

10391775  
04/04/2008 11:56 AM \$258.00  
Book - 9590 Pg - 7696-7772  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
OVERLAND DEVELOPMENT  
421 S 400 E  
SLC UT 84111  
BY: SLR, DEPUTY - WI 77 P.

**DECLARATION OF CONDOMINIUM**

**BROADWAY TOWER  
CONDOMINIUMS**

Salt Lake City, Salt Lake County, State of Utah

## TABLE OF CONTENTS

	<u>Page</u>
<u>RECITALS</u> .....	1
<u>DECLARATION</u> .....	1
<b>ARTICLE I</b>	
DEFINITIONS .....	1
1.01 <u>Basic Definitions</u> .....	1
1.02 <u>Gender and Number</u> .....	7
<b>ARTICLE II</b>	
SUBMISSION .....	7
2.01 <u>Submission</u> .....	7
2.02 <u>Covenants Running with the Subject Property</u> .....	8
2.03 <u>Priority Documents</u> .....	8
2.04 <u>Statement of Intention</u> .....	8
<b>ARTICLE III</b>	
BUILDING, UNITS, AND COMMON ELEMENTS .....	8
3.01 <u>The Building</u> .....	8
3.02 <u>Units</u> .....	9
3.03 <u>Interests in General Common Elements</u> .....	9
3.04 <u>Limited Common Elements</u> .....	10
3.05 <u>Separate Taxation of Condominium Units</u> .....	11
3.06 <u>Description of Condominium Units</u> .....	11
<b>ARTICLE IV</b>	
THE RESIDENTIAL ASSOCIATION .....	11
4.01 <u>Formation of the Residential Association</u> .....	11
4.02 <u>Purposes and Powers</u> .....	11
4.03 <u>Residential Association Documents</u> .....	13
4.04 <u>Books and Records</u> .....	13
<b>ARTICLE V</b>	
VOTING .....	14
5.01 <u>Voting</u> .....	14
<b>ARTICLE VI</b>	
MANAGEMENT COMMITTEE .....	15
6.01 <u>Number and Election of Directors/Committee Members</u> .....	15
6.02 <u>Powers of the Management Committee</u> .....	15
6.03 <u>Declarant Control Period</u> .....	15
6.04 <u>Removal of Directors</u> .....	16
6.05 <u>Replacement of Directors</u> .....	16
6.06 <u>Management Committee Liability</u> .....	16
<b>ARTICLE VII</b>	
ASSESSMENTS, COMMON EXPENSES, BUDGETS AND LIENS .....	17
7.01 <u>Obligations for Assessments</u> .....	17
7.02 <u>Shares of Common Expenses</u> .....	18
7.03 <u>Budgets</u> .....	19
7.04 <u>General Assessments</u> .....	20

7.05	<u>Special Assessments</u>	20
7.06	<u>Utility Assessments</u>	21
7.07	<u>Default Assessments</u>	21
7.08	<u>Assignment of Assessments</u>	22
7.09	<u>Assessment Lien</u>	22
7.10	<u>Waiver of Homestead Exemptions</u>	23
7.11	<u>Estoppel Certificates; Notices to Mortgagees</u>	23
7.12	<u>Reserve Fund</u>	23
ARTICLE VIII		
	UTILITY AND OTHER SERVICES	24
8.01	<u>Water, Sewer, Electric and Trash Removal Services</u>	24
8.02	<u>Cable Television and Satellite Dishes</u>	24
8.03	<u>Telephone</u>	25
8.04	<u>Other Utilities</u>	25
ARTICLE IX		
	MAINTENANCE OF COMMON ELEMENTS AND UNITS	25
9.01	<u>Maintenance of Common Elements</u>	25
9.02	<u>Maintenance of Units and Limited Common Elements</u>	26
9.03	<u>Mechanic's Liens and Indemnification</u>	26
ARTICLE X		
	COVENANTS, CONDITIONS AND RESTRICTIONS	27
10.01	<u>Applicability of Covenants, Conditions and Restrictions</u>	27
10.02	<u>Residential Association Documents</u>	27
10.03	<u>Notice of Conveyance, Assignment or Encumbrance</u>	27
10.04	<u>Use of Common Elements</u>	27
10.05	<u>Alterations</u>	27
10.06	<u>Nuisances, Hazardous Activities and Unsightliness</u>	28
10.07	<u>Signs</u>	28
10.08	<u>Compliance with Laws</u>	29
10.09	<u>Compliance with Insurance</u>	29
10.10	<u>Subdivision, Rezoning and Timesharing</u>	29
10.11	<u>Vehicles and Parking</u>	29
10.12	<u>Deliveries, Trash Removal and Other Services</u>	31
10.13	<u>Storage</u>	31
10.14	<u>Animals</u>	31
10.15	<u>Solid-Fuel Burning Devices</u>	31
10.16	<u>Restrictions and Disclosures Regarding Rentals</u>	32
10.17	<u>Units</u>	32
10.18	<u>No Smoking Permitted</u>	33
10.19	<u>Balconies, Decks and Patio Restrictions</u>	33
10.20	<u>Sound Attenuation</u>	34
10.21	<u>Declarant's Exemption</u>	34
ARTICLE XI		
	EASEMENTS AND RESERVATIONS	35
11.01	<u>Declarant's Easements Over Common Elements</u>	35
11.02	<u>Utility Easement</u>	35
11.03	<u>Residential Association's Easement</u>	36
11.04	<u>Easements to Owners</u>	36
11.05	<u>Easements to Parking by Unit Owners</u>	36
11.06	<u>Entry in Aid of Other Rights</u>	36
11.07	<u>Easements for Encroachments</u>	37

11.08	<u>Emergency Access Easement</u>	37
ARTICLE XII		
	INSURANCE	37
12.01	<u>General Liability Insurance</u>	37
12.02	<u>Property Insurance</u>	37
12.03	<u>Flood Insurance</u>	38
12.04	<u>Fidelity Insurance or Bond</u>	38
12.05	<u>Liability Insurance for Directors and Officers</u>	38
12.06	<u>Additional Provisions to be Contained in Insurance Policies</u>	39
12.07	<u>Trustee</u>	40
12.08	<u>Unit Owner Maintained Insurance</u>	40
12.09	<u>Management Committee' Authority to Revise Insurance Coverage</u>	40
12.10	<u>Periodic Insurance Review</u>	41
ARTICLE XIII		
	CASUALTY	41
13.01	<u>Total or Partial Destruction of the Residential Condominium Project</u>	41
13.02	<u>Excess Insurance Proceeds</u>	41
13.03	<u>Casualty to a Unit</u>	42
ARTICLE XIV		
	CONDEMNATION	42
14.01	<u>Condemnation of All Units</u>	42
14.02	<u>Condemnation of Fewer Than All Units</u>	42
14.03	<u>Condemnation of Common Elements</u>	42
14.04	<u>Appointment of Residential Association Regarding Condemnation Claims</u>	42
ARTICLE XV		
	SPECIAL DECLARANT RIGHTS	42
15.01	<u>Improvements</u>	42
15.02	<u>Development Rights</u>	43
15.03	<u>Sales Offices, Models and Signs</u>	43
15.04	<u>Exercising Special Declarant Rights</u>	43
15.05	<u>Interference with Special Declarant Rights</u>	43
15.06	<u>Rights Transferable</u>	44
ARTICLE XVI		
	MORTGAGEE PROTECTIONS	44
16.01	<u>Benefit of Mortgagees</u>	44
16.02	<u>Notice of Actions</u>	44
16.03	<u>Consent Required</u>	44
16.04	<u>Notice of Objection</u>	45
16.05	<u>First Mortgagee's Rights</u>	45
16.06	<u>Limitations on First Mortgagee's Rights</u>	45
16.07	<u>Declarant Rights</u>	46
ARTICLE XVII		
	ENFORCEMENT AND REMEDIES	46
17.01	<u>Enforcement</u>	46
17.02	<u>Attorneys' Fees</u>	47
17.03	<u>Interest</u>	47
17.04	<u>Right to Notice and Hearing</u>	47
17.05	<u>Non-Waiver</u>	47

ARTICLE XVIII		
TERM AND AMENDMENTS		48
18.01	<u>Term</u>	48
18.02	<u>Termination</u>	48
18.03	<u>Amendments</u>	48
ARTICLE XIX		49
MISCELLANEOUS		49
19.01	<u>Interpretation of the Declaration</u>	49
19.02	<u>Severability</u>	49
19.03	<u>Disclaimer of Representations</u>	49
19.04	<u>Reference to Declaration and Deeds</u>	49
19.05	<u>Successors and Assigns of Declarant</u>	49
19.06	<u>Captions and Titles</u>	49
19.07	<u>Exhibits</u>	49
19.08	<u>Governing Law</u>	49
19.09	<u>Notices</u>	50
19.10	<u>Service of Process</u>	50

EXHIBIT A - Legal Description of the Subject Property

EXHIBIT B - Bylaws

EXHIBIT C - Interest in Common Areas

WHEN RECORDED, PLEASE MAIL TO:

Dennis K. Poole  
Poole & Associates, L.C.  
4546 South 700 East, Suite 200  
Salt Lake City, Utah 84107

space above for recorder's use

**DECLARATION OF CONDOMINIUM  
BROADWAY TOWER CONDOMINIUMS**

THIS DECLARATION OF CONDOMINIUM (as amended from time to time, this "Declaration") is made as of April \_\_\_\_, 2008, by Broadway Tower Apartment Associates, a Utah limited partnership (together with its successors and assigns, "Declarant").

RECITALS

A. Declarant owns the Subject Property located in the County of Salt Lake, State of Utah, that is more particularly described on Exhibit A hereto.

B. Declarant desires to create a condominium project on such real property pursuant to the Utah Condominium Ownership Act, Utah Code Sections 57-8-1 through 57-8-38, as the same may be amended from time to time. The condominium project shall be known as the "BROADWAY TOWER CONDOMINIUMS."

C. Declarant deems it necessary and desirable to subject the Subject Property, and all Improvements now or hereafter constructed on the Subject 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) "Act" means the Utah Condominium Ownership Act, Utah Code Annotated §§57-8-1 through 57-8-38 (2006 Supp.), as the same may be amended from time to time.

(b) "Area," when reference is made to a Unit or Units, means the total number of square feet of the ground or floor surface thereof, rounded to the nearest whole number ending in zero, and computed and determined as follows on the basis of dimensions shown on the Map. The

measurements used in determining Area shall run from the middle of walls separating Units or common areas and the interior surface of exterior walls and each separate level, story, or floor contained within or making up the Unit shall be taken into account and, subject to the following provisions, shall augment the Area thereof. So long as it substantially complies with the provisions of this Section and is not arbitrary, Declarant's determination of the Area of a Unit, as set forth in this Declaration or in any amendment hereto shall be conclusive.

(c) "Articles" means when referring to the Residential Association Documents, the articles of incorporation of the Residential Association, as the same may be amended from time to time.

(d) "Assessment" means any charge imposed by the Residential Association, as permitted by the Act, including but not limited to, a General Assessment, a Special Assessment or a Default Assessment levied and assessed pursuant to Article VII below.

(e) "Assessment Lien" has the meaning given to that term in Section 7.08 below.

(f) "Association Documents" means this Declaration, the Articles, the Bylaws and the Rules and Regulations, as the same may be amended from time to time.

(g) "Building" shall mean and refer to a building containing Units and comprising a part of the Property.

(h) "Bylaws" when referring to the Residential Association means the bylaws of the Residential Association, attached hereto and forming a part hereof as Exhibit B, as the same may be amended from time to time.

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

(j) "Common Expenses" means:

(i) any and all costs, expenses and liabilities incurred by or on behalf of the Residential Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Elements; (B) providing facilities, services and other benefits to Unit 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 Residential Condominium Project; and (F) operating the Residential Association;

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

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

(iv) reserves for any such costs, expenses and liability.

(k) "Condominium Unit" means a Unit together with:

(i) the Interest in General 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 Residential Association appurtenant to that Unit.
- (l) "Declarant" means Broadway Tower Apartment Associates a Utah limited partnership, and its successors and assigns.
  - (m) "Declarant Control Period" has the meaning given to that term in Section 6.03 below.
  - (n) "Declaration" means this Declaration of Condominium for Broadway Tower Condominiums, as the same may be amended from time to time.
  - (o) "Default Assessment" has the meaning given to that term in Section 7.06 below.
  - (p) "Director" means a duly elected or appointed member of the Management Committee.
  - (q) "Eligible Mortgagee" means those First Mortgagees giving notice as provided in Section 16.01.
  - (r) "First Mortgage" means any 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.
  - (s) "First Mortgagee" means a Mortgagee under a First Mortgage.
  - (t) "General Assessment" has the meaning given to that term in Section 7.04 below.
  - (u) "General Common Elements" means all of the areas of the Residential 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) all Improvements, including, without limitation, the foundations, 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, yards, gardens, patios, balconies, decks, courtyards, stoops, exits and entrances, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use, and all other parts of the Subject Property necessary or convenient to the existence, maintenance and safety of the Residential 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;
    - (ii) unless designated as Limited Common Elements, all parking facilities, driveways and ramps; and
    - (iii) any parcels of real property and Improvements and fixtures located thereon (A) that are owned by a Person other than the Residential Association, but in which the Residential Association has rights of use or possession pursuant to this Declaration, a lease, license, easement or other agreement, and (B) that are used or possessed by the Residential Association for the benefit of all Unit Owners.
  - (v) "Guest" means any family member, employee, agent, independent contractor, lessee, customer or invitee of a Unit Owner.



(w) "Improvement[s]" means the Building, together with any other building, structure or other improvement (including, without limitation, all fixtures and improvements contained therein) located on the Subject Property and within or upon which one or more Units or Common Elements are or will be located.

(x) "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.

(y) "Land" means the real property identified in Article II of this Declaration.

(z) "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) the mechanical rooms, balconies, Parking Spaces, and any other physical portion of the Residential Condominium Project depicted on the Plat as Limited Common Elements, or as Parking Spaces.

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

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

(iv) any parcels of real property and Improvements and fixtures located thereon (A) that are owned by a Person other than the Residential Association, but in which the Residential 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 Residential 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, and any portion thereof serving more than one Unit shall be Limited Common Elements allocated solely to those Units served. Nonstructural walls located wholly within a Unit are a part of the Units in which they are located.

(aa) "Management Committee" means the Residential 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.

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

(cc) "Manager" has the meaning given to that term in Section 6.02(b) below.

(dd) "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.

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

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

(gg) "Parking Space(s)" means one or more separately designated stalls or spaces on the Plat, or any amendment thereto which are identified by Parking Space Numbers and may be assigned to a Unit as Limited Common Elements or which may be reserved by easement to the Declarant pursuant to the provisions of Section 2.01 in conjunction with the use of the Additional Land.

(hh) "Par Value" means the number of points assigned to each Unit by this Declaration as set forth on Exhibit C hereto. The points assigned to a Unit shall be equal to one thousand (1,000) multiplied by the sum of (i) 1 divided by the total number of Units within the Residential Condominium Project (determined to six decimals); plus (ii) the Area of the Unit divided by the total Area of all Units within the Residential Condominium Project (determined to six decimals). The Par Value of each Unit shall be re-computed as Units are added to the Residential Condominium Project pursuant to the provisions of Section 15.03. In determining Par Values, Declarant may have made and may make, as Additional Land and Units are added to the Residential Condominium Project, minor adjustments in some or all of the Par Values 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 Par Values of all Units equals two thousand (2,000).

(ii) "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.

(jj) "Plat" means the Condominium Plat filed herewith, entitled "Condominium Plat of BROADWAY TOWER CONDOMINIUMS," executed and acknowledged by Declarant, consisting of five (5) sheets, and prepared by Michael D. Hoffman, a duly registered Utah Land Surveyor holding Certificate No. 316831, as such Condominium Plat may be amended or supplemented in accordance with law and the provisions hereof from time to time.

(kk) "Priority Documents" means the following: (i) that certain Agreement Number 5-W Waiver of Installation of Public Way Improvement executed June 8, 1982, by and between Salt Lake City Corporation and Egbert Allright Parking, Inc, recorded June 11, 1982, as Entry No. 3683724 in Book 5383 at Page 15 of the official records of the Salt Lake County Recorder; (ii) that certain Abstract of Findings and Order executed June 13, 1983, and recorded June 13, 1983 as Entry No. 3804413 in Book 5466 at Page 1274 of the official records of the Salt Lake County Recorder; and (iii) that certain Abstract of Findings and Order executed February 27, 1984, and recorded February 28, 1984 as Entry No. 3909694 in Book 5534 at Page 1386 of the official records of the Salt Lake County Recorder.

(ll) "Project" means the Building, and all Units, and all Common Elements known as the Broadway Tower Condominiums.

(mm) "Purchaser" means a Person, other than Declarant or a Successor Declarant, who acquires legal title to the fee simple interest in any Condominium Unit or portion thereof.

(nn) "Record," "Recording," "Recorded," and "Recorder" each have the meaning stated in Utah Code Annotated §57-3-101 through §57-3-102, as the same may be amended from time to time.

(oo) "Residential Association" means the association of Owners of Units known as Broadway Tower Condominiums Association, Inc., a Utah nonprofit corporation, and its successors and assigns.

(pp) "Residential Association Documents" means this Declaration, the Articles, the Bylaws, and the Rules and Regulations, as the same may be amended from time to time.

(qq) "Residential Condominium Project" means the real estate condominium project created on the Subject Property by this Declaration, consisting of the Units and the Common Elements, known as Broadway Tower Condominiums.

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

(ss) "Salt Lake County Records" means the Official Records for Salt Lake County, Utah.

(tt) "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.

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

(vv) "Special Declarant Rights" means all rights that Declarant reserves for itself in this Declaration.

(ww) "Subject Property" means the real property which Article II of this Declaration submits to the terms of the Act, including but not limited to any portion of the Additional Land added pursuant to the provisions of Section 15.03.

(xx) "Unit" means a physical portion of the Residential Condominium Project that:

(i) consists of one or more rooms or spaces located in one or more floors or parts of floors located in the Subject Property;

(ii) is designated for separate ownership and independent use; and

(iii) is designated as a Unit in Exhibit C of this Declaration and on the Plat.

The walls (excluding interior walls located solely within the boundaries of a Unit), floors or ceilings are designated on the Plat as boundaries of a Unit, and all paneling, tiles, wallpaper, painting, finished flooring and any other materials constituting any portion of the finished surfaces thereof are part of the Unit, and all other portions of the walls, floors and ceilings are part of the Common Elements.

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

(zz) "Unit 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. 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.

(aaa) "Successor Declarant" means any Person who succeeds to any Special Declarant Right.

(bbb) "Total Residential Condominium Project Par Value" means the Par Value of all Units in the Residential Condominium Project, as set forth on Exhibit C hereto, as the same may be amended by the addition of Additional Land.

(ccc) "Utility Assessment" has the meaning given to that term in Section 7.06 below.

(ddd) "Working Capital Fund" has the meaning given to that term in Section 7.12 below.

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

2.01 Submission.

There is hereby submitted to the provisions of the Act, as the Subject Property associated with Broadway Tower 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 Subject Property 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; 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 Subject Property 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 DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the above-described Subject Property and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or for any assignee or successor of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct and complete the Building and all of the other improvements described in this Declaration or in the Plat recorded concurrently herewith, and to do all things reasonably necessary or proper in connection therewith; (ii) to improve portions of the Subject Property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Unit Owners as Declarant or as such assignee or successor may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the above-described Subject Property or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire three (3) years after the date on which the Declaration was filed for record in the Salt Lake County Records.

**2.02 Covenants Running with the Subject Property.**

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 Residential Association, all other parties having any, right, title or interest in the Subject Property or any portion thereof and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives.

**2.03 Priority Documents.**

This Declaration and the other Association Documents shall be subject and subordinate to the Priority Documents. If there is any conflict or inconsistency between the terms and conditions of this Declaration or any of the other Association Documents and the terms and conditions of the Priority Documents, the terms and conditions of the Priority Documents shall control.

**2.04 Statement of Intention.**

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

**ARTICLE III  
BUILDING, UNITS, AND COMMON ELEMENTS**

**3.01 The Building.**

The Improvements included in the Residential Condominium Project are now or will be located on the Subject Property. The significant Improvements contained in the Residential Condominium Project include: (i) one (1) Building, generally consisting of twelve (12) levels; (ii) ninety six (96) Units located upon nine (9) levels; and (iii) three (3) parking levels, storage areas, asphalt or concrete driveways, and the Common Elements. The Common Elements which are recreational in nature are an exercise room and a hot tub. The location and configuration of the Improvements referred to in the foregoing sentence are depicted on the Plat. The Residential Condominium Project also contains other improvements of a less significant nature which are not depicted on the Plat. The Plat shows the number of stories within the Building and the number of Units which are contained in the Building and included in the Residential Condominium Project.

Declarant has made no representation or warranty of any kind, express or implied, with respect to the Residential Condominium Project, the existing improvements or any component contained therein. The Building and improvements now existing have been used as a residential apartment complex and the Declarant acquired the same for conversion into condominiums. Except for any written warranty which may be contained in a purchase agreement, the Declarant makes no representation or warranty and each Owner who acquires a Unit and any interest in the Building, acquires such Unit and interest "as is, where is and with all faults."

3.02 Units.

(a) Declarant hereby creates ninety six (96) Units. The Plat shows the Unit Number of each Unit, its location, dimensions from which its Area may be determined, and the General Common Elements and Limited Common Elements to which it has access. Each Unit shall be capable of being separately owned, encumbered and conveyed. Each Unit Owner of a Unit shall be entitled to the exclusive ownership and possession of such Unit Owner's Unit, subject to the terms and conditions of this Declaration, and each Unit may be transferred without any right of first refusal or similar restriction.

(b) No Unit 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 Sections 10.11, 10.11 and 15.03, 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 Declarant's exercise or enjoyment of any Special Declarant Right;

(ii) subject to the provisions of Section 10.04, a Unit Owner may grant its rights to use any General Common Element or any Limited Common Element appurtenant to the Unit Owner's Unit to the Unit Owner's Guests; or

(iii) the Unit Owner of a Unit may construct partitions within its Unit only with the prior written consent of the Management Committee provided that any such construction shall not result in the removal or modification of the Common Elements (including but not limited to structural elements) or Limited Common Elements; further provided, however, the Unit 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 Unit Owner leases its Unit.

3.03 Interests in General Common Elements.

(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 calculated in accordance with the following formula:

$$\text{Interest in General Common Elements} = \frac{\text{(Par Value of the Unit)}}{\text{(Total Residential Condominium Project Par Value (2000))}}$$

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. Exhibit C shall be modified from time to time as Additional Land and Units are added to the Residential Condominium Project in accordance with the requirements of Section 15.03.

(b) The Interest in General Common Elements appurtenant to each of the Units of the Residential 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 Unit Owners expressed in an amendment to this Declaration adopted as provided in Section 18.03 hereof. If any Units are added to or withdrawn from the Residential Condominium Project, or if the Area of one or more Units is increased or decreased, the Interest in General Common Elements for all Units within the Residential Condominium Project after such addition or withdrawal, increase or decrease shall be recalculated in accordance with the formula set forth in paragraph 3.03(a) above. 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 Residential 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 restriction upon a Unit Owner's right of ingress to and egress from such Unit Owner's Unit, which right shall be perpetual and appurtenant to such Unit.

### 3.04 Limited Common Elements.

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. The Limited Common Elements of the Residential Condominium Project and the Units to which they are appurtenant are generally described as follows: (i) one or more balconies or patios (not including or extending into decking or other materials constituting the balcony or patio surface, excluding the exterior surface of all walls of a Building which may surround part of the balcony or patio, excluding the railings which may in part contain the balcony or patio, and excluding the roof or decking (including the surface thereof) above the balcony or deck, all of which exclusions shall remain Common Elements and not Limited Common Elements), and (ii) one Parking Space, all as assigned to each respective Unit as more particularly shown on the Plat or as subsequently assigned by Declarant to Units as evidenced by one or more Supplements to this Declaration based upon needs and preferences of Unit Owners. The Unit Owner shall not permit any screws, bolts, or other items to be used upon the Limited Common Elements of a balcony or patio or any other locations which would penetrate the Common Elements. The Unit Owner of a Unit shall keep the Limited Common Elements designated for use in connection with his Unit, in a good, clean, sanitary and attractive condition; provided, that a Unit Owner may not maintain any item of personal property upon a patio or balcony which is higher than or is stored above the top of the originally constructed railing; further provided, however, that the Residential Association shall keep those components for which it is responsible in a good state of repair. In the event that a Unit Owner fails to keep the Limited Common Elements appurtenant to his Unit in a good, clean, sanitary, and attractive condition, or in the event that the Unit Owner improperly uses or damages the Common Elements adjacent to a Limited Common Element, the

Residential Association may cause the Limited Common Element to be properly maintained and the Common Elements to be restored to their proper condition, at the expense of the Unit Owner, in accordance with the procedures set forth in Section 7.07.

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:

Unit \_\_\_\_ contained within Broadway Tower Condominiums Project as the same is identified in the Condominium Plat recorded in Salt County, Utah, on \_\_\_\_\_, 200\_ as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_, beginning at page \_\_\_\_ (as said Condominium Plat shall have heretofore been amended or supplemented) and in the Declaration of Condominium for Broadway Tower Condominiums, recorded in Salt Lake County, Utah on \_\_\_\_\_ as Entry No. \_\_\_\_\_, in Book No. \_\_\_\_\_, beginning 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 General 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 portion there) or Unit, the boundaries of a 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, the Subject Property and/or a Unit.

ARTICLE IV  
THE RESIDENTIAL ASSOCIATION

4.01 Formation of the Residential Association.

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

4.02 Purposes and Powers.

- (a) The Residential 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 Unit Owners; provided however, that without the approval of Unit Owner's holding eighty percent (80%) or greater of the votes allocated to all Units, the Residential Association may not establish a rental desk, hotel desk or similar facilities for the management of rentals within the Residential Condominium Project;

(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 other Persons, with or without the vote or consent of the Owners, Mortgagees, insurers or guarantors of Mortgages, or of any other Person;

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

(vii) to regulate and manage the Residential Condominium Project; and

(viii) to execute and record, on behalf of all Unit 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 Residential Association Documents, the Residential 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 Residential 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 Residential 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 Unit Owners, such as (A) recreational facilities and services, (B) water, sewer, natural gas, electric, cable television, HVAC services, and other utility services, and (C) trash collection facilities and other services, all of which services specified in (B) and (c) may be the subject of a Utility Assessment as provided in Section 7.06 herein below;

(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 Residential Condominium Project;

- (iii) borrow monies and grant security interests in the Common Elements, and in the assets of the Residential Association as collateral therefor;
- (iv) make capital improvements, repairs and replacements to the Common Elements;
- (v) adopt Rules and Regulations; and
- (vi) hire and terminate managers and other employees, agents and independent contractors.

#### 4.03 Residential Association Documents.

(a) This Declaration and the Plat create the Residential Condominium Project and set forth certain covenants, conditions, restrictions, reservations, easements, assessments, charges and liens applicable to the Subject Property. The Articles create the Residential Association. The Bylaws provide for the regulation and management of the Residential Association, and the Rules and Regulations provide for the regulation and management of the Residential 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 terms and conditions of this Declaration shall control. If there is any conflict or inconsistency between the terms and conditions of the Articles and the terms and conditions of the Bylaws or the Rules and Regulations, the terms and conditions of the Articles shall control. If there is any conflict or inconsistency between the terms and conditions of the Bylaws and the terms and conditions of the Rules and Regulations, the terms and conditions of the Bylaws shall control.

#### 4.04 Books and Records.

The Management Committee, or the Manager, if any, shall keep detailed, accurate records in chronological order, of Utility Assessments, and receipts and expenditures affecting all such other Assessments and the Common Elements, specifying and itemizing the Common Expenses and any other expenses incurred. Upon request, the Residential Association shall allow Unit Owners, Mortgagees, prospective purchasers and prospective Mortgagees, and their respective agents to inspect current copies of the Residential Association Documents and the books, records, budgets and financial statements (including a copy of the most recent annual audited financial statements, if the same has been prepared) of the Residential Association during normal business hours and under other reasonable circumstances. The Residential Association may charge a reasonable fee for copying such materials.

The Residential Association shall be required to prepare and furnish within one hundred twenty (120) days after the end of each fiscal year of the Residential Association, an audited financial statement of the Residential Association for the immediately preceding fiscal year. Copies of such audited financial statements shall be made available to the holder, insurer or guarantor of any First Mortgage secured by a Unit as they shall request the same.

#### 4.05 Rules and Regulation.

The Residential Association may make reasonable Rules and Regulations governing the use, repair and maintenance of the Units and of the Common Elements, which Rules and Regulations shall be consistent with the rights and duties established in this Declaration. Such Rules and Regulations may include, without limitation: (i) a requirement that draperies, shades, or other interior window coverings, including the interior surfaces of any window or door glass used in Units shall present a uniform appearance of type and color from the exterior of any Unit or all Units, and that the Residential Association shall have the right to inspect and reinspect and approve all proposed draperies, shades, or other interior window coverings to insure compliance with such Rules and Regulations before installation thereof in a Unit; (ii) a requirement that windows not be

tinted; (iii) that materials, facilities, apparatus and components used in the repair and maintenance of a Unit be of the same type, quality, grade, and appearance as those originally installed in a Unit, including but not limited to the requirement that floor coverings of specific types be replaced with the same type of coverings (i.e., carpet for carpet, tile for tile, etc.); (iv) that glass specifications originally installed as part of a Unit be maintained (i.e., special requirements for south and west facing windows); (v) that no walls of any type located within a Unit be moved without prior Residential Association approval; and (vi) that Limited Common Elements conform to standardized regulations regarding appearance, maintenance and modifications thereof.

## ARTICLE V VOTING

### 5.01 Voting.

(a) At any meeting of the Residential Association, the Interest in General Common Elements appurtenant to a Unit may be voted in connection with issues presented to the Unit Owners for vote.

(b) The votes allocated to the Units of the Residential Condominium Project are equal to one hundred (100) multiplied by the Interests in General Common Elements set forth on Exhibit C attached hereto and made a part hereof. Consequently, the total number of votes allocated to all Units shall be ten thousand (10,000).

(c) If any Units are added to or withdrawn from the Residential Condominium Project, or the Area of one or more Units is increased or decreased, the total number of votes allocated to all ownerships 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.

(d) Each 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 Unit Owners of the Unit. If the Unit 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 Unit Owner casts a vote representing a particular Unit, it will thereafter be presumed for all purposes that the Unit Owner was acting with the authority and consent of all other Unit Owners with whom such Unit Owner shares the Unit, unless objection thereto is made by a Unit 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 Unit 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 Unit 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 Unit Owner.

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

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

ARTICLE VI  
MANAGEMENT COMMITTEE

**6.01 Number and Election of Directors/Committee Members.**

The Management Committee shall consist of five (5) Directors. The initial Directors shall hold office until the election or appointment of their successors at the first annual meeting. Thereafter, subject to the terms and conditions of Sections 6.03 and 6.04 below, each Director will hold office for a term as follows: two (2) Directors shall be elected for a term of one (1) year and three (3) Directors shall be elected for a term of two (2) years, and at each annual meeting thereafter the Unit Owners shall elect the number of Directors whose terms are to expire, for a term of two (2) years each..

**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 Residential Association in all instances.

(b) The Management Committee shall be required to retain by written contract, a professional manager (the "Manager") who shall be responsible for the routine operation of the Residential Condominium Project, unless Unit Owners holding two thirds (2/3) or more of all votes allocated to Units agree to the contrary. Each Manager (or its principal broker) shall be a licensed real estate broker or property manager in the State of Utah.

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

- (i) amend this Declaration;
- (ii) terminate the Residential Association, this Declaration or the Residential Condominium Project;
- (iii) elect Directors to the Management Committee; or
- (iv) determine the qualifications, powers and duties, or terms of office, of Directors.

**6.03 Declarant Control Period.**

(a) Subject to the terms and conditions of paragraphs 6.03(b) and (c) below, but notwithstanding anything else to the contrary contained in this Declaration or in any other Residential Association Document, Declarant shall have the exclusive right to appoint and remove all Directors and Officers during the Declarant Control Period. The phrase "Declarant Control Period" means the period commencing on the date on which the Declaration was Recorded, and ending on the first to occur of the following:

- (i) the expiration of three (3) years from the date that this Declaration (exclusive of amendments or supplements) is Recorded in the official records of the County Recorder of Salt Lake County, State of Utah, or such shorter period as the Declarant may determine in its sole discretion; or
- (ii) the date not later than one hundred twenty (120) days after the date upon which Units representing seventy-five percent (75%) of the total Interests (including those Units which may be added with the Additional Land) in the General Common Elements have been conveyed to Purchasers.

(b) Declarant may voluntarily surrender its right to appoint and remove Officers and Directors prior to the expiration of the Declarant Control Period, but, in that event, Declarant may require, for the remainder of the Declarant Control Period, that specific actions of the Residential Association or the Management Committee, as described in a recorded instrument executed by Declarant, be approved by the Declarant before they become effective.

(c) During the thirty (30)-day period immediately preceding the date on which the Declarant Control Period expires, the Unit Owners shall elect a Management Committee of five (5) Directors as set forth in Section 6.01 above consisting of Unit Owners or designated representatives of Unit Owners. Any Unit Owner may designate for election multiple representatives to serve, and such representatives may serve, simultaneously on the Management Committee if so elected. Such Directors shall take office upon election.

(d) No management contract, lease of recreational areas or facilities, or any other contract or lease designed to benefit the Declarant which was executed by or on behalf of the Residential Association or the Unit Owners as a group shall be binding after the expiration of the Declarant Control Period unless renewed or ratified by the consent of a Majority of the votes allocated to the Units as provided in Section 5.01(b).

(e) The Declarant need not designate a Manager, as provided in Section 6.02 (b), during the Declarant Control Period.

**6.04 Removal of Directors.**

(a) Directors appointed by Declarant may be removed, with or without cause, solely by Declarant.

(b) Each Director, other than a Director appointed by Declarant, may be removed, with or without cause, by a seventy-five percent (75%) or greater vote of the votes allocated to the Units as provided in Section 5.01(b).

**6.05 Replacement of Directors.**

(a) Vacancies on the Management Committee created by the removal, resignation or death of a Director appointed by Declarant shall be filled by a Director appointed by Declarant.

(b) A vacancy on the Management Committee created by the removal, resignation or death of a Director appointed or elected by the Unit Owners shall be filled by a Director elected by the Unit Owners.

(c) Any Director elected or appointed pursuant to this Section 6.05 shall hold office for the remainder of the unexpired term of the Director that Director replaced.

**6.06 Management Committee Liability.**

No Director shall be liable to the Unit Owners for any mistake in judgment, for negligence, or on other grounds, except for such Director's own individual gross negligence, willful misconduct or bad faith. The Residential Association shall indemnify 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 Residential Association or Unit Owners, unless such contract was made in bad faith or contrary to the provisions of the Act or this Declaration. The liability of a Unit Owner arising out of the foregoing indemnification shall be limited to the total liability concerned multiplied by such Unit Owner's Interest in General Common Elements. The Residential Association shall be authorized to obtain liability insurance for the acts and/or omissions of such Directors and/or officers.

ARTICLE VII  
ASSESSMENTS, COMMON EXPENSES, BUDGETS AND LIENS

7.01 Obligations for Assessments.

(a) Each Unit 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 Residential Association all:

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

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

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

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

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

(c) No Unit 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 Unit Owner shall be personally liable for all Assessments and other charges levied on such Unit Owner or such Unit Owner's Unit during the period of such Unit Owner's ownership of the Unit. If there is more than one Unit Owner of a Unit, each Unit Owner shall be jointly and severally liable with the other Unit Owners of the Unit for all Assessments and other charges levied on the Unit or any Unit Owner of the Unit. In a voluntary conveyance, the grantee of a 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 Residential Association to collect such Assessment or other amount, including all fees and disbursements of attorneys, accountants, appraisers, receivers and other professionals engaged by the Residential Association in connection therewith, may be recovered by a suit for a money judgment by the Residential Association without foreclosing or waiving any Assessment Lien securing the same.

(f) In addition to any other remedy provided in this Declaration, when an Assessment has not been paid when due, the Residential Association shall have the right, after giving notice to a Unit Owner and an opportunity to be heard in accordance with the requirements of the Act and the further provisions herein, to: (i) terminate the Unit Owner's right to receive utility services that are paid for by the Residential Association as part of the Common Expenses; and/or (ii) terminate the Unit Owner's right of access and use of any common recreational facilities. Upon payment of the Assessment due, including any interest, late payment fees and/or collection costs, the Residential Association shall immediately take action to reinstate the terminated utility services to the Unit and permit the Unit Owner to again use the common recreational facilities. Prior to terminating any utility services or the right of access and use of recreational facilities, the Residential Association shall give written notice to the delinquent Unit Owner in the manner provided in this Declaration, which notice shall include the following: (i) notice that utility services and/or the right of access and use of the common recreational facilities will be terminated if payment of the past-due Assessment is not received within the time provided in the Declaration, Bylaws, or Rules and Regulations, which time shall be stated and shall be at least forty-eight (48) hours from the date of the notice; (ii) notice of the amount of the Assessment which is due, including any interest or late payment fees; and (iii) notice of the Unit Owner's right to request a hearing. The Unit Owner may request an informal hearing to dispute the Assessment by submitting a written request to the Residential Association within fourteen (14) days from the date the notice required above is received by the Unit Owner. Such hearing shall be conducted in accordance with the standards adopted by the Residential Association as set forth in Section 17.04, as may be supplemented by Rules and Regulations. If such hearing is timely requested by the Unit Owner, the utility services and the right of access and use of the common recreational facilities may not be terminated by the Residential Association until after such hearing has been conducted and a final decision has been entered by the Residential Association.

(g) In addition to any other remedy provided in this Declaration, when an Assessment has not been paid for a period more than sixty (60) days from when it was due and a Unit has been leased (as such term is defined by the Act), the Residential Association shall have the right to demand that the Unit Owner's tenant for such Unit pay to the Residential Association future lease payments until the Residential Association is paid; provided, however, that such demand shall not be made upon a tenant until the requirements of the Act are complied with, including but not limited to first giving written notice (with the required content) to a Unit Owner and subsequently giving written notice (with the required content) to a tenant of a Unit in the manner provided by this Declaration and in accordance with the requirements of the Act, and further provided, that any such funds collected by the Residential Association from a tenant be deposited into a separate account to be disbursed to the Residential Association, with costs of administration, or to be paid to the Unit Owner as required by the Act. Any time frames which are to be established for notice and/or performance by the Unit Owner shall be established by the Residential Association and set forth in the Rules and Regulations.

#### 7.02 Shares of Common Expenses.

(a) Except as otherwise set forth in this Declaration, the Residential 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 Residential Association levies an Assessment, Declarant shall pay all Common Expenses. No assessments shall be levied until the first day of the month following the sale and closing of a Unit to a person not the Declarant. Assessments with respect to Units which are added as part of the Additional Land, shall begin on the first day of the month following addition to the Residential Condominium Project.

(c) Upon the purchase of a Unit, each Purchaser shall be required to pay to the Residential Association as provided in Section 7.12, an amount equal to one fourth of the then General Assessment (i.e, three monthly installments if the General Assessment is to be paid in twelve installments), two thirds of such payment to be deposited into a Working Capital Fund to be

maintained by the Residential Association, and one third of such payment to be deposited into a reserve to be maintained by the Residential Association pursuant to Section 7.12.

(d) A Person who acquires a Unit in a trustee or foreclosure sale or who acquires a Unit by deed-in-lieu of foreclosure shall be personally liable only for those assessments which accrue after the date of such sale or deed as provided in Section 7.01 (b) above, and provided the lien of a Mortgagee has priority over the Assessment Lien of the Residential Association as provided in Sections 7.09 (b) and/or 7.09 (c), in the event of a trustee or foreclosure sale, the Assessment Lien of the Residential Association shall be extinguished and shall no longer be a lien upon the applicable Unit; nevertheless a deed-in-lieu shall not extinguish the Assessment Lien without the written consent of the Residential Association.

### 7.03 Budgets.

(a) Prior to the first levy of a General Assessment, and thereafter on or before November 1 of each calendar year, the Management Committee shall adopt a proposed annual budget for the Residential 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 7.12 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 five (5) days after adopting a proposed annual budget, the Management Committee shall deliver a summary of the proposed annual budget to the Unit Owners. Such notice shall also specify the date for a meeting of the Unit Owners to consider ratification of the proposed annual budget, the date of such meeting to occur on the second Tuesday of November of each year, or in the event that the Management Committee elects to set a different date for ratification of the proposed annual budget, a date not less than fourteen (14) days nor more than sixty (60) days after the delivery of the summary of the proposed annual budget to the Unit Owners. Unless the proposed budget is ratified at the meeting of the Unit 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. If the proposed annual budget is rejected, the annual budget last ratified by the Unit Owners shall be deemed renewed for the next calendar year and shall remain in full force and effect until such time as the Unit Owners ratify a subsequent annual budget proposed by the Management Committee. Notwithstanding the foregoing, the total amount of annual General Assessments shall not exceed the previous year's annual General Assessments by more than 25% for the first three (3) calendar years after the end of the Declarant Control Period (as defined in Section 6.03), and thereafter 10%, without the affirmative vote of Unit Owners holding sixty-seven percent (67%) of the Interests in General Common Elements.

(c) If the Management Committee deems it necessary or advisable to amend an annual budget that has been ratified by the Unit 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 Unit Owners and set a date for a meeting of the Unit 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 Unit 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.

(d) Unit Owners acknowledge that in the event that annual budgets and/or amendments thereto are not approved as provided in this Section 7.03, the Management Committee may be required to reduce services to the Residential Condominium Project.

#### 7.04 General Assessments.

(a) After the Management Committee has adopted an annual budget pursuant to paragraph 7.03(b) above, the Residential 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 product obtained by multiplying:

(i) the amount set forth in the annual budget adopted by the Management Committee as the amount of Common Expenses to be raised by General Assessments, by

(ii) that Unit's Interest in General Common Elements.

(b) The Unit Owners shall pay the General Assessments levied against their respective Units in such periodic installments as may be required by the Residential 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 shall the amount of each Unit 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 Unit Owners shall continue to pay periodic installments of the General Assessment to the Residential 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 Residential Association shall levy against each Unit the General Assessment for the then current calendar year and each Unit 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 Unit Owners credit, in such manner as the Management Committee deems necessary or appropriate, for any installments that the Unit Owners have previously paid to the Residential Association during such calendar year.

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

#### 7.05 Special Assessments.

(a) The Assessments that the Residential 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 Residential Association determines that an Assessment is required to immediately fund any Common Expense attributable to the Common Elements, the Residential Association shall amend the budget in accordance with Section 7.03 and thereafter levy an Assessment for such Common Expense against the Units in proportion to the Interests in General Common Elements.

(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 Residential Association.

7.06 Utility Assessments.

(a) The Assessments made pursuant to this Section 7.06 are referred to in this Declaration as "Utility Assessments."

(b) In the event that the Residential Association provides or causes others to provide utility services to an individual Unit which are separately metered, the Residential Association shall be deemed to have made a levy for the amount charged for such services, as the same is determined periodically, but not more frequently than monthly. Immediately subsequent to the determination of the amount of utility services provided, the Residential Association or its Manager shall cause a statement of the amount(s) due for such services to be provided to each Unit Owner receiving service. The amount set forth in such statement is immediately due and payable by the Unit Owner to the Residential Association. Nothing herein shall preclude the Residential Association from combining the statement for Utility Assessments with any other Assessment or charge to a Unit Owner.

(c) The Unit Owner shall pay the Utility Assessment levied against their respective Unit monthly as statements are received.

(d) Utility 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.

(e) With respect to any Utility Assessment, or portion thereof, levied other than a late charge, the Unit Owner of the Unit against which the Residential Association has levied a Utility Assessment may request an opportunity to contest the amount of a Utility Assessment, provided such request is made in writing to the Residential Association within thirty (30) days of the date of the statement. Upon notice and hearing, the Management Committee, or a committee designated for such purpose, shall affirm or modify the Utility Assessment levied.

7.07 Default Assessments.

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

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

(ii) a violation of any covenant or condition of a Residential Association Document by a Unit Owner or a Unit Owner's Guest, the Residential Association may levy an Assessment for such Common Expense against such Unit Owner's Unit. Any such Assessment levied by the Residential Association and each fine, penalty, fee or other charge imposed upon a Unit Owner for the Unit Owner's violation of any covenant or condition of any Residential 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 Unit Owner of the Unit against which the Residential Association seeks to levy the Default Assessment shall be provided notice and an opportunity to be heard. Unit Owners of Units against which Default Assessments have been levied shall pay such Default Assessments as and when required by the Residential Association.

7.08 Assignment of Assessments.

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

7.09 Assessment Lien.

(a) The Residential 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 Residential 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 Residential Association acceleration of installment obligations. Fines, late charges and/or penalties may be established from time to time by the Management Committee, subject to the requirements of Section 7.01 (f) and (g) as applicable.

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

(i) encumbrances on the interest of a Unit Owner recorded prior to the date such notice 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 7.09(b) above, an Assessment Lien shall not be prior to a First Mortgage recorded before the date on which the Assessment sought to be enforced became delinquent.

(d) An Assessment Lien is 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. Suit to recover a money judgment for unpaid Assessments is maintainable without foreclosing or waiving the lien securing it.

(e) This Section 7.09 does not prohibit actions or suits to recover sums secured by an Assessment Lien or the Residential Association from taking a deed in lieu of foreclosure.

(f) In any action by the Residential Association to collect Assessments or to foreclose an Assessment Lien for unpaid Assessments, the court may appoint a receiver for the Unit 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 Residential Association during the pending of the action to the extent of the Residential 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.

7.10 Waiver of Homestead Exemptions.

To the fullest extent permitted by law, by acceptance of the deed or other instrument of conveyance of a Unit, each Unit Owner irrevocably waives the homestead exemption provided by the Utah Exemptions Act, Utah Code Ann. §78-23-1 through §78-23-15 as amended from time to time, as the same may apply to the Assessment Lien.

7.11 Estoppel Certificates; Notices to Mortgagees.

(a) The Residential Association shall furnish to a Unit Owner or such Unit 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 Residential 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 Unit Owner's Unit. The statement shall be furnished within ten (10) calendar days after receipt of the request and is binding on the Residential Association, the Management Committee and every Unit Owner in favor of all Persons who rely upon such statement in good faith. If no statement is furnished to the Unit 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 Residential 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 First Mortgagee delivers to the Residential Association a written request for notice of unpaid Assessments levied against a Unit subject to a First Mortgage held by that First Mortgagee, the Residential Association shall report to the First 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 First 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 First Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as a lien of the First Mortgage held by such First Mortgagee.

7.12 Reserve Fund.

(a) The Residential Association shall maintain an adequate 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 and maintained from General Assessments. In addition the Declarant shall create a "Working Capital Fund" for the benefit of the Residential Association for the initial months of operations of the Residential Condominium Project which shall be funded by Purchasers as follows. At the closing of the sale of a Unit by Declarant to a Purchaser, the Purchaser shall pay to the Residential Association an amount equal to the Residential Association's estimate of one fourth (1/4) of the then General Assessment for the fiscal year in which the sale of the Unit occurs (i.e, the equivalent of three months installments if installments are made monthly), two thirds (2/3) thereof to be deposited into the Working Capital Fund and one third (1/3) thereof to be deposited into the reserve fund; provided, however that at such time as the Declarant Control Period terminates, the Declarant shall pay to the Residential Association, the required deposit for each unsold Unit which is part of the Residential Condominium Project; further provided, that the Declarant is entitled to seek reimbursement of such deposit for each Unit from a Buyer of each Unit, as each such Unit is sold and closed. Funds not expended from the Working Capital Fund prior to the expiration of three (3) years from the first sale of a Unit, shall be transferred to the reserve fund. Thereafter, the Residential Association may increase the reserve fund or replace funds withdrawn from the reserve fund with funds collected through General Assessments. The Declarant shall have no right to use any of the Working Capital Fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Residential Association.

(b) Payments by Purchasers to the Residential Association under paragraph 7.12(a) above shall not be credited against, or relieve Purchasers from, their obligation to pay other Assessments levied against Units by the Residential Association.

(c) Upon the sale of a Unit from one Unit Owner to another, the Residential Association shall not be obligated to return to the transferor any funds held in reserve.

#### ARTICLE VIII UTILITY AND OTHER SERVICES

##### 8.01 Water, Sewer, Electric and Trash Removal Services.

(a) It is initially contemplated that electric services shall be separately obtained by each Unit Owner and that all such services will be separately metered and billed to such Unit by the utility company or other party furnishing such services. The charges incurred by the Unit Owners of Units for such services shall not be a part of the Common Expenses of the Residential Condominium Project.

(b) All other utility services, if any, furnished to the Residential Condominium Project which are separately metered and billed to an individual Unit by the utility company, the Residential Association, or other party furnishing such services shall be paid for by the Unit Owner of the Unit to which such utility is metered. Any such utility services provided by the Residential Association to a Unit shall create an obligation to pay a Utility Assessment as provided in Section 7.06 above. All other water, sewer, electric, heating and cooling, and trash removal services, which are not separately metered, shall be a part of the Common Expenses and shall be allocated by the Residential Association among the Units and charged to the Unit Owners in accordance with their Interest in General Common Elements.

(c) Each Unit Owner shall ensure that its Unit is sufficiently heated to prevent the freezing of water and sewer lines serving the Residential Condominium Project.

##### 8.02 Cable Television and Satellite Dishes.

(a) The Declarant or the Residential Association may, at its election, arrange for one or more cable providers to provide services to Unit Owners within the Residential Condominium Project. Nevertheless, each Unit Owner of a Unit shall be responsible for obtaining cable television services for its Unit 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) The Declarant or the Residential Association may provide one or more master antenna systems for Units which allow for individualized television service. Nevertheless, each Unit Owner of a Unit shall be responsible for obtaining cable television services for its Unit 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.

(c) Only if a master antenna system for Units is not provided as set forth in (b) above, and only if required by applicable law, a Unit Owner of a Unit shall have the right to install a miniature satellite dish (not exceeding 24 inches in diameter) at an area designed for such purposes upon a patio or deck which is designated as Limited Common Elements appurtenant to such Unit for the sole benefit of a Unit Owner, such installation to be made totally within the area of such Limited Common Elements (i.e., within the patio and balcony area) and below the top rail of any railing installed as part of the original construction or as otherwise approved in advance in writing by the Management Committee. Such installation and maintenance shall be made in accordance with the Rules and

Regulations and at the sole cost and expense of the Unit Owner. Any maintenance of the satellite dish or of the Common Elements occasioned by the installation and maintenance of such satellite dish shall be the sole financial responsibility of the Unit Owner and the Residential Association is authorized to assess the cost of the same against the Unit Owner as a Default Assessment pursuant to the provisions of Section 7.07. In the event that the Limited Common Elements appurtenant to a Unit do not lend themselves to the placement of a miniature satellite dish, the Residential Association shall have no obligation to provide a substitute location for installation of a satellite dish.

(d) All cable television services furnished to the Residential Condominium Project which are separately metered and billed to an individual Unit by the cable company or other party furnishing such services shall be paid for by the Unit Owner of the Unit to which such services are metered. Any such cable services provided by the Residential Association to a Unit shall create a Utility Assessment as provided in Section 7.06 above. All other cable television services shall be a part of the Common Expenses and shall be allocated by the Residential Association among the Units and charged to the Unit Owners in accordance with their proportionate Share of Common Expenses.

#### 8.03 Telephone.

(a) Each Unit 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 Residential 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 Residential 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 Residential 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 Residential 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. Any utility service provided to a Unit shall create a Utility Assessment as provided in Section 7.06 above.

### ARTICLE IX MAINTENANCE OF COMMON ELEMENTS AND UNITS

#### 9.01 Maintenance of Common Elements.

Except as otherwise provided in this Declaration, the Residential Association, or its duly designated agent, shall maintain the General Common Elements and the other Residential Association property in good order and condition and shall otherwise manage and operate the General Common Elements as it deems necessary and appropriate. The Residential Association, by its Management Committee, or their designee, 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 Unit. In addition, the Residential Association shall ensure that all interior General Common Elements are sufficiently heated to prevent the freezing of water and sewer lines serving the Residential Condominium Project. Without the limiting the foregoing, the Residential Association may:

- (a) construct, modify, add to, repair, replace or renovate any improvements that are located on or constitute a part of any General Common Element, provided, however that any such General Common Element shall be replaced with a like-kind improvement, including material, design and color, unless Unit Owners holding not less than seventy-five percent (75%) of the Interests in General Common Elements approve a different material, design or color;
- (b) plant and replace trees, shrubs and other vegetation on any General Common Element;
- (c) place, maintain and replace signs upon any General Common Element;
- (d) adopt and enforce Rules and Regulations regulating the use of General Common Elements; and
- (e) take any other actions as the Residential Association deems necessary or advisable to protect, maintain, operate, manage or regulate the use of the General Common Elements.

**9.02 Maintenance of Units and Limited Common Elements.**

Each Unit Owner, at such Unit Owner's sole cost and expense, shall maintain in good order and repair its respective Unit and all structural 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 Residential Condominium Project and so as not to affect adversely the value or use of any other Unit or other portions of the Residential Condominium Project. In further explanation of the foregoing, each Unit 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 Residential 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 Unit Owner of such Unit shall fail to correct such condition or state of disrepair promptly following written notice from the Residential Association and only upon the approval of the Management Committee, the Residential Association shall have the right, at the expense of the Unit Owner and without liability to the Unit 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 Residential 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 Unit Owner shall separately maintain, clean, repair and generally keep in good order and operating condition the Limited Common Elements serving solely such Unit Owner's Unit. Any costs and/or expenses incurred by the Residential Association, as provided in this Section, may become the basis for a Default Assessment as provided in Section 7.07.

**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 a Unit Owner or an agent, contractor or subcontractor of a Unit Owner shall be the basis either for filing a lien against the Unit of any other Unit 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 Unit 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 Unit 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 Unit Owner shall indemnify and hold harmless each of the other Unit Owners and any Mortgagee from and against all liability arising from any claim or lien against the Unit of any other Unit Owner or against the Common

Elements for construction performed or for labor, materials, services or supplies incorporated in the Unit Owner's Unit at the Unit 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 Residential Association Documents.

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

(b) Promptly after an encumbrance of a fee simple interest in a Unit or portion thereof, the Unit Owner shall furnish the Residential 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, subject however, to the terms, conditions, and limitations set forth in Rules and Regulations. Notwithstanding the preceding sentence, neither a Unit Owner nor a Guest may use any Common Element in any manner that unreasonably interferes with, hinders or encroaches upon the rights of other Unit Owners in and to the Common Elements. Without limiting the generality of the foregoing, no Unit Owner shall cause, or permit its Guests to cause, waste to any Common Element. In the event a Unit Owner enters into a lease or rental agreement for his Unit, for the period of such lease or rental agreement, the Unit Owner's use of such Common Elements shall be restricted to those reasonably necessary for a landlord of such Unit, except as provided to the contrary in Section 10.11.

10.05 Alterations.

(a) Except as otherwise expressly provided in this Declaration, a Unit 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 is contrary to the requirements of the Rules and Regulations, that results in the substitution of different types of materials, facilities, apparatus and components from those originally installed, or affects any Common Element or any other Unit, without the prior written consent of the Residential Association. No Unit Owner shall do any work or make any alterations or changes which would jeopardize the soundness or safety of the Residential Condominium Project without obtaining the written consent of each Unit Owner. No Unit Owner shall do any work or make any alterations or changes which would reduce the value of the Residential Condominium Project or impair any easement or hereditament, without in every case first obtaining the prior written consent of the Residential Association. In addition to the requirement of obtaining written consent of the Architectural Control Committee, no Owner shall do any work or make any alterations or changes which would move any walls defining the Unit or otherwise expand the Unit without obtaining formal



written approval from governmental and quasi-governmental authorities with jurisdiction and recording the appropriate documentation, including Declaration and Plat amendments.

(b) Without limiting the generality of paragraphs 10.05(a) above, and subject to the provisions of Section 8.02, a Unit Owner of a Unit may not, without the prior written consent of the Residential Association, install or erect any improvement, mechanical system or fixture (including but not limited to a satellite dish except as provided in Section 8.02) that either:

- (i) protrudes beyond the boundaries of the Unit Owner's Unit; or
- (ii) is located wholly outside the Unit Owner's Unit (even if located within a Limited Common Element that is assigned to solely the Unit Owner's Unit); or
- (iii) constitutes the modification, construction, or installation of improvements upon or comprising a part of a Limited Common Element, including but not limited to the installation of racks, closets, shelves, or other improvements to a Limited Common Element (i.e., installation of shelves or a closet upon a deck).

10.06 Nuisances, Hazardous Activities and Unsightliness.

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

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

(c) No unsightliness shall be permitted at the Subject Property.

(d) Normal construction activities shall not be considered to violate the terms and conditions of this Section 10.06. **BY ACCEPTING A DEED TO A UNIT, AN OWNER ACKNOWLEDGES THAT NOISES, LIGHTS AND ODORS COMMON TO RECREATIONAL AND COMMERCIAL ACTIVITIES, AS WELL AS CONSTRUCTION ACTIVITIES, MAY EXIST ON OR NEAR THE SUBJECT PROPERTY, AT ANY TIME AND FROM TIME TO TIME.**

10.07 Signs.

(a) No signs or banners whatsoever shall be erected or maintained on the Subject Property which may be viewed within or by those passing the Project, including but not limited to any sign or banner which may be located within a Unit or on or within any vehicle or other item of personal property located within the Project, except signs required by legal proceedings and those permitted or approved by this Declaration.

(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, and no sign or banner may be displayed or hung from any patio or balcony by any means or method.

(c) In accordance with Rules and Regulations adopted by the Management Committee, the Residential Association may, but has no obligation to provide a procedure for the uniform posting of signs of Units "For Sale" or "For Rent" at a specific location within an office or Common Element designated for such purpose by the Management Committee.

(d) The violation of these provisions may result in the assessment of a Default Assessment.

10.08 Compliance with Laws.

Nothing shall be done or kept at the Subject Property 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 Residential Association, nothing shall be done or kept at the Subject Property that may result in the cancellation of any insurance maintained by the Residential Association or may result in an increase in the rates of any such insurance.

10.10 Subdivision, Rezoning and Timesharing.

(a) No Unit may be subdivided, 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 Residential Association and has received all applicable governmental and quasi-governmental approvals.

(b) No application for rezoning any portion of the Subject Property, 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 Residential Association (or pursuant to written consents in lieu of such a meeting) and the uses that would be permitted under the rezoning comply with this Declaration and the other Residential Association Documents.

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

(d) The covenants, conditions and restrictions set forth in paragraphs 10.10(a) and (b) above shall not apply to Declarant's development of the Subject Property or to Declarant's exercise of any Special Declarant Right.

10.11 Vehicles and Parking.

(a) Each Parking Space may be used and occupied for parking purposes only. Note: The Project does not have a sufficient number of Parking Spaces to comply with current Salt Lake City zoning standards; consequently, any deficiencies in the number of Parking Spaces shall the sole responsibility of the Owners and the Residential Association, and Salt Lake City shall have no responsibility for any such deficiencies.

(b) None of the following may be kept or parked at the Residential Condominium Project, except such delivery and service trucks as are temporarily parked in locations designated by the Residential Association for such purposes: (i) an unlicensed or registered motor vehicle; (ii) a motor vehicle classed by manufacturer rating as exceeding three-quarter ton; (iii) a dual wheeled truck; (iv) a mobile home; (v) a trailer; (vi) a detached camper or camper shell; (vii) a boat or other similar equipment or vehicle.

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

(d) Ingress and egress between Parking Units may be regulated and restricted according to Rules and Regulations adopted by the Management Committee.

(e) The Declarant has assigned or shall assign in the future to each Unit one or more separately designated and numbered Parking Spaces which shall be designated as Limited Common Elements, and when assigned shall be set forth on Exhibit "C" attached hereto or an amendment thereto, provided however, that Declarant may defer such assignment to a later date which shall be effective upon the recording of a supplement to this Declaration. The Declarant shall at a minimum assign one (1) Parking Space to each Unit. Each Parking Space, if any, assigned to a Unit in excess of the foregoing minimum assignments shall be deemed an "Excess Parking Space." Declarant makes no representation that any Excess Parking Space will be available for any Unit. Notwithstanding the designation of an Excess Parking Space as appurtenant to a specific Unit, a Unit Owner is permitted to have an Excess Parking Space reassigned to another Unit within the Residential Condominium Project solely upon satisfaction of the following conditions: (i) a written request is made to the Management Committee by the "Transferring Owner" prior to reassignment to the Transferee Owner; (ii) the reassignment of an Excess Parking Space shall be made only to the Residential Association, for the benefit of the Transferring Owner until it is reassigned to a Unit, or to a Unit located within the Project and upon such reassignment the Excess Parking Space shall become appurtenant to such Unit; (iii) at the time of reassignment of such Excess Parking Space, the Unit from which the severance is to occur is not encumbered by a Mortgage in favor of a lender or by a lien filed on behalf of the Residential Association, or in the alternative all Mortgagees, lien holders and/or holders of an interest in and to the Unit of the Transferring Owner consent in writing to the reassignment of the Excess Parking Space and the resulting release of their Mortgage and/or lien as to such appurtenance; (iv) at no time shall a Unit have less than the minimum number of Parking Spaces assigned to it as specified above; and (v) the costs to be incurred by the Residential Association, including the recording of applicable documents necessary to evidence the reassignment are paid in advance by the Transferring Owner or the Transferee Owner, as they shall agree in writing. The Residential Association may also permit the "trading" and reassignment of Parking Spaces (other than Excess Parking Space) provided all of the conditions specified in (i) through (v) are satisfied as to each of the Units affected by such trade. Upon satisfaction of the foregoing conditions, the Residential Association shall record an amendment to the Declaration to evidence the reassignment of the applicable Parking Space or Spaces. Any consideration exchanged between the Transferring Owner and the Transferee Owner shall be a matter of written contract between them.

(f) The Residential Association may reserve to itself, for the benefit of Unit Owners and/or staff of the Residential Association, one or more Parking Spaces which may be designated for handicap purposes and/or staff parking. The Residential Association may make any of such designated Parking Spaces available to Unit Owners needing handicap parking in accordance with procedures adopted by the Residential Association, including but not limited to agreements which require a temporary exchange by a Unit Owner of such Unit Owner's assigned Parking Space for a Parking Space designated for handicap parking. Notwithstanding the foregoing provisions and the provisions of subparagraph (d) above, the Residential Association may also (i) prohibit or restrict the transfer of Parking Spaces if such Parking Spaces are designated for handicap purposes, or (ii) force a Unit Owner who is not or is no longer handicapped or does not maintain a handicapped person within such Unit Owner's Unit, to trade a Parking Space designated as handicap parking for a Parking Space located elsewhere. Evidence of handicap status shall be by providing evidence to the Residential Association of distinguishing license plate or placard issued by the Utah Department of Motor Vehicles. Trading and reassignment of Parking Spaces shall be accomplished in accordance with the provisions of subparagraph (d) (ii) through (v) above, except that any Parking Space to be traded and reassigned need not be an Excess Parking Space.

(g) Parking Spaces appurtenant to a Unit shall be deemed included within the lease of the Unit to those individuals who lease such Unit; provided, however, that a Unit Owner may exclude from the lease of a Unit, any Excess Parking Space, reserving the right to lease the same to other Unit Owners only. A Unit Owner may not lease any Parking Space under any other circumstance or for any other use.

(h) Notwithstanding anything to the contrary contained in this Declaration, an Owner of a Parking Space may not make improvements or alterations to its Parking Spaces; provided, nothing herein shall reduce a Unit Owner's obligation for repair and maintenance as provided in Section 9.02.

10.12 Deliveries, Trash Removal and Other Services.

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

(b) Unit 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 Subject Property.

(c) The Management Committee shall establish and enforce as part of the Rules and Regulations, procedures for moving furniture and personal belongings of Unit Owners to and from Units, which procedures may limit the days and time of such moving.

10.13 Storage.

No Unit Owner shall store any materials or items on or in any Common Element, other than those Common Elements designed for that purpose, such as storage lockers, and then only in strict accordance with the terms and conditions of the Residential Association Documents. No Owner shall store environmentally hazardous materials, flammable or combustible materials, firearms or munitions, or other nuisance materials on or in any Common Element.

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, provided, however not more than one (1) usual and ordinary pet, such as a dog, cat, or bird, and not including rodents or reptiles of any kind, may be kept by the Unit Owners of a Unit in accordance with Rules and Regulations established by the Management Committee with respect to the keeping of such animals (including, but not limited to the size thereof), and all such pets shall be kept under reasonable control at all times. Notwithstanding the foregoing, no pet may be kept at the Residential Condominium Project which is a serious annoyance or is obnoxious to the Unit Owners. No pet shall be allowed in the Common Elements (including landscaped areas) except as may be permitted by the Rules and Regulations. Declarant or any Unit Owner may cause any unauthorized pet found in the Common Elements to be removed to a pound or animal shelter under the jurisdiction of the City and/or County of Salt Lake, by calling the appropriate authorities, whereupon the Unit Owner (upon payment of all expenses therewith) may obtain the pet. No dog whose barking disturbs other Unit Owners in a reasonably objective manner shall be permitted to remain on the Residential Condominium Project. Any decision regarding the conduct of a pet shall be made only after notice to the Unit Owner and the opportunity to be heard before the Management Committee. Unit Owners shall prevent their pet from soiling any portion of the Common Element and shall promptly clean up any fouling by their pet, all in accordance with the Rules and Regulations. Any cleaning, damage, and/or personal injury occasioned by a pet shall be the sole responsibility of its Unit Owner and if not paid may result in the imposition of a Default Assessment.

10.15 Solid-Fuel Burning Devices.

No fuel burning devices, such as charcoal grills, wood burning stoves, fireplaces or liquid burning devices shall be used, kept or stored on the Subject Property; provided however, that nothing herein shall preclude within any Unit or interior space designated as a General Common Element of the Residential Condominium Project, the use of natural gas stoves and ovens, natural gas dryers, and natural gas fireplaces,

as long as the same are installed and maintained in good working order and according to all applicable building codes and other applicable laws and ordinances. Under no circumstances are any fuel burning devices (cooking or otherwise) of any kind to be used on exterior balconies, decks, patios or similar locations within the Residential Condominium Project.

**10.16 Restrictions and Disclosures Regarding Rentals.**

Pursuant to reasonable Rules and Regulations established by the Management Committee, the Residential Association may otherwise regulate or restrict the term of rentals of Condominium Units, provided that the initial term of a lease is not less than six (6) months, and may require the rental of any Condominium Unit to be conducted through one or more approved management companies. The Residential Association may also require that all lease agreements be on forms approved by the Residential Association, or in the alternative be reviewed and approved by the Residential Association or the management company. Such Rules and Regulations may require that any tenants be screened for any lawful reason and approved by the Residential Association or the management company prior to renting the Condominium Unit; provided, however, that approval of the Residential Association or the management company shall not be unreasonably withheld. Prior to renting any Condominium Unit, the Unit 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 Rules and Regulations;
- (b) The tenant shall agree not to allow or commit any nuisance, waste, unlawful or illegal act upon the Project;
- (c) The lease shall be on terms and for a period authorized by applicable governmental laws, ordinances and statutes; and
- (d) The Unit Owner and the tenant shall acknowledge that the Residential Association is an intended third party beneficiary of the lease agreement, that the Residential Association shall have the right to enforce compliance with the Declaration and Bylaws and to abate any nuisance, waste, unlawful or illegal activity upon the premises; and that the Residential Association shall be entitled to exercise all of the Unit Owner's rights and remedies under the lease agreement to do so.

Prior to a tenant's occupancy of a Unit, the Unit Owner must provide to the Residential Association the name, address and telephone number of the tenant and a copy of the written lease agreement. The Residential Association shall have the right and the obligation to enforce compliance with the Declaration and Bylaws against any Unit Owner and/or occupant of any Condominium Unit, 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.

Upon a tenant's occupancy of a Unit, the Unit Owners of such Unit shall thereafter have only limited rights in the use of the Common Elements, such use limited to those uses reasonably necessary for a landlord to enforce the provisions of such lease. In the event that a Unit Owner withholds an Excess Parking Space (as defined in Section 10.11) from the terms of the Lease, the Unit Owner thereof shall have the continuing right to use such Excess Parking Space according to the provisions of Section 10.11.

**10.17 Units.**

- (a) Except as otherwise expressly permitted by this Declaration, a Unit Owner of a Unit may use such Unit only as a permanent or vacation single-family residence (as "family" is defined from time to time in the zoning ordinances of Salt Lake City, Utah) for itself and its Guests. No Unit Owner of a 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 a Unit Owner from leasing or renting such Unit Owner's Unit to others

so long as the use of such Unit complies with the provisions of this Declaration (including but not limited to Section 10.16), 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 10.17(a) above, a Unit Owner may use its Unit as its private office, on the condition that the Unit Owner does not invite others to its Unit to conduct business and such use complies with all applicable federal, state and local laws, ordinances, regulations and rules.

(c) Owners of the Units 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 Project which is designated on the condominium plat as a Limited Common Element.

(d) Notwithstanding anything to the contrary contained in this Declaration, a Unit Owner of a Unit may make improvements or alterations to its Unit, without the consent of any Unit Owner or the Residential Association, on the conditions that:

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

(ii) the Unit 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 all applicable requirements of this Declaration, the Act and all laws, ordinances, regulations and rules of governmental and quasi-governmental authorities with jurisdiction.

If any such improvement constitutes or requires the erection or modification of partitions within any Unit, such improvements require the approval of the Management Committee as specified in Section 3.02 (d) (iii). If any such improvement or alteration will impair any other Unit or any Common or Limited Common Element, the Unit Owner of the Unit shall not make the improvement or alteration without the prior written consent of the Majority of the Unit Owners of the Units.

(e) In the event that Owners install window treatments (i.e., blinds, drapes and similar treatments) within Units, all portions of such treatments visible from the exterior of the Building, shall be white as designated by the Residential Association. Owners shall not sweep or throw, or permit to be swept or thrown from the Units any dirt debris or other substance, except for snow and ice removal.

**10.18 No Smoking Permitted.**

**No smoking, in any form, shall be permitted inside any Unit, Parking Space, a Building or the Common Elements or any vehicle located within the same.**

**10.19 Balconies, Decks and Patio Restrictions.**

Balconies, decks and patios which are located within the Residential Condominium Project are subject to the following limitations, restrictions and prohibited uses:

(a) No part of any balcony, deck or patio shall be used for storage (including without limitation, boxes, bicycles, pet houses, sports equipment or playthings). A pet 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 a Building.

(c) Only patio furniture, propane barbecue equipment and live plants in decorative pots, which are maintained in a neat and clean manner and where applicable, in good order and repair, may be stored on balconies, patios or decks. No charcoal burning barbecues will be used and/or permitted on balconies, patios or decks. No hot tubs or spas shall be permitted upon any deck or patio. Except as provided in Section 10.15, under no circumstances are any fuel burning devices (cooking or otherwise) of any kind to be used on exterior balconies, decks, patios or similar locations within the Residential Condominium Project.

(d) Except as may otherwise be required to be allowed by applicable laws and/or regulations, 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 a Building.

(e) No Owner may enclose any portion of a balcony, deck or patio area with a fence (excluding railings originally installed or replaced with the approval of the Residential Association), tent, or structure without the prior approval of the Residential Association, or make any other alteration or modification to such balcony, deck or patio that shall alter the appearance of the Residential Condominium Project. Likewise, no awnings, sunroof, canopy or shutter of any type shall be permitted on a balcony, deck or patio without the prior approval of the Residential Association.

#### 10.20 Sound Attenuation.

In order to reduce sound transference between adjoining Units or through floors between Units, each Unit shall be subject to the following requirements:

(a) All hardwood or hard surface flooring to be installed after March 1, 2008, must be installed over an acoustical underlayment, in accordance with guidelines approved by the Residential Association.

(b) "Woofers" and "sub-woofers" type speakers shall be elevated from the floor by being placed on approved sound insulating mats or cushions or otherwise mounted according to requirements and guidelines established by the Residential Association. All other speakers which are mounted on walls or ceilings, must be surface mounted with approved hangers without penetrating the surface of such walls or ceilings, and in accordance with requirements and guidelines established by the Residential Association.

#### 10.21 Declarant's Exemption.

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

(a) Declarant's exercise and enjoyment of any Special Declarant Right or any other rights of Declarant under this Declaration or any other Residential Association Document; or

(b) the conduct by Declarant or its 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 Units or other property within or adjacent to the Residential Condominium Project.

ARTICLE XI  
EASEMENTS AND RESERVATIONS

11.01 Declarant's Easements Over Common Elements.

(a) In accordance with the Act, Declarant hereby reserves for itself, its successors and assigns a general, transferable easement over, across, through and under the Common Elements to:

(i) discharge Declarant's obligations under this Declaration;

(ii) exercise any of Declarant's rights under this Declaration; and

(iii) make improvements on the Subject Property or any other real estate owned by Declarant, for the purpose of doing all things reasonably necessary and proper in connection with the foregoing.

(b) Declarant hereby reserves for itself, its successors and assigns, the right to:

(i) establish from time to time utility and other easements, permits or licenses over, across, through and under the Common Elements for the benefit of the Residential Condominium Project, any property owned by Declarant; and

(ii) create other reservations, exceptions and exclusions for the best interest of the Declarant and other Persons, on the conditions that (A) the parties benefitted by the easement, license, permit, reservation, exception or exclusion must use reasonable efforts to locate any such easement, license, permit reservation, exception or exclusion to minimize interference with the use of the Subject Property by the Unit Owners to the extent practicable; and (B) if the parties benefitted by the easement, license, permit, reservation, exception or exclusion construct or install any improvements on the Subject Property pursuant to the same, the benefitted parties shall promptly repair any damage caused to the Subject Property thereby at their sole cost and expense.

(c) Declarant hereby reserves for itself, its successors and assigns, the right to use any Units owned or leased by Declarant as models, management offices, sales offices for the Residential Condominium Project and other projects or customer services offices and Declarant reserves the right to relocate the same from time to time. This easement shall continue until Declarant has conveyed all Units in the Residential Condominium Project to Unit Owners other than Declarant.

11.02 Utility Easement.

(a) Subject to the terms and conditions of this Declaration and all other Residential Association Documents, Declarant hereby creates a general easement over, across, through and under the Subject Property 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 Subject Property or any portion thereof. The Residential Association may, but is not obligated to, authorize the release of portions of the general easement created pursuant to this Section 11.02 upon the request of any Unit Owner showing good cause therefor.

(b) Pursuant to this easement, a utility or service company may install and maintain facilities and equipment on the Subject Property 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 Subject Property, except in accordance with terms and conditions of Section 10.05 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, the Residential Association, Declarant and other utility and service companies.

(c) If any utility or service company furnishing utilities or services to the Subject Property or any portion thereof as permitted under Section 11.02(a) above requests a specific easement by separate recordable document, the Residential Association shall have the right and authority, but not the obligation, to grant such easement over, across, through and under any portion of the Subject Property.

#### 11.03 Residential Association's Easement.

(a) The Residential 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 Residential Association under this Declaration or any other Residential Association Document; and

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

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

#### 11.04 Easements to Owners.

Owners shall 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 their Units along, across and through the Common Elements and through the Units within the Residential Condominium Project on the condition that (A) the Owners of the Units, at their sole cost and expense, shall repair, replace and restore any damage to the Common Elements or any 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, to the extent that such machinery, equipment, utility lines, wires, circuits, cables and conduits are located within a Unit, the location shall be designated by the Owner of such Unit pursuant to its reasonable discretion; and (c) such installation, maintenance, repair or replacement does not materially interfere with the use of the Base Structure and complies with all applicable requirements of the Act and all laws, ordinances, regulations and rules of governmental and quasi-governmental authorities with jurisdiction.

#### 11.05 Easements to Parking by Unit Owners.

The Unit Owners and those Guests which are authorized by the Rules and Regulations to have access to areas where the Parking Spaces are located shall have a rights and privileges for vehicular and pedestrian ingress and egress, without charge, over and across the drive isles located in parking areas, but not over Parking Spaces or other restricted areas.

#### 11.06 Entry in Aid of Other Rights.

There shall be an easement in favor of each Unit 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 Unit 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 Unit Owner hereunder or necessary to the

construction and operation of the said Unit 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 Unit Owner of an affected Unit or the Management Committee may designate.

11.07 Easements for Encroachments.

In the event that any portion of the General Common Elements, a Limited Common Element, and/or Unit encroaches or comes to encroach on the General Common Elements, a Limited Common Element, 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, but such easement shall not relieve a Unit Owner of liability in the case of willful misconduct.

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 Subject Property in the proper performance of their duties.

ARTICLE XII  
INSURANCE

12.01 General Liability Insurance.

The Residential Association shall obtain and maintain one or more policies of comprehensive general liability insurance insuring the Unit Owners, the Residential Association, the Management Committee, the Manager, and their respective agents against general liability and claims arising in connection with the ownership, existence, use, operation, maintenance, or management of the Common Elements, in an amount per occurrence that is not less than \$3,000,000 for bodily injury, including deaths of persons and property damage, or such greater amount as the Management Committee deems appropriate. Coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Elements, legal liability arising out of lawsuits related to employment contracts of the Residential Association, and such other risks as are customarily covered with respect to condominium projects similar in construction, location and use, including but not limited to host liquor liability, employers liability insurance, contractual and all-written contract insurance, and comprehensive automobile liability insurance. Such insurance shall cover claims of one or more insured parties against other insured parties.

12.02 Property Insurance.

The Residential Association shall obtain and maintain a multi-peril policy or policies of fire and other hazard insurance covering the entire Residential Condominium Project (both Units and Common Elements), with extended coverage and all other coverages in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use, including a "Special Condominium Endorsement, the standard "All risk" endorsement, on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost) of the Residential Condominium Project, subject to reasonable deductibles and exclusive of land, excavations, foundations and similar items normally excluded from property insurance policies, together with common personal property, equipment and supplies. 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) in the event that the Residential Condominium Project contains a steam boiler, a Steam Boiler and Machinery Coverage Endorsement (with minimum liability of \$1,000,000 per accident) if the Project has central heating or cooling; and
- (g) 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 Flood Insurance.

In the event that the Residential Condominium Project is located within an area which has been officially identified by the Secretary of Housing and Urban Development as having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program (NFIP), the Residential Association shall purchase for the benefit of and on behalf of the Residential Association, flood insurance covering the entire Residential Condominium Project (both Units and Common Elements), in an amount deemed appropriate by the Residential Association, but not less than the lesser of (a) the maximum coverage available under the NFIP for all Units and other insurable property within the Residential Condominium Project to the extent that the same are within an area having special flood hazards; or (b) 100% of the current replacement cost of all such Units and other insurable property. Such policy shall be in a form which meets the current Guidelines issued by the Federal Insurance Administrator.

#### 12.04 Fidelity Insurance or Bond.

The Residential Association shall purchase for the benefit of and on behalf of the Residential Association, in such amounts and in such forms as it deems appropriate, fidelity insurance or a bond to cover against dishonesty of members of the Management Committee, Officers and employees of the Residential Association and all others persons handling, or responsible for funds of or administered by the Residential Association, destruction or disappearance of money or securities, and forgery. If funds are administered by a management agent, the management agent shall be required to maintain fidelity bond coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Residential Association. Such fidelity bonds shall name the Residential Association as an obligee and shall not be less than the greater of (i) three (3) months assessments on all Units plus reserve funds, or (ii) the estimated maximum amount of funds, including reserve funds, in the custody of the Residential Association or the management agent, as the case may be, at any given time during the term of each bond. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions, and shall not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days' prior written notice to the Residential Association and to any Fannie Mae servicer holding a Mortgage on behalf of Fannie Mae.

#### 12.05 Liability Insurance for Directors and Officers.

The Residential Association shall purchase liability insurance for Directors and officers to cover errors and omissions of Directors and Officers of the Residential Association, and any obligation for indemnification as contained in Section 6.06, provided that such insurance is available at reasonable rates determined in an

objective manner based upon coverages available and rates charged to other associations similar to that of the Residential Association.

**12.06 Additional Provisions to be Contained in Insurance Policies.**

Any insurance policies obtained and maintained by the Residential Association pursuant to Sections 12.01, 12.02, 12.03, and 12.04 above shall name as insureds the Residential Association and the Unit Owners (including Declarant, so long as Declarant is the Unit Owner of any Unit) and provide that:

(a) Each policy of insurance obtained by the Residential Association shall be issued to and for the benefit of Broadway Tower Condominiums Association, Inc. for the benefit of its owners (or its authorized representative or trustee under the terms of an insurance trust agreement) and shall provide: a standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Project is located; a waiver (if available) of the insurer's subrogation rights with respect to the Residential Association, the Management Committee (and each of them), Officers of the Residential Association, the Manager, the Unit Owners, Mortgagees, and their respective servants, agents and guests; that it cannot be canceled, suspended or invalidated due to the conduct of any member, officer, or employee of the Residential Association or of the Manager without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Unit Owners; and that a mortgagee clause endorsement which must provide that the insurance carrier shall notify in writing any and all insureds, including the servicers on behalf of Mortgagees thereof at least thirty (30) days in advance of the effective date of any substantial modification or cancellation of the policy.

(b) All insurance policies shall be written by a company holding a "A" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports - International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBBq" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service. In the event that a first mortgage on a Unit is held or guaranteed by FNMA or FHLMC, and the requirements of such applicable entity regarding the qualifications of insurance carriers are more restrictive than those set forth above, such requirements shall be satisfied. Each insurer must be specifically licensed to transact business within the State of Utah. Policies are unacceptable where (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Borrower or a Mortgagee; or (ii) by the terms of the carrier's charter, by-laws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent a Mortgagee or the borrower from collecting insurance proceeds.

(c) All policies of property insurance must provide that notwithstanding any provision affording the insurer the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Residential Association (or any insurance trustee) or when in conflict with the provisions of any insurance trust agreement to which the insurance may be a party, or any requirement of law.

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

(e) except as provided in Section 12.08 for primary insurance required of each Unit Owner, if, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner, the Residential Association's policy shall provide primary insurance.

(f) Certificates of insurance shall be issued to each Unit Owner and Mortgagee upon request.

12.07 Trustee.

Any loss covered by the property insurance policy described in Section 12.02 above must be adjusted with the Residential Association or its authorized insurance trustee, and the insurance proceeds for that loss shall be payable to the Residential Association or any insurance trustee designated for that purpose, and not to any Unit Owners or Mortgagees. The insurance trustee or the Residential Association shall hold any insurance proceeds in trust for the Unit 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, and the Unit Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Residential Condominium Project has been repaired or restored or the Residential Condominium Project is terminated.

12.08 Unit Owner Maintained Insurance.

Each Unit Owner shall have the obligation to separately maintain a homeowner's policy in addition to the coverage provided by the Association. Each Unit Owner shall be primarily responsible to maintain, repair, replace and insure items appurtenant to such Unit Owner's Unit and to insure such Unit Owner's personal property against loss by fire or other casualty. Such required insurance shall cover claims from loss caused by fire, water damage or other hazards that (a) originate within the Unit; (b) are caused by accident of negligence of the Unit Owner or his tenants or guests; or (c) are caused by items that are the Unit Owner's responsibility to maintain, repair or replace. All such insurance that is individually carried as required herein shall be primary for losses up to and including \$25,000 and must contain a waiver of subrogation rights by the insurer as to other Unit Owners, the Residential Association, Manager, Declarant, and Mortgagees. Each such policy shall also include, at a minimum Coverage A Building for \$25,000. In the event that a Unit Owner fails to maintain insurance as required herein, such Unit Owner will nevertheless be responsible for the first \$25,000 of any claim arising from losses that originate within such Unit Owner's Unit and/or from items that are such Unit Owner's responsibility to repair or place, and such Unit Owner shall be responsible for all items appurtenant to such Unit Owner's Unit. In the event of a claim on the Association Policy which emanates from a Unit, the Unit Owner of such Unit shall be obligated to pay the Association the amount of any deductible upon the Association's policy. Each Unit Owner should attempt to obtain coverage for the Association deductible as part of the Unit Owner's policy required by this Section 12.08.

Each Unit Owner shall also acquire for that Unit Owner's own protection, personal liability coverage and such insurance on the Unit Owner's contents as the Unit Owner deems appropriate. **THE RESIDENTIAL ASSOCIATION SHALL HAVE NO RESPONSIBILITY REGARDING INSURANCE ON THE PERSONAL PROPERTY OR TENANT'S IMPROVEMENTS OR CLAIMS FOR PERSONAL LIABILITY OF UNIT OWNERS**

12.09 Management Committee' Authority to Revise Insurance Coverage.

(a) The Residential Association and its Directors and Officers shall have no liability to any Unit Owner or Mortgagee if, after a good faith effort, (i) the Residential 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.

(b) The Management Committee is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Residential 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.

(c) Each Unit Owner, by acceptance of a deed to a Unit irrevocably appoints the Residential Association as that Unit 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 Residential Association and any losses or claims related thereto and agrees to be bound by the actions so taken as if the Unit Owner had personally taken the action.

12.10 Periodic Insurance Review.

The Management Committee periodically (and not less than once every three (3) years) shall review the Residential 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 Residential Association. The review shall include an appraisal by a qualified appraiser of the current replacement costs of all covered property under the Residential 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 Residential Condominium Project.

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

(a) If 75% or more of the Residential Condominium Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Residential Association are insufficient to accomplish restoration, and if the Owners, within one hundred (100) days after the destruction or damage, and by a vote of at least sixty seven percent (67%) elect not to repair or reconstruct the affected improvements, the Residential Association shall promptly record in the Salt Lake County Records a notice setting forth such facts, upon which the provisions of the Act shall apply and shall govern the rights of all parties having an interest in the Residential Condominium Project or any of the Units.

(b) the Residential Association obtains the consent of Eligible Mortgagees (as defined in Section 16.02) upon Units to which at least fifty-one percent (51%) or more of the votes of Units subject to First Mortgages held by such Eligible Mortgagees (based on the Interest in General Common Elements attributable to each Unit covered by a First Mortgage held by an Eligible Mortgagee).

13.02 Excess Insurance Proceeds.

If the entire Residential 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 Residential 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 Unit Owners of those Units and the Unit 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 Unit 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 Residential Association is not obligated to make any such repairs or replacements, each Unit Owner shall repair or replace any damage to or destruction to the interior of its Unit, as soon as is reasonably practical after such damage or destruction occurs.

ARTICLE XIV  
CONDEMNATION

14.01 Condemnation of All Units.

If the entire Residential Condominium Project is taken by condemnation, eminent domain or similar proceeding, the Residential Condominium Project shall terminate as of the date of the taking and any condemnation award payable in connection therewith shall be paid to the Residential Association and then disbursed by the Residential Association to the Unit Owners in proportion to their interests in General Common Elements.

14.02 Condemnation of Fewer Than All Units.

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

(a) any condemnation award payable in connection therewith shall be paid to the Unit Owners of the Units taken and expended to repair those Units not taken, and

(b) the interest in General Common Elements appurtenant to those Units not taken 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 Residential Association and then disbursed by the Residential Association to the Unit Owners in proportion to their interests in General Common Elements.

14.04 Appointment of Residential Association Regarding Condemnation Claims.

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

ARTICLE XV  
SPECIAL DECLARANT RIGHTS

15.01 Improvements.

Declarant hereby reserves for itself, its successors and assigns the right, but is not obligated, to construct:

(a) any improvements shown on the Plat; and

(b) any other buildings, structures or improvements that Declarant desires to construct on the Subject Property, or any other real estate owned by Declarant, regardless of whether the same ever become part of the Residential Condominium Project.

**15.02 Development Rights.**

Declarant hereby reserves for itself, its successors and assigns the right to create easements, permits, licenses and other property rights and reservations as described in Articles II, III and XI of this Declaration.

**15.03 Sales Offices, Models and Signs.**

Notwithstanding anything in the Declaration to the contrary, during the Declarant Control Period, Declarant shall have the following rights in furtherance of any sales, promotional, or other activities designed to accomplish or facilitate the sale of all Units owned or to be owned by Declarant.

(a) Declarant shall have the right to maintain one or more models and sales offices in which it conducts the business of marketing and selling Units.

(b) Declarant shall have the right to maintain a reasonable number of promotional, advertising, and/or signs, banners, or similar devices at any place or places on the Subject Property, but any such device shall be of a size and in a location as is reasonable and customary.

(c) Declarant 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 Declarant Control Period, Declarant shall have the right to remove from the Residential Condominium Project any signs, banners, or similar devices and any separate structure or facility which was placed on a portion of the Subject Property for the purpose of aiding Declarant's sales efforts.

(d) Any signs, banners, or similar devices, and any separate structure or facility for aiding Declarant's sales efforts shall comply with applicable zoning ordinances.

**15.04 Exercising Special Declarant Rights.**

Declarant may exercise its Special Declarant Rights at any time prior to the later to occur of the date on which the Declarant Control Period expires or the date that is three (3) years after the date on which the Declaration was recorded in the Salt Lake County Records. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise its Special Declarant Rights. If Declarant exercises any Special Declarant Right with respect to any portion of the Subject Property, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Subject Property. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article XV and any other right reserved to Declarant in this Declaration, without the consent of the Residential Association or any of the Unit Owners.

**15.05 Interference with Special Declarant Rights.**

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



15.06 Rights Transferable.

Declarant may transfer any Special Declarant Right reserved to it under this Article XV or under any other provision of this Declaration in accordance with the terms and conditions of the Act.

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 by a First Mortgagee, which request states both the name and address of such First Mortgagee and the Unit number or address of the Unit on which it has (or insures or guarantees) a First Mortgage (herein referred to as an "Eligible Mortgagee" upon such request in the form required herein), the Residential Association shall give prompt written notice of the following to each First 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 First Mortgagee;
- (b) any delinquency in the payment of Assessments which remains uncured for sixty days by a Unit Owner whose Unit is encumbered by a First Mortgage held by such First Mortgagee;
- (c) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Residential Association;
- (d) any proposed action which would require the consent of First Mortgagees as set forth in this Article; and
- (e) any judgment rendered against the Residential Association.

16.03 Consent Required.

Notwithstanding anything to the contrary contained in this Declaration or the Bylaws, the Residential Association may not take any of the following actions without the consent of Eligible Mortgagees (as defined in Section 16.02) upon Units to which at least sixty-seven percent (67%) or more of the votes of Units subject to First Mortgagees (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 Residential Condominium Project, except after condemnation or substantial casualty;
- (b) except as provided herein for condemnation, casualty and the exercise of Special Declarant Rights, change the Interests in General Common Elements, Shares of Common Expenses or votes in the Residential Association of any Unit;
- (c) subdivide, partition, or relocate the boundaries of any Unit, except as permitted with respect to Special Declarant Rights;

(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;

(f) change the purposes for which the Units or the Common Elements are restricted;

(g) amend or add any material provision which provides for, govern or regulate any of the following: (i) increases in assessments by more than 25% for the first three (3) calendar years after the end of the Declarant Control Period (as defined in Section 6.03), and thereafter 10%, of the previously annually assessed amounts, assessment liens or subordination of such lien; (ii) reserves for maintenance, repair and replacement of the Common Elements (including but not limited to reductions); (iii) insurance or fidelity bonds; (iv) rights to use of the common elements; (v) responsibility for maintenance and repair of the Residential Condominium Project; (vi) expansion or contraction of the Residential Condominium Project, or the addition, annexation or withdrawal of property to or from the Residential Condominium Project; (vii) leasing of Units; (viii) imposition of any right of first refusal or similar restriction on the right of the Unit Owner of a Unit to sell, transfer, or otherwise convey his or her Unit in the Residential Condominium Project; (ix) the establishment of self-management by the Residential Association without professional management; or (x) amend this Declaration or the Bylaws which are for the express benefit of Eligible Mortgagees; or

(h) merge the Residential Condominium Project with any other common interest community.

#### 16.04 Notice of Objection.

Unless a First Mortgagee provides the Residential Association with written notice of its objection, if any, to any proposed amendment or action requiring the approval of First Mortgagees within thirty days following the receipt of notice of such proposed amendment or action, the First Mortgagee will be deemed conclusively to have consented to or approved the proposed amendment or action.

#### 16.05 First Mortgagee's Rights.

(a) First 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. First Mortgagees making such payment shall be owed immediate reimbursement from the Residential Association.

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

#### 16.06 Limitations on First Mortgagee's Rights.

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

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

(b) prevent the Residential Association or the Management Committee from commencing, intervening and/or settling any legal proceeding; or

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

16.07 Declarant Rights.

No provision or requirement of this Article XVI shall apply to any Special Declarant Rights or other rights or options reserved to Declarant in this Declaration.

ARTICLE XVII  
ENFORCEMENT AND REMEDIES

17.01 Enforcement.

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

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

(i) a proceeding for injunctive relief;

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

(iii) in the discretion of the Residential Association, for so long as any Unit Owner fails to comply with any such provisions, exclusion of such Unit Owner and its Guests from the use of any Common Elements and from participation in any Residential Association affairs.

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

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

(ii) The Residential Association may, after notice and an opportunity to be heard, fine the Unit Owner, as a Default Assessment, an amount not to exceed \$150 (or such greater amount allowed by law) for each violation. For ongoing violations, such Default Assessment shall be in an amount not to exceed \$150 (or such greater amount allowed by law) per day until the violation is remedied. The Unit Owner shall pay any such fine to the Residential Association within thirty (30) days after the Unit Owner receives written invoice therefor from the Residential Association.

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

(iv) The Residential 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 Residential 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 Residential 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 fees and disbursements of any attorneys, accountants, engineers, appraisers or other professionals engaged by the prevailing party.

**17.03 Interest.**

If a Unit Owner fails to pay to the Residential Association any Assessment or other amount due to the Residential Association as and when the same becomes due, the Unit Owner shall pay to the Residential Association interest on such unpaid amount at the rate of eighteen percent (18%) 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 a Residential Association Document requires that an action be taken after "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 Residential Association) shall give at least three (3) days prior written notice of the proposed action to all Unit 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 Unit 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 Unit Owner shall be notified of the decision in the same manner in which notice of the hearing was given. Any Unit 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 a Unit 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 Residential Association or any Unit Owner to enforce any covenant, condition, restriction, reservation, easement, assessment, charge, lien or other provision of this Declaration or any other Residential 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 RESIDENTIAL ASSOCIATION AND EACH UNIT 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, RESIDENTIAL ASSOCIATION AND A UNIT OWNER OR UNIT OWNERS WITH RESPECT TO THIS DECLARATION OR ANY OTHER RESIDENTIAL 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, RESIDENTIAL ASSOCIATION AND EACH UNIT 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, RESIDENTIAL ASSOCIATION, OR A UNIT OWNER MAY FILE AN EXECUTED COPY OF THIS AGREEMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF DECLARANT, RESIDENTIAL ASSOCIATION AND EACH UNIT OWNER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY. DECLARANT, RESIDENTIAL ASSOCIATION, OR AND UNIT 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 Subject Property 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 Residential Condominium Project and this Declaration, by the vote of one hundred percent (100%) of the votes allocated to all Units. If the necessary votes are obtained, the agreement of the Unit Owners to terminate the Residential Condominium Project and this Declaration shall be evidenced by a termination agreement or ratification thereof, executed by the required number of Unit Owners in accordance with the Act. Upon recordation of the termination agreement in the Salt Lake County Records, the Residential Condominium Project shall be terminated, this Declaration shall have no further force or effect, and the Residential Association shall be dissolved. Notwithstanding the foregoing, the Unit Owners may not terminate the Residential Condominium Project during the Declarant Control Period without Declarant's prior written consent, which consent Declarant may withhold in its sole discretion.

##### 18.03 Amendments.

Except as otherwise expressly provided in this Declaration 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, Unit 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. If the necessary votes and consents are obtained, the Residential Association shall cause an amendment to the Declaration to be Recorded in the Salt Lake County Records. Notwithstanding the foregoing, the Unit Owners may not amend this Declaration during the Declarant Control Period without Declarant's prior written consent, which consent Declarant may withhold in its sole discretion.

ARTICLE XIX  
MISCELLANEOUS

19.01 Interpretation of the Declaration.

Except for judicial construction, the Residential Association, by its Management Committee, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Residential 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 Residential 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, 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 Residential 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 powers hereunder on the condition that Declarant's rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers.

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 Unit Owners of each Unit shall have one and the same registered mailing address to be used by the Residential Association or other Unit Owners for notices, demands, and all other communications regarding Residential Association matters. The Unit Owner or the representative of the Unit Owners of a Unit shall furnish such registered address to the secretary of the Residential Association within ten (10) days after transfer of title to the Unit to such Unit Owner or Unit Owners. Such registration shall be in written form and signed by all of the Unit Owners of the Unit or by such persons as are authorized to represent the interests of all Unit Owners of the Unit. If no address is registered or if all of the Unit Owners cannot agree, then the address of the Unit shall be deemed their registered address of the Unit Owner(s), and any notice shall be deemed duly given if delivered to the Unit. All notices and demands intended to be served upon the Residential Association shall be sent to the following address or such other address as the Residential Association may designate from time to time by notice to the Owner(s):

Broadway Tower Condominiums Association, Inc.  
c/o Broadway Tower Apartment Associates  
421 South 400 East  
Salt Lake City, Utah 84111

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 Residential Association, and initially shall be Kenneth T. Holman, with his principal place of business located at 421 South 400 East, Salt Lake City, Utah 84111. The Association may appoint a new agent for service of process as and when it desires.

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.

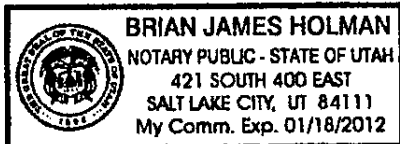
Broadway Tower Apartment Associates, a Utah limited partnership


By:   
Kenneth T. Holman, General Partner

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

On this 3<sup>rd</sup> day of April, 2008, before me personally appeared Kenneth T. Holman, who acknowledged himself to be the General Partner of Broadway Tower Apartment Associates, a Utah limited partnership, and being authorized to do so, he executed the foregoing instrument for the purposes therein contained, by signing the name of the partnership, by himself as general partner.

[NOTARY SEAL]



  
Notary Public

**EXHIBIT A**

(Attached to and forming a part of the  
Declaration of Condominium for Broadway Tower Condominiums)

---

**Legal Description of the Subject Property**

Beginning at a point North 89°58'13" East (Record=East) 165.95 feet from the Northwest corner of Lot 5, Block 54, Plat "A", Salt Lake City Survey, and running thence North 89°58'13" East (Record=East) 93.03 feet; thence South 00°02'12" East (Record=South) 165.00 feet; thence South 89°58'13" West (Record=West) 93.03 feet; thence North 00°02'12" West (Record=North) 165.00 feet to the point of beginning.

Contains: 15,350 sq. ft. (0.352 acres)



**EXHIBIT B**

(Attached to and forming a part of the  
Declaration of Condominium for Broadway Tower Condominiums)

---

**Bylaws**

A copy of the Bylaws of the  
Broadway Tower Condominiums Association, Inc.  
follows this cover sheet.

**BYLAWS**  
**OF**  
**BROADWAY TOWER HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I**  
**NAME AND LOCATION**

The name of the corporation is **BROADWAY TOWER HOMEOWNERS ASSOCIATION, INC.**, hereinafter referred to as the "Association". The principal office of the Corporation in the State of Utah shall be located at 421 South 400 East, Salt Lake City, Utah 84111, 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", "Association of Unit Owners", or "Unit Owners Association" shall mean and refer to "Broadway Tower Homeowners Association, Inc.", a Utah nonprofit corporation, its successors and assigns.

Section 2.2 "Board of Directors" or "Board" shall mean and refer to the individuals elected by the Declarant and/or Unit Owners 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 "Common Elements" shall mean and refer to that part of the Subject Property which is not included within the Units and which is owned by the Association for the common use and enjoyment of the Owners, together with all improvements thereon and all easements appurtenant thereto including, but not limited to, private utility lines and personal property owned by the Association when the context so requires, and as more particularly described in the Declaration.

Section 2.4 "Declarant" shall mean and refer to Broadway Tower Apartment Associates, a Utah limited partnership, its successors and assigns, if such successors or assigns should acquire from the Declarant all of its rights and obligations of development.

Section 2.5 "Declaration" shall mean and refer to the Declaration of Condominium applicable to the Subject Property recorded in the Office of the Recorder of Salt Lake County, State of Utah, and amendments thereto.

Section 2.6 "Member" shall mean and refer to those persons entitled to Membership as provided in the Declaration.

Section 2.7 "Unit" means a physical portion of the Condominium Project that:

- (1) consists of one or more rooms or spaces located in one or more floors or parts of floors located in the Subject Property;
- (2) is designated for separate ownership and independent use; and
- (3) is designated as a Residential Unit or Unit on Exhibit C of the Declaration and on the Plat.

The walls, floors or ceilings are designated as boundaries of a Unit, and all paneling, tiles, wallpaper, painting, finished flooring and any other materials constituting any portion of the finished surfaces thereof are part of the Unit, and all other portions of the walls, floors and ceilings are part of the Common Elements.

Section 2.8 "Unit 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 a Unit Owner. The term "Unit Owner" includes Declarant to the extent that Declarant is the record holder of legal title to the fee simple interest in a Condominium Unit. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term "Unit 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.

Section 2.9 "Subject Property" shall mean and refer to that certain real property described in the Declaration of Condominium (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 "Subject Property."

### **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 2009, 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-fourth (1/4) of the Interests in 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 fifty percent (50%) 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 Proxies.** At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Unit.

**Section 3.6 Voting.** Since a Unit Owner 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 Owners 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 not less than five (5) individuals; provided, however, that until (i) the expiration of three (3) years from the date that the Declaration (exclusive of amendments or supplements) is recorded in the official records of the County Recorder of Salt Lake County, State of Utah, or such shorter period as the Declarant may determine in its sole discretion, or (ii) a date not later than one hundred twenty (120) days after the date upon which Units representing seventy-five percent (75%) of the total Interests in the General Common Elements have been conveyed to purchasers (the "Declarant Control Period"), Declarant shall have the exclusive right to appoint and remove all Directors and Officers. The Board of Directors may consist of one (1) individual selected by the Declarant. Unit Owners who permanently occupy their Unit shall be eligible for Board membership.

In addition to individual Unit Owners, spouses of Unit 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 owning a Unit, shall be eligible for Membership on the Committee.

Section 4.2 Term of Office. Subject to the provisions of Section 4.1 above, at the first annual meeting, the Members shall elect five (5) of the Directors, two (2) for a term of one year and three (3) for a term of two (2) years, and at each annual meeting thereafter the Members shall elect the number of Directors whose terms are to expire for a term of two (2) years each.

Section 4.3 Removal. Any Director who is appointed by the Declarant may be removed by the Declarant. Other Directors may be removed, with or without cause, by a sixty-seven percent (67%) or greater vote allocated to the Units as provided in the Declaration. In the event of death, resignation or removal of a Director, his or her successor shall be selected in accordance with the provisions of the Declaration.

Section 4.4 Compensation. Board members shall 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 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** **NOMINATION AND ELECTION OF BOARD MEMBERS**

Section 5.1 Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. If no Nominating Committee has been appointed by the Board, the Board shall serve in that capacity. Nominations may also be made from the floor at the annual meeting of Members. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board, and two or more Members of the Association or if such Members do not exist or decline appointment, the Declarant. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made among Members or non-Members.

Section 5.2 Election. Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

**ARTICLE VI**  
**MEETINGS OF THE BOARD OF DIRECTORS**

**Section 6.1 Regular Meetings.** Regular meetings of the Board shall be held quarterly 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 6.2 Special Meetings.** Special meetings of the Board shall be held when called by the president of the Association, or by any two Board members after not less than three (3) days notice to each Board member.

**Section 6.3 Quorum.** A majority of the number of Board members shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Board members present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

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

**Section 7.1 Powers.** The Board of Directors shall have power to:

(a) adopt and publish Rules and Regulations governing the use of the Common Elements and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights and right to use of the recreational facilities, if any, of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

(c) 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;

(d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

**Section 7.2 Duties.** It shall be the duty of the Board of Directors to:

(a) retain by written contract, a professional manager (the "Manager") who shall be responsible for the routine operation of the Condominium Project, unless Unit Owners holding two thirds (2/3) or more of all votes allocated to Units agree to the contrary. 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 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 Owner 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 Owner 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 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 7.3 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 Condominium;
- (c) elect Directors to the Board of Directors; or
- (d) determine the qualifications, powers and duties, or terms of office, of Directors.

### **ARTICLE VIII** **OFFICERS AND THEIR DUTIES**

Section 8.1 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 8.2 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, Vice President, and other officers as shall be deemed appropriate.

Section 8.3 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 8.4 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 8.5 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 8.6 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 8.7 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 8.4 of this Article.



Section 8.8 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.

**Vice-President.** The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board of Directors.

**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 IX** **COMMITTEES**

The Board of Directors, may if it elects appoint a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors may appoint other committees as deemed appropriate in carrying out its purposes.

#### **ARTICLE XI** **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. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date of delinquency at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Unit Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. No Unit Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Unit.

**ARTICLE XII**  
**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 XIII**  
**AMENDMENTS**

Section 13.1 These Bylaws may be amended, at a regular or special meeting of the Members, by Members holding two-thirds (2/3) of the Interests in Common Elements, in person or by proxy, except that the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments until such time as Units to which an aggregate of at least three-fourths (3/4) of the Interests in Common Elements than appurtenant to the Project have been conveyed by the Declarant to Unit purchasers.

Section 13.2 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 XIV**  
**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, we, being all of the Directors of BROADWAY TOWER HOMEOWNERS ASSOCIATION, INC., have hereunto set our hands this 2<sup>nd</sup> day of April, 2008.

BROADWAY TOWER APARTMENT ASSOCIATES,  
a Utah limited partnership

By:

  
Kenneth T. Holman, General Partner

**ARTICLES OF INCORPORATION**

**OF**

**BROADWAY TOWER HOMEOWNERS ASSOCIATION, INC.**  
**A NON-PROFIT CORPORATION**

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, the undersigned, natural persons of the age of twenty-one years or more, hereby associate ourselves for the purpose of forming a corporation under the Utah Revised Non-Profit Corporation Act and do hereby adopt the following Articles of Incorporation for such Corporation:

**ARTICLE I**  
**NAME AND DURATION**

The name of the Corporation is **BROADWAY TOWER HOMEOWNERS ASSOCIATION, INC.**, and the duration of the corporation shall be perpetual.

**ARTICLE II**  
**PURPOSES**

The Corporation is organized exclusively for non-profit purposes, and the specific purposes for which this non-profit corporation is organized are to manage, operate, insure, construct, improve, repair, replace, alter and maintain the Common Elements and to provide certain facilities, services and other benefits to the Unit Owners (defined in the Declaration, as herein after described) within that real property located in Salt Lake City, Salt Lake County, State of Utah, more particularly described on Schedule "A" attached hereto and incorporated herein by reference, and to promote the health, safety and welfare of the residents within the above described real property and any additions thereto as may hereafter be brought within the jurisdiction of this Association. For this purpose the Association is authorized to:

(a) exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration of Condominiums of the Broadway Tower Condominiums, a Utah condominium project (hereinafter called the "Declaration") dated as of \_\_\_\_\_, 2008, and recorded \_\_\_\_\_, 2008, as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_, beginning at page \_\_\_\_\_ of the Official Records of the Salt Lake County Recorder, wherein Broadway Tower Apartment Associates, a Utah limited partnership, is designated as "Declarant", applicable to the property, and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length;

(b) fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the

Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(c) acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(d) borrow money, and with the assent of Unit Owners holding three-fourths (3/4) of the Interest in the General Common Elements as defined in the Declaration, mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(e) dedicate, sell or transfer all or any part of the Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Unit Owners; provided, however, that the Association may grant such easements as shall be necessary for the development of the Property without the consent of the Unit Owners. Except with respect to easements, no such dedication, sale or transfer shall be effective unless the same has been approved by Unit Owners holding three-fourths (3/4) of the Interest in the General Common Elements as defined in the Declaration, agreeing to such dedication, sale or transfer;

(f) participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional residential property and Common Elements, provided that any such merger, consolidation or annexation shall have the assent of Unit Owners holding three-fourths (3/4) of the Interest in the General Common Elements as defined in the Declaration;

(g) have and to exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Act of the State of Utah may now or hereafter have or exercise; and

(h) to enter into agreements with other persons, including, without limitation, easements, licenses, leases and other agreements with the Declarant, with or without the vote or consent of the Unit Owners, Mortgagees, insurers, or guarantors of Mortgages, or of any other Person.

### **ARTICLE III** **MEMBERSHIP**

Every person or entity who is a record Owner of a fee or undivided fee interest in any Unit (as defined in the Declaration) which is subject to the Declaration, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest in any Unit merely as security for the performance of any obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment by the Association.

**ARTICLE IV**  
**VOTING RIGHTS**

4.1 At any meeting of the Association, the Interest in General Common Elements appurtenant to a Unit may be voted in connection with issues presented to the Unit Owners for vote. The votes allocated to the Units of the Condominium Project shall be equal to one hundred (100) multiplied by the Interests in General Common Elements as set forth on Exhibit C attached to the Declaration. Consequently, the total number of votes allocated to all Units shall be ten thousand (10,000).

4.2 If any Units are added to or withdrawn from the Condominium Project, or the Area of one or more Units is increased or decreased, the total number of votes allocated to all Memberships 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.

4.3 Each Unit shall be entitled to the number of votes allocated to it in accordance with paragraphs 4.1 and 4.2 herein 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 Unit Owner casts a vote representing a particular Unit, it will thereafter be presumed for all purposes that the Unit Owner was acting with the authority and consent of all other Unit Owners with whom such Unit Owner shares the Unit, unless objection thereto is made by a Unit Owner of the 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.

4.4 In any case in which the Act or the Declaration requires the vote of a stated percentage of the Unit 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 Unit Owners who collectively hold at least the stated percentage or required votes. Such written consents shall be subject to the following conditions:

- (a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Unit Owner.
- (b) Any change in ownership of a Condominium Unit which occurs after consent has been obtained by the Unit Owner having an interest therein shall not be considered or taken into account for any purpose.
- (c) Unless consent of all Unit Owners having an interest in the same Condominium Unit is secured, the consent of none of such Unit Owners shall be effective.

**ARTICLE V**  
**REGISTERED OFFICE AND AGENT**

The address of the initial designated and registered office of the Corporation is 421 South 400 East, Salt Lake City, Utah 84111, and the name of the registered agent at such address is **Kenneth T. Holman**.

**ARTICLE VI**  
**CORPORATION POWERS**

The Corporation shall have such powers and authority as are provided by Statute, Section 16-6a-101, *et seq.*, Utah Code Annotated (2005, as amended). Specifically, the Corporation shall have power and authority to sue or be sued and defend in the Corporate name; maintain a corporate seal; receive gifts, devisees, bequests of personal and real property, to purchase or lease personal or real property and to otherwise acquire, hold, improve, use, and possess the same; to convey, mortgage, pledge, lease, exchange, transfer, bargain, or otherwise dispose of any or all of its property and assets; to conduct its normal and ordinary affairs, transact business, and carry on operations with such offices as are necessary within the State of Utah or the Continental United States; to elect a Board of Directors, and to appoint officers and agents of the Corporation and to define, by bylaw and otherwise, the duties and compensation of said officers and agents; to make and alter by-laws and resolutions, not otherwise inconsistent with the Articles of Incorporation, the Declaration or the laws of the State of Utah for the administration of the affairs of the Corporation; to indemnify any Director, officer, or agent of the Corporation for expenses actually and necessarily incurred in furthering the activities and operations of the Corporation or in the defense of any litigation or action in which any said Director, officer, or agent is made a party; and to exercise all other powers necessary and reasonably convenient to effect any and all of the purposes for which the Corporation is now authorized or hereafter may be authorized by the laws of the United States and the State of Utah.

**ARTICLE VII**  
**LIMITATIONS ON DISPOSITION OF**  
**EARNINGS AND ASSETS**

The Corporation's objectives are not for pecuniary profit and no part of the net earnings of the Corporation, if any, shall inure to the benefit of any member of the Board of Directors, officer or Member of the Corporation or any other individual, and no Director, officer or member of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution or liquidation of the Corporation. No part of the activities of the Corporation shall be to provide propaganda, or otherwise attempting to influence legislation, or participate in or intervene in any political campaign on behalf of any political party or any candidate for public office. Notwithstanding any other provision of these Articles to the contrary, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income taxes under Section 501(c) of the Internal Revenue Code of 1954, as amended or, (b) by a corporation contributions to which are deductible under Section 17(c) (2) of the Internal Revenue Code of 1954, as amended.

**ARTICLE VIII**  
**INCORPORATORS AND BOARD OF DIRECTORS**

The conduct of the affairs of the Corporation shall be governed and controlled by a Board of Directors consisting of not less than five (5) individuals; provided, however, that until (i) the expiration of three (3) years from the date that the Declaration (exclusive of amendments or supplements) is recorded in the official records of the County Recorder of Salt Lake County, State of Utah, or such shorter period as the Declarant may determine in its sole discretion, or (ii) a date not later than one hundred twenty (120) days after the date upon which Units representing seventy-five percent (75%) of the total Interests in the General Common Elements have been conveyed to purchasers, (the "Declarant Control Period") Declarant shall have the exclusive right to appoint and remove all Directors and Officers. During the Declarant Control Period, the Board of Directors may consist of one (1) individual selected by the Declarant. The qualifications of individuals permitted to serve on the Board of Directors shall be established in the Bylaws of the Corporation. Said Board of Directors shall exercise such powers as are provided by these Articles of Incorporation, the laws of the State of Utah, and the Bylaws of the Corporation. The names and addresses of the persons who are to severally serve as the initial incorporators and Directors of the Corporation until the first meeting of the Board of Directors, or until their successors are duly elected and qualified are as follows:

Kenneth T. Holman  
421 South 400 East  
Salt Lake City, Utah 84111

The initial Directors shall hold office until the election or appointment of their successors at the first annual meeting. Thereafter, The initial Directors shall hold office until the election or appointment of their successors at the first annual meeting. Thereafter, subject to the Declarant Control Period, each Director will hold office for a term as follows: two (2) Directors shall be elected for a term of one year and three (3) Directors shall be elected for a term of two (2) years, and at each annual meeting thereafter the Unit Owners shall elect the number of Directors whose terms are to expire, for a term of two (2) years each.

**ARTICLE IX**  
**OFFICERS**

The Board of Directors is authorized to elect and appoint officers and agents of the Corporation as shall be necessary and appropriate. Such officers and agents shall hold office until their successors are duly elected or appointed and qualified or until they are removed. All officers and agents of the Corporation, as between themselves and the Corporation, shall have such authority and perform such duties in the management of the affairs of the Corporation as may be provided in these Articles of Incorporation, the Bylaws or the Declaration or as may be determined by resolution of the governing Board of Directors not inconsistent with these Articles of Incorporation, the Bylaws or the Declaration.

The Board of Directors shall be required to retain by written contract, a professional manager (the "Manager") who shall be responsible for the routine operation of the Condominium Project, unless Unit Owners holding two-thirds (2/3) or more of all votes allocated to the Units

agree to the contrary. Each Manager (or its principal broker) shall be a licensed real estate broker or property manager in the State of Utah.

**ARTICLE X**  
**BYLAWS**

The Unit Owners may adopt, amend and repeal at will such Bylaws as are not inconsistent with law, these Articles of Incorporation, the Declaration and the Utah Non-Profit Corporation Act, provided that any such amendments shall require the consent of Unit Owners holding two-thirds (2/3) of the Interest in the General Common Elements (as defined in the Declaration) and as further provided in the Bylaws attached to the Declaration.

**ARTICLE XI**  
**DISSOLUTION**

The Association may be dissolved only upon the termination of the Declaration in accordance with terms thereof and with the assent given in writing and signed by Unit Owners holding not less than three-fourths (3/4) of the Interest in the General Common Elements as defined in the Declaration. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

**ARTICLE XII**  
**LIABILITY**

The Board of Directors, members of the Board, officers, employees and members of this Corporation shall not be liable, either jointly or severally, for any obligation, indebtedness or charge against the Corporation.

**ARTICLE XIII**  
**INDEMNITY OF OFFICERS AND BOARD OF DIRECTORS**

The Corporation shall indemnify any and all of its officers or members of the Board of Directors, or former officers or members of the Board of Directors, or any person who may have served at its request as a member of the Board of Directors against expenses actually and necessarily incurred by them in connection with the defense of any action, suit or proceeding in which they or any of them are made parties, or a party, by reason of being or having been members of the Board of Directors or officers of the Corporation, except in relation to matters as to which any member of the Board of Directors or officer or former officer or member of the Board of Directors or person shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty. Such indemnification shall not be deemed

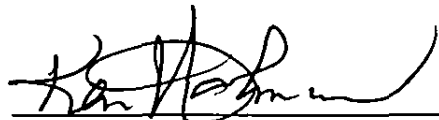


exclusive of any or all other rights to which those indemnified may be entitled, under any Bylaws, agreement, vote of subscribers or otherwise.

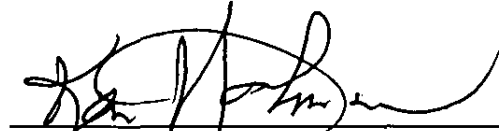
**ARTICLE XIV**  
**AMENDMENT**

Any amendment to these Articles of Incorporation shall require the assent of Unit Owners holding sixty-seven percent (67%) of the Interest in the General Common Elements as defined in the Declaration.

IN WITNESS WHEREOF, the undersigned Incorporators have set their hands this 4<sup>th</sup> day of April, 2008.

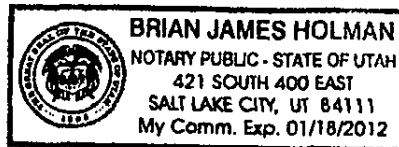
  
\_\_\_\_\_  
KENNETH T. HOLMAN

The undersigned hereby agrees to act as the Registered Agent for the above Corporation.

  
\_\_\_\_\_  
KENNETH T. HOLMAN

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

I hereby certify that on the 4<sup>th</sup> day of April, 2008, personally appeared before me KENNETH T. HOLMAN, who being by me first duly sworn, declared that he is the person who signed the foregoing instrument as an incorporator and Registered Agent, and that the statements contained therein are true.



  
\_\_\_\_\_  
NOTARY PUBLIC

EXHIBIT A

(Legal Description)

Real Property located in Salt Lake County, Utah, and is more particularly described as follows:

Beginning at a point North 89°58'13" East (Record=East) 165.95 feet from the Northwest corner of Lot 5, Block 54, Plat "A", Salt Lake City Survey, and running thence North 89°58'13" East (Record=East) 93.03 feet; thence South 00°02'12" East (Record=South) 165.00 feet; thence South 89°58'13" West (Record=West) 93.03 feet; thence North 00°02'12" West (Record=North) 165.00 feet to the point of beginning.

Contains: 15,350 sq. ft. (0.352 acres)

Tax ID #

16-06-180-002

16-06-180-003

**EXHIBIT C**

**Interest in Common Areas**

(Attached to and forming a part of the  
Declaration of Condominium for Broadway Tower Condominiums)

**Each of the Units is located at 230 East Broadway, Salt Lake City, Utah.**

total units:					total sf:	2000.000000	100.00%
96					79,148	Par	Interest in
Floor #	Unit No.	Unit Style	Parking No.	Sq. Ft.	Value	Common Area	
4	401	2	1	917	22.002556	1.1001%	
4	402	4	6	614	18.174285	0.9087%	
4	403	3	2	622	18.275362	0.9138%	
4	404	6	7	931	22.179440	1.1090%	
4	405	5	3	931	22.179440	1.1090%	
4	406	8	8	700	19.260857	0.9630%	
4	407	7	4	748	19.867316	0.9934%	
4	408	11	9	962	22.571112	1.1286%	
4	409	9	5	938	22.267882	1.1134%	
4	410	10	10	722	19.538818	0.9769%	
5	501	1	11	917	22.002556	1.1001%	
5	502	2	12	917	22.002556	1.1001%	
5	503	3	13	622	18.275362	0.9138%	
5	504	4	14	624	18.300631	0.9150%	
5	505	5	15	931	22.179440	1.1090%	
5	506	6	16	931	22.179440	1.1090%	
5	507	7	17	748	19.867316	0.9934%	
5	508	8	18	700	19.260857	0.9630%	
5	509	9	19	938	22.267882	1.1134%	
5	510	10	20	722	19.538818	0.9769%	
5	511	11	21	962	22.571112	1.1286%	
6	601	1	22	917	22.002556	1.1001%	
6	602	2	23	917	22.002556	1.1001%	
6	603	3	24	622	18.275362	0.9138%	
6	604	4	25	624	18.300631	0.9150%	
6	605	5	26	931	22.179440	1.1090%	
6	606	6	27	931	22.179440	1.1090%	
6	607	7	28	748	19.867316	0.9934%	
6	608	8	29	700	19.260857	0.9630%	
6	609	9	30	938	22.267882	1.1134%	
6	610	10	31	722	19.538818	0.9769%	
6	611	11	32	962	22.571112	1.1286%	

7	701	1	33	917	22.002556	1.1001%
7	702	2	34/35	917	22.002556	1.1001%
7	703	3	36	622	18.275362	0.9138%
7	704	4	64	624	18.300631	0.9150%
7	705	5	65	931	22.179440	1.1090%
7	706	6	66	931	22.179440	1.1090%
7	707	7	67	748	19.867316	0.9934%
7	708	8	68	700	19.260857	0.9630%
7	709	9	69	938	22.267882	1.1134%
7	710	10	70	722	19.538818	0.9769%
7	711	11	71	962	22.571112	1.1286%
8	801	1	72	917	22.002556	1.1001%
8	802	2	73	917	22.002556	1.1001%
8	803	3	74	622	18.275362	0.9138%
8	804	4	75	624	18.300631	0.9150%
8	805	5	76	931	22.179440	1.1090%
8	806	6	77	931	22.179440	1.1090%
8	807	7	78	748	19.867316	0.9934%
8	808	8	79	700	19.260857	0.9630%
8	809	9	80	938	22.267882	1.1134%
8	810	10	81	722	19.538818	0.9769%
8	811	11	82	962	22.571112	1.1286%
9	901	1	83	917	22.002556	1.1001%
9	902	2	84	917	22.002556	1.1001%
9	903	3	85	622	18.275362	0.9138%
9	904	4	86	624	18.300631	0.9150%
9	905	5	87	931	22.179440	1.1090%
9	906	6	88	931	22.179440	1.1090%
9	907	7	89	748	19.867316	0.9934%
9	908	8	90	700	19.260857	0.9630%
9	909	9	91	938	22.267882	1.1134%
9	910	10	92	722	19.538818	0.9769%
9	911	11	98/99	962	22.571112	1.1286%
10	1001	1	57	917	22.002556	1.1001%
10	1002	2	56	917	22.002556	1.1001%
10	1003	3	55	622	18.275362	0.9138%
10	1004	4	54	624	18.300631	0.9150%
10	1005	5	53	931	22.179440	1.1090%
10	1006	6	52	931	22.179440	1.1090%
10	1007	7	51	748	19.867316	0.9934%
10	1008	8	50	700	19.260857	0.9630%
10	1009	9	49	938	22.267882	1.1134%
10	1010	10	48	722	19.538818	0.9769%
10	1011	11	47	962	22.571112	1.1286%

11	1101	1	93	917	22.002556	1.1001%
11	1102	2	94	917	22.002556	1.1001%
11	1103	3	46	622	18.275362	0.9138%
11	1104	4	45	624	18.300631	0.9150%
11	1105	5	95	931	22.179440	1.1090%
11	1106	6	96	931	22.179440	1.1090%
11	1107	7	44	748	19.867316	0.9934%
11	1108	8	43	700	19.260857	0.9630%
11	1109	9	97	938	22.267882	1.1134%
11	1110	12	42	852	21.181310	1.0591%
11	1111	13	41	751	19.905220	0.9953%
12	1201	1	58	917	22.002556	1.1001%
12	1202	2	59	917	22.002556	1.1001%
12	1203	3	40	622	18.275362	0.9138%
12	1204	4	39	624	18.300631	0.9150%
12	1205	5	60	931	22.179440	1.1090%
12	1206	6	61	931	22.179440	1.1090%
12	1207	7	38	748	19.867316	0.9934%
12	1208	8	37	700	19.260857	0.9630%
12	1209	14	63/100	1,670	31.516379	1.5758%

2000.000000