

13048894
08/09/2019 03:32 PM \$40.00
Book - 10814 Pg - 6330-6417
RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
LIBERTY SKY ASSOCIATES
6440 S WASATCH BLVD #100
SLC UT 84121
BY: CBP, DEPUTY - WI 88 P.

DECLARATION OF CONDOMINIUMS

BLOCK 71 CONDOMINIUMS

TABLE OF CONTENTS

	<u>Page</u>
<u>RECITALS</u>	1
<u>DECLARATION</u>	1
<u>ARTICLE I DEFINITIONS</u>	2
<u>1.01 Basic Definitions</u>	2
<u>1.02 Gender and Number</u>	10
<u>ARTICLE II SUBMISSION AND CONSTRUCTION OF PROJECT</u>	11
<u>2.01 Submission</u>	11
<u>2.02 Covenants Running with the Land</u>	12
<u>2.03 Statement of Intention</u>	12
<u>2.04 Appointment and Conveyance to Trustee</u>	12
<u>ARTICLE III BUILDINGS, UNITS, AND COMMON ELEMENTS</u>	12
<u>3.01 The Buildings</u>	12
<u>3.02 Units</u>	13
<u>3.03 Interests in General Common Elements</u>	15
<u>3.04 Limited Common Elements</u>	16
<u>3.05 Separate Taxation of Condominium Units</u>	16
<u>3.06 Description of Condominium Units</u>	17
<u>3.07 Interpretation</u>	17
<u>3.08 Reservation of Right to Construct</u>	17
<u>ARTICLE IV THE ASSOCIATION</u>	18
<u>4.01 Formation of the Association</u>	18
<u>4.02 Purposes and Powers</u>	18
<u>4.03 Association Documents</u>	20
<u>4.04 Books and Records</u>	20
<u>ARTICLE V VOTING</u>	20
<u>5.01 Voting</u>	20
<u>ARTICLE VI MANAGEMENT COMMITTEE</u>	22
<u>6.01 Number and Election of Directors</u>	22
<u>6.02 Powers of the Management Committee</u>	22
<u>6.03 [Intentionally Deleted]</u>	22
<u>6.04 Removal of Directors</u>	23
<u>6.05 Replacement of Directors</u>	23
<u>6.06 Management Committee Liability</u>	23
<u>ARTICLE VII ASSESSMENTS, COMMON EXPENSES, BUDGETS AND LIENS</u>	23
<u>7.01 Obligations for Assessments</u>	23
<u>7.02 Shares of Common Expenses</u>	24
<u>7.03 Budgets</u>	25
<u>7.04 General Assessments</u>	26
<u>7.05 Special Assessments</u>	27
<u>7.06 Default Assessments</u>	27
<u>7.07 Assignment of Assessments</u>	28
<u>7.08 Assessment Lien</u>	28

7.09	<u>Waiver of Homestead Exemptions</u>	29
7.10	<u>Estoppel Certificates: Notices to Mortgagees</u>	30
7.11	<u>Reserve Fund</u>	30
ARTICLE VIII UTILITY AND OTHER SERVICES		31
8.01	<u>Water, Sewer, Natural Gas, Electric and Trash Removal Services</u>	31
8.02	<u>Cable Television</u>	31
8.03	<u>Telephone</u>	32
8.04	<u>Other Utilities</u>	32
ARTICLE IX MAINTENANCE OF COMMON ELEMENTS AND UNITS		32
9.01	<u>Maintenance of General Common Elements</u>	32
9.02	<u>Maintenance of Units and Limited Common Elements</u>	33
9.03	<u>Mechanic's Liens and Indemnification</u>	34
ARTICLE X COVENANTS, CONDITIONS AND RESTRICTIONS		35
10.01	<u>Applicability of Covenants, Conditions and Restrictions</u>	35
10.02	<u>Association Documents</u>	35
10.03	<u>Notice of Conveyance, Assignment or Encumbrance</u>	35
10.04	<u>Use of Common Elements</u>	35
10.05	<u>Alterations</u>	35
10.06	<u>Nuisances, Hazardous Activities and Unsightliness</u>	36
10.07	<u>Signs</u>	37
10.08	<u>Compliance with Laws</u>	37
10.09	<u>Compliance with Insurance</u>	37
10.10	<u>Subdivision, Rezoning and Timesharing</u>	37
10.11	<u>Vehicles and Parking</u>	38
10.12	<u>Deliveries, Trash Removal and Other Services</u>	38
10.13	<u>Exterior Storage</u>	39
10.14	<u>Animals</u>	39
10.15	<u>Limitations on Balconies, Decks and Patios</u>	39
10.16	<u>Disclosures Regarding Rentals</u>	39
10.17	<u>Units</u>	40
10.18	<u>Declarant's Exemption</u>	41
10.19	<u>Parking Units</u>	42
10.20	<u>Residential Unit</u>	43
ARTICLE XI EASEMENTS AND RESERVATIONS		45
11.01	<u>Declarant's Easements Over Common Elements</u>	45
11.02	<u>Utility Easement</u>	45
11.03	<u>Association's Easement</u>	46
11.04	<u>Easements to Residential Owners</u>	46
11.05	<u>Easements to Parking Owners</u>	47
11.06	<u>Entry in Aid of Other Rights</u>	47
11.07	<u>Easements for Encroachments</u>	48
11.08	<u>Emergency Access Easement</u>	48
ARTICLE XII INSURANCE		49
12.01	<u>General Liability Insurance</u>	49
12.02	<u>Property Insurance</u>	49
12.03	<u>Fidelity Insurance Requirements</u>	50

<u>12.04</u>	<u>Additional Provisions to be Contained in Insurance Policies</u>	50
<u>12.05</u>	<u>Trustee</u>	51
<u>12.06</u>	<u>Owner Maintained Insurance</u>	51
<u>12.07</u>	<u>Management Committee's Authority to Revise Insurance Coverage</u>	52
<u>12.08</u>	<u>Periodic Insurance Review</u>	53
ARTICLE XIII	CASUALTY	53
<u>13.01</u>	<u>Total or Partial Destruction of the Condominium Project</u>	53
<u>13.02</u>	<u>Excess Insurance Proceeds</u>	54
<u>13.03</u>	<u>Casualty to a Unit</u>	54
<u>13.04</u>	<u>Casualty to Building</u>	55
ARTICLE XIV	CONDEMNATION.....	57
<u>14.01</u>	<u>Condemnation of All Units</u>	57
<u>14.02</u>	<u>Condemnation of Fewer Than All Units</u>	57
<u>14.03</u>	<u>Condemnation of Common Elements</u>	57
ARTICLE XV	RESIDENTIAL CONSTRUCTION RIGHTS.....	58
<u>15.01</u>	<u>Improvements</u>	58
<u>15.02</u>	<u>[Intentionally Deleted]</u>	58
<u>15.03</u>	<u>Promotional Material</u>	58
<u>15.04</u>	<u>Exercising Residential Construction Rights</u>	59
<u>15.05</u>	<u>Interference with Residential Construction Rights</u>	59
<u>15.06</u>	<u>Residential Construction Rights Transferable</u>	59
ARTICLE XVI	MORTGAGEE PROTECTIONS	60
<u>16.01</u>	<u>Benefit of Mortgagees</u>	60
<u>16.02</u>	<u>Notice of Actions</u>	60
<u>16.03</u>	<u>Consent Required</u>	60
<u>16.04</u>	<u>Notice of Objection</u>	61
<u>16.05</u>	<u>Priority Mortgagee's Rights</u>	62
<u>16.06</u>	<u>Limitations on Priority Mortgagee's Rights</u>	62
<u>16.07</u>	<u>Liability of Priority Mortgagees</u>	62
ARTICLE XVII	ENFORCEMENT AND REMEDIES	63
<u>17.01</u>	<u>Enforcement</u>	63
<u>17.02</u>	<u>Attorneys' Fees</u>	64
<u>17.03</u>	<u>Interest</u>	64
<u>17.04</u>	<u>Right to Notice and Hearing</u>	64
<u>17.05</u>	<u>Non-Waiver</u>	65
<u>17.06</u>	<u>Waiver of Jury</u>	65
ARTICLE XVIII	TERM AND AMENDMENTS.....	66
<u>18.01</u>	<u>Term</u>	66
<u>18.02</u>	<u>Termination</u>	66
<u>18.03</u>	<u>Amendments</u>	66
ARTICLE XIX	MISCELLANEOUS	67
<u>19.01</u>	<u>Interpretation of the Declaration</u>	67
<u>19.02</u>	<u>Severability</u>	67
<u>19.03</u>	<u>Disclaimer of Representations</u>	67
<u>19.04</u>	<u>Reference to Declaration and Deeds</u>	67
<u>19.05</u>	<u>Successors and Assigns of Declarant</u>	67

19.06 Captions and Titles 68
19.07 Exhibits 68
19.08 Governing Law 68
19.09 Notices 68
19.10 Service of Process 68
EXHIBIT Legal Description of the Land 72
EXHIBIT Bylaws 73
EXHIBIT Par Value of Units 1

WHEN RECORDED, PLEASE MAIL TO:

Dennis K. Poole
Poole & Associates, L.C.
4543 South 700 East, Suite 200
Salt Lake City, Utah 84107

space above for recorder's use

**DECLARATION OF CONDOMINIUMS OF
BLOCK 71 CONDOMINIUMS**

THIS DECLARATION OF CONDOMINIUMS (this "Declaration") is made as of August 7, 2019, by **BOYER 151, L.C.**, a Utah limited liability company ("Boyer 151"), and **BOYER 102, L.C.**, a Utah limited liability company ("Boyer 102") (collectively, the "Declarant").

RECITALS

A. Declarant desires to create a condominium project on the land located in Salt Lake City, Salt Lake County, State of Utah, that is more particularly described on Exhibit "A" hereto, pursuant to the Utah Condominium Ownership Act, Utah Code Sections 57-8-1 through 57-8-57, as the same may be amended from time to time. The condominium project is known as the "Block 71 Condominiums."

B. Declarant deems it necessary and desirable to subject such property, and all improvements now or hereafter constructed on such property, to the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration.

DECLARATION

In consideration of the foregoing, Declarant hereby declares as follows:

ARTICLE I
DEFINITIONS

1.01 Basic Definitions.

As used in this Declaration, the following terms have the meanings given to them in this Section 1.01.

- (a) "Access Agreement" shall mean that certain Access Agreement by and between Boyer 151, L.C., and Boyer 102, L.C., dated August 7, 2019, and Recorded in the Salt Lake County Records.
- (b) "Act" means the Utah Condominium Ownership Act, Utah Code Annotated §§57-8-1 through 57-8-58, as the same may be amended from time to time.
- (c) "Apartment" or "Apartments", if more than one, shall have the meaning set forth in Section 3.02 (d)(iii).
- (d) "Articles" means the articles of incorporation of the Association, as the same may be amended from time to time.
- (e) "Assessment" means a General Assessment, a Special Assessment or a Default Assessment levied and assessed pursuant to Article VII below.
- (f) "Assessment Lien" has the meaning given to that term in Section 7.08 below.
- (g) "Association" means the association of Owners known as Block 71 Condominiums Association, Inc., a Utah nonprofit corporation, and its successors and assigns.
- (h) "Association Documents" means this Declaration, the Articles, the Bylaws, the Plat, and the Rules and Regulations, as the same may be amended from time to time.
- (i) "Authorized User" means the members, managers, employees, agents, independent contractors, leasees, customers, or invitees of the Owner of a Unit.
- (j) "Building" or "Buildings", as the context requires, means (i) the Tower Structure within the Residential Unit, and/or Parking Garage 1, Parking Garage 2, and their respective related Common Elements, and does not mean a building containing Units as defined in the Act.
- (k) "Bylaws" means the bylaws of the Association, attached hereto and forming a part hereof as Exhibit "B", as the same may be amended from time to time.

(l) "City" means Salt Lake City, a body corporate and politic of the State of Utah.

(m) "Commercial Parking Unit" means a separately existing and specifically defined air space within which Parking Garage 1 is located and which the Owner of the Commercial Parking Unit shall maintain, operate and replace Parking Garage 1. The Commercial Parking Unit shall consist of the airspace above and the subsurface below the Land and all area and Improvements above and below the surface of the Land and within the vertical boundaries defined by the Unit boundary lines shown on the Plat, extended upward to the heavens and downward to the center of the earth. The Commercial Parking Unit shall include all improvements located within the boundaries of the Commercial Parking Unit, including, without limitation, the footings and foundations, the columns, girders, beams, supports, perimeter and supporting walls, utility systems, mechanical systems, sprinkler systems, exhaust, heating and ventilation systems, storage areas, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, chimneys, drainage facilities, patios, balconies, decks, porches, courtyards, stoops, exits and entrances, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for the exclusive use of the Commercial Parking Unit. The Commercial Parking Unit is identified as the "Commercial Parking Unit" on the Plat and is designated as such on Exhibit "C" attached hereto.

(n) "Common Elements" means the General Common Elements and the Limited Common Elements.

(o) "Common Expenses" means:

(i) any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Elements (except for such Common Elements as are maintained and repaired by the Association, but the cost of which is allocated to some but not all of the Owners pursuant to the terms of this Declaration); (B) providing facilities, services and other benefits to Owners; (c) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby including, but not limited to, the Rules and Regulations; (D) levying, collecting and enforcing the Assessments, charges and liens imposed pursuant hereto; (E) regulating and managing the Condominium Project; and (F) operating the Association;

(ii) costs, expenses and liability agreed upon as Common Expenses by the Association or declared to be Common Expenses by this Declaration, the Act or the Association;

(iii) all sums lawfully assessed against the Owners; and

- (iv) reserves for any such costs, expenses and liability.
- (p) "Condominium Project" means the real estate condominium project created on the Land by this Declaration, consisting of the Units and the Common Elements, known as Block 71 Condominiums.
- (q) "Condominium Unit" means a Unit, including the Residential Unit, the Commercial Parking Unit, and the Residential Parking Unit, together with:
- (i) the Interest in the Common Elements appurtenant to that Unit;
 - (ii) the right to the exclusive or nonexclusive use of the General Common Elements and Limited Common Elements appurtenant to that Unit, if any; and
 - (iii) the membership in the Association appurtenant to that Unit.
- (r) "Declarant" means collectively BOYER 151, L.C., a Utah limited liability company, and BOYER 102, L.C., a Utah limited liability company, and their respective successors and assigns.
- (s) "Declaration" means this Declaration of Condominium for the Block 71 Condominiums, as the same may be amended from time to time.
- (t) "Default Assessment" has the meaning given to that term in Section 7.06 below.
- (u) "Director" means a duly elected or appointed member of the Management Committee.
- (v) "First Mortgage" means any first priority Mortgage which is not subordinate to any other monetary lien or encumbrance, except liens for taxes or other liens which are given priority by statute.
- (w) "First Mortgagee" means a Mortgagee under a First Mortgage. Transamerica Life Insurance Company and Allianz Life Insurance Company of North America, as co-lenders, shall be a "First Mortgagee" under the terms of this Declaration for so long as they hold a Mortgage (designated as a Deed of Trust, Security Agreement and Fixture Filing or its equivalent), granted for the benefit of such Mortgagees as a lien against the Residential Unit and the Residential Parking Unit and the same remains of Record in the Salt Lake County Records and is not released or reconveyed. KeyBank National Association shall be a "First Mortgagee" under the terms of this Declaration for so long as it holds a Mortgage (designated as a Deed of Trust, Security Agreement and Fixture Filing), granted for the benefit of such Mortgagee as a lien against the

Commercial Parking Unit and the same remains of Record in the Salt Lake County Records and is not released or reconveyed.

(x) "General Assessment" has the meaning given to that term in Section 7.04 below.

(y) "General Common Elements" means (except, particularly, for any of the following contained in a Unit) all of the areas of the Condominium Project, other than the Units and the Limited Common Elements. Without limiting the generality of the preceding sentence, the General Common Elements include, without limitation:

(i) the Land;

(ii) all Improvements, including, without limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, utility systems and rooms, mechanical systems and rooms, sprinkler systems, exhaust, heating and ventilation systems, storage areas, garbage facilities, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, drainage facilities, patios, exits and entrances, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use, necessary or convenient to the existence, maintenance and safety of the Condominium Project, or normally in use by two or more Units, except for those Improvements that are designated by the Act, by this Declaration or by the Plat as Units or Limited Common Elements; and

(iii) any parcels of real property and improvements and fixtures located thereon (A) that are owned by a Person other than the Association, but in which the Association has rights of use or possession pursuant to this Declaration or a lease, license, easement or other agreement, and (B) that are used or possessed by the Association for the benefit of all Owners.

(z) "Guest" means any family member, employee, agent, independent contractor, lessee, customer or invitee of an Owner.

(aa) "Improvement[s]" means each Building, together with any other building, structure or other improvement (including, without limitation, all fixtures and improvements contained therein) located on the Land and within or upon which a Unit and/or Common Elements are or will be located.

(bb) "Interest in General Common Elements" means the undivided interest in the General Common Elements appurtenant to each Unit, determined in accordance with the terms and conditions of Section 3.03 below.

(cc) "Land" means the real property which Article II of this Declaration submits to the terms of the Act.

(dd) "Limited Common Elements" means the Limited Common Elements designated by this Declaration or the Plat for the exclusive use of one or more Units, but fewer than all of the Units. Without limiting the generality of the foregoing, "Limited Common Elements" include, without limitation,

(i) any shutters, awnings, window boxes, windows, doors, doorsteps, porches, balconies, patios, and other apparatus intended to serve a single Unit but located outside the boundaries of such Unit;

(ii) all installations for and all equipment connected with furnishing fewer than all Units with utility service, including, but not limited to, utility systems, mechanical systems and exhaust and ventilation systems;

(iii) patios, decks, porches, elevators, waiting areas, storage spaces, garbage facilities, foyers, entrances, exits, hallways, stairways, walkways, rooms and offices, and other areas and improvements that are designed to serve fewer than all of the Units including without limitation all structural and mechanical ties between Parking Garage 1 and Parking Garage 2 which allow direct unobstructed access from Parking Garage 1 to Parking Garage 2; and

(iv) any parcels of real property and Improvements and fixtures located thereon (A) that are owned by a Person other than the Association, but in which the Association has rights of use or possession pursuant to this Declaration or a lease, license, easement or other agreement, and (B) that are used or possessed by the Association for the benefit of Owners of fewer than all of the Units.

If any chute, flue, duct, wire, conduit, bearing wall, bearing column or other structural component, any portion of a mechanical system or any fixture lies partially within and partially outside of the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, any portion thereof serving more than one Unit of a particular type (i.e., Residential or Parking) shall be, as the case may be, Limited Common Residential or Limited Common Parking, and any portion thereof serving more than one Unit of a different type or any portion of the Common Elements or serving all Units is a part of the General Common Elements. Nonstructural walls located wholly within a Unit are a part of the Units in which they are located. Limited Common Elements identified on the Plat as being of a particular type but not specifically designated to the use of a particular Unit are designated for the use of all Units of that particular type (i.e., an area designated "Limited Common Parking" on the Plat is for the use of all Parking Units), or if there is only one Unit of that particular type, then that Unit only.

(ee) "Limited Common Parking" means the Limited Common Elements designated in this Declaration or the Plat, if any, for the exclusive use of one or more Parking Units but not any Residential Unit.

(ff) "Limited Common Residential" [or "Residential Limited Common Area" on the Plat] means the Limited Common Elements designated in this Declaration or the Plat, if any, for the exclusive use of the Residential Unit, but not any Parking Unit.

(gg) "Management Committee" means the Association's board of directors which shall also be and have all of the rights, duties and authority of the management committee described by the Act, except as otherwise expressly provided herein.

(hh) "Majority," regardless of whether capitalized, means the Owners of more than fifty percent (50%) of the aggregate Interest in General Common Elements.

(ii) "Mortgage" means any mortgage, deed of trust or other document pledging any Condominium Unit or interest therein as security for payment of a debt or obligation.

(jj) "Mortgagee" means any Person named as a mortgagee or beneficiary in any Mortgage and any successor to the interest of any such Person under a Mortgage.

(kk) "Officer" means a duly elected or appointed officer of the Association.

(ll) "Owner" means the Person who is the record holder of legal title to the fee simple interest in any Condominium Unit as reflected in the Salt Lake County Records. If there is more than one record holder of legal title to a Condominium Unit, each record holder shall be an Owner. The term "Owner" includes Declarant to the extent that Declarant is the record holder of legal title to the fee simple interest in a Condominium Unit. With respect to a Subdivided Unit, the term Owner shall mean the association of Sub-Unit owners created by the applicable Sub-Declaration and related documents. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term "Owner" shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such Person has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof; further provided that this provision shall not preclude a mortgagee or a beneficiary or trustee under a deed of trust from exercising rights granted to it by an Owner under the terms of its Priority Mortgage and related security agreement prior to concluding a foreclosure, arrangement or proceeding in lieu thereof including without limitation exercising any voting proxies or assignments of the Owner's rights hereunder.

(mm) "Parking Garage" or "Parking Garages" shall mean, as the context requires, Parking Garage 1 and/or Parking Garage 2 as shown on the Plat.

(nn) "Par Value" means the number of points assigned to each Unit by this Declaration as set forth on Exhibit "C" hereto. The total number of points shall equal one hundred (100).

(oo) "Person" means any natural person, corporation, partnership, limited liability company, association, trustee, governmental or quasi-governmental entity or any other entity capable of owning real property under the laws of the State of Utah.

(pp) "Plat" means the Condominium Plat filed herewith, entitled "Block 71 Condominiums", executed and acknowledged by Declarant, consisting of eight (8) sheets, and prepared by David B. Draper, a duly registered Utah Land Surveyor holding Certificate No. 6861599, as such Condominium Plat may be amended or supplemented in accordance with law and the provisions hereof from time to time.

(qq) "Project" means the Buildings, and all Units, and all Common Elements known as Block 71 Condominiums.

(rr) "Priority Mortgage" means a first or second priority Mortgage which is not subordinate to any other monetary lien or encumbrance, except liens for taxes or other liens which are given priority by statute, provided the same is recorded prior to the date of recording a notice of lien by or on behalf of the Association.

(ss) "Priority Mortgagee" means a Mortgagee under a Priority Mortgage.

(tt) "Reciprocal Easements Agreement" shall mean that Reciprocal Easements Agreement by and between The United States of America, acting by and through the Administrator of General Services (the "Government"), and Boyer QC Holdings, L.C., a Utah limited liability company ("Boyer QC"), Recorded in the Salt Lake County Records June 4, 2014, as Entry No. 11860095, in Book 10235, beginning at Page 7647, as amended by that Amendment to Reciprocal Easement Agreement made and entered into December 6, 2017, by and between the Government and Boyer 151, L.C., a Utah limited liability company and Boyer 102, L.C., a Utah limited liability company, as successor property owners to Boyer QC, Recorded December 12, 2017, as Entry No. 12677766, in Book 10628, beginning at Page 8361, as the same may be further amended from time to time. For purposes of this Declaration the Reciprocal Easements Agreement shall be deemed a General Common Element.

(uu) "Record," "Recording," "Recorded," and "Recorder" each have the meaning stated in Utah Code Annotated, Title 57, Chapter 3, Recording of Documents, as the same may be amended from time to time.

(vv) "Reserve Fund" has the meaning given to that term in Section 7.11 below.

(ww) "Residential Construction Rights" means all of the rights granted to the Owner or Owners of the Residential Unit and the Residential Parking Unit as provided in this Declaration to develop and construct the Tower Structure and Parking Garage 2 within the boundaries of the Residential Unit and the Residential Parking Unit, respectively.

(xx) "Residential Encroachment Easement" means an easement granted to and for the benefit of the Owner of the Residential Unit permitting the encroachment of the Tower Structure into the air space adjacent to the west boundary line of the Residential Parking Unit (adjacent to the Residential Unit) above Parking Garage 2 at Levels 5 through 20 of the Tower Structure, not to exceed ten (10) feet horizontally and east from the west boundary of the Residential Parking Unit, including the right to access the Tower Structure within such area and to construct, operate, maintain, repair and replace those portions of the Tower Structure located therein.

(yy) "Residential Parking Unit" means a separately existing and specifically defined air space within which Parking Garage 2 is to be located and which the Owner of the Residential Parking Unit shall construct, maintain, operate and replace Parking Garage 2. The Residential Parking Unit shall consist of the airspace above and the subsurface below the Land and all area and Improvements above and below the surface of the Land and within the vertical boundaries defined by the Unit boundary lines shown on the Plat, extended upward to the heavens and downward to the center of the earth, subject to the terms of the Residential Encroachment Easement. The Residential Parking Unit shall include all improvements located within the boundaries of the Residential Parking Unit, including, without limitation, the footings and foundations, the columns, girders, beams, supports, perimeter and supporting walls, utility systems, mechanical systems, sprinkler systems, exhaust, heating and ventilation systems, storage areas, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, chimneys, drainage facilities, patios, balconies, decks, porches, courtyards, stoops, exits and entrances, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for the exclusive use of the Residential Parking Unit. The Residential Parking Unit is identified as the "Residential Parking Unit" on the Plat and upon Exhibit "C" attached hereto.

(zz) "Residential Unit" means a separately existing and specifically defined air space within which the Owner of the Residential Unit shall construct, maintain and operate the Tower Structure. The Residential Unit shall consist of the airspace above and the subsurface below the Land and all area and Improvements above and below the surface of the Land and within the vertical boundaries defined by the Unit boundary lines shown on the Plat, extended upward to the heavens and downward to the center of the earth, together with the Residential Encroachment Easement which shall be appurtenant to the Residential Unit. The Residential Unit shall include all improvements located within the Residential Unit, including, without limitation, the footings and foundations, the columns, girders, beams, supports, perimeter and supporting walls, utility systems, mechanical systems, sprinkler systems, exhaust, heating and ventilation systems, storage areas, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, chimneys, drainage facilities, patios, balconies, decks, porches, courtyards, stoops, exits and entrances, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for the exclusive use of the Residential Unit. The Residential Unit is identified as the "Residential Unit" on the Plat and upon Exhibit "C" attached hereto.

(aaa) "Rules and Regulations" means any instrument adopted from time to time by the Association for the regulation and management of the Condominium Project, as the same may be amended from time to time.

(bbb) "Salt Lake County Records" means the Official Records of the Recorder for Salt Lake County, Utah.

(ccc) "Share of Common Expenses" means the share of Common Expenses allocated to each Unit in accordance with the terms and conditions of Section 7.02 below.

(ddd) "Special Assessment" has the meaning given to that term in Section 7.05 below.

(eee) "Sub-Declaration" is defined in paragraph 3.02(d)(iv).

(fff) "Subdivided Unit" means a Condominium Unit subdivided pursuant to the provisions of paragraph 3.02(d)(iv).

(ggg) "Sub-Unit" is defined in paragraph 3.02(d)(iv).

(hhh) "Total Condominium Project Par Value" means the Par Value of all Units in the Condominium Project, as set forth on Exhibit "C" hereto.

(iii) "Tower Structure" means a multi-story structure to be separately constructed within the Residential Unit, which Tower Structure is to be separately constructed, maintained and operated by the Residential Unit Owner.

(jjj) "Transferee" means a Person, other than Declarant or its affiliate who acquires legal title to the fee simple interest in any Condominium Unit.

(kkk) "Trustee" means Dennis K. Poole, attorney at law, whose address is 4543 South 700 East, Suite 200, Salt Lake City, Utah 84107.

(lll) "Unit" means each of the Residential Unit, the Commercial Parking Unit, and the Residential Parking Unit as designated in Exhibit "C" of this Declaration and on the Plat, unless the context clearly indicates otherwise or that a particular Unit is specifically excepted from any such reference.

(mmm) "Unit Number" means the number, letter, or combination thereof which designates a Unit on the attached Exhibit "C" and on the Plat.

1.02 Gender and Number.

Wherever the context of this Declaration so requires:

- (a) words used in the masculine gender shall include the feminine and neuter genders;
- (b) words used in the neuter gender shall include the masculine and feminine genders;
- (c) words used in the singular shall include the plural; and
- (d) words used in the plural shall include the singular.

ARTICLE II
SUBMISSION AND CONSTRUCTION OF PROJECT

2.01 Submission.

There is hereby submitted to the provisions of the Act, as the Land associated with the Block 71 Condominiums, the following-described parcel of real property situated in Salt Lake County, State of Utah:

See Exhibit "A" attached hereto and incorporated herein by this reference.

TOGETHER WITH: (i) all buildings, if any, improvements, and structures situated on or comprising a part of the above-described parcel of real property, whether now existing or hereafter constructed; (ii) all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying said parcel; and (iii) all articles of personal property intended for use in connection with said parcel.

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Land or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; all easements and rights-of-way of record (including but not limited to the Reciprocal Easements Agreement and the Access Agreement); any easements, rights-of-way, encroachments, or discrepancies shown on or revealed by the Plat or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described Land at such times as construction of all Improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities.

RESERVING UNTO the Owners of the Residential Unit and the Residential Parking Unit, the Residential Construction Rights as specified in Article XV.

2.02 Covenants Running with the Land.

All covenants, conditions, restrictions, reservations, easements, charges, liens and other provisions of this Declaration are covenants running with the land, or equitable servitudes, as the case may be. The obligations, burdens and benefits created by this Declaration shall bind and inure to the benefit of Declarant, the Owners, the Association, all other parties having any, right, title or interest in the Land or any portion thereof and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives.

2.03 Statement of Intention.

The condominium project to be created on the Land is hereby created pursuant to and shall be governed by the provisions of the Act.

2.04 Appointment and Conveyance to Trustee.

The Trustee is hereby appointed a Trustee as required by the Act and Utah Code Annotated, Section 57-1-21 (1)(a)(i) or (iv). The Declarant hereby conveys and warrants pursuant to Utah Code Annotated, Sections 57-1-20 and 57-8-45 to the Trustee, with power of sale, the Unit(s) and all improvements to the Unit(s) for the purpose of securing payment of assessments under the terms of this Declaration. Nothing herein shall preclude the substitution of the Trustee in accordance with the provisions of Utah Code Annotated, Section 57-1-22, as long as such substituted Trustee satisfies the requirements of the Act.

ARTICLE III
BUILDINGS, UNITS, AND COMMON ELEMENTS

3.01 The Buildings.

(a) The Improvements included in the Condominium Project are now or will be located on the Land. The significant Improvements contained in the Condominium Project will include the following three (3) Buildings: The Tower Structure to be located within the Residential Unit and being up to twenty (20) stories in height; Parking Garage 1 located within the Commercial Parking Unit, as now constructed and being six (6) stories in height; and Parking Garage 2 to be located within the Residential Parking Unit and being four (4) stories in height, and the Common Elements. The location and configuration of the Improvements referred to in the foregoing sentence are depicted on the Plat. The Condominium Project also contains other improvements of a less significant nature which are not depicted on the Plat, such as outdoor lighting, area landscaping, driveways, additional parking, and concrete sidewalks and walkways. The

Plat shows the Unit Number and the number of stories which are contained, or are to be contained, in each of the Buildings included in the Condominium Project.

(b) The principal materials to be used in the construction of the Tower Structure are as follows: all load bearing and non-load bearing walls are steel frame or concrete; the bottom floor is to be comprised of reinforced concrete; the above-grade floors are of concrete; the roof is steel framed and covered in part with a rubber membrane and metal; interior walls are primarily gypsum board with some exposed concrete; and exterior walls are surfaced with glass and poured in place concrete. The principal material used in the construction of the parking Garage is reinforced poured in place concrete.

3.02 Units.

(a) Declarant hereby creates: three (3) Units within the Condominium Project. The Plat shows the Unit Number of each Unit, its location, dimensions, and the General Common Elements and Limited Common Elements, if any, to which it has access. Each Unit shall be capable of being separately owned, encumbered and conveyed. Each Owner of a Unit shall be entitled to the exclusive ownership and possession of such Owner's Unit, subject to the terms and conditions of this Declaration. The Unit designation, par value, interest in General Common Elements and Owner of such Unit as a result of filing this Declaration is set forth in Exhibit "C" attached hereto.

(b) No Owner may alter its Unit, subdivide its Unit or relocate the boundaries between a Unit and an adjacent Unit, except as expressly provided by this Declaration and the Act.

(c) Except as expressly provided to the contrary in this Declaration, including but not limited to Section 3.03 herein below, the Interest in General Common Elements and the right to use Limited Common Elements appurtenant to the Unit may not be partitioned or separated from the Unit or any part thereof; provided that this subparagraph shall not prejudice or otherwise affect the rights set forth in Article XIII and Article XIV of this Declaration in the event of casualty or condemnation.

(d) Notwithstanding anything to the contrary contained in paragraphs 3.02(b) and 3.02(c) above or elsewhere in this Declaration:

(i) nothing shall prevent or limit the Residential Unit or Residential Parking Unit Owners' exercise or enjoyment of any Residential Construction Rights;

(ii) an Owner may grant its rights to use any General Common Element or any Limited Common Element appurtenant to the Owner's Unit to the Owner's Guests or to the owners of Sub-Units pursuant to a Sub-Declaration duly recorded in accordance with the provisions of this Declaration; and

(iii) the Owner of the Residential Unit may construct partitions within its Unit creating separate dwelling units (herein collectively defined as "Apartments" or singularly an "Apartment") and lease each of such Apartments located within its Unit to one or more lessees; provided, however, the Owner of a Unit may not assign all or any portion of the voting rights allocated to its Unit to any lessee to whom the Owner leases all or a portion of its Unit.

(iv) Not earlier than twenty (20) years from receipt of a certificate of occupancy for the Tower and all Apartments located therein issued by the City, and subject to the consent of any First Mortgagee under a First Mortgage on the Residential Unit, the Owner or Owners of the Residential Unit may subject all, but not part, of such Residential Unit to a separate condominium declaration (a "Sub-Declaration") applicable to such Residential Unit only for the purposes of subdividing the Residential Unit into common elements and various smaller units capable of separate ownership (each a "Sub-Unit") subject to the following instructions and limitations:

A. The submission of such Residential Unit to a Sub-Declaration shall comply with all applicable laws, ordinances, codes, rules and regulations of all governmental or quasi-governmental bodies with jurisdiction, and each Sub-Declaration and the rights of Sub-Unit owners and any association of such owners thereunder shall be expressly subject to and subordinate to this Declaration; and

B. The Sub-Declaration for such subdivided Residential Unit shall provide that the owners of the Sub-Units created thereby shall have no vote in the Association or any other right to participate in the government and affairs of the Association; provided, however, that the association of said Sub-Unit owners may vote the Interest in Common Elements assigned to the subdivided Residential Unit from and after the date the Owner of the Subdivided Unit has prepared, executed and recorded the required Sub-Declaration and record of survey map as required by the Act in order to effect the subdivision of the Residential Unit. Except as the same may be limited by the Sub-Declaration for the Residential Unit, each owner of a Sub-Unit shall have the right to use each General Common Element and Limited Common Elements designated for the use of the Subdivided Unit to the same extent as an owner of the Subdivided Unit prior to such subdivision; provided, however, that any rights pertaining to the installation of utilities or similar facilities and accompanying easements granted hereby shall, to the extent that they impact the Common Elements or any other Unit, be exercised by the association of Sub-Unit owners only, and may not be exercised by any Sub-Unit owner individually.

C. Such power and authority shall be exercised on one occasion only, such that upon the subdivision of the Residential Unit, the Subdivided Unit shall not be further subdivided except pursuant to the terms of the Sub-Declaration accomplishing such subdivision.

Subject to the foregoing, the Owner or Owners of the Residential Unit shall have the sole power and authority to subdivide the Owner's Residential Unit as set forth in this section, subject however to the limitations and provisions contained in this section and in the Act and subject to the consent of any First Mortgagee under a First Mortgage encumbering the Residential Unit. Such power and authority to so subdivide the Residential Unit shall be an appurtenance of the Residential Unit, may not be separated from the ownership of the Residential Unit, and shall be automatically transferred to and held by any successor in title to the Residential Unit, subject to the limitations and provisions contained in this section and the Act. Except as expressly provided in this section, the Residential Unit may not be further subdivided by any Owner.

3.03 Interests in General Common Elements.

Notwithstanding references in this Declaration to General Common Elements and provisions governing the same, it is anticipated that the Project will contain a minimal amount of General Common Elements (including the Reciprocal Easements Agreement), it being the intent of the Declarant that each Unit within the Project will be independently owned, operated and maintained by the Owner of each such Unit. Nevertheless, for General Common Elements now or hereafter existing, the following provisions shall govern the same.

(a) The Interests in General Common Elements shall be allocated among the Units as set forth in this Section 3.03. The Interest in General Common Elements appurtenant to a Unit shall be expressed as a percentage and calculated in accordance with the following formula:

$$\begin{array}{lcl} \text{Interest in General} & = & \left(\frac{\text{Par Value of the Unit}}{\text{Total Condominium Project Par Value}} \right) \times 100 \\ \text{Common Elements} & = & \end{array}$$

In determining the Interests in General Common Elements, Declarant may have made minor adjustments in some or all of the Interests in General Common Elements which result from a strict application of the formula described in the immediately foregoing sentence for the purpose, but only for the purpose, of assuring that the total Interests in General Common Elements equals 100.00%. The Interests in General Common Elements which are appurtenant to the Units and which are set forth on Exhibit "C" have been computed in the aforesaid manner.

(b) The Interest in General Common Elements appurtenant to each of the Units of the Condominium Project are set forth on Exhibit "C" attached hereto and made a part hereof.

(c) The Interest in General Common Elements shall have a permanent character and shall not be altered without the express consent of all Owners expressed in an amendment to this Declaration adopted as provided in Section 18.03 hereof. If the area of one or more Units is increased or decreased, the Interest in General Common Elements for all Units within the Condominium Project after such increase, decrease, or removal shall be recalculated in accordance with the formula set forth in paragraph 3.03(a) above. In making any such recalculation, Units that are substantially identical shall be assigned the same or proportionate Par Values. Units with substantially different heights above the ground, or having substantially different views, or have substantially different uses, amenities, or characteristics that might result in differences in market value may be assigned different Par Values. The Par Value assigned to a Unit shall not be considered to reflect or control the sales price or fair market value of any Unit, and no opinion, appraisal, or fair market transaction may affect the Par Value of any Unit, or such Unit's Interest in General Common Elements, voting rights in the Association, liability for Common Expenses, or the right to any common profits, assigned on the basis thereof.

(d) Except as expressly provided to the contrary elsewhere in this Declaration, an Interest in General Common Elements may not be partitioned from the Unit to which it is appurtenant, and any purported conveyance, encumbrance or transfer of an Interest in General Common Elements made without the Unit to which the Interest in General Common Elements is appurtenant shall be void. The immediately foregoing sentence shall not prejudice or otherwise affect the rights set forth in Articles XIII and XIV of this Declaration in the event of casualty or condemnation. There shall not be any unreasonable restriction upon an Owner's or its Guest's right of ingress to and egress from such Owner's Unit.

3.04 Limited Common Elements.

Notwithstanding references in this Declaration to Limited Common Elements and provisions governing the same, it is anticipated that the Project will contain a minimal amount of Limited Common Elements, it being the intent of the Declarant that each Unit within the Project will be independently owned, operated and maintained by the Owner of each such Unit. Nevertheless, should any Limited Common Element now or hereafter be determined to exist, except as expressly provided to the contrary in this Declaration, the allocation of the Limited Common Elements to the Units as shown on the Plat may not be altered without the consent of all Owners whose Units would be affected by such reallocation.

3.05 Separate Taxation of Condominium Units.

Pursuant to the Act, each Condominium Unit constitutes a separate parcel of real estate and will be separately assessed and taxed.

3.06 Description of Condominium Units.

Any deed, lease, mortgage, deed of trust, or other instrument conveying, encumbering or otherwise affecting a Condominium Unit shall describe the interest or estate substantially as follows:

[Residential Unit/Commercial Parking Unit/Residential Parking Unit ____], contained within the Block 71 Condominiums as the same is identified in the Condominium Plat recorded in Salt Lake County, Utah, on _____, 2019 as Entry No. _____ (as said Condominium Plat shall have heretofore been amended or supplemented) and in the Declaration of Condominium for Block 71 Condominiums, recorded in Salt Lake County, Utah on _____, 2019, as Entry No. _____, in Book No. _____ at Page _____ (as said Declaration may have heretofore been amended or supplemented). TOGETHER WITH the undivided ownership interest in said Project's Common Elements that is appurtenant to said Unit as more particularly described in said Declaration.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Condominium Unit. Neither the Interest in General Common Elements, nor the right of exclusive use of the Limited Common Elements, shall be separated from the Unit to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such Interest in the Common Elements and such right of exclusive use shall automatically accompany the transfer of the Unit to which they relate.

3.07 Interpretation.

In interpreting this Declaration, the Plat or any deed or other instrument affecting a Building, or a Unit, the boundaries of the Building or Unit constructed or reconstructed in substantial accordance with the Plat shall be conclusively presumed to be the actual boundaries rather than the description expressed in the Plat, regardless of settling or lateral movement of a Building, and regardless of minor variance between boundaries shown on the Plat and those of a Building or Unit.

3.08 Reservation of Right to Construct.

Owners of the Residential Unit and the Residential Parking Unit, including Boyer 151 and Boyer 102, reserve the right to construct the Tower Structure within the Residential Unit and Parking Garage 2 within the Residential Parking Unit, in accordance with the provisions of Article XV and with plans and specifications approved by the City consistent with the depiction set forth on the Plat .

ARTICLE IV
THE ASSOCIATION

4.01 Formation of the Association.

On or before the date on which Declarant conveys the first Condominium Unit to a Transferee, Declarant shall form the Association.

4.02 Purposes and Powers.

(a) The Association's purposes are:

(i) to manage, operate, insure, construct, improve, repair, replace, alter and maintain the Common Elements;

(ii) to provide certain facilities, services and other benefits to the Owners;

(iii) to administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby;

(iv) to levy, collect and enforce the Assessments, charges and liens imposed pursuant hereto;

(v) to enter into agreements with other Persons, including, without limitation, easements, licenses, leases and other agreements with one or more condominium associations, with or without the vote or consent of the Owners, Mortgagees, insurers or guarantors of Mortgages, or of any other Person, including, but not limited to, those which contemplate the sharing of expenses among the Association and other condominium associations, for facilities and services that serve the Association and other condominium associations;

(vi) to take any action that it deems necessary or appropriate to protect the interests and general welfare of Owners;

(vii) to regulate and manage the Condominium Project;

(viii) to cause the inspection and maintenance of the Common Elements, and any report of any consultant retained as provided herein; and

(ix) to execute and record, on behalf of all Owners, any amendment to this Declaration or the Plat which has been approved by the vote or consent necessary to authorize such amendment.

(b) Unless expressly prohibited by law or any of the Association Documents, the Association may:

(i) take any and all actions that it deems necessary or advisable to fulfill its purposes;

(ii) exercise any powers conferred on it by the Act or any Association Document; and

(iii) exercise all powers that may be exercised in Utah by nonprofit corporations.

(c) Without in any way limiting the generality of paragraph 4.02(b) above, the Association may, but is not obligated to:

(i) to the extent not provided by a public, quasi-public or private utility provider, provide certain facilities and services to the Owners, such as (A) water, sewer, propane, electric, and other utility services, and (B) trash collection facilities and services;

(ii) acquire, sell, lease and grant easements over, under, across and through Common Elements which are reasonably necessary to the ongoing development and operation of the Condominium Project;

(iii) make capital improvements, repairs and replacements to Common Elements; and

(iv) hire and terminate managers and other employees, agents and independent contractors.

(d) In the exercise of its power to adopt Rules and Regulations, the Association shall not adopt any Rule or Regulation that unreasonably interferes with:

(i) the use of each Unit for usual and customary purposes otherwise permitted by law or any of the Association Documents;

(ii) the easements identified in Section 11.04 hereof; or

(iii) snow removal from or maintenance and/or repair of the Tower Structure or the Parking Garages.

Any Owner may state in a writing delivered to the Association its objection to the Rules and Regulations adopted by the Association within forty-five (45) days after the Association's promulgation of the same and delivery to the Owners. Such writing shall state with reasonable particularity such Owner's objection and what modifications to the

Rules and Regulations that, if made, would satisfy such Owner's concerns. If the objection cannot be resolved by the Owner and the Association within thirty (30) days of the Association's receipt of the Owner's objection, the disputed Rules and Regulations, or applicable portions thereof, shall be submitted to a vote of the Owners. Such Rules and Regulations shall be deemed approved upon a fifty-one percent (51%) or greater vote of the votes allocated the Units; provided, however, no Owner shall unreasonably withhold its approving vote of the Rules and Regulations proposed by the Association for approval. Rules and Regulations that are not objected to within the forty-five (45) day period specified above shall be deemed approved by the Owners.

4.03 Association Documents.

(a) This Declaration and the Plat create the Condominium Project and set forth certain covenants, conditions, restrictions, reservations, easements, assessments, charges and liens applicable to the Land. The Articles create the Association. The Bylaws provide for the regulation and management of the Association, and the Rules and Regulations provide for the regulation and management of the Condominium Project.

(b) If there is any conflict or inconsistency between the terms and conditions of this Declaration and the terms and conditions of the Articles, the Bylaws or the Rules and Regulations, the conflict shall be resolved in accordance with Section 57-8-40 (5) of the Act.

4.04 Books and Records.

The Management Committee, or manager, if any, shall keep detailed, accurate records in chronological order, of receipts and expenditures affecting the Common Elements, specifying and itemizing the Common Expenses and any other expenses incurred. Upon request, the Association shall allow Owners and Mortgagees and their respective agents to inspect current copies of the Association Documents and the books, records, budgets and financial statements of the Association during normal business hours and under other reasonable circumstances. The Association may charge a reasonable fee for copying such materials.

ARTICLE V
VOTING

5.01 Voting.

(a) At any meeting of the Association, the Interest in General Common Elements appurtenant to a Unit may be voted by the applicable Owner or its proxy in connection with issues presented to the Owners for vote, subject to the provisions of (f) below.

(b) The votes allocated to the Units of the Condominium Project are equal to one hundred multiplied by the Interests in General Common Elements set forth on Exhibit "C" attached hereto and made a part hereof.

(c) If any Units are added to or withdrawn from the Condominium Project, or if one or more Units is increased or decreased as a result of a condemnation of all or a portion of a Unit as provided in Article XIV, the total number of votes allocated to all Units and the allocation thereof after such addition, withdrawal, increase or decrease shall be adjusted so that such votes at all times remain equal to the Interest in General Common Elements appurtenant to such Unit. With respect to a Subdivided Unit, the votes allocated to such Subdivided Unit in accordance with paragraphs 5.01(a), (b) and (c) above, shall be voted in a block by the association of Sub-Unit Owners created by the applicable Sub-Declaration and related documents. No Sub-Unit Owner shall be deemed an Owner, nor shall any such Owner have the right to participate directly in any matter requiring a vote of the Owners.

(d) Each Unit, including a Subdivided Unit, shall be entitled to the number of votes allocated to it in accordance with paragraphs 5.01(a), (b) and (c) above, regardless of the number of Owners of the Unit. If the Owners of a Unit cannot agree among themselves as to how to cast their votes on a particular matter, they shall lose their right to vote on such matter. If any Owner casts a vote representing a particular Unit, it will thereafter be presumed for all purposes that the Owner was acting with the authority and consent of all other Owners with whom such Owner shares the Unit, unless objection thereto is made by an Owner of that Unit to the Person presiding over the meeting at the time the vote is cast. If more than the number of allocated votes are cast for any particular Unit, none of such votes shall be counted and all of such votes shall be deemed null and void other than to determine whether a quorum exists.

(e) In any case in which the Act or this Declaration requires the vote of a stated percentage of the Owners or approval of an act or transaction, such requirement shall be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners who collectively hold at least the stated percentage of required votes. Such written consents shall be subject to the following conditions:

(i) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner.

(ii) Any change in ownership of a Condominium Unit which occurs after consent has been obtained by the Owner having an interest therein shall not be considered or taken into account for any purpose.

(iii) Unless consent of all Owners having an interest in the same Condominium Unit is secured, the consent of none of such Owners shall be effective.

(f) Notwithstanding any provision contained in this Section 5.01, for any and all matters coming before the Owners for a vote that exclusively affect the Residential Unit or the Residential parking Unit, then such matters shall be decided by a vote of the Owners of the Residential Unit and the Residential Parking Unit, respectively, excluding any votes from the Owners of the Commercial Parking Unit, and for any and all matters coming before the Owners for a vote that exclusively affect the Commercial Parking Unit, then such matters shall be decided by a vote of the Owners of the Commercial Parking Unit, excluding any votes from the Owners of the Residential Parking Unit and the Residential Parking Unit.

ARTICLE VI
MANAGEMENT COMMITTEE

6.01 Number and Election of Directors.

The Management Committee shall consist of three (3) Directors to be appointed as provided in the Bylaws. The initial Directors or any subsequently appointed Directors shall hold office until the election or appointment of his or her successors.

6.02 Powers of the Management Committee.

(a) Except as provided in this Declaration, the Articles and the Bylaws, the Management Committee may act on behalf of the Association in all instances.

(b) The Management Committee may retain Consultants relative to the operation of the Project.

(c) The Management Committee may not act on behalf of the Association to:

(i) amend this Declaration;

(ii) terminate the Association, this Declaration or the Condominium;

(iii) elect Directors to the Management Committee; or

(iv) determine the qualifications, powers and duties, or terms of office, of Directors.

6.03 [Intentionally Deleted.]

6.04 Removal of Directors.

Directors may be removed, with or without cause, by the Owners or their successors, as the case may be, that appointed such Director to serve on the Committee as specified in the Bylaws.

6.05 Replacement of Directors.

In in the event of a vacancy on the Management Committee created by the removal, resignation or death of a Director appointed by the Owners of a Unit as specified in the Bylaws, those same Owners of such Unit shall have the power to appoint a successor Director. Any Director so appointed shall hold office until the Owners of the Unit appointing such Director shall appoint a successor, or such Director resigns or dies.

6.06 Management Committee Liability.

No Director shall be liable to the Owners for any mistake in judgment, for negligence, or on other grounds, except for such Director's own individual and willful misconduct, gross negligence, or bad faith. The Association shall indemnify, defend and hold harmless each Director from and against all liability to third parties arising out of any contract made by the Management Committee on behalf of the Association, unless such contract was made in bad faith or contrary to the provisions of the Act or this Declaration.

ARTICLE VII
ASSESSMENTS, COMMON EXPENSES, BUDGETS AND LIENS

7.01 Obligations for Assessments.

(a) Each Owner, by accepting a deed to a Unit (regardless of whether it shall be expressly stated in such deed), shall be deemed to have covenanted and agreed, to pay to the Association all:

- (i) General Assessments;
- (ii) Special Assessments;
- (iii) Default Assessments; and
- (iv) other charges,

that the Association is required or permitted to levy or impose on such Owner or such Owner's Unit pursuant to this Declaration or any other Association Document.

(b) Notwithstanding the definition of the term "Owner":

(i) a Person who acquires a Condominium Unit in a foreclosure sale shall be personally liable for all Assessments and other charges that the Association is required or permitted to levy or impose on that Unit or on the Owner of that Condominium Unit on or after the date of the foreclosure sale; and

(ii) a Person who acquires a Condominium Unit by deed-in-lieu of foreclosure shall be personally liable for all Assessments and other charges that the Association is required or permitted to levy or impose on that Unit or on the Owner of that Condominium Unit on or after the date on which the Owner of the Condominium Unit executes the deed-in-lieu of foreclosure.

(c) No Owner shall be exempt from liability for any Assessment or other charges by waiving the use or enjoyment of any Common Element or by abandoning a Unit against which such Assessments or other charges are made.

(d) Each Owner shall be liable for all Assessments and other charges levied on such Owner or such Owner's Unit during the period of such Owner's ownership of the Condominium Unit. If there is more than one Owner of a Condominium Unit, each Owner shall be jointly and severally liable with the other Owners of the Condominium Unit for all Assessments and other charges levied on the Unit or any Owner of the Condominium Unit. In a voluntary conveyance, the grantee of a Condominium Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor without prejudice to the grantee's rights to recover from the grantor the amount of the Assessment paid by the grantee.

(e) Each Assessment or other charge, together with interest and penalties thereon and all costs and expenses incurred by the Association to collect such Assessment or other amount, including all fees and disbursements of attorneys, accountants, appraisers, receivers and other professionals engaged by the Association in connection therewith, may be recovered by a suit for a money judgment by the Association without foreclosing or waiving any Assessment Lien securing the same.

7.02 Shares of Common Expenses.

(a) Except as otherwise set forth in this Declaration, the Association's Common Expenses shall be allocated among the Units in accordance with the Interest in General Common Elements appurtenant to such Units (the "Shares of Common Expenses").

(b) Until the Association levies an Assessment, Declarant shall pay all Common Expenses. No assessments shall be levied until the conveyance of one or more Units by the Declarant.

7.03 Budgets.

(a) Prior to the first levy of a General Assessment, and thereafter on or before October 1 of each calendar year (the "Budget Deadline"), the Management Committee shall adopt a proposed annual budget for the Association for the following calendar year that sets forth:

(i) the Management Committee's estimates of Common Expenses for the next calendar year, taking into account any default or surplus realized for the current calendar year and any amounts as may be necessary to fund the reserve provided for in Section 7.11 of this Declaration;

(ii) the amount of funds for such Common Expenses that the Management Committee proposes to raise through General Assessments; and

(iii) the amount of funds for such Common Expenses that the Management Committee proposes to raise through Special Assessments.

(b) Within thirty (30) days after adopting the first proposed annual budget, the Management Committee shall deliver a summary of the proposed annual budget to the Owners and set a date for a meeting of the Owners to consider ratification of the proposed annual budget. The date of such meeting shall not be less than fourteen (14) days nor more than sixty (60) days after the delivery of the summary of the proposed annual budget to the Owners. Unless the proposed budget is ratified at the meeting of the Owners by a vote of at least fifty-one percent (51%) of the votes allocated to all Units, the proposed budget shall be deemed rejected and the Management Committee shall revise such proposed annual budget until it is ratified by the Owners as provided herein. Once the first annual budget has been approved by the Owners as provided herein above, the Management Committee is authorized, by a Majority of its Members, to adopt and implement subsequent annual budgets without the approval of Owners provided that any such annual budget does not exceed the previous year's actual Association expenditures (determined by taking the actual expenditures of the Association for the twelve (12) months period prior to the then Budget Deadline beginning with the period of September 1 and ending on August 31) by fifteen percent (15%). If the proposed budget does exceed the prior year's actual Association expenditures by fifteen percent (15%), the Management Committee shall submit the proposed annual budget to the Owners and shall set a meeting of the Owners to consider and approve or reject the same all in accordance with the procedures required for the original annual budget as provided herein above. If the proposed annual budget is not approved by Owners holding fifty-one percent (51%) of the votes allocated to all Units, the annual budget last adopted shall be deemed renewed for the next calendar year and shall remain in full force and effect until such time as the Management Committee adopts a budget as permitted herein or the Owners ratify a subsequent annual budget proposed by the Management Committee.

(c) If the Management Committee deems it necessary or advisable to amend an annual budget that is required to be ratified because of such proposed amendment or has previously been ratified by the Owners under paragraph 7.03(b) above, the Management Committee may adopt a proposed amendment to the annual budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall not be less than fourteen (14) days nor more than sixty (60) days after the delivery of the summary of the proposed amendment. Unless the proposed amendment is ratified at the meeting of the Owners by a vote of at least fifty-one percent (51%) of the votes allocated to all Units, the proposed amendment shall be deemed rejected.

7.04 General Assessments.

(a) After the Management Committee has adopted an annual budget pursuant to paragraph 7.03(b) above, the Association shall levy an assessment for Common Expenses (a "General Assessment") on each Unit. The amount of the General Assessment levied against a Unit shall equal the sum of (i) and (ii) below:

(i) for costs and expenses which are attributable to all Units (which specifically is intended to include the Common Expenses defined in Section 1.01 (m) (iii)) on the basis of their Interest in General Common Elements, the amount for each such item set forth in the annual budget adopted by the Management Committee, multiplied by that Unit's Interest in General Common Elements; and

(ii) for costs and expenses which are attributable to Owners of Units but not all of them (i.e., maintenance of certain Units undertaken by the Association, and costs attributable to one or more classifications of Limited Common Elements), the amount for each such item set forth in the annual budget adopted by the Management Committee, multiplied by a fraction where the numerator is each participating Unit's Interest in General Common Elements and the denominator is the sum of all of the participating Units Interests in General Common Elements who are entitled to use the particular class of Limited Common Elements.

(b) The Owners shall pay the General Assessments levied against their respective Units in such periodic installments as may be required by the Association.

(c) If the Management Committee adopts an amendment to the General Assessment portion of an annual budget pursuant to paragraph 7.03(c) above, the amount of the General Assessment levied against each Unit shall be adjusted accordingly (as provided in Section 7.04 (a) above), as shall the amount of each Owner's periodic installments.

(d) If the Management Committee fails to adopt an annual budget for any calendar year prior to January 1 of that calendar year, the Owners shall continue to pay

periodic installments of the General Assessment to the Association at the rate payable during the prior calendar year until such time as the Management Committee adopts a new annual budget for the then current calendar year. Once the Management Committee adopts a new annual budget, the Association shall levy against each Unit the General Assessment for the then current calendar year and each Owner's periodic installments shall be adjusted as necessary to pay the new General Assessment in equal periodic installments over the remainder of such calendar year, giving the Owners credit, in such manner as the Management Committee deems necessary or appropriate, for any installments that the Owners have previously paid to the Association during such calendar year.

(e) The failure of the Association to levy a General Assessment for any calendar year shall not be deemed a waiver, modification or release of an Owner's liability for the Share of Common Expenses allocated to such Owner's Unit.

7.05 Special Assessments.

(a) The Assessments that the Association may levy pursuant to this Section 7.05 are referred to in this Declaration as "Special Assessments."

(b) Notwithstanding anything to the contrary contained in Section 7.04 above, if the Association determines that an Assessment is required to immediately fund any Common Expense attributable to the Common Elements, the Association shall amend the budget in accordance with Section 7.03 (including, but not limited to obtaining the approval of Owners as and if required by Section 7.03) and thereafter levy an Assessment for such Common Expense against the Units in accordance with the requirements of Section 7.04 (a) above.

(c) Each Special Assessment levied against any Unit shall be shown on an annual budget, or an amendment to an annual budget, adopted by the Management Committee pursuant to Section 7.03 above and shall be paid as and when required by the Association.

7.06 Default Assessments.

(a) Notwithstanding anything to the contrary contained herein, if any Common Expense is caused by:

(i) the negligence or misconduct of an Owner or an Owner's Guest; or

(ii) a violation of any covenant or condition of an Association Document by an Owner or an Owner's Guest, the Association may levy an Assessment for such Common Expense against such Owner's Unit. Any such Assessment levied by the Association and each fine, penalty, fee or other charge, including but not limited to those specified in Section 7.01(e), imposed upon an

Owner for the Owner's violation of any covenant or condition of any Association Document are each referred to herein as a "Default Assessment."

(b) Default Assessments need not be shown on an annual budget, or on an amendment to an annual budget, adopted by the Management Committee pursuant to Section 7.03 above.

(c) With respect to any Default Assessment, or portion thereof, levied other than as a late charge, the Owner of the Unit against which the Association seeks to levy the Default Assessment shall be provided notice and an opportunity to be heard, as provided in Section 17.04. Owners of Units against which Default Assessments have been levied shall pay such Default Assessments as and when required by the Association.

7.07 Assignment of Assessments.

The Association shall have the unrestricted right to assign its right to receive Assessments and other future income, either as security for obligations of the Association or otherwise, on the condition that any such assignment is approved by a Majority of the votes allocated to Units represented at a meeting of the Owners at which a quorum is present.

7.08 Assessment Lien.

(a) The Association shall have a lien on each Unit for any Assessment levied against that Unit and for any fines, late charges, penalties, interest and attorneys' fees, disbursements and costs of collection imposed against the Owner of such Unit under any Association Document (the "Assessment Lien"). The Assessment Lien shall secure all of the foregoing obligations of an Owner from the time such obligations become due. If an Assessment is payable in installments, the Assessment Lien shall secure each installment from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

(b) An Assessment Lien shall constitute a lien upon the Owner's Unit, and, upon the Recording in the Salt Lake County Records of a notice of lien by the Management Committee it is a lien prior to all other liens and encumbrances on a Unit, recorded and unrecorded except:

(i) encumbrances (including Mortgages) on the interest of an Owner recorded prior to the date such notice of Assessment Lien is recorded which by law would be a lien prior to subsequently recorded encumbrances; and

(ii) liens for real estate taxes and special assessment liens on the Unit in favor of any governmental assessing unit or special improvement district; and

(c) Notwithstanding the terms and conditions of subparagraph 7.08(b) above, an Assessment Lien shall not be prior to a Priority Mortgage recorded before the date on which the Assessment sought to be enforced became delinquent.

(d) An Assessment Lien may be enforced, subject to Article XVI below by (i) causing a Unit to which the Assessment Lien applies to be sold through nonjudicial foreclosure as though the lien were a deed of trust, in the manner provided by the Act and Utah Code Annotated, Sections 57-1-22 through 57-1-44; or (ii) foreclose the lien through a judicial foreclosure in the manner provided by the Act and the law for the foreclosure of a mortgage. An Assessment Lien shall be extinguished unless proceedings to enforce the Assessment Lien are instituted within six (6) years after the full amount of the Assessment secured thereby becomes due. Notwithstanding the above, suit to recover a money judgment for unpaid Assessments is maintainable without foreclosing or waiving the lien securing it.

(e) This Section 7.08 does not prohibit actions or suits to recover sums secured by an Assessment Lien or the Association from taking a deed in lieu of foreclosure.

(f) In any action by the Association to collect Assessments or to foreclose an Assessment Lien for unpaid Assessments, the court may appoint a receiver of the Owner to collect all sums alleged to be owed by the Owner prior to or during the pendency of the action, including, but not limited to, all costs and expenses of such proceedings, reasonable attorneys' fees, and a reasonable rental for the Unit. A court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Assessments.

(g) An Assessment Lien may be foreclosed in like manner as a deed of trust or mortgage on real estate or in any other manner permitted by law. Periodic Assessments shall be payable during the period of foreclosure of an Assessment Lien.

7.09 Waiver of Homestead Exemptions.

To the fullest extent permitted by law, by acceptance of the deed or other instrument of conveyance of a Unit or a Sub-Unit, each Owner and each Owner of a Sub-Unit irrevocably waives the homestead exemption provided by the Utah Exemptions Act, Utah Code Ann. §78B-5-501 through §78B-5-513, as amended from time to time, as the same may apply to the Assessment Lien.

7.10 Estoppel Certificates: Notices to Mortgagees.

(a) The Association shall furnish to an Owner or such Owner's designee or to a Mortgagee or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered agent, and payment of a reasonable fee not to exceed the amount provided for in the Act, a statement setting forth the amount of unpaid Assessments currently levied against such Owner's Unit. The statement shall be furnished within ten (10) calendar days after receipt of the request and is binding on the Association, the Management Committee and every Owner in favor of all Persons who rely upon such statement in good faith. If no statement is furnished to the Owner, the Mortgagee or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert the priority of its Assessment Lien upon the Unit for unpaid Assessments which were due as of the date of the request.

(b) If a Priority Mortgagee delivers to the Association a written request for notice of unpaid Assessments levied against a Unit subject to a Priority Mortgage held by that Priority Mortgagee, the Association shall report to the Priority Mortgagee any unpaid Assessments levied against such Unit that remain unpaid for more than sixty (60) days after the same shall have become due. The Priority Mortgagee may pay any such unpaid Assessment, together with any and all costs and expenses incurred with respect to the Assessment Lien securing such unpaid Assessment, and upon such payment, such Priority Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as a lien of the Priority Mortgage held by such Priority Mortgagee.

7.11 Reserve Fund.

(a) The Association shall maintain a reserve fund for Common Expenses. The reserve fund shall include such amounts as the Management Committee may deem proper for general working capital, for a general operating reserve, and for a reserve fund for replacements and major maintenance or capital replacement, and will be funded as follows. The Association shall include within each annual budget and General Assessment sufficient amounts to fund reserves determined by the Management Committee as necessary for the purposes specified herein.

(b) The Association shall cause a reserve analysis to be conducted no less frequently than every six (6) years, and review, and if necessary, update a previously conducted reserve study analysis no less frequently than every three (3) years. The Management Committee may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Management Committee, to conduct the reserve analysis.

(c) The Association shall:

(i) annually, at the annual meeting of Owners or at a special meeting of Owners, present the most recent reserve study analysis or update and provide an opportunity for Owners to discuss reserves and thereafter in accordance with the Act, to vote on whether to rescind the reserve fund line item within any budget adopted at the annual meeting (which will result in funding the reserve fund line item to the amount most recently approved in a budget); and

(ii) prepare and keep minutes of each meeting held under Subsection (c)(i) and indicate in the minutes any decision relating to funding a Reserve Account.

ARTICLE VIII UTILITY AND OTHER SERVICES

8.01 Water, Sewer, Natural Gas, Electric and Trash Removal Services.

(a) All natural gas, electric, and other utility services furnished to the Condominium Project which are separately metered and billed to an individual Unit (or portions thereof) by the utility company or other party furnishing such services shall be paid for by the Owner or occupant of the Unit (or portions thereof) to which such utility is metered. All other water, sewer, natural gas and electric services shall be a part of the Common Expenses and shall be allocated by the Association among the Units and charged to the Owners in accordance with their Shares of Common Expenses; provided, however, in the event that sub-meters are installed which measure the use of water, the Association is authorized to bill the Owners of individual Units the cost of water and sewer service based upon the actual use of water for each such Unit.

(b) Each Owner shall ensure that its Unit, excluding only each Parking Unit, is sufficiently heated to prevent the freezing of water and sewer lines serving the Condominium Project.

8.02 Cable Television.

(a) The Owners of each of the Units shall be responsible for obtaining cable television services for its Unit and the Limited Common Elements appurtenant thereto, and shall pay all costs, expenses, fees, rates and other installation and connection charges incurred in connection therewith, including, without limitation, any connection fees, directly to the provider of such services.

(b) All cable television services furnished to the Condominium Project shall be separately metered and billed to an individual Unit (or Sub-Unit, if created) by the cable company or other party furnishing such services and shall be paid for by the Owner of the Unit to which such services are metered.

(c) Nothing herein shall preclude the Association from obtaining bulk cable service as long as Owners of each Unit, or their respective Guests, shall be separately metered and billed.

8.03 Telephone.

(a) Each Owner shall be responsible for obtaining telephone services for its Unit and the Limited Common Elements designed to serve only its Unit and shall pay all costs, expenses, fees, rates and other charges incurred in connection therewith, including, without limitation, any connection fees, directly to the provider of such services.

(b) The Association shall determine what, if any, telephone services are necessary for the General Common Elements that serve all of the Units and shall be responsible for obtaining those services. The Common Expenses incurred by the Association for those services shall be allocated among the Units in accordance with their proportionate Shares of Common Expenses.

8.04 Other Utilities.

If the Association incurs Common Expenses for any utility service not described above, or if the manner of providing or metering any utility service described above changes from the manner in which such service is provided or metered as of the date of this Declaration, the Association may allocate the Common Expenses incurred for such new utility service or changed utility service in any reasonable and equitable manner consistent with the Act.

ARTICLE IX
MAINTENANCE OF COMMON ELEMENTS AND UNITS

9.01 Maintenance of General Common Elements.

(a) Except as otherwise provided in this Declaration, the Association, or its duly designated agent, shall maintain the General Common Elements in good order and condition and shall otherwise manage and operate the General Common Elements as it deems necessary or appropriate. The Management Committee shall have the irrevocable right to have access to each Unit and appurtenant Limited Common Elements from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of the General Common Elements or for making emergency repairs necessary to prevent damage to the General Common Elements or to another Unit or Units. In addition, the Association shall ensure that all interior General Common Elements, if any, are sufficiently heated or otherwise protected to prevent the freezing of water and sewer lines serving the Condominium Project.

(b) Without limiting the obligations of the Association as set forth in (a) above, the Association may:

(i) construct, modify, add to, repair, replace or renovate any improvements that are located on or constitute a part of any General Common Element;

(ii) plant and replace trees, shrubs and other vegetation on any General Common Element;

(iii) place, maintain and replace signs upon any General Common Element;

(iv) adopt and enforce Rules and Regulations regulating the use of General Common Elements; and

(v) take any other actions as the Association deems necessary or advisable to protect, maintain, operate, manage or regulate the use of the General Common Elements.

(c) In furtherance of the obligations of the Association as set forth in (a) above, the Association shall hire one or more consultants to perform inspections of Improvements and to hire one or more contractors to perform services recommended to properly maintain and repair such Improvements. Nothing herein shall preclude the Association, by a majority of its Management Committee, from obtaining "second" opinions regarding the need for repairs and maintenance of the Improvements prior to the implementation of the same. In the event of a conflict in the recommendations of one or more reports obtained pursuant to the provisions of this Section 9.01 (c) the Management Committee shall determine which recommendations the Association shall accept and what repairs the Association shall cause to be performed.

9.02 Maintenance of Units and Limited Common Elements.

(a) Each Unit Owner, at such Owner's sole cost and expense, shall maintain in good order and repair its respective Unit and all structural elements of the Unit (but not including structural elements constituting General Common Elements), utility facilities, lines, ducts, and other such apparatus (including all fixtures located therein) serving solely such Unit so as not to detract from the appearance of the Condominium Project and so as not to affect adversely the value or use of any other Unit or other portions of the Condominium Project. In further explanation of the foregoing, each Owner shall keep the interior of his Unit, including without limitation, interior walls, doors, windows, ceilings, floors, and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in good state of repair. In the event that any element, facility, apparatus and/or component of any Unit is in need of replacement, such component shall be replaced with the same type, style, grade and quality of element, facility, apparatus and/or component as originally existed, except as may be permitted to the contrary by the Association, including Rules and Regulations which may address such issues. In the

event that any such Unit shall develop an unclean or unsanitary condition or fall into a state of disrepair, and in the event that the Owner of such Unit shall fail to correct such condition or state of disrepair promptly following written notice from the Association and only upon the approval of the Management Committee, the Association shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary or unclean condition or state of disrepair; provided, however, that the Association shall in no event have the obligation to correct or eliminate any such condition or state of disrepair. In addition to the foregoing, each Owner shall separately maintain, clean, repair and generally keep in good order and operating condition the Limited Common Elements serving solely such Owner's Unit. Any costs and/or expenses incurred by the Association, as provided in this Section, may become the basis for a Default Assessment as provided in Section 7.06.

(b) The Association shall maintain in good order and repair the Limited Common Elements, if any, that are not reserved exclusively for any one Unit, including but not limited to all structural elements, utility facilities, lines, ducts, and other such apparatus (including all fixtures located therein) serving such Limited Common Elements. Except for events which may give rise to a Default Assessment, the cost of maintenance, repair and replacement of such items located within the Limited Common Elements shall be separately allocated to the Owners in accordance with the provisions of Section 7.04 (a).

9.03 Mechanic's Liens and Indemnification.

No labor performed or materials furnished and incorporated into a Unit with the consent or at the request of an Owner or an agent, contractor or subcontractor of an Owner shall be the basis either for filing a lien against the Unit of any other Owner not expressly requesting or consenting to the same, or against the Common Elements. Notwithstanding the foregoing, labor performed or materials furnished for the Common Elements, if authorized by the Owners, the manager or the Management Committee in accordance with this Declaration, the Bylaws, the Rules and Regulations, or the Act, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for filing a lien pursuant to applicable law. Payment for any such lien shall be made as provided in the Act. Each Owner shall indemnify, defend and hold harmless each of the other Owners and any Mortgagee from and against all liability arising from any claim or lien against the Unit of any other Owner or against the Common Elements for construction performed or for labor, materials, services or supplies incorporated in the Owner's Unit at the Owner's request.

ARTICLE X
COVENANTS, CONDITIONS AND RESTRICTIONS

10.01 Applicability of Covenants, Conditions and Restrictions.

Except as otherwise provided in this Declaration, the covenants, conditions and restrictions set forth in this Article X shall apply to all Units and Common Elements.

10.02 Association Documents.

Each Owner shall strictly comply with, and shall require its Guests to comply with, all provisions of the Association Documents that apply to such Owner or such Owner's Unit.

10.03 Notice of Conveyance, Assignment or Encumbrance.

(a) Promptly after a conveyance of a fee simple interest in a Unit or portion thereof, the grantee shall furnish a copy of the conveyance deed to the Association.

(b) Promptly after an encumbrance of a fee simple interest in a Unit or portion thereof, the Owner shall furnish the Association with a copy of the Mortgage creating the encumbrance.

10.04 Use of Common Elements.

All Owners and their Guests may use the General Common Elements and the Limited Common Elements designed to serve their Units for the purposes for which such Common Elements are intended. Notwithstanding the preceding sentence, neither an Owner nor a Guest may use any Common Element in any manner that unreasonably interferes with, hinders or encroaches upon the rights of other Owners in and to the Common Elements. Without limiting the generality of the foregoing, no Owner shall cause, or permit its Guests to cause, waste to any Common Element.

10.05 Alterations.

(a) Except as otherwise expressly provided in this Declaration, and following the construction of the Tower Structure and Parking Garage 2, an Owner of a Unit may not make (i) any improvement or alteration to a Common Element, or (ii) any improvement or alteration to its Unit that affects any Common Element or any other Unit, without the prior written consent of the Association. No Owner shall do any work or make any alterations or changes which would jeopardize the soundness or safety of the Condominium Project without obtaining the written consent of each Owner. No Owner shall do any work or make any alterations or changes which would materially reduce the value of the Condominium Project or, without authority, materially impair any easement, without in every case first obtaining the prior written consent of the Association.

(b) Except for the Tower Structure and Parking Garage 2, no new Improvement shall be constructed on the Land and no construction, alteration, installation or other work affecting the exterior surface of any existing Improvement shall be made, except as required or approved by the Association as provided in this Declaration.

(c) Notwithstanding paragraphs 10.05(a) and 10.05(b) above, initial construction of a Unit and its related Building (including, but not limited to re-construction of items as a result of a casualty which occurs prior to receipt of certificates of occupancy) may be carried out by any Owner responsible for such initial construction without obtaining the prior written consent of the Association in each instance; provided, however, that all such initial construction shall be accomplished in accordance with plans and specifications approved by the Owners holding a Majority of the Interest in General Common Elements prior to the commencement of such construction.

(d) Without limiting the generality of paragraphs 10.05(a) through (c) above, an Owner of a Unit may not, without the prior written consent of the Owner affected by such installation and the Association, install or erect any improvement, mechanical system or fixture that either:

(i) protrudes beyond the boundaries of the Owner's Unit; or

(ii) is located wholly outside the Owner's Unit (even if located within a Limited Common Element that is assigned to solely the Owner's Unit).

The limitations contained in this paragraph 10.05(d) shall not preclude the repair or replacement of an improvement, system, or fixture originally installed, constructed or approved by the Declarant or an Owner pursuant to Article XV, including but not limited to the Tower Structure and Parking Garage 2.

10.06 Nuisances, Hazardous Activities and Unsightliness.

(a) No Person shall conduct any activity on the Land which creates a nuisance.

(b) No Person shall conduct any activity on the Land which is or might be hazardous to any Person or property.

(c) No unsightliness shall be permitted at the Land.

(d) Normal construction activities shall not be considered to violate the terms and conditions of this Section 10.06.

(e) No Person shall conduct any activity on the Land or within any Unit that is contrary to the Rules and Regulations established from time to time by the Association.

10.07 Signs.

(a) No signs whatsoever shall be erected or maintained on the Land, except signs required by legal proceedings, marketing and leasing signs, directional and other signs approved by Owners holding a Majority of the Interest in General Common Elements and those permitted in accordance with reasonable Rules and Regulations established by the Association with respect to the type and location of such signs.

(b) Without limiting the generality of paragraph 10.07(a) above, no "For Sale" or "For Rent" signs shall be displayed on the exterior or interior of a Unit, except that a limited amount of signage may be permitted in accordance with reasonable Rules and Regulations established by the Association with respect to the type and location of such signs.

10.08 Compliance with Laws.

Nothing shall be done or kept at the Land in violation of any law, ordinance, rule, regulation or other requirement of any governmental or quasi-governmental authority.

10.09 Compliance with Insurance.

Except as may be approved in writing by the Association, nothing shall be done or kept at the Land that may result in the cancellation of any insurance maintained by the Association or may result in an increase in the rates of any such insurance. Activities incident to or necessary for the conduct of parking operations within portions of the Limited Common Elements shall not violate the terms of this Section 10.09 even if such activities result in an increase in rates of insurance. Any such increase in the rates of insurance shall be charged to the Owners of the Units whose uses create such increases as Special Assessments.

10.10 Subdivision, Rezoning and Timesharing.

(a) Except as provided in Section 3.02(d)(iv), no Unit may be subdivided or eliminated, unless the subdivision has been approved by one hundred percent (100%) of the votes allocated to all Units at a duly convened meeting of the Association and their respective First Mortgagees and has received all applicable governmental and quasi-government approvals.

(b) No application for rezoning any portion of the Land, and no applications for variances or use permits, shall be filed with any governmental or quasi-governmental authority, unless the proposed rezoning has been approved by one hundred percent (100%) of the votes allocated to all Units at a duly convened meeting of the Association (or pursuant to written consents in lieu of such a meeting) and their respective First

Mortgagees and the uses that would be permitted under the rezoning comply with this Declaration and the other Association Documents.

(c) No Owner shall offer or sell any interest in any Unit under a "timesharing" or "interval ownership" plan or similar plan.

10.11 Vehicles and Parking.

(a) No motor vehicle, mobile home, trailer, detached camper or camper shell, boat or other similar equipment or vehicle may be kept or parked at the Condominium Project in violation of the Rules and Regulations adopted by the Association, except such delivery and service trucks as are temporarily parked in locations designated by the Association for such purposes.

(b) No motor vehicle shall be constructed, repaired or serviced at the Condominium Project, except on a short-term emergency basis where such repairs are necessary to affect the removal of a disabled vehicle.

(c) An Owner of a Unit shall have no right to use, and shall not permit its lessees and other Guests to use any parking space located in a Unit not owned by it, except by separate agreement or license with the Owner of the applicable Parking Unit. In furtherance of the foregoing, each Owner of a Parking Unit shall have the right to designate (by sign or other means) all parking spaces in its Parking Unit for the exclusive use of such Owner and its Guests and to enforce the same by towing as authorized by applicable governmental laws, ordinances, and regulations. Nevertheless and except as further limited and regulated as provided in Section 11.05 below, the Owners of the Residential Unit and the Residential Parking Unit (including their respective Guests) shall have the right of ingress and egress for pedestrian and vehicular traffic through the designated drive lanes of the Commercial Parking Unit (including its Limited Common Elements, as applicable), to the extent necessary for access to the Residential Parking Unit or Limited Common Elements appurtenant thereto, and shall have the right to use in common with all other Owners any parking spaces, if any, designated as a General Common Element on the Plat.

10.12 Deliveries, Trash Removal and Other Services.

(a) By acceptance of a deed to a Unit, an Owner agrees that all deliveries and all trash removal services, and other such services to that Owner or its Unit shall be effected at a location or locations designated by the Association from time to time for such purposes. Unless otherwise directed by the Association, Owners of all Units and their Guests shall place all trash and other waste from the Units in receptacles which are located in the Condominium Project and designated for that purpose.

(b) Owners shall not, and shall not permit their Guests to litter. No burning of trash, garbage or other waste materials will be permitted at the Land.

10.13 Exterior Storage.

No Owner shall store any materials or items on or in any Common Element, other than those Common Elements designed for that purpose, if any, such as storage lockers, and then only in strict accordance with the terms and conditions of the Association Documents.

10.14 Animals.

No animals, livestock or poultry of any kind shall be raised, bred, or kept in or on the Property or in any Unit, except in accordance with reasonable Rules and Regulations established by the Association with respect to the keeping of pets. Notwithstanding the foregoing, nothing herein shall preclude the use of working animals trained and used for the handicapped.

10.15 Limitations on Balconies, Decks and Patios.

(a) No part of any balcony, deck or patio comprising any portion of an Apartment shall be used for storage (including without limitation, boxes, bicycles, pet houses, sports equipment or playthings). Pets shall not be left on balconies, decks or patios except for brief periods when accompanied by the pet owner or pet owner's designee.

(b) No exterior clothesline shall be erected or maintained and there shall be no exterior drying or laundering of clothes on any balcony, patio or other area outside of a Building or any Apartment comprising the same.

(c) No barbecues or other cooking devices of any kind shall be used, kept, stored and/or permitted on balconies, patios or decks of any Apartment.

(d) Except as may otherwise be required to be allowed by Governing Laws, no satellite dish, communication, other receiving type equipment, or wiring or cabling will be mounted on balconies, decks, patios, railings or from the vertical side of Buildings. Owners of Buildings will make a good faith effort to place common satellite dishes and communication equipment on the roofs of the Buildings so as to minimize or eliminate satellite dishes and communication equipment on patios, balconies and decks.

(e) The Association may establish and modify from time to time, as part of its Rules and Regulations, provisions governing the use, placement and/or additional restrictions with respect to balconies, patios or decks immediately available or part of an Apartment, including but not limited to patio furniture, plants and other items.

10.16 Disclosures Regarding Rentals.

Prior to renting any Condominium Unit (including any Apartments located within a Condominium Unit), the Owner and the tenant shall execute a written lease agreement which shall include the following provisions:

(a) The tenant shall agree to comply with all of the terms and conditions of the Declaration, Bylaws, and the Rules and Regulations;

(b) The tenant shall agree not to allow or commit any nuisance, waste, unlawful or illegal act upon the Project; and

(c) The Owner and the tenant shall acknowledge that the Association is an intended third party beneficiary of the lease agreement, that the Association shall have the right to enforce compliance with the Declaration, Bylaws, and the Rules and Regulations and to abate any nuisance, waste, unlawful or illegal activity upon the premises; and that the Association shall be entitled to exercise all of the Owner's rights and remedies under the lease agreement to do so.

Whether or not the foregoing provisions are contained in a lease agreement with a tenant, the Association shall have the right and the obligation to enforce compliance with the Declaration and Bylaws against any Owner and/or occupant of any Unit and each Apartment located therein, and shall have all rights and remedies available under state or local law, in addition to its rights and remedies as a third party beneficiary under any lease agreement, to enforce such compliance. Notwithstanding the terms of any tenant lease, as provided in Section 3.02 (d) (iii), no tenant shall have the right to exercise any voting rights allocated to a Unit.

10.17 Units.

(a) Except as otherwise expressly permitted by this Declaration (including those spaces which are reasonably related to the operation of a residential apartment project, such as a rental office, clubhouse and similar spaces) and authorized by applicable zoning laws and ordinances to be used for such purposes, the Owner of the Residential Unit may use such Residential Unit for residential purposes only by the said Unit's occupants and their Guests. Except as provided by this Declaration, no occupant of the Residential Unit (or Apartment located therein) shall conduct any business, profession, occupation or trade from its Unit or Apartment, including, without limitation, the operation of a so-called "boarding house", "bed and breakfast" or "chalet"; provided that this Declaration does not prohibit an Owner from leasing or renting such Owner's Residential Unit or Apartment located therein to others so long as the use of such Residential Unit complies with the provisions of this Declaration, the Act and other applicable laws and ordinances. Use of the Parking Units shall be restricted to use of the same for commercial and/or residential parking purposes only. Any lease of a Unit shall be in writing and shall be subject to this Declaration and the Bylaws.

(b) Notwithstanding the restrictions set forth in paragraph 10.17(a) above, an Owner may use portions of a Unit as a private or rental office, provided such use complies with all applicable federal, state and local laws, ordinances, regulations and rules;

(c) Notwithstanding anything to the contrary contained in this Declaration, an Owner of a Unit may make improvements or alterations to its Unit or the Limited Common Elements designed to serve only such Unit without the consent of any Owner or the Association, subject to the covenants and easements set forth in this Declaration and the Access Agreement, on the conditions that:

(i) the improvement or alteration does not impair or cause damage to any other Unit, any Limited Common Element, or any means of access designed to serve any other Unit;

(ii) the Owner of the Unit promptly repairs any damage to any General Common Element caused thereby at its cost and expense;

(iii) the improvement or alteration complies with the Act and all applicable laws, ordinances, regulations and rules of governmental and quasi-governmental authorities with jurisdiction.

If any such improvement or alteration will impair any other Unit or access to any other Unit or any Limited Common Element assigned to serve any other Unit, the Owner of the Unit shall not make the improvement or alteration without the prior written consent of the Majority of the Owners of the Units, or the Owners of the Units served by the Limited Common Elements that will be impaired thereby, as the case may be.

(d) Notwithstanding anything to the contrary in this Article X, the Owner of the Unit may erect and attach signs, banners, window boxes, decorations and other similar items on the exterior of the Unit or projections from the exterior of the Unit on the condition that such signs, banners, window boxes, decorations and other similar items and their locations are consistent with the Rules and Regulations adopted from time to time by the Association.

10.18 Residential Owner's Exemption.

Nothing contained in this Declaration or in any other Association Document shall be construed to prevent:

(a) the Owner(s) of the Residential Unit and/or the Residential Parking Unit's exercise and enjoyment of any Residential Construction Rights under this Declaration or any other Association Document; or

(b) the conduct by such Owners, or its or their employees or agents of any activity, including, without limitation, the erection or maintenance of temporary structures, improvements or signs, necessary or convenient to the development, construction, marketing or sale of property within the Residential Unit and/or Residential Parking Unit.

10.19 Parking Units.

(a) Each Parking Unit shall be designated as Convertible Space which shall permit the division of or reconfiguration of one or more Parking Units. Parking Units may be used and occupied solely for parking and storage purposes. The Owner of the Residential Unit shall be the owner of the Residential Parking Unit and immediately upon recording of this Declaration, the same shall be deeded to Boyer 151 by special warranty deed. The Commercial Parking Unit shall initially be owned by Boyer 102, and immediately upon recording of this Declaration, the same shall be deeded to Boyer 102 by special warranty deed. Any Owner may lease all or any portion of its Parking Unit for such purpose.

(b) [Intentionally Deleted.]

(c) Owners of Parking Units shall not use, and shall not permit their Guests to use, any waiting area, stairway, elevator, patio, walkway, hallway, storage area, restroom or other portion of the Condominium Project which is designated on the Plat as Limited Common Residential.

(d) Notwithstanding anything to the contrary contained in this Declaration, an Owner of a Parking Unit or Owners of Parking Units may make improvements or alterations to their Parking Unit(s) or the Limited Common Parking Elements designed to serve only their Parking Unit(s), including without limitation, the erection of partitions as permitted under subparagraph 3,02(d)(iii) above, without the consent of any Owner or the Association, on the conditions that:

(i) the improvement or alteration does not impair or cause damage to any other Unit, any Limited Common Element, or access designed to serve any Residential Unit;

(ii) the Owner(s) of the Parking Unit(s) promptly repairs any damage to any General Common Element caused thereby at its cost and expense;

(iii) the improvement or alteration complies with all applicable requirements of the Act and all laws, ordinances, regulations and rules of governmental and quasi-governmental authorities with jurisdiction.

If any such improvement or alteration will impair any other Unit or any Limited Common Element assigned to serve any other Unit, the Owner(s) of the Parking Unit(s) shall not make the improvement or alteration without the prior written consent of the Majority of the Owners of the Units, or the Owners of the Units served by the Limited Common Elements that will be impaired thereby, as the case may be.

(e) Notwithstanding anything to the contrary in this Article X, the Owner of a Parking Unit may:

(i) perform such activities within its Parking Unit as are lawfully permitted and are common to or necessary for the conduct of commercial parking operations, including, without limitation, any lights, sounds and odors which typically result from such activities; and

(ii) apply for and obtain special use permits and licenses which are necessary or appropriate for the conduct of commercial parking activities in its Parking Unit in accordance with this Declaration and the other Association Documents, without obtaining the approval of the Residential Unit Owner, on the condition that such permits and licenses are consistent with the existing zoning and actual uses of the Parking Unit at the time the permit or license is applied for.

10.20 Residential Unit.

(a) The Residential Unit shall initially be owned by Boyer 151 and immediately upon recording of this Declaration, the same shall be deeded to Boyer 151 by special warranty deed. Except as otherwise expressly permitted by this Declaration, the Owner of the Residential Unit may use the Residential Unit for residential purposes only by the occupants of the Residential Unit and their Guests. Except as set forth herein, no Owner of the Residential Unit shall conduct any business, profession, occupation or trade from its Unit, including, without limitation, the operation of a so-called "bed and breakfast" or "chalet"; provided that this Declaration does not prohibit the Owner of the Residential Unit from leasing or renting such Owner's Unit or Apartments located therein to others so long as the use of such Unit complies with the provisions of this Declaration, the Act and other applicable laws and ordinances, Any lease of a Unit or any portion thereof shall be in writing and shall be subject to this Declaration and the Bylaws.

(b) Notwithstanding the restrictions set forth in paragraph 10.05(a) above:

(i) An Owner of the Residential Unit may use a portion of the residential Unit for on-site amenities and a private rental office, on the condition that such use complies with all applicable federal, state and local laws, ordinances, regulations and rules; and

(ii) An Owner of the Residential Unit that has been subdivided pursuant to Section 3.02(d)(iv) and who has thus become a declarant under a Sub-Declaration with respect to such Subdivided Unit, may use a Sub-Unit as a management office, or a combined management office and residence for a resident manager, for the Residential Unit and/or the Sub-Units created pursuant to a Sub-Declaration.

(c) An Owner of the Residential Unit shall not use, and shall not permit their Guests to use any portion of the Limited Common Parking, except with respect to the Limited Common Parking appurtenant to the Residential Parking Unit owned by the

Owners of the Residential Unit or as otherwise provided herein or pursuant to a Sub-Declaration affecting both the Residential Parking Unit and the Residential Unit. The Owner(s) of the Residential Unit and its (their) Guests shall have the right to use Common Areas and those Limited Common Residential areas identified for the Residential Unit's use on the Plat.

(d) Owners of the Residential Unit shall not use, and shall not permit their Guests to use any non-public stairway, elevator, patio, walkway, hallway, storage area, restroom or other portion of the Condominium Project which is designated on the Plat as Limited Common Parking, except with respect to the Limited Common Parking attributable to the Residential Parking Unit or as otherwise provided herein or pursuant to a Sub-Declaration affecting both the Residential Parking Unit and the Residential Unit.

(e) Notwithstanding anything to the contrary contained in this Declaration, an Owner of the Residential Unit may make improvements or alterations to the Residential Unit or the Limited Common Residential Elements designed to serve only the Residential Unit, including without limitation, the erection of partitions as permitted under subparagraph 3.02(d)(iii) above, without the consent of any Owner or the Association, on the conditions that:

(i) the improvement or alteration does not impair or cause damage to any other Unit, any Limited Common Element, or access designed to serve any Parking Unit;

(ii) the Owner of the Residential Unit promptly repairs any damage to any General Common Element caused thereby at its cost and expense;

(iii) the improvement or alteration complies with all applicable requirements of the Act and all laws, ordinances, regulations and rules of governmental and quasi-governmental authorities with jurisdiction.

If any such improvement or alteration will impair any other Unit or any Limited Common Element assigned to serve any other Unit, the Owner of the Residential Unit shall not make the improvement or alteration without the prior written consent of the Majority of the Owners of the Units, or the Owners of the Units served by the Limited Common Elements that will be impaired thereby, as the case may be.

(f) Notwithstanding anything to the contrary contained in this Declaration, and in addition to the rights of an Owner of the Residential Unit under paragraph 10.20(e) above:

(i) the Owner of the Residential Unit shall have the right to alter the facade of the Tower Structure located in the Residential Unit (including, without limitation, the creation, removal and relocation of entrances, exits, windows, window boxes, signage and other architectural features), without the consent of

any Owner or the Association, on the conditions that (A) the Owner of the Residential Unit repairs any damage to any Common Element caused thereby, at its expense, and (B) such alteration complies with all applicable requirements of all applicable laws, ordinances, regulations and rules of governmental and quasi-governmental authorities with jurisdiction.

(g) Notwithstanding anything to the contrary in this Article X, the Owner of the Residential Unit may erect and attach signs, banners, window boxes, decorations and other similar items on the exterior of the Tower Structure located within the Residential Unit or projections from the exterior of said Tower Structure on the condition that such signs, banners, window boxes, decorations and other similar items and their locations are approved by the Management Committee and otherwise comply with the Association Documents.

ARTICLE XI EASEMENTS AND RESERVATIONS

11.01 Declarant's Easements Over Common Elements.

In accordance with the Act, Declarant (and each of them) hereby reserves for itself, a general easement over, across, through and under the Common Elements to:

- (a) discharge Declarant's obligations under this Declaration; and
- (b) exercise any of Declarant's rights under this Declaration.

11.02 Utility Easement.

(a) Subject to the terms and conditions of this Declaration and all other Association Documents, Declarant hereby creates a general easement over, across, through and under the Land for ingress to, egress from, and installation, replacement, repair and maintenance of, all utility and service lines and systems, including, without limitation, water, sewer, natural gas, telephone, electricity and cable communication that service the Land or any portion thereof.

(b) Pursuant to this easement, a utility or service company may install and maintain facilities and equipment on the Land and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of Improvements to provide service to the Units or the Common Elements. Notwithstanding anything to the contrary contained in this Section 11.02, no sewers, electrical lines, water lines or other utilities or service lines may be installed or relocated on any portion of the Land, except in accordance with terms and conditions of Sections 10.05 and 10.17 above. Any utility or service company using this general easement shall use its best efforts to install, repair,

replace and maintain its lines and systems without disturbing the uses of Owners, Declarant and other utility and service companies.

(c) If any utility or service company furnishing utilities or services to the Land or any portion thereof as permitted under paragraph 11.02(a) above requests a specific easement by separate recordable document, the Owner or Owners of the Unit or Units upon which such easement is to be located shall have the right and authority, but not the obligation, to grant such easement over, across, through and under the Units of such Owner or Owners. If the requested easement is to be located in whole or in part upon the Unit of an Owner that is not willing to provide its consent, the Owner(s) requesting the specific easement shall have the right to request that the Association grant such easement, which shall have the authority, but not the obligation, to grant such easement over, across, through and under any Unit, provided such easement does not unnecessarily impair, damage, obstruct, or disturb the Unit over which the easement is granted; and further provided, that the Association shall have the right and power to require that the Owner or Owners requesting such easement repair and/or restore any improvements located upon a Unit which are damaged as the result of the grant of such easement.

11.03 Association's Easement.

(a) The Association shall have a general easement over, across, through and under each Unit and each Common Element to:

(i) exercise any right held by the Association under this Declaration or any other Association Document; and

(ii) perform any obligation imposed upon the Association by this Declaration or any other Association Document.

(b) Notwithstanding the foregoing, the Association shall not enter any Unit or Sub-Unit without reasonable prior notice to the Owner thereof, except in cases of emergency.

11.04 Easements to Residential Owners.

In addition to the rights granted in Article XV, the Owner of the Residential Unit shall have and is hereby granted a Residential Encroachment Easement in perpetuity without charge for encroachment of the Tower Structure into the Residential Parking Unit above Parking Garage 2 according to the terms of the Residential Encroachment Easement as defined in this Declaration.

The Owner of the Residential Unit shall also have the right and a perpetual easement, without charge, to install, operate, maintain, repair and replace machinery, equipment, utility lines, wires, circuits, cables and conduits serving such Residential Unit, along, across and

through the Common Elements on the condition that (A) the Owner of the Residential Unit, at its sole cost and expense, shall repair, replace and restore any damage to the Common Elements or any other Units caused by such installation, operation, maintenance, replacement or repair, (B) all such machinery, equipment, utility lines, wires, circuits, cables and conduits shall, except for minor variations, be in the number, specification, and location provided for in construction drawings approved by the Management Committee prior to the commencement of construction of any such facilities; and (c) such installation, maintenance, repair or replacement complies with all applicable requirements, laws, ordinances, regulations and rules of governmental and quasi-governmental authorities with jurisdiction.

Subject to the limitations contained herein below, the Owner of each Unit shall have the right and a perpetual non-exclusive easement, without charge, to access its Unit, across and over such portions of the General Common Elements (including but not limited to the areas described in the Reciprocal Easements Agreement) and Limited Common Elements as is reasonably necessary to have pedestrian and vehicular ingress and egress to and from such Units and those ramps, driveways, stairs, elevators and corridors designed for the use of all Units.

11.05 Easements to Parking Owners.

(a) In accordance with and subject to the terms and conditions of the Access Agreement, the Owner and Guests of the Residential Parking Unit shall have the right to, and a perpetual easement for, vehicular and pedestrian ingress and egress, over and across the driveways, entrances, exits, and sidewalks located in the Commercial Parking Unit, including the entrance and exit ramps, drive isles, stairs, and elevators located in Parking Garage 1, to provide ingress and egress to the Residential Parking Unit.

(b) In accordance with and subject to the terms and conditions of the Access Agreement, the Owner and Guests of the Residential Units shall have the right to, and a perpetual easement for, vehicular and pedestrian ingress and egress, over and across the driveways, entrances, exits, and sidewalks located in the Commercial Parking Unit, including the entrance and exit ramps, drive isles, stairs, and elevators located in Parking Garage 1, to provide access to the Residential Unit.

11.06 Entry in Aid of Other Rights.

There shall be an easement in favor of each Owner to enter in and upon the Common Elements and Units with workers, materials and tools to the extent, at the time, and for the periods reasonably necessary to enable an Owner to access Limited Common Elements appurtenant to such Owner's Unit or Units isolated from public access or via Common Elements and to otherwise perform all of the construction, maintenance, inspection, repair, and replacement required of such Owner hereunder or necessary to the operation of the said Owner's Unit. Notwithstanding the foregoing and except when access is required on an emergency basis, any access may be limited to such reasonable times as the Owner of an affected Unit or the Management Committee may designate.

11.07 Easements for Encroachments.

(a) To the extent that the below ground footings of Parking Garage 1 currently extend into the Residential Parking Unit, the Owner(s) of the Commercial Parking Unit are granted a perpetual easement to maintain, repair and replace such footings as the same now exist.

(b) Subject to obtaining the approval of Boyer 102 with respect to the design and construction of Parking Garage 2 as provided in Section 15.04 of this Declaration, and provided that the Owner(s) of the Residential Parking Unit shall construct Parking Garage 2 substantially in accordance with the approvals provide by Boyer 102 as specified in Section 15.04, the Owner(s) of the Residential Parking Unit are hereby granted a perpetual easement for the use of a portion of the footings of Parking Garage 1 for the construction, support, maintenance and replacement of the Parking Garage 2, and for the installation of construction materials to connect the entrance points into Parking Garage 2 at corresponding levels of Parking Garage 1.

(c) In the event that any portion of the General Common Elements or a Limited Common Element currently in existence or reconstructed so as to substantially duplicate an existing feature or improvement originally constructed by Declarant encroaches or comes to encroach on the General Common Elements, a Limited Common Element, or another Unit, as a result of construction, reconstruction, repair, shifting, settlement, or movement of any portion of the foregoing, an easement is created hereby and shall exist so long as such encroachment exists.

(d) Except as provided in Section 11.04 and Sections 11.07 (a) and (b) above, any other, further or additional encroachment of improvements to be constructed or installed within or upon a Unit, shall not be permitted to encroach under, upon or over any other Unit without the prior written approval of the Owner(s) of such Unit which may be encroached upon.

11.08 Emergency Access Easement.

Declarant hereby grants a general easement to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or Persons to enter upon the Land in the proper and lawful performance of their duties.

ARTICLE XII
INSURANCE

12.01 General Liability Insurance.

The Association shall obtain and maintain one or more policies of commercial general liability insurance insuring the Owners, the Association, the Management Committee, the manager engaged by the Association, if any, and their respective agents against general liability and claims arising in connection with the ownership, existence, use or management of the Common Elements, in an aggregate amount that is not less than \$5,000,000, or such greater amount as the Management Committee deems appropriate. Such insurance shall cover claims of one or more insured parties against other insured parties.

12.02 Property Insurance.

The Association shall obtain and maintain a master blanket policy of property insurance coverage for no less than the full insurable replacement cost of all of the Common Elements, subject to reasonable deductibles and exclusive of land, excavations, foundations and similar items normally excluded from property insurance policies. The policy shall contain each of the following features, to the extent that such features are, in the reasonable discretion of the Management Committee, available at reasonable cost:

- (a) an agreed-amount endorsement or its equivalent;
- (b) an increased-cost-of-construction endorsement or a contingent-liability-from-operation-of building-laws endorsement or their equivalent;
- (c) an extended-coverage endorsement;
- (d) vandalism and malicious mischief coverage;
- (e) a special-form endorsement;
- (f) a determinable-cash-adjustment clause or a similar clause to permit cash settlement covering full value of the Common Elements in case of partial destruction and a decision not to rebuild.

12.03 Fidelity Insurance Requirements.

The Association may obtain fidelity insurance naming the Association as insured. If obtained, the policy must provide fidelity coverage for all officers, directors, trustees, and employees of the Association and all other persons who handle or are responsible for handling funds held or administered by the Association, whether or not the person receives compensation for services. The policy must provide minimum limits at least equal to the larger of (i) the highest amount of funds, including reserve funds, that the Association is expected to hold at any time while the policy is in force, or (ii) three months of the expected aggregate Assessments for the policy term, plus reserve funds.

12.04 Additional Provisions to be Contained in Insurance Policies.

Any insurance policies obtained and maintained by the Association pursuant to Sections 12.01, 12.02, and 12.03 above shall comply with the requirements of Section 57-8-43 (or subsequent amendment) of the Act and shall name as insureds the Association and the Owners (including Declarant, so long as Declarant is the Owner of any Unit) and provide that:

- (a) the insurer waives its right of subrogation under the policy against any Owner or any person residing with owner in a Unit;
- (b) no act or omission by any Owner, unless acting under the specific direction of the Association, will void the policy or be a condition to recovery under the policy; and
- (c) if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Each policy shall include a standard Mortgagee clause which shall include the following if not inconsistent with the requirements of the Act:

- (a) Name the loan services and its successors and assigns as the Mortgagee;
- (b) Provide that any reference to a Mortgagee in the policy shall mean and include all Mortgagees of any Unit or Unit lease or sublease in their respective order of preference, whether or not named therein;
- (c) Provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Board or Owners or any persons under any of them; and
- (d) Waive any provision invalidating such mortgage clause by reason of the failure of any Mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the Mortgagee pay any premium thereon, and any contribution clause.

12.05 Trustee.

Any loss covered by the property insurance policy described in Section 12.02 above must be adjusted with the Association, and the insurance proceeds for that loss shall be payable to the Association or any insurance trustee designated for that purpose, and not to any Owners or Mortgagees. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 13.02 below, the proceeds must be disbursed first for the repair or restoration of the damaged property.

12.06 Owner Maintained Insurance.

(a) The Owner(s) of the Residential Unit, the Commercial Parking Unit, and the Residential Parking Unit shall, respectively, separately insure the Tower Structure and the Parking Garages for not less than the full insurable replacement cost of such Buildings, subject to reasonable deductibles and exclusive of land, excavations, foundations and similar items normally excluded from property insurance policies. The policy shall contain each of the following features, to the extent that such features are, in the reasonable discretion of the Management Committee, available at reasonable cost:

- (i) an agreed-amount endorsement or its equivalent;
- (ii) an increased-cost-of-construction endorsement or a contingent-liability-from-operation-of-building-laws endorsement or their equivalent;
- (iii) an extended-coverage endorsement;
- (iv) vandalism and malicious mischief coverage;
- (v) a special-form endorsement; and
- (vi) a determinable-cash-adjustment clause or a similar clause to permit cash settlement covering full value of the Common Elements in case of partial destruction and a decision not to rebuild.

Any insurance policies obtained and maintained by the Owner of the Residential Unit and the Parking Units pursuant to this paragraph shall name as insureds the Association and the Owners (including Declarant, so long as Declarant is the Owner of any Unit), as their respective interests may appear, and provided that:

- (vii) the insurer waives its right of subrogation under the policy against the Association, Declarant, Mortgagees and any owner or member of the Owner's household;

(viii) no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;

(ix) if, at the time of a loss under the policy, there is other insurance in the name of an Owner or the Association covering the same risk covered by the policy, the Unit Owner's policy provides primary insurance; and

(x) the Owners of the Residential Unit and the Residential Parking Unit are not required to name the Owner of the Commercial Parking Unit as an additional insured.

(b) The Owner of any Subdivided Unit or the association of Sub-Unit Owners created by a Sub-Declaration, shall separately insure such common areas and facilities as are created pursuant to a subdivision of such Condominium Unit pursuant to Section 3.02(d)(iv) with insurance consistent with the requirement paragraph 12.05(a) above.

(c) Each Owner shall have the right to separately insure its personal property against loss by fire or other casualty. In addition, any Improvements made by an Owner within its Unit may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "tenant's improvements". All such insurance that is individually carried must contain a waiver of subrogation rights by the insurer as to other Owners, the Association, Declarant, and Mortgagees.

12.07 Management Committee's Authority to Revise Insurance Coverage.

(a) Subject to any restrictions imposed by the Act, the Management Committee shall have the power and right to deviate from the insurance requirements contained in this Article XII in any manner that the Management Committee, in its discretion, considers to be in the best interests of the Association. If the Management Committee elects to materially reduce the coverage from the coverage required in this Article XII, the Management Committee shall make all reasonable efforts to notify the Owners of the reduction in coverage and the reasons therefor at least thirty (30) days before the effective date of the reduction.

(b) The Association and its Directors and Officers shall have no liability to any Owner or Mortgagee if, after a good faith effort, (i) the Association is unable to obtain any insurance required hereunder because the insurance is no longer available; or (ii) if available, the insurance can be obtained only at a cost that the Management Committee, in its sole discretion, determines is unreasonable under the circumstances.

(c) In the event that the Association becomes aware that General Liability Insurance and/or Property Insurance is not reasonably available (meaning available using typical insurance carriers and markets, irrespective of the ability of the Association to

pay), the Association shall, within seven (7) calendar days after becoming aware, give all Owners notice pursuant to Section 19.09, that such insurance is not reasonably available.

(d) The Management Committee is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Association, including, but not limited to, the right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

(e) In the event of a covered loss resulting in damage to one or more Units, but less than the entire Project, each damaged Unit shall be responsible for a portion of the deductible to the Property Insurance policy, such portion to be determined in accordance with the provisions of Section 57-8-43 of the Act; and in the event that the Owner of such damaged Unit fails to pay such portion, the Association shall have the right to make a Default Assessment for such amount.

(f) Each Owner, by acceptance of a deed to a Unit irrevocably appoints the Association as that Owner's attorney in fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing, and taking other related actions in connection with any insurance policy maintained by the Association and any losses or claims related thereto and agrees to be bound by the actions so taken as if the Owner had personally taken the action.

12.08 Periodic Insurance Review.

The Management Committee periodically (and not less than once every three (3) years) shall review the Association's insurance policies and make such adjustments to the policies' terms and conditions as the Management Committee considers to be in the best interests of the Association. The review shall include an appraisal by a qualified appraiser of the current replacement costs of all covered property under the Association's policy unless the Management Committee is satisfied that the current dollar limit of the property policy, coupled with the amount of actual reserves on hand, is equal to or greater than the current replacement costs.

ARTICLE XIII CASUALTY

13.01 Total or Partial Destruction of the Condominium Project.

If there is a total or partial destruction of the Condominium Project, the Condominium Project shall be promptly rebuilt or repaired by the Owners in accordance with the Act, unless:

(a) the Condominium Project is terminated in accordance with Section 18.02 hereof;

(b) repair or replacement would be illegal under any state or local statute governing health or safety;

(c) seventy-five percent (75%) or more of the Buildings and the Units located therein are destroyed or substantially damaged, and the Owners, by a vote of at least sixty-seven percent (67%) of the Interests in General Common Elements and their respective First Mortgagees, do not voluntarily, within 100 days after the occurrence of such damage, make provision for reconstruction, and the Management Committee shall Record, in the Salt Lake County Records, a notice, in accordance with the Act, thereby subjecting the Condominium Project to an action for partition and sale; or

(d) the Owners, by a vote of at least sixty-seven percent (67%) of the Owners of the Interests in General Common Elements and their respective First Mortgagees, if any, elect to sell or otherwise dispose of the Condominium Project in accordance with the Act.

Any partition of the Condominium Project made according to the provisions of this Section 13.01 shall provide for a division of the Condominium Project into separate lots containing the same physical boundaries as specified for the Units as depicted upon the Plat, with each resulting lot retaining the right to ingress and egress as specified in the Reciprocal Easements Agreement and the Access Agreement.

13.02 Excess Insurance Proceeds.

If the entire Condominium Project is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Condominium Project, and, except to the extent that other persons will be distributees, the insurance proceeds attributable to Units and Limited Common Elements that are not rebuilt must be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, or to Mortgagees, as their interests may appear, and the remainder of the proceeds, if any, must be distributed to all the Owners or Mortgagees, as their interests may appear, in proportion to the Interests in General Common Elements of all the Units.

13.03 Casualty to a Unit.

To the extent that the Association is not obligated to make any such repairs or replacements and subject to the further requirements and limitations set forth in Section 13.04 below, each Owner shall repair or replace any damage to or destruction to its Unit, as soon as is reasonably practical after such damage or destruction occurs. If the Owner does not commence the repair or replacement of its Unit as required hereunder, within ninety (90) days of the date of the casualty, the Association shall have the right to do so, upon the vote of at least sixty-seven percent (67%) of the Interest in General Common Elements and their First Mortgagees, and may use any insurance proceeds from the insurance required to be carried under Article XII to complete such repair or replacement.

13.04 Casualty to Building.

Except as provided in sub-section (b) below with respect to a Mortgagee who has acquired ownership of the Residential Unit, the Commercial Parking Unit, and/or the Residential Parking Unit by foreclosure or deed in lieu of foreclosure, in the event of damage to or destruction of the Building which is part of such Unit, the Owner of the applicable Unit shall be obligated to repair and restore the damaged Building to the same or better condition than it existed prior to the event of destruction; provided, however, that such repair and restoration obligation shall be terminated if the casualty event results in a decision to terminate or not rebuild the Condominium Project pursuant to Section 13.01 above. The provisions of this Section 13.04 and the rights created shall not apply to nor be available with respect to a Sub-Unit.

(a) Subject to the foregoing limitations, such repair and restoration shall be commenced as soon as practically possible, in any event within ninety (90) days of the date of the casualty, prosecuted with reasonable diligence, and be at the sole cost and expense of the applicable Unit Owner. Such repair and restoration obligation shall apply irrespective of whether the damage or destruction concerned is covered by the insurance contemplated and required by this Declaration and irrespective of whether the proceeds of such insurance are sufficient to pay all of the costs and expenses required for repair and restoration. The proceeds of such insurance shall, however, be available for use in paying such costs and expenses. Access to Parking Garage 2 relies on Parking Garage 1 within the Commercial Parking Unit. Thus, the Owner of the Commercial Parking Unit shall be obligated to rebuild Parking Garage 1 upon its damage or destruction or, if rebuilding is not feasible or permitted under applicable law, to make such alterations and renovations as to permit the Owner(s) of the Residential Parking Unit full access to its Unit at no cost, expense or liability to the Owners of the Residential Parking Unit. To the extent the effect of the casualty is to obstruct access to or the use of any other Unit, the Owner(s) of the Units subject to the casualty shall take such actions immediately following the casualty event to perform all work as may be necessary to grant access to the obstructed Unit(s). If such Owner fails to do so within ten (10) business days following the event of casualty, the Association, or the Owner of the Unit to which access is obstructed, at such Owner's election, shall have the right to take such action and perform the related work at the cost of the Owner required to, but failing, to take the requisite actions.

(b) If a Priority Mortgagee has acquired possession and ownership of the Commercial Parking Unit by foreclosure or deed in lieu of foreclosure, either in its own name or in the name of an affiliate or designee (an "Acquiring Mortgagee"), and there is an event of damage to or destruction of Parking Garage 1, then the Acquiring Mortgagee shall have not more than ninety (90) days from the date of casualty or destruction (the "Election Period") to elect to either: (I) repair and restore the damaged Building pursuant to the requirements stated in the introductory sub-paragraph and sub-paragraph (a) of this Section; or (II) to take the proceeds of insurance maintained by the Acquiring Mortgagee

without an immediate obligation to repair and restore the damaged Building (except for Necessary Repairs, as defined below), and market and attempt to sell the Unit owned by the Acquiring Mortgagee as more specifically set forth below.

(i) The Acquiring Mortgagee's election pursuant to this Section shall be irrevocable and shall be made in writing, which writing shall be delivered by the Acquiring Mortgagee to the Association before the end of the Election Period. Failure of the Acquiring Mortgagee to deliver the required written notice of election as provided herein shall be deemed an election by the Acquiring Mortgagee to repair and restore the damaged Building pursuant to option (I).

(ii) If the Acquiring Mortgagee elects or is deemed to have elected to repair and restore the damaged Building pursuant to option (I) above, the Acquiring Mortgagee shall commence such repair and restoration within ten (10) days after the end of the Election Period and diligently pursue completion of the repair and restoration work so as to achieve substantial completion not later than twenty (20) months from the close of the Election Period.

(iii) If the Acquiring Mortgagee elects to take the proceeds of insurance maintained by the Acquiring Mortgagee and market and sell the Unit and owned by the Acquiring Mortgagee pursuant to option (II) above, the Acquiring Mortgagee shall: (A) immediately make such repairs to the damaged Building as are necessary (the "Necessary Repairs") to allow the remaining Unit or Units to remain open and operate under all applicable laws, including, without limitation, providing access to the Residential Parking Unit and Residential Unit, and to render the damaged Building's condition clean and safe such that the Building does not pose any increased threat (i.e. by reason of its damaged, destroyed or unrepaired condition) of casualty to the remaining Buildings and Units or injury to the occupants thereof or their guests, customers and invitees; and (B) have a period of nine (9) months from the end of the Election Period (the "Marketing Period") to the closing of the sale of the Unit. The terms of any such sale of the Unit or Units owned by the Acquiring Mortgagee shall irrevocably and unconditionally commit the third-party acquiring the Unit(s) to assume all of the obligations of the Unit Owner under the Declaration; provided, such obligations shall be modified to provide such third-party with the option to either: (Z) immediately demolish the damaged Building in its entirety, and immediately commence and diligently prosecute to completion the construction of a replacement Building; or (Y) restore and repair the damaged Building in its entirety in not more than thirty (30) months from such third-party's acquisition of the Building and applicable Unit; provided that, under either option, access to the Residential Unit and the Residential Parking Unit is afforded in a manner not substantially less than in existence prior to the destruction.

(iv) If the Acquiring Mortgagee shall fail to close a third-party sale of the damaged Building and applicable Unit(s) during the Marketing Period, then

the Acquiring Mortgagee shall, within ten (10) business days after the termination of the Marketing Period elect to either: (C) immediately demolish the damaged Building in its entirety, clean the site, and provide separate access to the Residential Parking Unit and Residential Unit; or (D) immediately convey good and marketable title to the damaged Building and applicable Unit(s) owned by the Acquiring Mortgagee to the Association for the total sum of \$10.00, free and clear of any claim by the Acquiring Mortgagee and any deed of trust, mortgage, mechanics liens or similar monetary encumbrance.

ARTICLE XIV CONDEMNATION

14.01 Condemnation of All Units.

If the entire Condominium Project is taken by condemnation, eminent domain or similar proceeding, the Condominium Project shall terminate as of the date of the taking and any condemnation award payable in connection therewith shall be paid to the Association and then disbursed by the Association to the Owners in proportion to the value of their respective Unit (as improved) determined by the foregoing proceeding(s), or in the absence of such a determination, the agreement of the Owners based upon their mutual agreement or in the absence of agreement by an appraisal made by an MAI appraiser selected by all Owners. During any condemnation, eminent domain or similar proceeding, each Owner shall be entitled to notice of and the right to participate in any such proceeding including but not limited to the right to appoint counsel and to approve any settlement.

14.02 Condemnation of Fewer Than All Units.

If one or more Units, but less than the entire Condominium Project, is taken by condemnation, eminent domain or similar proceeding,

(a) any condemnation award payable in connection therewith shall be paid to the Owners of the Units taken, and

(b) the Interest in General Common Elements appurtenant to those Units shall be reallocated, in accordance with the terms and conditions of the Act.

14.03 Condemnation of Common Elements.

If any portion of the Common Elements is taken by condemnation, eminent domain or similar proceeding, any condemnation award payable in connection therewith shall be paid to the Association and then disbursed by the Association to the Owners in proportion to their Interests in General Common Elements.

ARTICLE XV
RESIDENTIAL CONSTRUCTION RIGHTS

15.01 Residential Improvements.

In addition to the easements reserved to all Owners of Units, the Declarant hereby grants to and reserves for the benefit of the Owners of the Residential Unit and the Residential Parking Unit such easements and rights of ingress and egress over, across, through the Residential Unit and the Residential Parking Unit as may be reasonably necessary for Owner(s) of the Residential Unit and the Residential Parking Unit (in a manner which is reasonable and not inconsistent with the provisions of this Declaration):

(i) to construct and complete the Tower Structure and Parking Garage 2 and all of the other improvements described in the Plat recorded concurrently herewith, or reasonably related thereto, and to do all things reasonably necessary or proper in connection therewith; and (ii) to improve portions of the Residential Unit and Residential Parking Unit with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of the Owners of the Residential Unit and Residential Parking Unit as they reasonably determine to be appropriate. The reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire seven (7) years after the date on which this Declaration is filed for record in the Salt Lake County Records.

15.02 [Intentionally Deleted.]

15.03 Promotional Material.

For a period of seven (7) years from the date of recording of this Declaration in the Salt Lake County Records or such longer period as the Owners shall determine, the Owner(s) of the Residential Unit shall have the following rights in furtherance of any rental, promotional, or other activities designed to accomplish or facilitate the marketing of Apartments located within the Residential Unit.

(a) The Owner(s) of the Residential Unit shall have the right to maintain a reasonable number of promotional, advertising, and/or signs, banners, or similar devices at any place or places within the Residential Unit or upon the Improvements located therein, but any such device shall be of a size and in a location as is reasonable and customary.

(b) The Owner(s) of the Residential Unit shall have the right from time to time to locate or relocate any signs, banners, or similar devices, but in connection with such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Within a reasonable period after the end of the period reserved in this Section 15.03, the Owner(s) of the Residential Unit shall have the right to remove from the Condominium Project any signs, banners, or similar devices and any separate

structure or facility which was placed on a portion of the Land for the purpose of aiding the rental efforts of the Owner(s) of the Residential Unit. Any signs, banners, or similar devices, and any separate structure or facility for aiding said Owners' rental efforts shall comply with applicable zoning ordinances.

15.04 Exercising Residential Construction Rights.

The Residential Construction Rights reserved and granted to the Owners of the Residential Unit and the Residential Parking Unit in this Article XV or elsewhere in the Declaration shall be exercised by the such Owners; provided, however, that with respect to the design and construction of Parking Garage 2, such Owners shall first obtain the approval of Boyer 102 for such design and construction given that Parking Garage 2 is to be connected to Parking Garage 1, which consent of Boyer 102 shall not be unreasonably withheld, conditioned or delayed. The Owners of the Residential Unit and the Residential Parking Unit may exercise Residential Construction Rights at any time during the period specified in Section 15.01, in any order, and no assurance is given as to the order in which such Owners will exercise the Residential Construction Rights. If such Owners exercise any Residential Construction Rights with respect to any portion of the Residential Unit or the Residential Parking Unit, such Owners may, but are not obligated to, exercise any additional Residential Construction Rights with respect to any other portion of the Residential Unit or the Residential Parking Unit. Except as specified in this Section 15.04, the Owners of the Residential Unit and the Residential Parking Unit may exercise any Residential Construction Right described in this Article XV and any other right reserved to such Owners in this Declaration, without the consent of the Association or any other Owners. During the period(s) of construction reserved in this Section 15.04, the Owners of the Residential Unit and the Residential Parking Unit shall cause all construction to be conducted in a manner that does not materially interfere with the use of the Commercial Parking Unit, except where otherwise approved in advance by Boyer 102.

15.05 Interference with Residential Construction Rights.

Neither the Association nor any Owner may take any action or adopt any Rule or Regulation that interferes with or diminishes the Residential Construction Rights, without the prior written consent of the Owner(s) of the Residential Unit and the Residential Parking Unit. Any action taken in violation of this Section 15.05 shall be null and void and have no force or effect.

15.06 Residential Construction Rights Transferable.

The Residential Construction Rights reserved and granted to the Owners of the Residential Unit and the Residential Parking Unit as specified in this Article XV are appurtenant to such Units and shall be deemed automatically transferred with the conveyance and/or transfer of title to each such Residential Unit and Residential Parking Unit.

ARTICLE XVI
MORTGAGEE PROTECTIONS

16.01 Benefit of Mortgagees.

This Article establishes certain standards and covenants which are for the benefit of Mortgagees. This Article is supplemental to, and not in substitution of, any other provisions of this Declaration, but in the case of any conflict, this Article shall control.

16.02 Notice of Actions.

If requested in writing to do so, the Association shall give prompt written notice of the following to each Priority Mortgagee making such request:

- (a) any condemnation loss or any casualty loss which affects a material portion of the Common Elements or any Unit in which an interest is held by the Priority Mortgagee;
- (b) any delinquency in the payment of Assessments which remains uncured for sixty (60) days by an Owner whose Unit is encumbered by a Priority Mortgage held by such Priority Mortgagee;
- (c) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association or by any other Owner;
- (d) any proposed action which would require the consent of Priority Mortgagees as set forth in this Article; and
- (e) any judgment rendered against the Association.

16.03 Consent Required.

Notwithstanding anything to the contrary contained in this Declaration, the Association may not take any of the following actions without the consent of sixty-seven percent (67%) of the Priority Mortgagees or such greater percent specified below (based on the Interest in Common Element attributable to each Unit covered by a First Mortgage):

- (a) by act or omission seek to abandon or terminate the Condominium Project without the written consent (in recordable form) of all First Mortgagees and others holding liens, except after condemnation or substantial casualty;
- (b) except as provided herein for condemnation, casualty, change the Interests in General Common Elements, Shares of Common Expenses or votes in the Association of any Unit;

- (c) subdivide, partition, or relocate the boundaries of any Unit;
- (d) abandon, subdivide, partition, encumber, sell, or transfer the Common Elements (the granting of easements for public utilities or for other purposes provided for in this Declaration shall not be deemed transfers);
- (e) use property insurance proceeds for losses to any portion of the Common Elements for other than repair, replacement, or reconstruction of such Common Elements, except as provided by this Declaration; or
- (f) merge the Condominium Project with any other common interest community.; or
- (g) amend any Association Document (excluding Rules and Regulations) which will have a material adverse effect upon a First Mortgagee or otherwise amend any Material Provision of any Association Documents (excluding Rules and Regulations). "Material Provisions" for purposes of this Section 16.03 (g) shall mean any provision affecting the following (excluding an amendment made for the purpose of correcting technical errors, to comply with applicable law, or for clarification only): (i) changes in the method of calculating the Assessments, obligations, maintenance fees, or other charges which may be levied against an Owner; (ii) reductions in Reserve Funds for maintenance, repair, and replacement of Common Elements; (iii) responsibility for maintenance and repairs; (iv) reallocation of interests in the Common Elements or rights to their use, except where otherwise specifically permitted by this Declaration; (v) convertibility of Units into Common Elements or vice versa, except as otherwise permitted by this Declaration; (vi) substantial reduction in hazard or fidelity insurance requirements; (vii) imposition of any restrictions on the leasing of Units, or portions thereof; (viii) imposition of any restrictions on Owner's right to sell or transfer his or her Unit; (ix) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Declaration; and (x) the rights or benefits granted to or afforded First Mortgagees.

16.04 Notice of Objection.

Subject to the requirements of the Act, unless a Priority Mortgagee or other lienholder provides the Association with written notice of its objection, if any, to any proposed amendment or action requiring the approval of Priority Mortgagees or other lienholder within sixty (60) days following the receipt of notice (given by certified or registered mail) of such proposed amendment or action, the Priority Mortgagee or other lienholder will be deemed conclusively to have consented to or approved the proposed amendment or action. Notice to a Priority Mortgagee or other lienholder shall be prominently labeled all in caps "URGENT TIME SENSITIVE RESPONSE REQUIRED."

16.05 Priority Mortgagee's Rights.

(a) Priority Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Elements or improvements thereon, and may pay overdue premiums on hazard insurance policies, for the Common Elements. Priority Mortgagees making such payment shall be owed immediate reimbursement from the Association.

(b) A Priority Mortgagee shall be entitled to cure any delinquency of the Owner of a Unit encumbered by its Priority Mortgage in the payment of Assessments. In that event, the Priority Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

16.06 Limitations on Priority Mortgagee's Rights.

No requirement for approval or consent by a Priority Mortgagee provided in this Article shall operate to:

(a) deny or delegate control over the general administrative affairs of the Association by the Owners or the Management Committee;

(b) prevent the Association or the Management Committee from commencing, intervening and/or settling any legal proceeding which it is otherwise authorized to intervene in or settle; or

(c) prevent any insurance trustee or the Association from receiving and distributing any insurance proceeds in accordance with the requirements of the Article XII above.

16.07 Liability of Priority Mortgagees.

Any Priority Mortgagee acquiring title to a Unit by foreclosure or deed in lieu thereof shall be entitled to all of the rights and benefits of this Declaration afforded to the Owner of the Unit so foreclosed or transferred. In no event shall any Priority Mortgagee be liable for a breach by an Owner of its obligations under this Declaration arising prior to the date of the Priority Mortgagee's acquisition of title to the applicable Unit except (i) to the extent of the performance of maintenance or repair or other nonmonetary obligations of a continuing nature, and (ii) all Assessments and other charges that the Association is required or permitted to levy or impose on that Unit as provided in this Declaration on or after the date of foreclosure or deed in lieu of foreclosure as specified in Section 7.01(b).

ARTICLE XVII
ENFORCEMENT AND REMEDIES

17.01 Enforcement.

(a) Each provision of this Declaration with respect to the Association or the Common Elements shall be enforceable by Declarant or by any Owner by a proceeding for injunctive relief.

(b) Each provision of this Declaration with respect to an Owner or a Unit shall be enforceable by Declarant or by the Association by:

(i) a proceeding for injunctive relief;

(ii) a suit or action to recover damages; or

(iii) in the discretion of the Association, for so long as any Owner fails to comply with any such provisions, exclusion of such Owner from participation in any Association affairs.

(c) In addition to the rights and remedies described in paragraph 17.01(b) above, if an Owner fails to strictly perform or observe any covenant or condition to be performed or observed by such Owner under this Declaration or any other Association Document, the Association shall have the following rights and remedies:

(i) After not less than five (5) day's written notice, the Association may, but is not obligated to, cure such failure to comply at the Owner's sole cost and expense. If the Association cures any such failure to comply, the Owner shall pay to the Association the amount of all costs incurred by the Association in connection therewith within thirty (30) days after the Owner receives a written invoice therefor from the Association.

(ii) The Association may, after notice and an opportunity to be heard, fine the Owner, as a Default Assessment, an amount not to exceed \$200 for each violation. The Owner shall pay any such fine to the Association within thirty (30) days after the Owner receives written invoice therefor from the Association.

(iii) With respect to an Owner's failure to pay an installment of any Assessment, the Association may accelerate the due date for the payment of the full amount of the Assessment.

(iv) The Association shall have all other rights and remedies available to it under this Declaration, at law or in equity.

(d) All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

17.02 Attorneys' Fees.

In the event of any dispute under or with respect to this Declaration or any other Association Document, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses in connection therewith, including, without limitation, the reasonable fees and disbursements of any attorneys, paralegals, accountants, engineers, appraisers or other professionals engaged by the prevailing party.

17.03 Interest.

If an Owner fails to pay to the Association any Assessment or other amount due to the Association as and when the same becomes due, the Owner shall pay to the Association interest on such unpaid amount at the rate of twelve percent (12%) per annum, or such other rate as the Management Committee may establish from time to time, from the due date of such unpaid amount until the date paid.

17.04 Right to Notice and Hearing.

Whenever an Association Document requires that an action be taken after "notice and opportunity to be heard," or "notice and hearing" the following procedure shall be observed. The party proposing to take the action (e.g., the Management Committee or a committee or officer of the Association) shall give at least ten (10) business days' prior written notice of the proposed action to all Owners whose interests would be significantly affected by the proposed action, as reasonably determined by the proposing party. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the party proposing to take the action, and all affected Owners may give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the hearing to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. Any affected Owner shall be notified of the decision in the same manner in which notice of the hearing was given. Any Owner having a right to notice and hearing shall have the right to appeal to the Management Committee from a decision of a proposing party other than the Management Committee. Such right of appeal may be exercised within ten (10) days after an Owner receives notice of the decision, by filing a written notice of appeal with the Management Committee. The Management Committee shall conduct a hearing within forty-five (45) days thereafter, giving the same notice and observing the same procedures as were required for the original hearing.

17.05 Non-Waiver.

Failure by Declarant, the Association or any Owner to enforce any covenant, condition, restriction, reservation, easement, assessment, charge, lien or other provision of this Declaration or any other Association Document shall in no way be deemed to be a waiver of the right to do so thereafter.

17.06 Waiver of Jury.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, DECLARANT AND THE ASSOCIATION AND EACH OWNER BY ACCEPTING A DEED TO A UNIT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS DECLARATION, THE OWNERSHIP OF A UNIT, OR IN ANY WAY CONNECTED WITH, RELATED TO OR INCIDENTAL TO THE DEALINGS OF DECLARANT, ASSOCIATION AND AN OWNER OR OWNERS WITH RESPECT TO THIS DECLARATION OR ANY OTHER ASSOCIATION DOCUMENTS, OR THE TRANSACTIONS RELATED HERETO, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, DECLARANT, ASSOCIATION AND EACH OWNER HEREBY AGREE THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT DECLARANT, ASSOCIATION, OR AN OWNER MAY FILE AN EXECUTED COPY OF THIS AGREEMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF DECLARANT, ASSOCIATION AND EACH OWNER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY. DECLARANT, ASSOCIATION, OR AND OWNER SHALL NOT SEEK TO CONSOLIDATE, BY COUNTER CLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

ARTICLE XVIII
TERM AND AMENDMENTS

18.01 Term.

The covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration shall run with and bind the Land until the Declaration is terminated pursuant to Section 18.02 below.

18.02 Termination.

Subject to the rights of Mortgagees under Article XVI above, the Owners may terminate the Condominium Project and this Declaration, by the vote of one hundred percent (100%) of the votes allocated to all Units and their First Mortgagees. If the necessary votes are obtained, the agreement of the Owners to terminate the Condominium Project and this Declaration shall be evidenced by a termination agreement or ratification thereof, executed by the required number of Owners in accordance with the Act, further provided that such termination agreement shall provide in substance that effective with termination each Owner shall receive a special warranty deed from the remaining Owners conveying fee simple title to that portion of the Land (a "parcel") upon which such Owner's Unit and improvements are located together with easements, licenses, and/or other agreements appurtenant to the real property and/or which grant in perpetuity to each parcel, ingress, egress and utility service consistent with the uses for such parcel. Upon recordation of the termination agreement in the Salt Lake County Records, the Condominium Project shall be terminated, this Declaration shall have no further force or effect, and the Association shall be dissolved.

18.03 Amendments.

(a) Except as otherwise expressly provided in Section 18.03(b) below or the Act, and except for provisions of this Declaration regarding the rights and obligations of Declarant, which may not be amended without Declarant's prior written consent, and subject to the rights of Mortgagees under Article XVI above, Owners may amend any provision of this Declaration at any time by a vote of at least sixty-seven percent (67%) of the votes allocated to all Units and their First Mortgagees. If the necessary votes and consent are obtained, the Association shall cause an amendment to the Declaration to be Recorded in the Salt Lake County Records.

(b) Notwithstanding the provisions of Section 18.03(a) above, any amendment affecting (i) the Interest in General Common Elements of each Unit Owner in the Common Elements, as expressed in this Declaration; (ii) Unit boundaries; or (iii) Unit Owners' voting rights, may only be amended by a vote of Owners holding one hundred percent (100%) of the Interest in General Common Elements and their First Mortgagees.

ARTICLE XIX
MISCELLANEOUS

19.01 Interpretation of the Declaration.

Except for judicial construction, the Association, by its Management Committee, shall have the exclusive right to construe and interpret the provisions of this Declaration, provided that such interpretation shall be reasonable and consistent with the Act and any customary standards. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by the covenants and the provisions hereof.

19.02 Severability.

Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity and enforceability of any other provision hereof.

19.03 Disclaimer of Representations.

Notwithstanding anything to the contrary contained in this Declaration, Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete development of the Condominium Project can or will be carried out or that any land now owned or hereafter acquired by Declarant is or will be subject to this Declaration, or that any such land, whether or not it has been subjected to this Declaration, is or will be committed to or developed for a particular use, or that such use will continue in effect.

19.04 Reference to Declaration and Deeds.

Deeds to and instruments affecting any Unit or any other part of the Condominium Project may contain the provisions set forth herein by reference to this Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth herein shall be binding upon the grantee-owner or other person claiming through any deed or other instrument and his heirs, executors, administrators, successors and assigns.

19.05 Successors and Assigns of Declarant.

Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and obligations hereunder on the condition that Declarant's rights and obligations may only be assigned by a written recorded instrument expressly assigning such rights and obligations.

19.06 Captions and Titles.

All captions and titles of headings of Articles and Sections in this Declaration are for the purpose of reference and convenience and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

19.07 Exhibits.

All exhibits attached to this Declaration are a part of, and are incorporated into, this Declaration.

19.08 Governing Law.

This Declaration shall be governed by and construed in accordance with Utah law.

19.09 Notices.

All notices required by the provisions of any of the Association Documents or the Act may be made in accordance with the provisions of Title 16, Chapter 6a, Utah revised Nonprofit Corporation Act. In addition, the Association may provide notice by electronic means, including text messages, email, or the website of the Association; provided, however, that if an Owner, by written demand, requires the Association to provide notice to the Owner by mail. All notices and demands intended to be served upon the Association shall be sent to the following address or such other address as the Association may designate from time to time by notice to the Owner(s):

Block 71 Condominiums Association, Inc.
101 South 200 East, Suite 200
Salt Lake City, Utah 84111

With a copy to:

Block 71 Condominiums Association, Inc.
c/o Cowboy Partners, L.C.
6440 S. Wasatch Blvd., Suite 200
Salt Lake City, Utah 84121


19.10 Service of Process.

The name and place of business of the person to receive service of process is as set forth in the Articles of Incorporation of the Association and initially shall be Brian Gochnour, 101 South 200 East, Suite 200, Salt Lake City, Utah 84111.

Declarant has caused its name to be signed by the signature of a duly authorized officer as of the day and year first written above.

BOYER 151, L.C., a Utah limited liability company,

By its Manager, The Boyer Company, L.C., a Utah limited liability company

By: 

Brian Gochnour
Manager

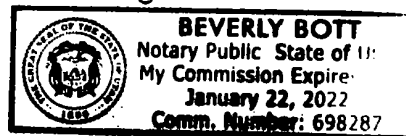
STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On this 8th day of Aug, 2019, before me personally appeared Brian Gochnour, who acknowledged himself to be the Manager of The Boyer Company, L.C., a Utah limited liability company, the Manager of BOYER 151, L.C., a Utah liability company, and being authorized to do so, he executed the foregoing instrument for the purposes therein contained, by signing the name of the company.

[NOTARY SEAL]




Notary Public



BOYER 102, L.C., a Utah limited liability company,

By its Manager, The Boyer Company, L.C., a Utah limited liability company

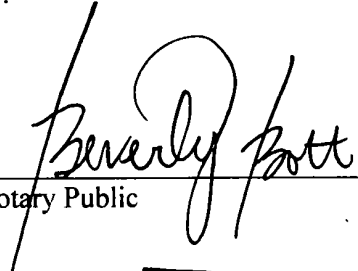
By: 

Brian Gochnour
Manager

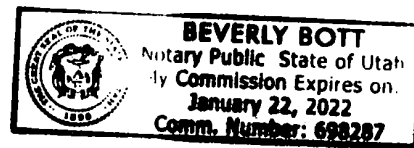
STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On this 8th day of August, 2019, before me personally appeared Brian Gochnour, who acknowledged himself to be the Manager of The Boyer Company, L.C., a Utah limited liability company, the Manager of BOYER 102, L.C., a Utah liability company, and being authorized to do so, he executed the foregoing instrument for the purposes therein contained, by signing the name of the company.

[NOTARY SEAL]



Notary Public



AGREEMENT AND CONSENT OF LIENHOLDER:

KeyBank National Association, as the holder of a lien affecting the above-referenced Land, hereby agrees and consents to the submission of the Land to the provisions of the Act pursuant to the terms of this Declaration.

Dated this 8 day of August, 2019.

KEYBANK NATIONAL ASSOCIATION

Nikolaus J. Muelleck

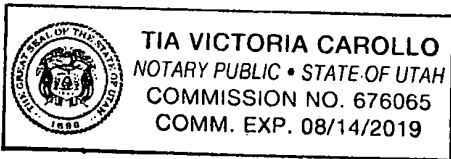
By: Nikolaus J. Muelleck

Its: Senior Vice President

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On this 8 day of August, 2019, before me personally appeared Nikolaus J. Muelleck who acknowledged himself to be the Senior Vice President of KeyBank National Association, and being authorized to do so, he executed the foregoing instrument for the purposes therein contained, by signing the name of the company, by himself as such officer.

[NOTARY SEAL]



Tia Victoria Carollo
Notary Public

EXHIBIT "A"

(Attached to and forming a part of the Declaration of Condominiums
for Block 71 Condominiums)

Legal Description of the Land

The "Land" referred to in the foregoing Declaration of Condominium is located in Salt Lake County, Utah, and is more particularly described as follows:

A parcel of ground situate in Lots 3, 4 and 8 of Block 71, Plat "A", Salt Lake City Survey, said parcel being described more particularly as follows:

Beginning at the Southwest Corner of Lot 3, Block 71, Plat "A", Salt Lake City Survey, and running thence North 0°01'23" West along the West line of said Block 71 a distance of 165.47 feet; thence North 89°58'59" East 165.11 feet; thence North 0°01'40" West 73.10 feet; thence North 89°58'59" East 82.50 feet; thence North 0°01'23" West 9.00 feet; thence North 89°58'59" East 217.97 feet; thence South 0°01'44" East 247.53 feet to a point on the South line of Lot 8 of said Block 71; thence South 89°58'39" West along the South line of said Lot 8 and said Lot 3 a distance of 465.60 feet to the point of beginning.

EXHIBIT "B"

(Attached to and forming a part of the Declaration of Condominiums
for Block 71 Condominiums)

Bylaws

A copy of the Bylaws of
Block 71 Condominiums Association, Inc.
follows this cover sheet.

BYLAWS
OF
BLOCK 71 CONDOMINIUMS ASSOCIATION, INC.

ARTICLE I
NAME AND LOCATION

The name of the corporation is **BLOCK 71 CONDOMINIUMS ASSOCIATION, INC.**, hereinafter referred to as the "Association". The principal office of the Corporation in the State of Utah shall be located at 6440 S. Wasatch Boulevard, Suite 100, Salt Lake City, Utah 84121, but meetings of Members and Directors may be held at such places within the State of Utah, County of Salt Lake, as may be designated by the Board of Directors.

ARTICLE II
DEFINITIONS

Section 2.1 "Association", or "Owners Association" shall mean and refer to Block 71 Condominiums Association, Inc., a Utah nonprofit corporation, its successors and assigns.

Section 2.2 "Board of Directors", "Board" or "Management Committee" shall mean and refer to the individuals elected or appointed by the Members to conduct and oversee the affairs of the Association and shall have the powers and duties as set forth in the Declaration, the Articles of Incorporation, and these Bylaws.

Section 2.3 "Declarant" shall mean and refer to Boyer 151, L.C., a Utah limited liability company, and Boyer 102, L.C., a Utah limited liability company, their respective successors and assigns, if such successors or assigns should acquire from the Declarant all of its or their rights under the Declaration.

Section 2.4 "Declaration" shall mean and refer to the Declaration of Condominiums applicable to the Subject Property recorded in the Office of the Recorder of Salt Lake County, State of Utah, and amendments thereto.

Section 2.5 "General Common Elements" shall mean and refer to that part of the Subject Property which is not included within the Units or the Limited Common Elements and all easements appurtenant thereto including, but not limited to, private utility lines and as more particularly described in the Declaration.

Section 2.6 "Unit" means a physical portion of the Condominium Project that:

- (1) is designated as a Unit on the Plat, or any amendment thereto;
- (2) is designated for separate ownership and independent use; and

(3) is designated as a Unit in the Declaration.

A Unit shall consist of the airspace above and the subsurface below the Land and all area and Improvements above and below the surface of the Land and within the vertical boundaries defined by the Unit boundary lines shown on the Map (as defined in the Declaration), extended upward to the heavens and downward to the center of the earth, together with appurtenances. A Unit shall include all improvements located within the Unit, including, without limitation, the footings and foundations, the columns, girders, beams, supports, perimeter and supporting walls, utility systems, mechanical systems, sprinkler systems, exhaust, heating and ventilation systems, storage areas, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, chimneys, drainage facilities, patios, balconies, decks, porches, courtyards, stoops, exits and entrances, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for the exclusive use of the Unit.

Section 2.8 "Member" means the Person who is the record holder of legal title to the fee simple interest in any Unit as reflected in the Salt Lake County Records. (Such Member may also be referred to as an "Owner".) If there is more than one record holder of legal title to a Unit, each record holder shall be a Member. The term "Member" includes Declarant to the extent that Declarant is the record holder of legal title to the fee simple interest in a Unit. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term "Member" shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such Person has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

Section 2.9 "Subject Property" shall mean and refer to that certain real property described in the Declaration of Condominiums (the "Declaration"), as amended, and such additions thereto as may hereafter be brought within the jurisdiction of the Association, referred to in the Declaration as the "Land".

ARTICLE III **MEETING OF MEMBERS**

Section 3.1 Annual Meetings. Annual meetings of the Members shall be held on the second Tuesday of March each year commencing 2022, and each subsequent regular annual meeting of the Members shall be held on the same day of the same month of each year thereafter, at the hour of 7:00 o'clock, p.m. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 3.2 Special Meetings. Special meetings of the Members may be called by or at the request of the president or by the Board of Directors, or upon written request of the Members holding one-third (1/3) of the Interests in General Common Elements.

Section 3.3 Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by

mailing a copy of such notice, postage prepaid, at least 15 days before such meeting to each Member entitled to vote thereafter addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 3.4 Quorum. The quorum required for any action by the Members hereunder, unless otherwise specifically set forth in the Declaration, shall be as follows: At each scheduled meeting called the presence of Members or of proxies entitled to cast two-thirds (2/3) of all outstanding votes shall constitute a quorum. If a quorum is not present at a scheduled meeting, such meeting may be adjourned pending notice of subsequently scheduled meeting at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequently scheduled meeting shall be held less than ten (10) or more than forty-five (45) days following the immediately preceding meeting.

Section 3.5 Voting by Proxy; Pledged Votes to Mortgagee. Votes allocated to a Unit may be cast pursuant to a proxy duly executed by an Owner. If a Unit is owned by more than one person, each Owner of a Unit may register protest to the casting of votes by the other Owners of the Unit through a duly executed proxy. A Unit Owner may not revoke a proxy given pursuant to this section except by (a) attending the meeting and voting in person, or (b) signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes (i) a writing stating that the appointment of the proxy is revoked; or (ii) a subsequent appointment form. A proxy is void if it is not dated or purports to be revocable without notice. Unless stated otherwise in the proxy, a proxy terminates 11 months after its date of issuance. An Owner may, but shall not be obligated to, pledge his or her vote on all issues or on specific issues to a Mortgagee. If the Board has been notified by the Mortgagee that it is enforcing its right to vote pursuant to such pledge, only the vote of the Mortgagee will be recognized on the issues that are subject to the pledge; provided, however, that if the Board has received such notices from more than one Mortgagee, the Mortgagee holding the Mortgage with the highest level of priority among the Mortgages held by those Mortgagees shall be entitled to vote.

Section 3.6 Voting. Votes appurtenant to a Unit are established in accordance with the terms and conditions of the Declaration which are restated in the Articles of Incorporation of the Association. Since a Member may be more than one person, if only one of such person(s) is present at a meeting of the Association that person shall be entitled to cast the votes appertaining to that Unit. But if more than one of such persons are present, the votes appertaining to that Unit shall be cast only in accordance with the agreement of a majority of them, and such consent shall be conclusively presumed if any one of them purports to cast the votes appertaining to that Unit without protest being made forthwith by any of the others to the person presiding over the meeting. The votes appurtenant to any one Unit may not be divided between Members of such Unit or with respect to matters before the Association; all such votes appurtenant to any one Unit shall be voted in one block. If more than the allocated votes are cast for any particular Unit, none of such votes shall be counted and all of such votes shall be deemed null and void other than to determine whether a quorum exists.

Section 3.7 Action Taken Without a Meeting. The Members 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 Members in accordance with the requirements of Utah Code Annotated, Section 16-6a-707. Any action so approved shall have the same effect as though taken at a meeting of the Members.

ARTICLE IV
BOARD OF DIRECTORS: SELECTION AND TERM OF OFFICE

Section 4.1 **Number.** The affairs of the Association shall be managed by a Board of Directors of three (3) individuals. Immediately after the conveyance of any Unit by the Declarant, and upon organization of the Association by the filing of its Articles of Incorporation with the Utah Department of Commerce, the Association shall hold an organization meeting. At the organization meeting, each of the Owners of the Residential Unit, the Commercial Parking Unit, and the Residential Parking Unit shall appoint one (1) individual to the Board of Directors. Thereafter, the Owner of each Unit may remove its appointee and appoint a replacement to the Board of Directors as and when it elects. Owners of Units, spouses of Owners, Mortgagees (or designees of Mortgagees), partners of partnerships owning a Unit, managers or members of limited liability companies owning a Unit, and trustees or officers of corporations or trusts owning a Unit shall be eligible for Membership on the Board.

Section 4.2 **Term of Office.** Each Director shall serve until his or her successor is appointed or elected as provided in Section 4.1.

Section 4.3 **Removal.** A Director may be removed, with or without cause, by the action of the Owner of the Unit who appointed such Director. In the event of death, resignation or removal of a Director, his or her successor shall be selected in accordance with the provisions of Section 4.1.

Section 4.4 **Compensation.** Board members may be reimbursed for all expenses reasonably incurred in connection with Association business. The Board may fix such compensation for any member as may be reasonable in light of the Association's financial condition and the duties which that member is required to perform.

Section 4.5 **Action Taken Without a Meeting.** The Board of Directors 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 the Board members. Any action so approved shall have the same effect as though taken at a meeting of the Board of Directors.

ARTICLE V
MEETINGS OF THE BOARD OF DIRECTORS

Section 5.1 **Regular Meetings.** Regular meetings of the Board shall be held annually without notice, at such place and hour as may be fixed from time to time by resolution of the Board members. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 5.2 Special Meetings. Special meetings of the Board shall be held when called by the president of the Association, or by any Board member after not less than three (3) days notice to each Board member.

Section 5.3 Quorum. A quorum for the transaction of business shall not exist absent the presence of all Board members; provided, however, if a quorum is not present at a regularly scheduled or special meeting, such meeting may be adjourned pending notice of a subsequent scheduled meeting at which a quorum shall be two (2) of the three (3) members of the Board. No such subsequently scheduled meeting shall be held less than five (5) or more than thirty (30) days following the immediately preceding meeting. Only acts or decision which are authorized by all of the Board members at a meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VI **POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

Section 6.1 Powers. The Board of Directors shall have power to:

- (a) adopt and publish Rules and Regulations governing the use of the General Common Elements and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;
- (b) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the Membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration; and
- (c) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 6.2 Duties. It shall be the duty of the Board of Directors to:

- (a) determine whether to retain by written contract, a professional manager (the "Manager"), unless the Members holding sixty-six and two-thirds percent (66 2/3%) of the votes attributable to the Interest in General Common Elements vote otherwise, which Manager shall be responsible for the routine operation of the Condominium Project. Each contract for professional management shall be subject to termination by either party on not more than ninety (90) days advance written notice and without the payment of any penalty for such termination; however, if the professional management contract is with the Declarant or its affiliate, such contract may be terminated without cause at such time as the Members (other than the Declarant) take control of the Association. Each Manager (or its principal broker) shall be a licensed real estate broker or property manager in the State of Utah;
- (b) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the

Members, or at any special meeting when such statement is requested in writing by Members owning one-fourth (1/4) of the Interests in General Common Elements;

(c) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(d) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Unit at least fifteen (15) days in advance of each annual assessment period;

(2) send written notice of each assessment to every Member subject thereto at least fifteen (15) days in advance of each annual assessment period; and

(3) foreclose the lien against any Unit for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the Member personally obligated to pay the same.

(e) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(f) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(g) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(h) cause the General Common Elements to be maintained; and

(i) maintain the books and financial records of the Association, and, cause to be prepared within one hundred twenty (120) days of the end of each fiscal year of the Association, an audited financial statement of the Association for the preceding fiscal year and to make the same available to the holder, insurer or guarantor of any first mortgage secured by a Unit upon submission of a written request for it.

Section 6.3 The Board of Directors may not act on behalf of the Association, to:

(a) amend the Declaration;

(b) terminate the Association, the Declaration or the Condominiums;

(c) elect Directors to the Board of Directors; or

- (d) determine the qualifications, powers and duties, or terms of office, of Directors.

ARTICLE VII **OFFICERS AND THEIR DUTIES**

Section 7.1 Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 7.2 Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members. At the initial meeting, the Board of Directors shall elect a President, Secretary, Treasurer, and other officers as shall be deemed appropriate.

Section 7.3 Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year or such longer period as the Board shall designate, unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 7.4 Special Appointments. The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may, from time to time, determine.

Section 7.5 Resignation and Removal. Any officer may be removed from office with or without cause by the Board of Directors. Any officer may resign at any time giving written notice to the Board of Directors, the president or the 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.

Section 7.6 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7.7 Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 7.4 of this Article.

Section 7.8 Duties. The duties of the officers are as follows:

President The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases,

mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

Secretary The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; if the Board deems appropriate, cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the Membership at its regular annual meeting, and deliver a copy of each to the Members.

ARTICLE VIII **ASSESSMENTS**

As more fully provided in the Declaration, each Member is obligated to pay to the Association general, special, utility, and default assessments and other charges which are and will be secured by a continuing lien upon the property against which the assessment is made.

ARTICLE IX **CORPORATE SEAL**

The Association may obtain a seal, in such form as the Association may elect, having the name of the corporation, the year of incorporation, and the words "Corporate Seal".

ARTICLE X **AMENDMENTS**

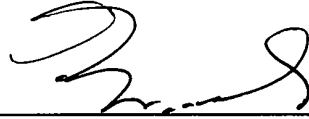
Section 10.1 These Bylaws may be amended, at a regular or special meeting of the Members, with the approval of (a) Members holding not less than sixty-seven percent (67%) of the Interests in General Common Elements, in person or by proxy, and (b) Mortgagees holding first priority Mortgages in Units allocated not less than sixty-seven percent (67%) of the Interests in General Common Elements.

Section 10.2 In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE XI
MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, I hereby certify that all of the initial Directors of **BLOCK 71 CONDOMINIUMS ASSOCIATION, INC.**, have adopted these Bylaws this 7th day of August, 2019.



BRIAN GOCHNOUR

EXHIBIT "C"

(Attached to and forming a part of the Declaration of Condominiums
for Block 71 Condominiums)

Par Value of Units

Line No.	Unit No.	Owner	Unit Par Value	Interest in C.E.	Votes
1	Residential Unit		90	90%	90
2	Residential Parking Unit		4	4%	4
3	Commercial Parking Unit		6	6%	6
TOTALS			100	100%	100