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Amended Restrictive Covenants Page 1 of 30
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By DIXON & TRUMAN



FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS FOR RIVERSIDE TOWERS COMMERCIAL CONDOMINIUMS

THIS FIRST AMENDMENT AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR RIVERSIDE TOWERS COMMERCIAL CONDOMINIUMS (the "First Amended Declaration"), is made and entered into the 3 day of December, 2009, by RIVERSIDE TOWERS, LLC, a Utah limited liability company, herein referred to as "Declarant". This Declaration is made in contemplation of the following facts and circumstances.

A. Declarant is the fee simple owner of certain real property located in Washington County, State of Utah, and more particularly described as follows:

Tax ID# SG-5-2-31-3213

Beginning at a point North 89°05'44" West, 535.26 feet along the Section line and North 1196.60 feet from the South Quarter Corner of Section 31, Township 42 South, Range 15 West, Salt Lake Base and Meridian, and running thence North 01°52'09" East, 225.02 feet; thence South 88°40'22" East, 357.62 feet; thence South 01°22'53" West, 180.85 feet to a point on a reverse curve to the left, the radius point of which is South 24°05'28" West, 75.00 feet; thence Westerly and Southerly 122.12 feet along the arc of said curve; thence North 88°40'22" West, 259.84 feet to the point of beginning.

(Proposed "RIVERSIDE TOWERS, LLC. COMMERCIAL CONDOMINIUMS")

Now known as Riverside Towers Commercial Condominiums (SG) Units 1, 2, 3, 4, 5 and 6. Tax ID # SG-5-2-31-3213, SG-RTCC-1, SG-RTCC-2, SG-RTCC-3, SG-RTCC-4, SG-RTCC-5, SG-RTCC-6.

(hereinafter the "Property")

B. Declarant recorded the Declaration of Covenants Conditions and Restrictions for Riverside Towers Commercial Condominiums (the "Original Declaration") on September 18, 2009;

C. Declarant desires to create within and upon the Property a business, professional and commercial complex in an attractive setting to be known as RIVERSIDE TOWERS (hereafter may be referred to as the "Project"). In order to do so, Declarant desires to establish covenants, conditions and restrictions upon the Property and each and every portion thereof, which will constitute a general scheme for the improvement, development and management of said Property, and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of the business environment within the Project;

D. Declarant desires to revise the Original Declaration as set forth below;

E. Whereas, Declarant is desirous of subjecting the Property, with all of the improvements thereon, to the Utah Condominium Ownership Act (Utah Code Ann. § 57-8-1, *et seq.* (1953, amended) by dividing and conveying the same to various purchasers, subject to the covenants, conditions and restrictions contained herein,

F. Declarant will hereafter hold and convey title to all of the Property subject to the covenants, conditions and restrictions hereinafter set forth.

NOW THEREFORE, Declarant hereby declares that the Property shall be held, sold, conveyed, transferred, leased, used and occupied subject to the easements, covenants, conditions and restrictions set forth herein and which shall run with the Property and all portions thereof and shall be binding upon all parties having or acquiring any right, title or interest in and to all or any portion of the Property, and the respective heirs, successors and assigns of such parties. The Original Declaration is revised and restated as set forth below. This First Amended Declaration shall replace and supersede the Original Declaration.

DECLARATION

Declarant does hereby declare that the Property is subject to the following covenants, conditions, and restrictions, easements, charges, assessments, and liens which are all for the purpose of protecting the value and desirability of the property and which shall be construed as covenants equitable servitude and shall run with the land and be binding, on the property and all parties having any right, title and interest in the property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

Article I

Definitions

- 1.1. **Act** shall mean and refer to the Utah Condominium Ownership Act (§ 57-8-1 through § 57-8-36, Utah Code Ann. (1953), as the same may be amended from time to time.
- 1.2. **Articles** shall mean the Articles of Incorporation for the Association filed with the Utah Division of Corporations and Commercial Code.
- 1.3. **Association** shall mean the Riverside Towers Owners Association, Inc.
- 1.4. **Building or Buildings** shall mean that certain building that has been constructed on the Property, as such Building is shown on the Plat,
- 1.5. **Bylaws** mean the Bylaws of the Riverside Towers Owners Association, Inc. The Bylaws are attached to this Declaration as Exhibit A.
- 1.6. **Common Areas and Facilities** means the areas designated "Common Area" on the Plat and shall specifically include, but not be limited to:

- a. the real property within the Project as described on the Plat as common area;
- b. the portion of the Property not specifically identified as a Unit on the Plat;
- c. all foundations, columns, girders, beams, supports, main walls, roofs, exterior walkways, driveways, streets (if any), yards, planting areas, fences, service and parking areas, entrances, exits, and in general all other apparatus, installations and other parts of the Property necessary or convenient to the existence, maintenance and safety of the Common Areas and facilities or normally in common use;
- d. installations of central service, such as water, power, elevator, and any other equipment existing in common use, such as heating and air conditioning equipment;
- e. the area specifically set forth and designated on the Plat as Common Area of common ownership; and
- f. all Common Areas and Facilities, whether or not specifically defined herein.

1.7 **Common Expenses** shall mean all sums which are assessed against and expended on behalf of all Owners and all sums which are required by the Association to perform or exercise its functions, duties, or right under the Act, this Declaration, the management agreement for the operations of the Project, if any, and such rules and regulations of the Association as may be adopted from time to time. By way of illustration, but not in limitation, Common Expenses shall include: (i) expenses of administrations, maintenance, operation, repair and replacement of those components of the Common Areas that must be maintained and/or replaced on a periodic basis, together with such reserves as may be from time to time established for the same by the Association; (ii) expenses agreed upon by the Association or the Owners, and lawfully assessed against the Owners in accordance with the Declaration; (iii) expenses declared to be Common Expenses by the Act, by this Declaration, or the Bylaws; (iv) any valid charge against the Project as a whole; (v) taxes and insurance; and (vi) any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or the Act. All Common Expenses shall be assessed when possible on a pro rata share of the benefit.

1.8 **Condominium** means a single Unit in the Project together with an undivided interest in the Common Areas and Facilities of the Project.

1.9 **Condominium Unit or Unit** shall mean a separate physical unit of the Property intended for independent use, consisting of rooms or spaces located in a Building as designated on the Plat and the percentage interest appurtenant thereto. Mechanical equipment and appurtenances located within any one unit or located without said Unit but designated and designed to serve only that Unit shall be considered part of that Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim, consisting of, among other items and, as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits or other utility lines or installations constituting a part of a Unit and serving only such Unit, and any structural members or any other property of any kind, including fixtures and appliances within such Unit, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the Building within such Unit is situated shall be

considered part of the Unit. A Unit shall not include pipes, wires, conduits, or other utility lines running through it which are used for or which serve more than one Unit, and shall not include any load-bearing walls or floors comprising a part of the Building in which the Unit is located. Each Unit shall include its appurtenant percentage interest in the Common Areas and Facilities.

- 1.10 **Declarant** means Riverside Towers, LLC, its successors and assigns.
- 1.11 **Declaration** means this document and any amendments.
- 1.12 **Limited Common Areas** means the area designated on the Plat as dedicated to the exclusive or joint use and enjoyment for a particular Unit Owner or Owners and their customers, clients, guests and invites; and any shutters, awnings, window boxes, door steps, balconies, patios, or other apparatus intended to serve such Unit or Units, but located outside the boundaries of the Unit or Units.
- 1.13 **Management Committee** shall mean the committee charged by this Declaration with the responsibility and the authority on behalf of the Association to make and enforce all of the reasonable rules and regulations governing the operation and maintenance of the Property. The Management Committee may exercise any other right or privilege given to it expressly by this Declaration, the Articles, or the Bylaws, or every other right or privilege reasonably to be implied in the existence of any right or privilege given to it in such documents or reasonable necessary to effectuate any such right or privilege. The terms "Management Committee" or "Committee" are synonymous with the terms "Board of Directors" or "Directors" as used in this Declaration, the Articles, and the Bylaws.
- 1.14 **Manager** shall mean the person, firm, or company, if any, designated from time to time by the Association, by order of the Committee, to manage, in whole or in part, the business and affairs of the Association and the Project.
- 1.15 **Member** shall mean a member of the Association.
- 1.16 **Mortgage** shall mean and include a mortgage, deed of trust, or other security instrument by which a Unit or any part thereof is encumbered.
- 1.17 **Mortgagee** shall mean and include a mortgagee under a first mortgage on any Unit, a beneficiary of a first deed of trust on any Unit, or a secured party of any other security instrument by which a Unit or any part thereof is encumbered in a first position.
- 1.18 **Plat** means the map prepared by CMF Survey and recorded on the records of the Washington County Recorder for the Riverside Towers Commercial Condominiums Subdivision.
- 1.19 **Project** means all of the units along with the Common Area shown on the Plat.
- 1.20 **Unit Number** shall mean the number, letter or combination thereof designating a Unit within the project.

1.21 **Unit Owner** means the entity, person or persons, or group owning a Unit in fee simple and an appurtenant undivided interest in the fee simple estate of the Common Areas. Regardless of the number of parties participating in ownership, those parties shall be treated as a group as one "Unit Owner".

Article II

Improvements, Units and Ownership

2.1 **Description of Improvements** The Improvements are described on the Plat. The Plat indicates the number of Units which are contained or to be contained in the Buildings which comprise the Improvements. Other significant facts relating to the Common Areas are included in the Plat. The Unit Numbers and the square footage of each Unit are set forth below.

The Condominium Project consists of one (1) Building, the Building consists of a total of 6 units. This Building is principally built of conventional wood, steel, stone and brick construction. The roof trusses are steel and the roofing material is epdm (rubberized roofing). This Building consists of a single story, however each Unit is capable of interior construction to create a second story. There are also related Improvements consisting of parking facilities, landscaping and signage, and other Common Facilities.

Unit #	Percentage Ownership	Square Footage	Votes
1	14.130	3950	14.130
2	17.174	4800	17.174
3	17.174	4800	17.174
4	17.174	4800	17.174
5	17.174	4800	17.174
6	17.174	4800	17.174
Total	100%	27950	100%

The Common Areas and Facilities shall remain undivided. No Unit may be further subdivided without the express written consent of the majority of the Board of Directors, amendment of this Declaration pursuant to Section 10.5, and compliance with St. George City subdivision ordinances, except that Declarant reserves the right to, without further consent of the Owners, unilaterally amend this Declaration and subdivide any Unit or portion of a Unit owned jointly or individually by Declarant, their successors and assigns in compliance with St. George City subdivision ordinances. Units may be combined in use if owned by the same Unit Owner, or if more than one Unit Owner formally agrees to do so, but such combination shall not be deemed to legally combine or merge said Units nor shall the Unit Owner have any greater interest in the Common Areas, any greater liability for assessments, or any greater voting power than is provided by summing the rights respective to each Unit Owned. Combination of Units in use shall not be a bar to subsequent severed use of the Units. No Unit Owner shall execute any deed, mortgage, lease or other instrument conveying, leasing, or otherwise encumbering title to the Unit without including therein all interests appurtenant thereto, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage or other such instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed

and taken to include the interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of any interest appurtenant to any Unit may be sold, transferred, or otherwise disposed of, except as part of a sale, transfer or other disposition of the Unit to which such interest is appurtenant.

- 2.2 **Transfer of Common Areas** Any deed, mortgage, deed of trust, sales contract or other instrument conveying or encumbering a Unit shall be conveyed with the appurtenant Percentage of Ownership interest in the Common Areas as set forth herein.
- 2.3 **Partition Not Permitted** The Common Areas shall be owned in common by all the Owners of Units, and no Owner may bring any action for partition thereof.
- 2.4 **Separate Mortgages by Owners** Each Owner shall have the right separately to mortgage or otherwise encumber his Unit. No Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas or any part thereof.
- 2.5 **Taxation of Units** Each Unit within the Project, including each Unit's appurtenant percentage in the Common Areas, shall be deemed to be a parcel and shall, upon conveyance of any Unit by Declarant, be assessed separately for all taxes, assessments, and other charges of any political subdivision, or of any special improvement district, or of any other taxing or assessment authority. For purposes of such assessment, the valuation of the Common Areas shall be apportioned among the Units in proportion to the percentage interest appurtenant to such Units. All such taxes, assessments, and other charges of each respective Unit shall be separately levied against the Unit Owner thereof. No forfeiture of sale of any Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Unit.
- 2.6 **Rules and Regulations** The Board of Directors may make reasonable rules and regulations governing the use of the Units and of the Common Areas, which rules and regulations shall be consistent with the rights and duties established in this Declaration. Such rules and regulations may include, without limitation: (i) a requirement that draperies, shades, or other interior window coverings, including the interior surfaces of any window or door glass used in Units shall present a uniform appearance of type and color from the exterior of any Building or all Buildings and that the Board of Directors shall have the right to inspect and re-inspect and approve all proposed draperies, shades, or other interior window coverings to ensure compliance with such rules before installation thereof in a Unit; and (ii) that Units conform to standardized regulations regarding appearance, maintenance and modifications thereof. The Association may suspend any Owner's voting rights in the Association during any period or periods during which such Owner fails to comply with such rules and regulations, or with any other obligations of such Owner under this Declaration. The Association may also take judicial action against the Owner to enforce compliance with such rules, regulations, or other obligations, or to obtain damages for non-compliance, all to the extent permitted by law.
- 2.7 **Title to the Common Area** Each Unit Owner shall be entitled to an undivided interest in the Common Area and Facilities according to each Unit Owner's percentage of Ownership as

set forth herein.

2.8 **Owners' Easements of Enjoyment** Every Owner has a right and easement of use and enjoyment in and to the Common Area. This easement is appurtenant to and passes with the title to every Unit, subject to:

- a. the right of the Association to suspend the voting rights and/or common utility service of a member for any period during which any assessment or portion thereof against his Unit remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of this Declaration, the Bylaws, and any published rules and regulations;
- b. the right of the Association, with the approval of seventy-five percent (75%) of each class of owners, to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the Common Area or any interest therein to any private individual, corporate entity, public agency, authority, or utility;
- c. the right of the Association to grant easements for water, sewer, gas, telephone, electricity and drainage purposes;
- d. the right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure;
- e. the terms and conditions of this Declaration; and
- f. the right of the Association, through its Directors, to adopt rules and regulations concerning use of the Common Area.

Article III

Owners Association

3.1 **Membership** Each Unit Owner shall automatically become a member of the Association until such time as his Ownership ceases, at which time his membership in the Association shall cease.

3.2 **Voting** Each Unit Owner shall be entitled to the number of votes set forth above. The assessments shall be charged by the Association based on the percentage of Ownership in the Common Areas of the Project. Until the later of (a) the date which is three (3) years after the recording of the Declaration, or (b) the date the Declarant shall own less than seventy-five percent (75%) of the Common Areas in the Project, the Declarant shall determine all assessments levied. However, under all circumstances, assessments levied to any Unit Owner shall be determined by his percentage ownership of the Common Areas. In the event there is more than one owner of a particular Unit, the voting relating to such Unit shall be exercised as such owners may determine among themselves. A vote cast at any Association meeting by any of such owners, whether in person or by proxy, shall be

conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another owner of the same Unit. In the event such objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

3.3 **Association** For a period of five (5) years from the date of filing the Association Articles of Incorporation, Declarant, at its option, shall have the right to appoint the Board of Directors of the Association. The Board of Directors may establish, amend and repeal rules and regulations governing the use of the Common Areas, parking restrictions, and restrictions on other activities on the Property, including all construction and improvements made within a Unit.

3.4 **Professional Management** The Board of Directors may employ a professional manager or other or other persons as independent contractors, not as agent or employee of the Association, to perform all or any part of the duties and responsibilities of the Association. Any contract with a person or firm appointed as a Manager shall be terminable by the Board of Directors for cause upon thirty (30) days written notice thereof. Any such contract to furnish goods or services for any Common Areas of the Association shall be limited to a duration of three (3) years; provided, however, that such contract may be renewable for successive one (1) periods with the approval for each such period by a vote or written consent of a majority of the Board of Directors.

Article IV

Functions of the Association

4.1 **Assessments** To help promote the health, safety, and welfare of the Owners, the Association shall have the authority to levy assessments for the Common Expenses of the Project. The following are the basic items for which assessments may be levied, but the Association at its discretion shall have the authority to create additional items to insure the health and welfare of the Unit Owners of their property:

- payment of taxes, insurance, and common utility charges;
- payment of repairs, replacements, and maintenance of the Common Areas and Facilities;
- establish an adequate reserve fund for the replacement of the Common Areas and Facilities;
- payment of administrative expenses of the Association; and
- payment of Common Area monthly maintenance fees including, but not limited to, trash removal, janitorial services, window cleaning, landscape maintenance, parking lot cleaning and snow removal, Common Area water and power costs

4.2 **Personal Obligation and Lien** Each Unit Owner shall, by acquiring or in any way becoming vested with his interest in a Unit, be deemed to covenant and agree to pay the

Association the monthly and all other assessments described in this Article, together with reasonable attorney fees, interest and costs of collection. All such amounts shall be, constitute, and remain:

- a. a charge and continuing lien upon the Unit with respect to which such assessment is made; and
- b. the obligation of the person who is the Owner of such Unit at the time the assessment falls due. No Owner may exempt himself or his Unit from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Unit. In a voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all such unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorney fees, which shall be a charge on the Unit at the time of conveyance, without prejudice to grantee's right to recover from the grantor the amounts paid by grantee therefore. Any such lien, however, shall 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.

4.3 **Purpose of Assessments** Assessments levied by the Association shall be used exclusively for the purpose of paying the Common Expenses and promoting the maintenance, health, safety, and welfare for the residents of the Project. The use made of the Association funds obtained from Assessments may include, without limitation, payment of the cost of: taxes, insurance, management and supervision of the Common Areas, including personal property owned by the Association; establishing and funding a reserve to cover a major repair or replacement of improvements within the Common Areas; any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration.

4.4 **Monthly Assessments** The initial monthly assessment shall be calculated on the basis of the square footage of the Unit multiplied by \$0.07 and shall be payable on the first day of each month. Except as otherwise provided in this Declaration, the amount of Monthly Assessments for any calendar year shall be as determined by the Association Budget for that calendar year, not accounting for Special Assessments, Additional Assessments, Individual Assessments, and such other assessments as permitted under this Declaration. Each Unit Owner's obligation for such assessments shall be determined by the Owner's fractional ownership interest in the Common Area. Declarant shall not be required to pay the monthly assessment nor any other assessment for any Unit that is not certified for occupancy.

4.5 **Basis of Monthly Assessments** Each Unit which is certified for occupancy shall be assessed according to the schedule set forth herein. Every Unit Owner shall pay his proportionate share of the Common Expenses. Assessments shall commence as to all Units in a phase on the first day of the month immediately following the first close of sale of a Unit in that phase. Payment thereof shall be in such amounts and in such intervals as the management Committee determines in accordance with the Act, this Declaration, or the Bylaws. The total monthly assessments against all Units shall be based among other

things, on the expense growing out of or connected with the maintenance and operation of the Common Areas (including management, grounds maintenance, taxes, insurance, lighting, heating, water, trash collection, snow removal, sewer service, repairs and maintenance, wages of Association employees, legal and accounting fees, and other related and necessary expenses) reasonable contingency for reserves; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Unit Owners under or by reason of this Declaration.

4.6 **Apportionment of Monthly Assessments** Expenses attributable to the Common Areas and to the Project as a whole shall be apportioned among all Unit Owners in proportion to their respective percentage interests.

4.7 **Special Assessments** In addition to the monthly assessments authorized by this Article, the Association may levy in any assessment year a Special Assessment, payable over such period of time as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any 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. Any amounts assessed pursuant hereto shall be assessed to Unit Owners in proportion to their respective percentage interest.

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.

A special Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

4.8 **Additional Assessments** In addition to the monthly assessments and Special Assessments authorized herein, the Association shall levy such assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to Common Areas from the activities of the City of St. George in maintaining, repairing or replacing utility lines and facilities thereon, it being acknowledged that the ownership of utility lines, underground or otherwise, is in the City up to and including the meters for individual Units, and that they are installed and shall be maintained to City specifications. All common areas, parking areas and private accesses shall have an easement for telephone, sewer, gas water, power and drainage for the installation and maintenance of improvements and such easements shall be subject to the right of the city of St. George to require the association to assess its members to repair or replace accesses or utilities where needed.

4.9 **Individual Assessments** Each Unit Owner shall also be assessed from time to time for (i) all fines, penalties and damages to which said Unit Owner is subject as a result of a violation of the terms of this Declaration and the rules and regulations prescribed by the Board of Directors; (ii) for damages caused to the Common Areas by the negligence or willful misconduct of such Unit Owner or his patrons, guests, invitees, or assignees, (child or adult); and (iii) for any other liability, indebtedness, or other obligation of the Unit Owner to the Association arising under the provisions of the Declaration. Notice of all

Individual Assessments shall be given by the Board of Directors to the Unit Owner assessed within fifteen (15) days of the adoption of the Individual Assessment. Individual Assessments shall be due and payable within thirty (30) days following written notice thereof by the Committee and shall bear interest thereafter at the rate of eighteen percent (18%) per annum.

4.10 **Lien for Assessments**

- a. Each monthly assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date. Failure of the Association to give timely notice of any Assessment shall not affect the liability of the Owner for such assessment. The Owner shall be responsible for all costs, expenses and attorney fees incurred in collection of delinquent assessments.
- b. All sums assessed to any Unit pursuant to this Article, together with interest thereon as provided herein, 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: (i) valid tax and special Assessment liens on the Unit in favor of any governmental assessing authority; and (ii) encumbrances on the interest of the Unit Owner recorded in the official records of the Washington County Recorder prior to the date a notice (as provided therein) is recorded which by law would be a lien prior to subsequently recorded encumbrances, including all unpaid obligatory advances to be made pursuant to such encumbrances and all amounts advanced pursuant to such encumbrances and secured by the lien thereof in accordance with the terms of such instrument. All other Mortgagees and lienors shall be deemed to consent that such liens 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.
- c. To evidence a lien for sums assessed pursuant to this Article, the Association shall prepare a written notice of lien setting forth the amount of the Assessment, the date due, the amount remaining unpaid, the name of the Unit Owner and a description of the Unit. Such a notice shall be signed by the President of the association and shall be recorded in the official records of the Office of the County Recorder of Washington County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by non-judicial power of sale or by judicial foreclosure by the Association in the same manner in which deeds of trust or mortgages on real property are foreclosed in the State of Utah. In any such sale or foreclosure, the Unit 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 reasonable attorney fees. All such costs, expenses and fees shall be secured by the lien being foreclosed. The Unit Owner shall also be required to pay to the Association any assessments against the Unit, which shall become due during the period of foreclosure. The Association shall have the right and power to bid any amount up to 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 Unit as the Owner thereof.

d. A release of notice of lien shall be executed by the President of the Association and recorded in the official records of the Office of the County Recorder of Washington County, State of Utah, upon payment of all sums secured by such lien which has been made the subject of a recorded notice of lien.

4.11 **Foreclosure/Suit.** A lien for nonpayment of the Common Expenses, whether for Annual Assessments or Special Assessments, may be levied by the Association. The Association may, at its option, enforce a foreclosure sale of any Unit Owner's Unit for nonpayment of any assessment or file suit. Each holder of a first mortgage (or deed of trust) on a Unit and any purchaser from it who comes into possession of the Unit by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or pursuant to power of sale or otherwise will take the Unit free of, and shall not be liable for, any claims for unpaid assessments and charges against the Unit which accrue prior to the time such holder comes into possession of the Unit.

4.12 **Statement of Account.** Upon payment of a reasonable fee, not to exceed Ten Dollars (\$10.00), or such higher amount as the Act may allow, and upon written request of any Owner or any Mortgagee, prospective Mortgagee or prospective purchaser of a Unit, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to a Unit; the amount of the current yearly assessment and the date that such assessment becomes or became due; the amount of any credit for advance payments or prepaid items, including, but not limited to, such Owner's shares of prepaid insurance premiums; and such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within ten (10) days, or such longer period allowed by the Act, all unpaid assessments which became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquires its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessment and the personal obligation of the purchaser shall be released automatically if the statement is not furnished within the ten (10) day period provided herein and thereafter an additional written request is made by such purchaser and is not complied with by the Association within ten (10) days, and the purchaser subsequently acquires the Unit.

Article V

Insurance

5.1 **Project Insurance and Property Damage.** The Association shall keep in force at all times:

- a. A blanket multi-peril policy covering fire and earthquake for the full replacement value of the Buildings, excluding items such as land, landscaping and other such items.
- b. A comprehensive policy of public liability insurance covering all of the Common Areas in the Project with a Severability of Interests Endorsement of equivalent

coverage which would preclude the company from denying the claim of a Unit Owner because of the negligent acts of the Association or other Unit Owner with limits not less than \$1,000,000.00 covering all claims for personal injury and/or property damage arising out of a single occurrence, including liability for property of others and such other risks as are customarily covered in similar projects.

5.2 **Additional Requirements** Any Insurance obtained pursuant to the preceding Section shall provide that:

- a. the name of the insured shall be the Association as the trustee for the Unit Owners and shall have standard mortgage clauses;
- b. Insurance coverage obtained and maintained pursuant to the requirements of the preceding Section may not be brought into contribution with insurance purchased by the Unit Owner or their mortgagees, and the coverage shall in any event be primary;
- c. Coverage must not be prejudiced by any act or neglect of the Unit Owners when such act or neglect is within the control of the Association or by failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no control;
- d. Coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to any and all insureds, including holders of first mortgages who have filed written requests for such notices including its name and address and the Unit number on which it holds the mortgage;
- e. The insurer shall waive subrogation as to any and all claims against the Association, the Owners of any Unit and/or their respective agents, employees or tenants, and of any defenses based on co-insurance or on invalidity arising from the acts of their insured; and
- f. Any provision that the carrier may elect to restore damage in lieu of a cash settlement shall not be exercisable without the prior written approval of the Association or when in conflict with any requirement of law.

5.3 **Use of Proceeds** Except as provided by statute, in case of substantial loss to the Units and/or Common Areas and Facilities of the Condominium project unless at least two-thirds (2/3) of the First Mortgagees and the Unit Owners have given their prior written approval, the Association shall not be entitled to use hazard insurance proceeds for losses to any condominium property other than the repair, replacement or reconstruction of such condominium property.

5.4 **Premiums** Any insurance premium shall be a part of the Common Expenses.

5.5 **Individual Unit Owners' Insurance** Insurance obtained by the Association shall not prejudice the rights of the individual Unit Owners to obtain insurance, and said Unit Owners shall insure their personal property and installed fixtures.

Article VI

Damage/Condemnation

Damage to or destruction of all or any portion of the Common Areas and condemnation of all or any portion of the Common Areas shall be handled in the following manner:

- a. Subject to Section 5.3, if the Common Areas are damaged or destroyed, the Association shall first utilize insurance proceeds and second reserve funds to cause the same to be repaired and reconstructed substantially as they previously existed.
- b. If the cost of effecting total restoration of such Common Areas exceeds the amount of insurance proceeds and reserve funds, the Association shall cause the same to be repaired and reconstructed substantially as they previously existed, and the difference between the insurance proceeds and the actual cost shall be levied as a Special Assessment against each unit and its respective Owner.
- c. To the extent of funds available for restoration, any restoration or repair of such Common Areas shall be performed substantially in accordance with the original plans and specifications as may be approved by the Board.
- d. Each Member shall be liable to the Association for any damage to the Common Areas or Improvements thereon sustained by reason of the negligence or willful misconduct of said Member or the Persons deriving their right and easement of use and enjoyment of the Common Areas from said Member, or of his respective patrons and guests, both minor and adult. In the event of such damage to the Common Areas or Improvements thereon, the board may either assess a penalty under the Rules and Regulations established by the Board in an amount sufficient to pay all costs of the Association attributable to such damage, including deductibles and increase in insurance premiums, if any, or the Board may repair the damage to the Common Areas or Improvements thereon with the proceeds from the Association's insurance and assign to the Association's insurance company its claims against the Member who, by his own acts or the acts (both minor and adult) of his patrons, guests, invitees, or assignees, damaged the Common Areas or Improvements thereon. In the case of joint ownership of a Unit, the liability of the Owners thereof shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary.
- e. If at any time the Common Areas, or any part thereof, shall be taken or condemned by any authority having the power of eminent domain, the Association shall represent the Unit Owners in these proceedings, negotiations, settlements or agreements. All compensation and damages shall be payable to the Unit Owners in proportion to the percentage of their Unit condemned and their fractional ownership in that part of the Common Areas condemned,

Article VII

Use Restrictions

- 7.1 Use of the Common Area The Common Area and Facilities shall be used only in a manner

consistent with the community nature. Utility installation necessary and appurtenant to individual Units may be located in the Common Areas with the written consent of the Association.

7.2 **Use of Units** The Property shall only be used for those uses and categories of uses, from time to time permitted within the applicable commercial zone of the City, but in all events, consistent with the use restrictions incorporated in this Article. Notwithstanding the foregoing, no Unit shall be used for any purpose without the prior approval of the Board, which may be denied notwithstanding that the use is allowed and permitted under the applicable commercial zone of the City. No Unit shall be used, occupied, or altered in violation of law so as to create a nuisance or interfere with the rights of any Unit Owner, or in any way which would result in an increase in the cost of insurance covering the Common Areas. If there is a question or disagreement among Unit Owners as to whether or not a particular business can lease or purchase one or more of the Units in the Riverside Towers Commercial Center, that issue shall be determined by at least a two-thirds (2/3) affirmative vote of the Board of Directors. No Unit Owner or tenant shall occupy any unit if the nature of that business is in violation with any city zoning ordinance or law.

7.3 **Maintenance** It shall be the responsibility of the Association to maintain, replace or repair:

- a. all exterior landscaping;
- b. all fixtures, floor coverings, railing, building supports, equipment and decor in the Common Areas;
- c. All portions of the Units which constitute a part of the exterior of the building or which front the Common Areas; and
- d. Any damage created by work done directly by the Association, its agents or employees.

7.4 **Heating and Air Conditioning Units** It shall be the obligation of the unit owner at its sole cost to not only provide regular service and maintenance of the heating and air conditioning equipment, but also repair and replacement of the same,

7.5 **Owner's Maintenance obligations** It shall be the responsibility of the Unit Owner to:

- a. maintain, repair or replace any portion of his Unit, including but not limited to any portion which may cause injury or damage to other Units or to the Common Areas and Facilities;
- b. paint, wallpaper, decorate and maintain the interior surface of all walls, ceilings and floors within the Unit as well as the plumbing, heating, and air conditioning for his Unit;
- c. perform his responsibilities in such a manner and at such reasonable hours so as not to unreasonably disturb other Unit Owners in the Building; and
- d. refrain from repairing, altering, replacing, painting, decorating, or changing the exterior of the Unit or any exterior appendages whether exclusively used by the Unit Owner or otherwise without obtaining the written consent of the Association.

7.6 **Association' Rights to Maintain Units** In the event that any Unit shall develop an

unclean or unsanitary condition or fall into a state of disrepair, and, in the event that the Owner of such Unit shall fail to correct such condition or state of disrepair promptly following written notice from the Association, the Association shall have the right, at the expense of the Owner, and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary or unclean condition or state of disrepair; provided, however, that the Association shall in no event have the obligation to correct or eliminate any such condition or state of disrepair.

All costs incurred by the Association for such work shall be collected by the Association as an Individual Assessment upon such Unit.

- 7.7 **Alteration or Improvement** No structural alteration shall be made to any Unit. No alteration or improvement to any Unit, which would alter the Common Areas may be made by any Unit Owner without the written consent of all Unit Owners. No application shall be filed with a governmental authority for a permit covering an addition, alteration or improvement to be made in a Unit which alters or affects the Common Areas unless approved and executed by all Unit Owners. Such approval and execution shall not, however, incur a liability on the part of the Association, or any of its Directors, officers, or members, to any person or entity, including but not limited to contractors, subcontractors, materialmen, architects, or engineers by reason of such addition, alteration or improvement, or to any person having any claim for injury to person or damage to property arising therefrom. Consent shall be requested in writing. The Association shall have the obligation to answer within thirty (30) days and failure to do so within that stipulated time shall mean that there is no objection to the proposed modification or alteration. The Association may require that the Unit Owner making such improvement, alteration or addition obtain such insurance coverage and in such amounts as the Association deems proper. No improvement or work of improvement including additions to or change or alteration to, a Unit shall be made until the complete plans and specifications showing the nature, kind, shape, height, and materials, including the color scheme and location of same shall have been submitted for approval to the Board of Directors, or the Declarant, if no Board has been formed (references to the Board of Directors shall also mean the Declarant if the Board of Directors has not been formed). The Board shall only approve the proposed work if it is substantially in harmony and compliance with the color scheme, shape, height, design, and use of materials that are provided for in this Declaration and that are found in the then existing Improvements in the Property. The Board will not permit any work to be done that requires a building permit without the approval being conditioned on providing a copy of the building permit to the ACC before the work commences. The Board shall approve or disapprove such design and location in writing within thirty (30) days after said plans and specifications have been submitted to it. In the event the Board fails to approve or disapprove such location, plans, and specifications or other requests within thirty (30) days after the submission thereof to it, then such approval will not be required, provided that any structure or Improvement so erected or altered, conforms to all of the conditions and restrictions herein contained, and is in harmony with similar structures erected within the Property. This approval required by this provision shall not apply to Declarant. Similarly, if an Owner desires to rent his Unit or a portion thereof to a tenant, the Owner must first obtain approval from the Board.

- 7.8 **Prohibited Uses** No part of the Property shall be used for any residential purpose. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Areas and Facilities which is in violation of any law, ordinance, or regulation of any governmental authority. No hazardous waste or substance shall be discharged or kept on the Property in such quantities and/or in containers as may be prohibited by federal, State, or local law. The Unit Owner in violation of this provision shall hold harmless and indemnify Declarant and the Association from and against all charges, fines, penalties, claims, causes of action, and costs (including attorney fees).
- 7.9 **Signs** Except for one "For Rent" or "For Sale" sign of not more than two (2) square feet, which may be placed in the window of a Unit, and directional signs, no signs of any type, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of Declarant or their agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time. The Declarant shall control style, design and location of all signage on any exterior surface of the building including all parapet surfaces.
- 7.10 **Quiet Enjoyment** No offensive activities shall be carried on in any part of the Condominium Project nor any activity which shall interfere with the quiet enjoyment of each Unit Owner or his tenants, or clients, guests or invitees.
- 7.11 **Garbage Removal** All trash and garbage shall be removed regularly from each Unit and placed in the bin provided by the Association. Disposal of any hazardous or contaminated waste or substances and all pollutants must be removed according to applicable governmental regulations at the expense of the Unit Owner. The Declarant or Association may, at its discretion, levy a surcharge to any Unit Owner if the Unit Owner of the occupant or tenant is creating an excessive amount of garbage as to require additional dumping charges.
- 7.12 **Parking** The parking areas closest to the Building shall be reserved for customers, patrons, clients, and similar persons receiving services from Tenants or Owners. Declarant reserves the right to, at its election, designate private parking areas.
- 7.13 **Animals** No animal of any kind, except fish in aquariums and animals which are companions of the visually impaired, shall be permitted on the Property.
- 7.14 **Unit Owner Responsibility** Each Unit Owner or his manager shall be responsible to ensure that his tenants comply with every provision of this Declaration.

Article VIII

Easements

- 8.1 **Utilities** There is hereby created a blanket easement upon, across, and under other

Building and all of the Common Areas for the maintenance, repair and replacement of all utilities accessing the Condominium Project.

8.2 **Police, Fire, and Ambulance Services** An easement is hereby granted to all City, County, and State emergency vehicles.

8.3 **Maintenance by the Association** An easement is hereby granted to the Association and any of its agents, employees, or assigns to maintain, repair or replace any items or equipment, on the Common Areas or within the individual Units. In the case of an emergency, the Association shall have the right to enter into any Unit in the Condominium Project to perform duties or repairs.

8.4 **Easement for Encroachments** 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 of the same shall and does hereby exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit or Units, as easement for such encroachment and for the maintenance of the same shall and does exist. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Buildings, by error in the Plat, by settling, rising or shifting of the earth, or by change in position caused by repair or reconstruction, of the Project or any part thereof.

8.5 **Easement for Access to Units** Each Owner 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, if any, designated for use in connection with his Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

8.6 **Easement for Access for Construction, Maintenance, Repair and Emergencies** Some of the Common Areas are or may be located within the Units or may be conveniently accessed only through the Units. The Declarant and the Unit Owners shall have the irrevocable right, to be exercised by Declarant or the Association (or the agents or Declaration or the Association) as the Unit Owner's agent, to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the construction of other Units, including without limitation plumbing, electrical and drainage, where maintenance, repair or replacement of any of the Common Areas and Facilities located therein or accessible therefrom from making emergency repairs therein necessary to prevent damage to the Common Areas or to another Unit or Units. The Association shall also have such right independent of any agency relationship. Damage to the interior of any part of a Unit or Units resulting from the construction, maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result or emergency repairs within another Unit at the instance of Declarant or the Association or of Owners shall be an expense of the person or entity causing the damage. Such damage shall be repaired and the property shall be restored substantially to the same condition as existed prior to the damage. Amounts owing by Owners pursuant hereto shall be collected by the Association as an Individual Assessment.

8.7 **Reservation of Easements by Declarant** Declarant hereby reserves such easements and

right of ingress and egress over, across and through the Common Area to complete the Project. Declarant further reserves unto itself, and for the sole benefit of Declarant, its successors and assigns, easements (appurtenant and in gross) over, across, through and under the Common Area, including specifically but without limitation, to the entire roof area and 8 ft. down from the top of the parapet face for signage and communication devices ("Signage & Communication Easements"). The Declarant, its successors and assigns, may for their benefit assign, lease or convey such Signage and Communication Easements to private or public entities or communication companies. Such Communication Easements include the right to install pads for any emergency power supply on the Common Area, provided the pad areas are landscaped to shield the emergency power supply from view.

Article X

General Provisions

- 10.1 **Enforcement** The Declarant, the Association, or any Unit Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, conveyances, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration, including, but not limited to, any proceeding at law or in equity against any person or persons violating any covenant or restriction either to restrain violation or to recover damages, and against the land to enforce any lien created by those covenants. Failure of the Association or any Unit Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In any proceeding arising because of an alleged default by a Unit Owner, the prevailing party shall be entitled to recover costs of the proceeding and such reasonable attorney fees as may be determined by the court.
- 10.2 **Non-Liability of Board** Neither the Board of Directors, officers or members of the Association shall be liable to any guest, invitee, lessee, tenant, Owner, member or other individual for mistakes in judgment, or for any negligence or nonfeasance arising in connection with the performance or nonperformance of duties under this Declaration or the Bylaws.
- 10.3 **Severability** All of the conditions, covenants and reservations contained in this Declaration shall be construed together, but if any one of said conditions, covenants, or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or reservation, or any part thereof shall be either affected or impaired; and the Association and Owners, their successors, heirs, and assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.
- 10.4 **Duration** The conditions, covenants and restrictions of this Declaration shall run in perpetuity with and bind the land, and shall inure to the benefit of and be enforceable by the Association, Declarant, or the Unit Owners subject to this Declaration, their respective legal representatives, heirs, successors, and assigns.

- 10.5 **Amendments** Except as provided for in Article X, the covenants, conditions and restrictions of this Declaration may be amended by an instrument signed by Unit Owners holding not less than seventy-five percent (75%) of the ownership of the Common Areas. Any amendment must be properly recorded in the records of Washington County, Utah to become effective.
- 10.6 **Notices** Any notice required to be sent under the provisions of this Declaration shall be conclusively deemed to have been given when deposited in the U.S. Mail, postage paid, to the last known address of the person who is entitled to receive it.
- 10.7 **Waivers** No provision contained herein shall be deemed to have been waived by reason of any failure of the Association to enforce it irrespective of the number of violations which may occur.

Article XI

Assignment of Powers

Any and all rights and powers of the Declarant herein contained may be delegated, transferred, or assigned. In the event of any such transfer of Declarant right, the Declarant shall have assigned all of its rights herein and shall be relieved from and after the date of such transfer of all liability and obligations hereunder, and the Successor Declarant(s) shall have all the rights and obligations of Declarant contained herein.

Article XII

Service of Process

- 12.1 **Registered Agent** Michon Palmer shall initially serve as agent for service of process in cases authorized by the Utah Condominium Ownership Act. Her address is 1906 So Stone Canyon Dr. St. George Utah 84790. The Association shall have the right to appoint a successor or substitute agent for service of process. Such successor or substitute agent and his or her address shall be specified by an appropriate instrument filed in the Office of the County Recorder of Washington County, State of Utah, and the Utah Division of Corporations and Commercial Code.
- 12.2 **Limitation of Liability** Neither Declarant nor the Association shall be liable for any failure of water service or other utility service to be obtained and paid for by the Association, or for any injury or damage to any person or property caused by the elements or by another Owner or person in or upon the Project, or resulting from electricity, water, rain, snow or ice which may leak or flow from outside or from any part of the Buildings, or their drains, pipes, conduits, appliances or equipment, or from any other place, unless caused by the negligence or willful misconduct of the Association. No diminution or abatement of any assessment under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Project or any part thereof, or from any action taken to comply with the

BYLAWS
OF
RIVERSIDE TOWERS
OWNERS ASSOCIATION, INC.

ARTICLE I
NAME AND LOCATION

The name of the corporation is RIVERSIDE TOWERS OWNERS ASSOCIATION, INC., hereinafter referred to as "Association." The principal office of the Association shall be located at 1906 South Stone Canyon Drive, St. George, Utah 84790, but meetings of Members and Directors may be held at such places within the State of Utah, County of Washington, as may be designated by the Board of Directors. The Board of Directors may also change the location of the principal office of the Association.

ARTICLE II
DEFINITIONS

Section 1. "Expandable Land" means and refers to those portions of land annexed to the Property.

Section 2. "Board of Directors" means and refers to the governing board of the Association.

Section 3. "Common Area" means the areas designated "Common Area" on the Plat and shall specifically include, but not be limited to:

- a. the real property within the Project as described on the Plat as common area;
- b. the portion of the Property not specifically identified as a Unit on the Plat;
- c. all foundations, columns, girders, beams, supports, main walls, roofs, exterior walkways, driveways, streets (if any), yards, planting areas, fences, service and parking areas, entrances, exits, and in general all other apparatus, installations and other parts of the Property necessary or convenient to the existence, maintenance and safety of the Common Areas and facilities or normally in common use;
- d. installations of central service, such as water, power, elevator, and any other equipment existing in common use, such as heating and air conditioning equipment;
- e. the area specifically set forth and designated on the Plat as Common Area of common ownership; and
- f. all Common Areas and Facilities, whether or not specifically defined herein.

Section 4. "Conveyance" means and refers to an actual conveyance of fee title to any Unit to any Unit Owner by a warranty deed or other document of title.

Section 5. "Declarant," means Riverside Towers, LLC, its successors and assigns.

Section 6. "Declaration" means and refers to the Declaration of Covenants, Conditions and Restrictions applicable to the Property recorded in the office of the Recorder of Washington County, State of Utah, and any amendments thereto.

Section 7. "Owners Association" or "Association" means and refers to the RIVERSIDE TOWERS OWNERS ASSOCIATION, INC., a Utah non-profit corporation, and its successors and assigns.

Section 8. "Unit Number" shall mean the number, letter or combination thereof designating a Unit within the project.

Section 9. "Limited Common Area" means the area designated on the Plat as dedicated to the exclusive or joint use and enjoyment for a particular Unit Owner or Owners and their customers, clients, guests and invites, and any shutters, awnings, window boxes, door steps, balconies, patios, or other apparatus intended to serve such Unit or Units, but located outside the boundaries of the Unit or Units.

Section 10. "Unit" shall mean a separate physical unit of the Property intended for independent use, consisting of rooms or spaces located in a Building as designated on the Plat and the percentage interest appurtenant thereto. Mechanical equipment and appurtenances located within any one unit or located without said Unit but designated and designed to serve only that Unit shall be considered part of that Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim, consisting of, among other items and, as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits or other utility lines or installations constituting a part of a Unit and serving only such Unit, and any structural members or any other property of any kind, including fixtures and appliances within such Unit, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the Building within such Unit is situated shall be considered part of the Unit. A Unit shall not include pipes, wires, conduits, or other utility lines running through it which are used for or which serve more than one Unit, and shall not include any load-bearing walls or floors comprising a part of the Building in which the Unit is located. Each Unit shall include its appurtenant percentage interest in the Common Areas and Facilities.

Section 11. "Member" shall mean a member of the Association.

Section 12. "Unit Owner" means the entity, person or persons, or group owning a Unit in fee simple and an appurtenant undivided interest in the fee simple estate of the Common Areas. Regardless of the number of parties participating in ownership, those parties shall be treated as a group as one "Unit Owner".

Section 13. "Project" means all of the units along with the Common Area shown on the Plat.

Section 14. "Supplementary Declaration" means and refers to any supplementary declaration of covenants, conditions, and restrictions or similar instrument, which may extend the provisions of the Declaration to all or any portion within the Expandable Land and containing such complementary or amended provisions for such additional land as are required by the Declaration.

Section 15. "Voting Power" The Association shall have two classes of voting membership:

(a) Class A. Class A Members shall be all owners of units within Riverside Towers, with the exception of Riverside Towers, LLC (hereinafter the "Developer"). Class A Members shall be entitled to the vote set forth below for each Unit owned, except that when more than one person or entity owns an interest in any Unit, the membership for such Unit shall be shared among the owners of that particular Unit and the vote appurtenant to such Unit shall be exercised as they jointly determine, but in no event shall more than the vote appurtenant to that Unit be cast with respect to any such Unit.

Unit #	Percentage Ownership	Square Footage	Votes
1	14.130	3950	14.130
2	17.174	4800	17.174
3	17.174	4800	17.174
4	17.174	4800	17.174
5	17.174	4800	17.174
6	17.174	4800	17.174
Total	100%	27950	100%

(b) Class B. The Class B Member shall be Riverside Towers, LLC, which shall be entitled to five (5) votes for each Unit owned. The Class B membership shall cease and be converted to Class A membership on the later of 5 years from the organization of the Association or when 75% of the Units have been sold.

Other Voting Rights. All other voting procedures to which the Members are subject are set forth in the Declaration of Covenants, Conditions & Restrictions for Riverside Towers, including any supplements or amendments thereto.

**ARTICLE III
MEETING OF MEMBERS**

Section 1. Annual Meetings. The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held on the same day each year thereafter. If the day for

the annual meeting of the Members is a legal holiday or weekend day, the meeting will be held on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the president or by the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4) of the Voting Power.

Section 3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day, and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. Written notice to a Member of a meeting is unnecessary if a waiver of notice is signed by that Member.

Section 4. Quorum. The quorum required for any action authorized by these Bylaws, except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws, shall be as follows: at the first meeting called, the presence of Members or of proxies entitled to cast at least a majority of all the Voting Power of the Association shall constitute a quorum. If a quorum is not present at the first meeting or any adjournment thereof, another meeting may be called at which meeting a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the immediately preceding meeting.

Section 5. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Unit.

ARTICLE IV

BOARD OF DIRECTORS: SELECTION, TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of not less than two (2) Directors and not more than five (5) Directors, who need not be Members of the Association.

Section 2. Term of Office. At the first annual meeting, the Members shall elect one (1) Director for a term of one (1) year, except during the time that Riverside Towers, LLC appoints the board as set forth in the Declaration recorded against the Project, one (1) Director for a term of two (2) years, at each annual meeting thereafter, the Members shall elect one (1) Director for a term of three (3) years.

Section 3. Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of the Voting Power of the Association. In the event of death,

resignation, or removal of a Director, his successor shall be selected by the remaining Members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual reasonable expenses incurred in the performance of his duties.

Section 5. Action Taken Without A Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

ARTICLE V NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a nominating committee. Nominations may also be made from the floor at the annual meeting. The nominating committee shall consist of a chairman, who shall be a Member of the Board of Directors, and one or more Members of the Association. The nominating committee shall be appointed by the Board of Directors prior to each annual meeting of the Members to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The nominating committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or nonmembers.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two (2) Directors, after not less than three (3) days written notice to each Director.

Section 3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII
POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

1. Adopt and publish rules and regulations governing the use of the Common Areas, and the personal conduct of the Members and their tenants, lessees, guests or invitees thereon, and to establish, impose, assess and collect fines and penalties for the infraction thereof;

2. Suspend the voting rights of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing for a period not to exceed sixty (60) days for infraction of published rules and regulations.

3. Exercise for the Association all powers, duties, and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration.

4. Declare the office of a member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board of Directors.

5. Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 2. Duties. It shall be the duty of the Board of Directors to:

6. Adopt and publish rules and regulations governing the use of the Common Area, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

7. Supervise all officers, agents, and employees of the Association, and to see that their duties are properly performed.

8. Pursuant to the Declaration, establish the annual assessment period and fix the amount of the annual base assessment against each Member for each Unit owned at least thirty (30) days in advance of each annual assessment.

9. Send written notice of each assessment to every Unit Owner subject thereto.

10. Foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action of law against the Unit Owner personally obligated to pay the same.

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

12. Procure and maintain liability and such other insurance on property owned by the Association.

13. Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.

14. Cause the Common Area to be maintained, preserved and kept in good repair.

ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of the Association shall be a president and vice president, who shall at all times be Members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president, or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices, except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

A. **President.** The president shall preside at all meetings of the Board of Directors; see that orders and resolutions of the Board are carried out; sign all leases, mortgages, deeds, and other written instruments; and co-sign all checks and promissory notes.

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

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

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

ARTICLE IX COMMITTEES

The Board of Directors shall appoint such committees as deemed appropriate in carrying out its purposes.

ARTICLE X BOOKS AND RECORDS

The books, records, and paper of the Association shall at all times during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of

Incorporation, and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at a reasonable cost.

ARTICLE XI
ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the Unit against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, or at such other rate as the Board of Directors shall establish from time to time, and the Association may bring an action at law against the Unit Owner personally obligated to pay the same and/or foreclose the lien against the property, and interest, costs, and reasonable attorney fees of any such action shall be added to the amount of such assessment. No Unit Owner may waive or otherwise escape liability for the assessments provided for herein by the non-use of the Common Area or abandonment of his Unit. Notwithstanding the above, Declarant shall pay no assessment (annual, special or additional) unless a Unit owned by Declarant is constructed on a Unit and is occupied.

ARTICLE XII
AMENDMENTS

Section 1. These Bylaws may be amended, at a regular or special meeting of the Members, by approval of a majority of the Voting Power present in person or by proxy.


Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE XIII
MISCELLANEOUS

The fiscal year of the Association shall begin on the 1st day of January and end of the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, we, being all of the Directors of RIVERSIDE TOWERS OWNERS ASSOCIATION, INC. have executed these Bylaws on this 3 day of December, 2009.

Riverside Towers, LLC


Michon Palmer, Manager