

DECLARATION OF CONDOMINIUM  
FOR  
FACTORY POINT PLACE  
Manchester Center, Vermont

The date of this Declaration for Factory Point Place is \_\_\_\_\_, 201\_\_\_\_. FPHC, LLC, a Vermont limited liability company with a place of business in Manchester Center, County of Bennington and State of Vermont (“Declarant”), the owner of record of all the Units (as defined below) of the common interest community created by this Declaration, hereby makes the following:

RECITALS

- A. Declarant is the owner in fee simple of lands in Manchester, Vermont, located at 4928 Main Street, and more fully described in Section 3.1.
- B. The lands described in Section 3.1 are improved by a building as well as sewer and water lines and other improvements.
- C. Declarant intends to establish a multi-unit Common Interest Community pursuant to portions of the Vermont Common Interest Ownership Act (Title 27A of the Vermont Statutes Annotated (V.S.A.) (“Act”) and the Condominium Ownership Act (Title 27, ch. 15 of the V.S.A.) (“COA”) upon the Property known as Factory Point Place (“Condominium”) as show on a plan entitled “Factory Point Place Building Permit Drawings” prepared by BMA Architects/Planners, dated \_\_\_\_\_ (“Floor Plans”) and the plan prepared by Long Trail Engineering, P.C., entitled “Former Factory Point Bank, Proposed Site Plan” revised October 25, 2016 (“Site Plan”).
- D. Factory Point Place is a small project as defined in 1-203 of the Act. It is subject only to sections 1-105, 1-106, and 1-107 of the Act. Pursuant to section 2-105(b) of the Act, the Declarant has elected to include additional matters in this Declaration. The inclusion of such matters is not intended to be and shall not constitute an election by the Declarant that the entire Act is applicable to Factory Point Place. This instrument also sets forth the covenants, easements, charges, assessments, affirmative obligations, and liens to be applicable to the lands.

SUBMISSION AND DEDICATION

The Property, as described in Section 3.1, together with all easements, rights, and appurtenances thereto, is submitted to condominium ownership upon the terms, limitations, restrictions, covenants, and conditions as set forth herein; all in furtherance of a common plan to enhance and preserve the value, desirability, and enjoyment of the Property and the interests therein to be conveyed or reserved.

ARTICLE I

**Section 1.** Definitions.

- (a) The following words and terms when used in this Declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

- i. “Act” – The Vermont Common Interest Ownership Act, as amended from time to time.
- ii. “Association” – Factory Point Place Condominium Association, Inc., a Vermont nonprofit Corporation, and its successors and assigns.
- iii. “Bylaws” – the Bylaws of the Association referenced in Section 3-106 of the Act, as amended from time to time.
- iv. “COA” shall mean the Condominium Ownership Act, as amended from time to time.
- v. “Commercial Units” means the five separate Units, one on the Ground Level designated on the Floor Plan as “Restaurant,” and four on the Street Level designated on the Floor Plan as “Retail #1,” “Retail #2,” “Retail #3,” and “Retail #4.”
- vi. “Common Elements” – All portions of the common interest community other than the units.
- vii. “Condominium” – The property ownership described in this Declaration.
- viii. “Declarant” – FPHC, LLC, its successors, and assigns.
- ix. “Declaration” – This instrument together with the Plan identified herein, as amended from time to time.
- x. “Site Plan” – the Plan prepared by Long Trail Engineering, P.C. entitled: “Former Factory Point Bank, Proposed Site Plan” revised
- xi. “Limited Common Element” – the portions of the common elements allocated by this Declaration or by operation of subdivision 2-102(2) or (4) of the Act for the exclusive use of one or more but fewer than all of the units.
- xii. “Limited Common Expense” – A Common Expense (or portion) which does not benefit all Units, as described in Section 3-115(c) of the Act.
- xiii. “Member” – Each person subject to membership in the Association as set forth in Section 5.1.
- xiv. “Owner” – The holder of fee simple title to any Unit. Notwithstanding any applicable theory of mortgage law, “Owner” shall not mean or refer to a mortgagee or its successors or assigns, unless and until the mortgagee has acquired title pursuant to foreclosure or by deed in lieu of foreclosure; nor shall “Owner” mean or refer to any lessee of an “Owner”; nor shall “Owner” mean or refer to any person holding title merely as security for the payment of a debt.
- xv. “Property” – The lands and premises described in Recital A and as more fully described in Section 3.1.
- xvi. “Residential Units” means all Units in the Condominium other than the Commercial Units.
- xvii. “Floor Plan” – the Plat entitled: “Factory Point Place Building Permit Drawings” prepared by BMA Architects/Planners, dated May 15, 2015.
- xviii. “Unit” – A unit within the meaning set forth in the Act, being one of nine units in the Condominium.
- xix. “Unit Owner” – The Declarant and any other person or entity owning a Unit, but not including a person or entity having an interest in a Unit solely as security for an obligation or pursuant to a lease.

(b) Each capitalized term used in this Declaration without definition shall have the meanings given or used in the Act, except where the context clearly otherwise requires.

ARTICLE II  
Names; Designation; Location

**Section 2.1.** Names

(a) The name of the Common Interest Community subject to this Declaration is “Factory Point Place.”

(b) The name of the Association is “Factory Point Place Condominium Association.”

**Section 2.2.** Designation.

The Common Interest Community subject to this Declaration is a condominium as defined in the Act.

**Section 2.3.** Location.

The Common Interest Community subject to this Declaration is located at 4928 Main Street, in the Town of Manchester, County of Bennington and State of Vermont. It is not located in any other municipality.

ARTICLE III  
Property

**Section 3.1.** Property.

The real property which is and shall be held, transferred, sold, devised, bequeathed, conveyed, leased, and occupied subject to this Declaration is as follows:

Being all and the same lands and premises conveyed to FPHC, LLC by Special Warranty Deed of Berkshire Bank, dated May 7, 2014 and recorded May 9, 2014 at Book 317, Instrument 172/Page 722 of the Town of Manchester Land Records, and more particularly described in and subject to subject to all covenants, restrictions, and easements of records and as set forth on Schedule A, attached.

Reference is hereby made to the above-mentioned instruments, the record thereof, the references therein made, and their respective records and references, in further aid of this description.

**Section 3.2.** Easements, Licenses, Reservations.

(a) Easements appurtenant to or included in the Property are: public utility easements of record and also the right of vehicular, pedestrian, and utility access to Main Street.

- (b) The Property is subject to public utility easements of record and the rights of the public to traverse Main Street.

**ARTICLE IV**  
**Units; Boundaries**

**Section 4.1.** Number of Units; Identification.

- (a) The number of Units in the Common Interest Community is nine (9), the maximum number of Units the Declarant intends to create.
- (b) The location of the Units and the identifying name or number of each Unit are set forth on the Floor Plan.

**Section 4.2.** Boundaries.

The Units are one and two-story units consisting of the enclosed space, having a direct exit to a Limited Common Element or a Common Element. The Units are depicted on the Floor Plan. Each Unit consists of the space within the following boundaries:

- (a) Upper and Lower boundaries: The upper and lower boundaries of a Unit shall be the following boundaries extended to an intersection with the Horizontal boundaries:
  - i. The Upper boundary of each Unit is the ceiling of the Unit measured inward from the exterior surface of the wallboard (meaning thereby, the surface of such wallboard which touches the ceiling joist to which it is attached). For the two-story Units, the upper boundary will be the ceiling of the rooms in the upper floor of the Unit.
  - ii. The Lower boundary of each Unit is measured inward from the upper surface of the subfloor.
- (b) The Horizontal boundaries of each Unit are the perimeter load-bearing walls and the party walls between the Units, measured inward from the exterior surface of the wallboard (meaning thereby, the surface of such wallboard which touches the stud to which it is attached). All wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces of the Unit shall be a part of the Unit, and all other portions of the walls, floors, ceilings, and spaces exterior to the Unit boundaries shall be a part of the Common Elements.
- (c) Any fixture (including but not limited to any chute, flue, duct, wire, conduit, bearing wall, and bearing column) serving more than one Unit and lying partially within and partially outside the designated boundaries of a Unit is a Common Element, and any portion thereof serving only one Unit is a Limited Common Element allocated solely to that Unit. Subject to the foregoing, all space, fixtures (including the associated housing, even where such housing extends beyond the

boundary of the Unit), and improvements within the boundaries of a Unit are a part of that Unit.

**Section 4.3.** Use of Units.

- (a) Each Unit may be used for all lawful purposes consistent with the Town of Manchester Zoning Bylaws and any State of Vermont requirements, except that Residential Units may be used only for residential purposes and Commercial Units may be used only for commercial purposes.
- (b) No Owner shall use any portion of the Property, including a Unit, in a manner which shall unreasonably interfere with the comfort or convenience of occupants of other Units or in violation of the provisions of this Declaration or any rules or regulations promulgated pursuant hereto. Owners and occupants acknowledge that this is a mixed-use building; as such, hours of business operations and noise levels in compliance with the provisions of Town of Manchester ordinances shall be presumed reasonable for purposes of this provision.

**Section 4.4.** Parking. Each Residential Unit shall have the right to use of one designated parking spot in the rear of the Building, as depicted on the Site Plan. Of the remaining three parking spots, two will be designated to Retail Units, and the remaining spot will be designated to the Restaurant Unit. Use of the parking lot shall be subject to the Rules and Regulations as may be established by the Association from time to time. The right of access to the parking area including rights of ingress and egress shall be in common with others Unit Owners. The parking lot and the roadway shall be a Common Element.

ARTICLE V

Allocated Interests; Governance, Assessments, Insurance

**Section 5.1.** Membership.

Every Owner is a Member of the Association. If a Unit is owned by more than one person, all of the co-Owners shall have the benefits of membership in the Association, subject to such reasonable rules and restrictions as the Board shall determine from time to time. The Membership rights of an Owner which is not a natural person may be exercised by any authorized officer, director, partner, trustee, or manager.

**Section 5.2.** Voting Rights, Common Expense Liability, and Common Element Interest.

Initially, there shall be two classes of membership in the Association: voting memberships and non-voting memberships. A voting membership shall be any membership owned and held by Declarant as Unit Owner. A non-voting membership shall be any membership owned and held by any Unit Owner other than Declarant. All memberships in the Association shall automatically become voting memberships upon the first to occur of the following: (i) sixty (60) days after the sale by Declarant of seventy-five percent (75%) of the proposed nine (9) Units in the Condominium; or (ii) two (2) years after the Declarant has ceased to offer Units for sale in the ordinary course of business; or (iii) upon Declarant amending the Bylaws to make all memberships voting

memberships. Thereafter, only one class of voting membership shall exist. Notwithstanding the foregoing, non-voting memberships shall be entitled to vote on those matters, identified in the Act, upon which Unit Owners may vote during the period of Declarant control.

When a membership is a voting membership, each Unit Owner, or one of the Unit Owners if record title in a Unit is held by more than one person, shall be entitled to vote in any meeting of the membership. Such person shall be known as the “Voting Member” of a Unit, and shall be designated in a writing signed by all Owners of the Unit and delivered to the Association.

Except as set forth above, votes in the Association, Common Expense liability, and Ownership interest in the Common Elements shall be calculated as follows:

Unit	Votes	Common Expense Liability	Common Element Ownership
Residential #1	1	10%	10%
Residential #2	1	10%	10%
Residential #3	1	10%	10%
Residential #4	1	10%	10%
Retail #1	1	10%	10%
Retail #2	1	10%	10%
Retail #3	1	10%	10%
Retail #4	1	10%	10%
Restaurant	2	20%	20%

**Section 5.3. Governance.**

- (a) Except as otherwise provided in the Act, the affairs and management of the Association shall be managed by its Board. There shall be at least three members of the Board.
- (b) In addition to the powers given to associations in the Act, the Association may assign its future income, including the right to receive periodic and special assessments for Common Expenses, but only by affirmative vote at a meeting called for that purpose (or by written consent) of all the Unit Owners.

**Section 5.4. Assessments; Procedures.**

- (a) Prior to each fiscal year, the Board shall adopt a budget for the Association containing an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair, and replacement of the Common Element and the cost of wages, materials, insurance premiums, services, supplies, and other expenses that may be declared to be Common Expenses by the Act, this Declaration, or a resolution of the Association, and which will be required to be paid during the ensuing fiscal year for the administration, operation, maintenance, and repair of the Property and the rendering to the Owner of all related services. Such budget shall also include such reasonable amounts as the Board considers necessary to provide working capital, a general operating reserve, and reserves for

contingencies and replacements. Such budget shall constitute the basis for determining each Owner's assessment for the Common Expenses of the Association.

- (b) The failure of delay of the Board to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of the Owner's obligation to pay the allocated share of the Common Expenses as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Owner shall continue to pay each semi-annual installment at the rate established for the previous fiscal year until notice of the semi-annual payment which is due more than ten (10) days after such new annual or adjusted budget shall have been delivered.
- (c) An assessment shall become past due on the 10<sup>th</sup> business day next following the date on which notice of an assessment is delivered to a Unit Owner. Interest shall accrue on the unpaid portion of past due assessments at the maximum rate of interest that may then be charged under 9 V.S.A. § 41a or any successor statute thereto.
- (d) In addition to the principal of and interest on any assessment, there shall be added to any assessment when it becomes past due (i) a late charge equal to 10% of the assessment, plus (ii) a \$25.00 administrative fee, plus (iii) all other costs incurred by the Association in connection with the collection of an assessment including the Association's court cost and attorneys' fees actually incurred, if any.
- (e) The Association shall have a lien on a Unit to secure the payment of any assessment levied against the Unit, including interest, penalties, administrative fees, attorneys' fees and collection costs assessed pursuant to Section 5.4(d). The provision of Section 3-116 of the Act shall govern the creation, attachment, priority, and enforcement of all such liens.
- (f) Surplus funds of the Association shall be applied to defray Common Expense liability or to fund a reserve fund.

### **Section 5.5. Insurance.**

- (a) Casualty insurance. In order to ensure that sufficient reconstruction or repair funds or both will be available to the Association if and when needed, the Association shall insure the entire Property, being the Common Elements, the Limited Common Elements, and the Units, exclusive of improvements, cabinetry, appliances, applied fixtures and wall/floor surfaces, furniture, and furnishings in and about the Units, in such amounts as it shall, in its judgment, determine to provide not less than one hundred (100) percent of the replacement value (exclusive of foundations) relative to the insurable improvements, in the event of damage or destruction from the casualty against which such insurance is obtained. Such insurance shall include fire insurance and extended coverage, vandalism, and malicious mischief insurance and such other types of insurance as may, in the

Board's judgment, serve this purpose. The Association may comply with the above requirements by the purchase of blanket coverage and may elect such deductible provisions as are, in its judgment, consistent with good business practice and the purpose for which the insurance is purchased.

Policies of casualty insurance hereunder shall name the Association as the insured and the person to which payment is to be made as trustee on behalf of the Owners and lienholders as their interests may appear. Such policies shall also provide that they cannot be canceled, except upon thirty (30) days' written notice to the insured Association.

- (b) Liability Coverage. The Association shall also purchase broad form comprehensive liability coverage in such amounts and in such form as prudent condominium management practice may suggest. Coverage shall include liabilities for personal injuries or property damage suffered on or in the Common or Limited Common Elements arising from the operation of motor vehicles on behalf of the Association.
- (c) Fidelity Coverage. Unless waived by the Association, the Association shall have fidelity coverage against dishonest acts on the part of the Directors, Managers, employees or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance shall name the Association as the named insured and shall be written in an amount deemed by the Association to be sufficient to provide protection, which shall be in no event less than two (2) times the insured's estimated annual operating expenses and reserves.
- (d) Premiums; Deductibles. Premiums and expense for all insurance purchased by the Association hereunder shall be Common Expenses. Where insurance premiums are increased as a result of increased risk attributable to a particular Unit, they shall be allocated to such Unit responsible for the increase, based upon the insurance carrier's appraisal of risk inherent to such Unit. A levy made against an Owner for an increase in premiums may be enforced by the Association by adding the same to the Common Expenses allocated to such Unit. Where an insurance claim is attributable to a particular Unit, payment of the deductible shall be paid by the Owner of such Unit.
- (e) Separate Insurance. No insurance purchase by the Association hereunder shall in any way prejudice the right of each Owner to insure his or her Unit and the property therein for his or her own benefit, nor shall the insurance purchased by any Owner diminish or in any way prejudice the Association's rights and protection under policies purchased and held by it pursuant to this Declaration. All such separate insurance coverage obtained by an Owner shall contain waivers of subrogation if available. The Association shall not be liable for any personal property owned by any Unit Owner, and each Unit Owner shall maintain an insurance policy or policies covering damage to property within the Unit in amounts sufficient to cover one hundred (100) percent of the replacement value.



(f) Excess Insurance Proceeds; Deficiencies in Insurance Proceeds. The cost of repair or replacement in excess of insurance proceeds and reserves, if any, shall be a Common Expense. In the event the Property is reconstructed or repaired and payment is made in full of all amounts due on account thereof, any proceeds of insurance then in the hands of the insurance trustee shall be paid to the Association and shall be considered as one fund and shall be divided among the Owners of all of the Units in the same proportion as that established in the Declaration for ownership of undivided percentage interests in the Common Elements, but only after first paying out of any Owner's share, to the extent such payment is required by any lienholder and to the extent there are sufficient funds, all amounts due on account of such liens upon said Unit in accordance with the priority of interest.

**Section 5.6.** Standards.

The Board shall, from time to time, establish design, function, and aesthetic standards for the Property, and all Owners shall comply with those standards, which may be amended by the Board.

ARTICLE VI  
Common Elements

**Section 6.1.** Designation of Common Elements.

The real estate which comprises the Common Elements (including the Limited Common Elements) as of the recording of this Declaration is all of the Property except the Units.

**Section 6.2.** Rights of Enjoyment in Common Elements.

Subject to the provisions of this Declaration, the rules and regulations of the Association, every Owner, and every guest and lessee of such person shall have a right of enjoyment in and to the Common Elements and such right shall be appurtenant to and shall pass with the title to every Unit.

**Section 6.3.** Use.

Each Owner may use the Common Elements in accordance with the purposes for which they were intended without hindering or encroaching upon the lawful rights of the other Owner. Use of the Common Elements shall be subject to the rules and regulations as shall be established from time to time by the Board.

**Section 6.4.** Limited Common Elements.

All fixtures or improvements designed to serve, attached to, or adjacent to a single Unit, but located outside the Unit's boundaries, all areas designated on the Floor Plan as front and back entrances, stairways, porches, decks, shutters, awnings, window boxes, doorsteps, balconies, and all exterior doors and interior windows, any storage and/or basement areas allocated to a particular Unit, are Limited Common Elements exclusively

to that Unit to which they are appurtenant. Except as otherwise provided herein, any expense for maintenance, repair, or replacement relating to Limited Common Elements shall be assessed to the Unit or Units to which such improvement is allocated.

ARTICLE VII  
Declarant Rights; Special Declarant Rights

**Section 7.1.** Development Rights.

The Declarant expressly does not reserve development rights.

**Section 7.2.** Special Declarant Rights.

The following Special Declarant Rights are reserved in this Declaration; if not exercised prior to the 2<sup>nd</sup> anniversary of the recording of this Declaration in the Land Records of the Town of Manchester, these Special Declarant Rights shall terminate:

- (a) to complete improvements indicated on the Site Plan filed with the Declaration;
- (b) to maintain for sale/advertising signs on the Common Elements as permitted by the Town of Manchester;
- (c) to use easements through the Common Elements for the purpose of making improvements within the Property for the benefit of the Property (such reservation not to be construed as a limitation on the rights granted to the Declarant in Section 2-116 of the Act;
- (d) to use, grant, and reserve easements and rights of way through, under, over, and across the Property for the benefit of the Property for the installation, maintenance, inspection, repair, and replacement of lines and appurtenances for public or private sewer, water, drainage, gas, electricity, telephone, and other utilities such as, but not limited to, cable television system, or security system. If damages are inflicted by the Declarant in the exercise of the easement and rights granted by this Section, it shall promptly repair such damage to the condition existing prior thereto; and
- (e) to appoint or remove any officer of the Association or any member of the Board during the period of Declarant Control referred to in Section 7.3.

**Section 7.3.** Declarant Control.

There shall be a period of Declarant control of the Association during which the Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Board. The period of Declarant Control shall terminate on the earliest occurrence of:

- (a) 60 days after three-fourths of the created Units are conveyed to Owners other than a Declarant;
- (b) two years after all Declarants have ceased to offer units for sale in the ordinary course of business;
- (c) the day the Declarant, after giving notice in a record to Unit Owners, records an instrument voluntarily surrendering all rights to control activities of the Association.

ARTICLE VIII  
General Restrictions; Reservations

**Section 8.1.** Resale.

An Owner may not sell, convey, hypothecate, or encumber his membership in the Association or interest in the Common Elements separate from the Unit to which it is appurtenant. There are no restrictions on the amount for which a Unit may be sold or the amount that may be received upon sale of the Unit, condemnation of the Unit, casualty loss to the Unit or termination of the Condominium.

**Section 8.2.** Use of Units.

- (a) Residential Units shall be used for residential purposes only, and no trade or business of any kind may be carried on therein, except customary home occupations and leases for residential purposes, provided such leases are for a minimum term of six months, and as otherwise provided in the Declaration and Bylaws.
- (b) Commercial Units may be used for any use that is allowed as a permitted use under the Town of Manchester Zoning Ordinance, as the same may be amended from time to time. No amendment to this Declaration shall limit or restrict the uses or operation of the Commercial Units unless approved in writing by the Commercial Unit Owners.
- (c) The occupancy of each Unit is subject to and benefitted by all easements, restrictions, and permits of record.

ARTICLE XI  
Alteration of Units

- (a) A Unit Owner may make improvements or alterations to a Unit which do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium. No structural improvements may be made to a Unit and no change in the appearance of the Common Elements, the exterior appearance of a Unit, or any other portion of the Condominium may be made by any Unit Owner without the prior written approval of the Board. No Unit may be

subdivided. However, after acquiring an adjoining Unit, a Unit Owner may move or alter any intervening partitions or create apertures in it even if the partition in whole or in part is a Common Element if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under these circumstances shall not alter the boundaries of the Units.

- (b) In no event shall any Unit Owner commence exterior construction, alteration, addition, or erection of any nature whatsoever upon any part of a Unit or Limited Common Element unless and until the plans and specifications showing the nature, kind, shape, height, materials, and location shall have been submitted to the Town of Manchester for zoning approval under the Town of Manchester Zoning ByLaws.
- (c) The boundaries between adjoining Units may be relocated only in accordance with the terms and requirements of Section 2-112 of the Act

**ARTICLE X**  
Amendments; termination of Condominium

**Section 10.1.** Generally.

- (a) This Declaration may be amended or terminated only by vote or agreement of the Owners of Units to which at least 75% of the votes in the Association are allocated. Every amendment shall be prepared, executed, and certified by the Association and shall be effective only when recorded in the Land Records of the Town of Manchester.
- (b) No amendment which changes the boundaries of any Unit or which alters the Allocated Interests of a Unit shall be valid unless the same has been signed or consented to by the Owner so affected.
- (c) In the event of termination, the Owners of the Units shall own the Property in fee simple as tenants in common in proportion to their Common Element interest.

**Section 10.2.** Statutory Compliance.

No amendment which alters this Declaration in any manner which would render it contrary to or inconsistent with applicable requirements or provisions of the Act shall be valid.

**ARTICLE XI**  
Rights Related to Mortgages

**Section 11.1.** Notice of Action.

Upon written request to the Association from any Institutional Mortgagee, identifying its name and address and the Unit number or address, such Institutional Mortgagee shall be entitled to timely written notice of:

- (a) Any condemnation, loss or any casualty loss which affects any material portion of the Condominium or any Unit on which there is a first mortgage held, insured, or guaranteed by such qualified requesting party;
- (b) Any delinquency in the payment of Assessments or other charged by a Unit Owner subject to a first mortgage held or insured by such party, which delinquency remains uncured for a period of sixty (60) days; and
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

**Section 11.2. Consent Required.**

Any termination of the legal status of the Condominium shall require the consent of all Institutional Mortgagees.

**Section 11.3. Consent.**

For the purposes of Section 11.2, above, any Mortgagee who receives a written request to approve action in accordance with Section 11.2, delivered by certified or registered mail, return receipt requested, shall be deemed to have consented to such action unless said Mortgagee provides a written negative response to the Association within thirty (30) days of the date of receipt by the Mortgagee of the written request.

ARTICLE XII  
Miscellaneous Provisions

**Section 12.1. Invalidity.**

If any provision of this Declaration is held invalid, the invalidity thereof shall not affect other provisions of this Declaration which can be given effect without the invalid provisions, and to this end the provisions of this Declaration are severable.

**Section 12.2. Headings.**

The headings in this Declaration are for purposes of reference and shall not limit or otherwise affect the meaning hereof.

**Section 12.3. Incorporation by Reference.**

Any Exhibits/Schedules are a part of this Declaration and the contents thereof are incorporated herein by reference.

**Section 12.4. Notice.**

Any notice required to be send under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, with the proper postage affixed, if to an Owner, to the address of the Owner as provided to the Association and, if the Association, at the Association's principal office.

**Section 12.5. Successors.**

The provisions of this Declaration shall be binding upon all parties having or acquiring any right, title, or interest in the Property or any part thereof and shall be for the benefit of each Owner and his or her heirs, successors, or assigns.

**Section 12.6. Occupants Bound.**

All provisions of the Declaration and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owner and which provide for sanctions against Owner shall apply to all occupants of any Unit.

**Section 12.7. Declarant's Disclaimer for Economic Benefit.**

Declarant has made no representations, and Declarant hereby disclaims any representations made by anyone claiming to act as Declarant's authorized agent, as to the feasibility of renting a Unit in the Condominium or otherwise generating income or deriving any other economic benefit from a Unit.

**Section 12.8. Declarant's Disclaimer for Security.**

Neither the Association nor the Declarant shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Unit Owners, tenants, guests, and invitees of any Unit Owner, as applicable, acknowledge that the Declarant and the Association are not insurers and that each Unit Owner, tenant, guest, and invitee assumes all risk of loss or damage to persons, to Buildings, and to contents of Buildings, and further acknowledge that neither the Declarant nor the Association have made any representation or warranty, nor has any Unit Owner, tenant, guest, or invitee relied upon any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose relative to any security measures recommended or undertaken.

**Section 12.9. Governing Law.**

This Declaration shall be governed by and construed in accordance with the laws of the State of Vermont, without giving effect to such jurisdiction's principles or conflicts of laws.

IN WITNESS WHEREOF, the Declarant has executed or caused this Declaration to be executed as of the \_\_\_ day of \_\_\_\_\_, 2017.

IN PRESENCE OF:

FPHC, LLC

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
William Drusic  
Duly Authorized Agent

STATE OF VERMONT  
BENNINGTON COUNTY, SS.

At Manchester, Vermont, this \_\_\_ day of \_\_\_\_\_, 2017, personally appeared William Drusic, Duly Authorized Agent of FPHC, LLC, to me known, and he acknowledged this instrument by him signed, and sealed, to be his free act and deed, and the free act and deed of FPHC, LLC.

Before me, \_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

ACKNOWLEDGED

FACTORY POINT CONDOMINIUM ASSOCIATION, INC.

By: \_\_\_\_\_  
Stephen Drusic  
Duly Authorized Agent

## SCHEDULE A

Being all and the same lands and premises conveyed to FPHC, LLC by Special Warranty Deed of Berkshire Bank, dated May 7, 2014 and recorded May 9, 2014 at Book 317, Instrument 172/Page 722 of the Town of Manchester Land Records, and more particularly described as follows:

Being the same lands and premises known as 4928 Main Street, Manchester Center, Vermont, together with all buildings and improvements thereon.

1. Estabrook Parcel: Being all and the same lands and premises conveyed to the Manchester Building Association by Warranty Deed of Cornelia M. and Emerson Estabrook dated June 4, 1896 and recorded in Volume 23, Page 300 of the Town of Manchester Land Records. Being also a portion of the lands and premises conveyed by Warranty Deed of Manchester Building Association to Factory Point National Bank dated December 31, 1984 and recorded in Volume 99, Page 12 of the Town of Manchester Land Records.
2. Carpenter Parcel: Being all and the same lands and premises conveyed to the Manchester Building Association by Warranty Deed of E.B. Carpenter dated June 13, 1896 and recorded in Volume 23, Page 318 of the Town of Manchester Land Records. Being also a portion of the lands and premises conveyed by Warranty Deed of Manchester Building Association to Factory Point National Bank dated December 31, 1984 and recorded in Volume 99, Page 12 of the Town of Manchester Land Records.
3. Hanley Parcel: Being a portion of the same lands and premises conveyed to Factory Point National Bank by Administrator's Deed of Manfred W. Ehrich, Jr., Administrator of the Estate of Mary J. Hanley dated December 18, 1969 and recorded in Volume 61, Page 62 of the Town of Manchester Land Records; excepting the lands and premises conveyed to VP Manchester LLC by Special Warranty Deed of Berkshire Bank dated December 28, 2012 and recorded in Volume 309, Page 802 of the Town of Manchester Land Records.
4. Bravakis Parcel: Being all and the same lands and premises conveyed to Factory Point National Bank by Warranty Deed of Louis T. and Olivia E. Bravakis dated February 7, 1983 and recorded in Volume 89, Page 215 of the Town of Manchester Land Records.

The Berkshire Bank is the successor by merger to Factory Point National Bank of Manchester Center. Reference is hereby made to the certification executed by Keith S. Hoyte Associate Counsel of the Commonwealth of Massachusetts, Office of the Commissioner of Banks, dated October 18, 2007 and recorded in Volume 214, Page 780 of the Town of Manchester Land Records.

Reference is hereby made to the following:



- A. Survey entitled “Boundary Line Adjustment, Lands of Berkshire Bank, 4928 Main Street, Manchester, Vermont” prepared by On Point Land Surveying dated May 12, 2012 and recorded June 8, 2012 as Map 2012-275 of the Town of Manchester Land Records.
- B. Survey entitled “Lands of Berkshire Bank, 4912 Main Street, Manchester, Vermont” prepared by On Point Land Surveying dated September 3, 2012 and revised December 31, 2012 and recorded December 31, 2012 as Map 2012-284 of the Town of Manchester Land Records.

The herein described lands and premises are subject to and have the benefit of any and all easements, rights of way, restrictions, covenants and conditions, and other matters of record in the Town of Manchester Land Records.

There herein conveyed lands and premises may be subject to easements, rights of way, restrictions, covenants and conditions, and other matters set forth in the following:

1. Warranty Deed of Cornelia M. and Emerson Estabrook to the Manchester Building Association dated June 4, 1896 and recorded in Volume 23, Page 300 of the Town of Manchester Land Records.
2. Warranty Deed of E.B. Carpenter to the Manchester Building Association dated June 13, 1896 and recorded in Volume 23, Page 318 of the Town of Manchester Land Records.
3. Warranty Deed of Manchester Building Association to Factory Point National Bank dated December 31, 1984 and recorded in Volume 99, Page 12 of the Town of Manchester Land Records.
4. Administrator’s Deed of Manfred W. Ehrich, Jr. Administrator of the Estate of Mary J. Hanley to Factory Point National Bank dated December 18, 1969 and recorded in Volume 61, Page 62 of the Manchester Land Records.
5. Warranty Deed of Louis T. and Olivia E. Bravakis to Factory Point National Bank dated February 7, 1983 and recorded in Volume 89, Page 215 of the Town of Manchester Land Records.
6. Easement Deed from Factory Point National Bank to Thomas Smith, III, Joshua Smith, and Jason Smith dated December 16, 1996 and recorded in Volume 164, Page 184 of the Town of Manchester Land Records.
7. Cross Easement and Maintenance Agreement between (1) Walker S. Kimball, Jr., (2) Richard L. Manley and Joan M. Kosinski, (3) James B. Campbell, Jr., Dorothy B. Campbell, Pauline C. Rennie, Edgar T. Campbell, and Lynn Ameden-Campbell, (4) William Herrick and Phyllis Dunn, (5) Factory Point National Bank, (6) Wayne E. Bell, Jr. and Debra Bell, and (7) Yetta Isaacs, Blanche Isaacs, and the Estate of Linda Greenberg dated June 16, 1992 and recorded in Volume 146, Page 147 of the Town of Manchester Land Records.

Said Cross Easement and Maintenance Agreement allocated 66% of maintenance costs to the Factory Point National Bank, the predecessor to Berkshire Bank. The Special Warranty Deed from Berkshire Bank to VP Manchester LLC dated December 28, 2012 and recorded December 31, 2012 in Volume 309, Page 802 of the Town of Manchester Land Records allocated 7% of the maintenance costs to 4912 Main Street. 59% of maintenance costs are allocated to the herein conveyed lands and premises.

8. Easement Deed signed by Louis Bravakis and Olivia Bravakis to the Town of Manchester, undated, and recorded June 23, 1981 in Volume 85, Page 16 of the Town of Manchester Land Records.
9. Quit Claim Deed from Manchester Building Association to Town of Manchester dated June 23, 1981 and recorded in Volume 85, Page 19 of the Town of Manchester Land Records.
10. Easement Deed from Factory Point National Bank to Town of Manchester dated July 1, 1987 and recorded in Volume 117, Page 118 of the Town of Manchester Land Records.
11. Easement Deed from Manchester Building Association to Central Vermont Public Service Corporation and New England Telephone & Telegraph Company dated January 19, 1973 and recorded in Volume 67, Page 22 of the Town of Manchester Land Records.
12. Easement Deed from Factory Point National Bank to New England Telephone & Telegraph Company dated June 7, 1995 and recorded in Volume 158, Page 174 of the Town of Manchester Land Records.
13. Easement Deed from Factory Point National Bank to Central Vermont Public Service Corporation and Verizon New England, Inc. dated February 13, 2007 and recorded in Volume 273, Page 490 of the Town of Manchester Land Records.
14. Special Warranty Deed from Berkshire Bank to VP Manchester LLC dated December 28, 2012 and recorded December 31, 2012 in Volume 309, Page 802 of the Town of Manchester Land Records.
15. Survey entitled "Boundary Line Adjustment, Lands of Berkshire Bank, 4928 Main Street, Manchester, Vermont" prepared by On Point Land Surveying dated May 12, 2012 and recorded June 8, 2012 as Map 2012-275 of the Town of Manchester Land Records.
16. Survey entitled "Lands of Berkshire Bank, 4912 Main Street, Manchester, Vermont" prepared by On Point Land Surveying dated September 3, 2012, revised December 31, 2012, and recorded December 31, 2012 as Map 2012-284 of the Town of Manchester Land Records.

17. Any and all utility easements of record in the Town of Manchester Land Records.
18. The terms and conditions of all permits and approvals issued by the Town of Manchester including, but not limited to, the permits and approvals referenced in the following:
  - (a) Town of Manchester Notice of Recorded Municipal Permit dated February 8, 2000 and recorded in Volume 1 (Bianchi), Page 324 of the Town of Manchester Land Records.
  - (b) Town of Manchester Zoning Permit-Administrative #2012-05-041 dated June 1, 2012 and recorded in Volume 5 (Bianchi), Page 850 of the Town of Manchester Land Records.
19. The terms and conditions of all permits and approvals issued by the State of Vermont.
20. Any and all rights involving a former town road extending southerly of and parallel to Main Street.

The subject lands and premises include all easement and rights of way reserved in the Special Warranty Deed from Berkshire Bank to VP Manchester LLC dated December 28, 2012 and recorded December 31, 2012 in Volume 309, Page 802 of the Town of Manchester Land Records.

The subject lands and premises include all right and title in the remaining lands held by Berkshire Bank, including appurtenant easements and rights of way and all other rights, if any, located south of Main Street and north of the west branch of the Battenkill River in Manchester Center.

Reference is hereby made to the above mentioned deeds and plans, the records thereof, and the references therein contained, all in further aid of this description.

Reference is also made to the Quitclaim Deed from the Town of Manchester to FPHC, LLC, dated May 14, 2014, and recorded May 14, 2014 at Book 317 Instrument 177/Page 750 of the Town of Manchester Land Records.

## FACTORY POINT PLACE CONDOMINIUM ASSOCIATION BYLAWS

The undersigned, having acknowledged a Common Interest Community Declaration for FACTORY POINT PLACE (“Declaration”) and subjected property located at 4928 Main Street in Manchester, Vermont (“Property” or “Condominium”) thereto, hereby establish the following Bylaws of the Factory Point Place Condominium Association, Inc. (“Association”) required by Article 3 of Title 27A of the Vermont Statutes Annotated.

All present and future Owners, lessees, invitees, employees, and agents, and any other person using any of the property in any manner and their use and enjoyment thereof is subject to compliance with these Bylaws and any rules and/or regulations adopted hereunder as the same may from time to time be amended. The mere acquisition or use of any Unit within the Property shall be deemed to constitute acceptance of and an agreement with these Bylaws and any rules and/or regulations adopted hereunder as the same may be amended from time to time.

### ARTICLE I

#### The Factory Point Place Condominium Association

##### **Section 1.1.** Membership.

Membership in the Association shall be determined, held, and maintained as provided in the Declaration and in these Bylaws.

##### **Section 1.2.** Common Expense Lien.

The rights of membership are subject to the payment of annual and special assessments levied by the Board of the Association, the obligation of which assessments is imposed against each Owner of and becomes a lien upon the Owner’s Unit against which such assessment has been made, all as provided under the Declaration to which the Property is subject.

##### **Section 1.3.** Meetings of Owners.

- (a) The annual meeting of Owners shall be held at the registered office of the Association on the first Saturday in January each year at such time and on such date as the Board shall determine. The Secretary shall give each Owner not less than ten (10), not more than fifty (50) days’ written notice of the exact date, time, and place of the meeting, either personally or by mail. If notice of a meeting is mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Owner at his or her address as it appears on the records of the Association, with postage prepaid. The note shall contain a general outline of the meeting agenda insofar as known to the Secretary.
- (b) Special meetings of Owners shall be held on not less than ten (10) nor more than thirty (30) days’ advance written notice, whenever called by the President

of the Board, a majority of the Board of Directors, or the President acting at the request of the Owners of at least forty percent (40%) of the ownership interest under the Declaration, either personally or by mail. If notice is mailed, such notice shall be deemed to be delivered when deposited in the United States mail, address to the Owner at his or her address as it appears on the records of the Association with postage prepaid.

- (c) The presence of more than fifty percent (50%) percent of the voting membership interests shall constitute a quorum for the transaction of business at any general or special meeting of the Owners. However, a majority of those Voting Members present at any regular or special meeting though less than a quorum, shall have power to adjourn the meeting to a future time.
- (d) Votes may be cast in person or by proxy. Proxies shall be valid only for the particular meeting designated therein and must be filed with the Secretary before the appointed time of the meeting. In no event, however, shall a proxy be valid after three (3) months from the date of its execution. Specific approval shall be effective when filed with the Secretary and which shall be equivalent to such vote if the same had been given in person at the meeting.
- (e) Seventy-Five (75) percent of the votes entitled to be cast on a matter to be voted upon by the members present or represented by proxy at a meeting at which a quorum is present shall be necessary for the adoption of matters voted upon at such meeting.
- (f) Meetings of Owners shall be presided over by the President of the Association, or in his or her absence, a Chairperson elected at the meeting.

## ARTICLE II Directors and Officers

### **Section 2.1.** Board of Directors.

- (a) The business of the Association shall be managed by a Board of Directors of three (3) Directors (“Board”).
- (b) The first Board, which shall hold office until the first regular annual meeting of the Association, which can be held as hereinafter provided, shall consist of three (3) persons, one having a term ending at such first annual meeting, one having a term ending at the second annual meeting, and one having a term ending at the third annual meeting of the Association. Thereafter, Directors whose terms then end shall be elected by the Voting Members at the annual meeting of the Association.
- (c) The Voting Members may, at any meeting (special or annual), upon a vote, remove a Director.

- (d) Vacancies on the Board may be filled by the remaining Directors for the unexpired term of the Director who resigned or was removed or, a new Director may be elected to serve out the remainder of the term at a special meeting called for that purpose pursuant to Article I, Section 3(b) of these Bylaws.
- (e) Meetings of the Board (regular or special) may be held at such time and place, within Vermont, as shall be determined from time to time, by a majority of the Directors. Notice of such meeting shall be given to each Director, personally, by mail, or by telephone at least one week prior to the date for which the meeting is scheduled, unless such notice is waived. Attendance at any meeting shall constitute waiver of notice of such meeting, except when a Director attends a meeting for the express purpose of objecting to the transaction of business because the meeting is not lawfully noticed, called, or convened.
- (f) In order to enable the Board to act efficiently, conveniently, and as frequently as the best interests of the Association may dictate, the directors are hereby empowered to act by mail or electronic mail in their capacity as members of the Board. A vote by mail or electronic mail shall be taken by sending to each Director a ballot containing the exact text of the proposed resolution or resolutions to be voted upon. No ballot shall be valid unless it is signed by the Director casting it. Marked and signed ballots shall be returned to the Secretary of the Association, who shall ascertain the outcome of the vote and record it like all other Directors' votes. The Secretary shall notify all Directors of the outcome of each vote, personally or by mail. Requests for a Directors' vote by mail, which must be accompanied by the ballot or ballots to be used therefor, may only be circulated by:
- i. Any Director;
  - ii. The Association Manager, if there is one; or
  - iii. The Secretary of the Association, acting at the request of the owners of at least thirty (30%) percent of the aggregate voting membership interests.
- (g) A quorum for the transaction of business at any meeting shall consist of a majority of the Board of Directors. A quorum for the transaction of business by mail shall consist of the entire Board of Directors. If no quorum is present at any meeting, a majority of those present, though less than a quorum, shall have power to adjourn the meeting to a future time. The act of the majority of the Directors present at a meeting at which a quorum is present shall be the Act of the Board of Directors.
- (h) The Board of Directors shall have and exercise all of the powers and perform all the duties given to the Association set forth in the Declaration and the Bylaws. Its powers shall include, but shall not be limited to, the following:
- i. To make, levy, and collect assessments against the Owners and their Units to defray the costs of the Association;
  - ii. To use the proceeds of assessments in the exercise of the Association's powers and the performance of its duties;

- iii. To maintain, repair, replace, and operate the Property and particularly, all common areas and facilities;
- iv. To construct and/or repair the property after total or partial destruction;
- v. To make, amend, promulgate, and enforce Administrative Rules and Regulations and Restrictions governing the details of the operation, use, and maintenance of the Units and the common areas and facilities; and Rules and Regulations relating to the grounds for an action to recover sums due for damages or injunctive relief or both on the behalf of the Association or an aggrieved Owner, against Owner(s) who fail to comply with such Rules and Regulations;
- vi. To enforce compliance by the Owners with all applicable provisions of the Declaration and Bylaws.
- vii. To employ personnel for reasonable compensation to perform the services (including clerical, accounting, and legal) required for the proper management of the Association and the replacement and repair of its Property.
- viii. The Board of Directors, by resolution adopted by a majority of the Directors, may designate and appoint one or more committees each of which shall consist of two (2) or more Directors, which committees, to the extent provided in such resolution, shall have and exercise all the authority of the Board of Directors, except that no such committee shall have the authority of the Board of Directors in reference to amending, altering, or repealing the Bylaws; electing, appointing or removing any member of any such committee or any Director or Officer of the Association; creating and/or amending Articles of Association authorizing the sale, lease, exchange, or mortgage of all or substantially all of the property and assets of the Association; authorizing the voluntary dissolution of the Association or revoking proceedings therefor; adopting a plan for the distribution of the assets of the Association; or amending, altering, or repealing any resolution of the Board of Directors which by its terms provides that it shall not be amended, altered, or repealed by such committee. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual Director of any responsibility imposed upon them by law.

**Section 2.2. Officers.**

- (a) The Association shall have a President, who shall be elected by the Board of Directors and hold office at its pleasure. Only persons who are Owners and members of the Board of Directors at the time of their election may become President. The President shall be Chair of the Board of Directors and of the Association. In addition, he or she shall perform such other functions as the Board of Directors may, from time to time, assign to him or her.
- (b) The Association shall have a Secretary who shall not also serve as President, who shall be elected by the Board of Directors and hold office at its pleasure. He or she shall keep the minutes of all general and special meetings of Directors and Owners, ascertain, certify, record, and publicize the outcome of all votes taken by the

Directors, maintain and keep current a register of all Owners giving their addresses, telephone numbers, and other information concerning where and how they can be reached, and a register of all persons and/or entities holding mortgages or other liens upon any part of the property.

- (c) The Association shall have a Treasurer, who may also be the Secretary, who shall be elected by the Board of Directors and hold office at its pleasure. The Treasurer shall keep the financial records and books of account and shall make an annual report to the Owners containing at least:
  - i. The Association's balance sheet as of the end of the fiscal year covered by the report; and
  - ii. The Association's income statement for the same period.
- (d) The Treasurer shall also be responsible for the keeping of the assessment roll required in the fiscal management of the Association. However, if a management contract is entered into, the terms thereof may provide that the Treasurer's functions shall be performed by the Manager;
- (e) The compensation, if any, of Officers and employees of the Association shall be fixed annually by the Board of Directors at its first meeting after the annual meeting of the Association.

**Section 2.3. Fiscal Management.**

- (a) The Treasurer or Manager of the Association shall maintain an assessment roll which shall include a separate account for each Unit in the project. Such account shall designate the name and address of the Owner or Owners, the amount of each assessment against such Owners and the Unit, the due dates of all assessments, the amounts paid by the Owner, and all unpaid assessments. It shall be the responsibility of the Directors to oversee that an orderly budgeting procedure is established. All assessments against Owners shall be based upon a budget. Assessments and common expenses not paid within thirty (30) days of the due date shall thereafter bear interest at the maximum rate permitted by law. If the collection of any assessment requires legal proceedings, the cost thereof, including the Association's reasonable attorneys' fees, shall be added thereto, and collectible in the same fashion as the assessment. Any assessment not paid by an Owner shall constitute a lien on behalf of the Association on the defaulting Owners' Unit.
- (b) The assessments against Owners shall be prepared, levied, and collected at such times and in such manner to assure that sufficient funds will be available to budget expenditures and operations when needed.
- (c) Any lien securing an Association assessment or common expenses may be foreclosed by suit by the Board of Directors acting on behalf of the Owners, in like manner as a mortgage on real property. In any foreclosure, the Owners shall be required to pay the costs of collection together with reasonable attorneys' fees. The Board of Directors may also bring suit to recover money judgment for unpaid



assessments and common expenses, including all costs and attorneys' fees without foreclosing or waiving the Association's lien secured thereby.

- (d) All checks, drafts, notes, and orders for the payment of money shall be signed by the President or the Treasurer, or by such other Officer as shall be duly authorized by the Board of Directors.

ARTICLE III  
Obligations of the Owners

**Section 3.1. Assessments.**

- (a) All Owners are obligated to pay assessments imposed by the Board of Directors on behalf of the Association to meet the Common Expenses, which may include liability, fire, and extended coverage insurance, the cost of purchasing oil for any common boiler and maintaining and repairing the Common Elements, including exterior window cleaning, and snow removal, reasonable reserves for future expenses of administration, and such other expenses as the Association may deem proper subject to adjustment from time to time as may be necessary. All such assessments (i) shall be made pro rata based upon the undivided percentage interest of each owner in the common areas and facilities, and (ii) shall be made in writing to each owner, which written assessment shall set forth on the fact thereof the aggregate assessment with respect to all Unit Owners, the basis therefor, and the resulting assessment allocated to each Owner. Further, assessments may be made payable in monthly installments, sufficient in amount to meet required cost and expenses as and when the same shall be due and payable.
- (b) Notwithstanding the above, the expense of cooking propane and the expense of rubbish removal for the four Residential Units shall be assessed equally among those four units and made as a separate assessment upon those Units.
- (c) Notwithstanding the above, the expense of rubbish removal for the commercial Units and the Restaurant shall be assessed among those Units pursuant to their respective common expense liability as set forth in the Declaration of Condominium, as the same may be from time to time amended.
- (d) The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the common areas which the Association is obligated to maintain. The reserve fund shall be maintained out of regular assessments for common expenses.
- (e) All sums assessed by the Association but unpaid for the share of the common expenses chargeable to any Unit shall constitute a lien on that Unit prior to all other liens except as otherwise provided by law. The lien may be foreclosed by suit by the manager of Board of Directors, acting on behalf of the Unit Owners, in like manner as a mortgage on real property. In any foreclosure the Unit Owner shall be required to pay a reasonable rental for the Unit and the plaintiff shall be entitled to the appointment of a receiver to collect it. The manager of Board of Directors,

acting on behalf of the Unit Owners, may, unless prohibited by the Declaration, bid in the Unit at foreclosure sale, and acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

**Section 3.2. Maintenance and Repair.**

- (a) Each Owner must perform promptly all maintenance and repair work within his or her own Unit which, if omitted, would affect the Property in any part belonging to other Owners or which would affect common areas. Each Owner is responsible for any damages and liabilities caused by a failure to do the same.
- (b) All repairs or improvements within and belonging solely to any Unit shall be at the Owner's sole expense.
- (c) An Owner shall reimburse the Association for any expenditures incurred for repair and/or replacement of any Limited Common Element benefiting such Unit or Units. In the event a Limited Common Element is allocated to more than one Unit, the cost shall be divided equally among all such benefited Units.
- (d) An Owner shall reimburse the Association for any expenditures incurred for repair or replacement within any common area resulting from the conduct of the Owner, or the Owner's invitees and/or guests.

ARTICLE IV  
Miscellaneous

**Section 4.1. Amendment of Bylaws.**

- (a) These Bylaws may be amended at any general or special meeting of the Association by a vote of fifty (50%) percent or more of the Voting Members. No modification of or amendment to these Bylaws shall be valid unless set forth in an amendment to these Bylaws and such amendment is duly filed in the office of the Association and in the Land Records of the Town of Manchester.
- (b) The consent of at least seventy-five (75%) percent of Voting Members shall be required to add or to amend any material provisions of these Bylaws which establish, provide for, govern, or regulate any of the following:
  - i. Voting;
  - ii. Assessments, assessment lien, or subordination of liens;
  - iii. Reserves for maintenance, repair, and replacement of common areas;
  - iv. Insurance or fidelity bonds;
  - v. Rights to use the common areas;
  - vi. Responsibility for maintenance and repair of several portions of the Condominium;
  - vii. Expansion or contraction of the Condominium or the addition, annexation, or withdrawal of property to or from the Condominium;
  - viii. Boundaries of any Unit;

- ix. The interest in the common areas or limited common areas;
- x. Leasing of Units; and
- xi. Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey ownership interest in a Unit.

**Section 4.2.** Construction of Bylaws.

In the case of any conflict between the recorded Declaration of Condominium and these Bylaws, the recorded Declaration of Condominium shall control. In the event of any conflict between the Act and these Bylaws, the Act shall control. In the event of any conflict between COA and these Bylaws, COA shall control.

**Section 4.3.** Terms.

Capitalized terms not defined herein shall have the meaning assigned to them in the Declaration or under the Act.

Adopted as the Bylaws of the Factory Point Place Condominium Association this \_\_\_\_ day of \_\_\_\_\_, 2017.

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