

WHEN RECORDED RETURN TO:  
RICHARDS, KIMBLE & WINN, P.C.  
2040 E. MURRAY HOLLADAY RD., SUITE 102  
SALT LAKE CITY, UT 84117  
801-274-6800

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AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
BROADWAY LOFTS CONDOMINIUM  
(including Association Bylaws - Article IX)

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GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
RICHARDS, KIMBLE & WINN  
2040 E MURRAY HOLLADAY RD #102  
SALT LAKE CITY UT 84117  
BY: ULR, DEPUTY - WI 54 P.

**THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM** is made and executed on the date evidenced below by the Broadway Loft Condominium Association, a Utah Nonprofit Corporation, (hereinafter referred to as "the Association"), pursuant to the provisions of the Utah Condominium Ownership Act (the "Act"), Title 57-8-1 et seq. of the Utah Code (1953), as may be amended from time to time.

#### RECITALS

A. This Amended and Restated Declaration of Condominium supercedes and replaces in its entirety the previously recorded "Declaration of Condominium and Declaration of Covenants, Conditions and Restrictions for Broadway Lofts Condominium" (the "Original Declaration") recorded as: **Entry No. 7536270, Book 8330, Page 4248, et seq., recorded on December 17, 1999**, in the records of the Salt Lake County Recorder.

B. The Bylaws, incorporated into this Declaration, supercede and replace in their entirety the previously recorded original Bylaws (and any amendments thereto) and House Rules which were attached as an Exhibit to the Original Declaration.

C. Association. The Association, by and through its Board of Directors, is the authorized representative of the owners of certain real property (Units and Common Area) known as the "Broadway Loft Condominium," located in Salt Lake County, Utah and more particularly described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Project").

D. Existing Project. The Project consists of Fifty (50) Residential Units, Eight (8) Live/Work Units, Two (2) Commercial Units and certain Common Area and Facilities;

E. Binding Effect. These covenants, conditions, restrictions, easements and limitations shall run with the real property and Units and shall be binding on all parties having or acquiring any right, title or interest in the described real property or any part thereof and shall inure to the benefit of each owner thereof and are imposed upon said real property and Units and every part thereof as a servitude in favor of each and every parcel/unit thereof as the dominant tenement or tenements.

F. Purpose of this Amended Declaration. It is intended that all Owners, guests, invitees, tenants and residents abide by these covenants, conditions and restrictions in order to maintain property values and a desirable living environment. Furthermore, additions and improvements have been made to the terms and conditions of the Original Declaration to better serve the needs of the Owners and to help enhance property values and the quality of life for all Owners/Members.

NOW, THEREFORE, pursuant to Article 17 of the Original Declaration, the necessary approvals to amend the Original Declaration have been received and this Amended Declaration is hereby adopted for the benefit of the Project and the Unit Owners thereof, the Association hereby executes this Amended and Restated Declaration of Covenants, Conditions and Restrictions for the Association, for and on behalf of all of the Unit Owners.

ARTICLE I

*DEFINITIONS*

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When used in this Declaration (including in that portion hereof headed "Recitals" and in the Bylaws included herein as Article X) the following terms shall have the meaning indicated.

**1.1 Act** shall mean and refer to the Utah Condominium Ownership Act (Section 57-8-1, et seq., Utah Code Annotated, 1953), as may be amended from time to time.

**1.2 Allocated Interest** shall mean the undivided interest (expressed as a fraction or percentage) in the Common Areas and Facilities. The allocation of Common Expenses and voting rights in the Association allocated to each unit shall be based on the Allocated Interest described herein.

**1.3 Assessments** shall mean the charges against Owners to defray the Common Expenses as well as miscellaneous individual assessments and special assessments for capital improvements for the purpose of restoring and reconstructing the condominium in the event of casualty; all as provided in this Declaration.

**1.4 Association** shall mean and refer to the Broadway Lofts Condominium Association. Every Unit Owner shall automatically be a member of the Association. Membership in the Association shall be appurtenant to the Unit in which the Owner has the necessary interest, and shall not be separated from the Unit to which it appertains. The property, business and affairs of the Association shall be governed by a Board of Directors as more particularly described herein and in the Bylaws.

**1.5 Board of Directors or Board** shall mean and refer to the Board of Directors of Broadway Loft Condominium as it exists at

any given time. The Board may also be referred to as the "**Management Committee**" herein.

**1.6 Common Areas and Facilities** shall mean the entire Condominium, including all items listed in Section 57-8-3(4) of the Act, unless otherwise described in this Declaration, excluding the Units.

**1.7 Common Expenses** shall mean and refer to all sums which are expended on behalf of all the Unit Owners and all sums which are deemed necessary by the Board of Directors to perform or exercise its functions, duties, or rights under the Act, this Declaration, the Management Agreement for operation of the Project, if any, and such rules and regulations as the Board of Directors may from time to time adopt.

**1.8 Common Profits** shall mean and refer to the balance of income, rents, profits and revenues from the Common Areas remaining after deduction of the Common Expenses.

**1.9 Declaration** shall mean and refer to this Amended and Restated Declaration and as it may be further amended from time to time.

**1.10 Family** shall mean any number of people living together in a Unit and related to the Unit Owner of record by blood, marriage or adoption, and including up to two (2) additional unrelated people.

**1.11 Lender** shall mean a holder of a mortgage or deed of trust on a Unit.

**1.12 Limited Common Area and Facility** means a portion of the Common Areas and Facilities specifically designated as a Limited Common Area and Facility in this

Declaration or the Plat and designated by this Declaration or the Plat for the exclusive use of one or more, but fewer than all of the Units and Owners thereof.

**1.13 Live/Work Unit** shall mean and refer to Units, as shown on the appropriate Plat Map, that may be used for either residential or commercial uses, subject to the limitations provided in this Declaration and local ordinances.

**1.14 Manager** shall mean and refer to the manager, if any, retained by the Board of Directors to oversee the day-to-day operations of the Association and to enforce the covenants, conditions, and restrictions applicable to this community. A Manager may also be a full-time employee and/or resident of the Project but may not be a Board member at the same time. The Association is not required to be professionally managed but may be so if desired.

**1.15 Mortgage** shall mean any mortgage, deed of trust or other security instrument by which a Unit or any part thereof is encumbered.

**1.16 Mortgagee** shall mean a beneficiary of a Mortgage as well as named Mortgagee.

**1.17 Occupant** shall mean a Person or Persons, other than an owner, in possession of, or using a Unit, including, without limitation, family members, tenants, guests, or invitees.

**1.18 Owner** shall mean a Person or Persons whose interest in the Unit is held in fee simple, according to the records of the County Recorder of Salt Lake County, Utah; however, the term "Owner" shall not include a Person who holds an interest in a Unit merely as security for the performance of an obligation.

**1.19 Percentage Interest** shall mean and refer to the undivided percentage interest of each Unit in the Common Areas as set forth in **Exhibit "B"** attached hereto.

**1.20 Person** shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

**1.21 Project Documents** shall mean and refer to this Declaration of Condominium, the Bylaws and Rules and Regulations of the Association.

**1.22 Property** shall mean and refer to the land, described in **Exhibit "A,"** the buildings, all improvements and the structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property, belonging to the Association, intended for use in connection therewith.

**1.23 Record of Survey Map or Maps or Plat Map** shall mean and refer to the Record of Survey Map of the Property submitted with the Original Declaration recorded in Book 99-12p, beginning at page 334, in the records of the Salt Lake County Recorder.

**1.24 Resident** shall mean and refer to any person living or staying at the Project. This includes but is not limited to all lessees, tenants, and the family members of Owners, tenants or lessees.

**1.25 Resolution** shall mean the document/process by which the Board promulgates the written community policies and rules of the Association. All resolutions shall be in writing and approved by a majority of the Board and distributed to the Owners prior to becoming effective. Resolutions may be repealed by a majority of the Board. All such policies and rules,

adopted via Resolution, shall be consistent with this Declaration and the Bylaws.

Notes

**1.26 Tenant or Renter** shall mean any Person occupying a Unit who is not an Owner of record of the Unit or a Family member. For purposes of this Declaration, all such other person(s) shall be deemed a tenant or renter whether or not monetary or other consideration is exchanged for the right to occupy a Unit.

**1.27 Unit** shall mean part of the Condominium, including one or more rooms situated in a building comprising part of the Condominium, designed or intended for independent ownership and occupancy as a dwelling unit. The respective Allocated Interest in the Common Area and Facilities is appurtenant to the Unit.

**1.28 Unit Number** shall mean and refer to the number, letter, or combination thereof which designates a Unit on the Map or any Exhibits hereto.

**1.29 Unit Owner or Owner** shall mean and refer to the owner of the fee in a Unit and the percentage of undivided interest in the Common Areas and Facilities which is appurtenant thereto. In the event a Unit is the subject of an executory Contract of sale, the contract purchaser shall, unless the seller and the purchaser have otherwise agreed and have informed the Board in writing of such agreement, be considered the Unit Owner for purposes of voting and Board membership.

ARTICLE II

*PROPERTY SUBMISSION; PROJECT DESCRIPTION*

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**2.1 Property Submitted.** There is hereby submitted to the provisions of the Act, as the property initially associated with the Broadway Lofts Condominium, the real property situated in Salt Lake County, State of Utah, more particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference; subject to the easements, reservations and other provisions set forth in said **Exhibit "A."**

**2.2 Description and Legal Status of Units.** The Project consists of one (1) building containing fifty (50) Residential Units, eight (8) Live/Work Units, two (2) Commercial Units and certain Common Areas and Facilities.

The Table shows the Units and Building designations, its location, the dimensions from which the Units and Common Areas may be determined, the Limited Common areas which are reserved for specific use (and as may also be further established or modified in this Declaration and by Board Resolution), and the Common Areas. All Units shall be capable of being independently owned, encumbered, and conveyed.

**2.3 Contents of Exhibit "B."** Exhibit "B" to this Declaration furnishes the following information with respect to each Unit: (a) the Unit Number; (b) its square footage; and, (c) the percentage interest of ownership each Unit enjoys with respect to the Common Areas. With respect to percentage interest, to avoid a perpetual series of digits and to obtain a total of one hundred percent (100%), the last digit has been adjusted and rounded up or down to a value that is most nearly correct.

**2.4 Interpretation of Declaration and Applicability of the Act.** Broadway Lofts Condominiums, as expressly stated in the Original Declaration and intended hereby, shall be governed by the Act, except where (in compliance with the Act), specific provisions in this Declaration vary, supersede or supplement the Act. In such event, the specific provisions of this Declaration which are contrary to the Act shall govern the Condominium.

NOTES

ARTICLE III

*UNITS, LIMITED COMMON AREAS, COMMON AREAS, ALLOCATED INTERESTS, AND PLAT*

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**3.1 Description of Boundaries of Each Unit and Unit Number.** The square footage and Unit Number of each of the Units within the Condominium are set forth on the Table marked as **Exhibit "B."**

The horizontal boundaries of each Unit shall be the underside of the finished but undecorated ceiling and the top of the finished but undecorated floor of the Unit as shown on the Plat.

The vertical boundaries of each Unit shall be the interiors of the finished but undecorated walls located on the perimeter lines of the respective Units as shown on the Plat.

In the event a Unit remains in an unfinished condition (namely, the ceiling, floor and/or perimeter walls), then, for purposes of this Article III, the definition of a Unit shall remain in force and effect but the boundary line determination, between the Common Area and the Unit(s), shall be conclusively determined by a structural engineer or similarly qualified individual/company who can reasonably determine the industry standard for the location of such ceilings, floors and perimeter walls based on the type of Unit space at issue.

All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and other materials constituting any part of the finished surfaces are part of the Unit, and all other and structural portions of the walls, floors, columns, or ceilings are part of the Common Areas and Facilities.

If any pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water, or sewer lines, or any other similar fixtures lie partially or wholly within or outside the

designated boundaries of a Unit, then any portion serving only that Unit is a Limited Common Area and Facility allocated solely to that Unit and any portion serving more than one Unit or any portion of the Common Area and Facilities is part of the Common Areas and Facilities.

Subject to the preceding sentence, each Unit shall consist of the space enclosed and bounded by the horizontal and vertical planes as shown on the Plat, and all interior partitions and other fixtures and improvements within such boundaries shall be part of the Unit. Conveyance of a Unit includes the use of the Limited Common Areas and Facilities appurtenant to said Unit.

**3.2 Description of Common Areas and Facilities for Parking and Storage Areas; Assigned Parking.**

The Association, by its rules and regulations, shall designate the parking spaces and storage areas within the Common Areas, including Limited Common Areas, of the Association to be used by the Owner of each Unit.

The Board shall have authority to designate and modify the use of parking spaces, including reserving certain spaces for use by contractors, janitors, other staff, or visitors, or for rental, or for any other reasonable use.

However such use must be reasonable and impartial as to individual Owners. Additionally, handicap parking spaces must be provided in accordance with state and federal laws.

All assigned parking garage spaces shall be treated as Limited Common Area and

reserved and assigned to specific Units pursuant to the rules and regulations and shall continue to be assigned and appurtenant to a particular Unit until such time as it might be changed by the Board.

This Declaration hereby authorizes that a uniform and one-time "privilege and use fee" for parking spaces may be charged to the Owner as determined by the Board. All Owners, however, shall be charged the same rate for this "privilege and use fee" and any unpaid fee shall be collected in the same manner as assessments as set forth in this Declaration.

Any reserved parking space paid for via the "privilege and use fee" described above shall be deemed Limited Common Area.

A copy of the parking space designation shall be distributed to all Owners and may be modified from time to time pursuant to Board vote, considering the needs of the Owners. Failure of an Owner to adhere to the reserved and assigned parking spaces shall subject the Owner to fines, towing of the vehicle, and any other enforcement action permitted by this Declaration.

The designation of storage units cannot be changed without the express written consent of the Owner whose use of the designated storage unit will be affected except upon the affirmative vote of more than eighty percent (80%) of the Owners as determined by their respective percentages of ownership.

In no event, shall an Owner be denied use of a parking space or storage unit except in instances where, through no fault of the Association or its members, it is impractical to provide such use.

### **3.3 Description of Limited Common Areas and Facilities for Patios, Balconies and Entryways.**

**3.3.1 General.** The patio, balcony (or balconies), exterior screens and shutters and entryway, if any, which are adjacent to each respective Unit as set forth and depicted on the Plat shall be exclusive Limited Common Areas and Facilities for the Unit. These Limited Common Areas and Facilities shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit.

**3.3.2 Unit 601.** Unit 601 has a limited common area identified as a roof patio. The Owner of Unit 601 is also granted a license to penetrate and use Common Areas and to re-route, at the Owner's sole cost and expense, utilities, plumbing and other common area property as is reasonably necessary to create a connection between Unit 601 and the limited common areas associated with Unit 601.

In the event that the Owner of Unit 601 creates such a connection to the roof patio, the Owner of Unit 601 shall bear the full costs of making such a connection, repairing any damage to the affected common areas and maintaining any structure associated with the connection to the roof patio or the use of the roof patio.

The Owner of Unit 601 is responsible for all maintenance, repair and replacement of the roof patio and any structure/fixture placed thereon. Furthermore, the Association shall not be liable for, and the Owner of Unit 601 shall indemnify and hold the Association harmless, against any injury to person, property, Common Areas or Units due to the use of the patio area or any structure/fixture placed thereon.

**3.4 Description of Common Areas and Facilities.** The Common Areas and Facilities shall consist of the entire Condominium, excluding the Units.



**3.5 *United Interest of Each Unit in the Common Areas and Facilities.*** The designation of the Allocated Interest which each Unit has in the Common Areas and Facilities is a fractional interest where the numerator is the square footage of the Unit and the denominator is the sum of the square footage of all the Units in the Condominium. See **Exhibit "B."**

**3.6 *Allocated Interest of Each Unit In the Votes of the Association.*** The designation of the Allocated Interest that each Unit has in the votes of the Association is a fraction where the numerator is the square footage of the Unit and the denominator is the sum of the square footage of all the Units in the Condominium.

**3.7 *Allocated Interest of Each Unit in the Common Expenses of Condominium.*** The designation of the Allocated Interest that each Unit bears in the Common Expenses of the Condominium is a fraction where the numerator is the square footage of the Unit and the denominator is the sum of the square footage of all the Units in the Condominium.

**3.8 *Current Statement of Allocated Interest.*** The Allocated Interest of each Unit for purposes of Section 3.5, Section 3.6, and Section 3.7 of the Declaration is set forth in **Exhibit "B"**, attached hereto and incorporated herein by reference.

**3.9 *Plat/Map.*** The Plat is hereby incorporated into, and made an integral part of, this Declaration and all requirements and specifications set forth on the Plat and which are required by the Act are deemed included in this Declaration. However, this Declaration may alter the designation of Limited Common Areas, as originally set forth on the Plat Map, to better serve the needs of the Association's Members.

ARTICLE IV

ENFORCEMENT OF COVENANTS, CONDITIONS, RESTRICTIONS

**4.1 Compliance.** Each Owner, tenant or occupant of a Unit shall comply with the provisions of this Declaration, the Bylaws, and the Rules and Regulations adopted pursuant to this Declaration, the Bylaws and any applicable statute. Failure to comply therewith shall be grounds for sanctions (i.e., fines) pursuant to the Association's rules and policies or legal action, including injunctive relief and monetary damages, as permitted below.

Further, subject to the "Alternative Dispute Resolution" procedures described in this Article, Owners are subject to legal action or suit maintainable by the Association or any aggrieved Owner for violations of these governing provisions, including the rules and regulations of the Association.

**4.2 Remedies.**

Violation of any provisions of this Declaration, the Bylaws or any rules or regulations adopted pursuant to this Declaration or Bylaws, or of any decision of the Association made pursuant to such documents, shall give the Board of Directors acting on behalf of the Association, in addition to any other rights set forth in this Declaration or the Bylaws, or under law, to do, any or all of the following after giving reasonable notice and an opportunity to be heard:

(a) Subject to reasonable notice, to enter any Unit which or as to which such violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of this Declaration, Bylaws and/or Rule and Regulations of the Association. Upon exercising such right, the Board of Directors shall not thereby be deemed guilty of any manner of trespass, provided that judicial proceedings shall be instituted before any

items of construction may be altered or demolished;

(b) Subject to Section 4.6 below, to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings;

(c) To levy reasonable fines pursuant to Board resolution. Said schedule of fines may be modified and revised, from time to time, by resolution of the Board of Directors. A copy of any such schedule of fines, shall be delivered to each Owner, mailed to the mailing address of the Unit or mailed to the mailing address designated by the Owner in writing to the Association, or otherwise delivered to the Owner, and enforced pursuant to the terms of Utah's Condominium Ownership Act, as may be amended from time to time, and may contain fines for the violations thereof.

(d) The right of the Association to suspend the voting rights of the Owners after notice and a hearing for any infraction of any of the published Rules and Regulations of the Association or of this Declaration.

(e) Subject to Section 4.6 below, bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration, the Bylaws and any Rules or Regulations adopted pursuant thereto. The Association shall be entitled to its attorney fees and costs in the event that it prevails in any such enforcement action, whether or not a lawsuit is commenced.

**4.3 Action by Owners.** Subject to any limitation imposed by Section 4.6 below, an aggrieved Owner may bring an action against such other Owner(s) or the Association to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

**4.4 Injunctive Relief.** Subject to Section 4.6 below, nothing in this section shall prevent an Owner, the Association, or other interested party from resorting to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

**4.5 Notification of First Mortgagee.** The Board of Directors shall notify in writing any first Mortgagee of any individual Unit of any default in performance of the terms of this Declaration by the Lot Owner which is not cured within sixty (60) days provided such Mortgagee has requested in writing to be so notified.

**4.6 Mandatory Alternative Dispute Resolution Procedures. Agreement to Encourage Dispute Resolution without Litigation.** Notwithstanding anything to the contrary below, the Board of Directors may exercise any of the rights and powers set forth in Section 4.2 (a), (c), (d) and (e) above without being bound by this Section 4.6.

Moreover, additional exemptions from the application of this Section 4.6 may be contained within this Section, as expressly set forth herein.

(a) The Association, the Board of Directors, and Members of the Association hereby agree and are bound to this provision not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth herein, in a good faith effort to resolve such claim.

(b) As used in this Section, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or related to:

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of anyone arising from the Association's Declaration or Bylaws;

(iii) the design or construction of improvements within the Association;

(c) The following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 4.7:

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration;

(iii) any suit between Owners, which does not include the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Association's Declaration or Bylaws;

(iv) any suit in which any indispensable party is not bound hereby;

(v) any suit as to which any applicable statute of limitations would expire within one hundred and eighty (180) days of giving the Notice required in Section 2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article; and

(vi) any enforcement action permitted pursuant to Section 4.2(a), (c), (d) or (e) above.

#### 4.7 *Mandatory Dispute Resolution Procedures*

(a) **Notice.** A person asserting a Claim ("Claimant") against another person subject to this Section ("Respondent") shall give written notice ("Notice of Dispute") to each Respondent and to the Board of Directors stating clearly and concisely:

(i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent, to discuss in good faith, ways to resolve the Claim.

(b) **Negotiation.** The Claimant(s) and Respondent(s) shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice of Dispute, the Board of Directors may appoint a representative to assist the parties in negotiating a resolution for the Claim.

(c) **Mediation.** If the dispute is not resolved within ninety (90) days after the Respondent receives Notice of Dispute, any party may submit the dispute to mediation by delivering a request for mediation ("Mediation Notice") in the same manner as allowed for delivery of the Notice of Dispute.

(i) **Selection of Mediator.** The mediator shall be one listed on the State of Utah's Court Roster and shall have no professional or personal affiliation with the disputing parties. The mediator shall be selected within sixty (60) days from the delivery of the Mediation Notice. The

mediator shall be selected by mutual agreement of the parties to the dispute subject to the preceding requirements. If the parties are unable to agree on a mediator, then a special meeting of the Owners shall be promptly called and a majority of those present, in person only, shall appoint the mediator. The disputing parties may participate in this meeting. Before accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.

(ii) **Position Letter; Pre-Mediation Conference.** No later than thirty (30) days after the selection of the mediator, each party to the dispute shall submit a letter ("Position Letter") to the named mediator containing:

(A) a description of the party's position concerning the issues that need to be resolved;

(B) a detailed description of the defects allegedly at issue; and

(C) a suggested plan of repair or correction.

The mediator may schedule a pre-mediation conference. All parties shall attend unless otherwise mutually agreed. The mediation shall be commenced within twenty (20) days after submittal of all Position Letters and shall be concluded within fifteen (15) days after the mediation began unless either (a) the mediator extends the mediation period, or (b) the parties mutually agree to extend the mediation period. The mediation shall be held in a place mutually acceptable to the parties.

(iii) **Failure to Submit Claim.** If the Claimant(s) does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant(s) shall be deemed to have waived the Claim, and the Respondent(s)

shall be relieved of any and all liability to the Claimant(s) (but not third parties) on account of such Claim.

Notes

(iv) **Failure to Settle.** If the parties do not settle the Claim within thirty (30) days after the mediation begins, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings, indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant(s) shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

(v) **Expenses.** Each party shall bear its own attorneys' fees and costs incurred in connection with the mediation. All other expenses of the mediation including the fees charged by the mediator and the cost of any proof or expert advice requested by the mediator shall be shared equally by the parties unless they agree otherwise.

(d) **Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

ARTICLE V

*MAINTENANCE OF COMMON AREAS; UNITS & LIMITED COMMON AREAS*

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**5.1 General Common Areas.** The Common Areas contained in the Project are described and identified in Articles I, II and III of this Declaration and the Association shall:

(a) Maintain and otherwise manage the Common Areas and Facilities and nonexclusive Limited Common Area and Facilities, including, but not limited to, the landscaping, parking areas, streets and recreational facilities, if any, located thereon and maintain all parking areas and exterior building mounted lights not within patios and balconies, walkway and landscape area lights (located outside patios and balconies), the structural support components of patios and roofs and flashings and other materials on patios and roofs that were installed to exclusively function as a roof, however, excluding skylights and other personal improvements thereto;

(b) Replace injured and diseased trees or other vegetation in any Common Areas and Facilities, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil or for aesthetic purposes;

(c) Place and maintain upon any Common Areas and Facilities, such signs, markers and lights as the Board may deem appropriate for the proper identification, use and maintenance of the Property,

(d) Pay all electrical, water, gas and other utility charges or fees for services furnished to the Common Areas and Facilities as the same become due and payable; and

(e) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Areas and Facilities and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board shall determine, in its sole discretion, the appropriate maintenance of the Common Areas and Facilities. If the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, guests, licensees, lessees or invitees, the cost of such maintenance or repair shall be paid by such Owner, upon demand, to the Association, and the Association may enforce collection of such amounts as provided below for the collection of Assessments.

(f) Neither the Percentage Interest nor the right of exclusive use of a Limited Common Area shall be separated from the Unit to which it appertains; and, even though not specifically mentioned in any instrument of transfer, the percentage interest and such right of exclusive use in the Limited Common Areas shall automatically accompany the transfer of the Unit to which they relate. Limited Common Area parking spaces, however, shall be governed by the rules and policies of the Association with respect to assigned, covered parking.

(g) The use of the Common Areas shall be limited to the Owners in residence and to their tenants in residence, and to their guests, invitees and licensees. The use of each of the Limited Common Areas shall be restricted to the Owner of the Unit to which it is appurtenant, to his tenants in residence, and to his guests, invitees and licensees.

The use of the Common Areas and Limited Common Areas shall be governed by the Declaration and the Rules and Regulations as initially established by Declarant and as adopted and amended from time to time by the Board of Directors.

(h) Notwithstanding any other provision of this Declaration, a patio, if any, to which a condominium Unit has sole access shall be for the exclusive use of the Owner of such

condominium Unit. Such Unit Owner shall keep the patio free and clean of snow, ice and any accumulation of water and shall make all repairs thereto and keep the same in good condition.

(i) If a sewer line, the use of which is shared by two or more Owners, becomes damaged or defective, and fault for such damage or defect cannot be attributed to the Owners sharing the line, then the repair, maintenance and replacement shall be a Common Expense of the Association.

**5.2 Unit Maintenance, Limited Common Areas and Facilities.** Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs, and replacement within his own Unit and within any Limited Common Area appurtenant to the Owner's Unit, unless any such maintenance, repair or replacement need is created by the defective design or construction of the original building; such defective designation shall be determined in the Board's absolute and sole discretion. Such obligation of the Owner shall include, without limitation:

(a) the maintenance of all interior and exterior doors, including thresholds and door jams, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting the finished surfaces of floors, ceilings, or interior walls (all other portions of the walls, floors, or ceilings are part of the Common Areas and Facilities);

(b) repair and replacement of all windows, skylights, and door glass or equivalent materials and the interior and exterior cleaning of such window and door glass; Owners, however, are not required to clean the exterior windows which comprise the exterior of the building.

(c) the maintenance of, in an open and unobstructed condition, all sewer and drainage pipes, water and other utility lines

serving an Owner's respective Unit between the points at which the same enters the respective Unit and the points where the same join the utility lines serving other Units;

(d) the maintenance, replacement, repair and restoration of all of the following which service an Owner's Unit exclusively: lighting fixtures (except exterior building mounted lights and walkway lights which are not located within patios and balconies), fans, plumbing fixtures, stoves, refrigerators, washers, dryers (ventless only), hot water heaters, air conditioning units (including but not limited to compressors, condensers, hoses and forced air units), intercoms, security systems, and such other appliances, fixtures, and decorations as an Owner may install;

(e) the maintenance of the Unit and all exclusive Limited Common Areas and Facilities, such as patios and balconies (including all materials above or upon the support structure, and railings and posts), exterior screens, shutters, and chimney flues, that are within his exclusive control in a clean and sanitary condition, free of pests and rodents, and in good order and repair, except that the sweeping and maintenance of any parking spaces and driveways that are designated as Limited Common Areas and Facilities hereunder, shall be the responsibility of the Association.

An Owner may make non-structural alterations within his Unit, but an Owner shall not make any structural or exterior alterations of the Common Areas and Facilities or the Limited Common Areas and Facilities without the prior written approval of the Board.

**5.3 Owner Default in Maintenance.**

If an Owner fails to so maintain his Unit or make repairs thereto in such a manner as may be deemed reasonably necessary in the judgment of the Board to preserve and protect the attractive appearance and value of the Condominium, or if an Owner shall

fail to observe any covenant or restriction imposed on such Owner by the terms of the Declaration, then the Board or its authorized representative shall give written notice to such Owner stating with particularity the nature of the default and the collective action which the Board determines to be required and requesting that the same be carried out within a period of fourteen (14) days after the giving of such written notice.

If such Owner fails to carry out such action within the period specified by the notice, then the Board may cause such action to be taken and may levy a special Assessment for the cost thereof against such Owner, said Assessment to be due and payable within thirty (30) days after the Board gives written notice thereof and to be secured by the Assessment lien created in this Declaration

**5.4 Utilities.** All utilities for individual Units (except those utility costs that are metered collectively and paid by the Association as a Common Expense item) will be metered separately to each Unit and such utility charges shall be the responsibility of the respective Owners. The Association shall purchase natural gas on behalf of the members and the Board is hereby authorized to adjust billing errors by any natural gas provider, regardless of when such billing error may have occurred and may, at any time, seek a more accurate payment from the Owners for their natural gas usage. The Board's determination with respect to a Unit's natural gas usage shall be deemed conclusive to the extent reasonably quantified and may be included in the Owner's respective assessment.



ARTICLE VI

*GENERAL AND SPECIFIC EASEMENTS*

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**6.1 Easement for Encroachment.** If any part of the Common Areas encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance for the same shall and does exist.

If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance shall and does exist. Such encroachments shall not be considered to be encumbrances either to the Common Areas or the Units.

Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the building(s) on the tract, by error in the appropriate Record of Survey Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

**6.2 Access for Repair of Common Areas.** Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units.

The Owners of the other Units shall have the irrevocable right, to be exercised by the Board of Directors as its agent, to have access to each Unit and to all Common Areas from time to time during reasonable hours of the day extending from 9:00 a.m. to 5:00 p.m. or at any time in an emergency situation. Such access is granted for the necessary maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas or to another Unit or Units.

Subject to this Declaration and the Association rules, non-exclusive reciprocal easements are hereby reserved and created for the purpose of support, ingress and egress to each Unit, access, use and enjoyment in favor of each Owner, upon, across, over, under and through the Common Areas and Facilities (exclusive of the Limited Common Areas and Facilities), including the use of all pipes, wires, ducts, cables, conduits, and public utility lines, which easements shall be appurtenant to each Unit.

The Association, acting through the Board or its authorized agent, and public utility companies providing service to the Condominium, shall have non-exclusive easements with the right of access to each Unit to make inspections, to remove violations, to maintain, repair, replace or effectuate the restoration of the Common Areas and Facilities accessible from such Unit; provided, however, such rights shall be exercised in a reasonable manner and at reasonable times with prior notification, unless emergency situations demand immediate access.

The Association, acting through the Board or its authorized agent, shall have non-exclusive right to grant permits, licenses and easements upon, across, over, under and through the Common Areas and Facilities for purposes necessary for the proper operation of the Condominium; provided, however, such rights shall be exercised in a reasonable manner and at reasonable times with proper notification, unless emergency situations demand immediate access.

**6.3 Emergency Repairs.** Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs within another Unit at the insistence of the Board shall be the

responsibility of the Association; provided, that if such damage is the result of the negligence of the Owner of a Unit, then such Owner shall be financially responsible for all such damage. Such damage shall be repaired and the property shall be restored substantially to the same condition as existed prior to damage. Amounts owing by Owners pursuant hereto shall be collected by the Board as an assessment with all rights of collection related thereto.

**6.4 Right of Ingress, Egress.** Each Owner, the tenant, guest or invitee, shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his Unit, and to the Limited Common Areas designated for use in connection with their Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

**6.5 Pipes, Ducts, Cables, Wires, Conduits, Public Utility Lines, and Other Common Facilities Located Inside of Units; Support.** Each Unit Owner shall have an easement in common with the Owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Facilities located in any of the other Units and serving his Unit.

Each Unit shall be subject to an easement in favor of the Owners of all other Units to use the pipes, ducts, cables, wires, conduits, public utility lines and other Common Facilities serving such other Units and located in such Unit.

The Board of Directors shall have a right of access to each Unit to inspect the same, to remove violations therefrom and to maintain, repair or replace the common areas contained therein or elsewhere in the buildings. Every portion of a Unit which contributed to the structural support of the building shall be burdened with an easement of structural support for the benefit of all other Units and the Common Areas.

**6.6 Easement for Board of Directors and Manager.** The Board of Directors and Manager, if any, shall have non-exclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

**6.7 Easement for Utility Services.** There is hereby created a blanket easement upon, across, over and under the property described in "Exhibit A" for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to, water, sewers, gas, telephones, electricity, and other utility services.

**6.8 Keys to Units / Access of Units** In order for the Board to access Units as provided for in this Article, all Unit Owners shall be required to keep on file with the Association a current copy of a key to their Unit which shall be safeguarded by the Association. In the absence of receiving a key, and in the event of an emergency, the Association may, by force if necessary, enter into a Unit in order to discharge any duties created under this Declaration. If a Unit Owner fails to provide a key to the Association as required in this Section, then any costs or damages incurred necessitated by entry into the Unit shall be the responsibility of the Owner and shall be charged as an Assessment against said Owner and Unit.

#### Notes

ARTICLE VII

*USE RESTRICTIONS; OWNER OBLIGATIONS*

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**7.1 Use of Units - Residential Use.**

With the exception of the two (2) commercial Units and the eight (8) Live/Work Units, as shown on the Plat Map, each of the other Units in the Project is limited to single-family residential use only. The term "Single-Family" shall be defined by the local Salt Lake City municipal zoning code.

Each Unit and Owner is subject to the uses and restrictions imposed by these restrictions including parking restrictions and rules and regulations of the Association. No Unit shall be used or rented for transient, hotel, or motel purposes. Single family occupancy is defined as a single housekeeping unit, operated on a nonprofit, noncommercial basis between its occupants, cooking and eating with a common kitchen and dining area, where all residents are members of a family related by blood, adoption, or marriage, except for not more than two (2) additional persons not so related may reside in a Unit.

**7.2 No Obstruction of Common Areas.**

There shall be no obstructions of the Common Areas by the Owners, their tenants, guests or invitees without the prior written consent of the Board. The Board may by Rules and Regulations prohibit or limit the use of the Common Areas as may be reasonably necessary for protecting the interests of all the Owners or protecting the Units or the Common Areas.

Nothing shall be kept or stored, on any part of the Common Areas without the prior written consent of the Board, except as specifically provided herein. Nothing shall be altered on, constructed in or removed from the Common Areas except upon the prior written consent of the Board.

**7.3 Cancellation of Insurance.** Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which

would result in the cancellation of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof over what the Board, but for such activity, would pay, without the prior written consent of the Board.

Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Board and the Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees.

**7.4 Rules and Regulations.**

No Owner shall violate the Rules and Regulations for the use of the Units and of the Common Areas as adopted from time to time by the Board of Directors. Said Rules and Regulations shall be adopted and enforced pursuant to the terms of Utah's Condominium Ownership Act, as may be amended from time to time, and may contain fines for the violations thereof. The Board shall have authority to promulgate any Rules and Regulations not prohibited by this Declaration or by law, and reasonably necessary to maintain a desirable living environment, including, but not limited to regulation of window coverings, signs, pets, smoking, antennas, satellite dishes, outdoor lighting, storage and parking of vehicles, etc.

**7.5 Structural Alterations.** No structural alterations to any Unit shall be made by any Owner without the prior written consent of the Board.

**7.6 *Offensive Activities.*** No noxious, offensive or unsightly conditions, including, but not limited to, the placement or storage of inoperable vehicles, car parts and appliances, or activities shall be permitted on the Common Areas or within any Unit, nor shall anything be done in or placed upon any Common Area or Units which interferes with or jeopardizes the enjoyment of other Units or causes a nuisance, or which is a source of annoyance to residents.

In addition, all rubbish, debris or unsightly materials or objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate therein or thereon.

Refuse containers and machinery and equipment not a part of the Units, shall be prohibited upon any Unit unless obscured from view of adjoining Units and Common Areas and Facilities.

Trash and garbage not disposed of by equipment contained within the Units shall be placed in containers by Owners and Occupants for removal from the Condominium in accordance with Association Rules applicable thereto adopted by the Board. Any resident identified as causing a blockage of the trash chute shall be fined according to the Association's policies for each occurrence.

The Board may adopt rules applicable to the provisions of this Section and their enforcement, including the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such rules. Any charges so assessed shall be a special Assessment.

**7.7 *Unlawful Activities.*** No unlawful use shall be made of the Property, Units, or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the same shall be observed.

**7.8 *Subdivision of Units or Further Restrictions.*** Except for Units 100 and 200

which were originally subdivided by the Declarant, no Unit shall be split, subdivided, or separated into two or more Units, and no Owner of a Unit shall sell or lease less than all of the Unit. An owner of two (2) or more adjacent Units may, however, combine those units to make a single Unit and then separate the single Unit into the original Units for purposes of selling one or more of the Units; provided however, that no such combination or subsequent separation shall be allowed until the Board has approved such combination or separation. Except for Units 100 and 200, no subdivision plat or further covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any Unit unless the Board has first approved the Plat or the proposed covenants, conditions, or restrictions, such approval to be evidenced by the Association's signature on the final recorded Plat or instrument imposing the covenants, conditions, or restrictions.

The Board's review shall be for the purpose of assuring, in the sole and absolute discretion of the Board, that the Plat or covenants, conditions, and restrictions are consistent and compatible with the overall plan of development of the Property.

However, in no event shall the approval of the Board of any plat or covenant, condition, or restriction be an abandonment or waiver of any provision of this Declaration. The provisions of this Declaration shall be and remain superior to any such plat or covenant, conditions, or restriction.

**7.9 *Architectural Control/Exterior and Interior Alterations.***

The Board may adopt rules and regulations that supplement the requirements, procedures and restrictions stated below in order to preserve the exterior appearance and interior structural integrity of the units, common area, and limited common area.

No exterior changes to the Common Areas, including Limited Common Areas,

whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Board or any committee established by the Board for that purpose.

By way of illustration, but not of limitation, the following are considered exterior changes; painting, landscaping, repairs, excavation, patio covers, screens, doors, evaporative coolers, fireplaces, skylights, storage buildings, solar collectors, shade screens, awnings, window coating or tinting, decorative alterations or other work which in any way alters the exterior appearance of the Property.

The Board, or any committee established by the Board for that purpose, may designate the design, style, model and manufacturer of any exterior improvement or alteration that is acceptable to the Board. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values.

No interior structural changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Board, or any committee established by the Board for that purpose. By way of illustration, but not of limitation, the following are considered interior structural changes: moving, removing, adding, or altering walls, doorways, and the like.

Notwithstanding anything above to the contrary, any construction or remodeling must be done consistent with the relevant Salt Lake City Building Code. All plans must be submitted to the Association's Board at least two (2) weeks prior to the desired "work start date."

Any desired work within a Unit that requires a building permit, shall also require prior written Board approval. Such work that does not require a building permit and does not cause a structural change to the interior of Unit (as described above), does not require Board approval.

In such cases where Board approval is required, Unit Owners may, at the discretion of the Board, be required to provide plans to a Board designated architect and/or engineer for review.

All costs related to such review(s) shall be borne by the Unit Owner proposing the work.

**7.10 Owner Obligations with Respect to Hiring and Using Contractors.** All Owners who engage in remodeling, construction or other alterations of their Unit shall comply with and be bound by the following (the term "contractor" used herein shall also be "subcontractors"):

(i) Owners shall require that their contractors are licensed (when the project so requires) and be able to produce proof of insurance upon a reasonable request by the Board.

(ii) Owners shall require that their contractors park their vehicles in assigned contractor parking spaces only and not in the Owner's 15 minute load and unload space.

(iii) Owners shall require that all unused construction materials, debris and refuse is removed promptly from the Property and disposed of by the Contractor. Contractors are not permitted to use the on-site dumpster.

(iv) Owners are responsible for any damage to the Common Areas caused by their contractor.

(v) Owners are responsible for the costs of any cleaning and/or repairs to the Common Areas and such costs shall be assessed as an Individual Assessment if not paid directly by the Owner after notice is given.

(vi) Any work, of any kind, that requires an interruption of any utility services to any other Unit must be approved at least three (3) business days in advance by the Board.

**7.10 Smoking.** Smoking within a Unit is permitted so long as there is no second-hand smoke transferred from one Unit to another. Second-hand smoke that drifts from one Unit to another shall be deemed a nuisance.

**7.11 Association Rules.** The Association shall have the power to make and adopt reasonable Association Rules with respect to activities that may be conducted on any part of the Condominium, including smoking.

The Board's determination as to whether a particular activity being conducted or to be conducted violates or will violate such Association Rules shall be conclusive unless, at a regular or special meeting of the Association, Owners representing a majority of the Allocated Interests in the votes of the Association vote to the contrary.

Fines may be imposed or formal legal action may be taken to compel compliance with the Association's rules. The Board shall adopt and modify from time to time a "schedule of fines" putting Owners on notice of the monetary amount related to violations.

**7.12 Variances.** The Board may, at its option and in extenuating circumstances, grant variances from the Restrictions set forth in Article VII of this Declaration if the Board determines in its discretion:

(a) either:

(i) that a Restriction would create an unreasonable hardship or burden on an Owner or Occupant or;

(ii) that a change of circumstances since the recordation of this Declaration has rendered such Restriction obsolete and;

(b) that the activity permitted under the variance will not have any substantial adverse effect on the Owners or Occupants of the Condominium and is consistent with the high quality of life intended for residents of the Condominium.

ARTICLE VIII

RENTAL RESTRICTIONS

*PURPOSE OF ARTICLE VIII: Limiting the number of Units that may be rented at any given time is intended to help ensure that all available loan products are available to prospective buyers as many lenders require that the number rentals be kept within certain limits.*

*Further, limiting rentals has proven to help avoid the certain communal ills, including among other things, rule violations, abuse and destruction of community and private property, the consequential increase in insurance premiums and the diminished safety of the Owners all associated with a high levels of tenancy.*

*Consequently, the Association deems restricting and regulating the manner of renting and number of rentals within the community necessary and in the best interest of the Owners and is consistent with best Mortgage lending practices.*

**8.1 Leasing and Rental of Living Units.**

Notwithstanding anything to the contrary contained in the Declaration, the leasing of any residence/Unit (hereinafter "Unit") within the Broadway Lofts Condominium shall be governed by this Article.

(a) Rental-Lease Limit. Owners and Units shall be subject to the following restrictions:

(i) Prior to renting or leasing any Unit as provided for herein, an Owner shall occupy their Unit for at least twelve (12) months before it can qualify as a permissible rental unit. For purposes of this section only, "occupy" shall mean that a Unit shall be owned by the same Owner(s) for a period of at least twelve (12) consecutive months, whether physically occupied by said Owner(s) or not, prior to being made available for rental or lease.

(ii) No owner may lease or rent less than their entire Unit (i.e., dormitory type and/or individual room rentals are not permitted) and no Owner may lease or rent any Unit for a period of less than twelve (12) consecutive months.

(iii) No Unit may be rented or leased if the rental or lease results in more than three (3) Units ("Rental-Lease Limit") being rented or leased at the same time.

(b) Application and Approval. Prior to renting or leasing any Unit, an Owner shall apply to the Board for approval. The Board shall review the application and make a determination of whether the rental or lease will exceed the Rental-Lease Limit. The Board shall:

(i) Approve the application if it determines that the rental or lease will not exceed the Rental-Lease Limit; or

(ii) Deny the application if it determines that the rental or lease of the Unit will exceed the Rental-Lease Limit.

(c) Hardship Exemption. In an effort to avoid undue hardships or practical difficulties such as the owner's job relocation, disability, military service, charitable service, or other similar circumstances, the Board shall have sole discretion to approve an owner's application to temporarily rent or lease the owner's unit.

The Board, in its sole discretion, may approve an additional two (2) Units for hardship exceptions. However, in the event that all of the available hardship exceptions have been granted and, thereafter, another legitimate hardship exception is requested (which would result in exceeding the permitted number of hardship exceptions), then a special meeting of the Owners shall be promptly called to vote on the issue. Notwithstanding any of the provisions in this Declaration or the Bylaws to the contrary,

those present at such special meeting shall constitute a quorum and vote on granting additional hardships. The affirmative vote of a simple majority of those present (in person or by proxy) shall be sufficient to permit additional hardship exceptions.

The Board may not approve an application to rent or lease less than the owner's entire unit.

The Board may approve under a hardship exemption the rent or lease of a unit for a minimum period of six (6) consecutive months but not more than twelve (12) months, unless the hardship is verified as a continuing one, but at no time shall the rent or lease of a unit be less than six (6) consecutive months.

(d) Multiple Unit Ownership. An owner is not eligible to rent more than one Unit until the pending applications of:

(i) All owners who are not currently renting or leasing a Unit have been approved; and

(ii) All owners who are currently renting or leasing fewer Units than the applicant have been approved.

(e) Review of Rental Applications. Applications from an owner for permission to rent or lease shall be reviewed and approved or denied by the Board pursuant to the following:

(i) The Board shall review applications for permission to rent or lease in chronological order based upon the date of receipt of the application. Within thirty (30) calendar days of receipt, the Board shall approve or deny an application and shall notify the owner within fifteen (15) calendar days of receipt of the application if permission is not given and the reason for the denial.

(ii) If an owner's application is denied, the applicant may be placed on a

waiting list according to the date the application was received so that the owner whose application was earliest received will have the first opportunity to rent or lease.

(f) Application Form; Approval Process; Waiting List. An application form, the application and approval process, a waiting list, and any other rules deemed necessary by the Board to implement a rental restriction shall be established by rules adopted by resolution of the Board consistent with any adopted rental restriction amendments, if any.

(g) Approved Lease Agreement. All Owners shall use and provide the Board with a copy of the Association's Approved Residential Lease Agreement ("Approved Lease Agreement") which shall be kept on file with the books and records of the Association so that the Association may determine the number of Units rented or leased at any given time. The Approved Lease Agreement shall be on a form prescribed by resolution of the Board. Moreover, no lease authorized by this Section shall be valid until the Association's approved Lease Addendum is signed and delivered to the Association.

(h) Violations of Rental Restrictions. If an Owner fails to submit the required application, fails to use and submit a copy of the Approved Lease Agreement and rents or leases any Unit, and/or rents or leases any Unit after the Board has denied the Owner's application, the Board may assess fines against the Owner and the Owner's Unit to the maximum allowed under Utah law.

In addition, regardless of whether any fines have been imposed, the Board may proceed with any other available legal remedies, including but not limited to, an action to terminate the rental or lease agreement and removal of any tenant or lessee as an intended Third-Party Beneficiary under the lease agreement.



(i) Recovery of Costs and Attorney Fees. The Association shall be entitled to recover from the offending owner its costs and attorney's fees incurred for enforcement of any rental restriction amendments that are adopted by the Members of the Association, regardless of whether any lawsuit or other action is commenced.

(j) Grandfather Clause. The following "grandfather clause" is contingent upon the Owner desiring to be "grandfathered" being in current compliance with the rental and leasing policies of the Association. In the event that an impermissible rental is presently occurring within a Unit, as determined by the Board, then such Unit and the Owner thereof shall not be entitled to grandfathered status and the following shall not apply. Those who are presently renting consistent with the current policies of the Association shall hereafter be referred to as a "Approved Owner." Only Approved Owners may become "Grandfathered Owners."

As of the date of recording of this amendment, any Approved Owner that is currently renting or leasing a Unit with the approval of the Association (hereafter "Grandfathered Owner") may continue to rent or lease their Unit until such time as the unit is sold or title is otherwise transferred to a new owner of record. However, notwithstanding the grandfather provision above, if a Grandfathered Owner fails to re-let their unit within ninety (90) days of the expiration or termination of a rental or lease agreement by any tenant, then the Grandfathered Owner and unit become subject to the Rental-Lease Limit expressed above and shall apply to the Board for permission to rent or lease the Unit.

(k) Owner Obligation to Inform Tenant and Association. Rental and lease agreements shall comply with the following:

(i) The Owner shall provide the tenant or lessee with a copy of all rules and regulations (the "Rules and Regulations") then in effect and shall take a receipt for

delivery of the Rules and Regulations. In the event the Rules and Regulations are amended, revised, changed, or supplemented by the Association, the Owner shall provide the tenant or lessee with a copy of the amendments, revisions, changes, or supplements within ten (10) calendar days of adoption by the Association, its Board, or its membership.

(ii) Upon the commencement of the rental or lease period, the owner shall provide the Association with a copy of the Approved Lease Agreement and a copy of the receipt specified in Section (i) of this paragraph. If the Owner fails to provide the receipt, the Association shall provide a copy of the Rules and Regulations to the tenant or lessee and take a receipt therefor, and shall assess a reasonable charge therefore to the Owner as an assessment.

(l) Termination of Lease or Rental Agreement for Violations. In addition to any other remedies available to the Association, the Board may require the owner to terminate a lease or rental agreement if the Committee determines that any lessee or tenant has violated any provision of this Declaration, the Articles of Incorporation, the Bylaws, or any amendments thereto, or the Rules and Regulations adopted thereto. However, the Association shall not exercise such a remedy unless or until at least three (3) warnings of non-compliance have been provided and the lessee or tenant has refused to cure its any deficiency or breach.

## **8.2 Moving "IN" and Moving "OUT" Fees and Charges**

(a) Move "In" and Move "Out" - General Requirements. The Board, pursuant to rules and regulations, may impose restrictions and fees regarding owners and tenants moving in and out of the condominium building. Such rules may include permissible moving times, impact fees for potential damage to the common areas, and disclosure of contact information for the records of the

Association. Fines may be imposed for a failure to comply with any such rules.

Notes

ARTICLE IX

*BYLAWS; MEETINGS; PROCEDURE, COMPOSITION AND DUTIES OF BOARD*

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**9.1 *Bylaws Applicability.*** The provisions of these Bylaws are applicable to the governance of the Association. All Owners of any fee or leasehold interest, all occupants or users of the Condominium, and the agents and servants of any of them are subject to the provisions of the Declaration, these Bylaws provisions, and the Rules and Regulations of the Association.

**9.2 *Personal Application.*** All present and future Owners, tenants, future tenants, their guests, licensees, servants, agents, employees and any other person or persons who shall be permitted to use the facilities of the Condominium, shall be subject to these Bylaws and to the Rules and Regulations of the Condominium. Acquisition, rental or occupancy of any of the Condominium Units in the Condominium shall constitute an acknowledgment that such Owner, tenant or occupant has accepted and ratified these Bylaws, the provisions of the Declaration and the Rules and Regulations and will comply with them.

**9.3 *Office.*** The office of the Condominium and of the Board of Directors shall be located at the Condominium or at such other place as may be designated from time to time by the Board of Directors.

**9.4 *Composition of Association.*** All of the Unit Owners of the Broadway Lofts Condominium, acting as a group in accordance with the Act, the Declaration and these Bylaws, shall constitute the Association. Except as to those matters which the Act specifically requires to be performed by the vote of the Unit Owners, the administration of the Condominium shall be performed by the Board.

**9.5 *Status and General Authority of Board of Directors.***

Notwithstanding anything herein contained to the contrary, the Association shall be managed, operated, and maintained by the Board of Directors (which may also be referred to as the "Management Committee") exclusively as agent of, and in the name of, the Association.

Any act performed by the Board of Directors pursuant to this Declaration or the Bylaws, as the same may be amended from time to time, shall be deemed to be performed by the Board for and on behalf of the Association as its agent.

The Board of Directors may delegate to a professional property management company, an independent contractor, an independent accountant and/or bookkeeper, or an occupant of any Unit within the Project, the necessary powers and authority to manage the Project.

The Association may reasonably compensate any such individual or company (referred to as "Manager") for said services. The Board may engage a single person/entity to fulfill all said positions or use a combination of different people/entities for the same. Any such Manager may not be a Board member.

The Manager so engaged shall be responsible for managing the Project for the benefit of the Board of Directors and the Unit Owners and shall, to the extent permitted by law and the terms of the agreement with the Board, be authorized to perform any of the functions or acts required or permitted to be performed by the Board of Directors itself.

**9.6 Composition of Board and Selection**

**Thereof.** As further provided in the Bylaws below, the Board of Directors shall be composed of not less than three (3) nor more than seven (7) members. Members shall serve on the Board until their qualified successors are elected. Only the Unit owners and officers and agents of Owners other than individuals shall be eligible for Board membership. As further established below, at the annual meeting each Unit Owner may vote his percentage of undivided ownership interest in favor of as many candidates for Board membership as there are seats on the Board to be filled.

**9.7 Voting.** There shall be sixty (60) voting interests in the Association, as long as the Owners of such interests are in good standing, as defined herein. Each Unit Owner shall have a vote equal to the percent interest said Unit holds in relation to the entire Project (See Exhibit "B.") as long as such Owner is in good standing, as defined herein. Since a Unit Owner may be more than one person, if only one of such persons 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 is present, then each co-owner shall be entitled to a percentage vote calculated by dividing the current percentage vote for the Unit, as reflected in Exhibit B, by the number of co-owners for such Unit. The vote appertaining to a Unit with multiple owners may be cast in accordance with the agreement of a majority of them, and such consent shall be conclusively presumed if any one of them purports to cast the vote appertaining to that Unit without protest being made forthwith by any of the others to the person presiding over the meeting.

Since a person need not be a natural person, the word "person" shall be deemed for the purposes of this Section to include, without limitation, any natural person having

authority to execute deeds on behalf of any person, excluding natural persons, which is, either alone or in conjunction with another person or persons, a Unit Owner.

Except where a greater number is required by the Act, the Declaration, or these Bylaws, a majority of the total votes of the Association, represented by Unit Owners present in person or represented by proxy in good standing and entitled to vote is required to adopt decisions at any meeting of the Association.

**9.8 Place of Meeting.** Meetings of the Association shall be held at the principal office of the Condominium or at such other suitable place as may be designated by the Board and stated in the notice of the meeting.

**9.9 Annual Meeting.** Annual meetings for any other purpose than the election of the Board of Directors may be held at any time on call of the President of the Board, by a majority of the Board or by Unit Owners representing twenty percent (20%) of the Unit Owners. Notice of such meeting shall be given in accordance with the provisions of these Bylaws.

The annual meetings of the Association shall be held on the same day of each succeeding year or within fifteen (15) days before or after the previously established meeting date, unless such day shall occur on a Sunday or holiday, in which event the meeting shall be held on the next succeeding Monday which is not a holiday. At such annual meetings the Board shall be elected by ballot of the Owners in accordance with the requirements of these Bylaws. The Association may transact such other business as may properly come before them at such meetings.

**9.10 Special Meetings.** It shall be the duty of the President to call a special meeting of the Association if so directed by resolution of the Board or, after all of the Board has been

elected by Unit Owners, upon a petition signed and presented to the Secretary by Owners having not less than twenty percent (20%) of the votes of all Owners. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

**9.11 Notice of Owner Meetings.** Notice of regular meetings of the Owners shall be given to each member, personally, by mail, electronic mail (if acceptable to the Owner), by telephone or by posting the notices in both elevators and the bulletin board located in the mail lobby as follows:

(a) for each annual meeting of the Owners, at least thirty (30) but not more than sixty (60) days in advance of such meeting and

(b) for each special meeting of the Owners at least ten (10) days in advance of such meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Owner of record, at the address of their respective Units and at such other address as each Owner may have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice. Moreover, hand delivered notice to the Unit or hand delivery to an Owner's mailbox shall satisfy any notice requirements herein.

**9.12 Voting Requirements.** Only Owners in "good standing" shall be entitled to vote at Owner's meetings. An Owner shall be deemed to be in "good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Association if, and only if, he or she shall have fully paid all due installments of assessments made or levied against him or her or their Unit by the Board

as hereinafter provided, together with all interest, costs, attorney's fees, penalties and other expenses, if any, properly chargeable to him or her and against their Unit, at least three (3) days prior to the date fixed for such annual or special meeting. An exception to this Section 9.12 shall be permitted if a special meeting is called for the purpose of challenging an assessment or use fee levied by the Board which greater than 50% of the Owners feel is unreasonable and have signed a petition evidencing the same. In such a case, non-payment of the fee in question, will not preclude an Owner from being considered in "good standing." "Good standing" shall be determined by the Treasurer.

Any reference herein to "total number of voting interests," "total number of voting percentages," or "total number of outstanding votes" shall not include in the calculation of votes necessary to take a specified action those Owners, and their appurtenant percentage interest, who are deemed to not be in "good standing." The approval threshold is therefore re-allocated taking such cases into consideration for any such particular vote e.g., if the required approval for a given action is 50% of the total number of voting interests and one unit whose percentage interest is 2% is delinquent, then 49% of the total voting interests is required ( $100\% - 2\% = 98\%$  and  $50\% \text{ of } 98\% = 49\%$ ). The terms of this provision shall also work to reduce the quorum requirement in the same manner set forth herein.

**9.13 Proxies.** The votes appertaining to any Unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Unit Owner, or, in cases where the Unit Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the

Unit Owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice as aforesaid. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Any proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy, and must be filed with the Secretary no later than the beginning of the meeting being held.

#### **9.14 Absentee Ballots.**

(a) A Member who is incapacitated, or who will be absent, on the date set for balloting may cast an absentee ballot at the place or time of balloting, or by mail, in the manner required by the Board, but in no event shall the vote be cast more than fourteen (14) days prior to the voting date.

(b) Ballot boxes containing absentee votes shall be opened and the ballots tabulated at the same time and place and under the same conditions as the regular ballots.

#### **9.15 Mail-in Ballots.**

(a) A majority of the Board of Directors may authorize the use and implementation of mail-in ballots at any election or vote on an issue it deems appropriate, including the election of Board members.

(b) When mail-in ballots are authorized by the Board, said ballots shall be prepared and mailed to Voting Members at least thirty (30) days but not more than sixty (60) days prior to the date of the election or vote on an issue. The date set for the tabulation of the ballots shall be stated on the

ballot. Ballots received on or after the date set for tabulation of the ballots shall not be counted.

(c) A combination of mail-in ballots and "in person" ballots may be used.

**9.16 Unanimous Written Consent in Lieu of Vote.** In any case in which these Bylaws or the Declaration require for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes of the Owners present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from every Owner entitled to cast a vote. The following additional provisions shall govern any application of this Section:

(a) All necessary consents must be obtained prior to the expiration of sixty (60) days after the first consent is given by any Member.

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

#### **9.17 Quorum for Owners' Meetings.**

Except as may otherwise be provided herein or by statute, at least twenty percent (20%) of the total number of Owners' voting rights, in person or represented by proxy or absentee ballot, or mail-in ballot shall constitute a quorum for the adoption of decisions. If, however, such quorum shall not be present or represented at any meeting; the Owners entitled to vote thereat, present in person, represented by proxy, absentee ballot or mail-in ballot, shall have power to adjourn the meeting and reschedule for a time no earlier than 48 hours, and no later than thirty (30) days after the time set for the original

meeting. An announcement of the rescheduled meeting shall be made at the original meeting. Furthermore, notice of such rescheduled meeting shall be required to be posted in a conspicuous manner and in a location where such notices are posted in the regular course or in such a place where such notices would be posted pursuant to the common understanding of the Members.

A quorum for the transaction of business at the rescheduled meeting shall be those present in person or represented by proxy, absentee ballot, or mail-in ballot.

**9.18 Order of Business.** The Board shall establish the agenda items for any properly called meetings of the Association.

**9.19 Title to Unit.** Title to Units may be taken in the name of natural person or in the names of two or more natural persons, or in the name of a corporation, partnership, association or other entity capable of holding title to real property, or any combination thereof.

**9.20 Conduct of Meeting.** The President shall, or in his absence the Vice-President preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a Minute Book all resolutions adopted by the meeting as well as a record of all transactions occurring thereat. The Minute Book may take the form of electronic media.

**9.21 Board of Directors - Powers and Duties.** The affairs and business of the Association shall be managed by the Board which shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration and may do all such acts and things as are not by the Act or

by these Bylaws directed to be exercised and done by the Association.

The Board shall have the power from time to time to adopt any Rules and Regulations deemed necessary for the enjoyment of the Condominium provided such Rules and Regulations shall not be in conflict with the Act, the Declaration or these Bylaws. Subject to any limitations or provisions contained in the Declaration, the Board shall be responsible for the following:

(a) Preparation of an annual budget, in which there shall be established the contribution of each Owner to the Common Expenses;

(b) Making assessments against Owners to defray the cost and expenses of the Condominium, establishing the means and methods of collecting such assessments from the Owners, and establishing the period of the installment payment of the annual assessment for Common Expenses. Unless otherwise determined by the Board, the annual assessment against each Owner for his proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month.

(c) Providing for the operation, care, upkeep, replacement, maintenance and surveillance of all of the Common Areas and services of the Condominium.

(d) Designating, hiring and dismissing the personnel necessary for the maintenance, operation, repair and replacement of the Common Area, and providing services for the Property, and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and material

to be used by such personnel in the performance of their duties, which supplies and equipment shall be deemed the common property of the Owners.

(e) Collecting the assessments against the Owners, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to carry out the administration of the Property.

(f) Making and amending Rules and Regulations respecting the use of the Property.

(g) Opening of bank accounts on behalf of the Condominium and designating the signatories required therefor.

(h) Making, or contracting for the making of, repairs, additions, and improvements to, or alterations of, the Property and repairs to, and restoration of, the Property, in accordance with the Declaration and other provisions of these Bylaws, after damage or destruction by fire or other casualty.

(i) Enforcing by legal means the provisions of the Declaration, these Bylaws and the Rules and Regulations for the use of the Property adopted by it, and bringing any proceedings which may be instituted on behalf of the Owners.

(j) Obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof.

(k) Paying the cost of all services rendered to the condominium and not billed to Owners of individual Units.

(l) Keeping books with detailed accounts of the receipts and expenditures affecting the Property, and the administration

of the Condominium, specifying and maintenance and repair expenses of the common Areas and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, upon reasonable notice and during general business hours on working days at the times and in the manner that shall be set and announced by the Board for the general knowledge of the Owners.

All books and records shall be kept in accordance with Generally Accepted Accounting Practices, and the same, upon resolution of the Association, shall be audited by an outside auditor employed by the Board who shall not be a resident of the Condominium, or an Owner therein. The cost of such audit shall be a Common Expense. A copy of the annual audit report shall be supplied to any first mortgagee of any Unit in the Condominium who requests the same in writing from the Treasurer.

(m) Ensure that the Association maintains its status as a Utah non-profit corporation. If at anytime the Association's status as a Utah non-profit corporation shall expire, the duly elected Board of Directors shall have the unilateral authority to reincorporate without Owner approval.

(n) To do such other things and acts not inconsistent with the Act, the Declaration or the Bylaws or by a Resolution of the Association.

#### ***9.22 Selection and Term of Office of the Board.***

The term of each Director shall be two years. Directors may be elected for successive terms, but may not be elected for more than three consecutive terms. The term of a Director filling a vacancy expires at the end



of the unexpired term that the Director is filling, except that if a Director is elected to fill a vacancy created by reason of an increase in the number of Directors, the term of the Director shall expire on the later of the next meeting at which Directors are elected, or the term, if any, designated for the Director at the time of the creation of the position being filled.

The terms of the Directors shall be staggered by dividing the total number of Directors into two groups, as nearly even as possible (e.g., if there are seven Directors, the number in the two groups shall be three and four). The terms of the Directors shall be staggered so that alternating groups become eligible for re-election at each annual meeting.

**9.23 Organization Meeting of the Board.**

The first meeting of the members of the Board following the annual meeting of the Association shall be held within ten (10) days after the annual meeting at such place as shall be fixed by the Board at the meeting at which such Board persons were elected, and no notice shall be necessary to the newly elected Board Members in order legally to constitute such meeting provided that majority of the whole Board shall be present thereat.

**9.24 Regular Meetings of the Board.**

Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the Board, but at least six (6) such meetings shall be held during each fiscal year after the first annual meeting of the Association.

**9.25 Special Meetings of the Board.**

Special meetings of the Board may be called by the President on three (3) business days' notice to each member. Such notice shall be given personally, by mail, electronic mail, by telephone or by posting the notices in both elevators and the bulletin board located in the

mail lobby, and such notice shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by the President or any Officer in like manner and on like notice on the written request of at least two (2) Board Members.

**9.26 Waiver of Notice of Board Meetings.**

Before or at any meeting of the Board, any Board Member may waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Board Member at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Board Members are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

**9.27 Quorum for Board Meetings.**

At all meetings of the Board, a majority of the Board members shall constitute a quorum for the transaction of business, and the acts of the majority of the Board present at a meeting at which a quorum is present shall be the acts of the Board. If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

**9.28 Vacancies on the Board.**

Vacancies in the Board caused by any reason other than removal of a Board Member by a vote of the Association shall be filled by vote of the majority of the remaining Board Members, at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy, even though the Board Members present at such meeting may constitute less than a quorum of the Board; and each person so elected shall be a Board Member for the remainder of the term of the

Board Member so replaced and until a successor is elected at the next annual meeting of the Association.

**9.29 Removal of Board Member.**

(a) A Board Member may be removed for cause, and his or her successor elected, at any duly called regular or special meeting of the Association at which a quorum is present, by an affirmative vote of the majority of the total voting interests of the Association represented and voting. Any Board Member whose removal has been proposed by the Owners shall be given at least thirty (30) days written notice of the calling of the meeting and the purpose thereof and shall be given a reasonable opportunity to be heard at the meeting.

(b) Any Board Member who fails (without a permitted excuse) on two (2) successive occasions to attend Board meetings (whether regular or special) or who has failed to attend at least 25% of all Board meetings (whether regular or special) held during any twelve month period may forfeit his membership on the Board as determined by the Board members that are in good standing at that time.

(c) Any Board Member who allows his installments of assessments made or levied against him and his Unit by the Board to exceed two months worth of assessments, including default interest, costs, attorney's fees, penalties and other expenses, if any, properly chargeable to him and against his Unit, and fails to cure the default within ten (10) days after written notice shall automatically forfeit his membership on the Board.

**9.30 Compensation.** No Board member shall receive any compensation from the Association for acting in such capacity,

except that the Board may provide by resolution that the Directors, Officers, or Committee Members shall be paid their out-of-pocket expenses incurred in the carrying out of their duties.

**9.31 Report of Board.** The Board shall present at each annual meeting, and when called for by vote of the Association at any special meeting of the Association, full and clear statement of the business and condition of the Condominium.

**9.32 Fidelity Bonds.** The Board may require that all officers, agents (including professional Manager and its employees) and employees of the Association handling or responsible for funds furnish adequate fidelity bonds. The premiums on such bonds shall constitute a Common Expense. The Board shall provide fidelity insurance coverage as required by the Declaration.

**9.33 Dispensing with Vote.** Any action by the Board required or permitted to be taken at any meeting may be taken without a meeting if all the members of the Board shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

**9.34 Liability of the Board.** The members of the Board shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or intentional bad faith.

The Association shall indemnify and hold harmless each of the Board Members from and against all decisions, determinations and contractual liability to others arising out of contracts made by the Board unless any such contract shall have been made in bad faith.

**9.35 *Open Meetings; Executive Sessions.***

(a) Open Meetings. Except as provided in Subsection (b) of this section, all meetings of the Board of Directors shall be open to Owners. However, no Owner shall have a right to participate in the Board meeting unless the Owner is also a member of the Board. The President shall have the authority to exclude an Owner who disrupts the proceedings at a Board meeting.

(b) Executive Sessions. At the discretion of the Board, the following matters may be considered in executive session:

(1) Consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation or criminal matters;

(2) Personnel matters, including salary negotiations and employee discipline;

(3) The negotiation of contracts with third parties;

(4) Collection of unpaid assessments.

(c) Executive Session Procedure.

(1) Except in the case of an emergency, the Board of Directors shall vote in an open meeting whether to meet in executive session. If the Board votes to meet in executive session, the President or other presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting.

(2) A contract or an action considered in executive session does not become effective unless the Board, following the executive session, reconvenes in open meeting and votes on the contract or action, which must be reasonably identified in the open meeting and included in the minutes.

**9.36 *Meetings by Telephonic or Electronic Communication.*** In the event of an emergency, meetings of the Board may be conducted by telephonic communication or by the use of a means of communication that allows all members of the Board participating to hear each other simultaneously or otherwise to be able to communicate during the meeting.

**9.37 *Board Member Proxy Votes.*** Board members may give their proxy to another Board member to cast their vote on their behalf, which proxy may be delivered in person, by mail, by electronically transmitted facsimile or other form of communication, including e-mail, providing a complete copy of the written proxy, including a copy of the signature.

**9.38 *Designation of Officers.*** The principal officers of the Condominium shall be a President, Vice President, Secretary and Treasurer, all of whom shall be elected by the Board.

The Board may appoint assistant secretaries and such other officers as in its judgment may be necessary. With the exception of the President, no officer need be a member of the Board. Two or more offices may be held by the same person, except that the President shall not hold any other office.

**9.39 *Election of Officers.*** The officers of the Association shall be elected annually by

the Board of Directors at the organization meeting of each Board and shall hold office at the pleasure of the Board. Any vacancy in an office shall be filled by the Board at a regular meeting or special meeting called for such purpose.

Nevertheless, the Board Members may serve as the officers of the Association, with such positions therein determined amongst themselves.

**9.40 Removal of Officers.** The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Board may be removed at any time by the affirmative vote of a majority of the whole Board, and his successor may be elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

**9.41 President.** The President shall be the chief executive officer; he or she shall preside at meetings of the Association and the Board and shall be an ex officio member of all Boards; he or she shall have general and active management of the business of the Condominium and shall see that all orders and resolutions of the Board are carried into effect.

**9.42 Vice President.** The Vice President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board or the President shall prescribe. If neither the President nor the Vice President is able to act, the Board shall appoint a member of the Board to do so on an interim basis.

**9.43 Secretary.** The Secretary shall attend

all sessions of the Board and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept by him/her for that purpose and shall perform like duties for Boards when required. He or she shall give, or cause to be given, notice of all meetings of the Association, the Board and Boards and shall perform such other duties as may be prescribed by the Board.

The Secretary shall also keep current and retain custody of the Minute Book of the Association, containing the minutes of all annual and special meetings of the Association and all sessions of the Board including resolutions.

**9.44 Treasurer.** The Treasurer shall have the custody of all funds and securities that are not under the control of the Managing Agent, and, with the assistance of the Managing Agent, shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all moneys and other valuable effects in such depositories as may be designated by the Board. He or she shall disburse funds as ordered by the Board taking proper vouchers for such disbursements, and shall render to the President and Board members, at the regular meetings of the Board, or whenever they may require it, an account of all of his transactions as Treasurer and of the financial condition of the Condominium.

Treasurer shall compile and keep current at the principal office of the Condominium, a complete list of the Owners and their last known post office addresses. This list shall be open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days.

**9.45 Agreements, Contracts, Deeds, Checks, etc.** All agreements, contracts, deeds, leases, checks and other instruments of the Association for expenditures shall be executed by at least two officers of the Board or by such other person or persons as may be designated by the Board.

**9.46 Compensation of Officers.** No officer shall receive any compensation from the Board for acting as such.

**9.47 Fiscal Year.** The fiscal year of the Association shall consist of the twelve month period commencing on January 1<sup>st</sup> of each year and terminating on December 31<sup>st</sup> of the same year. The fiscal year herein established shall be subject to change by the Board should it be deemed advisable or in the best interests of the Association.

**9.48 Amendments to these Bylaws - Article IX.** Except as otherwise provided in this Article IX, these Bylaws may be modified or amended either (i) by an affirmative vote of at least fifty-one percent (51%) of the total voting percentage interests in the Project at any regular or special meeting at which a quorum is present, provided that Notice of the proposed amendment shall have been given to each Owner simultaneously with the notice of such meeting, or (ii) pursuant to a written instrument duly executed by at least sixty-seven percent (67%) of the total voting percentage interests of the Unit Owners.

**9.49 Recording.** A modification or amendment of these Bylaws shall become effective only if such modification or amendment is recorded in the office of the County Recorder of Salt Lake County, Utah.

**9.50 Conflicts.** No modification or

amendment of these Bylaws may be adopted which shall be inconsistent with the provisions of the Act or with the provisions of the Declaration. A modification or amendment once adopted and recorded as provided for herein shall then constitute part of the official Bylaws of the Condominium and all Owners shall be bound to abide by such modification or amendment.

**9.51 Manner of Notice Pursuant to the Bylaws.** All notices, demands, bills, statements or other communications provided for or required under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by U.S. Mail, first class postage prepaid, (i) if to an Owner, at the address of his Unit and at such other address as the Owner may have designated by notice in writing to the Secretary, or (ii) if to the Board or the Manager, at the principal office of the Manager or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section.

**9.52 Waiver of Notice.** Whenever any notice is required to be given under the provisions of the statutes, the Declaration or of these Bylaws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto, unless such waiver is ineffective under the provisions of the Act.

Notes

ARTICLE X

*ASSESSMENTS*

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**10.1 Agreement to Pay Assessment.** Each Owner of any Unit by the acceptance of a deed therefore, whether or not it be so expressed in the deed, or by entering into a sale and purchase contract, shall be deemed, to covenant and agree with each other and with the Association to pay to the Association:

(1) annual assessments, payable in monthly installments, made to the Association for the purposes provided in this Declaration;

(2) special assessments for capital improvements and other matters as provided in this Declaration, and, as the case may be;

(3) individual assessments applicable to less than all owners as set forth below. Such assessments shall be fixed, established and collected from time to time in the manner provided in this Article.

The monthly assessments herein provided shall commence as to all Units on the date deed is delivered to a purchaser of a Unit, with the first monthly assessment being adjusted according to the number of days remaining in the month of conveyance.

**10.2 Amount of Total Annual Assessments.** The total annual assessments against all Units shall be based upon advance estimates of cash requirements by the Board to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, which estimates may include, among other things expenses of management, grounds maintenance, taxes

and special assessments, (until the Units are separately assessed as provided herein), premiums for all insurance which the Board is required or permitted to maintain pursuant hereto, common lighting and heating, water charges, trash collection, repairs and maintenance of the Common Areas that must be replaced on a periodic basis, wages for Board employees (if any), legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus and/or sinking fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration.

**10.3 Apportionment of Annual Assessments.** Expenses attributable to the Common Areas and to the Project as a whole shall be apportioned among all Owners in proportion to their respective Percentage Interests in the Common Areas.

**10.4 Notice of Annual Assessments and Time for Payment Thereof.** Annual assessments shall be made on a calendar year basis. In the event of increases or decreases in the assessment amount, the Board shall give written notice to each Owner as to the amount with respect to his/her Unit not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year. Such assessments shall be due and payable in monthly installments on the first day of each and every month of each year.

Delinquent assessments shall be subject to reasonable late fees and/or interest as adopted and published by the Board.

Failure of the Board to give timely notice of any assessment as provided herein shall not affect the liability of the Owner of a Unit for such assessment, but the date when payment shall become due in such case shall be deferred to a date thirty (30) days after such notice shall have been given.

If, in the Board's sole discretion, the assessment is too large or too small as a result of unanticipated income or expenses, the Board may effect an equitable change in the amount of the assessment in any given year. However, without the prior approval of a majority of the percentage of ownership interests in the Common Areas, no such increase shall be greater than twenty percent (20%) of the present assessment amount in any calendar year. Furthermore, Owners shall be given at least thirty (30) days prior written notice of any change.

The annual assessment, however, may be increased in any amount deemed necessary by a two-thirds (2/3) majority vote of all voting interests of the Owners at any regular or special meeting of the Association.

**10.5 Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Board may levy in any assessment year a special assessment, payable over such a period as the Board may determine, for the purpose of defraying, in whole or in part, the cost of any Capital Improvement, which, for purposes of this provision, is defined as or comprised of any betterments of a long lasting nature which add to the capital value of the property through construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration.

This Section shall not be construed as an independent source of authority for the Board to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections hereof.

Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective Percentage Interests in the Common Areas. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

Any unpaid special assessment shall be subject to late fees and/or interest and adopted and published by the Board from the date it becomes due and payable if not paid within thirty (30) days after such date.

Notwithstanding anything to the contrary herein contained, additions or capital improvements to the Project which cost no more than twenty percent (20%) of the current years annual assessment, may be authorized by the Board of Directors alone.

Additions or capital improvements the cost of which will exceed such amount must, prior to being constructed, be authorized by at least a majority of the total voting percentage interests. Any addition or capital improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed, be authorized by a vote of Unit Owners in person or by proxy of not less than 51% of the total voting percentage interests at a meeting of the Association, special or annual, at which a quorum is present.

**10.6 Lien for Assessments.** All sums assessed to any Unit pursuant to this Declaration, together with interest thereon as provided hereon, shall be secured by a lien on such Unit in favor of the Association.

Such lien shall be superior to all other liens and encumbrances on such Unit, except only for: (a) valid tax and special assessment liens on the Unit in favor of any governmental assessing authority; and (b) a lien for all sums unpaid on a first-mortgage, duly recorded in the Official Records of Salt Lake County, Utah, including all unpaid obligatory advances to be made pursuant to such Mortgage and all amounts advanced pursuant to such Mortgage and secured by the lien thereof in accordance with the terms of such instrument.

All other lienors acquiring liens on any Unit after this Declaration shall have been recorded in said records shall be deemed to consent that such lien shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

To evidence a lien for sums assessed hereunder, the, Board, or its agent, may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. Such a notice shall be signed by the Board, or its agent, and may be recorded in the Office of the County Recorder of Salt Lake County, Utah.

No notice of lien shall be recorded until there is a delinquency in the payment of any assessment. Such lien may be enforced by judicial foreclosure by the Board in the same

manner in which mortgages on real property may be foreclosed in Utah or in a non-judicial manner, the same as for trust deeds in the State of Utah.

In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of lien and all court costs and reasonable attorneys' fees. All such costs, expenses and fees shall be secured by the lien being foreclosed.

In the event of a non-judicial foreclosure, the Association hereby appoints, and each Owner accepts as Trustee, the Association's then retained attorney for all such purposes.

The Owner shall also be required to pay to the Board any assessments against the Unit which shall become due during the period of foreclosure.

The Board shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof.

A release of notice of lien shall be executed by the Board and recorded in the Office of the County Recorder of Salt Lake County, Utah, upon payment of all sums secured by a lien which has been made the subject of a recorded note of lien.

Any encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any amounts secured by the lien created hereunder, and upon such payment such encumbrancer shall be subrogated to all rights of the Board with respect to such lien, including priority.



The Board shall report to any encumbrancer of a Unit any unpaid assessments remaining unpaid for thirty days after the same shall have become due; provided, however, that such encumbrancer first shall have furnished to the Board written notice of such encumbrance.

**10.7 Personal Obligations of Owner.** The amount of any annual or special assessment against any Unit shall be the personal obligation of the Owner thereof to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Board without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Unit.

**10.8 Statement of Account.** Upon payment of a reasonable fee not to exceed ten dollars (\$10.00), or such other amount as may in the future be allowed by the Act, and upon written request of any Owner or any Mortgagee, prospective Mortgagee or prospective purchaser of a Unit, the Board shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit; amount of the current yearly assessment and the date that such assessment becomes or became due; credit for advanced payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums; and such statement shall be conclusive upon the Board in favor of persons who rely thereon in good faith.

Unless such request for a statement of account shall be complied with within thirty (30) calendar days, all unpaid assessments

which became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within the thirty (30) calendar day period provided herein and thereafter an additional written request is made by such purchaser and is not complied with within fifteen (15) calendar days, and the purchaser subsequently acquires the Unit.

**10.9 Personal Liability of Purchaser for Assessments.** A purchaser of a Unit, through a voluntary conveyance, shall be jointly and severally liable with the seller for all unpaid assessments against the Unit up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

**10.10 Individual Assessments.** Individual assessments may be levied by the Board against a Unit and its Owner for:

(1) Administrative costs and expenses incurred by the Board in enforcing the Project Documents, including any fines levied for violations;

(2) Costs associated with the maintenance, repair or replacement of Common Area for which some but not all of the Unit Owners are responsible;

(3) Any other charge, fee, fine, dues, expense, or cost designated as an Individual Assessment in the Association's governing documents or by the Board of

Directors; and

(4) Reasonable attorneys' fees, interest, and other charges relating thereto as provided in this Declaration.

**10.11 Reserve Account** The Association shall establish a reasonable reserve account for the funding of long term maintenance and/or replacement items as the Board of Directors, in their sole discretion, deem necessary and in the best interests of the Owners.

The Board of Directors, shall use reasonable efforts to fund said reserve account but shall not be held personally liable for any alleged failure to fully fund said account as long as gross negligence or intentional misconduct is not proven in a court of law.

**10.12 Absentee Owner Failure to Pay Assessments** In the event that an absentee owner fails to pay any assessment obligation hereunder, the Association may demand that the tenant(s) pay to the Association any rent owing to said Owner. Said amount received shall be applied to the Owner's account and payments hereunder shall not constitute a breach of the lease agreement between the Owner and Tenant.

In the event that the Owner's assessment account is brought current pursuant to this Section, then the Association shall forward all excess rental payments to the Owner and tenant shall be directed to make future payments directly to the Owner.

**10.13 Transfer Fees.** Each time a legal title to a Unit passes from one person to another, unless the transfer is made to a Qualified Successor Owner, which shall mean such owner's spouse, son, daughter,

father or mother or a legal entity, such as a trust, in which the owner or the owner's spouse, son, daughter, father or mother hold a beneficial interest of at least fifty percent (50%) (the "Qualified Successor Owner(s)") for estate planning purposes, within thirty (30) days after the effective date of such title transaction the new Unit Owner may pay to the Board, in addition to any other required amounts, a transfer fee, unless otherwise determined by the Board.

**10.14 Termination of Utility Services.** If any assessment is delinquent and after notice and an opportunity to be heard, the Association may terminate the Owner's right to receive utility services and discontinue their use and access to recreational facilities subject to the following: (a) before terminating any utility services or right of access and use of recreational facilities (if any), the Board, or its agent, shall give written notice to the Unit Owner stating that such services will be terminated if payment of the delinquent assessment is not received within forty-eight (48) hours; (b) the notice sent shall contain the amount of the assessment due, including any interest or late payment fee and state that the Owner is entitled to request a hearing to dispute the assessment by submitting a written request to the Board within fourteen (14) days from the date the notice is received.; (c) utilities or services may not be terminated until after any such hearing.

Notes

ARTICLE XI

*INSURANCE*

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**11.1 Insurance.** Unit Owners are required to carry and maintain adequate property and liability insurance on their Units.

To the extent it can be exhausted, a Unit Owners' policy shall serve as primary insurance in the event any damage is caused to another Unit, Common Area, or Limited Common Area, so long as fault is attributable to the said Unit Owner, their guests, tenants, and invitees. The Board of Directors may request that Owners provide proof of adequate insurance.

In the event that Owners do not obtain and maintain the insurance required pursuant to this Declaration, then the Association shall have the right, but not the obligation, to purchase a homeowner policy consistent with this Declaration and add the costs of said policy to the assessment account of the Owner.

The Board of Directors shall secure and at all times maintain the following insurance coverage:

(a) A master or blanket policy of property insurance, with extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost).

Each such policy shall contain the standard mortgagee clause which must be endorsed to provide that any proceeds shall be paid to the

Association for the use and benefit of mortgagees as their interests may appear. The insured shall be the Association as a trustee for the Unit Owners, or their authorized representative. Such insurance must provide protection against at least the following loss by fire and other hazards covered by the standard extended coverage.

(b) A comprehensive policy of public liability insurance covering all of the Common Areas insuring the Association, the Board, the Manager, and the Unit Owners against any liability incident to the ownership, use, or operation of the Common Areas and public ways of the Project or of any Unit which may arise among themselves, to the public, or to any invitees, or tenants of the Project, or of the Unit Owners. Limits of liability under such insurance shall be not less than One Million Dollars (\$1,000,000.00) covering all claims for personal property injury and for property damage arising out of a single occurrence, including protection against water damage liability, liability for non-owned and hired automobile and liability for property of others. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of the Association or other Unit Owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for similar projects in location, construction and use.

(c) The Association shall maintain fidelity coverage to protect against dishonest acts on the part of Board Members, Manager

(including, but not limited to, employees of professional managers) employees, or volunteers responsible for handling funds belonging to or administered by the Association.

The fidelity bond or insurance must name the Association as the obligee and shall be written in an amount equal to one hundred and fifty percent (150%) of the estimated current annual Common Expenses of the Association, including reserves, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

The following additional provisions shall apply with respect to insurance:

(1) In addition to the insurance and bond coverage described above, the Board shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with all condominium projects similar to the Project in construction, nature and use.

(2) Each hazard insurance policy shall be written by a company holding a financial rating of Class VI or better as designated in Best's Key Rating Guide. 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, by-laws or policy, contributions or assessments may be made against the Borrower or the Mortgagee, or its designee; or (ii) by the terms of the carrier's charter, bylaws 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 the Mortgagee or the borrower from collecting insurance proceeds.

(3) The Board shall have the authority to adjust losses.

(4) Insurance secured and maintained by the Board shall not be brought into contribution with insurance held by the individual Unit Owners or their mortgagees.

(5) Each policy of insurance obtained by the Board 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 Board, the Manager, the Unit Owners, 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 Board 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 or designees thereof at least thirty (30) days in advance of the effective date of any substantial modification or cancellation of the coverage.

(6) Each Unit Owner shall obtain additional insurance at his own expense, as long as such additional insurance does not have the effect of decreasing the amount which may be realized under any policy maintained by the Board. Each Unit Owner

shall supply the Board with a copy of his policy within 30 days after he acquires such insurance.

As stated above, the Unit Owner's insurance policy shall serve as primary insurance, to the extent exhausted, in the event any damage is caused to another Unit, Common Area, or Limited Common Area, so long as fault is attributable to the said Unit Owner.

(7) Insurance coverage required by this Article must not be prejudiced by (i) any act or neglect of the Unit Owners when such act or neglect is not within the control of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Project over which the Association has no control.

(8) 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 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.

**11.2 Damage to Project.** In the event of damage or destruction all of the improvements in the Condominium Project, the following Procedures shall apply:

(a) If proceeds of the insurance maintained by the Board of Directors are alone sufficient to repair or reconstruct the damage or destroyed improvement, such repair or reconstruction shall be carried out.

(b) If less than 75% of the Project's

improvements are destroyed or substantially damaged, and if the proceeds of the insurance maintained by the Board are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all the Unit Owners shall be assessed for any deficiency on the basis of their respective Percentage Interest.

(c) If 75% or more of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Board of Directors are not alone sufficient to accomplish restoration, and if the Unit Owners within 100 days after the destruction or damage by a vote of at least 75% elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subparagraph (b) above.

(d) If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Board are insufficient to accomplish restoration, and if the Unit Owners do not, within 100 days after the destruction or damage and by a vote of at least 75%, elect to repair or reconstruct the affected improvements, the Board of Directors shall promptly record with the Salt Lake County Recorder a notice setting forth such facts. Upon the recording of such notice the provisions of subsections (1) through (4) of Section 57-8-31, Utah Code Annotated (1953), shall apply and shall govern the rights of all parties having an interest in the Project or any of the Units.

Any reconstruction or repair which is required to be carried out by this Article regarding the extent of damage to or destruction of Project improvements shall be made by three MAI appraisers selected by the

Board of Directors. The decision of any two such appraisers shall be conclusive.

Notes

**11.3 Insurance Obtained by Owners.** Each unit owner shall be required to maintain adequate insurance for their Unit(s) and provide proof to the Association that they have such insurance if requested. If damage is caused to (1) the common areas, (2) unit(s), or (3) persons or property and is due to the fault or neglect of the owner, its tenants, guests, or invitees, then the "at fault" owner's insurance is the primary insurance policy (to the extent exhausted) and the Association's is deemed secondary.

**11.4 Reimbursement of Deductible.** The Association is entitled to recover its deductible arising from any claims caused by the "at fault" owners conduct. Any such claim for a deductible reimbursement shall be considered an Individual Assessment and collected as such.

ARTICLE XII

*MORTGAGEE PROTECTION*

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**12.1. Mortgagee Protection.**

Notwithstanding anything to the contrary contained in the Declaration:

(a) Any mortgage holder which comes into possession of the Unit pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgagee or deed (or assignment in lieu of foreclosure) shall be exempt from any "right of first refusal", or other provisions which may exist relating to sale or lease of the Units in the Project, and no right of first refusal shall impair the rights of any first mortgage to: (i) foreclose or take title to a Unit pursuant to the remedies provided in the Mortgage, or (ii) accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or (iii) interfere with a subsequent sale or lease of the Unit so acquired by the Mortgagee.

(b) In the event of damage to or destruction of any Unit, which loss exceeds \$1,000.00, or any part of the Common Areas, which loss exceeds \$10,000.00, the institutional holder of any first mortgage on a Unit shall be entitled to timely written notice to any such damage or destruction. No Unit Owner or other party shall be entitled to priority over such institutional holder with respect to the distribution to such Unit Owner of any insurance proceeds regardless of the amount of loss. Upon request of any first mortgagee of the Association must provide a letter to said first Mortgagee wherein the Association agrees to notify the first Mortgagee or any organization it designates at the address indicated by the Mortgagee whenever (i) damage to a Unit covered by the first Mortgagee's Mortgage exceeds \$1,000.00, or (ii) damage to the Common

Areas and related facilities exceeds \$10,000.00.

(c) If any Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the institutional holder of any first mortgage of a Unit shall be entitled to timely written notice of any such proceeding or proposed acquisition. No Unit Owner or other party shall have priority over such institutional holder regardless of the amount of the condemnation award with respect to the distribution to such Unit Owner of the proceeds of any award or settlement.

(d) Each holder of a first mortgage lien on a Unit who obtains title to a Unit by virtue of remedies provided in the Mortgage, including but not limited to, foreclosure of the mortgage, or by deed of assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of unpaid charges and shall not be liable for any unpaid claims or assessments and charges against the Unit which accrue prior to the acquisition of title of such Unit by Mortgagee, except for claims for a pro-rata share of such assessments or charges to all Project Units including the mortgaged Unit.

(e) Any lien which the Board of Directors may have on any Unit in the Project for the payment of Common Expenses assessments attributable to such Unit will be subordinate to the lien or equivalent security interest of any first mortgage on the Unit recorded prior to the date any such Common Expense

Assessments become due.

(f) Unless at least 75% of the institutional holders of first Mortgages (based on one vote for each Mortgage owned) of Units have given their prior written approval neither the Board of Directors, Owners nor the Association shall:

(1) By act or omission, seek to abandon or terminate the Project, except in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain.

(2) Change the Percentage Interests or obligations of any Unit for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for (ii) determining the pro-rata share of ownership of each Unit in the appurtenant Common Areas, except as necessary to allow the expansion of the Project as provided in the Declaration.

(3) Partition or subdivide any Unit or of the Common Areas.

(4) By act or omission, seek to amend, partition, subdivide, encumber, sell, abandon or transfer the Common Areas. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas of the Project shall not be deemed a transfer within the meaning of this subparagraph).

(5) Use hazard insurance proceeds for losses to any condominium property (whether to Units or to the Common Areas) for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in cases of substantial loss to the Units and/or the Common Areas

of the Project.

(g) Any institutional holder of a first mortgage (or trust deed) of a Unit in the Project will, upon request, be entitled to (i) examine the books and records of the Project during normal business hours; (ii) receive the financial statements of the Project within 90 days following the end of any fiscal year of the Project; and (iii) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

(h) Whenever there is a change of ownership of a Unit, the Board shall require that the new Unit Owner furnish the Board with the name of the holder of any first mortgage (or trust deed) affecting such Unit. The Board of Directors or Manager shall maintain a current roster of Unit Owners and of the holders of first mortgages (or trust deed) affecting Units in the Project.

Notes



ARTICLE XIII

MISCELLANEOUS

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**13.1 Amendment.** Except as provided below, the vote of at least sixty-seven percent (67%) of the total voting percentage interests of all of the Unit Owners shall be required to amend this Declaration or the Map. The Bylaws have their own amendment provisions provided for in Article IX.

Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Board of Directors. In such instrument the Board shall certify that the vote required by this Paragraph for amendment has occurred.

**13.2 Consent Equivalent to Vote.** In those cases in which the Act or this Declaration requires the vote of a stated percentage of the Project's undivided ownership interest for the authorization or approval of a transaction, such requirement may 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 necessary percentage of undivided ownership interest.

**13.3 Voting.** Each Owner shall be entitled to a percentage vote equal to their percentage interest in the Common Areas listed on **Exhibit "B"** for such Unit. When more than one Person owns an interest in a Unit, each such Person shall be a member of the Association and each Co-Owner shall be entitled to a percentage vote calculated by dividing the percentage vote allotted to the Unit, as reflected on **Exhibit "B,"** by the number of Co-Owners for such Unit, but in no event shall more than the allotted percentage vote be case with respect to any Unit.

**13.4 Service of Process.** The Board of Directors shall appoint a service of process

agent. Such agent and his/her address shall be specified by an appropriate instrument filed in the appropriate corporate records for the State of Utah.

**13.5 Duty of Owner to Pay Taxes on Unit Owned.** It is understood that under the Act each Unit (and its in the Common Areas) in its respective percentage ownership interest in the Project is subject to separate assessment and taxation of each taxing authority and the special district(s) for all types of taxes and assessments authorized by law, and that as a result thereof, no taxes will be assessed or levied against the Project as such, except for certain personal properties thereof. Accordingly, each Unit Owner will pay and discharge any and all taxes and assessments which may be assessed against him on his Unit.

**13.6 Covenants to Run With Lands; Compliance.** This Declaration and all the provisions hereof shall constitute covenants which run with the land and constitute equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of The Association, all parties who hereafter acquire any interest in or occupy a Unit or any part of in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, assigns, guests and invitees.

Each Owner or occupant of a Unit shall comply with, and all interests in all Units shall be subject to, the terms of the Act, the terms of this Declaration, the By-Laws, and the provisions of any rules, regulations, agreements, instruments, and determinations adopted pursuant thereto, (hereinafter referred to collectively as the "Declaration"), and failure to comply shall be grounds for an action to recover sums due for damages or

injunctive relief or both, maintainable by the Board on behalf of the Association, or, in a proper case, by an aggrieved Unit Owner. By acquiring any interest in a Unit each Unit Owner or occupant consents and agrees to be bound by and subject to each and every provision of the Declaration. Should the Association be required to take action hereunder or by applicable law, whether such remedy is pursued by filing a lawsuit or otherwise, the Association may recover all costs and expenses, including a reasonable attorney's fee, which may arise or accrue.

**13.7 Indemnification of Board of Directors.** Absent intentional and willful misconduct, each member of the Board of Directors, officers and committee members shall be indemnified and held harmless by the Unit Owners against all costs, expenses, and fees, reasonably incurred by him or her in connection with any proceeding to which he or she may become involved by reason of his/her being or having been a member of said Board, serving as an office or committee member.

**13.8 Mortgage Obligations.** In the event that a bank, lender or other mortgagee/lien holder obtains title to any Unit within the Association, said mortgagee shall have all obligations under this Declaration including paying timely assessments, maintaining Units, including heat, water and pipes.

**13.9 Invalidity.** The invalidity of any provisions of this Declaration, or any portion thereof, shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

**13.10 Waiver.** No provision contained in

this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

**13.11 Effect of Recorded Instruments.** At any point in time, the Declaration and the Record of Survey Map concerning each phase which is then a part of the Project shall constitute the constituent parts of a single Declaration and Record of Survey Map affecting the Project. Accordingly, in the event the provisions of the separate instruments conflict irreconcilably, the terms of that instrument which is last recorded shall control.

**13.12 Effective Date.** This Declaration shall take effect upon recording in the office of the Salt Lake County Recorder, Utah.

Notes



**EXHIBIT "A"**

**(Legal Property Description)**

A parcel of land being a part of Block 50, Plat "A", Salt Lake City Survey in the Northeast Quarter (NE 1/4) of Section 1, Township I South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah described as follows:

BEGINNING at a point on the north line of Block 50, Plat "A", Salt Lake City Survey, said point being North 89°58'00" East 123.75 feet from the northwest corner of said Block 50 and running thence North 89° 58'00" East 96.25 feet to the Northwest corner of that property described in Warranty Deed recorded in Book 6975 at Page 2270 of the Salt Lake County records; thence South 00°01'10" East 165.00 feet to the southwest corner of said property; thence along the south line of said property North 89°58'00" East 1.28 feet to a point on the East line of an existing building as described in a Notice of Property Line and No-build Agreement recorded in Book 8100 at Page 1744 of the Salt Lake County records; thence along said east line the following three courses: South 00°21'36" East 19.77 feet, South 86°48'53" East 0.96 feet, and South 00° 17'38" East 145.18 feet to a point on the south line of Lot 6 of said Block 50; thence South 89°58'00" West 1.05 feet along said south line; thence South 00°01'10" East 0.75 feet; thence South 89°58'00" West 4.50 feet; thence South 00°01'10" East 47.25 feet; thence South 89°58'00" West 217.50 feet to a point on the west line of said Block 50; thence North 00°01'10" West 34.68 feet along said west line; thence North 89°41'35" East 58.48 feet to a point on the West line of an existing building; thence along said west line North 00°18'25" West 180.00 feet; thence South 89°41'35" West 57.58 feet to a point on said west line of Block 50; thence North 00°01'10" West 26.07 feet along said west line of Block 50; thence North 89°58'00" East 123.75 feet; thence North 00°01'10" West 137.25 feet to the POINT OF BEGINNING.

Tax Parcel Numbers

Unit 100 15-01-407-001-0000	Unit 205 15-01-401-015-0000
Unit 101 15-01-401-002-0000	Unit 206 15-01-407-016-0000
Unit 102 15-01-407-003-0000	Unit 207 15-01-407-017-0000
Unit 103 15-01-407-004-0000	Unit 208 15-01-407-018-0000
Unit 104 15-01-407-005-0000	Unit 301 15-01-407-019-0000
Unit 105 15-01-407-006-0000	Unit 302-15-01-407-020-0000
Unit 106-15-01-407-007-0000	Unit 303 15-01-407-021-0000
Unit 107 15-01-407-008-0000	Unit 304 15-01-407-022-0000
Unit 108 15-01-407-009-0000	Unit 305 15-01-407-023-0000
Unit 200 15-01-407-010-0000	Unit 306 15-01-407-024-0000
Unit 201 15-01-407-011-0000	Unit 307 15-01-407-025-0000
Unit 202 15-01-407-012-0000	Unit 308 15-01-407-026-0000
Unit 203 15-01-407-013-0000	Unit 309 15-01-407-027-0000
Unit 204 15-01-407-014-0000	Unit 310 15-01-407-028-0000
Unit 402 15-01-407-031-0000	Unit 311 15-01-407-029-0000
Unit 403 15-01-407-032-0000	Unit 401 15-01-407-030-0000
Unit 404 15-01-407-033-0000	Unit 507 15-01-407-047-0000
Unit 405 15-01-407-034-0000	Unit 508 15-01-407-048-0000
Unit 406 15-01-407-035-0000	Unit 509 15-01-407-049-0000
Unit 407 15-01-407-036-0000	Unit 510 15-01-407-050-0000
Unit 408 15-01-407-037-0000	Unit 511 15-01-407-051-0000
Unit 409 15-01-407-038-0000	Unit 601 15-01-407-052-0000
Unit 410 15-01-407-039-0000	Unit 602 15-01-407-053-0000
Unit 411 15-01-407-040-0000	Unit 603 15-01-407-054-0000
Unit 501 15-01-407-041-0000	Unit 604 15-01-407-055-0000
Unit 502 15-01-407-042-0000	Unit 605 15-01-407-056-0000
Unit 503 15-01-407-043-0000	Unit 606 15-01-407-057-0000
Unit 504 15-01-407-044-0000	Unit 607 15-01-407-058-0000
Unit 505 15-01-407-045-0000	Unit 608 15-01-407-059-0000
Unit 506 15-01-407-046-0000	Unit 609 15-01-407-060-0000
	COMMON AREA 15-01-407-061-0000

**EXHIBIT B**

<b>UNIT ALLOCATION TABLE</b>					
<b>Unit</b>	<b>Unit Area</b>	<b>Unit %</b>	<b>Unit</b>	<b>Unit Area</b>	<b>Unit %</b>
Unit 100	7,233 sq. ft.	8.52%	Unit 401	2,499 sq. ft.	2.94%
Unit 101	857 sq. ft.	1.01%	Unit 402	981 sq. ft.	1.16%
Unit 102	915 sq. ft.	1.08%	Unit 403	992 sq. ft.	1.17%
Unit 103	906 sq. ft.	1.07%	Unit 404	664 sq. ft.	0.78%
Unit 104	924 sq. ft.	1.09%	Unit 405	793 sq. ft.	0.93%
Unit 105	914 sq. ft.	1.08%	Unit 406	1,104 sq. ft.	1.30%
Unit 106	914 sq. ft.	1.08%	Unit 407	1,846 sq. ft.	2.18%
Unit 107	921 sq. ft.	1.09%	Unit 408	1,846 sq. ft.	2.18%
Unit 108	790 sq. ft.	0.93%	Unit 409	1,930 sq. ft.	2.27%
Unit 200	7,387 sq. ft.	8.70%	Unit 410	2,229 sq. ft.	2.63%
Unit 201	768 sq. ft.	0.90%	Unit 411	1,906 sq. ft.	2.25%
Unit 202	769 sq. ft.	0.91%	Unit 501	2,503 sq. ft.	2.95%
Unit 203	815 sq. ft.	0.96%	Unit 502	982 sq. ft.	1.16%
Unit 204	828 sq. ft.	0.98%	Unit 503	1,011 sq. ft.	1.19%
Unit 205	813 sq. ft.	0.96%	Unit 504	668 sq. ft.	0.79%
Unit 206	920 sq. ft.	1.08%	Unit 505	798 sq. ft.	0.94%
Unit 207	748 sq. ft.	0.88%	Unit 506	1,107 sq. ft.	1.30%
Unit 208	742 sq. ft.	0.87%	Unit 507	1,210 sq. ft.	1.43%
Unit 301	3,106 sq. ft.	3.66%	Unit 508	1,206 sq. ft.	1.42%
Unit 302	1,221 sq. ft.	1.44%	Unit 509	1,264 sq. ft.	1.49%
Unit 303	1,237 sq. ft.	1.46%	Unit 510	1,474 sq. ft.	1.74%
Unit 304	668 sq. ft.	0.79%	Unit 511	1,396 sq. ft.	1.64%
Unit 305	782 sq. ft.	0.92%	Unit 601	2,602 sq. ft.	3.07%
Unit 306	1,106 sq. ft.	1.30%	Unit 602	881 sq. ft.	1.04%
Unit 307	1,200 sq. ft.	1.41%	Unit 603	1,028 sq. ft.	1.21%
Unit 308	1,202 sq. ft.	1.42%	Unit 604	1,045 sq. ft.	1.23%
Unit 309	1,253 sq. ft.	1.48%	Unit 605	938 sq. ft.	1.11%
Unit 310	1,470 sq. ft.	1.73%	Unit 606	975 sq. ft.	1.15%
Unit 311	1,388 sq. ft.	1.64%	Unit 607	1,344 sq. ft.	1.58%
			Unit 608	1,234 sq. ft.	1.45%
			Unit 609	1,609 sq. ft.	1.90%
			<b>Total</b>	<b>84,864 sq. ft.</b>	<b>100.00</b>