

FIRST AMENDED AND RESTATED BYLAWS
OF
THE PLUNGE CONDOMINIUMS OWNERS ASSOCIATION, INC.

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ARTICLE 1 - INTRODUCTION

These First Amended and Restated Bylaws of The Plunge Condominiums Owners Association, Inc. amend and fully restate the original Bylaws of the Association, which were attached as Exhibit A to the Original Declaration, and are adopted pursuant to the Declaration and the Colorado Revised Nonprofit Corporation Act (“**Nonprofit Act**”), as amended and the Colorado Common Interest Ownership Act, as amended (the “**Act**”). Capitalized terms not otherwise defined herein shall have the meanings set forth in the First Amended and Restated Declaration for the Plunge Condominium recorded _____, 2024 in the Property Records at Reception No. _____, as amended (the “**Declaration**”) and in the Act.

ARTICLE 2 - EXECUTIVE BOARD

Section 2.1 Number; Qualification; Election.

2.1.1 The affairs of the Project and the Association shall be governed by its Executive Board, which shall consist of at least three (3), but not more than five (5), persons. Unit Owners eligible to vote may be elected to, or appointed to fill a vacancy on, the Executive Board. In the case where, through removal or resignation, the total number of Executive Board members is less than as provided in this Section 2.1.1, the Executive Board will be considered properly constituted with less than three (3) members. The number of members of the Board may be increased or decreased by amendment of these Bylaws; provided, however, at no time may this number be reduced to less than three (3) members.

2.1.2 If any Unit is owned by a partnership, corporation, limited liability company or trust, any officer, director, manager, partner, trustee or employee of that Unit Owner shall be eligible to serve on the Board and shall be deemed to be a Unit Owner for the purposes of the preceding sentence.

Section 2.2 Election and Term of Office. Members of the Board, also referred to in the Governing Documents as “directors,” shall be elected by the Unit Owners at their annual meeting. At any meeting at which the Board or a director is to be elected by the Members, the Owners may, by resolution, adopt specific procedures which are not inconsistent with these Bylaws or the Nonprofit Act for conducting the elections. The terms of the Executive Board shall be three (3) years. Notwithstanding any provision in this Section 2.4 to the contrary, directors may be elected by written ballot pursuant to the Nonprofit Act and shall be elected by secret ballot, pursuant to the Act if one or more Board seats is contested. Each director shall hold office until the election and qualification of his or her successor, or their earlier resignation or removal. Cumulative voting shall not be permitted in the election of directors or for any other purpose.

Section 2.3 Removal of Directors. A regular or special meeting of Unit Owners may be called for the purpose of considering the removal of any director. The Board shall designate by resolution or motion the date and time of such regular or special meeting after such meeting is properly set or called in accordance with these Bylaws and Colorado law. Any one (1) or more of the directors may be removed with or without cause by an affirmative vote of sixty-seven percent (67%) of all of the

Units (not weighted based on square footage). Any director whose removal has been proposed shall be given an opportunity to be heard at the meeting. Successors may then and there be elected by the Members holding a majority of the votes in the Association who are present either in person or by proxy at the meeting if a quorum is present.

Section 2.4 Vacancies. Except in the case of a vacancy caused by removal of a director by the Members, the vacancy may be filled by the affirmative vote of a majority of all of the remaining Executive Board, though less than a quorum of the Executive Board. The term of the director so elected shall be coincident with the term of the replaced director.

Section 2.5 Quorum of the Executive Board; Voting; Proxies. A majority of the number of directors fixed from time to time by these Bylaws shall constitute a quorum for the transaction of business. Any act by a majority vote of the Board in attendance where a quorum is present shall be an act of the Board. Directors shall be allowed to vote by proxy pursuant to the Act.

Section 2.6 Place and Notice of the Executive Board Meetings. Any regular or special meetings of the Board may be held at such place within or without the State of Colorado and upon such notice as the Executive Board may prescribe. The Executive Board shall hold a regular meeting at least once each year and shall, in addition, meet as often as they deem necessary or desirable to perform their duties hereunder. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Before, at, or after any meeting of the Executive Board, any director may, in writing, waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the waiver of notice of such meeting. However, in the absence of waivers of notice: (i) notice of the time and place of a regular meeting shall be communicated in writing to the directors not less than three (3) days prior to the meeting and (ii) notice of a special meeting shall specify the time and place of the meeting and the nature of any special business to be considered and shall be communicated in writing to directors not less than three (3) days prior to the meeting. Notices of meetings of the Executive Board shall be posted on the Association's website, if any, and/or emailed to all of the Unit Owners as soon as practicable and at least twenty-four hours prior to the meeting except in the event of an emergency. The Executive Board shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all of the directors. Any action so approved shall have the same effect as though taken at a meeting of the Executive Board. All or some of the directors may participate in a meeting by means of a conference call or electrically via an Internet meeting services or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

Section 2.7 Powers and Duties. The Executive Board shall act in all instances on behalf of the Association, except as otherwise specifically provided in the Declaration, these Bylaws or the Act. The Board shall have, subject to the limitations contained in the Declaration and the Act, the powers and duties necessary, desirable or appropriate for the administration of the affairs of the Association and of operation and maintenance of the Project, including, but not limited to, the following powers and duties:

2.7.1 Adopt and amend Bylaws and Rules;

2.7.2 Adopt and amend budgets for revenues, expenditures and reserves;

2.7.3 Levy and collect Assessments;

2.7.4 Suspend the right of a Unit Owner to cast such votes, or by proxy the votes of another, during any period in which such Unit Owner is in default in the payment of any Assessment, or, after notice and a hearing, during any time in which a Unit Owner is in violation of any other provision of the Governing Documents;

2.7.5 Hire and discharge managing agents;

2.7.6 Hire and discharge employees, independent contractors and agents other than managing agents;

2.7.7 Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Governing Documents in the Association's name, on behalf of the Association or two (2) or more Unit Owners on matters affecting the Project;

2.7.8 Make contracts and incur liabilities;

2.7.9 Regulate the use, maintenance, repair, replacement and modification of all Association property within or outside of the Project, or the Common Elements, and to the extent provided in the Declaration, of the Units;

2.7.10 Cause additional improvements to be made as a part of the Common Elements;

2.7.11 Acquire, hold, encumber and convey, in the Association's name, any right, title or interest to real estate or personal property, but Common Elements may be conveyed or subjected to a security interest only pursuant to C.R.S. §§ 38-33.3-312 of the Act and upon the affirmative vote of the Unit Owners of Units to which at sixty-seven percent (67%) of the votes in the Association are allocated;

2.7.12 Grant easements for any period of time, including permanent easements, and grant leases, licenses and concessions through or over the Common Elements upon the affirmative vote of the Unit Owners of Units to which at sixty-seven percent (67%) of the votes in the Association are allocated;

2.7.13 Impose and receive a payment, fee or charge for services provided to Unit Owners and for the use, rental or operation of the Common Elements;

2.7.14 Establish and impose reasonable charges for late payment of Assessments or any other sums due and, after notice and hearing, levy a reasonable fine for a violation of the Governing Documents of the Association;

2.7.15 Impose a reasonable charge for administrative or clerical services, including, but not limited to, the preparation, duplication, and dissemination of the Governing Documents, and any amendments thereto, and statements of unpaid Assessments, and to recover any applicable recording fees;

2.7.16 Provide for the indemnification of the Association's officers and directors to the extent provided by law, the Declaration and these Bylaws and maintain directors' and officers' liability insurance;

2.7.17 Appoint any committee as required or permitted by the Declaration or these Bylaws or as may be deemed appropriate by the Board to carry out its purposes and duties.

2.7.18 By resolution, set forth policies and procedures which shall be considered incorporated herein by reference as though set forth in full, and which provide for corporate actions and powers which are different than those set forth in the Nonprofit Act, but which are permitted by the Act to be "otherwise set forth in the Bylaws." Such resolutions shall be given the same force and effect as if specifically enumerated in these Bylaws;

2.7.19 Upon the affirmative vote of the Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated, borrow money or assign the Association's right to future income.

2.7.20 Exercise any other powers conferred by the Governing Documents, the Act and the Nonprofit Act;

2.7.21 Exercise any other power that may be exercised in Colorado by a legal entity of the same type as the Association; and

2.7.22 Exercise any other power necessary and proper for the governance and operation of the Association.

Section 2.8 Manager. The Executive Board may employ one or more managers for the Project, at a compensation established by the Executive Board, to perform duties and services authorized by the Executive Board ("**Manager**"). The Executive Board may delegate to the Manager only the powers granted to the Executive Board by these Bylaws under by Sections 2.9.3, 2.9.6, 2.9.9, 2.9.10, 2.9.15, and 2.9.19. Licenses, concessions and contracts may be executed by the Manager pursuant to specific resolutions of the Executive Board and to fulfill the requirements of the budget. The Manager shall maintain fidelity insurance coverage or a bond for the benefit of the Association in an amount not less than Fifty Thousand Dollars (\$50,000) or such higher amount as the Board shall require. The Manager's services may be terminated without penalty and without cause notwithstanding any provision to the contrary contained in the Manager's contract for services to the Association.

Section 2.9 Compensation. No director shall receive any compensation from the Association for acting as such. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a Executive Board member is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested director.

Section 2.10 Executive Board Meetings. All meetings of the Board, at which action is to be taken by vote, will be open to the Unit Owners, except that meetings of the Board may be held in executive session(s), without giving notice and without the requirement that they be open to Unit Owners, in the following situations:

2.10.1 Matters pertaining to employees of the Association or involving the employment, promotion, discipline or dismissal of an officer, agent, or employee of the Association;

2.10.2 Consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;

2.10.3 Investigative proceedings concerning possible or actual criminal misconduct;

2.10.4 Matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure; and

2.10.5 Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy.

ARTICLE 3 - MEMBERSHIP

Section 3.1 Membership. Ownership of a Unit is required in order to qualify for membership in the Association.

Section 3.2 Responsibilities of Unit Owners. Any person or entity, on becoming a Unit Owner, shall automatically become a Member of the Association and be subject to these Bylaws. Such membership shall terminate without any formal Association action whenever such person ceases to own a Unit, but such termination shall not relieve or release any such former Unit Owner from any liability or obligation incurred under, or in any way connected with, the Association during the period of such ownership, or impair any rights or remedies which the Board or others may have against such former Unit Owner arising out of ownership of the Unit and membership in the Association and the covenants and obligations incident thereto.

Section 3.3 Voting Rights. Each Unit shall be allocated the votes in **Exhibit B** to the Declaration. The Association shall not have a vote with respect to any Unit which may be owned by it.

ARTICLE 4 - MEETINGS OF UNIT OWNERS

Section 4.1 Meetings of the Unit Owners. The following types of “meetings” (as that term is used in the Nonprofit Act) shall be or may be held, as provided below.

4.1.1 Annual Meetings. Regular meeting of Unit Owners shall be held at least annually at such date set forth in the notice. The annual meetings of the Unit Owners shall be held on a date and at a time selected by the Board in each succeeding year. At these meetings, the Board shall be elected by the Unit Owners, in accordance with the provisions of Article 2 of these Bylaws. The Unit Owners may transact other business as may properly come before them at these meetings.

4.1.2 Special Meetings. Request that a special meeting of the Association be called may be made by the President, by a majority of the directors or by a written instrument signed by Unit Owners comprising twenty percent (20%) of the votes in the Association.

4.1.3 Meeting to Approve Annual Budget. At the annual meeting of the Association or at a special meeting of the Association called for such purpose, the Unit Owners shall be afforded the opportunity to ratify a budget of the projected revenues, expenditures and reserves for the Association’s next fiscal year as proposed by the Executive Board. A summary of the proposed budget approved by the Board shall be mailed to the Unit Owners within thirty (30) days after its adoption along with a notice of a meeting of the Association to be held not less than fourteen (14) nor more than fifty (50) days after mailing of the summary to the Unit Owners. Unless a majority of the total votes in the Association reject the proposed budget, the budget is ratified. There are no quorum requirements for this meeting. In the event the proposed budget is rejected, the budget last ratified by the Owners shall continue in effect until such time as the Unit Owners ratify a subsequent budget proposed by the Executive Board as provided above.

Section 4.2 Place of Meetings. Meetings of the Unit Owners shall be held at the at the Project or other location in the Town of Telluride designated in the notice and may be adjourned to a suitable place convenient to the Unit Owners, or conducted via the internet, as may be designated by the Board, President or by the Members who call a special meeting.

Section 4.3 Notice of Meetings. Except as otherwise set forth in Subsection 4.1.3, the secretary shall cause notice of all meetings of the Unit Owner set forth in Section 4.1 to be hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to the mailing address designated in writing by the Unit Owner, not less than ten (10) nor more than fifty (50) days in advance of a meeting. No action shall be adopted at a special meeting except as stated in the notice. Unless otherwise required by law, all Member meeting notices may be sent by email to the Owners if they have provided an email address to the Association.

Section 4.4 Adjournment of Meeting. At any meeting of Unit Owners, a majority of the Unit Owners who are present at that meeting, either in person or by proxy, may adjourn the meeting to another time.

Section 4.5 Order of Business. The order of business at all meetings of the Unit Owners shall be as set forth in the written meeting agenda available at the beginning of each meeting.

Section 4.6 Voting. Pursuant to the Declaration, each Unit is allocated one vote to be cast as follows:

4.6.1 If only one of several Owners of a Unit is present at a meeting of the Association, the Unit Owner present is entitled to the Vote allocated to the Unit. If more than one of the Unit Owners is present, the Votes allocated to the Unit may be cast only in accordance with the agreement of a majority of the Owners of that Unit. Majority agreement exists if any one of the Unit Owners casts the vote allocated to the Unit without protest being made promptly to the person presiding over the meeting by another Owner of the Unit.

4.6.2 Votes allocated to a Unit may be cast under a proxy duly executed by a Unit Owner. If a Unit is owned by more than one person, each Owner of the Unit may vote or register protest to the casting of votes by the other Owners of the Unit through a duly executed proxy. A Unit Owner may revoke a proxy given under this section only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates eleven months (11 months) after its date, unless it specifies a shorter term.

4.6.3 The vote of a corporation or limited liability company may be cast by an officer of that corporation or by the manager of the limited liability company in the absence of express notice of the designation of a specific person by the Board, members, manager, operating agreement or bylaws of the owning corporation or limited liability company. The vote of a trust may be cast by any trustee of the trust. The vote of a partnership may be cast by any general partner of the owning partnership in the absence of express notice of the designation of a specific person by the owning partnership. The moderator of the meeting may require reasonable evidence that a person voting on behalf of a corporation, limited liability company, partnership or Unit Owner is qualified to vote.

4.6.4 Votes allocated to a Unit owned by the Association may not be cast.

Section 4.7 Quorum. Except as otherwise provided in these Bylaws, the Unit Owners present in person or by proxy at any meeting of Unit Owners, representing fifty percent (50%) of the votes in the Association, shall constitute a quorum at that meeting.

Section 4.8 Voting by Mail. The Executive Board may decide that voting of the Members on any matter required or permitted by the statutes of Colorado, the Declaration, the Articles of Incorporation, or these Bylaws shall be by mail. Pursuant to the Nonprofit Act, any action that may be taken at any annual, regular, or special meeting of Unit Owners may be taken without a meeting if the secretary delivers a written ballot to every Member entitled to vote on the matter, and if the following requirements are met:

4.8.1 A written ballot shall: (i) set forth each proposed action; and (ii) provide an opportunity to vote for or against each proposed action;

4.8.2 Approval by written ballot shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot;

4.8.3 All solicitations for votes by written ballot shall: (i) indicate the number of responses needed to meet the quorum requirements (ii) state the percentage of votes necessary to approve or reject each matter, other than the election of director; (iii) specify the time by which a ballot must be received by the Association in order to be counted; and (iv) be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter; and

4.8.4 A written ballot may not be revoked.

Section 4.9 Majority Vote. The vote of a majority of the Unit Owners present in person or by proxy at a meeting at which a quorum shall be present shall be binding upon all Unit Owners for all purposes except where a higher percentage vote is required in the Declaration, these Bylaws or the Act.

Section 4.10 Unit Owner Addresses for Notices. Unless otherwise required by the Act, or requested in writing to the Association, notice required to be given, or otherwise given by the Association under these Bylaws, to any Unit Owner or any other written instrument to be given to any Unit Owner, shall be emailed to such Unit Owner at their email address provided to the Association. Where notice is required by US Mail it shall be mailed in a postage prepaid envelope by first class, registered or certified mail to the address of the Unit shown upon the Association's records as being owned by such Unit Owner, or sent via a recognized national over-night delivery service. If more than one Owner owns a particular Unit, then any notice or other written instrument may be addressed to all of such Unit Owners and may be mailed in one envelope in accordance with the foregoing. Any notice or other written instrument given by the Association in accordance with the foregoing will be deemed to have been given on the date that it is emailed, placed into the United States Postal Service or on the date it is received by a recognized over-night delivery service.

ARTICLE 5 - OFFICERS

Section 5.1 Designation. The principal officers of the Association shall be a President, Vice President, Secretary and Treasurer, all of whom shall be elected by the Executive Board. The Executive Board may appoint an assistant treasurer, an assistant secretary and other officers as it finds necessary. Any two offices may be held by the same person, except the offices of President and Secretary. The office of Vice President may be vacant. All officers must be directors.

Section 5.2 Election of Officers. The officers of the Association shall be elected annually by the Executive Board at the organizational meeting of each new Executive Board.

Section 5.3 Resignation and Removal of Officers. Upon the affirmative vote of a majority of the Executive Board, any officer may be removed, either with or without cause. A successor may be elected at any regular meeting of the Executive Board or at any special meeting of the Executive Board called for that purpose. Any officer may resign at any time by giving written notice to the Executive Board's President or Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. A vacancy in any office may be filled by appointment by the Executive Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

Section 5.4 President. The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Unit Owners and of the Board. The President shall have all of the general powers and duties which are incident to the office of president of a nonprofit corporation organized under the laws of the State of Colorado, including but not limited to the power to appoint committees from time to time as the President may decide is appropriate to assist in the conduct of the affairs of the Association. The President may fulfill the role of Treasurer in the absence of the Treasurer. The President may cause to be prepared and may execute amendments, attested by the Secretary, to the Declaration and these Bylaws on behalf of the Association, following authorization or approval of the particular amendment as applicable.

Section 5.5 Vice President. The Vice President shall take the place of the President and perform the president's duties whenever the President is absent, unable or unwilling to act. If neither the President nor the Vice President is able to act, the Executive Board shall appoint another of its members to act in the place of the president on an interim basis. The Vice President shall also perform other duties imposed by the Executive Board or by the President.

Section 5.6 Secretary. The secretary shall record the votes and keep the minutes of all meetings of the Unit Owners and the Executive Board. The secretary shall have charge of the Association's books and papers as the Executive Board may direct and shall perform all the duties incident to the office of secretary of a nonprofit corporation organized under the laws of the State of Colorado. The Secretary may cause to be prepared and may attest to execution by the president of amendments to the Declaration and the Bylaws on behalf of the Association, following authorization or approval of the particular amendment as applicable.

Section 5.7 Treasurer. The Treasurer shall be responsible for Association funds and securities, for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial data. This officer shall be responsible for the deposit of all monies and other valuable effects in depositories designated by the Board and shall perform all the duties incident to the office of treasurer of a nonprofit corporation organized under the laws of the State of Colorado. The treasurer may endorse on behalf of the Association, for collection only, checks, notes and other obligations and shall deposit the same and all monies in the name of and to the credit of the Association in banks designated by the Executive Board. Except for reserve funds described below, the Treasurer may have custody of and shall have the power to endorse for transfer, on behalf of the Association, stock, securities or other investment instruments owned or controlled by the Association or as fiduciary for others. Reserve funds of the Association shall be deposited in segregated accounts or in prudent investments, as the Board decides.

Section 5.8 Execution of Instruments. Except as otherwise may be provided in these Bylaws, all agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by any officer of the Association or by any other person or persons designated by the Board, including the Manager. Any officer may prepare, execute, certify and record duly adopted amendments to the Declaration on behalf of the Association.

Section 5.9 Statements of Unpaid Assessments. The treasurer, assistant treasurer, a manager employed by the Association or, in their absence, any officer having access to the books and records of the Association may prepare, certify, and execute statements of unpaid assessments, in accordance with C.R.S. § 38-33.3-316 of the Act. The Association may charge a reasonable fee for preparing

statements of unpaid Assessments. The amount of this fee and the time of payment shall be established by resolution of the Board. Any unpaid fees may be assessed as a Common Expense Assessment against the Unit for which the certificate or statement is furnished.

ARTICLE 6 - ENFORCEMENT

Section 6.1 Abatement and Enjoinment of Violations by Unit Owners. The Executive Board shall adopt and may amend from time to time, policies for enforcement and abatement of violations of rules, regulations and restrictions set forth in the Governing Document. The Association shall be entitled to recover all costs and expenses of enforcement to the fullest extent permitted by The Act.

Section 6.2 Fine for Violation. The Executive Board may adopt resolutions providing for fines or other monetary penalties for the infraction of its Rules or of the Declaration. Fines will be levied after notice thereof and an opportunity to be heard. The Executive Board may levy fines in amounts that it, in its sole discretion, shall determine to be reasonable for each violation of the Governing Documents, including those violations which persist after notice and an opportunity for a hearing is given.

ARTICLE 7 - INDEMNIFICATION

Section 7.1 Actions Other than by or in the Right of the Association. The Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he or she is or was a director or officer of the Association, or a committee member, who is or was serving at the request of the Association in such capacity, against expenses (including expert witness fees, attorneys' fees and costs) judgments, fines, amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner which such individual reasonably believed to be in the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. Determination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner he or she reasonably believed to be in the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe his conduct was unlawful.

Section 7.2 Actions by or in the Right of the Association. The Association shall indemnify any person who was or is a party or who is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure judgment in its favor by reason of the fact that such person is or was a director, officer or committee member of the Association or is or was serving at the request of the Association in such capacity, against expenses (including expert witness fees, attorneys' fees, expenses and costs) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner which he or she reasonably believed to be in the best interests of the Association; but no indemnification shall be made in respect of any claim, issue or matter as to which such person has been adjudged to be liable for negligence, recklessness, or willful misconduct in the performance

of his or her duty in the Association unless, and to the extent that the court in which such action or suit was brought determines upon application that, despite the adjudication of liability, but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses if such court deems proper.

Section 7.3 Successful on the Merits. To the extent that a director, manager, officer, project manager, employee, fiduciary or agent of the Association has been successful on the merits in defense of any action, suit or proceeding referred to in Subsections 7.1 or 7.2 of this Article 7, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including expert witness fees, attorneys' fees, expenses and costs) actually and reasonably incurred him or her in connection therewith.

Section 7.4 Determination Required. Any indemnification under Subsections 7.1 or 7.2 of this Article 7 (unless ordered by a court) and as distinguished from Subsection 7.3 of this Article , shall be made by the Association only as authorized by the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because such individual has met the applicable standard of conduct set forth in subsections 7.1 or 7.2 above. Such determination shall be made by the Executive Board by majority vote of a quorum consisting of those members of the Board who were not parties to such action, suit or proceeding or, if a majority of disinterested directors so directs, by independent legal counsel and a written opinion or by Members entitled to vote thereon. Such determination shall be reasonable, based on substantial evidence of the record, and supported by written opinion. The Executive Board shall provide a copy of its written opinion to the person seeking indemnification upon request.

Section 7.5 Payment in Advance of Final Disposition. The Association shall pay for or reimburse the reasonable expenses incurred by a former or current director or officer who is a party to a proceeding in advance of final disposition of the proceeding if the director or officer furnishes to the Association a written affirmation of the Board member's good faith belief that he or she has met the standard of conduct described in Subsections 7.1 or 7.2 of this Article 7, the Board member or officer furnishes to the Association a written understanding, executed personally or on the Board member's or officer's behalf to repay the advance if it is ultimately determined that the Board member or officer did not meet the standard of conduct and a determination is made that the facts then known to those making the determination would not preclude indemnification under this article. The undertaking required in this paragraph shall be an unlimited general obligation of the Board member or officer but need not be selected and may be accepted without reference to financial ability to make repayment.

Section 7.6 No Limitation of Rights. The indemnification provided by this 7 shall not be deemed exclusive of nor a limitation upon any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of the members or disinterested directors, or otherwise, nor by any rights which are granted pursuant to the Act and the Nonprofit Act.

Section 7.7 Directors and Officers Insurance. The Association shall purchase and maintain insurance on behalf of any person who is or was a director or an officer of the Association against any liability asserted against him or her and incurred by such individual in any such capacity or arising out of his or her status as such, whether or not the Association would have the power to indemnify such individual against such liability under provisions of this Article 7.

ARTICLE 8 - RECORDS

Section 8.1 Records and Audits. The Association shall maintain financial records as required by the Act. The cost of any audit or review shall be a Common Expense unless otherwise provided in the Declaration. At the discretion of the Board or upon request pursuant to subparagraph 8.1.1 or 8.2.2, the Association's financials shall be subject to an audit, using generally accepted auditing standards, or a review, using statements on standards for accounting and review services, by an independent and qualified persons elected by the Board pursuant to the Act. An audit shall be required when both of the following conditions are met:

8.1.1 The Association has annual revenues or expenditures of at least two hundred fifty thousand dollars; and

8.1.2 An audit is requested by the owners of at least one-third of the Units represented by the association.

Section 8.2 Examination. All records maintained by the Association or the Manager shall be available for examination and copying by any Unit Owner or by any of their duly authorized attorneys, at the expense of the person examining the records, during normal business hours and after reasonable notice. The Executive Board may impose restrictions on the commercial or any other use of any list of Unit Owners obtained pursuant to this Article 8 that is not directly related to Association business.

Section 8.3 Records. The Association shall keep the following records:

8.3.1 Detailed records of receipts and expenditures affecting the operation and administration of the Association;

8.3.2 Records of claims for construction defects and amounts received pursuant to settlement of those claims;

8.3.3 Minutes of all meetings of the Unit Owners and Executive Board, a record of all actions taken by the Unit Owners or Executive Board without a meeting, and a record of all actions taken by any committee of the Executive Board;

8.3.4 The names of Unit Owners in a form that permits preparation of a list of the names of all Unit Owners and the physical mailing addresses at which the Association communicates with them, showing the number of votes each Unit Owner is entitled to vote;

8.3.5 The current Governing Documents;

8.3.6 Financial statements as described in C.R.S. section 7-136-106, C.R.S., for the past three (3) years and tax returns of the Association for the past seven years, to the extent available;

8.3.7 A list of the names, electronic mail addresses, and physical mailing addresses of its current Executive Board members and officers;

8.3.8 Its most recent periodic report delivered to the secretary of state, if any; Financial records sufficiently detailed to enable the Association to comply with C.R.S. section 38-33.3-316(8) concerning statements of unpaid assessments;

8.3.9 The Association's most recent reserve study, if any;

8.3.10 Current written contracts to which the Association is a party and contracts for work performed for the Association within the immediately preceding two years;

8.3.11 Records of Executive Board or committee actions to approve or deny any requests for design or architectural approval from Unit Owners;

8.3.12 Ballots, proxies, and other records related to voting by Unit Owners for one year after the election, action, or vote to which they relate;

8.3.13 All written communications within the past three years to all Unit Owners generally as Unit Owners;

8.3.14 The most recent disclosure as required by C.R.S. Section 38-33.3-209.4; and

8.3.15 Such other records the Executive Board shall determine from time to time are necessary or desirable.

ARTICLE 9 - MISCELLANEOUS

Section 9.1 Notices. All notices to the Association or the Executive Board shall be delivered to the office of the Manager, or, if there is no Manager, to the office of the Association, or to such other address as the Executive Board may designate by written notice to all Unit Owners. Except as otherwise provided, all notices to any Unit Owner shall be sent to the Unit Owner's address as it appears in the records of the Association. All notices shall be deemed to have been given when deposited into the United States mail, first class postage prepaid, except notices of changes of address, which shall be deemed to have been given when received.

Section 9.2 Fiscal Year. The Board shall establish the fiscal year of the Association.

Section 9.3 Waiver. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason or any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 9.4 Office. The principal office of the Association shall be within the Project or at such other place as the Board may from time to time designate.

Section 9.5 Reserves. As a part of the adoption of the regular budget the Executive Board shall include an amount which, in its reasonable business judgment, will establish and maintain an adequate reserve fund for the replacement of improvements to the Common Elements based upon the age, remaining life and the quantity and replacement cost of improvements to the Common Elements.

Section 9.6 Committees. The Executive Board may appoint such committees as deemed appropriate which, to the extent provided for in the resolution appointing the committee and allowed by law, shall have the powers of the Executive Board in the management and affairs and business of the Association.

ARTICLE 10 - AMENDMENT TO BYLAWS

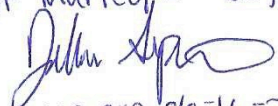
Section 10.1 Vote. Except in circumstances where the Nonprofit Act or the Act require approval of the Unit Owners, the Bylaws may be amended only by vote of a majority of the directors, following notice to all Unit Owners, at any meeting duly called for such purpose.

CERTIFICATION

These First Amended and Restated Bylaws of The Plunge Condominium Owners Association, Inc. were approved by Members holding at least 67% of the votes in the Association pursuant to Article V of the By-laws attached to the Original Declaration.

The Plunge Condominium Owners Association, Inc.

By: 
Michael Barron, President

State of Arizona
County of Maricopa July 9, 2024
Notary 
Commission exp 06-16-2027



JILLIAN STEPHENS
Notary Public - Arizona
Maricopa County
Commission # 203413212
My Comm. Expires 06-16-2027