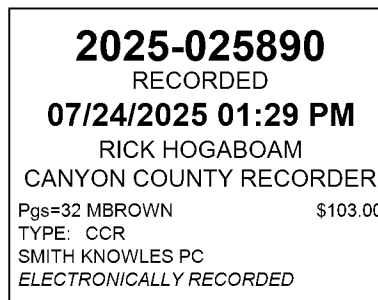


When recorded, return to:



**DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS**  
**For Middleton Industrial Park Condominiums**  
(A Commercial and Industrial Flex Space Project)

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR Middleton Industrial Park Condominiums (this “Declaration”) is hereby adopted by Middleton Industrial Holdings, LLC, its successors, and assigns, (hereinafter “Declarant”) and is made effective as of the date recorded in the Canyon County Recorder’s Office.

**RECITALS:**

(A) On or about July 26, 2024, a Plat Map depicting the Industrial Flex Space Project was recorded in the Canyon County Recorder’s Office, as Instrument No. 2024-023408, which may be added to on a phase-by-phase basis, with all phases of the Industrial Flex Space Project collectively being referred to as the “Industrial Flex Space Project” or “Property”), as may be more particular described in the recorded Plats and/or **Exhibit “A”** and subsequently recorded or amended plats for the Industrial Flex Space Project.

(B) Declarant desires to subject the Industrial Flex Space Project to the terms of this Declaration, the Governing Documents, and the Act. Declarant intends to develop Industrial Flex Space properties within the Industrial Flex Space Project. Declarant will develop and convey all of the Units within the Property subject to a general plan of development, and subject to certain protective covenants, conditions, restrictions and easements, as set forth in this Declaration, as amended from time to time, which are deemed to be covenants running with the land mutually burdening and benefitting each of the Units within the Industrial Flex Space Project. Common Areas and Limited Common Areas are those areas that are depicted in the recorded Plat(s), as amended, and as described in this Declaration.

(C) Declarant has deemed it desirable for the efficient preservation of the values and amenities of the Industrial Flex Space Project to create an entity which possesses the powers to maintain and administer the Common Areas and Limited Common Areas (where applicable) and otherwise administer and enforce the provisions of this Declaration. For such purposes, Declarant will cause to be registered with the Idaho Secretary of State the Middleton Commons Condominiums Association, Inc. (“Association”). The Association is governed by the terms of this Declaration, the Bylaws, and the Articles of Middleton Commons Condominiums Association, Inc., which “Bylaws” and “Articles” are incorporated herein, as may be amended from time to time.

(D) No provision of this Declaration shall prevent the Declarant from doing any of the

following, which shall be deemed to be among Declarant's reserved rights in addition to such rights as may be described elsewhere in this Declaration: (1) installation and completion of the Project Improvements; (2) use of any Unit owned by the Declarant as a temporary sales office or model; (3) installation and maintenance of signs incidental to sales or construction which are in compliance with applicable City or County ordinances; (4) assignment of Declarant's rights under this Declaration in whole or part; and (5) retention of Declarant's rights with respect to subsequent phases. A supplemental declaration, with such modifications or supplemental provisions as may be deemed appropriate by Declarant on a phase-by-phase basis, may be recorded to address differences in the circumstances affecting any Lots or Units to be constructed after the initial phase.

(G) These Recitals are made a part of this Declaration.

## **COVENANTS, CONDITIONS AND RESTRICTIONS**

### **ARTICLE I - DEFINITIONS**

1.0 Unless the context clearly requires the application of a more general meaning, the following terms, when used in the Declaration, shall have the following meanings:

(A) "Act" shall mean the Condominium Property Act, Idaho Code § 55-1501 *et. seq.*

(B) "Allocated Interest" shall mean the undivided interest of an Owner (expressed as a percentage in **Exhibit "B"** to this Declaration) in the Common Areas and facilities, which is utilized for purposes of calculating Assessments and voting rights in the Association.

(B) "Architectural Control Committee" or "ACC" shall mean the Architectural Control Committee created by the Declaration, the Bylaws, or Articles. If no ACC is established, the Board shall fulfill the duties of the ACC.

(C) "Articles" shall have the meaning set forth in the Recitals.

(D) "Assessment" shall mean any monetary charge, fine or fee imposed or levied against an Owner by the Association, as provided in the Governing Documents, regardless of whether said assessment is identified as a regular assessment, lot-type assessment, special assessment, limited assessment, individual assessment, reserve assessment, capital improvement assessment, late fee, or other charge.

(E) "Association" shall mean Middleton Commons Condominiums Association, Inc., and as the context requires, the officers or directors of that Association.

(F) "Bulk Service Contract" or "Bulk Service Provider" shall mean a service provider for items such as; internet, television, cable, satellite, telephone, data, solar power and similar utilities and services.

(G) "Board" shall mean the duly elected and acting Board of Directors of the

Association.

(H) “Bylaws” shall have the meaning set forth in the Recitals.

(I) “City” shall mean Middleton, Idaho and its appropriate departments, officials and boards.

(J) “County” shall mean Canyon County, Idaho and its appropriate departments, officials and boards.

(K) “Common Area” or “Common Areas” shall mean and refer to all property in the Project owned in common by the Owners pursuant to their Allocated Interest including, but not limited to, the following items:

- i) All Common Areas and facilities designated as such in the Plat(s) or in this Declaration;
- ii) All real property and Improvements included within the Project that are not part of a Unit or Limited Common Area;
- iii) Structural elements of the buildings and Units including foundations, columns, girders, beams, supports, supporting walls, main walls (including any bearing walls, even if the bearing wall is located within the interior of a Unit), common walls, floors, sub-floors, sub-roofs, and ceilings between Units or between a Unit and a Common Area (other than the interior surfaces of such floor or ceiling which interior surfaces form part of the Unit);
- iv) Exterior surface of the Building (excluding balcony doors, windows, glass, and/or skylights);
- v) Storage and parking areas not specifically assigned to individual Units;
- vi) Stairs, stairwells, vestibules, halls, corridors, lobbies, and fire escapes;
- vii) Landscaping in the Project;
- viii) Project entrance, asphalt, driveway, curbing and sidewalks (that are not maintained by the City), exterior parking;
- ix) Perimeter fencing (if any);
- x) Mailroom, mailboxes, central entrance and Common Area restrooms;
- xi) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the entire Project and intended for the common use of all Owners;
- xii) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to two or more Units (and not maintained by the City). Further, if any of the foregoing lie partially within and partially outside the designated boundaries of a Unit, then: (a) any portion of the item that serves only that Unit is part of that Unit, and (b) any portion of the item is part of the Common Areas if the item serves more than one Unit or serves any portion of the Common Areas and Facilities.
  - 1. AC units, compressors, water heaters, and/or similar utility equipment that provides service only to individual Units are the

responsibility of the appurtenant Unit. However, if such equipment may be located on Common Areas, permission and oversight from the Association is required for maintenance, repairs and replacement of equipment located in Common Areas.

- xiii) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Project owned by the Association for the common benefit of the Owners.

(L) “Common Expenses” means any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Areas (and Limited Common Areas if required in the Governing Documents); (B) providing facilities, services and other benefits to Owners as set forth in this Declaration; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (D) levying, collecting and enforcing the assessments, charges, fines, penalties and liens imposed pursuant hereto; (E) operating the Association; and (F) creating reserves for any such costs, expenses and liability as required by this Declaration or the Act.

(M) “Declarant” shall mean and refer to Middleton Industrial Holdings, LLC, and its successors and assigns.

- 1. “Declarant Related Entity or Entities” shall mean Declarant, parent companies, subsidiaries, assigns, successors, related or designated construction entities, or other entities established by Declarant or Declarant’s members for the purpose of owning, developing, constructing and/or selling Lots or Units in the Industrial Flex Space Project.

(N) “Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions for Middleton Industrial Park Condominiums, together with any subsequent amendments or additions through supplemental declarations.

(O) “Governing Documents” shall mean the Declaration, Bylaws, Articles, Rules, and any other documents or agreements binding upon an Owner adopted by the Association.

(P) “Improvement” shall mean all structures and appurtenances of every type and kind, including but not limited to Units, parking facilities, walkways, retaining walls, driveways, fences, landscaping, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building.

(Q) “Limited Common Areas” shall mean all property designated on the recorded Plat or as described in this Declaration as Limited Common Area, owned in common by the Owners pursuant to their Allocated Interest, but for the exclusive use and enjoyment of one or more appurtenant Units but fewer than all of the Units, which may include:

- (i) Assigned parking stalls;

- (ii) Assigned storage areas;
- (iii) Balconies, porches; and
- (iv) Shutters, awnings, window boxes.

(R) “Lot” shall mean any lettered building shown on any official and recorded Plats, including all Improvements located thereon. Lot may also refer to the individually numbered Unit.

(S) “Manager” shall mean any entity or person engaged by the Board of Directors to manage the Project.

(T) “Member” shall mean and refer to every person who holds membership in the Association, including an Owner and the Declarant as set forth herein.

(U) “Owner” shall mean and refer to the person who is the Owner of record (in the office of the County Recorder of Canyon County, Idaho) of a fee simple or an undivided interest in any Unit within the Industrial Flex Space Project. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term “Owner” shall not mean or include a mortgagee or a beneficiary of trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof. Owner may include a non-natural, but legally recognized entity, such as a limited liability company, corporation, partnership, limited partnership, trust, and/or other legally entity recognized by Idaho State law. Accordingly, such an Owner may designate a natural person of its selection as Owner’s agent to serve and act in the Owner’s place. Notwithstanding the foregoing, an Owner may designate only one natural person to serve as its agent at any one time.

(V) “Person” shall mean a natural person or any legal entity with a right to hold title to real property in its own name in the State of Idaho, including the authorized representative of such legal entity.

(W) “Plat(s)” shall mean an official and recorded plat of the Industrial Flex Space Project, including all subsequent phases, if any, when recorded, as approved by the City and recorded in the office of the Canyon County Recorder, as it may be amended from time to time, including the Plat specific to the Industrial Flex Space Project.

(X) “Rules” mean any instrument adopted by the Board, as approved by the Association, for the regulation and management of the Association, as provided in the Governing Documents.

(Y) “Project Improvements” shall mean all improvements to be installed outside the boundaries of Lots or Units or within easements as identified on the Plats that are necessary to provide public road access and/or private road access and utility service to the Units and including other construction work required to comply with any conditions of City or County or other governmental agencies to the approval of the Project or any Plat(s) thereof.

(Z) “Unit” shall mean any numbered Unit shown on any official and recorded Plat(s)

whether or not it contains an Improvement and shall include all mechanical equipment and other appurtenances such as: HVAC equipment; water heaters; air conditioning apparatus; electrical panels, receptacles, and outlets; appliances; and fixtures located within any one Unit or located without said Unit but designated and designed to serve only that Unit shall be considered part of the Unit. Drywall, insulation, floors, ceilings (excluding structural components of the floors and ceilings constituting Common Area), windows, window frames, skylights (if any), exterior glass, doors, doorframes, door locks, doorbells, doorknobs, patio/balcony doors, shutters, awnings, window boxes, doorsteps, stoops, and similar components. All pipes, wires, conduits, or other public utility lines or installations serving only the Unit shall be considered part of the Unit. The Unit shall extend to the center of the walls shared with any abutting Unit, which center shall form the boundary of the Units sharing that wall. All decorated interiors and all surfaces of interiors and any other material constituting any part of the finished surfaces shall be part of the Unit. Furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring shall be deemed to be a part of the Unit concerned.

## **ARTICLE II – EASEMENTS & OTHER RIGHTS**

2.1 Easements & Rights Concerning Common Area. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Industrial Flex Space Project Common Area. Such right and easement shall be appurtenant to and shall pass with title to each Unit and in no event shall be separated therefrom, or encumbered, pledged, assigned or otherwise alienated by an Owner. Any Owner may temporarily delegate the right and easement of use and enjoyment described herein to any invitee on such Owner's Unit. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Area except for the necessary parking, access, and utility easements for use in common with others.

- (a) The Association shall be the trustee for all Owners with respect to easements, licenses, agreements, and conveyances of Common Areas, consistent with the Declaration and Idaho law.

2.2 Easements & Rights Concerning Limited Common Area. The Association shall have a non-exclusive easement for any utility or any required maintenance in and through the Limited Common Area.

- (a) The Association shall be the trustee for all Owners with respect to easements, licenses, agreements, and conveyances of Limited Common Areas, consistent with the Declaration and Idaho law.

2.3 Delegation of Use. Any Owner may delegate, in accordance with the Governing Documents, their right of enjoyment to the Common Area and any Common Facilities located thereon to the members of their family and their tenants and shall be deemed to have delegated said rights to contract purchasers who reside on said Owner's Unit.

2.4 Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

- (a) The right of the Association to govern by Rules the use of the Common Area so as to provide for access and use in a manner consistent with the preservation of the Industrial Flex Space purposes of the Industrial Flex Space Project, including the right of the Associations to impose reasonable limitations;
- (b) The right of the Associations to suspend an Owner's right to the use of the Common Areas, or any amenities included therein, for any period during which an Owner is in violation of the terms and conditions of the Governing Documents or delinquent in the payment of a levied assessment or fee.
- (c) The right of the City, County, and any other governmental or quasi-governmental body having jurisdiction over the Industrial Flex Space Project, to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas and Common Areas for the purpose of providing police and fire protection, utility access/installation, and providing any other governmental or municipal service.
- (d) The right of the Association, as attorney in fact for the Owners, to dedicate, convey or grant easement rights to the Common Areas for such purposes and subject to such conditions as may be agreed to by the Association. No such dedication or transfer, however, may take place without the Association first receiving written approval from the relevant government agency pursuant to all applicable state and city ordinances in effect at the time of such proposed dedication or transfer.

2.5 Easement in Favor of Association. The Units, Common Areas and Limited Common Area are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

- (a) For inspection during reasonable hours in order to verify the performance by Owners or other persons of all items of maintenance and repair for which they are responsible;
- (b) For inspection, maintenance, repair and replacement of portions of the Common Areas and Common Areas;
- (c) For correction of emergency conditions;
- (d) For the purpose of enabling the Associations, ACC or any other committees to exercise and discharge during reasonable hours their respective rights, powers and duties.

2.6 Reservation of Access and Utility Easements. Declarant hereby reserve an easement for access and utilities (including but not limited to: electrical, gas, communication, phone, internet, cable, sewer, drainage and water facilities) over, under, along, across and through the Property, together with the right to grant to a City and County, or any other appropriate governmental agency, public utility or other utility corporation or association, easements for such purposes over, under, across, along and through the Industrial Flex Space Project upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Associations and those claiming by, through or under the Owners or the Associations; and in connection with the installation, maintenance or

repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof. Each Owner in accepting the deed to a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Associations as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way.

2.7 Easements for Encroachments. If any part of the Common Areas as improved by Declarant now or hereafter encroaches upon any Lot or Unit or if any structure constructed by Declarant on any Lot or Unit now or hereafter encroaches upon any other Lot or Unit or upon any portion of the Common Area or Industrial Flex Space Project Common Area, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Lot or Unit shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Lot or Unit or upon any portion of the Common Area or Industrial Flex Space Project Common Area due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

2.8 Easements for Construction and Development Activities. Declarant reserves easements and rights of ingress and egress over, under, along, across and through the Property, consistent with Idaho Code 50-1302 and the Plats and Governing Documents, and the right to make such noise, dust and other disturbance as may be reasonably incident to or necessary for the (a) construction of Units, (b) to maintain sales or leasing offices, management offices and models throughout the Industrial Flex Space Project and to maintain one or more advertising signs on the Common Area with respect to the sales of Lots or Units, or other property in the Industrial Flex Space Project, (c) improvement of the Common Area, and construction, installation and maintenance thereon of roadways, walkways, buildings, structures, landscaping, and other facilities designed for the use and enjoyment of some or all of the Owners, and (d) construction, installation and maintenance on lands within, adjacent to, or serving the Industrial Flex Space Project.

2.9 Landscaping Easement. The Association shall have an easement and related access rights in order to maintain the Common Area landscaping or any other landscaping that is the Association's responsibility.

2.10 Right to Modify Lot/Unit Boundaries and Interior Boundary Lines. Declarant reserves the unilateral right to modify Lot or Unit boundaries and interior boundary lines and/or combine Lots or Units so long as it owns the Units; provided, however, such changes may not extensively alter the boundaries of the Common Area and facilities nor change the percentages of ownership interest.

2.11 Income generated from negotiation, installation or provision of certain utilities and amenities. Declarant and/or Declarant Related Entities invest time, experience, infrastructure and/or capital in the negotiation, provision or installation of certain utilities and amenities (*e.g.*, internet, cable, fiber, phone, solar power, etc.) that provide services and benefits to owner in the

Industrial Flex Space Project that would not otherwise be available or at a reduced cost. Any income gained by these parties from these efforts may be retained by the Declarant, Declarant Related Entities, or their assigns, even after the Declarant Control Period. Association may enter into contracts with third parties related to the provisions of such utilities and amenities for the benefit of Owners in the Industrial Flex Space Project, which utilities and amenities may be paid for through Assessments. Owners contracting separately with individual third-party providers will still be required to pay any normal and customary access fee for applicable bulk rate contract services entered into by the Association.

2.12 Utility Metering. Any utility that is not individually billed to a Unit may be allocated to a Unit by the Association based upon use and/or the Allocated Interest.

2.13 Parking Areas. The Association may adopt rules governing parking in the Industrial Flex Space Project.

### **ARTICLE III - MEMBERSHIP, VOTING & CONTROL PERIOD**

3.1 Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association, so long as such Owner has an ownership interest in a Unit and such membership shall automatically terminate when the Owner ceases to have an ownership interest in the Unit. Upon the transfer of an ownership interest in a Unit the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Person in the same proportional interest and by the same type of tenancy in which title to the Unit is held. Notwithstanding the foregoing, the Declarant shall also be granted voting rights as a Class "B" Member, as defined below.

3.2 The Association shall have two (2) classes of voting membership, Class "A" and Class "B", as follows:

(a) Class "A". Class "A" Members shall be all Owners with the exception of Class "B" membership, if any. Class "A" membership shall be entitled to vote in accordance with their Allocated Interest. Only an Owner that is current on all Assessments and/or other fees thirty (30) days in advance of the meeting or vote shall be deemed in good standing and entitled to vote. With regard to any approval that requires a specified percentage of total membership, the total membership shall be calculated from the total number of Owners eligible to vote at the time such approval is sought. Since an Owner may be more than one Person, if only one of such Person(s) is present at the meeting of the Association that Person shall be entitled to cast the vote appertaining to that Unit. But if more than one of such Person(s) is present, the vote appertaining to that Unit shall be cast only in accordance with the agreement of a majority of them, and such consent shall be conclusively presumed if any one of them purports to cast the vote appertaining to that Unit without protest being made forthwith by any of the others to the person presiding over the meeting. The vote appurtenant to any one Unit may not be divided between Owners. If the vote of a majority of the owners of a Unit cannot be determined, no vote shall be cast in relation to such Unit.

(b) Class "B". The Class "B" Member shall be Declarant. In all matters requiring a vote, the Class "B" membership shall receive five hundred (500) votes for each recorded Unit or acre of property in the Industrial Flex Space Project owned by Declarant. The Class "B" membership shall also be entitled to appoint the members of the Board for the Association during the Class "B" Control Period.

3.3 The Class "B" Control Period will end no later than twelve (12) months after 95% of the Units are occupied by an Owner, other than Declarant. The provisions in this Section 3.3 shall apply to the transfer of board control, but does not affect other Declarant rights as set forth in this Declaration.

3.4 Notwithstanding anything to the contrary in this Declaration, Declarant may exercise its discretionary termination of control in whole or in part as to any portion of the Property at its sole election and determination. In doing so as to a portion of the Property, it does not waive any reversionary or remaining control as to all other portions of the Property, the control of which is not expressly terminated by Declarant.

#### **ARTICLE IV – ASSOCIATION & ASSESSMENTS**

4.1 Organization. The Association has been created to effectively enforce the Governing Documents and shall operate as a non-profit corporation. The Association shall be comprised of the Owners within the Industrial Flex Space Project and is established for the benefit of the Owners and the enforcement of the Governing Documents. Membership in the Association is deemed an appurtenance to the Unit and is transferable only in conjunction with the transfer of the title to a Unit. The Association shall serve as the organizational body for all Owners.

4.2 Enforcement Powers. The Association shall have all powers granted to it by the Governing Documents and the Act to enforce these covenants and restrictions by actions in law or equity brought in the name of the Association, and the power to retain professional services needed to the enforcement of the Governing Documents and to incur expenses for that purpose, including but not limited to: (1) record, lien, foreclose and other enforcement and collection actions against an Owner and their Unit; (2) initiate legal or similar proceedings; (3) impose fines; (4) collect any rents directly from tenant for past due assessments; (5) terminate an Owners' right to receive utility service paid as a common expense; (6) terminate an Owner's right to utilize Common Area and/or amenities; and (7) any other action or remedy allowed by the Governing Documents or Idaho law.

- (a) The Association shall have the exclusive right to initiate enforcement actions in the name of the Association. The Association may appear and represent the interest of the Industrial Flex Space Project at all public meetings concerning zoning, variances, or other matters of general application and interest to the Owners.
- (b) The Association shall have the authority to initiate and compromise claims and litigation on behalf of the Association resulting from the enforcement of the Governing Documents. In the event that the Association initiates

legal action against a specific Owner or Owners to enforce these Governing Document, whether or not such action results in the commencement of a formal legal proceeding, the Association shall have the right to assess the costs of such litigation, dispute, or enforcement action, including reasonable attorney fees, against the Owner(s) or Unit(s) in question and collect those assessment in any manner authorized in the Governing Documents or Idaho law.

- (c) The Board shall be afforded discretion to utilize its reasonable judgment to determine whether and how to: impose fines, record liens, pursue legal action; otherwise enforce the Governing Documents; or when and how to settle or compromise claims.

4.3 Association Rules. The Board from time to time and subject to the provisions of the Governing Documents, may adopt, amend, repeal and enforce Rules governing the Industrial Flex Space Project. The Association's rulemaking authority may govern conduct and activities upon the Common Areas and Lots or Units. Rules shall not discriminate among Owners and shall not be inconsistent with the Articles, Bylaws or this Declaration. A copy of the Rules as they may from time to time be adopted, amended or repealed, shall be emailed, mailed, or otherwise delivered to each Owner and Occupant.

- (a) During the Class B Control Period, Declarant may adopt rules in its sole discretion.

4.4 Violation Deemed a Nuisance. Any violation of the Governing Documents that is permitted to remain on the Property is deemed a nuisance and is subject to abatement by the Association.

- (a) Any single or continuing violation of the covenants contained in this Governing Documents may be enjoined in an action brought by the Association. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including reasonable attorney fees and court costs.
- (b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. This Declaration is to be construed as being in addition to those remedies available at law.
- (c) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.
- (d) The failure to take enforcement action shall not be construed as a waiver of the contents contained in this Declaration in the future or against other similar violations.

4.5 Assessments. Assessments will be made to meet the anticipated and recurring costs, expenses and Common Expenses of the Association. The Association has the power to levy

assessments against each Unit as necessary to carry out its functions. Assessments shall be levied against all Units in the Property, whether vacant or improved. Each Owner shall by acquiring or in any way becoming vested with their interest in a Unit, be deemed to covenant and agree to pay to the Association the assessments described in these covenants, together with late payment fees, interest, and costs of collection (including reasonable attorney fees). Declarant shall be exempt from paying the Assessments provided within this Declaration, unless Declarant rents/leases a Unit owned by Declarant to a third party.

- (a) Regular Assessments. All such amounts shall be, constitute and remain: (a) a charge and continuing lien upon the Unit with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligations of the Owner or Owners of such Unit at the time the assessment falls due. No Owner may exempt themselves or their Unit from liability for payment of assessments by waiver of their rights in the Common Areas or by abandonment of their Unit. In a voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments, late payment fees, interest and costs of collection (including reasonable attorney fees) which shall be a charge on the Unit at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee.
- (b) Special Assessment. The Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas.
- (c) Limited Assessment. The Association may levy limited assessments on every Unit, Owner or occupant that shall cause any damage to the Industrial Flex Space Project Community or otherwise causes the Association to incur any individual expense for maintenance, repairs, or enforcement action taken under the provisions of the Governing Documents. The amount of any such limited assessments shall be determined by the cost of such repairs, maintenance, or enforcement action, including all overhead and administrative costs (including reasonable attorney fees), and shall be allocated among the affected Owner(s) or Unit(s) according to the cause of damage, maintenance, repair work or enforcement action, as the case may be, which limited assessment may be levied in advance of the performance of work.
- (d) Unit Type Assessment. An assessment based upon a specific type of Unit and the related costs and services provides for that Unit Type.
- (e) Reserve Fund. The Association may levy a reserve fund assessment, as set forth in this article.
- (f) The Association may levy other assessments or fees, as authorized by the Governing Documents.

4.6 Budget. The Board is authorized and required to adopt a budget annually. The Board may revise the approved budget from time to time as necessary to accurately reflect actual and/or anticipated expenses that are materially greater than previously budget. The budget shall

estimate and include the total amount for the Common Expenses, shall contain an appropriate amount for reserves, and may include an amount for other contingencies. The budget shall also be broken down into reasonably detailed expense and income categories. Unless otherwise established by the Board, regular Assessments shall be paid in equal monthly installments.

4.7 Reserve Fund Analysis. The Board may cause a reserve analysis to be conducted from time to time to analyze the cost of repairing, replacing, or restoring Common Area. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.

4.8 Start-Up Development Assessment. With the exception of Declarant and Declarant Related Entities, the first Owner of record of a completed Unit (following the Declarant and initial builder) shall pay to the Association at closing an initial, start-up fee in an amount that is adopted by the Board of Directors. This fee shall be a one-time, initial start-up fee, shall not be prorated for any time left in the calendar year following closing, and is in addition to the prorated Regular Assessment. The Association shall utilize this fee to assist in the administration, legal, operations, maintenance, and other expenses and costs related to Association for the management of the affairs of the Association and the Common Areas for the benefit of the Association and its members.

4.9 Transfer Fee. Pursuant to Idaho Code § 55-3102(4)(f), upon the sale or transfer of a Unit within the Association, a transfer fee in the amount established by the Board, which amount may be established from time to time by resolution, shall be paid to the Association at the time of conveyance or transfer. This transfer fee shall be for the benefit of the Association, its members and property and shall be utilized for purposes set forth in the Association's Governing Documents. Declarant may establish such other fees and charges for set up, issuance of estoppel certificates, and other charges as allowed by law. Declarant and Declarant Related Entities are exempt from the Transfer Fee.

4.10 Date of Commencement of Assessments. Assessments provided for herein shall commence as to each Unit on the first day of the first month following the effective date of the first budget. Assessments shall be due and payable in a manner and on a schedule, as the Board may provide. Notwithstanding, Assessments for those Units owned by Declarant or their assigns, successors, subsidiaries, related construction entities, or other entities established by Declarant, or Declarant's members, for the purpose of constructing Units on the Lot (collectively "Declarant's Related Entities") shall not commence until the completed Unit is conveyed to an Owner that is not the Declarant or a Declarant's Related Entity. No amendment of this Declaration changing the allocation assessments with regard to Declarant or Declarant Related Entities shall be valid without the consent of the Declarant.

4.11 Fines. The Association shall have the power to assess a fine against an Owner and/or their Unit for a violation of the terms and conditions of the Governing Documents in an amount established by the Board. Prior to imposing a fine, the Board shall first provide written notice to the violating Owner describing the violation(s), actions to be taken by the Owner to correct the violation(s), and a warning that if the violation(s) are not corrected within the time stated in the letter (no earlier than 72-hours) that a fine will be charged against the Owner and the

Owner's Unit. Further, the Board may independently take legal action, when needed, to correct or enjoin violations of this Declaration.

4.12 Mechanic's Lien Rights. Pursuant to Idaho Code §55-1519, no labor performed or services or materials furnished with the consent of or at the request of an Owner or such Owner's agent, contractor or subcontractor shall be the basis for the filing of a lien against the Common Area or the Unit of any other Owner or against any part thereof, or against any other property of any other Owners, unless such other Owner has expressly consented to or requested in writing the performance of such labor or furnishing of such materials or services. Such express written consent shall be deemed to have been given by the Owner of any Unit in the case of emergency corrective action undertaken by the Association. Labor performed or services or materials furnished for the Property if duly authorized by the Association shall be deemed to be performed or furnished with the express consent of each Owner. Any Owner may remove their Unit from a lien against two or more Units or any part thereof by payment of sums created by such lien, which is attributable to such Owner's Unit.

4.13 Delinquent Assessment. Any assessment not timely paid shall be delinquent, and the Association may invoke any and all remedies to recover said delinquent assessments including by: suit, judgment, lien, foreclosure, or other remedy authorized by the Governing Documents or the Idaho law.

4.14 Due Date, Charges & Interest. The Board may adopt Rules and policies to provide further detail or that expressly modify this section. Unless otherwise established by the Board, monthly assessments shall be due and payable on the first of each month and late if not received by the 10<sup>th</sup> of each month. The Board may charge a late fee in an amount set by the Board, for each unpaid or late assessment. In addition to late fees, interest may accrue on all unpaid balances at 18% per annum. The Board may also impose other reasonable charges imposed by a manager related to collections.

4.15 Lien. Upon recording of a notice of lien on any Unit, there shall exist a perfected lien for unpaid assessments prior to all other liens, except liens that by law would be superior thereto.

4.16 Foreclosure Sale. In accordance with Idaho Code §55-1518, the Association shall have all rights and power of foreclosure granted by the law, including non-judicial foreclosure through power of sale in the same manner as a deed of trust. The Association may also bid for the Unit at foreclosure sale, acquire, hold, lease, mortgage, and convey the same. During the period in which a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be charged or levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of any Special Assessment that would have been charged had such Unit not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid assessments and attorney fees shall be maintainable without foreclosing or waiving the lien securing the same.

4.17 Other Remedies. All rights and remedies of the Association shall be cumulative,

and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy. The "One Action Rule" shall not be a defense to the enforcement of all rights and remedies of the Association. The Association may elect to bring an action to recover for a delinquent Assessment against the Owner, including purchaser or seller, and other obligees. Any attorney fees or costs incurred in these efforts shall also be assessed against the Owner(s), their Unit(s), and/or other obligees jointly and severally.

4.18 Payment by Tenant. The Association shall be entitled to demand and collect from a tenant of any Unit the amount of any assessment that is more than thirty (30) days past due.

4.19 Attorney Fees. In addition to the recovery of costs and attorney fees as provided herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner breach of the Governing Documents, including meetings, research, memoranda, monitoring and other legal work incurred in response to an Owner breach or violation of the Governing Documents. These fees may be collected by special or individual assessment against the subject Owner(s) or Unit(s).

4.20 Appointment of Trustee. Such lien may be foreclosed by appropriate action in court or through power of sale in the same manner as a deed of trust by the Association, its attorney or other person authorized to make the sale. Such sale shall be conducted in accordance with the provisions of the Idaho Code applicable to the exercise of powers of sale in deeds of trust or any other manner permitted by law. The Association hereby appoints Burt R. Willie, Esq. or Mitchell D. Gardner, Esq., licensed members of the Idaho State Bar, or subsequently designated and qualified individual(s), with power of sale, the Unit, and all Improvements to the Unit for the purpose of securing payment of assessments and fees under the terms of this Declaration.

## **ARTICLE V - ARCHITECTURAL CONTROL COMMITTEE**

5.1 Architectural Control Committee ("ACC"). An Architectural Control Committee may be appointed by the Declarant to oversee any construction, re-construction, remodeling or altering of exterior Improvements in the Industrial Flex Space Project. If no ACC is appointed, the Board will assume the duties and responsibilities of the ACC. Declarant shall remain empowered to appoint the ACC until it turns over such authority in writing to the Association.

## **ARTICLE VI - ARCHITECTURAL RESTRICTIONS**

6.1 Development Agreement. If applicable, all Improvements shall satisfy architectural restrictions set forth in any Development Agreement(s) with City, as amended.

6.2 Design Guidelines. The Declarant and/or ACC may adopt Design Guidelines that are consistent with any Development Agreement(s) but may include additional detail and restrictions.

6.3 Landscaping. Declarant shall install the initial landscaping in the Industrial Flex Space Project consistent with any Development Agreement(s).

6.4 Fencing. No fence, wall, hedge, or other dividing structure may be installed without the prior, written consent of the Board or ACC.

6.5 Signs. Upon approval by the Association or Declarant, an Owner may place a sign on their Unit to identify the company name or DBA filed with the Idaho Secretary of State. Declarant may, but is not required, to install a sign pylon along Middleton Road and/or Bass Lane for the purpose of allowing Unit Owners to advertise their business, trade or other use. Maintenance of signs on a Unit is the sole responsibility of Owners or tenants. If a sign pylon is provided by Declarant, the Association shall be responsible for maintenance and repairs, which costs shall be shared among Owners as a Common Expense.

## **ARTICLE VII – UNITS, ASSOCIATION COMMON AREAS, LIMITED COMMON AREAS, MODIFICATIONS & PARTY WALLS**

7.1 Description of the Building & Units. The Property is comprised of multiple condominium buildings and other Improvements, with Units located inside the condominium buildings. All Units shall be capable of being independently owned, encumbered, and conveyed. The Owner or Owners of each Unit shall be entitled to the exclusive possession and control of such Unit, subject to the rights of the Association set forth in the Governing Documents. Each Unit constitutes a separate parcel of real estate and will be separately assessed and taxed.

7.2 Description of Units. The Units are described in the Plat(s) and this Declaration.

7.3 Separate Taxation of Units. Each Unit constitutes a separate parcel of real estate and will be separately assessed and taxed.

7.4 Ownership of Common Areas. The Common Areas shall be owned by the Owners of all of the Units as tenants in common. The Allocated Interest in the Common Areas shall attach to each Unit. Upon any conveyance or transfer of a Unit, the undivided interest in Common Areas attributable to such Unit shall automatically be conveyed or transferred with the Unit. No undivided interest in Common Areas may be transferred or conveyed separate or apart from the Unit to which the undivided interest is attributable. Each Owner shall have a license to use all of the Common Areas, subject to the terms and conditions of the Governing Documents.

7.5 Shares of Common Expenses. Except as otherwise set forth in this Declaration, all Common Expenses shall be allocated among all Units in accordance with the Allocated Interest.

7.6 Limited Common Areas. Limited Common Area shall be used exclusively by the Unit to which such Limited Common Area is appurtenant and may not be severed from the ownership or occupation of the Unit. Notwithstanding, such Limited Common Area remains subject to the Governing Documents and the Association's ability to manage certain elements of such Limited Common Area.

7.7 Modification to Units. Without prior, written approval from the Board, an Owner may not make any repairs, modifications, or alterations to any part of the exterior of a Unit or building. Similarly, without prior, written approval from the Board, an Owner may not conduct any interior remodels of the Unit that impact existing walls, structures or other items that may impact the integrity of the Unit, such as: shared walls, shared roofing/flooring and similar components. This provision is not intended to prevent an owner from decorating, painting, or conducting similar activities without the prior written permission of the Board. The Board may require that such modification or repairs be made in a particular manner and with qualified persons to maintain conformity within the Project.

- (a) The Board shall have no authority to approve of any remodeling: (1) inconsistent with the Governing Documents; (2) that modifies the exterior dimensions of any Unit from the original construction (unless any such modification is approved of as otherwise required herein), or (3) that would cause unsafe conditions.
- (b) All remodeling and other repairs and modifications to Units must be completed in compliance with all applicable building code, laws, and the manufacturer's specifications for any materials, equipment, and fixtures.
- (c) The Association may require indemnification agreements from an Owner with respect to any approved modification that impacts the Common Areas or other shared components.
- (d) The Association may adopt design guidelines and policies and procedures with respect to the application process for modification to the Unit or building, including plan submission, retention of necessary professionals, appeals and other reasonable detail and requirements.

7.8 Combination of Units. No two or more Units may be combined so as to have the effect of requiring the Association to amend this Declaration or other Governing Documents, and/or to require the modification of the percentage of undivided interest in the Common Areas. Each Unit shall remain its own distinct and separate space as shown on the Plat, each with its own mailing address. Notwithstanding the foregoing, an Owner may own two or more adjoining Units. If two or more adjoining Units are owned by the same Owner, the Owner may elect to forego installation or may remove the Demising Wall (defined below) between the Units. Removal of a Demising Wall shall require the prior written approval of the Association. The Owner will be responsible for payment of Assessments based on each individual Unit owned. By way of example, if an Owner owns three adjoining Units, the Owner would be responsible for Assessments for each of the three Units separately. In the event an Owner sells any of the adjoining Units, the Owners will be responsible for the construction and installation of a Demising Wall, and will be subject to the Section 7.9 herein.

7.9 Party Walls. Each Unit within a building may be separated by a demising wall ("Demising Wall") constructed by Declarant. Each Demising Wall which is built as a part of the original construction of the Lots or Units upon the Industrial Flex Space Project and placed on the dividing lines between Units shall constitute a party wall, and, to the extent consistent with this Section 7.9, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. The cost of reasonable repair and

maintenance of a Demising Wall shall be shared by the Owners who use the Demising Wall in proportion to such use. However, if one Owner is negligent or willfully damages a Demising Wall, that Owner shall bear the whole cost of repairing the Demising Wall. If a Demising Wall is destroyed or damaged by fire or other casualty, any Owner who has used the Demising Wall shall restore it, and if the other Owners thereafter make use of the Demising Wall, they shall contribute to the cost of restoration thereof in proportion to such use with prejudice, however, to the right of any such Owners to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions. An Owner's(s') failure to promptly repair or maintain a Demising Wall may result in the imposition of fines by the Association.

## **ARTICLE VIII – MAINTENANCE OF COMMON AREAS, LIMITED COMMON AREAS, AND UNITS**

8.1 Maintenance of Common Areas. Except as otherwise provided in this Declaration, the Association, or its duly designated agent, shall maintain all Common Areas, including, without limitation, the Improvements and any landscaping located thereon in good order and repair and shall otherwise manage and operate all Common Areas as it deems necessary and appropriate.

- (a) Landscaping. General landscape and sprinkler maintenance, including the repair, maintenance and replacement of existing sprinkler systems and landscaping within the Common Areas, which shall generally include mowing, edging, blowing of grass, raking and disposal of leaves.
- (b) Snow Removal. The Association shall make reasonable and prudent efforts to for the removal of snow from private roads, sidewalks, and other relevant Common Areas within the Project. Owners shall be responsible and take reasonable precautions with respect to ice and ice accumulation. The work of removing snow may be delegated to a third party. To the extent permitted by law, the Association shall not be responsible or liable for said third party's removal of snow. The Association may adopt policies with regard to snow removal from Limited Common Areas and other areas within the Project.
- (c) Joint Meters. The Association shall maintain meters that serve two or more Units. Such expenses may be allocated to the appurtenant Units, as determined by the Association.
- (d) Common Utilities & Equipment. The Association shall maintain utility equipment (*i.e.*, water heaters) that serve two or more Units. Such expenses may be allocated to the appurtenant Units, as determined by the Association.
- (e) Damage to Common Area. Any maintenance, repairs, or replacement that is needed to any portion of Common Area that is due to the negligent or reckless acts of an Owner, including guests, invitees, occupants, etc. shall be paid by the offending Owner. All such costs shall be charged as a Limited Assessment.

8.2 Maintenance of Limited Common Areas. Each Owner shall keep their respective Limited Common Area in a clean, sanitary, and attractive condition at all times. Owner shall keep Limited Common Areas, including open balconies, private yards, garages, decks and assigned

parking stalls in a neat and orderly fashion, as further defined by rules and regulations adopted by the Board. The Association shall be responsible for all necessary repairs and replacement of Limited Common Areas at the end of their useful lives and not due to negligence or abuse of the appurtenant Owners. Any maintenance, repairs, or replacement that is needed to any portion of Limited Common Area that is due to the negligent or reckless acts of an Owner, including guests, invitees, occupants, etc. shall be paid by the offending Owner. All such costs shall be charged as a Limited Assessment.

8.3 Owner's Responsibility for Maintenance of Units. Each Owner, at such Owner's sole cost and expense, shall maintain and/or replace such Owner's Unit and the Improvements constituting a part thereof, in good order and repair. The Owner shall be responsible for keeping the Unit and Improvements thereon in a clean and sanitary condition, free from leaks, mold and conditions impacting other Units or the building, including but not limited to, pests and rodents. Each Owner shall also keep the interior of their Unit in a clean and sanitary condition and in a good state of repair. No subsequent exterior alterations, improvements, or remodeling, whether structural or changes in landscaping, paint color or materials will be made without the advance consent of the Board. Declarant shall be exempt from this provision.

8.4 Repairs by Association. In the event that an Owner permits their Unit or Improvements to fall into a state of disrepair that is dangerous, unsafe, unsanitary, or unsightly condition or fails to comply with any other covenant or restriction in violation of this Declaration, the Association may give written notice to the Owner describing the condition complained of and demand that the Owner correct the condition within 15 days. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Owner's Unit and take corrective action to abate the condition. All costs of abatement shall be charged to the Owner, who agrees to promptly pay the reasonable costs of any work performed under this provision, plus 15%. In addition, each Owner hereby grants to the Association a lien on the Unit and any Improvements to secure repayment of any sums advanced pursuant to this section, which lien may be foreclosed at any time by the Association in the manner prescribed in Idaho for the foreclosure of mortgages. Alternatively, without requiring foreclosure, the Association may seek collection of sums advanced directly from the Owner of the Unit in question. Unpaid amounts will bear interest from the date advanced at the lawful judgment rate under applicable state law.

8.5 Repair Following Damage. In the event of casualty loss or damage to the Improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review by the Board, provided however that alterations or deviations from the original approved plans will require review. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent injury or dangerous conditions following loss or damage before re-construction begins. Such temporary measures may be taken without the consent or approval of the Board, provided that any such measure must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances will permit. Unless delayed by City/County approval or insurance carrier approval, no damaged structure will be permitted to remain on any Unit for more than 90 days without repairs commencing and any damaged structure which does remain unrepaired after 90 days following the occurrence of damage is deemed a nuisance which

may be abated by the Association.

8.6 Association Maintenance of Units. The Association shall maintain, repair, and replace the roofs, shingles, rain gutters and downspouts for all buildings (which include the Units), and the normal wear and tear on exterior wall finishes of the buildings (which include the Units). All necessary structural repairs of roofs and exterior walls will remain the financial responsibility of the affected Owners but may be organized and/or carried out by the Association, as determined by the Association. Exterior wall maintenance by the Association does not include: doors, doorframes, garage doors, windows, window frames, window wells, skylights, patio doors, or glass of any kind. All other components or Improvements of the exterior of the Units, that are not specifically assigned to the Association herein shall be maintained by Owners. It is the obligation of each Owner to maintain their Unit and Improvements located thereon in a clean and sanitary condition and uncluttered in order to preserve and enhance the enjoyment of the Property.

## **ARTICLE IX -USE LIMITATIONS & RESTRICTIONS**

9.1 Commercial, Retail, Office, and Similar Uses. All Units may be used for commercial purposes consistent with the Middleton City Code, state, and federal laws, and any Development Agreement(s). The ACC or Board may implement rules restricting the type and scope of commercial activity that can be conducted on the Property or within the Units. The Association must approve, in writing, activities and uses conducted on the Property or within the Units. Any change in use shall also require the written approval of the Association. The Association's approval of a use on the Property or within the Units does not excuse an Owner, Occupant, tenant or other Person from obtaining necessary approvals from the City. Each Owner, Occupant, tenant or other Person using the Property or Units is responsible for complying with all City rules and regulations. No use or activity may be conducted on the Property or within any Unit that is offensive, obscene, or that would otherwise negatively impact the Industrial Flex Space Project, as determined by the Board. The Association's determination and approval of a use on the Property or within the Units shall not be unreasonably withheld; however, uses of a similar nature shall not be permissible unless approved by the Board. By way of example, if a Unit is occupied and used as a gym, no other Unit may be used as a gym.

9.2 Zoning Regulations. The lawfully enacted zoning regulations of the City and/or County, and any building, fire, and health codes are in full force and effect in the Industrial Flex Space Project. No building may be occupied in a manner that is in violation of any statute, law or ordinance. It is the responsibility of all Owners, Occupants, tenants, etc. to ensure their use of a Unit or Lot is consistent with all applicable zoning regulations.

9.3 No Noxious or Offensive Activity. No noxious, offensive or illegal activity shall be carried on in or upon any part of the Industrial Flex Space Project, nor shall anything be done or placed in or upon any part of the Industrial Flex Space Project which is or may be a nuisance or may cause embarrassment, disturbance, or annoyance to Occupant(s) of other Units or Lots, including but not limited to unsightliness or the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise. No activities shall be conducted, nor improvements constructed, in or upon any part of the Industrial Flex Space Project which are or

may become unsafe or hazardous to any person or property. No outdoor storage or other uses are allowed.

9.4 Vehicles, Parking, Loading Areas. As approved by the Association, the Association may promulgate further rules and policies with regard to vehicles and parking including, but not limited to time and location restrictions, fines, towing, enforcement, street parking, type of vehicles, rules and prohibitions with regard to oversized, commercial, recreational, trailers, RVs, boats and other types of vehicles. Loading and unloading of merchandise, supplies and equipment should be at times and locations causing the least impact to commercial activities of neighboring businesses. All loading docks or areas should be screened from public view. The Association may implement additional Rules for parking and loading areas. Under no circumstances may any Owner, Occupant, tenant, guest, invitee, or other Person obstruct the flow of traffic, including vehicles parked and ingress/egress from the Industrial Flex Space Project.

9.5 Sign Easement. The Association reserves a non-exclusive easement on the exterior surfaces of a building and on the surfaces and other portions of the Common Areas and Facilities (but not Limited Common Areas and Facilities or the exterior window and door surfaces of Units, which exterior surfaces form part of the Common Areas and Facilities), as the servient estate, for the benefit of: (a) the Industrial Flex Space Project as a whole, for the purposes of providing directional signs within the Industrial Flex Space Project and signs identifying the name of the Industrial Flex Space Project (the Board, acting on behalf of all Unit Owners, shall administer the benefit of this portion of the sign easement); and (b) each Unit for the purpose of advertising on-site uses in the Unit. The Association reserves a non-exclusive easement on the exterior surface of each Unit. The foregoing sign easement is subject to further applications, restrictions, requirements, and criteria that may be adopted by rule or policy of the Board and/or ACC.

9.6 Trash and Rubbish. Trash, rubbish, garbage, or other waste shall not be kept except in covered containers. The Board may adopt further rules and policies governing trash containers and collection.

9.7 Animals. No animals, livestock, or poultry of any kind shall be raised, kept, or bred for any commercial purpose. All animals in the Project shall be maintained as required by the laws and ordinances of City. The Association may adopt rules further governing the animals in the Project.

9.8 Satellite Dishes. The use of fiber, cable and other less visible options are preferred and may be included in bulk rate contracts. The location of any satellite dishes in the Project, including any related cables or infrastructure, must receive the prior, written approval from the ACC.

9.9 Prohibited Activities. No Owner shall do or permit anything to be done in its Unit that might do any of the following: (a) increase the existing rate or violate the provisions of any insurance carried with respect to the Property; (b) create a public or private nuisance, commit waste or materially and unreasonably interfere with, annoy or disturb any other Unit Owner or occupant of the Building (the uses permitted and easements created herein shall not be deemed to constitute

such unreasonable: interference, annoyance or disturbance); (c) overload the floors or otherwise damage the structure of the Building; (d) violate any present or future law, ordinance, regulation or requirement, including those relating to hazardous substances, hazardous wastes, pollutants or contaminants, those relating to access by disabled persons and the requirements of any board of fire underwriters or other similar body relating to the Property; (e) lower the first-class character of the Property; or (f) otherwise detract from the appearance or value of the Property (but uses and activities that are permitted under this Declaration shall not be deemed to detract from the appearance or value of the Property). No Owner may service or store vehicles on the Property, *i.e.*, long term storage where the vehicle is not operable, registered and being used on a regular basis. No Owner may use the Parking Area for parking or storing boats, trailers, recreational vehicles or other similar items.

9.10 Prohibited Uses. No portion of the Property shall be used for any of the following uses: (a) a bowling alley; (b) a funeral home; (c) a facility for the sale of paraphernalia for use with illicit drugs; (d) a facility for the sale or display of pornographic material, such as adult theaters or adult bookstores, as determined by community standards for the area in which the Property is located; (e) an off-track betting parlor; (f) a carnival, amusement park or circus; (g) a gas station, car wash or auto repair or body shop; (h) a facility for the sale of new or used motor vehicles, motorcycles, trailers or mobile homes (for this purpose, scooters and motorized bicycles shall not be deemed to be motor vehicles, and sales of scooters and motorized bicycles is permitted on the Property), unless inventory can be stored or shown within the Unit. No inventory may be stored or shown outside a Unit at any time; (i) a facility for any use that is illegal; (j) a skating rink; (k) arcade; (l) beauty or other school, barber college, reading room or other facility catering primarily to students or trainees rather than customers; or (m) a ticket sales center of any kind (except that sales of tickets shall be permitted if they are merely incidental to the regular business carried on in the Property). No portion of the Industrial Flex Space Project or the Units shall be used for 24-hour commercial, office or retail uses, such as call centers.

9.11 Leasing. The Owner of a Unit shall have the right to lease such Unit, subject to the following conditions: (a) all leases shall be in writing; (b) such lease shall be specifically subject to the Governing Documents, and any failure of a tenant or occupant to comply with the Governing Documents shall be a default under the lease; and (c) the Owner shall be liable for any violation of the Governing Documents committed by the tenant of such Owner.

## **ARTICLE X** **INSURANCE**

10.1 Insurance Requirement. The Association shall obtain insurance as required in this Declaration and as required by Idaho law. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.

As used in this Article:

(1) “Covered Loss” means a loss, resulting from a single event or

- occurrence that is covered by the Association's property insurance policy.
- (2) "Unit Damage" means damage to a Unit.
  - (3) "Unit Damage Percentage" means the percentage of total damage resulting in covered loss that is attributable to Unit Damage.

#### 10.2 Property Insurance.

##### (a) Hazard Insurance.

- (i) Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering all Common Areas, and Limited Common Areas. Any blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.
- (b) Flood Insurance. If the property insured by the Association is not situated in a Special Flood Hazard Area, the Association may nonetheless, if approved by a majority of Owners, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.
- (c) Earthquake Insurance. The Association may, if approved by a majority of Owners purchase earthquake insurance to cover earthquakes not otherwise covered by blanket property insurance.
- (d) Association's Right to Not Tender Claims that are Under the Deductible. If, in the exercise of its business judgment, the Board of Directors determines that a claim is likely not to exceed the Association's property insurance policy deductible the Association need not tender the claim to the Association's insurer.

10.3 Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL Insurance insuring the Association, the agents and employees of the Association, and the Owner, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000) covering all claims for death of or injury to any one person or property damage in any single occurrence.

10.4 Director's and Officer's Insurance. The Association shall obtain Directors' and Officers' liability insurance protecting the Board of Directors, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). The policy shall:

- (a) Include coverage for volunteers and employees;
- (b) Include coverage for monetary and non-monetary claims;
- (c) Provide for the coverage of claims made under any Fair Housing Act or similar statute or that are based on any form of discrimination or civil rights claims; and

- (d) Provide coverage for defamation. In the discretion of the Board of Directors, the policy may also include coverage for any manager and any employees of the manager and may provide that such coverage is secondary to any other policy that covers the manager or any employees of the manager.

10.5 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association may obtain insurance covering the theft or embezzlement of funds.

10.6 Named Insured. The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.

10.7 Association's Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to the Association, as insurance trustee; and shall not be payable to a holder of a security interest. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. Each Owner hereby appoints the Association, as insurance trustee and attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and the execution of releases of liability, and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representative, successors or assigns of an Owner.

10.8 Owner Act Cannot Void Coverage under Any Policy. An Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

10.9 Owners' Individual Coverage. **EACH OWNER MUST PURCHASE INDIVIDUAL INSURANCE COVERAGE IN THE AMOUNT RECOMMENDED BY THE OWNER'S INSURANCE AGENT, BUT NOT LESS THAN EQUAL TO THE REPLACEMENT COSTS OF \$160.00 PER SQUARE FOOT FOR EACH UNIT OWNED BY AN OWNER.** The Association must be named as an additional insured on the Owner's policy. Each Owner will be required to produce proof of coverage at least once per year, at the request of the Association. Any Owner must notify the Association within twenty-four (24) hours of any lapse or termination of the policy. Owners who fail to produce proof of coverage or fail to obtain a new policy after any lapse or termination shall be subject to enforcement action by the Association, including, but not limited to fines. The Board may adopt additional Rules or regulations to establish reporting/production of proof by each Owner to ensure compliance with this Section 10.9.

10.10 Special Assessment. If the damage or destruction to the Common Areas or Limited

Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the members, levy a special assessment against all Owners as provided in the Governing Documents.

## **ARTICLE XI - MISCELLANEOUS PROVISIONS**

11.1 Amendment. At any time while this Declaration is in effect, the covenants herein contained can be modified by the Declarant or Declarant' successors and assigns during the Class B Control Period at the sole discretion of the Declarant. Thereafter, the covenants contained herein can only be modified by the affirmative vote of the Owners representing not less than sixty-seven (67%) percent of the total votes of the Association. No meeting or voting shall be required for an amendment, if the required, written consent is obtained from the requisite number of Owners.

### 11.2 Association Litigation.

(a) Notwithstanding any other provision to the contrary in this Declaration, the Association shall not file, commence or maintain any lawsuits, actions or legal proceedings against Declarant, the individual managers, owners, members or officers of Declarant, Declarant' contractors, or any other person or entity involved in the construction of the Lots or Units unless and until all of the following requirements have been satisfied:

(i) The Association has obtained a legal opinion from an attorney licensed to practice law in Idaho having at least ten (10) years of experience in litigation practice, with the legal opinion providing in substance the following: (i) a description of the factual allegations and legal claims to be asserted in the action; (ii) an analysis of the facts and legal claims explaining why it would be in the best interests of the Association to file and pursue such action, taking into account the anticipated costs and expenses of litigation, the likelihood of success on the merits of the claims, and the likelihood of recovery if a favorable judgment is obtained by the Association; and (iii) providing a budget of the estimated amounts of legal fees, costs, expert witness fees and other expenses likely to be incurred in connection with such action (the "Litigation Budget"); and

(ii) The Association has collected funds from the Owners, by special assessment or otherwise, equal to at least one-half (1/2) of the Litigation Budget.

(b) If any claims or actions falling within the scope of this Section are filed without satisfying all of the requirements set forth above, such claims/action shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied. In any action to enforce the requirements of this Section, the prevailing party shall be entitled to an award of reasonable attorney fees and costs. Individual

Owners, however, shall not be allowed to file or pursue any actions or claims belonging to other Owners or to the Association.

(c) No action affected by this Section shall be conducted utilizing legal counsel who are compensated on a contingency fee or similar means of compensation in which litigation costs and attorney's fees are not paid on a current basis or are paid out of the settlement or judgment amount recovered by the Association in such action.

(d) This Section shall not apply to: (i) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (ii) the collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; (iv) counterclaims brought by the Association in proceedings instituted against it; or, (v) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of an express contract with the Association or its manager for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

11.3 Repurchase Option for Construction Defect Claims. In the event any Owner shall commence action against Declarant or Declarant's Related Entities for the purpose of constructing Units on the Lot (collectively "Declarant") in connection with any alleged construction defects in such Owner's Unit, Declarant shall have the option, but not the obligation, to purchase such Unit on the following terms and conditions:

- (a) The purchase price shall be an amount equal to the sum of the following, less any sums paid to such Owner under any homeowner's warranty, in connection with the alleged defect:
  - (i) The purchase price paid by the original Owner of the Unit & Lot when originally purchased from Declarant;
  - (ii) The agreed upon value of any improvements made to the Unit by anyone other than Declarant; and
  - (iii) The Owner's reasonable moving costs.
- (b) Close of escrow shall occur not later than forty-five (45) days after written notice from Declarant to the Owner of Declarant's intent to exercise the option herein.
- (c) Title shall be conveyed to Declarant free and clear of all monetary liens and other encumbrances other than non-delinquent real estate taxes.
- (d) Exercise of the repurchase option as provided for herein above shall constitute full and final satisfaction of all claims relating to the subject Unit and Lot. The Owner shall promptly execute and deliver any notice of dismissal or other document necessary or appropriate to evidence such satisfaction.
- (e) Declarant's option to repurchase granted herein with respect to any particular Unit and Lot shall automatically terminate upon the expiration of the last applicable statute of limitations applicable to any construction or

warranty claim governing such Unit and Lot including all applicable tolling periods.

11.4 Condemnation. Whenever all or any part of the Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation), the Board may act on behalf of the Association in negotiating and completing such transaction.

11.5 Damage & Destruction. Immediately after damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the Board, or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Areas. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Areas to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

- (a) Any damage or destruction to the Common Areas shall be repaired or reconstructed unless Owners representing at least seventy-five (75%) percent of the total vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the costs of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Areas shall be repaired or reconstructed; provided, however, this provision shall not apply to construction mortgagees providing construction financing for such damaged property.
- (b) In the event, that it should be determined in the manner described above that the damage or destruction to the Common Areas shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Common Areas shall be restored to their natural state and maintained by the Association, in a neat and attractive condition.
- (c) If the damage or destruction to the Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the members, levy a special assessment against all Owners as provided in the Governing Documents.

11.6 Constructive Notice. Every person who owns, occupies, or acquires any right, title or interest in any Unit in the Industrial Flex Space Project is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of

each of the provision of this Declaration against their Unit, whether or not there is any reference to this Declaration in the instrument by which they acquire interest in any Unit.

11.7 Liberal Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Industrial Flex Space Project. Headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

11.8 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in a Unit, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriated documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

11.9 No Representations and Warranties. Each Owner and occupant understand, agrees, and acknowledges through taking title or residing in the Industrial Flex Space Project that the Declarant, Association, and the Board have not made any representations or warranties of any kind related to the Industrial Flex Space Project and that each Owner or occupant has not relied upon any reorientations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose relative to the Industrial Flex Space Project.

11.10 Severability. Each of the covenants contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining covenants shall remain in full force and effect.

*[This Space Intentionally Left Blank]*

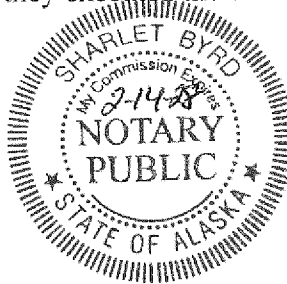
MIDDLETON INDUSTRIAL HOLDINGS, LLC, the Declarant

[Signature]  
By: Robert Nash  
Its: Member

STATE OF Alaska )  
: ss  
COUNTY OF Third Judicial District)

On this 22nd day of July, 2025, personally appeared before me Robert Nash who being by me duly sworn, did say that they are an authorized representative of Middleton Industrial Holdings, LLC, and that the within and foregoing instrument was signed on behalf of said corporation and duly acknowledged to me that they executed the same.

[Signature]  
Notary Public  
Residing at: Soldotna Alaska  
My Commission Expires: 2-14-28



**Exhibit "A"**  
**Legal Description**

A PARCEL OF LAND LOCATED IN THE NE1/4 OF THE NE1/4 OF SECTION 18,  
TOWNSHIP 4 NORTH, RANGE 2 WEST, BOISE MERIDIAN, CITY OF MIDDLETON, CANYON  
COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 18; THENCE, ALONG THE  
EAST BOUNDARY OF SAID NE1/4 OF THE NE1/4,

A) S.01°21'47"W., 364.93 FEET TO THE SOUTH RIGHT-OF-WAY OF BASS LANE, AND  
THE POINT OF BEGINNING; THENCE, CONTINUING,

1) S.01°21'47"W., 947.39 FEET TO THE SOUTHEAST CORNER OF SAID NE1/4 OF THE  
NE1/4; THENCE, ALONG THE SOUTH BOUNDARY THEREOF,

2) N.89°30'25"W., 745.67 FEET TO THE SOUTHEAST CORNER OF MIDDLETON  
INDUSTRIAL PARK NO. 1, RECORDED IN BOOK 48 OF PLATS AT PAGE 27,  
RECORDS OF CANYON COUNTY, IDAHO; THENCE, ALONG THE EAST BOUNDARY OF  
SAID MIDDLETON INDUSTRIAL PARK NO. 1,

3) N.00°34'04"E., 948.24 FEET TO NORTHEAST CORNER OF SAID MIDDLETON  
INDUSTRIAL PARK NO. 1 AND THE SOUTH RIGHT-OF-WAY OF SAID BASS LANE;  
THENCE, ALONG SAID RIGHT-OF-WAY,

4) S.89°26'05"E., 758.61 FEET TO THE POINT OF BEGINNING.

CONTAINING: 16.37 ACRES, MORE OR LESS.

**Exhibit “B”  
Allocated Interest**

<b><u>Building/Unit Number</u></b>	<b><u>Square Footage</u></b>	<b><u>Interest Percentage</u></b>
<b>Building 1 (Lot 1, Block 1)</b>		
Unit 101	3,000	1.99%
Unit 102	3,000	1.99%
Unit 103	3,000	1.99%
Unit 104	3,000	1.99%
Unit 105	3,000	1.99%
<b>Building 2 (Lot 2, Block 1)</b>		
Unit 201	3,000	1.99%
Unit 202	3,000	1.99%
Unit 203	3,000	1.99%
Unit 204	3,000	1.99%
Unit 205	3,000	1.99%
<b>Building 3 (Lot 3, Block 1)</b>		
Unit 301	3,000	1.99%
Unit 302	3,000	1.99%
Unit 303	3,000	1.99%
Unit 304	3,000	1.99%
Unit 305	3,000	1.99%
<b>Building 4 (Lot 4, Block 1)</b>		
Unit 401	3,125	2.08%
Unit 402	3,125	2.08%
Unit 403	3,125	2.08%
Unit 404	3,125	2.08%
Unit 405	3,125	2.08%
Unit 406	3,125	2.08%
Unit 407	3,125	2.08%
Unit 408	3,125	2.08%

**Exhibit "B"**  
**Allocated Interest -Continued**

**Building 5 (Lot 5, Block 1)**

<b>Unit 501</b>	<b>4,080</b>	<b>2.71%</b>
<b>Unit 502</b>	<b>4,080</b>	<b>2.71%</b>
<b>Unit 503</b>	<b>4,080</b>	<b>2.71%</b>
<b>Unit 504</b>	<b>4,080</b>	<b>2.71%</b>
<b>Unit 505</b>	<b>4,080</b>	<b>2.71%</b>

**Building 6 (Lot 1, Block 2)**

<b>Unit 101</b>	<b>3,750</b>	<b>2.49%</b>
<b>Unit 102</b>	<b>3,750</b>	<b>2.49%</b>
<b>Unit 103</b>	<b>3,750</b>	<b>2.49%</b>
<b>Unit 104</b>	<b>3,750</b>	<b>2.49%</b>
<b>Unit 105</b>	<b>3,750</b>	<b>2.49%</b>
<b>Unit 106</b>	<b>3,750</b>	<b>2.49%</b>
<b>Unit 107</b>	<b>3,750</b>	<b>2.49%</b>
<b>Unit 108</b>	<b>3,750</b>	<b>2.49%</b>

**Building 7 (Lot 2, Block 2)**

<b>Unit 201</b>	<b>3,750</b>	<b>2.49%</b>
<b>Unit 202</b>	<b>3,750</b>	<b>2.49%</b>
<b>Unit 203</b>	<b>3,750</b>	<b>2.49%</b>
<b>Unit 204</b>	<b>3,750</b>	<b>2.49%</b>
<b>Unit 205</b>	<b>3,750</b>	<b>2.49%</b>
<b>Unit 206</b>	<b>3,750</b>	<b>2.49%</b>
<b>Unit 207</b>	<b>3,750</b>	<b>2.49%</b>
<b>Unit 208</b>	<b>3,750</b>	<b>2.49%</b>

**Total: 100%**