser not later than \_\_\_\_\_, 20\_\_\_\_ ("Contingency Date") in which the Lender agrees to lend up to \$\_\_\_\_\_ at an initial rate of interest not to exceed \_\_\_\_\_ (\_\_\_\_%) percent per annum, for a term of at least \_\_\_\_\_ years,

with a maximum of \_\_\_\_ points. The Purchaser and Seller agree to the following conditions:

(a) The Purchaser must apply for such mortgage within Seven (7) days after the Date of this Agreement. If the Purchaser fails to make formal application by said date, the Purchaser shall be in default of this Agreement, shall forfeit all Deposits, and this Agreement shall be deemed null and void.

The Purchaser is to notify the Seller or Listing Agent of the identity of each Lender to whom the Purchaser has made such application within ten (10) days after the Date of the Purchaser's application. The Purchaser hereby authorizes the Seller and/or Listing Agent to contact any such Lender(s) to confirm the status of the Purchaser's application.

(b) Within four (4) days of receipt of a written commitment or denial for such mortgage, but in no event later than the Contingency Date above, the Purchaser agrees to provide a copy of such commitment or denial to the Seller or Listing Agent.

(c) If the Purchaser applies for a mortgage within the terms and amount set forth above and receives a written denial for such mortgage, then, upon providing a copy of the denial to the Seller or Listing Agent by the Contingency Date or extensions thereof, this Agreement shall be declared null and void and all Deposits made hereunder shall be refunded.

(d) In the event the Purchaser has received neither a commitment nor a denial for such mortgage by the Contingency Date, the Purchaser shall, prior to the Contingency Date, and by written notice to the Seller or Listing Agent, request to extend the time by which a copy of the written commitment or denial must be provided, or waive the mortgage contingency clause by written notice. In response to the Purchaser's request, the Seller may, by the Contingency Date, and by written agreement with the Purchaser, extend the time by which a copy of the written commitment or denial must be provided. If the Seller does not extend the Contingency Date, this Agreement shall be null and void and all Deposits made hereunder shall be refunded unless the Purchaser has waived the mortgage contingency in writing.

(e) In the event the Purchaser has not provided a copy of the written commitment or denial for such mortgage and has not given written notice as specified in Section 4.4 (d) to the Seller or Listing Agent by the Contingency Date or extensions thereof, then the Purchaser shall be in default of this Agreement, shall forfeit all Deposits, and this Agreement shall be deemed null and void.

(f) Nothing herein shall be deemed to limit the right of the Purchaser to obtain a mortgage in a greater or lesser amount than set forth above, however, the contingency set forth in this Section 4.4 shall apply ONLY if the Purchaser applies for a mortgage not greater than the amount set forth above.

4.5 Waiver of Mortgage Contingency. If initialed by Buyer, this Agreement is not contingent upon financing and Section 4.4 of this Agreement shall not apply. However, Buyer reserves the right to finance any portion of the Purchase Price.

\_\_\_\_\_  
(Initials of Buyer)

4.6. Purchaser's Possession of the Premises. It is expressly understood and agreed that the Purchaser shall in no event take possession of the premises prior to the Closing Date, (as hereinafter defined), and full compliance by the Purchaser with the terms of this Agreement.

4.7. No Recording of this Agreement. Purchaser agrees that he or she will not record this Agreement in the Land Evidence Records of the Town of Portsmouth, Rhode Island, and that in the event it is recorded by Purchaser or his or her agent, Seller may, (in addition to any other right or rights set forth in this Agreement), elect to declare this Agreement terminated and at an end. In the event of the exercise of the election by Seller to terminate this Agreement, all rights of Purchaser hereunder shall cease and terminate, and it is agreed that all sums paid by Purchaser to Seller may be retained by Seller as and for liquidated damages for the breach of this Contract. Notice of intention to declare this Contract so terminated shall be given in writing to Purchaser and shall become effective upon the recording of a copy of such notice in the Land Evidence Records of the Town of Portsmouth.

4.8. Receipt and Acknowledgement of Rhode Island Real Estate Sales Disclosure Form: Purchaser acknowledges that it received the Rhode Island Real Estate Sales Disclosure Form prepared by Seller prior to the offer by Purchaser to purchase the Property.

4.9. Inspections: Notwithstanding anything to the contrary in Section 5.5 of this Agreement, Purchaser may, at the Purchaser's expense, choose to have any or all of the following inspections conducted as part of this Sales Agreement. The Purchaser shall have ten (10) calendar days from the date of this Agreement to conduct these inspections ("Inspection Period") or this contingency shall be deemed to be waived. If there is a delay in the receipt of the inspection report due solely to the inability of the inspector to complete the inspection, the Inspection Period shall be extended for a reasonable time not to exceed seven (7) calendar days. If requested, the inspector shall provide the Purchaser with an explanation of the delay which shall be made available to the Seller. Purchaser authorizes release of all inspection reports to the Agent representing the Purchaser.

#### INSPECTIONS TO BE CONDUCTED:

	Yes	No		Yes	No
Pest Infestation	___	___	Wetlands	___	___
Physical/Mechanical	___	___	Hazardous Substances	___	___
Well Water	___	___	Flood Plain	___	___
Radon Gas	___	___	Lead Contamination	___	___

Other:

NOTICE: to waive inspection, Purchaser must initial below.

\_\_\_\_\_ Having been informed of a 10-day right to test/inspect  
 Initials for the presence of lead, the Purchaser elects not to  
 have any test(s)/inspections(s) for lead performed.

Additional Provisions: \_\_\_\_\_

If any inspection by a recognized and reputable inspector or inspection company, performed within the Inspection period, discloses any existing, substantial/materially deficient condition\* which has not been disclosed to the Purchaser prior to the execution of the Agreement, the Purchaser, upon providing the inspection report verifying said existing substantial materially

deficient condition\*(s) to Seller within seven (7) days after Purchaser, has obtained a copy of said report (Purchaser's receipt of said report shall be governed by Section 10 of this Agreement), may:

(a) Allow the Seller the opportunity to cure such deficient condition\*(s) by providing a written list of those items Purchaser requests Seller to correct, whereupon Seller shall be given seven (7) days after receipt of the report and request to notify, per Section 10, Purchaser in writing if Seller agrees, at Seller's own expense, to correct the deficient condition\*(s). Purchaser and Seller should mutually agree prior to any work being performed what each other's obligations will be subsequent to such performance.

(b) If Seller does not so agree or perform, and the Purchaser has not waived this contingency in writing, this Agreement shall be null and void and Deposits made hereunder shall be refunded, or;

(c) Terminate this Agreement by notifying the Seller in writing within seven (7) days of receipt of the inspection report, whereupon this Agreement shall be null and void and Deposits made hereunder shall be refunded.

(d) Purchaser and Seller may agree to prorate the cost of correcting said existing, substantial/materially deficient condition\*(s). Said corrections are to be performed by a recognized and reputable contractor to accepted industry standards or as otherwise mutually agreed.

Notwithstanding the foregoing, the Buyer may waive this contingency and accept the Property in "AS IS" condition.

\_\_\_\_\_ Having been informed of the right to test/inspect, (Initials) the Purchaser elects not to have any

test(s)/inspection(s) performed.

\*"Deficient condition" is defined as a structural, mechanical or other condition that would have a significant adverse effect on the value of the Property; that would significantly impair the health or safety of future occupants of the Property, or that, if not repaired, removed or replaced would significantly shorten or have a significant adverse effect on the expected normal life of the Property. Deficient condition does not include structural, mechanical or other conditions the nature and extent of which Purchaser had actual knowledge or written notice before signing this Agreement.

## 5. CONVEYANCE OF UNIT:

5.1. Seller covenants and agrees to convey to Purchaser the Unit, including the specified percentage of undivided interest in the Common Elements, at the closing by a statutory form Warranty Deed as set forth in 3.1 hereof.

5.2. Date and Place. The Closing Date is the date set forth in the Schedule. The place of closing shall be at the offices of KENYON LAW ASSOCIATES, LLP, Counsellors at Law, 133 Old Tower Hill Road, Suite 1, Wakefield, Rhode Island, 02879, unless another place of closing in Rhode Island is designated in Seller's written notice. Seller and Purchaser by written agreement may amend the date or place of Closing.

5.3. Apportionment of Charges. The following shall be apportioned as of the last day immediately preceding the closing:

(a) Monthly installment of Common Expense Assessment.

- (b) Taxes on the basis of the calendar year for which assessed.
- (c) Water and Sewer use charges, if any.
- (d) Heating fuel.
- (e) The net amount thereof shall be added to or deducted from, as the case may be, the Purchase Price by Purchaser at the time of delivery of the deed. If the amount of said taxes is not known at the time of delivery of the deed, they shall be apportioned on the basis of the taxes assessed for the preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained; and, if the taxes which are to be apportioned shall thereafter be reduced by abatement, the amount of such abatement, less the reasonable cost of obtaining the same shall be apportioned between the parties, provided that neither party shall be obligated to institute or prosecute proceedings for an abatement. In addition, if, with respect to the then current tax period, the Unit with its appurtenant interests and rights is not yet taxed as a separate parcel of real estate, said taxes (which will in such event be assessed against the entire parcel on which the Condominium is located) shall be further apportioned by multiplying the assessment of such Unit times the prior year's tax rate.

5.4. Payment of Closing Costs and Initial Capital Payment. Purchaser hereby agrees to pay his Attorney's fees, title examination, and all of the normal costs incurred in connection with the closing, in accordance with the customs in Washington County, Rhode Island. Purchaser may engage his or her own Attorney as desired, at Purchaser's expense, to perform any independent title examination or investigation in connection with this sale. The Buyer at the Closing shall pay the initial capital payment fee as provided in Section 6.6 of the Association By-Laws.

5.5. Unit Inspection. The Purchaser shall be entitled to an inspection of the Unit prior to the Closing in order to determine the condition of the Unit.

5.6. Purchaser's Option. If Seller shall be unable to give title or to make conveyance, or to deliver possession of the Premises, all as herein stipulated, unless the time of closing is extended for delays beyond Seller's control, then any other obligations of the parties hereto shall cease and this Agreement shall become null and void and without further equitable or legal recourse to any party, unless Seller elects to use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, as the case may be, in which event Seller shall give notice of such election to Purchaser at or before the Closing Date and thereupon such time shall be extended for a period of sixty (60) days from the date of receipt of said notice. If at the expiration of the extended time, Seller shall have failed to so remove any defects in title, or deliver possession, as the case may be, all as herein agreed, then any payments made under this Agreement shall be forthwith refunded and all other obligations of all parties hereto shall cease and this Agreement shall become null and void and without further equitable or legal recourse to any party, provided that Purchaser shall have the election, at either the original or extended time to accept such title as Seller can deliver to the Unit in its then condition and to pay therefor the purchase price without deduction, in which case Seller shall Convey such title.

5.7. Acceptance By Purchaser. The acceptance of a deed by Purchaser shall be deemed to be full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.

5.8. Use of Purchase Money To Clear Title. To enable Seller to make conveyance as herein provided, Seller may, at the time of closing, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed or that provision for prompt recording thereof reasonably satisfactory to Purchaser is made at the Closing.

6. TIME OF ESSENCE:

Time is of the essence of this Agreement.

7. WARRANTY:

The only warranties provided by the Seller are those contained in the Limited Warranty Certificate attached hereto as **Exhibit B**. The Purchaser acknowledges that he has read the Limited Warranty Certificate and agrees to execute said Limited Warranty Certificate at the Closing limiting the period of the statute of limitation on the warranty to two (2) years.

8. RISK OF LOSS:

All risk of loss to the Unit shall be borne by the Seller up to the time of the Closing as herein defined; thereafter, all such risk of loss shall be borne by Purchaser.

9. INSURANCE:

Seller (or the Association of the Condominium) shall maintain fire and extended coverage insurance on the building in which said Unit is located as now in force or as may otherwise be required by the Declaration. At the Time of Closing, Seller shall deliver to Purchaser a certificate evidencing such insurance coverage.

10. NOTICES:

Any notice required or permitted to be given to Seller hereunder shall be deemed sufficient if in writing, forwarded by certified mail, return receipt requested, to Seller at its Notice Address.

Any notice required to be given to Purchaser hereunder shall be deemed sufficient if in writing, addressed to Purchaser, sent by certified mail, return receipt requested, and delivery attempted by the United States Postal Service at the address of Purchaser set forth herein.

11. DEFAULT:

11.1. Purchaser shall be in default under this Contract if any of the following events take place:

- (a) Purchaser fails or refuses to execute when due all necessary instruments required by terms hereof.
- (b) Purchaser fails or refuses to pay on time any amount set forth in this Contract.
- (c) Purchaser in any way fails or refuses to perform any provision of this Contract.
- (d) Purchaser makes an assignment for benefit of creditors or files a petition under any bankruptcy, insolvency or debtor relief law or permits any such petition to remain undismissed for a period of sixty (60) days.

11.2. In the event of a default of Purchaser, all sums paid by Purchaser shall be retained by Seller as liquidated and exclusive damages, and neither party shall have any further recourse in law or in equity.

11.3. In the event that Seller shall exercise or endeavor to exercise its remedy as provided in 11.2 hereof and Purchaser shall bring a legal action against Seller and the Seller shall prevail in such action, Purchaser shall pay on demand all reasonable costs and expenses, including without limitation reasonable Attorney's fees, incurred in connection therewith.

11.4. Seller shall be in default under this Contract if any of the following events take place:

- (a) Seller is unable to convey good and marketable title in fee simple as provided in 3.1 hereof.
- (b) Seller breaches any other of its obligations contained in this Agreement.

11.5. In the event of the default of Seller for the reason set forth in 11.4(a) hereof, Purchaser shall, at his or her election, have the right to accept such title as Seller is able to convey, without any claim on the part of Purchaser for reduction of the Purchase Price for defects or objections; or the Purchaser shall have the right to rescind this Contract, and Seller shall refund to Purchaser all payments made under this Agreement, together with all interest, if any, earned on the deposit. Anything to the contrary herein contained notwithstanding, it is specifically understood and agreed by the parties hereto that the delivery and acceptance of the Unit deed by Purchaser shall constitute full compliance by the Seller with the terms of this Agreement.

11.6. In the event of the default of Seller for the reasons set forth in 11.4(b), then in that event, Seller shall refund to Purchaser all payments made under this Agreement.

11.7. The rights in event of default as set forth in sections 11.1 through 11.6 shall be exclusive of any other right or remedy. The Purchaser acknowledges that the Purchaser does not have the right of specific performance in the event of default by Seller.



## 12. ASSIGNMENT:

This Agreement shall not be assigned without the written consent of the Seller first had and obtained. Seller may refuse to consent to such assignment for any reason or for no reason at all. An assignor hereunder shall not be released from any liability arising by virtue of this Agreement until all assignment fees required by Seller have been paid to Seller, and until the Unit deed has been placed on record.

## 13. BROKER:

Purchaser represents that the Broker who has introduced him to or shown him the premises or any unit thereof is the Broker named in the Schedule of Purchase and Sales Agreement, to which a commission will be paid as set forth in the Schedule of Purchase and Sales Agreement, if, as and when the Deed is delivered and the full purchase price received, but not otherwise. Purchaser agrees to indemnify and hold the Seller harmless from any claims by any other broker claiming to have introduced the Purchaser to this Condominium development, together with all expenses incurred in connection with such claims.

## 14. CERTIFICATE OF NO LIENS:

At the time of Closing, Seller shall deliver to Purchaser a statement from the Association in recordable form setting forth that there are no outstanding common expenses assessed against the Unit as of said time.

## 15. TITLE INSURANCE:

At the time of Closing, a policy of title insurance will be made available to Purchaser, at Purchaser's expense, insuring that Purchaser's record title to the Unit and its appurtenant interests and rights are free from all encumbrances, other than those set forth in Paragraph 3.1 hereof. Such title insurance will affirmatively insure the creation and existence of a valid condominium under the Act. If Purchaser desires title insurance coverage, the premium therefor, as well as the fee charged by the attorney certifying title to the company issuing said insurance, shall be payable in full at the Time of Closing.

## 16. BUYER/SELLER INFORMATION:

(a) **Ordinances:** Buyers of real estate in the State of Rhode Island are legally obligated to comply with all local real estate ordinances; including but not limited to, ordinances on the number of unrelated persons who may legally reside in a dwelling, as well as ordinances on the number of dwelling units permitted under the local zoning ordinances.

(b) **Wetlands:** The location of coastal wetlands, bays, fresh water wetlands, ponds, marshes, riverbanks or swamps, and the associated buffer areas may impact future Property development. If known, Seller must disclose to the Buyer any such determination on all or part of the land made by the Department of Environmental Management.

(c) **Radon Gas:** Radon has been determined to exist in the State of Rhode Island.

Testing for the presence of radon in residential real estate prior to purchase is advisable.

(d) **Lead Contamination:** "Every Purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced Intelligence Quotient, behavioral problems, and impair memory. Lead poisoning also poses a particular risk to pregnant women. The Seller of any interest in residential real property is required to provide the Buyer with any information on lead-based paint hazards from risk assessments or inspections in the Seller's possession and notify the Buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."

Purchasers of pre-1978 housing must receive a separate lead disclosure and education brochure.

(e) **Restrictions or Legislative/Governmental Action:** Buyer is responsible to investigating whether there are any restrictions or legislative/governmental actions, present or proposed, which affect or would affect the use of the Property.

(f) **Private Well Water:** R.I.G.L. 5-20.8-12 gives buyers the right to test the water quality of a private well in accordance with regulations established by the RI Department of Health pursuant to R.I.G.L. 23-1-5.3.

#### 17. ADDITIONAL SELLER OBLIGATIONS:

(a) **Smoke Detectors:** Rhode Island law requires that all existing one, two and three family dwellings, and all existing residential buildings with less than eight units, shall be equipped with an approved smoke detector system. It is the responsibility of the Seller to deliver the Property at the closing in compliance with such law along with a smoke detector certificate dated no earlier than 60 days before the closing.

(b) **Non-Resident Withholding Tax:** If the Seller is not a resident of the State of Rhode Island or will not be a resident at the time of the closing, the Buyer must withhold six (6%) percent of the net proceeds to the Seller (9% if the Seller is a corporation), in accordance with R.I.G.L. Section 44-30-71.3, as may be amended from time to time, and pay such amount to the Division of Taxation as a non-resident withholding tax. In order to have such tax based on gain rather than net proceeds of sale, Seller must submit an election form to the Division of Taxation at least twenty (20) days prior to closing. Seller agrees to pay the entire amount of such tax found to be due at or after the closing, whether or not such tax was correctly calculated at the closing, it being understood that the tax shall not exceed the amount of net proceeds to Seller. This tax liability shall survive the transfer of title to the Property and shall be a lien against the Property.

(c) **Foreign Investment In Real Property Tax Act ("FIRPTA"):** The Seller is not a foreign person or foreign corporation as defined in FIRPTA and, accordingly, that the Buyer will not be required to comply with the withholding requirements of FIRPTA at the closing.

#### 18. CONSTRUCTION OF AGREEMENT:

This instrument, executed in triplicate, is to be construed as a Rhode Island contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors, and assigns, and may be cancelled, modified and amended only by a written instrument executed by both Seller and Purchaser. The captions are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the intent of the parties to it.

19. EXHIBITS:

Exhibits A & B attached hereto and the Exhibits referred to herein as being part of the Declaration of Plan of IMMOKOLEE COMMONS CONDOMINIUM are hereby incorporated herein and made a part of this Agreement.

20. ENTIRE AGREEMENT:

The terms of this Agreement, together with the Public Offering Statement and all Exhibits attached thereto, including, but not limited to, the Declaration and Association By-laws, and the Exhibits, which may be attached hereto constitute the entire agreement between the parties hereto and no verbal statements made by anyone with regard to the transaction which is the subject of this Agreement shall be construed as a part hereof unless the same be incorporated herein by writing. Purchaser has relied only upon the warranties or representations set forth in this Agreement and the Public Offering Statement and all Exhibits attached thereto. No oral warranties, representations or statements shall be considered a part hereof.

IN WITNESS WHEREOF, Seller and Purchaser have executed this Agreement under seal as of the day and year first above written.

IMMOKOLEE COMMONS, LLC

BY: \_\_\_\_\_  
James R. Barrows, Managing Member

(Purchaser) \_\_\_\_\_

(Purchaser) \_\_\_\_\_

WARRANTY DEED  
(Statutory Form)

IMMOKOLEE COMMONS, LLC, a Rhode Island limited liability company, for consideration paid, grants to \_\_\_\_\_ of, as (Tenancy), with

WARRANTY COVENANTS,

A fee simple interest in and to Unit \_\_\_\_ ( ), together with an undivided \_\_\_\_\_ (\_\_\_\_%) percent interest in the Common Elements, in that certain condominium situated on Immokolee Drive in the Town of Portsmouth, Rhode Island, more particularly described on that plat consisting of two (2) sheets entitled "RECORD OF SURVEY MAP - PHASE 1 IMMOKOLEE COMMONS CONDOMINIUM OWNER OF RECORD: IMMOKOLEE COMMONS LLC 1364 Smith Street, North Providence, RI 02911 PROJECT APPLICANT: IMMOKOLEE COMMONS LLC 1364 Smith Street, North Providence, RI 02911 PROJECT LOCATION: 65 Immokolee Drive AP 36 Lot 60 Portsmouth, RI 02871 JOHN BRAGA & ASSOCIATES, INC. Civil Engineers - Land Surveyors PO Box 944 Portsmouth, R.I. 02871-0919 Phone (401) 683-0101" (hereinafter referred to as "Record of Survey Map")

The Condominium has been established pursuant to the Rhode Island Condominium Act by Declaration (the "Declaration") dated \_\_\_\_\_ and recorded in the Land Evidence Records of Portsmouth, Rhode Island, in Book \_\_\_\_ at page \_\_\_\_; and said above entitled plat, recorded on \_\_\_\_\_ at \_\_\_\_\_ P.M.

The Unit is conveyed together with and subject to easements, covenants, restrictions and provisions of the Declaration and the use as a limited common element of the parking space for Unit \_\_\_\_ designated on the Record of Survey Map.

The benefits and obligations hereunder shall be deemed covenants running with the land and shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

The undersigned hereby certifies that it has complied with the smoke detector law and the carbon monoxide law, R.I.G.L. Section 23-28.35-1 et seq.

The grantor is a Rhode Island limited liability company and all of its members are residents of Rhode Island as evidenced by affidavit, therefore this transfer is such that no Rhode Island General Law Section 44-30-71.3 withholding is required.

WITNESS my hand this \_\_\_\_ day of \_\_\_\_\_, 2021.

IMMOKOLEE COMMONS, LLC

BY: \_\_\_\_\_  
James R. Barrows, Managing Member

STATE OF RHODE ISLAND  
COUNTY OF \_\_\_\_\_

In \_\_\_\_\_ (city/town) on the \_\_\_\_ day of \_\_\_\_\_, 2021, before me personally appeared James R. Barrows, Managing Member of IMMOKOLEE COMMONS, LLC, to me known and known by me to be the party executing the foregoing instrument, and he acknowledged said instrument, by him executed, to be his free act and deed, individually and in his capacity as aforesaid and the free act and deed of IMMOKOLEE COMMONS LLC.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

ACCEPTANCE BY GRANTEE(S)

This Warranty Deed is hereby accepted by the Grantee(s) in accordance with the terms and conditions herein contained.

\_\_\_\_\_  
Grantee

\_\_\_\_\_  
Grantee

STATE OF RHODE ISLAND  
COUNTY OF \_\_\_\_\_

In \_\_\_\_\_, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known and known by me to be the party(ies) executing the foregoing instrument and he/she/they acknowledged said instrument, and the execution thereof, to be his/her/their free act and deed.

\_\_\_\_\_  
Notary Public  
My commission expires:

Grantees' Mailing Address:

\_\_\_\_\_  
\_\_\_\_\_

EXHIBIT A TO PURCHASE AND SALES AGREEMENT

**LIMITED WARRANTY CERTIFICATE**  
**IMMOKOLEE COMMONS CONDOMINIUM**

Issued To and Accepted By

\_\_\_\_\_  
Unit Owner  
Condominium Unit \_\_\_\_\_

DATE: \_\_\_\_\_ (CLOSING DATE)

ISSUED BY: IMMOKOLEE COMMONS, LLC  
1364 Smith Street  
North Providence RI 02911  
(hereinafter called "Company")

ISSUED TO: \_\_\_\_\_  
(the "Purchaser(s)")

PROPERTY: UNIT NO. \_\_\_\_\_ IMMOKOLEE COMMONS CONDOMINIUM,

PROPERTY ADDRESS: \_\_\_\_\_

**STATEMENT OF WARRANTY.** The only warranties provided by IMMOKOLEE COMMONS, LLC are those expressly set forth in Section 34-36.1-4.14 of the Rhode Island Condominium Act. IMMOKOLEE COMMONS, LLC warrants that the Unit and the Common Elements in the IMMOKOLEE COMMONS CONDOMINIUM are suitable for the ordinary uses of real estate of its type, and that any improvements made or constructed by the Company are free from defective materials and constructed in a workmanlike manner.

**TERM OF COVERAGE.** With respect to a Unit, the above warranty expires two (2) years after the date hereof and with respect to the Common Elements, the above warranty expires two (2) years after the first Unit in the Condominium was conveyed to a bona fide Purchaser.

**LIMITATIONS.** This Warranty does not cover, and the Company has no responsibility for the following:

1. Damages or defects arising due to ordinary wear and tear.
2. Damage or defects due to abusive use, misuse or failure to follow normal maintenance procedures.
3. Damage or defects caused by the elements, "intervening external cause", or "Acts of God", including, but not limited to, fire, water, windstorm, hurricane, hail, lightning, earthquake, theft, riot, war, etc., nor does it cover damage caused by defective or improper provision of utility service by the appropriate utility companies.
4. Damage or defects caused by the provision of service by anyone not in the employ or direction of the Company.
5. Damage or defects caused by any alteration of any item originally provided by the Company. In the event of any such alteration, then this Warranty shall terminate and become null and void as to the item in question.
6. Damage or defects which are the result of characteristics common to the materials in question.
7. Damage, defects or conditions resulting from expansion or contraction of materials and/or condensation.
8. The Company shall not be responsible for any loss, damage or injury resulting from delay in rendering service under this Warranty, nor is the Company responsible for any other cost, expense or damage incurred by Purchaser while an item or product is out of service during the fulfillment of any warranty obligations. In no event shall the Company be liable for special, incidental or consequential damages.
9. Water leaks in the basement.
10. This Warranty does not cover the following unless noted on the Unit Inspection Form when the Purchaser inspects the Unit:
  - (a) Any loss on account of mildew.
  - (b) Any problem concerning carpets except defective manufacture and/or installation.

EXHIBIT IV TO  
PUBLIC OFFERING STATEMENT

- (c) Interior painting.
- (d) Chips, scratches or discoloration in counter tops
- (e) Chips and/or scratches in or on sinks, toilets, toilet seats, bath tubs, refrigerators, or stoves.
- (f) Gouges, wrinkles or tears in kitchen flooring.
- (g) Scratches, blemishes, discoloration or tarnishing on mirrors.
- (h) Tears, holes or flaws in screening.
- (i) Scratches or dents on windows and sliding glass door frames.
- (j) Scratches, cracks or discoloration on window and sliding door glass.
- (k) Breaks, cracks or tarnishing on light fixtures.

11. The appliances originally provided with the Unit by the Company, including the dishwasher, refrigerator, range, microwave, heat and cooling system, and water heater, are not covered by this Warranty since they are covered by warranties from the manufacturer and/or sub-contractors.

12. The liability of the Company is limited to replacing or repairing any defective parts or materials which do not comply with this warranty and in no event shall such liability exceed the replacement cost of the Unit.

13. EXCEPT AS SET FORTH ABOVE, THE UNIT AND ALL PERSONAL PROPERTY ARE BEING SOLD "AS IS", WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BY WAY OF ILLUSTRATION AND NOT LIMITATION, IMPLIED WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR HABITABILITY.

SERVICE. The Purchaser shall not interfere with employees of the Company providing service or other persons directed to provide such service by the Company. Any such interference shall void this Warranty.

REQUESTS FOR SERVICE. Requests for service may be submitted in person or in writing and sent to:

IMMOKOLEE COMMONS CONDOMINIUM  
PROJECT MANAGER  
136 Smith Street  
North Providence, RI 02911

The company shall not be required to furnish service during other than normal business hours, Monday through Friday.

COVERAGE. This Warranty covers parts, materials and labor. This Warranty gives you specific legal rights, and you may also have other rights. There are no expressed warranties other than those contained on the face of this instrument. Notwithstanding anything stated above to the contrary, this Warranty shall be governed by Rhode Island law.

STATUTE OF LIMITATION. The Company and the Purchaser hereby covenant and agree that a judicial proceeding for breach of any obligation arising for breach of the express and implied warranties of quality and arising under Sections 34-36.1-4.13 and 34-36.1-4.14 of the Rhode Island Condominium Act must be commenced within two (2) years after the cause of action accrues.

NOTICE. No claim arising out of any warranties set forth herein may be brought, unless, prior to the expiration of the appropriate two-year warranty period, the Purchasers have delivered notice in writing to the Company of alleged breaches of these warranties.

PROCEDURES. The following procedures have been established to permit maximum in administering work under this warranty:

Each Unit Owner makes an inspection of his Unit prior to settlement. At that time, a list of items needing correction is generated. Certain additional items may arise from time to time, as is normal in a new building. The procedure to be followed for correcting these latent defects is as follows:

1. Except in case of emergency, no latent defects shall be reported within the first ninety (90) days after occupancy. This provision will avoid confusion with the correction of the items noticed in the Unit Inspection Form and will also allow IMMOKOLEE COMMONS, LLC's Contractor a more efficient and expeditious work schedule by combining in one list all latent defects discovered in the first ninety (90) days of occupancy. IMMOKOLEE COMMONS, LLC's experience shows that most latent defects are discovered within ninety (90) days from occupancy.

2. After ninety (90) days from occupancy, if Purchaser has discovered latent defects that are covered by the warranty, he may submit in writing to IMMOKOLEE COMMONS, LLC a list of such latent defects.

3. Upon receipt of such list, IMMOKOLEE COMMONS, LLC's Representative will meet the Purchaser and after inspecting the Unit will list the legitimate latent defects on the "90-Day Warranty Inspection Form", a copy of which is attached to be signed by Purchaser and IMMOKOLEE COMMONS, LLC's Representative. All rules and procedures established in the "Unit Inspection Form" in case of disagreement between Purchaser



and IMMOKOLEE COMMONS, LLC's Representative will govern also for the implementation of the "90-Day Warranty Inspection Form".

4. Additional latent defects that may be discovered subsequent to the implementation of the "90-Day Warranty Inspection Form", but still during the period covered by the warranty will be handled case by case upon written notice from Purchaser to IMMOKOLEE COMMONS, LLC and always in accordance with the same rules and procedures established for the implementation of the "Unit Inspection Form" and the "90-Day Warranty Inspection Form".

By following the foregoing procedure, the correction of the defects covered by warranty will take place in an orderly and efficient manner, with a minimum inconvenience to the Unit Owners.

Dated: \_\_\_\_\_

IMMOKOLEE COMMONS, LLC

By: \_\_\_\_\_  
JAMES R. BARROWS, MANAGING MEMBER

Accepted, including specifically, without limitation, the limitation of a two (2) year period of the statute of

\_\_\_\_\_  
Purchaser

Date: \_\_\_\_\_

\_\_\_\_\_  
Purchaser

Date: \_\_\_\_\_

## EXHIBIT B TO PURCHASE AND SALES AGREEMENT

**UNIT INSPECTION FORM**

**IMMOKOLEE COMMONS CONDOMINIUM**

**CERTIFICATE OF ACCEPTANCE**

PURCHASER(S): \_\_\_\_\_

SALE CONTRACT DATED: \_\_\_\_\_

UNIT NO.: \_\_\_\_\_ PURCHASE PRICE:\$ \_\_\_\_\_

The undersigned Purchaser(s) of the above-described Unit purchased on the date set forth above for the purchase price as aforesaid, has inspected the Unit on the date set forth below. The following items were noted specifically and any discrepancy is noted below:

ITEMS CHECKED	APPROVE	DISAPPROVE
Painting or wall covering of the Unit	_____	_____
Floor covering and carpeting	_____	_____
Appliances in good working condition	_____	_____
Kitchen Plumbing, sink, disposal _____	_____	_____
Bathroom toilet(s), shower(s), tub(s) and wash basin(s)	_____	_____
Cabinet work, doors, hinges	_____	_____
Electrical lights, switches, plugs	_____	_____
Furniture and furnishings	_____	_____
Windows, doors, sliding doors, locks and keys	_____	_____
Balcony, patio and railings	_____	_____
Closets, mirrors, counters	_____	_____
All other items	_____	_____

As to items disapproved, the following are my written exceptions:

This acceptance is subject to the correction in workmanlike manners within a reasonable time of the items listed above as disapproved or excepted.

EXHIBIT V TO PUBLIC OFFERING STATEMENT

The undersigned with the exceptions noted above have accepted the Unit, including the appliances, as complete and accept any changes (including substitutions) that have been made to the Unit. The undersigned accept the Common Elements of the IMMOKOLEE COMMONS CONDOMINIUMS including any changes and substitutions made thereto.

The following procedures have been established to efficiently identify and correct possible defects existing at time of inspection and acceptance of the Condominium Unit.

1. All incomplete items and legitimate defects readily visible to the human eye shall be noted for completion or correction upon this Unit Acceptance Form.

2. In case there is a failure to agree between Seller and Purchaser(s) concerning inclusion of the incomplete items and legitimate defects to be noted on the Unit Acceptance Form, Seller will, within seven (7) days from the date of inspection, submit the disagreement to the Project Architect for decision, and such decision shall be final and binding on Seller and the Purchaser(s). It is understood and agreed that the Project Architect will be required to render a decision on the items in dispute based on the plans and specifications for the Building and Unit, the Limited Warranty Certificate, the Declaration, and the By-laws for IMMOKOLEE COMMONS CONDOMINIUM. The charges by the Project Architect for this service will be paid one-half by Seller and one-half by the Purchaser(s) prior to resolution.

3. The signature of Seller representative on the Unit Acceptance Form constitutes agreement by Seller to complete or correct in workmanlike manner all items noted on such form. Work shall start promptly and be carried on expeditiously by Seller. In the event that such work is not completed prior to settlement and occupancy by Purchaser(s), the Purchaser(s) agrees to grant reasonable access to the Unit for the purpose of such work during normal working hours and as required by the work schedule of Seller contractor. Should Purchaser(s) fail to grant such required access, Seller will so notify Purchaser(s) in writing, and if failure on the part of Purchaser(s) in granting the required access should continue after seven (7) days of receipt of such notice, then Purchaser(s) will lose any right to the corrective work noted on the Unit Acceptance Form.

4. Upon completion of all work noted on the Unit Acceptance Form, Seller will so notify Purchaser(s), in writing, and Purchaser(s) shall acknowledge such completion by signing the second part of the form. In the event Purchaser(s) and Seller fail to agree on the satisfactory completion of the work as referred to above, Seller will, within seven (7) days from notification to Purchaser(s), submit the disagreement to the Project Architect and the same provisions established for disagreement concerning the items to be noted on the Unit Acceptance form will govern.

Dated:\_\_\_\_\_

\_\_\_\_\_  
Purchaser(s)

\_\_\_\_\_  
Purchaser(s)

Witnessed by:

\_\_\_\_\_

IMMOKOLEE COMMONS, LLC agrees that the exceptions to this acceptance are correct and that it will correct the exceptions within a reasonable period of time.

IMMOKOLEE COMMONS, LLC

BY: \_\_\_\_\_  
Authorized Representative

I (we) acknowledge that the above items noted as exceptions have been completed in a workmanlike manner.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Purchaser(s)

\_\_\_\_\_  
Purchaser(s)

IMMOKOLEE COMMONS CONDOMINIUM

90-DAY WARRANTY INSPECTION FORM

\_\_\_\_\_  
Purchaser(s)

\_\_\_\_\_  
Unit Number

Listed below are the legitimate latent defects discovered to date in my Condominium Unit in accordance with the terms and conditions of my Limited Warranty Certificate dated \_\_\_\_\_, 2021.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Purchaser(s)

\_\_\_\_\_  
Purchaser(s)

IMMOKOLEE COMMONS, LLC agrees to correct in a workmanlike manner the items listed above.

ACCEPTED AND AGREED:  
IMMOKOLEE COMMONS LLC

BY: \_\_\_\_\_  
Authorized Representative

I (we) acknowledge that the above items have been completed in a workmanlike manner.

\_\_\_\_\_  
Purchaser(s)

\_\_\_\_\_  
Purchaser(s)

**Immokolee Commons Condominium Association**  
**Fiscal Year Ending December 31, 2022**

	Budget	Per Unit
Units	8	
<b>Expenses</b>		
Liability and Hazard Insurance	\$12,800	\$ 1,600
Fidelity Bond	\$ 250	\$ 31
Landscaping	\$16,000	\$ 2,000
Snow Removal	\$ 3,200	\$ 400
Trash Removal	\$ 3,840	\$ 480
Legal & Accounting	\$ 600	\$ 75
Water for Sprinklers	\$ 2,200	\$ 275
Power Washing	\$ 2,000	\$ 250
Office Supplies	\$ 500	\$ 63
Septic Maintenance	\$ 1,000	\$ 125
Sprinkler System Maintenance	\$ 1,600	\$ 200
<b><u>Replacement Reserves</u></b>		
Street Pavement-20 Years	\$ 8,000	\$ 1,000
Roof Reserves-30 Years	\$ 1,800	\$ 225
	\$53,790	\$ 6,724
Calculated Monthly HOA Fee	\$ 560	

Initial Capital Payment is two (2) months of assessment per unit to provide working capital.

**EXHIBIT VII TO PUBLIC OFFERING STATEMENT**