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DECLARATION OF UNIT OWNERSHIP FOR THE EMPIRE GARAGE

The City of Billings, Montana, a municipal corporation and political subdivision of the State of Montana (“City of Billings”), does hereby make and submit for filing the following Declaration under the Unit Ownership Act of the State of Montana, Section 70-23-101, et seq. Montana Code Annotated.

1. SUBMISSION TO UNIT OWNERSHIP.

The purpose of this Declaration is to submit the real property herein described and the improvements constructed thereon to the form of ownership and use provided by Chapter 23, Title 70, Montana Code Annotated, hereinafter referred to as the "Montana Unit Ownership Act". The City of Billings has assembled the land subject to this Declaration for the purpose of constructing a mixed use parking structure as an urban renewal project pursuant to Montana Code Annotated, Title 7, Chapter 15, Sections 42 and 43, (the “Montana Urban Renewal Laws”) and pursuant to Billings City Ordinance No. 11-5539. The urban renewal project is referred to herein as the “Empire Garage”. The City of Billings has granted options and rights of first refusal to purchase certain Units in the Empire Garage to Zootist Hospitality, LLC, Zootist Garage, LLC, and to Alley Cat Investments, LLC (“Alley Cat”) pursuant to option agreements dated May 31, 2011 and May 4, 2011, respectively.

The real property upon which the Empire Garage shall be constructed is located in Yellowstone County, Montana, is owned in fee simple by the City of Billings, and is more particularly described as follows (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.

The provisions of this Declaration and the Bylaws of the Association shall be covenants running with the land and shall be binding on all Owners.

2. DEFINITIONS.

Capitalized terms used in this Declaration and not otherwise defined herein shall have the respective meanings set forth in the Montana Unit Ownership Act. In addition, the following terms shall have the following respective meanings:

- (a) "Alley Cat Parking Unit" means the Unit in the Building consisting of parking spaces on the first level of the Building as identified on the attached Exhibit "A" and as described in Section 4.
- (b) "Association" means the Empire Garage Owners Association, a Montana non-profit corporation.
- (c) "Building" means the multiple unit mixed-use building located on the Land.
- (d) "Common Elements" means the General Common Elements and the Limited Common Elements.
- (e) "Common Expenses" means the General Common Expenses and the Limited Common Expenses.
- (f) "Eligible Mortgage Holder" means the holder of a first mortgage or trust indenture on any Unit which has requested, in writing, that the Association notify it of any proposed action requiring the consent of a specified percentage of eligible mortgage holders.
- (g) "General Common Elements" are defined in Section 5(a) of this Declaration. Any portion of the Empire Garage not identified as part of a Unit or as a Limited Common Element shall be a General Common Element.
- (h) "Hotel Parking Unit" means the Unit in the Building consisting of parking spaces on the second, third, fourth and fifth levels of the Building as identified on the attached Exhibit "A" and as described in Section 4.
- (i) "Limited Common Elements" means those Common Elements designated in this Declaration as reserved for the use of fewer than all of the Unit Owners.
- (j) "Northern Hotel" means the real property and improvements adjacent to the Empire Garage located upon Lots 13, 14, 15, 16, 17, and 18, Block 109, Original

Town, now City of Billings, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana. The Northern Hotel is owned by Zootist Hotel, LLC.

- (k) The following definitions shall apply for purposes of Section 12 of this Declaration: "Owned and Controlled" as to a Person means ownership of a majority controlling interest in the Person and management control over the Person. "Owns and Controls" as to the Northern Hotel means ownership of a majority controlling interest and management control of the Northern Hotel.
- (l) "Parking Units" means collectively the Alley Cat Parking Unit, Hotel Parking Unit and the Public Parking Unit.
- (m) "Person" means and includes any individual or entity, including partnership, limited liability company, corporation or governmental unit.
- (n) "Public Parking Unit" means the Unit in the Building consisting of parking spaces on the second, third, fourth, fifth and sixth levels of the Building as identified on the attached Exhibit "A" and as described in Section 4.
- (o) "Retail Units" means the Units in the Building located on the first level of the Building as identified on the attached Exhibit "A" and as described in Section 4.
- (p) "Securities Building" means the real property and improvements adjacent to the Empire Garage, located upon Lots 19 and 20, Block 109, Original Town, now City of Billings, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana. The Securities Building is a condominium with multiple unit owners.
- (q) "Skybridge" means the skybridge connecting the Northern Hotel to the Hotel Parking Unit in the location shown on the attached Exhibit "A".
- (r) The following definition shall apply for purposes of Section 12 of this Declaration: "Transfer" or "Transferred" means (i) the direct or indirect sale, transfer, conveyance or other disposition in one or a series of related transactions of a Parking Unit; or (ii) any Person or group of related Persons is or becomes a beneficial owner, directly or indirectly, of more than 50% of the total ownership interest of a Parking Unit or the total voting power of the Owner of a Parking Unit. A Transfer shall not include a lease of a Unit. Any Transfer is subject to Section 12.
- (s) "Unit" means a Parking Unit or a Retail Unit.
- (t) "Unit Owners" or "Owner" means the Person owning a Unit, including a contract purchaser if a notice of purchaser's interest is recorded with the Yellowstone County Clerk and Recorder, and including co-owners. A lessee of a Unit shall not be considered a Unit Owner.
- (u) "Utility Services" is broadly defined to include provision of gas, electricity, water and sewer, television, telephone, internet and other computer services, whether wireless or by wire or cable, and other communication systems and energy systems.

3. DESCRIPTION OF EMPIRE GARAGE.

The Empire Garage consists of the Land and the Building to be constructed on that land. The Building will be of steel, timber, dimensional lumber, and reinforced concrete construction with decorative metal on the exterior wall surfaces, and concrete foundation. The plans for the Building and each Unit, the size of each Unit, the site plan showing the location of the Building on the Land, and the location and Unit designation for each Unit, are shown on the attached Exhibit "A", which by this reference is included herein.

The Building will contain the following Units: the Public Parking Unit, the Hotel Parking Unit, the Alley Cat Parking Unit and the Retail Units as identified on the attached Exhibit "A" and as described in Section 4.

The Skybridge is not included in or a part of the Empire Garage and will not be insured or maintained by the Association.

4. DESCRIPTION OF UNITS.

Each Unit shall consist of one or more separate spaces bounded by the surface of the floor, the surface of the ceiling, the center of interior non-structural walls separating two Units, if any, and the interior surface of the exterior building walls adjoining the Unit.

All lights and equipment inside the perimeter of the Unit which serve only that Unit, and all utility lines and pipes within a Unit and serving only that Unit shall be part of the Unit.

The exterior awnings, if any, grease chases, signs identifying a single Retail Unit, ventilation systems, heat pumps, and furnaces and air conditioning equipment, serving a single Unit, and utility lines and pipes which serve only one Unit are also part of the Unit.

The boundaries of each Unit are shown on the attached Exhibit "A".

5. COMMON ELEMENTS.

- (a) The General Common Elements include all of the following:
 - (i) Foundations and pilings;

- (ii) Drainage systems;
- (iii) Concrete structure;
- (iv) Exterior concrete, brick and masonry skin;
- (v) Glass curtain walls on stair/elevator towers;
- (vi) Fire extinguishers;
- (vii) Plumbing: piping and systems for water hosebibs, drainage systems, sewer, and storm water;
- (viii) Utility services, lines, pipes, electrical transformers and panels which serve all Units;
- (ix) Main entrances to the Building, excluding the ramps and the equipment limiting access of vehicles to the Parking Units;
- (x) The Land described above;
- (xi) The exterior walls of the Building;
- (xii) Windows and exterior doors in the Building;
- (xiii) All structural components of the Building;
- (xiv) The floor/ceiling separating the levels or Units, except the surfaces which are a Limited Common Element or part of a Unit;
- (xv) Outside lighting, if any;
- (xvi) The walls, except the surfaces which are part of a Unit or a Limited Common Element;
- (xvii) The signs identifying the Empire Garage and the "Empire Garage Marketplace", if any;
- (xviii) The dumpster for trash and the trash collection area;
- (xix) All rooms and closets labeled "GC" on the attached Exhibit "A";
- (xx) The sprinkler system and fire riser stand pipes which provide fire protection;
- (xxi) All other parts of the Empire Garage available for use by or benefitting all Unit Owners.

(b) **Limited Common Elements.** Notwithstanding Section 5(a), the surface of the ramps, lights, utility lines and pipes, and equipment which serve only the Hotel Parking Unit and the Public Parking Unit shall be Limited Common Elements reserved for the exclusive use of the Owners of these Units, their customers, employees and guests.

The utility lines and pipes, and the equipment which serve two or more Retail Units and the corridor behind the Retail Units shall be Limited Common Elements reserved for the exclusive use of the Owners of those Units, their customers, employees, tenants and guests.

The structural steel elevator/stair tower enclosures, except the glass curtain walls, the stairs, elevators and stairwells and the lobbies serving them, and the elevator equipment rooms shall be Limited Common Elements reserved for the exclusive use of the Owners of the Public Parking, Hotel Parking and the Retail Units, and their tenants, employees and guests.

The handicapped parking space in the Alley Cat Parking Unit shall be a Limited Common Element reserved for the use of those handicapped persons using the Alley Cat Parking Unit. The handicapped parking spaces on the second, third, fourth, fifth and sixth levels of the Building shall be Limited Common Elements reserved for the use of those handicapped persons using the Hotel Parking Unit and the Public Parking Unit.

(c) In the event it is unclear whether an improvement is a Common Element or a part of a Unit, the exterior of the Building and improvements shared by or serving more than one Unit shall be Common Elements and improvements within a Unit shall be part of the Unit served.

6. OWNERSHIP.

Each Unit Owner shall be a fee simple owner of the Unit and of an undivided interest in the Common Elements. The percentage of the undivided interest in the Common Elements appurtenant to each Parking Unit and the Retail Units shall be as follows:

Public Parking Unit	54.41%
Hotel Parking Unit	31.02%
Alley Cat Parking Unit	5.33%

Retail Units 9.24%

7. CHANGES TO UNITS AND COMMON ELEMENTS.

(a) Units shall be constructed by the City of Billings only to the extent shown on the design plans for the Empire Garage. The cost of additional work to any Unit shall be the sole responsibility of the Owner of the Unit.

No Owner shall make any additions or changes to a Unit which do not comply with applicable building codes. No Owner shall make any improvements to its Unit which will impair the structural integrity of the Building, which will structurally change the Building, or which will encroach on another Unit or the Common Elements. No Owner shall remove any rated firewall, floor or ceiling, or open any rated firewall, floor or ceiling unless the opening is permitted by the then applicable building code.

(b) No Owner shall make any improvements or changes to the Common Elements or the exterior of the Building without prior written approval of the Board of Directors of the Association.

(c) The Owner of one or more Retail Units shall have the right to divide a Retail Unit into separate smaller Retail Units or to change the size of two or more Retail Units by building one or more additional common walls within the Owner's existing Retail Unit or by removing or moving non-structural walls located solely within the Retail Units. Each new or modified Retail Unit shall have a separate door for ingress and egress to the sidewalk and street, and a back door which provides access to the pedestrian walkway. If a Retail Unit is divided, or the size changed, the percentage of undivided interest in the Common Elements appurtenant to the Retail Unit before division shall be divided among the new or modified Retail Units created by the division or modification in proportion to the floor area of each new or modified Retail Unit; the total floor area shall equal total floor area of the changed Units prior to such change. If a Retail Unit is divided, or the size is changed, the Owner of the Retail Unit shall record an amendment to this Declaration, showing the floor plans for the new or changed Retail Units and setting forth the undivided interest in the Common Elements appurtenant to each new or modified Retail Unit. Any such amendment to the Declaration shall be subject to review and approval of the Board to confirm that such amendment is in compliance with the provisions of this Declaration and the

Bylaws of the Association.

(e) Notwithstanding any other provision in this Declaration or the Bylaws of the Association, no Parking Unit may be divided into smaller units without the prior written consent of all of the Owners of Parking Units. This provision may not be amended or revoked without the written consent of all of the Owners of Parking Units.

(f) After completion of construction of the Building, no TV antennas, satellite dishes, air-conditioning units, wiring or any other device shall be installed on the exterior of the Building or on Common Elements without prior written approval of the Board of Directors.

8. EASEMENTS.

(a) There shall exist for the benefit of each Unit and as a burden on the other Units the following easements:

(i) Easement through the Common Elements for ingress and egress for each Unit Owner and the Owner's tenants, employees, customers and guests making use of such Common Elements in accordance with the terms of this Declaration. Each Unit Owner and the Owner's tenants, employees, customers and guests shall have an unrestricted right of ingress and egress upon the Common Elements for access to the Owner's Unit.

(ii) Easements through the Units and Common Elements for maintenance, repair and replacement of the Units and Common Elements. Use of these easements, however, for access to the interior of Units shall be limited to reasonable hours, except that access may be had at any time in case of emergency. Twenty four (24) hour advance notice must be given to Unit Owners before accessing the Owner's Unit for non-emergency maintenance, repair or replacement; provided however that notice need not be given for routine maintenance.

(iii) Every portion of a Unit which contributes to the structural support of the Building shall be burdened with an easement of structural support for the benefit of the Common Elements, and the other Units.

(iv) Easements through the Units and Common Elements for all facilities for the furnishing of utility services within the Building, which facilities shall include but not be limited to conduits, ducts, plumbing and wiring; provided that the easements for such facilities through a Unit shall be only substantially in accordance with the plans of the Building. Placement of towers, receivers, generators, cables, wires, pipes or solar collectors on the exterior of the Building or in any common area shall require the prior written consent of the Board of Directors. Such consent may be withheld for any reason.

(v) Easements for encroachments existing upon completion of construction of the Empire Garage and its Units (and maintenance thereof) of any portion of the Common Elements upon a Unit or Units so long as they stand, and easements for encroachments (and maintenance thereof) of any portion of a Unit upon the Common Elements, and upon an adjoining Unit or Units, so long as they stand.

Such encroachments and easements shall not be considered or determined to be encumbrances on the Common Elements, or on the Units for purposes of marketability of title.

There shall be appropriate agreements and easements between the affected parties and Zootist Hotel, LLC for construction, access, maintenance, repair, replacement and use of the Skybridge.

9. GRANT OF EASEMENTS FOR SERVICES.

The undersigned hereby grants an easement over and across the Common Elements and the Units for fire service, police protection, solid waste and emergency services. The City of Billings has previously granted an easement to Securities Building, LLC for trash disposal which is recorded in the records of Yellowstone County, Montana under Document No. _____. This easement is located in the Alley Cat Parking Unit and depicted on Exhibit "A" as Securities Building Easement.

10. POWER OF THE BOARD TO GRANT ADDITIONAL EASEMENTS.

The Board of Directors of the Association is authorized and empowered to grant such licenses, easements, and rights of way for sewer lines, water lines, gas lines, television cable

lines, telephone lines, underground conduits, and other utility services over and through the Common Elements, as may be necessary and appropriate for the maintenance, preservation, and enjoyment of the Common Elements or the Units, or for adding utility services to any Unit, so long as the easement has no significant negative effect on use of the Units.

11. EMPIRE GARAGE OWNERS ASSOCIATION, POWERS, DUTIES AND MEMBERSHIP.

There shall be established a Montana nonprofit corporation named the Empire Garage Owners Association. Articles of Incorporation of the Association (the “Articles”) shall be filed by the City of Billings promptly upon recording of this Declaration. The Association shall be responsible for the management and control of the Empire Garage and the Building pursuant to and as set forth in this Declaration, the Articles and Bylaws of the Association. Each Unit Owner shall be a member of the Association pursuant to and as set forth in this Declaration, the Articles and Bylaws of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Unit.

12. INTENDED USES AND RESTRICTIONS ON TRANSFER AND USE OF UNITS.

(a) **Urban Renewal Purpose of Projects.** The City of Billings has entered into a development agreement with Zootist Hotel, LLC for rehabilitation and redevelopment of the Northern Hotel as an urban renewal project of the City of Billings pursuant to Billings City Ordinance No. 11-5539. Zootist Garage, LLC and Zootist Hotel, LLC are Owned and Controlled by Chris Nelson and Mike Nelson. The City of Billings has also entered into development agreements with Securities Building, LLC and Alley Cat for redevelopment of the Securities Building and the parking lot on Lots 4 and 5 of Block 109 respectively as urban renewal projects of the City of Billings. Securities Building, LLC and Alley Cat are Owned and Controlled by William and Marcia Honaker.

The City of Billings has undertaken the Empire Garage as an urban renewal project in part to provide parking for the Northern Hotel and the Securities Building. The City of Billings wishes to ensure that the purposes of the Montana Urban Renewal Laws are satisfied by the terms and conditions of ownership and use of the Empire Garage.

(b) **Intended Use of Units.**

(i) **Parking Units.** Each of the Parking Units shall be used for the parking of motor vehicles.

(ii) **Retail Units.** The intended use of the Retail Units shall be any lawful commercial, business, or office use except those uses specifically prohibited in this Declaration, the Articles or Bylaws of the Association, or in any applicable restrictive covenants of record. Each party, by acceptance of a deed for a Unit, acknowledges and agrees that the restrictive covenants in the deed from Zootist Garage, LLC to City of Billings dated May 31, 2011, recorded on May 31, 2011, under Document No. 3588643 in the records of Yellowstone County Montana, are not applicable to any Retail Unit located solely on Lots 1 through 7, Block 109.

(iii) **All Units.** Additional restrictions on use of all Units are set forth in the Bylaws of the Association, as such may be amended from time to time.

(c) **Restrictions on Transfer of Hotel Parking Unit and Alley Cat Parking Unit.**

In furtherance and consideration of the urban renewal purposes of the Empire Garage, the following restrictions on Transfer of the Hotel Parking Unit and the Alley Cat Parking Unit shall apply:

(i) Until the final maturity date of the bonds issued by the City of Billings to finance or refinance construction of the Empire Garage or the final repayment of such bonds, whichever is earlier, the Hotel Parking Unit shall not be Transferred to any Person other than: (A) Chris Nelson; (B) Mike Nelson; (C) any Person Owned and Controlled by Chris Nelson or Mike Nelson; or (D) any Person that Owns and Controls the Northern Hotel.

(ii) Until the final maturity date of the bonds issued by the City of Billings to finance or refinance construction of the Empire Garage or the final repayment of such bonds, whichever is earlier, the Alley Cat Parking Unit shall not be Transferred to any Person other than: (A) William Honaker; (B) Marcia Honaker; (C) any Person Owned and Controlled by William Honaker or Marcia Honaker; (D) any purchaser of a commercial condominium unit in the Securities Building from a Person Owned and Controlled by

William Honaker or Marcia Honaker; or (E) any purchaser of a Retail Unit from a Person Owned and Controlled by William Honaker or Marcia Honaker.

These restrictions on Transfer will not restrict the right of the Owner of the Hotel Parking Unit or the Alley Cat Parking Unit to grant a mortgage or deed of trust secured by their respective Parking Unit; provided that the mortgagee, trustee, and/or beneficial owner of the Parking Unit, and their successors and assigns, shall be subject to the restrictions on Transfer and use set forth in this Section 12.

These restrictions on Transfer will not restrict the right of any Person to convey his or her interest in the Hotel Parking Unit or the Alley Cat Parking Unit upon death; provided that the heir, devisee or beneficiary of the Parking Unit shall be subject to the restrictions on Transfer and use in this Section 12. The heir, devisee or beneficiary shall be substituted for their respective deceased transferor identified in subsections (i)(A), (B) or (C), or subsection (ii) above.

Upon transfer of an interest in the Alley Cat Parking Unit to a permitted transferee under subsections (ii)(D) or (E) above, the permitted transferee shall be substituted for William Honaker or Marcia Honaker for purposes of determining subsequent permitted transfers.

These restrictions on Transfer shall be binding on the Owner of the Hotel Parking Unit, the Owner of the Alley Cat Parking Unit, and any permitted transferee of the Hotel Parking Unit or the Alley Cat Parking Unit, and collectively upon their respective heirs, devisees, beneficiaries, representatives, agents, successors, assigns, members, managers, directors, officers, shareholders, lessees and tenants. These restrictions on Transfer shall be set forth in any conveyance of the Hotel Parking Unit or the Alley Cat Parking Unit, respectively; and shall be covenants running with the land.

(d) **Restrictions on Use of Hotel Parking Unit and Alley Cat Parking Unit.**

In furtherance and consideration of the urban renewal purposes of the Empire Garage, the following restrictions on use of the Hotel Parking Unit and the Alley Cat Parking Unit shall apply:

- (i) The Hotel Parking Unit shall be used solely to provide vehicle parking for guests, tenants and employees of the Northern Hotel or any Retail Unit ("Hotel Eligible Users");

provided that the Owner of the Hotel Parking Unit may lease or permit use of a maximum of thirty (30) parking spaces in the Hotel Parking Unit by Persons other than Hotel Eligible Users.

(ii) The Alley Cat Parking Unit shall be used solely to provide vehicle parking for guests, tenants and employees of the Securities Building or any Retail Unit (“Alley Cat Eligible Users”); provided that the Owner of the Alley Cat Parking Unit may lease or permit use of a maximum of four (4) parking spaces in the Alley Cat Parking Unit by Persons other than Alley Cat Eligible Users. The Alley Cat Parking Unit may be used for events related to the businesses of the Alley Cat Eligible Users, such as “Alive After Five.”

These restrictions on use shall be binding on the Owner of the Hotel Parking Unit, the Owner of the Alley Cat Parking Unit, and any permitted transferee of the Hotel Parking Unit or the Alley Cat Parking Unit, and collectively upon their respective heirs, devisees, beneficiaries, representatives, agents, successors, assigns, members, managers, directors, officers, shareholders, lessees, tenants, mortgagees, trustees, and beneficial owners. These restrictions on use shall be set forth in any conveyance of the Hotel Parking Unit or the Alley Cat Parking Unit, respectively; and shall be covenants running with the land.

(e) **Enforcement of Restrictions on Transfer and Use.**

(i) The Owners of the Hotel Parking Unit and the Alley Cat Parking Unit respectively may not Transfer such Unit in violation of the restrictions on Transfer in this Section 12, without prior written approval of the Association and the City of Billings, which consent may be withheld in the sole discretion of the Association or the City of Billings. Any attempted Transfer in violation of these restrictions shall be void. The Owners of the Hotel Parking Unit and the Alley Cat Parking Unit respectively shall provide the Association, all Unit Owners, and the City of Billings with written notice of any intended Transfer of all or an interest in the Hotel Parking Unit or the Alley Cat Parking Unit, together with the name and address of the intended transferee, and such other information concerning the intended Transfer as the Association or the City of Billings may reasonably request. Within 30 days after receipt of the notice described in this subsection, the Association and the City of Billings must either approve or disapprove the proposed Transfer. If approved, the approval shall be stated in a

certificate executed by the Association and the City of Billings in recordable form, and shall be delivered to the Owner. If the proposed Transfer is not approved, the Owner may pursue remedies under Section 20 below; provided that the Association and the City of Billings shall have no obligation to approve any Transfer of the Hotel Parking Unit or the Alley Cat Parking Unit in violation of the restrictions on Transfer or use in Section 12.

(ii) Upon written request by the Association or the City of Billings, the Owner of the Hotel Parking Unit and the Owner of the Alley Cat Parking Unit shall provide documentation of any receipts, leases, permits, agreements or other evidence with respect to use of parking spaces in their respective Parking Units.

(iii) The restrictions on Transfer and use in this Section 12 may be enforced by the Association or by the City of Billings in any manner provided by law, including, but not limited to, by injunction and specific performance. The Owners of the Hotel Parking Unit and the Alley Cat Parking Unit respectively, by acceptance of a deed to their Unit, acknowledge and agree that monetary damages are not an adequate remedy at law for violation of these restrictions on Transfer and use, and that the legal requirements for issuance of a temporary restraining order, preliminary and permanent injunction shall be deemed satisfied by their violation of these restrictions on Transfer or use.

(iv) In the event of any dispute regarding the restrictions on Transfer or use in this Section 12, the provisions of the second and third paragraphs of Section 20(a) and the provisions of Section 20(b) shall apply and shall include the City of Billings as a party.

13. **COMMON EXPENSES.**

(a) **General Common Expenses.** All of the following Association expenses shall be charged to the Unit Owners as a General Common Expense, according to each Unit Owner's percentage of undivided interest in the Common Elements:

(i) Administrative expenses of the Association, including management, accounting and legal fees incurred by the Association;

(ii) The Association's costs of enforcing this Declaration and the Bylaws and rules and regulations of the Association to the extent such costs are not required to

be paid by the violating Unit Owner;

(iii) Except as otherwise provided herein, or in the Bylaws of the Association, the cost of maintenance, repair and replacement of General Common Elements, including, but not limited to, the cost of maintenance and repair of the exterior surfaces of the Building, except the window and exterior doors to individual Retail Units and the signage for individual Units, if any. The cost of replacement of the membrane in the second floor above the Retail Units, as needed, shall also be a General Common Expense. Maintenance of the interior surface of walls, floors and ceilings serving only a single Unit shall not be a Common Expense.

(iv) Casualty, fidelity and liability insurance premiums for the Units and Common Elements, as provided in the Bylaws of the Empire Garage Owners Association;

(v) All bills for common utilities, except water and sewer, and all bills for solid waste removal;

(vi) The cost of snow removal from sidewalks and alley adjoining the Building, if necessary;

(vii) The cost of maintaining the landscaping in the sidewalks adjoining the Building;

(viii) Salaries of employees of the Association, if any, and compensation of a manager and other agents of the Association, if any.

(b) Limited Common Expenses. All costs of maintenance, repair and replacement of Limited Common Elements shall be charged to the Unit Owners having the right to use the Limited Common Elements. The share of each Unit Owner shall equal the undivided interest in the Common Elements appurtenant to that Owner's Unit, divided by the undivided interest in the General Common Elements appurtenant to all Units having the right to use the Limited Common Element, multiplied by the total expense(s) to be shared.

(c) Allocation of Expenses. Certain anticipated Common Expenses are identified on Exhibit "B" and shall be allocated among the Unit Owners as set forth on Exhibit "B"; provided that Exhibit "B" may not reflect a complete list of Common Expenses which may be assessed by the Board.

(d) **Joint and Several Liability.** Co-owners of a Unit shall be jointly and severally liable for payment of Common Expenses for the Unit owned.

(e) **Expenses Due to Misuse or Neglect of Unit Owner.** Expenses for maintenance or repairs to Common Elements necessitated by the misuse or neglect of a Unit Owner or lessee, or a tenant of a Retail Unit, shall be charged to such Unit Owner, and shall be payable solely by that Unit Owner, unless fully covered by the Association's insurance. The charges pursuant to this section shall be a lien on the Unit of the responsible Owner; the lien may be foreclosed by the Association in the same manner as a lien for Common Expenses, subject to the dispute resolution requirements set forth in Section 20.

14. WATER, SEWER AND GARBAGE COLLECTION.

The Empire Garage has one main water meter. The City of Billings will read that water meter and bill the Association for sanitary sewer service, garbage collection, and all water used by all Units.

The Association shall pay the entire water, sewer and garbage bill and bill each Unit Owner for a share of the water, sewer and garbage bill.

If any Retail Unit is used for a purpose that requires more water than is normally used by a business office, e.g., a restaurant or hair salon, the Owner of that Unit must install a sub-meter for that Unit, at the Owner's expense, and must pay a share of the water and sewer bill equal to the cost of the metered water usage plus a proportionate share of sewer and garbage charges for the Unit. The balance of the water and sewer bill shall be paid by the Owners of the unmetered Units; the share of each unmetered Unit shall equal the floor area for the Unit, divided by the floor area of all unmetered Units.

The assessments for water, sewer and garbage are not Common Expenses but may be collected in the same manner as a Common Expense. In the event of nonpayment, the Association shall have all of the remedies set forth in this Declaration or allowed under Montana law. Each Owner, by acceptance of a deed to a Unit, or by execution of this Declaration, contracts and agrees that the Association shall have a lien on that Owner's Unit for any unpaid bills for water, sewer and garbage provided to the Unit; the lien may be foreclosed by the Association in the same manner as a lien for Common Expenses.

15. COVENANT TO PAY ASSESSMENTS.

Assessments shall be made by the Association for all Common Expenses and for water and sewer and garbage. Each Unit Owner, by acceptance of a deed, whether or not it shall be expressed in said deed, is deemed to covenant and agree to pay to the Association, all periodic and special assessments made by the Association for Common Expenses, and for water, sewer and garbage.

16. REMEDIES FOR NON-PAYMENT OF ASSESSMENTS.

All unpaid sums assessed by the Association for Common Expenses and water and sewer and garbage expenses, and all other monies owed by a Unit Owner to the Association, together with interest, late payment fees, collection costs, costs of suit or arbitration and reasonable attorney fees, shall be the obligation of such Unit Owner and may be added to the next regular assessment for that Unit and shall constitute a lien on such Unit, and if filed of record, may be foreclosed in the same manner as a construction lien. During any such foreclosure, the Unit Owner shall be required to pay a reasonable rental for the Unit, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the rent, upon Court order. Rents collected shall be applied to amounts owed to the Association and any excess returned to the Unit Owner. If the Board of Directors receives written notice pursuant to Section 20(a) that the amount of an unpaid assessment is contested by a Unit Owner, together with payment of any unpaid undisputed amount, the Association shall not foreclose its lien which includes the contested amount until the parties have complied with the informal dispute resolution process provided in Section 20(a) below.

Each assessment for Common Expenses and for all other monies owed to the Association by a Unit Owner, including water and sewer and garbage expenses, together with interest, late payment fees, collection costs, costs of suit or arbitration, and reasonable attorney fees, shall also be the personal obligation of the Owner of the Unit against which the assessment was made at the time the assessment fell due, and a suit or arbitration proceeding to recover a money judgment for unpaid assessments or for other monies owed to the Association shall be maintainable by the Association against said Owner without foreclosing or waiving the lien securing the same.

Except for the parties' attorney's fees incurred in mediation as contemplated in Section 20(a), all costs of collection of delinquent assessments, including but not limited to court costs, costs of filing liens, and attorney fees, shall be the obligation of the non-paying Unit Owner and may be added to the next regular assessment for that Unit. Such costs shall be a lien on the unit of the non-paying Owner and, if unpaid, the lien may be foreclosed in the same manner as a lien for unpaid Common Expenses, subject to the dispute resolution process in Section 20(a) below.

17. INDEMNIFICATION.

To the extent permitted by law and except as provided below, each Unit Owner (the "Indemnifying Owner") shall indemnify, defend and hold the other Unit Owners (the "Indemnified Owners") harmless, from and against any and all third party actions, claims, liability or liabilities, and demands to the extent arising out of (a) failure of the Indemnifying Owner to maintain its Unit as herein provided, or (b) the use, occupancy, or non-use of all or any part of the Unit Owner's Unit, due to carelessness, negligence, improper conduct, unlawful conduct, breach of the Declaration, the Bylaws or the rules and regulations adopted by the Association, or violation of federal, state, or local law, by the Unit Owner or its lessees, tenants, agents, employees, contractors, and licensees.

No Owner is required to indemnify, defend or hold harmless any other Owner, to the extent any action, claim, liability or liabilities, and/or demand results from the Indemnified Owner's or Indemnified Owner's tenants', agents', employees', contractors', licensees', customers', invitees', guests', or permitted occupants' carelessness, negligence, improper conduct, unlawful conduct, breach of the Declaration, the Bylaws or the rules and regulations adopted by the Association, or violation of federal, state, or local law.

18. NOTICE TO ELIGIBLE MORTGAGE HOLDERS.

The Directors of the Association shall provide all Eligible Mortgage Holders with timely written notice of:

(a) Any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the mortgage of such eligible holder, insurer, or guarantor, where such delinquency has continued for a period of 90 days; and

(b) Any casualty loss or condemnation which affects a material portion of the Empire Garage or any Unit in which there is a security interest held by the Eligible Mortgage Holder;

and

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

19. PROCESS.

Service of process in the cases provided for in Section 70-23-901, Montana Code Annotated, shall be made upon BRENT BROOKS, at 210 N. 27th Street, Billings, Montana 59101. This provision may be amended in the manner provided in Section 70-23-902, MCA.

20. NON-BINDING DISPUTE RESOLUTION AND RIGHTS OF ACTION.

(a) **Alternative Dispute Resolution.** In the event a Unit Owner disputes the amount of any assessment or other monies owed by the Unit Owner to the Association, the Unit Owner shall give written notice to the Board of Directors, within 10 days after receipt from the Association of the first bill or statement or other written notice of the amount owing. The notice shall set forth the amount in dispute and a brief statement of the reason the amount is disputed. The notice shall include payment of any unpaid undisputed part of the assessment or monies owed the Association by the Unit Owner. Within 10 days after the notice is given, the Unit Owner and the Board of Directors shall meet to try to informally resolve the dispute.

In the event a monetary dispute or any other dispute between any Unit Owner and/or the Association and/or the City of Billings cannot be resolved informally within 20 days after the dispute arises, the dispute shall be submitted to a mediator, if requested by any disputing party. All disputing parties must participate in the non-binding mediation. Mediation must be requested in writing within 20 days after the dispute arises and must be concluded within 4 weeks after the request for mediation is made. A majority of the disputing parties must agree on the person to serve as mediator. The participating parties shall share equally in the fees charged by the mediator. If a majority of the participating parties cannot agree on selection of an impartial mediator within 5 days of the request for mediation, the selection shall be made by the best out of 5 tosses of a coin suitable for such purpose, whereby the hand game “Rock, Paper, Scissors” shall be used to decide at each toss which party gets to make the call, and whereby the winner of the tosses shall have sole discretion to select the mediator.

If the dispute is not resolved pursuant to these resolution procedures or if a Unit Owner does not give notice that a payment is disputed, the Association, a Unit Owner or the City of

Billings may pursue any legal remedy or action available under Montana law including those described in subsection (b) below.

(b) **Rights of Action.** The Association and any Unit Owner, including the City of Billings, shall have the right to maintain an action for specific performance, for damages and/or for injunction, and for foreclosure of one or more liens for unpaid assessments or other monies owed the Association, against any other Unit Owner or the Association for failure to comply with the provisions of this Declaration or the Articles or Bylaws of the Association, or any rules, regulations or restrictive covenants adopted by the Association.

The Association and any aggrieved Unit Owner, on behalf of the Association, may collect unpaid assessments for Common Expenses in any manner permitted by Montana law.

The prevailing party in any action or collection proceeding, except pursuant to non-binding mediation conducted pursuant to Section 20(a), shall be entitled to recover its costs and attorney fees actually incurred from the losing party.

(c) **Bidding at Foreclosure.** The Association and any Unit Owner shall have the power to bid on a Unit at a foreclosure or other legal sale, and to acquire and hold, lease, mortgage and vote the votes appurtenant to, convey or otherwise deal with the same. In the event the Association is the successful bidder for a Unit at a foreclosure or other legal sale, the City of Billings shall have an option to purchase all right, title and interest of the Association in the Unit by paying to the Association the amount bid by the Association for the foreclosed Unit.

21. AMENDMENT.

This Declaration, except where otherwise provided in this Declaration or by Montana law, shall be amended only by the written approval of the Owners of at least 51% of the Common Elements, together with approval of 3 of the 4 Classes of Unit Owners – the Public Parking Unit, the Hotel Parking Unit, the Alley Cat Parking Unit and Retail Units – with each Class Unit entitled to one vote (i.e., the Retail Unit Owners, if more than one, shall have one collective Class vote.)

Notwithstanding anything herein to the contrary, Section 6 may be amended only by affirmative vote of all Unit Owners.

All amendments to this Declaration shall be recorded in the office of the Yellowstone County Clerk and Recorder, Billings Montana.

22. UNITS SUBJECT TO DECLARATION, BYLAWS, RULES AND REGULATIONS, AND RESTRICTIVE COVENANTS.

All present and future Owners of Units shall be subject to, and shall comply with the provisions of this Declaration, the Bylaws of the Association, restrictive covenants, and rules and regulations adopted by the Association, as these instruments may be amended from time to time. The execution of a purchase contract by a Unit Owner or the acceptance of a deed thereto shall constitute acceptance of the provisions of such instruments by such Owner. The provisions of this Declaration and the Bylaws of the Association, restrictive covenants, and rules and regulations adopted by the Association shall be covenants running with the land and shall bind any person having an interest in such Unit as though the provisions were recited and fully stipulated in each deed or conveyance thereto. The invalidity of any provision of this Declaration shall not affect in any manner the validity or enforceability of the remainder of this Declaration. No provision in this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

23. CONSTRUCTION FINANCING.

The City of Billings has issued tax-exempt bonds for the purpose of financing construction of the Building. Neither the Association nor any Unit Owner shall take or permit to be taken by any of its officers, employees or agents any action which would cause, in the opinion of the City of Billings upon consultation with its bond counsel, interest on any such tax-exempt bonds heretofore or hereafter issued by the City of Billings, to become includable in gross income for federal income tax purposes under the Internal Revenue Code and applicable Treasury Regulations. The Association and each Unit Owner agree to amend this Declaration and the Bylaws of the Association, and take or refrain from taking any other action requested by the City of Billings, in order to maintain the tax-exempt status of any such bonds. This provision may not be amended without consent of the City of Billings.

24. CONFLICTS.

In the event of any conflict between this Declaration and the provisions of the Articles of Incorporation or Bylaws of the Association, the provisions of this Declaration shall govern and apply.

25. WARRANTY.

Except for warranties regarding title as provided in the General Warranty Deed provided by the City of Billings to each Owner, the City of Billings gives no warranty, express or implied, on any of the Units or common area improvements, but will transfer to the initial Owners and the Association all manufacturers and dealers warranties received from the general contractor on materials, fixtures and equipment, and any warranty given by the general contractors who constructed the Building and common areas.

THE CITY OF BILLINGS SPECIFICALLY DISCLAIMS ANY LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGE TO ANY PERSON, THE UNITS AND COMMON ELEMENTS, OTHER COMPONENTS OR ANY OTHER REAL OR PERSONAL PROPERTY RESULTING FROM A CONSTRUCTION DEFECT. ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS AND HABITABILITY, ARE EXPRESSLY DISCLAIMED AND DO NOT APPLY.

DATED this _____ day of _____, 2013.

CITY OF BILLINGS, MONTANA

By: _____
_____, Mayor

ATTEST:

By: _____
_____, City Clerk

STATE OF MONTANA)
 : ss
County of Yellowstone)

This instrument was acknowledged before me on _____, by

_____ and _____, the Mayor and
City Clerk of the City of Billings.

(Print or type name of notary)
Notary Public for the State of Montana
Residing at Billings, Montana

Acknowledged and agreed to by:

Zootist Garage, LLC

By: _____
Its: _____

Zootist Hospitality, LLC

By: _____
Its: _____

Alley Cat Investments, LLC

By: _____
Its: _____