

Return to:  
Brent Brooks  
Billings City Attorney  
P.O. Box 1178  
Billings, MT 59103

## **BYLAWS OF EMPIRE GARAGE OWNERS ASSOCIATION**

### **1. APPLICABILITY OF BYLAWS.**

The provisions of these Bylaws are applicable to the Empire Garage which has been submitted to and created pursuant to the provisions of the Montana Unit Ownership Act and pursuant to the Declaration of Unit Ownership for the Empire Garage (the "Declaration"). The condominium is located upon the following described real property located in Billings, Yellowstone County, Montana (the "Land"):

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, Block 109, Original Town, now City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document #16312.

All present or future Owners, tenants, or any other Person who might use the improvements on the Land in any manner, are subject to the provisions of these Bylaws. The acquisition, rental, or occupancy of any of the Units will signify that these Bylaws are accepted, ratified, and will be complied with.

Capitalized terms used herein but not otherwise defined shall have the respective meanings given such terms in the Declaration.

### **2. MEMBERSHIP, MEETINGS AND VOTING.**

(a) **Membership.** Each Unit Owner shall be a Member of the EMPIRE GARAGE OWNERS ASSOCIATION, a Montana non-profit corporation, hereinafter called the "Association". However, if the ownership of any Unit is vested in more than one person, and while each such Owner shall be a Member, the co-owners or joint owners of the Unit shall be deemed to be one Member for the purpose of voting and the determination of any required quorum.

The Association shall have four classes of membership (each a "Class"). The Owners of the Hotel Parking Unit shall be one Class, the Owners of the Alley Cat Parking Unit shall be another Class, the Owners of the Public Parking Unit shall be another Class and all Owners of

Retail Units shall form the fourth Class. The City of Billings is the Owner of each Unit not yet sold by the City.

(b) **Ownership.** Subject to Section 12 of the Declaration, ownership shall be determined according to the records of the Clerk and Recorder of Yellowstone County, Montana and shall also include those purchasing Units under purchase contracts who have an equitable interest in the Unit as disclosed by the public record in the office of the Yellowstone County Clerk and Recorder, and in such an event the equitable owner shall be considered as the only Owner of such Unit. Tenants shall not be deemed to be Owners even if the record owner has complied with the provisions of 70-23-102(16) MCA.

(c) **Voting by Members.** Each Class of Unit Owner shall have votes equaling the percentage of undivided interest in the Common Elements appurtenant to the Owner's Unit. Accordingly, the Owner of the Hotel Parking Unit shall have 31.02 votes, the Owner of the Public Parking Unit shall have 54.41 votes, the Owners of the Retail Units shall collectively have 9.24 votes, and the Owner of the Alley Cat Parking Unit shall have 5.33 votes. The 9.24 votes for the Retail Units shall be divided among the Retail Units in proportion to the floor area of each Retail Unit. Owners are also referred to herein as "Members". Except as otherwise provided in the Declaration or these Bylaws, any action by the Members shall require approval by Members holding a majority of the votes. The votes for any Unit owned by more than one Person shall be exercised as such co-owners may among themselves determine. Whenever a Unit is owned by two or more Persons, any one of such Owners may vote, in the absence of protest by the other or others. Votes may be cast in person or by proxy.

In the case of Owners which are municipalities, corporations, partnerships, LLCs or trusts, a partner, member, manager, trustee, officer or designated representative of the Owner may represent the Member for purposes of voting.

Members shall be entitled to vote on the following:

- (i) Election of Director for Members Class;
- (ii) Amendment of the Declaration;
- (iii) Amendment of the Articles of Incorporation in accordance with the Articles and Section 15 of these Bylaws;
- (iv) Amendment of these Bylaws in accordance with Section 15;
- (v) Rebuilding after a casualty loss in accordance with Section 9; and
- (vi) Matters referred to the Members for decision due to Directors inability to

approve by majority vote pursuant to Section 3(g).

(d) **Proxies.** Proxies may be made by any Member entitled to vote. They shall be valid only for the particular meeting designated and must be filed with the Secretary on or before the appointed time of the meeting.

(e) **Annual and Special Meetings.** The annual meeting of the Association shall be held every year at a time and on a day to be determined by the Board. Additional regular and special meetings of the Association may be called by the President or any two Directors. Notice of all meetings shall be given to each member personally or by mail, telephone, facsimile, or e-mail at least five (5) business days prior to the day named for such meeting. If notice is given by e-mail, the Association shall maintain a record of all e-mails sent. The presence, in person or by proxy, of Members having a sufficient number of votes to decide the business to be transacted at the meeting shall constitute a quorum.

The agenda for the annual meeting shall include the following:

- (1) Determination of quorum;
- (2) Approval of minutes of last annual meeting;
- (3) Presentation of financial report for past year and budget for coming year;
- (4) Board report on insurance coverage;
- (5) Election of Directors;
- (6) Old Business, if any;
- (7) New business; and
- (8) Public comment, if required by Montana law.

(f) **Manner of Obtaining Approval of Unit Owners.** Approval of all decisions and resolutions of the of the Association which require the approval of the Members may be obtained by vote at an annual, regular or special meeting.

### **3. BOARD OF DIRECTORS.**

(a) **Number of Directors.** The affairs of the Association shall be governed by a Board of Directors composed of four Directors, with each Class electing one Director.

(b) **Qualifications of Directors.** Directors must be Owners of Units, or in the case of Owners which are municipalities, corporations, partnerships, LLCs or trusts, a partner, member, manager, trustee, officer or designated representative of the Owner.

(c) **Election and Term of Office.** The Directors shall be elected at the annual meetings of the Association. The term of office of each Director shall be for one year. If a quorum cannot be obtained for an annual meeting, the existing Directors shall continue to serve until the next annual or special meeting is held and new Directors are elected.

(d) **Nomination and Election.** Candidates for Directors shall be nominated by their representative Class from the floor at each annual meeting. Each Unit Owner in a Class shall be entitled to vote for a Director nominated by that Class; provided that each Class comprised of a single Unit Owner may designate its Director. The candidate receiving the largest number of votes shall serve as the Director for that Class.

(e) **Compensation.** No compensation shall be paid to Directors for their services as Directors unless salaries for Directors are approved by all of the Members entitled to vote. However, Directors shall be reimbursed for actual expenses incurred in the performance of their duties.

(f) **Meetings.** Regular and special meetings of the Board of Directors may be called by the President or any two Directors. Notice of such meetings shall be given by the Secretary to each Director and to the Treasurer and President of the Association, personally or by mail, telephone or facsimile, at least five (5) business days prior to the day named for such meeting. Notice may also be given by e-mail at least five (5) business days in advance, provided the Association maintains a record of all emails sent. If required by Montana law, notice shall also be given to the public, in the manner required by Montana law. Information concerning major actions by the Board shall be promptly disseminated to all members of the Association in a manner to be determined by the Board. Owners, lenders and members of the public may attend Board meetings but their participation in the meetings may be limited to the extent determined by the Directors present at the meeting, and as provided by Montana law.

(g) **Voting by Directors.** Each Director shall have one equal vote on any issue on which the Director is entitled to vote. All Directors may vote on issues pertaining to the powers and duties of the full Board as set forth herein or in the Articles of Incorporation or in the Declaration of Unit Ownership for the Empire Garage. Only those Directors elected by Owners responsible for assessments for the Limited Common Elements may vote on issues affecting those Limited Common Elements. Any action by the Board shall require approval by a majority vote of the Directors entitled to vote on the issue, and one of the required affirmative

votes must be cast by the Director representing the Public Parking Unit. Except as provided in subsection (h), in the event the Board of Directors is unable to approve an issue by a majority vote including an affirmative vote of the Public Parking Unit, the issue shall be referred to and decided by Members holding a majority of the votes within 10 days. Only those Members responsible for assessments for the Limited Common Elements may vote on issues affecting those Limited Common Elements. This means that the City of Billings will have the controlling vote on issues affecting Units owned by the City of Billings, except as provided in subsection (h). Actions taken by Members pursuant to this subsection shall be covered by and included in the directors and officers liability insurance maintained by the Association.

**(h) Voting by Directors on Increased Expenditures.** Any actions by the Board of Directors on: (i) items that increase annual assessments more than 20% from the previous year's annual assessments; or, (ii) expenditures for non-budgeted non-emergency items totaling more than \$30,000 during the current budget year, shall require the affirmative vote of a majority of the Directors entitled to vote on the issue, including the affirmative vote of the Director representing the Public Parking Unit. The \$30,000 amount for non-budgeted non-emergency items shall increase annually based on the increase in the CPI rate for all Urban Consumers and all Items. In the event the Board of Directors is unable to approve an increased expenditure pursuant to this subsection, the expenditure shall not be assessed by the Board.

**(i) Powers and Duties of Board.** The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all acts and things as are not by law, the Declaration or these Bylaws directed to be exercised by the Members, or some, but not all Directors. In addition, the Board of Directors shall have the following powers and duties:

- (i) To enforce the provisions of the Declaration and these Bylaws by any lawful action.
- (ii) To determine the amount of assessments payable by the Unit Owners for General Common Expenses and to allocate and assess said expenses among Unit Owners pursuant to the terms set forth in the Declaration. Assessments shall include reasonable reserve funds. The Board shall have the authority to invest reserve funds in any manner not inconsistent with the needs of the Association.
- (iii) In its discretion, to impose special assessments for emergencies, as they are incurred.
- (iv) To send written notice of any change in the regular assessments and written notice of any special assessment to each Owner at least 30 days before its due date.

- (v) To record and foreclose a lien against any Unit for unpaid assessments.
- (vi) To read the water meters, determine the cost of water and sewer and garbage provided to each Unit, and assess that amount to the Owner of the Unit.
- (vii) To adopt a schedule of late payment fees.
- (viii) To adopt a schedule of fines for violation of the provisions of these Bylaws or any rules and regulations for use of the Common Elements duly adopted by the Board.
- (ix) To issue, or to cause an appropriate officer to issue, upon demand by any Person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.
- (x) To procure and maintain insurance required or authorized to be purchased by the Association.
- (xi) To pay all debts of the Association.
- (xii) To grant and accept easements, permits and licenses on behalf of all Unit Owners, as necessary for the proper operation of the Empire Garage.
- (xiii) To contract for repairs, maintenance, alterations, additions and improvements which are the obligation of the Association.
- (xiv) To adopt and amend administrative rules governing use and operation of the General Common Elements.
- (xv) To determine which persons are allowed access to the main power room and to mechanical and utility rooms.
- (xvi) Upon written request from any Person having an interest or prospective interest in a Unit, to prepare and furnish within a reasonable time an audited financial statement of the Empire Garage Owners Association for the immediately preceding tax year, at the requesting Person's expense. The Board shall require that audit expenses be paid in advance of beginning the audit.
- (xvii) To file annual corporate reports with the Montana Secretary of State and to pay the required fee.
- (xviii) To prepare income tax returns for the Association, if required by state or federal

law, and to pay all taxes owed.

- (xix) To provide any notices required by these Bylaws or the Declaration.
- (xx) To remove any unauthorized additions to the Common Elements and to assess the costs of removal to the responsible Unit Owner.
- (xxi) To delegate any of the above-mentioned powers and duties to one or more officers or employees of the Association, or to an independent contractor or agent.
- (xxii) To engage the services of a paid manager or managing agent for the purpose of managing the Association and/or the Common Elements. The manager shall not provide management of or for the individual Units. Management of each Unit shall be the sole responsibility of the Owner of that Unit.
- (xxiii) To supervise all officers, agents and employees of the Association, to ensure that they properly perform their duties.

(j) **Powers and Duties of Retail Units Director.** The Director elected by the Owners of the Retail Units shall have the power and duty:

- (1) To propose to the Owners of the Retail Units the amount of all assessments for Limited Common Expenses payable only by the Owners of Retail Units for approval by a weighted majority vote of those Owners, and to allocate and assess approved Limited Common Expenses among the Retail Unit Owners. Assessments may include reserve funds for major repairs. Such Director shall have the authority to invest reserve funds in any manner not inconsistent with the needs of the Retail Units.
- (2) In its discretion, to impose special assessments for emergencies pertaining solely to the Retail Units Limited Common Elements, as they are incurred.

(k) **Powers and Duties of Hotel Parking Unit Director and Public Parking Unit Directors.** The Directors elected by the Owners of the Public Parking Unit and the Hotel Parking Unit shall have the power and duty:

- (1) To determine what maintenance and repairs are needed for the Public Parking Unit and Hotel Parking Unit Limited Common Elements, to determine the amount of all assessments for such Limited Common Expenses payable by the Owners of the Hotel Parking Unit and the Public Parking Unit, and to

allocate and assess said expenses among those Unit Owners. Assessments shall include reserve funds for major repairs. The Directors shall have the authority to invest reserve funds in any manner not inconsistent with the needs of the Association.

- (2) In their discretion, to impose special assessments for emergencies pertaining solely to the Hotel Parking Unit and Public Parking Unit Limited Common Elements, as they are incurred.

**(l) Powers and Duties of Retail Units Director and Hotel Parking Unit and Public Parking Unit Directors.** The Directors elected by the Owners of the Retail Units and Hotel Parking Unit and Public Parking Unit shall have the power and duty:

- (1) To determine what maintenance and repairs are needed to the Retail Units, Hotel Parking Unit and Public Parking Unit Limited Common Elements and to determine the amount of all assessments for such Limited Common Expenses payable by the Owners of the Retail Units, Hotel Parking Unit and the Public Parking Unit, and to allocate and assess approved Limited Common Expenses among the those Owners. Assessments may include reserve funds for major repairs. The Director shall have the authority to invest reserve funds in any manner not inconsistent with the needs of the Retail Units, Hotel Parking Unit and the Public Parking Unit.
- (2) In their discretion, to impose special assessments for emergencies pertaining solely to the Retail Units, Hotel Parking Unit and Public Parking Unit Limited Common Elements, as they are incurred.

**(m) Directors as Trustee for Unit Owners.** The Board of Directors is hereby irrevocably appointed as Trustee for the Unit Owners of all of the Units to manage, control and deal with the interests of such Unit Owners in the General Common Elements as necessary to permit the Board of Directors to fulfill all of its powers, rights, functions and duties.

The Board of Directors is hereby irrevocably appointed as Trustee for each Unit Owner, each mortgagee, other named insureds, and their beneficiaries and any other holder of a lien or other interest in the Units and Common Elements to:

- (1) adjust and settle all claims arising under insurance policies purchased by the Board of Directors; and
- (2) execute and deliver releases upon the payment of claims.

The mortgagee and guarantor of a mortgage on any Unit shall have the right to timely

written notice of any casualty loss that affects a material portion of the Building or the Unit securing its mortgage.

(n) **Resignation and Removal of Directors.** Any Director may be removed from office by the majority vote of the Unit Owners of the Class electing the Director. In the event of resignation or removal of a Director, the vacancy shall be filled by a new Director elected by the Unit Owners of the Class represented by such resigned or removed Director, at a special meeting of the Unit Owners, in the manner provided for the election of Directors, with the person so elected serving the balance of the unexpired term.

#### 4. **OFFICERS.**

(a) **Board Elects Officers.** The Board of Directors shall annually elect a President, a Secretary, and a Treasurer. The Board in its discretion may also elect a Vice-President. Officers need not be Members of the Association. No two offices may be held by the same person except the offices of Secretary and Treasurer. The officers of the Association shall hold office at the pleasure of the Board and may be removed by the Board, with or without cause. In the event of a vacancy the Board shall elect a successor at any regular meeting or at any special meeting called for such purpose. THOMAS W. HANEL and CARI MARTIN, shall serve as interim President and Secretary respectively, until the first annual meeting of the Association.

(b) **Duties.** The President shall preside at all meetings of the Association and of the Board of Directors, shall supervise the affairs of the Association and its officers, shall have all of the powers and duties usually vested in the office of President and shall also perform such other duties as from time to time may be assigned by the Board of Directors. The Vice-President, if any, shall act in the place of the President and shall have such other duties as may be assigned by the Board of Directors. The Secretary shall keep all books and records of the Association and the Board of Directors and record all minutes of meetings of both, shall keep a record of all members of the Association, and shall serve all required notices. The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate itemized accounts of all receipts and disbursements in books belonging to the Association, in chronological order. The Treasurer shall be responsible for the deposit of all monies 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 Board of Directors.

(c) **Compensation.** Any officer may be compensated, in a reasonable amount, as determined by the Board of Directors.

#### 5. **INSPECTION OF RECORDS.**

The books, records and papers of the Association and a copy of the Declaration ,

Bylaws, Articles of Incorporation and Rules and Regulations, if any, for the Empire Garage shall be open for inspection by any Unit Owner and by holders, insurers and guarantors of first mortgages on Units, at any reasonable time, after reasonable notice to the Secretary. To the extent required by Montana law, the books, records and papers of the Association shall also be available for inspection and copying by the public.

**6. EMERGENCY ACCESS.**

Directors, and the Association's property manager, if any, shall have the right to enter any Unit in case of an emergency originating in or threatening such Unit whether or not the Owner or occupant is present at the time.

**7. INSURANCE**

(a) Except as provided otherwise below, the Association shall insure all of the Units and all Common Element improvements, including every part of the Building, and all fixtures attached or affixed to any part of the Building against loss or damage by fire and other casualty in an amount representing the full insurable value thereof, less a deductible in an amount to be determined by the Board. Such insurance shall cover all Common Elements described in Section 5 of the Declaration, all walls, all concrete floors and ceilings, and all fixtures and equipment within or serving all of the Parking Units.

Notwithstanding anything herein to the contrary, the insurance shall not cover fixtures, equipment, floor coverings, and dropped ceilings in the Retail Units, or equipment such as HVAC equipment serving only one Retail Unit, or signs identifying a specific Retail Unit. The insurance purchased by the Association shall not cover personal property inside any Unit, or loss of rental income. All Owners must insure their personal property, and obtain loss of rents insurance for Units or parking spaces if they wish such insurance coverage. Owners of Retail Units must also obtain insurance for interior finishes, fixtures, and equipment within or serving only their Unit if the Owner wishes insurance coverage on these items.

(b) The Association shall purchase public liability and property damage insurance, insuring the Association and the Unit Owners for liability for personal injuries to, or the death of, any person, or damage to property resulting from the ownership, use, or occupancy of the Common Elements, with policy limits to be determined by the Board, but no less than \$1,000,000.00 per occurrence and \$2,000,000.00 per aggregate.

(c) The Association shall purchase fidelity insurance coverage for all persons handling Association monies, naming the Association as insured, in an amount equal to the maximum funds held by the Association. If the Association employs a management agent, the agent must have its own fidelity insurance policy providing the same coverage required above.

(d) The Association shall purchase directors and officers liability insurance covering each member of the Board and each officer of the Association; the amount of coverage shall be determined by the Board.

(e) The cost of all insurance purchased by the Association shall be a part of the General Common Expense.

(f) Directors shall seek to obtain the best insurance value, considering the coverage, the price, the financial stability of the insurer, and the history of the insurer in promptly and properly handling claims.

(g) All Association insurance proceeds shall be paid to the Board of Directors as trustee for disbursement.

(h) Each policy shall contain a standard mortgagee clause in favor of each mortgagee or trust indenture beneficiary, or contract of sale endorsements in favor of the contract sellers of any Units and shall require the insurer to notify the Association, each Unit Owner, and each first mortgage holder, in writing, of any lapse, cancellation or substantial change to the policy at least ten days prior to the date on which such cancellation or change takes effect. Duplicate originals of all new insurance policies and of all policy renewals (or, alternatively, Accord certificates of insurance showing coverages), together with proof of payment of premiums, shall be delivered to all mortgagees and contract sellers of Units at least thirty (30) days prior to expiration of the then current policies.

(i) The Board of Directors shall annually review the adequacy of limits of coverage of insurance policies, shall obtain an appraisal from an insurance company or other knowledgeable person or business of the full replacement value of the covered improvements, without deduction of depreciation, for the purpose of determining the amount of property insurance required under this section, and report its findings and decisions regarding insurance to the membership of the Association.

(j) General liability insurance policies procured by the Association shall contain waivers of subrogation.

(k) Property insurance policies procured by the Association shall not contain any co-insurance penalty.

(l) Unit Owners shall not be prohibited from carrying other insurance for their own benefit provided that all policies shall contain waivers of subrogation and provided that the liability of the carriers issuing insurance obtained by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner.

(m) Insurance payments for a fire or other property loss insured by the Association shall be applied by the Board of Directors as Trustee to repair or replacement of the damaged property. In the event of loss to one or more but not all Units, any amount needed to repair or replace the Unit, in excess of insurance payments, shall be paid by the Owner of that Unit.

(n) The Association shall pay, as a General Common Expense, the deductible amount for any loss insured by the Association.

(o) Owners who rent or lease Retail Units shall require the Tenant to carry liability insurance on the Unit in an amount not less than \$1,000,000.00, per occurrence and \$2,000,000.00 general aggregate, naming the Association as a primary additional insured. The policy shall require the insurer to notify the Association, in writing, of any cancellation or substantial change to the policy at least thirty (30) days prior to the date on which such cancellation or change takes effect. The tenant, or its insurer, shall provide the Association with proof of insurance.

#### **8. LIABILITY OF OFFICERS AND DIRECTORS.**

The Officers and Directors of the Association shall not be liable to the Association or any Unit Owner for any mistake of judgment, negligent or otherwise, except for their own individual willful misconduct or bad faith. The Association shall indemnify and hold harmless each of the Officers and Directors from and against all liability to others arising out of actions taken or contracts made by the officers or the Board of Directors on behalf of the Association unless such act or contract shall have been in bad faith, except to the extent that such liability is satisfied by directors and officers liability insurance.

To the extent not covered and paid by directors and officers liability insurance, the Association shall indemnify any person, including Member decisions made pursuant to Section 3(g) herein, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that the person is or was an Officer or Director of the Association against expenses, including attorney fees, judgments, and fines and amounts paid in settlement approved by the Board of Directors and incurred by the person in connection with such action, suit or proceeding if the Officer or Director acted in good faith and in a manner the officer or Director reasonably believed to be in, or not opposed to, the best interest of the Association.

**9. CASUALTY LOSS.** If the Building is damaged by fire or other casualty it must be repaired or rebuilt unless there is a total loss of all Units and Owners of 75% of the Common Elements agree not to rebuild. Insurance payments for a property loss insured by the Association shall be applied by the Board, or its designated Trustee, to repair or replacement of

the damaged property, except in the event of a total loss of all Units and a decision of the Owners of 75% of the Common Elements not to rebuild. When the Building is repaired or replaced after casualty, it shall substantially conform, in size, style, quality and appearance, to the Building as it existed prior to the casualty, unless otherwise agreed by all Owners.

#### **10. ASSESSMENTS FOR COMMON EXPENSES.**

(a) **When Assessments Begin.** The Owner of each Unit shall be obligated to pay regular and special assessments for General and Limited Common Expenses, and for water and sewer and garbage, beginning upon conveyance of such Unit to the Owner.

(b) **Amount.** Prior to the annual meeting, the Board of Directors shall prepare an Association budget for the coming year. A copy of that budget, together with a statement of the amount of each regular assessment for the coming year, shall be delivered to each Unit Owner at least one week before the annual meeting. Each regular assessment for General Common Expenses shall be equal to the total estimated General Common Expenses for the coming year, plus a reasonable reserve allowance for replacement of improvements, divided by the number of payments due for the year and multiplied by the percentage of undivided interest in the General Common Elements for the assessed Unit. If an annual budget is not prepared as required, the regular assessments due shall be equal to the amount of the regular assessments for the previous year until changed by the Board of Directors, after preparation of a new budget. The amount of the regular assessments may be changed by the Board at any time it determines that the change is necessary or advisable. Written notice of the amount of any changed regular assessments shall be given, by mail or otherwise, to each Unit Owner at least 30 days in advance of the first payment due date for the assessment. Except for changes in the amount of the regular assessments, no bills or other notices that regular assessments are due need be given by the Association. Assessments for General Common Expenses must be based upon and computed by using the percentile interest that each Unit Owner has in the Common Elements. Assessments for Limited Common Expenses shall be calculated as set forth in Section 13(b) of the Declaration.

(c) **Due Date.** Regular assessments for Common Expenses shall be due and payable, in advance, on the first day of each payment period. Special assessments and assessments for water and sewer and garbage shall be due and payable 30 days after a bill for those expenses is mailed or hand delivered to the responsible Unit Owner. The Board of Directors shall determine whether regular assessments shall be payable monthly, quarterly, semi-annually or annually.

(d) **Record Keeping.** All assessments collected by the Association may be commingled in a single fund from which shall be paid the expenses for which the assessments

are made. Separate records of payments received shall be kept for each Unit.

(e) **Interest and Late Fees.** Assessments paid more than 10 days after the date when due shall bear interest at the rate of twelve percent (12.0%) per annum from the date when due until paid; in addition, late paying Owners shall be obligated to pay a late fee if a schedule of late payment fees has been adopted by the Board of Directors. All payments or assessments shall be applied first to late fees, then to interest and then to the earliest assessment due.

(f) **Special Assessments.** The Board may impose special assessments for unanticipated emergency expenses upon affirmative vote of the Directors.

(g) **No Exemption from Payment.** No Owner of a Unit shall be exempt from liability for his or her contribution toward any Common Expense by waiver of the use or enjoyment of those items paid for or by abandonment of the Unit.

(h) **Account Balance Transfers with Unit.** No Unit Owner shall be entitled to receive the balance in that Owner's assessment account upon sale of the Owner's Unit. The account balance shall pass with sale of the Unit, to the credit of the new Unit Owner. This provision shall not be deemed to prohibit a selling Owner from collecting the balance of that Owner's assessment account from a purchaser.

(i) **Remedies for Failure to Pay.** The remedies for failure to pay assessments are set forth in the Declaration.

## **11. MAINTENANCE AND MANAGEMENT OF UNITS AND COMMON ELEMENTS.**

(a) **Unit Owner Responsibilities.** Every Unit Owner shall be responsible for all maintenance of and repairs to that Owner's Unit; Owners of Retail Units shall also be responsible for replacement of all broken glass in their Unit, and for maintenance, repair and replacement of doors serving only their Unit. All fixtures and equipment within a Unit and serving only that Unit shall be maintained, replaced and kept in repair by the Unit Owner, except in the event of damage covered by insurance purchased by the Association. The surfaces of floors, walls and ceilings serving only one Unit shall be cleaned, maintained and repaired by the Owner of that Unit. Each Owner shall be responsible for all maintenance and repair to the furnace and the air conditioning, if any, serving only that Owner's Unit and for the cost of installation, repair and replacement of the Owner's or tenant's business signs. Each Owner shall be responsible for all damages to the other Units or to the Common Elements resulting from the Owner's failure to effect such maintenance and repair.

All maintenance and repairs for which an Owner is responsible shall be paid for by the Owner.

Every Unit Owner shall be responsible for operation and management of that Owner's Unit and for payment of operation and management costs.

(b) **Association Responsibilities.** The Association shall be responsible for all maintenance, repair and replacement of Common Elements, except for:

- (1) cleaning and replacement of window glass in Retail Units;
- (2) maintenance, repair and replacement of exterior doors and signs in Retail Units; and
- (3) cleaning, maintenance and repair of the surfaces of walls floors and ceilings serving only one Unit.

The Association shall be responsible for maintaining common water and sanitary sewer lines, and the sidewalks adjoining the Building.

The Association shall be responsible for management of the Common Elements; it shall not be responsible for management or operation of any Owner's Units.

The Board may employ personnel necessary for the maintenance, upkeep and repair of the Common Elements as is deemed necessary.

(c) **Standard of Maintenance and Repair.** The Empire Garage shall be maintained and repaired to keep the Building clean, well lighted, safe and in good repair. All equipment shall be kept in good working order.

## 12. **RESTRICTIONS ON USE.**

The following restrictions apply to use of all Units and Common Elements:

(a) **Maintenance and Repair.** Unit Owners shall promptly perform all maintenance and repair work within their own Units which, if omitted, would affect any Common Element, and each Unit Owner shall be responsible for all damages and liabilities created by such failure to maintain or repair.

(b) **Garbage.** All garbage and trash must be placed in the proper receptacles designated for refuse collection and no garbage or trash shall be placed elsewhere on any Common Element or outside any Unit.

(c) **Fire Prevention.** No Unit Owner shall perform any act or store anything within or immediately adjacent to the Owner's Unit, or Limited Common Elements used by the Owner, which might increase the rate of fire and other casualty insurance for the Building or increase the probability of fire as a result of such act or the storage of such items.

(d) **Unlawful Use.** No unlawful use shall be made of any Unit, the Common Elements, or any part thereof.

(e) **Signs.** All permanent signs must be approved by the Board, before installation, and must comply with the City of Billings sign ordinances. The Board may adopt guidelines for, or restrictions on, signs identifying a business occupying any Unit.

(f) **Hazardous Substances.** Storage of chemicals or hazardous substances shall not be permitted in any Unit or the Common Elements, except reasonable amounts of cleaning supplies.

(g) **Utility and Mechanical Rooms.** Access to the main power service room and the mechanical and utility rooms shall be restricted to the persons designated by the Board of Directors. Owners and tenants shall not enter any common mechanical or utility room, nor shall any Owner or tenant adjust or modify any pipe, line, valve, or equipment of any kind for providing heat, water, or other utilities, or adjust or modify elevator equipment, unless accompanied by a designee of the Board of Directors; except in an emergency threatening life or property.

(h) **No Smoking.** No smoking shall be permitted in the Building.

(i) **Block Access.** No Owner or tenant shall block access to another Owner's parking area or retail business or to a Common Element used by another Unit Owner. This provision does not include temporary parking of delivery vehicles in designated alley locations while loading or unloading.

(j) **Nuisances.** No nuisances shall be allowed on the property nor shall any use or practice be allowed which unduly disrupts the business of other Owners.

(k) **Prohibited Uses.** No Unit may be used for an adult bookstore, for an adult theater or massage parlor or for any sexually oriented business, as defined by the City of Billings Zoning Ordinances. Therapeutic massages may be offered only by massage therapists or other health care providers licensed by the State of Montana. No Unit may be used for a business which violates the applicable zoning ordinances of the City of Billings or any applicable covenants or restrictions on the use of the Unit. No Unit may be used for a residence. No Unit may be used for Outpatient facilities providing medical care and other services for persons with mobility impairments, or for any facilities that specialize in treatments or services for persons with mobility impairments, or for any other use which requires the availability of more than 12 handicapped parking places in the Parking Units.

(l) **Public Participation.** The Association, its members and its Board shall comply with all applicable Montana laws governing open meetings, inspection of records and rights of the

public to participate in the operation of local government.

**13. RULES AND REGULATIONS.**

Administrative rules and regulations concerning the use of the General Common Elements may be adopted and amended by the Board of Directors. Administrative rules and regulations concerning the use of the Limited Common Elements may be adopted and amended by the Directors elected by the Unit Owners responsible for assessments for those Limited Common Elements.

A copy of the current rules and regulations shall be provided to each Unit Owner by the Secretary of the Association, without cost, upon receipt of a request therefor.

**14. LIABILITY OF THE ASSOCIATION AND UNIT OWNERS.**

The Association shall not be liable to any Unit Owner or any tenant of any Owner for any failure to provide services paid for as a Common Expense, or for any uninsured injury or damage to person or property caused by the weather, or resulting from water, snow or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment onto a Unit. The Association shall not be liable to any Unit Owner or any tenant of any Owner for uninsured loss or damage, by theft or otherwise, of articles which may be stored upon any of the Common Elements. This shall not be deemed to be a waiver of any liability between Unit Owners or tenants. No diminution or abatement of any assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Elements, or from any action taken by the Association to comply with any law, ordinance or with the order or directive of any government authority. The Association shall not be liable to any Unit Owner or any tenant of any Owner for uninsured injury or damage to person or property caused by another Unit Owner. Any such liability shall be attributed solely to the responsible Unit Owner. The Association shall not be liable to any Unit Owner or any tenant of any Owner for uninsured personal injuries or uninsured injuries to property occurring on Common Elements.

**15. AMENDMENT.**

(a) These Bylaws and the Articles of Incorporation may be amended ; provided, however, that the Bylaws and Articles of Incorporation shall always include those particulars required to be included therein by the Montana Unit Ownership Act. No amendment shall take effect unless: (i) approved by Members holding at least 75% of the votes, and 3 of the 4 Directors (each Director having one vote for this purpose); and (ii) until a copy of the Amendment, certified by the President and Secretary of the Association, is recorded in the office of the Clerk and Recorder of Yellowstone County, Montana, or with the Montana Secretary of State as applicable.

(b) The consent of Eligible Mortgage Holders who represent at least fifty-one (51%) percent of the votes of Units subject to mortgages held by Eligible Mortgage Holders shall be required for a change in any of the following:

- (i) Changes in insurance requirements; and
- (ii) Changes in any provisions which expressly benefit mortgage holders, insurers or guarantors.

**16. BYLAWS ARE COVENANTS.** The provisions of these Bylaws shall be covenants running with the land and shall be binding on all Owners, their successors, assigns and their tenants and guests, for so long as the real property described herein is subject to the provisions of the Montana Unit Ownership Act.

**17. ENFORCEMENT AND WAIVER.**

In the event the Board of Directors shall refuse to enforce the provisions of these Bylaws or the Declaration or duly adopted administrative Rules and Regulations, any Unit Owner shall have the right to do so on behalf of the Association.

Failure of the Association, its Board of Directors or any of its Members to enforce the provisions of these Bylaws or the Declaration or any administrative Rules and Regulations adopted by the Board shall not be deemed a waiver of the right to do so in the future.

The losing party in any lawsuit or arbitration proceeding brought to enforce these Bylaws or the Declaration shall be obligated to pay the reasonable attorney fees incurred by the prevailing party, together with costs incurred in the lawsuit or arbitration proceeding.

The Board of Directors is hereby authorized to adopt a schedule of fines for violation of any of the provisions of these Bylaws, and for violation of any additional administrative rules adopted by the Board pursuant to Section 13 above, and to assess such fines against all violating Owners. All fines shall be a lien on the Unit of the Owner against whom they are imposed and if unpaid, may be foreclosed in the same manner as a lien for Common Expenses, subject to the dispute resolution provisions set forth in Section 20 of the Declaration. The Owner of each Unit shall also be responsible for fines resulting from the conduct of the Owner's lessees and tenants.

**IN WITNESS WHEREOF,** the undersigned, being the Owner of the property to which these Bylaws apply and being the Interim President and Secretary of the Association,, have executed this instrument as evidence of the adoption of the aforesaid Bylaws of the Association and hereby certify that the foregoing is a true and correct copy of the Bylaws of the Association.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

EMPIRE GARAGE OWNERS ASSOCIATION

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

Thomas W. Hanel, Interim President

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

Cari Martin, Secretary

STATE OF MONTANA )  
 : ss.  
County of Yellowstone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned, a Notary Public for the State of Montana, personally appeared THOMAS W. HANEL, known to me to be the Interim President of the EMPIRE GARAGE OWNERS ASSOCIATION, whose name is subscribed to the foregoing Bylaws and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this certificate first above written.

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

(print or type name of notary)  
Notary Public for the State of Montana  
Residing in Billings, Montana  
My Commission Expires: \_\_\_\_\_

(SEAL)



1 22 13 Draft

Alley Cat Investments, LLC

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

Its: \_\_\_\_\_