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**AMENDED AND RESTATED**  
**DECLARATION OF CONDOMINIUM**  
**for**  
**35 WEST BROADWAY CONDOMINIUMS**

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**EXHIBIT B Bylaws**

**EXHIBIT C Units, Square Footages, Interests in Common Areas**

**AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
FOR  
35 WEST BROADWAY CONDOMINIUMS**

This Amended and Restated Declaration of Condominium (“**Declaration**”) is made as of September 23, 2008, by **Sterling Partners, L.L.C.**, a Utah limited liability company (“**Declarant**”).

**Section 1  
DEFINITIONS**

As used in this Declaration, each of the following terms will have the meaning attributed to it in this Section.

1.1 **Act.** The Utah Condominium Ownership Act, Utah Code §§ 57-8-1 through –40 (2008 General Session), as amended.

1.2 **Area.** The total square footage of the ground or floor surfaces of a Unit, rounded to the nearest whole number. The measurements used in determining Area will run from the interior surfaces of the walls surrounding the Unit. The Area of each separate floor, level, or story in the Unit will be added together when calculating the Area of a Unit. Declarant’s determination of the Area of a Unit, as set forth on Exhibit C to this Declaration and on the Plat, will be conclusive as long as the measurement substantially complies with this Section 1.2 and is not arbitrary.

1.3 **Articles.** The articles of incorporation of the Association, as amended.

1.4 **Assessment.** A General Assessment, Special Assessment, or Default Assessment levied under Section 7.

1.5 **Assessment Lien.** Defined in Section 7.9.

1.6 **Association.** 35 West Broadway Condominium Association, Inc., a Utah nonprofit corporation.

1.7 **Association Documents.** This Declaration, the Articles, the Bylaws, and the Rules and Regulations, as amended.

1.8 **Building.** The structure containing the Units and Common Areas, as shown on the Plat, and having an address of 35 West 300 South, Salt Lake City, Utah.

1.9 **Bylaws.** The bylaws of the Association, as amended. A copy of the Bylaws is attached to this Declaration as Exhibit B.

1.10 **City.** Salt Lake City, a Utah municipal corporation.

1.11 **Common Areas.** The General Common Areas and the Limited Common Areas.

1.12 **Common Expenses.**

(a) any costs, expenses, and liabilities incurred by or on behalf of the Association, including costs, expenses and liabilities of (i) managing, operating, insuring, improving, repairing, replacing, and maintaining the Common Areas (except for the Limited Common Areas to be separately maintained by Owners under this Declaration); (ii) providing facilities, utilities, services, and other benefits to the Project and the Owners; (iii) administering and enforcing the covenants, conditions, rules, restrictions, reservations, and easements created by the Association Documents; (iv) levying, collecting, and enforcing the Assessments, charges, and liens imposed under the Association Documents; (v) regulating and managing the Project; and (vi) operating the Association;

(b) costs and liabilities agreed upon as Common Expenses by the Association or declared to be Common Expenses under the Act or the Association Documents;

(c) reserves for Common Expenses; and

(d) all other sums lawfully assessed against the Owners.

1.13 **Condominium Unit.** A Unit together with:

(a) the Interest in Common Areas appurtenant to that Unit;

(b) the right to the exclusive or nonexclusive use of the General Common Areas and Limited Common Areas appurtenant to that Unit; and

(c) the membership in the Association appurtenant to that Unit.

1.14 **County.** Salt Lake County, Utah.

1.15 **County Records.** The official records of Salt Lake County, Utah.

1.16 **Declarant.** Sterling Partners L.L.C., a Utah limited liability company.

1.17 **Declarant Control Period.** The period beginning on the date this Declaration is recorded in the County Records, and ending at the Turnover Meeting.

1.18 **Declaration.** This Amended and Restated Declaration of Condominium for 35 West Broadway Condominiums, as amended.

1.19 **Director.** A duly elected or appointed member of the Management Committee.

1.20 **Eligible First Mortgagee.** An Eligible Mortgagee who holds a First Mortgage on a Unit.

1.21 **Eligible Mortgagee.** Any Mortgagee of a Unit (or any insurer or guarantor of a Mortgage on a Unit) who has provided a written request to the Association to be notified of any of the events listed in Section 15.1. The written request must state the name and address of the Mortgagee and the street address of the Unit to which its Mortgage relates.



1.22 **First Mortgage.** Any Mortgage that is not subordinate to any other lien, except a lien for taxes or another lien that is given priority by statute.

1.23 **First Mortgagee.** A holder of a First Mortgage.

1.24 **General Assessment.** Defined in Section 7.5.

1.25 **General Common Areas.** All areas of the Project other than the Units and the Limited Common Areas, including:

(a) foundations, columns, girders, beams, supports, perimeter and supporting walls, utility systems, mechanical systems, sprinkler systems, exhaust, heating and ventilation systems, storage areas, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, chimneys, drainage facilities, outdoor water features, gazebos, yards, gardens, parking areas, patios, balconies, decks, porches, courtyards, stoops, exits and entrances, tanks, pumps, motors, fans, compressors, ducts, and all apparatus and installations intended to serve all the Owners; and

(b) any real or personal property located in the Project that is (i) owned or used by the Association for the benefit of all Owners or (ii) owned by a Person other than the Association but in which the Association has rights of use or possession under this Declaration or under a lease, license, easement, or other agreement.

1.26 **Guest.** Any family member, employee, agent, independent contractor, tenant, subtenant, customer, or invitee of an Owner.

1.27 **Improvements.** The Building and any other improvements located on the Land or to be constructed on the Land.

1.28 **Individual Assessment.** Defined in Section 7.7.

1.29 **Interest in Common Areas.** The undivided interest in the Common Areas appurtenant to each Unit, determined in accordance with Section 6.3.

1.30 **Land.** The real property legally described on Exhibit A, excluding the Improvements.

1.31 **Limited Common Areas.**

(a) The Limited Common Areas designated by this Declaration or on the Plat for the exclusive use of one or more Units, but fewer than all of the Units. "Limited Common Areas" includes:

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

(ii) balconies, hallways, and other areas and improvements that are designed to serve less than all the Units; and

(iii) any real property (including improvements and fixtures located thereon) (A) in which the Association has rights of use or possession under this Declaration or under a lease, license, easement, or other agreement, and (B) that is used or possessed by the Association for the benefit of Owners of fewer than all of the Units.

(b) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other structural component, any portion of a mechanical system, or any fixture lies partially within and partially outside of the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Area allocated solely to that Unit, and any portion thereof serving more than one Unit or serving any portion of the Common Areas is a part of the General Common Areas. A nonstructural wall located wholly within a Unit is a part of the Unit in which it is located.

1.32 **Majority.** The Owners of more than 50% of the aggregate Interests in Common Areas.

1.33 **Management Committee.** The Association's board of directors.

1.34 **Mortgage.** Any mortgage, deed of trust, or other document pledging any Condominium Unit or interest therein as security for payment of a debt.

1.35 **Mortgagee.** Any Person named as a mortgagee or as a trustee or beneficiary under any Mortgage and any successor to the interest of any such Person under a Mortgage.

1.36 **Office Owner.** An Owner of an Office Unit.

1.37 **Office Unit.** Each of Units 103, 104, 105, 201, 201A, 202, 203, 204, 205, 301, 302, 303, and 304.

1.38 **Officer.** A duly elected or appointed officer of the Association.

1.39 **Owner.** A Person who holds a fee simple interest in any Condominium Unit as reflected in the County Records. If more than one Person holds a fee simple interest in the same Condominium Unit, each such Person will be an Owner. "Owner" includes Declarant to the extent that Declarant holds a fee simple interest in a Condominium Unit. "Owner" will not include a Mortgagee unless and until the Mortgagee has acquired title by foreclosure or deed in lieu of foreclosure.

1.40 **Person.** Any natural person, corporation, partnership, limited liability company, association, trustee, governmental or quasi-governmental entity, or any other entity capable of owning real property under Utah law.

1.41 **Plat.** The condominium plat entitled "35 West Broadway, a Utah Condominium Project", recorded September 4, 2008, as Entry No. 10513390 in Book 2008P at Page 217, executed and acknowledged by Declarant, consisting of five sheets, and prepared by Kenneth A. Petty, a duly registered Utah land surveyor holding License Number 362254, as may be amended or supplemented in accordance with applicable law and this Declaration.

1.42 **Project.** The condominium project created on the Land by this Declaration, consisting of the Improvements, including the Building, the Units, and the Common Areas, and known as 35 West Broadway Condominiums.

1.43 **Purchaser.** A Person other than Declarant who acquires a fee simple interest in a Condominium Unit.

1.44 **Residential Limited Common Areas.** Limited Common Areas reserved for the exclusive use of the Residential Owners.

1.45 **Residential Owner.** An Owner of a Residential Unit.

1.46 **Residential Unit.** Each of Units 401, 402, 403, 404, 501, 502, 503, and 504.

1.47 **Retail Owner.** An Owner of a Retail Unit.

1.48 **Retail Unit.** Each of Units 101, 102, and 200.

1.49 **Rules and Regulations.** Any instrument, as amended from time to time, adopted by the Association for the regulation and management of the Project.

1.50 **Special Assessment.** Defined in Section 7.6.

1.51 **Special Declarant Rights.** All rights that Declarant reserves for itself in this Declaration.

1.52 **Storage Owner.** An Owner of a Storage Unit.

1.53 **Storage Unit.** Each of Units S-1, S-2, S-3, S-4, S-5, S-6, S-7, S-8, S-9, S-10, S-11, S-12, S-13, S-14, and S-15.

1.54 **Turnover Meeting.** The meeting called by Declarant to turn over administrative responsibility for the Project to the Owners, as described in Section 4.2.

1.55 **Unit.**

(a) A physical portion of the Project that:

(i) consists of one or more rooms or spaces located in one or more floors or parts of floors in the Building,

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

(iii) is designated as a Unit on Exhibit C and on the Plat.

(b) The walls, floors, and ceilings are designated as the boundaries of a Unit. The finished surfaces of the walls, floors, and ceilings, including all paneling, tiles, wallpaper, painting, and finished flooring, are part of the Unit. Nonstructural partition walls within the Unit

are part of the Unit All other portions of the walls, floors, and ceilings are part of the Common Areas.

1.56 **Unit Number.** The number or letter or combination of number and letter that identifies a Unit on Exhibit C and on the Plat.

## **Section 2 SUBMISSION**

2.1 **Submission.** The Land, the Improvements, all easements, rights-of-way, and other appurtenances, and all personal property intended for use in connection with the Project are submitted to the Act, subject to:

(a) all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; any mineral reservations of record and rights incident to those mineral reservations; all instruments of record that affect the Project, including any Mortgage, easement, or right-of-way; and any encroachment, or discrepancy shown on or revealed by the Plat or otherwise existing; and

(b) such easements and rights of ingress and egress over, across, through, and under the Project as may be reasonably necessary for Declarant to construct and complete the Improvements, including an easement for each pipe, line, cable, wire, utility line, or similar facility that traverses or partially occupies the Project after construction of the Improvements is complete.

2.2 **Covenants Running with the Land.** All covenants, conditions, restrictions, and easements under this Declaration are covenants running with the land and will bind and inure to the benefit of Declarant, the Owners, the Association, all other parties having any, right, title, or interest in the Project, and their respective successors and assigns.

### 2.3 **Association Documents.**

(a) This Declaration and the Plat create the Project in accordance with the Act and set forth certain covenants, conditions, restrictions, and easements applicable to the Project. The Articles create the Association; the Bylaws provide for the regulation and management of the Association; and the Rules and Regulations provide additional rules and regulations applicable to the Project.

(b) In accordance with Section 57-8-40 of the Act: (i) if there is any conflict or inconsistency between the provisions of the Act, the provisions of the Utah Revised Nonprofit Corporation Act, and the provisions of the Articles, this Declaration, the Bylaws, or the Rules and Regulations, the provisions of the Act will control; (ii) if there is any conflict or inconsistency between the provisions of the Utah Revised Nonprofit Corporation Act and the provisions of the Articles, this Declaration, the Bylaws, or the Rules and Regulations, the provisions of the Utah Revised Nonprofit Corporation Act will control; (iii) if there is any conflict or inconsistency between the provisions of the Articles and the provisions of this

Declaration, the Bylaws, or the Rules and Regulations, the provisions of the Articles will control; (iv) if there is any conflict or inconsistency between the provisions of this Declaration and the provisions of the Bylaws or the Rules and Regulations, the provisions of this Declaration will control; (v) if there is any conflict or inconsistency between the provisions of the Bylaws and the provisions of the Rules and Regulations, the provisions of the Bylaws will control.

### **Section 3**

#### **MEMBERSHIP IN THE ASSOCIATION**

3.1 **Formation of the Association.** On or before the date on which Declarant conveys the first Condominium Unit to a Purchaser, Declarant will form the Association. The Association will be a Utah nonprofit corporation and will have the powers and obligations set forth in this Declaration for the benefit of the Project and the Owners. Every Owner will be a member of the Association. Membership will begin automatically when a Person becomes an Owner and will continue until the Person is no longer an Owner, at which point the membership will expire automatically. The Articles will provide for the Association's perpetual existence, but if the Association is at any time dissolved, whether inadvertently or deliberately, it will automatically be succeeded by an unincorporated association of the same name, and the Association's powers and obligations existing immediately before its dissolution will automatically vest in the successor unincorporated association. To the greatest extent possible, any successor unincorporated association will be governed by the Articles and Bylaws as if they constituted the governing documents of the unincorporated association.

#### 3.2 **Voting.**

(a) **Allocation.** Each Unit will be allocated the number of votes equal to its Interest in Common Areas. An Owner may vote by participating in a duly called meeting in person, by proxy, or by written ballot.

(b) **Multiple Ownership.** Each Unit will be entitled to the number of votes allocated to it in accordance with Section 3.2(a) regardless of the number of Owners of the Unit. If the Owners of a Unit cannot agree among themselves as to how to cast their votes on a particular matter, they will lose their right to vote on the matter. If any Owner of a Unit casts a vote representing that Unit, it will be presumed for all purposes that the Owner acted on behalf of all the Owners of that Unit. However, such vote will be disqualified if any of the other Owners of the Unit objects at the meeting before the votes are counted, or, in the case of a written ballot, objects to the Management Committee in writing, as long as the Management Committee receives the objection by the time designated for the ballots to be counted. If more than the number of allocated votes is cast for any particular Unit, none of such votes will be counted except in determining whether a quorum exists.

### **Section 4**

#### **MANAGEMENT OF THE ASSOCIATION**

4.1 **Management Committee.** The affairs of the Association will be conducted by the Management Committee and by such Officers as the Management Committee may elect or appoint in accordance with the Bylaws. During the Declarant Control Period, the Management

Committee will be appointed by Declarant in its sole discretion. After the expiration of the Declarant Control Period, the Management Committee will be elected by the Owners in accordance with the Bylaws.

4.2 **Turnover Meeting.** Declarant will call a meeting (“Turnover Meeting”) of the Association for the purpose of turning over administrative responsibility for the Project to the Owners within 90 days after the first to occur of the following: (a) two years and nine months have elapsed since the date this Declaration was recorded; (b) all Units have been conveyed to Purchasers; or (c) Declarant records a written statement in the County Records voluntarily terminating the Declarant Control Period effective as of the Turnover Meeting. At the Turnover Meeting, the Directors appointed by Declarant will resign from the Management Committee and will be replaced by their successors, who will be elected by the Owners as provided in the Bylaws. If Declarant fails to call the Turnover Meeting, any Owner or Mortgagee may call the meeting by giving notice as provided in the Bylaws.

4.3 **Director and Officer Liability.** No Director or Officer will be liable to the Owners for any negligence or mistake in judgment. However, a Director or Officer may be liable for its willful misconduct or bad faith. The Owners and the Association will indemnify and hold harmless each Director and Officer from and against all liability to third parties arising out of any contract made by the Management Committee on behalf of the Association or the Owners, unless such contract was made in bad faith. The liability of an Owner in connection with the foregoing indemnification will be limited to the total liability concerned multiplied by the Owner’s Interest in Common Areas.

**Section 5**  
**POWERS AND OBLIGATIONS OF THE ASSOCIATION.**

5.1 **Powers and Obligations.** The Association will have the power to:

(a) manage, operate, insure, construct, improve, repair, replace, alter, and maintain the Common Areas;

(b) provide certain facilities, services, and other benefits to the Owners, including, to the extent not provided by a public, quasi-public, or private utility provider, water, sewer, natural gas, electricity, cable television, and other utilities, and trash collection facilities and services;

(c) create various classes of services and levy appropriate Individual Assessments against the Owners who benefit from such services, without being required to render such services to Owners who do not agree to pay for the services or who fail to comply with the Rules and Regulations applicable to such services;

(d) enter into licenses, leases, and other agreements for facilities and services that serve the Association;

(e) acquire, sell, lease, and grant easements over, under, across, and through Common Areas to facilitate development and operation of the Project;

(f) levy, collect, and enforce the Assessments, charges, and liens imposed under this Declaration;

(g) borrow money and grant security interests in the Common Areas and in the Association's assets as collateral for the borrowed money;

(h) hire and terminate managers and other employees, agents, and independent contractors;

(i) keep detailed, accurate records of receipts and expenditures affecting the Common Areas, specifying and itemizing the Common Expenses and any other expenses incurred;

(j) allow Owners and Mortgagees to inspect current copies of the Association Documents and the books, records, budgets, and financial statements of the Association during normal business hours and under other reasonable circumstances; the Association may charge a reasonable fee for copying such materials;

(k) execute and record, on behalf of all Owners, any amendment to an Association Document or to the Plat that has been duly approved;

(l) administer and enforce the Association Documents;

(m) exercise all powers conferred on it by the Association Documents;

(n) exercise all powers conferred on it by the Act;

(o) exercise all powers that may be exercised in Utah by a nonprofit corporation; and

(p) take any action that it deems necessary or appropriate to protect the interests of the Owners, unless specifically prohibited by the Association Documents or by law.

## **5.2 Powers of the Management Committee.**

(a) Subject to Section 5.2(b) and except as otherwise provided in the Association Documents, the Management Committee may act on behalf of the Association in all instances, and will have all of the powers, duties, and authority given to a management committee by the Act.

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

(i) terminate or amend this Declaration;

(ii) terminate the Association or the Project;

(iii) elect Directors or determine the qualifications, powers, duties, or terms of office of Directors.

5.3 **Contracts.** Any contract for services such as garbage collection, maintenance, lawn care, or snow removal executed on behalf of the Association during the Declarant Control Period is binding beyond the expiration of the Declarant Control Period unless the Management Committee elects to terminate the contract after the expiration of the Declarant Control Period. However:

(a) The Management Committee may not terminate a contract executed on behalf of the Association during the Declarant Control Period if the contract is for utilities, cable services, or other similar services that require an investment of infrastructure or capital, unless the Management Committee is otherwise entitled to terminate the contract by law or under the terms of the contract itself.

(b) Any contract entered into during the Declarant Control Period on behalf of the Association or the Owners that is designed to benefit Declarant will not be binding after the expiration of the Declarant Control Period unless the contract is renewed or ratified by Majority vote.

## **Section 6 IMPROVEMENTS**

6.1 **Building.** The principal materials used or to be used in the construction of the Building are as follows: load-bearing walls are made of brick masonry, reinforced concrete masonry, concrete, or structural steel studs covered with exterior plaster; columns are made of cast iron or wood; the above-grade floor and roof structure consists of plywood sheathing over wooden beam and joist with steel reinforcement in places, or free span within the space of steel deck over steel truss-joint; the roof is protected with a membrane; interior non-bearing walls will consist of steel stud or wood frame surfaced with gypsum board or plywood; exterior brick or plastered walls are to be painted or surfaced with stucco or metal.

### 6.2 **Units.**

(a) Declarant creates 39 Units within the Project, including 8 Residential Units, 3 Retail Units, 13 Office Units, and 15 Storage Units. The Plat shows the Unit Number of each Unit, the location of each Unit, the dimensions from which each Unit's Area may be calculated, and the Limited Common Areas appurtenant to each Unit. Each Unit is capable of separate ownership, encumbrance, and conveyance. Each Owner is entitled to the exclusive ownership and possession of its Unit, subject to the Association Documents.

(b) An Owner may grant its rights to use any General Common Area or any Limited Common Area appurtenant to the Owner's Unit to the Owner's Guests.

(c) Declarant reserves the right to subdivide a Unit owned by Declarant, to merge two or more adjoining Units owned by Declarant into a single Unit, or to relocate the boundary between two adjoining Units owned by Declarant, as long as such subdivision, merger, or boundary location (i) does not change Declarant's total Interests in Common Areas, (ii) does not change any other Owner's Interest in Common Areas, and (iii) complies with applicable law.



(d) Any Owner may merge two or more adjoining Units owned by the Owner into a single Unit or relocate the boundary between two adjoining Units owned by the Owner, as long as such merger or boundary location (i) does not change the Owner's total Interests in Common Areas, (ii) does not change any other Owner's Interest in Common Areas, and (iii) complies with applicable law.

(e) The Association will file an amendment to this Declaration and a supplement to the Plat reflecting any subdivision, merger, or relocation carried out under this Section 6.2.

### **6.3 Interest in Common Areas.**

(a) The Interest in Common Areas appurtenant to a Unit will be expressed as a percentage and will be equal to the ratio of the Area of the Unit to the aggregate Area of all Units in the Project. The Interests in Common Areas appurtenant to the Units are set forth on Exhibit C.

(b) To ensure that the aggregate Interests in Common Areas equal exactly 100.00%, Declarant has rounded some or all of the Interests in Common Areas.

(c) Except as provided by the Act, each Unit Owner's total Interests in Common Areas will have a permanent character and may not be altered without the approval of two-thirds of the Owners.

(d) Except as otherwise permitted or required by the Act, an Interest in Common Areas may not be partitioned or separated from its Unit.

**6.4 Limited Common Areas.** Except as expressly provided to the contrary in this Declaration, the allocation of the Limited Common Areas to the Units as shown on the Plat may not be altered without the consent of all Owners whose Units would be affected by such reallocation, and the right to use Limited Common Areas appurtenant to a Unit may not be partitioned or separated from the Unit.

**6.5 Separate Taxation of Units.** Each Condominium Unit constitutes a separate parcel of real estate under the Act and is subject to separate assessment and taxation.

**6.6 Legal Description of Condominium Units.** Any deed, lease, Mortgage, or other instrument conveying or encumbering a Condominium Unit will describe the interest substantially as follows:

Unit \_\_\_\_, contained within the 35 West Broadway Condominiums and identified on the Plat recorded in Salt Lake County, Utah, on September 4, 2008, as Entry No. 10513390 in Book 2008P at Page 217 (as amended or supplemented), and in the Amended and Restated Declaration of Condominium for 35 West Broadway Condominiums, recorded in Salt Lake County, Utah on September 23, 2008, as Entry No. \_\_\_\_\_, in Book \_\_\_\_\_ at Page \_\_\_\_\_ (as amended or supplemented). Together with the undivided ownership Interest in Common Areas, and the Limited Common Areas appurtenant to the Unit, as more particularly described in the Declaration.

6.7 **Interpretation.** The boundaries of the Building and each Unit constructed or reconstructed in substantial accordance with the Plat will be conclusively presumed to be the actual boundaries, rather than the boundaries shown on the Plat, regardless of settling or lateral movement of the Building and regardless of minor variance between boundaries shown on the Plat and those of the Building or Unit.

**Section 7**  
**ASSESSMENTS, COMMON EXPENSES, BUDGETS, AND LIENS**

7.1 **Purpose of Assessments.** The Assessments levied by the Association will be used exclusively to promote the recreation, health, safety, and welfare of the Owners and their respective Guests, and for the improvement, operation, and maintenance of the Common Areas.

7.2 **Types of Assessments.** The Association may levy General Assessments, Special Assessments, and Individual Assessments, all as described in this Section.

7.3 **Obligation to Pay Assessments.**

(a) Each Owner covenants to pay to the Association all General Assessments, Special Assessments, Individual Assessments, and other charges that the Association is required or permitted to levy on the Owner or the Owner's Unit under the Association Documents.

(b) A Person who acquires a Unit in a foreclosure sale (or by deed in lieu of foreclosure) will be personally liable for all Assessments and other charges that the Association is required or permitted to levy against the Unit or the Unit Owner on or after the date of the foreclosure sale (or deed in lieu of foreclosure).

(c) No Owner may avoid its obligation to pay an Assessment or other charge by waiving the use or enjoyment of any Common Area or by abandoning its Unit.

(d) Each Owner will be personally liable for all Assessments and other charges levied against the Owner or the Owner's Unit while the Owner owns the Unit. If there is more than one Owner of a Unit, each Owner of the Unit will be jointly and severally liable with the other Owners of the Unit for all Assessments and other charges levied against the Unit or any Owner of the Unit. In a voluntary conveyance, the grantee of a Unit will be jointly and severally liable with the grantor for all unpaid Assessments and charges owed by the grantor without prejudice to the grantee's right to recover from the grantor the amount of the Assessment or charge paid by the grantee.

(e) The manner of assessing and collecting Assessments will be as set forth in the Bylaws.

7.4 **Annual Budget.** The Management Committee will prepare an annual budget for the Association each fiscal year, taking into account the projected Common Expenses, reserve fund requirements, any existing surplus or deficit in Association funds, and any income expected from sources other than Assessments. At least ten days before the annual meeting of the Association, the Management Committee will deliver a summary of the proposed annual budget

to the Owners. Unless the proposed annual budget is rejected by Majority vote at the annual meeting, the proposed annual budget will be deemed ratified. If the proposed annual budget is rejected by the Owners, or if the Management Committee cannot agree on an annual budget, the previous fiscal year's budget will be deemed renewed for the next fiscal year and will remain in effect until the Owners approve (or fail to reject) a subsequent annual budget proposed by the Management Committee at a special meeting of the Association (the Owners having received a summary of the proposed budget at least ten days before the meeting).

**7.5 General Assessments.** Based on the annual budget, the Management Committee will determine the amount of the General Assessment, which will be allocated among the Units in proportion to each Unit's Interest in Common Areas.

**7.6 Special Assessments.** In addition to the General Assessments authorized in Section 7.5, the Management Committee may levy during any fiscal year a Special Assessment applicable to that year only, for the purpose of deferring all or any part of the cost of unbudgeted expenses, expenses in excess of those budgeted, or other unanticipated, extraordinary, or emergency expenses. Special Assessments that in the aggregate in any fiscal year exceed an amount equal to 15% of the budgeted Common Expenses of the Association for the fiscal year may be levied only if approved by at least 67% of the aggregate Interests in Common Areas. Special Assessments will be allocated among the Units in proportion to each Unit's Interest in Common Areas.

**7.7 Individual Assessments.** The cost of any item or service benefiting less than all of the Units may, in the Management Committee's discretion, be assessed as an Individual Assessment exclusively against the Units benefiting from the service. Individual Assessments will also include fines imposed for violation of the Association Documents and charges against a Unit to reimburse the Association for costs incurred in bringing the Unit or its Owner into compliance with the Association Documents.

**7.8 Assignment of Assessments.** With the approval of a Majority vote, the Association may assign its right to receive Assessments and other future income, either as security for the Association's obligations or otherwise.

**7.9 Assessment Lien.**

(a) The Association will have a lien on a Unit for any past-due Assessment levied against that Unit and for any past-due late charges, interest, attorneys' fees, or collection costs imposed on the Unit Owner under the Association Documents ("**Assessment Lien**").

(b) Upon the Management Committee's recording of a notice of lien, the Assessment Lien will be a lien on the Unit prior to all other liens and encumbrances, recorded or unrecorded, except:

(i) an encumbrance recorded before the notice of lien is recorded and that would by law be a lien prior to any subsequently recorded encumbrance; and

(ii) a tax lien or special assessment lien in favor of any governmental assessing unit or special improvement district.

(c) An Assessment Lien will be extinguished unless proceedings to enforce the Assessment Lien begin within six years after the full amount of the Assessment becomes due. The Association may sue to recover a money judgment for an unpaid Assessment or charge without foreclosing or waiving the Assessment Lien securing the unpaid Assessment or charge.

(d) If the Association sues to collect an unpaid Assessment or charge or to foreclose on an Assessment Lien, the court may appoint a receiver to collect all sums owed by an Owner before or during the pendency of the suit, including the costs of the proceedings, reasonable attorneys' fees incurred by the Association, and a reasonable rental for the delinquent Owner's Unit. A court may order the receiver to pay to the Association all sums collected by the receiver during the pendency of the action.

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

**7.10 Waiver of Homestead Exemptions.** To the fullest extent permitted by law, each Owner irrevocably waives the homestead exemption provided under the Utah Exemptions Act, Utah Code §§ 78-23-1 through -15 (2007), as it applies to the Assessment Lien.

**7.11 Estoppel Certificates; Notices to Mortgagees.**

(a) Upon written request and payment of a reasonable fee (not to exceed the amount provided for in Section 57-8-20(7)(a) of the Act, as amended), the Association will deliver to an Owner or a Mortgagee a statement setting forth the amount of unpaid Assessments and other charges currently levied against the Owner's Unit. The Association will deliver the statement within ten days after it receives the request (and the accompanying fee). The statement will be binding on the Association and the Management Committee in favor of all Persons who rely on the statement in good faith. If the Association fails to provide the statement to the requesting party, the Association will not be entitled to assert the priority of its Assessment Lien on the Unit for unpaid Assessments due as of the date the statement was requested.

(b) If a First Mortgagee delivers to the Association a written request for notice of unpaid Assessments levied against a Unit subject to a First Mortgage held by that First Mortgagee, the Association will report to the First Mortgagee any Assessments or charges levied against the Unit that are more than 60 days past-due. The First Mortgagee may pay any such unpaid Assessment or charge, together with all expenses incurred with respect to the Assessment Lien securing such unpaid Assessment or charge, and upon such payment, the First Mortgagee will have a lien on the Unit for the amounts paid, which lien will have the same priority as the lien of the First Mortgage held by the First Mortgagee.

**7.12 Reserve Fund.** The Association may establish a reserve fund for repair and replacement of Common Area improvements. When budgeting for the reserve fund, the Management Committee will take into account the number and nature of replaceable assets, the expected life of each asset, and the expected replacement cost. The Management Committee may borrow funds from the reserve fund to meet high seasonal demands on regular operating funds or

to meet other temporary expenses that will later be paid from General Assessments or Special Assessments. The Association may prudently invest the reserve fund.

## **Section 8**

### **UTILITIES AND SERVICES**

**8.1 Water and Sewer.** The Association will arrange and pay for water and sewer services for the Common Areas and the Units. The cost of water and sewer services will be a Common Expense.

**8.2 Trash Removal.** Each Unit Owner will be responsible for removing all trash from its Unit and disposing of the trash in designated Common Area trash receptacles provided by the Association. The Association will arrange and pay for trash removal services. The cost of trash removal services and Common Area trash receptacles will be a Common Expense.

**8.3 Janitorial.** The Association will arrange and pay for maintenance and janitorial services for the General Common Areas and for the Residential Limited Common Areas (but not other Limited Common Areas or the Units), and the cost of such services will be a Common Expense.

**8.4 Natural Gas and Electricity.** The Association will arrange and pay for natural gas and electricity for the General Common Areas and the Residential Limited Common Areas, and the cost of such services will be a Common Expense. If natural gas and electricity consumption attributable to a Unit (and any Limited Common Areas appurtenant solely to that Unit) is separately metered, the Unit Owner will pay for the actual cost of such consumption. Otherwise, the Management Committee will equitably allocate the cost of natural gas and electricity consumption among the Units that are not separately metered. Each Owner will ensure that its Unit is sufficiently heated to prevent the freezing of water and sewer lines serving the Project.

**8.5 Cable/Satellite Television and Internet.** The Association will arrange and pay for such cable, satellite, or similar television and internet services as the Association deems necessary for the General Common Areas and Residential Limited Common Areas, and the cost of such services will be a Common Expense. Each Unit Owner will pay for the cost of such services for its Unit and for the Limited Common Areas designed to serve solely its Unit.

**8.6 Telephone.** The Association will arrange and pay for such telephone services as the Association deems necessary for the General Common Areas and Residential Limited Common Areas, and the cost of such services will be a Common Expense. Each Owner will pay for the cost of telephone services for its Unit and for the Limited Common Areas designed to serve solely its Unit.

**8.7 Other Utilities.** If the Association incurs Common Expenses for any utility or service not described in this Section, or if the manner of providing or metering any utility service described in this Section changes from the manner in which the service is provided or metered as of the date of this Declaration, the Association may allocate the Common Expenses incurred for the new utility service or changed utility service in any reasonable manner consistent with the

Act, including allocating the expenses as an Individual Assessment against the Units and Unit Owners benefiting from the service.

**Section 9**  
**MAINTENANCE**

**9.1 Maintenance of Common Areas.**

(a) The Association will maintain the Common Areas in good order and repair and will otherwise manage and operate the Common Areas as it deems necessary or appropriate. The Management Committee will have reasonable access to each Unit as necessary for maintaining, repairing, or replacing the Common Areas or for making emergency repairs necessary to prevent damage to the Common Areas or other Units. The Association will ensure that all interior Common Areas are sufficiently heated to prevent the freezing of water and sewer lines serving the Project. The Association may also:

- (i) construct, alter, repair, replace, renovate, or add to any Common Area improvements;
- (ii) plant, maintain, and replace trees, shrubs, and other vegetation on the Common Areas;
- (iii) place, maintain, and replace signs on the Common Areas;
- (iv) adopt and enforce Rules and Regulations regulating the use of the Common Areas; and
- (v) take any other actions necessary or advisable to improve, protect, maintain, operate, or regulate the use of the Common Areas.

(b) Notwithstanding Section 9.1(a), each Owner will keep the Limited Common Areas serving solely its Unit in a clean and orderly condition.

**9.2 Maintenance of Units.** Each Owner will maintain its Unit in good order and repair at its sole expense.

**9.3 Mechanic's Liens and Indemnification.** No labor performed or materials furnished and incorporated into a Unit with the consent of an Owner or its contractor, subcontractor, or agent will be the basis either for filing a lien against the Common Areas or the Unit of any other Owner who does not consent to the lien. However, labor performed or materials furnished for the Common Areas, if authorized by the Association in accordance with the Association Documents or the Act, will be deemed to be performed or furnished with the express consent of each Owner and will be the basis for filing a lien under applicable law. Payment for any such lien will be made as provided in the Act. Each Owner will indemnify and defend the Association and each other Owner and its Mortgagees from and against all liability arising from any claim or lien against the Unit of any other Owner or against the Common Areas for labor performed or materials furnished for the Owner's Unit at the Owner's request.

**Section 10**  
**INSURANCE**

10.1 **Property Insurance.** The Association will obtain and maintain special form property insurance covering the full replacement value of the Common Areas. The Management Committee may obtain insurance against earthquake, flood, or other special risks if required by law or if the Management Committee determines that such insurance is in the best interests of the Association.

10.2 **Liability Insurance.** The Association will obtain and maintain commercial general liability insurance with a combined single limit for bodily injury and property damage of at least \$2,000,000 for each occurrence, covering damage or injury caused by the negligence of the Association or any of the Owners or their respective agents. Such insurance will cover claims of one or more insured parties against other insured parties.

10.3 **Directors and Officers Insurance.** The Management Committee may obtain and maintain a directors and officer's liability or errors and omissions policy, if reasonably available.

10.4 **Fidelity Bond.** The Association will obtain and maintain a separate fidelity bond in a reasonable amount to be determined by the Management Committee to cover all non-compensated Directors and Officers as well as all Association employees for theft of Association funds.

10.5 **Miscellaneous Items.** The following provisions will apply to all insurance coverage:

(a) **The Insured.** Any policy required to be maintained by the Association under this Section will name as insured the Association as trustee for each Unit Owner.

(b) **Beneficiary.** In any policy covering the entire Project, each Owner (and its Mortgagees, if any) will be a beneficiary of the policy in an amount proportionate to the Owner's Interest in Common Areas.

(c) **Certificate of Insurance.** The Management Committee will provide evidence of the insurance required under this Section 10 to any Owner or Mortgagee who requests it.

(d) **Mortgage Provisions.** Each policy will contain a standard mortgage clause or its equivalent and will provide that the policy may not be canceled or substantially modified without at least 15 days' prior written notice to each Mortgagee.

(e) **Waiver of Subrogation.** Each property insurance policy will contain a waiver of the insurer's right of subrogation against the Owners, the Association, and Declarant.

(f) **Act or Omission by Owner.** Each insurance policy will provide that the policy will not be prejudiced by any act or omission of an Owner.

(g) **Disbursement of Proceeds.** Proceeds of property insurance policies will be used promptly to repair the damage. Any proceeds remaining thereafter will be placed in the reserve fund.

(h) **Special Endorsements.** Each policy will contain those endorsements commonly purchased by other Associations in similarly situated first-class subdivisions in the County, including an agreed-amount endorsement; an inflation-guard endorsement (when it can be obtained); a building ordinance or law endorsement, if the enforcement of any building, zoning, or land-use law would result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs; a steam boiler and machinery coverage endorsement, if the Project has any central heating or cooling.

(i) **Individual Property Insurance Limited.** Each Owner will separately insure its Unit, its personal property, and any improvements made by the Owner within its Unit against casualty loss. However, the insurance will be limited to the type and nature of coverage commonly known as "tenant's improvements". Such insurance must contain a waiver of subrogation rights by the insurer as to other Owners, the Association, and Declarant.

(j) **Deductible.** The deductible on a claim made against the Association's property insurance policy will be paid for by the party who would be liable for the loss, damage, claim, or repair in the absence of insurance, and if multiple parties are responsible, the cost of the deductible will be allocated in relation to the amount each party's responsibility bears to the total. If a loss is caused by an element, risk, or peril beyond the control of any Unit Owner, then the Association will be responsible for the deductible.

10.6 **Adjusting Claims.** The Management Committee has the authority to adjust claims and, if the claim may be filed with the Unit Owner's insurance carrier, may require from the prospective claimant's insurance company a formal notice of rejection and an unconditional denial of the claim or its equivalent before submitting the claim to the Association's insurance company.

## **Section 11**

### **COVENANTS, CONDITIONS, AND RESTRICTIONS**

11.1 **Applicability of Covenants, Conditions, and Restrictions.** Except as otherwise provided in this Declaration, the covenants, conditions, and restrictions set forth in this Section will apply to all Owners, Units, and Common Areas.

11.2 **Guests.** Each Owner will be responsible for ensuring that its Guests comply with all applicable provisions of the Association Documents.



**11.3 Notice of Conveyance or Encumbrance.** Upon acquiring a fee simple interest in a Unit, the Purchaser will promptly deliver a copy of the conveyance deed to the Association. Upon Mortgaging its Unit, the Owner will promptly deliver a copy of the Mortgage instrument to the Association.

**11.4 Use of Retail Units.** Retail Units may be used for commercial or general office purposes only. A Retail Owner may lease all or any portion of its Retail Unit for such purpose. A Retail Owner may not use and may not permit its Guests to use any portion of the Residential Limited Common Areas. A Retail Owner may perform such activities within its Retail Unit as are lawfully permitted and are common to or necessary for the conduct of commercial or office operations. A Retail Owner may apply for and obtain special use permits and licenses that are necessary or appropriate for the conduct of commercial activities in its Retail Unit without obtaining the approval of the Association, as long as the permits and licenses are consistent with existing zoning and with the actual uses of the Retail Unit at the time the permit or license is applied for.

**11.5 Use of Office Units.** Office Units may be used for general office purposes only. An Office Owner may lease all or any portion of its Office Unit for such purpose. An Office Owner may not use and may not permit its Guests to use any portion of the Residential Limited Common Areas. An Office Owner may perform such activities within its Office Unit as are lawfully permitted and are common to or necessary for the conduct of office operations.

**11.6 Use of Residential Units.** Residential Units may only be used as (a) a permanent or vacation single-family residence (as "family" is defined from time to time in City zoning ordinances) or (b) as a "live/work" space used jointly as a single-family residence and as office space, so long as (i) there is adequate working space accessible from the living area that is reserved for and regularly used by one or more persons residing in the Units, (ii) no more than eight nonresident persons (including employees and clients) occupy or use the office space at any one time, and (iii) the use complies with City zoning ordinances and other applicable laws. A Residential Owner may lease or rent its Residential Unit to others so long as the use of the Residential Unit complies with this Declaration, the Act, and other applicable laws.

**11.7 Use of Storage Units.** A Storage Owner may use and occupy its Storage Unit only to store items in accordance with applicable law and in accordance with the Rules and Regulations. Only a Residential Owner, Retail Owner, or Office Owner may own a Storage Unit. A Storage Owner may lease its Storage Unit to another Owner, or to another Person as long as that Person concurrently leases the Storage Owner's Residential Unit, Retail Unit, or Office Unit, as applicable. A Storage Owner may use its Storage Unit for parking or storage of a vehicle. However, each Storage Owner acknowledges that the size and dimensions of its Storage Unit may not be adequate to accommodate parking or storage of a large vehicle or of more than one vehicle, and assumes the entire risk of damage that may result from parking a vehicle or vehicles in the Owner's Storage Unit. Declarant, the Association, and the City make no representation as to the fitness of any Storage Unit for parking or storage of a vehicle.

**11.8 Use of Units by Declarant and the Association.** Notwithstanding anything to the contrary in this Declaration, the Association and (during the Declarant Control Period) Declarant

may use one or more Units owned or leased by it as a management office or as a combined management office and residence for a resident manager for the Project.

**11.9 Use of General Common Areas.** Each Owner and its Guests may use the General Common Areas for the purposes for which they were designed. However, no Owner or Guest may use the General Common Areas in a manner that unreasonably interferes with the rights of other Owners or Guests to use the General Common Areas.

**11.10 Use of Limited Common Areas.** Each Owner and its Guests will have the exclusive right to use the Limited Common Areas appurtenant solely to such Owner's Unit for the purposes for which such Limited Common Areas are designed. All Residential Limited Common Areas are appurtenant to all Residential Owners, and only Residential Owners will have the right to use the Residential Limited Common Areas. No Residential Owner or its Guest may use the Residential Limited Common Areas in a manner that unreasonably interferes with the rights of other Residential Owners and their respective Guests to use the Residential Limited Common Areas.

**11.11 Improvements and Alterations.**

(a) An Owner may make improvements or alterations to its Unit, including erecting partitions within its Unit, without the consent of the Association or any other Owner, as long as:

(i) the improvement or alteration does not impair or damage any Common Area or any other Unit;

(ii) the improvement or alteration does not protrude beyond the boundaries of the Owner's Unit; and

(iii) the improvement or alteration complies with applicable laws.

(b) Declarant reserves the right to construct any Improvements shown on the Plat and any other improvements that Declarant desires to construct on the Project.

**11.12 Nuisances and Hazardous Activities.**

(a) No Person will conduct any activity on the Project that creates a nuisance, as reasonably determined by the Management Committee. Without limiting the generality of the previous sentence, the following activities and uses will be deemed to be a nuisance and will be prohibited within the Project:

(i) smelting of iron, tin, zinc or other ores; refining of petroleum or of petroleum products;

(ii) community fairs, flea markets, pawn shops, military surplus stores, open air stalls, carnivals, or for the sale of drug paraphernalia;

(iii) discotheque or dance hall;

(iv) video game parlor or other amusement use, gambling facility or operation or bingo hall, including an off-track or sports betting parlor, the operation of table games, slot machines, video poker/black-jack/keno machines or similar devices, or as a bingo hall;

(v) athletic events;

(vi) fortune telling;

(vii) motor vehicle, boat, mobile home, lawn care, power tool, appliance, farm, heavy construction equipment or implement sales, leasing, service, repair, storage and similar activities;

(viii) veterinary facility, animal raising facility or pet shop or taxidermy;

(ix) storage or processing of scrap metal, glass, paper or rags;

(x) any type of outdoor storage;

(xi) nude or semi-nude dance clubs;

(xii) massage parlors (excluding day spas, medical treatment and therapeutic facilities allowed by applicable zoning laws) or cinemas or bookstores selling or exhibiting material of a pornographic or adult nature;

(xiii) business or use which (A) creates strong, unusual or offensive odors, fumes, dust or vapors, (B) is a public or private nuisance, (C) emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness, (D) creates unusual fire, explosive or other hazards, (E) has flashing lights or signs, strobe lights, search lights or loudspeakers, or (F) has phonographs, radios or video screens within any exterior portion;

(xiv) auditorium or other similar place of public entertainment or general assembly;

(xv) bowling alley;

(xvi) funeral parlor;

(xvii) industrial, warehouse (other than the storage of inventory, fixtures and equipment as part of a permitted business) or manufacturing use;

(xviii) "hi-fi", electronics, stereo, television or similar stores, unless such stores have soundproofing reasonably satisfactory to the Association, in its reasonable discretion;

(xix) laundromat or dry cleaners (except as a "drop off" site for off-site cleaning);

(xx) photography stores that develop film on-site (unless the proposed Owner has received assurances satisfactory to the Association, in its reasonable discretion, as to the prior storage and disposal of processing chemicals and other photographic waste materials);

(xxi) any use that overloads the electrical, plumbing or mechanical systems of the Project or that exceeds the load-bearing capacity of the floors of the Project;

(xxii) any business or other use of the Project that would result in the escape, disposal or release of any amount of biologically active, toxic or hazardous wastes, materials or substances, or any other substance that is prohibited, limited or regulated by any governmental or quasi-governmental authority or that, even if not so regulated, could or does pose a hazard to health and safety of the occupants of the Building or surrounding property (collectively "**Hazardous Substances**") in violation of any applicable Environmental Laws (as hereinafter defined); no Unit or other portion of the Project will be used for the storage or use of Hazardous Substances in any manner prohibited by law or otherwise inconsistent with commercially reasonable standards for the storage and use of Hazardous Substances comparable to other first-class office and retail buildings used for or containing laboratories using Hazardous Substances, nor will any Owner allow to be brought into the Building or onto the Project any such Hazardous Substances except to use in the ordinary course of any Owner's business. All Units and other portions of the Project will, at all times, be kept and maintained so as to comply with all existing or hereafter enacted or issued statutes, laws, rules, ordinances, orders, permits and regulations of all state, federal, local and other governmental and regulatory authorities, agencies and bodies applicable to the Project, pertaining to environmental matters, or regulating, prohibiting or otherwise having to do with asbestos and all other toxic, radioactive, or hazardous wastes or materials including, but not limited to, (A) any asbestos or insulation or other material composed of or containing asbestos, or (B) any hazardous, toxic or dangerous substance, material or waste defined as such in (or for the purposes of) the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Safe Drinking Water Act, 15 U.S.C. § 2601 et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., any so-called state or local "Superfund" or "Superlien" laws, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous substance ("**Environmental Laws**").

(b) No Person will conduct any activity on the Project that is or might be hazardous to any Person or property.

(c) Reasonable construction activities approved under this Declaration will not be considered a nuisance under Section 11.12(a).

(d) Each Owner acknowledges that the Project includes a commercial element and that reasonable noises, lights, and odors common to commercial activities may exist on or near the Project at any time and from time to time.

(e) Any Retail Unit that is used for cooking or other food or beverage preparation and service must be properly vented such that food and related odors are not permitted to enter into any other Unit or into the Common Areas, and such use must comply with all building and health codes and related legal requirements required for such use.

**11.13 Signs.** Subject to City sign ordinances, Declarant may place and maintain a reasonable number of signs, banners, or similar items at any place on the Project to advertise the sale of Units or otherwise promote the Project. Subject to City sign ordinances and Management Committee approval as to size, content, appearance, and location, a Retail Owner or Office Owner may erect, attach, and maintain signs, banners, decorations, and other similar items on the exterior of the Project. Otherwise, except as required by law, no signs may be placed or maintained on the exterior portion of the Project. Signs may be placed on the interior of the Building, subject to Management Committee approval as to size, content, appearance, and location.

**11.14 Compliance with Laws and Insurance Policies.** Nothing will be done or kept on the Project that violates applicable law or that may result in an increase in insurance premiums or the cancellation of any insurance policy maintained by the Association.

**11.15 Rezoning and Timesharing.**

(a) No Owner, other than Declarant, may apply for rezoning or a variance with the City with respect to any portion of the Project unless (i) the proposed rezoning or variance has been approved by 67% of the votes allocated to the Units and, during the Declarant Control Period, by Declarant, and (ii) the uses that would be permitted under the rezoning or variance comply with the Association Documents.

(b) No Owner may offer or sell any interest in a Unit under a “timesharing” or “interval ownership” plan or similar plan.

**11.16 Exterior Storage.** No Owner may store any items in the Common Areas except in those portions of the Common Areas designated for storage.

**11.17 Solid-Fuel Burning Devices.** Wood-burning stoves and wood-burning fireplaces may not be used in the Project.

**11.18 Animals.**

(a) Except as provided in Section 11.18(b), no animals, livestock, or poultry may be raised, bred, or kept in the Project.

(b) Each Residential Owner may keep one domestic cat or one dog, or one of each, in its Unit, so long as (i) no more than one cat or one dog, or one of each, is kept in a Unit, regardless of the number of Owners or Guests residing in the Unit; (ii) the Residential Owner abides by the Rules and Regulations pertaining to the maintenance and care of pets; and (iii) the dog or cat does not have a propensity for violence. No pet enclosure may be placed or maintained on the Common Areas, nor may any pet be tied to any structure outside of a Unit. Dogs outside of a Unit must be on a leash at all times. No pet will be allowed to defecate or urinate on the Common Areas, and the owner of the offending pet will immediately remove any

feces or urine left on the Common Areas by the owner's pet. If any Residential Owner (or its Guest) fails to abide by the Rules and Regulations or covenants applicable to the keeping of pets, the Management Committee may bar the Residential Owner's (or its Guest's) pet from using or traveling on the Common Areas and may impose a fine for such violation. If any pet endangers the health of any Owner or creates a nuisance, as reasonably determined by the Management Committee, the offending pet must be removed from the Project within seven days after the Management Committee delivers written notice to the Owner.

**11.19 Disclosures Regarding Rentals.** Pursuant to Salt Lake City Code Section 21A.56.040(A)(2):

(a) The Association may regulate, limit, or prohibit rentals of Units, and may require the rental of any Unit to be conducted through the Association or a designated management company. The Association may also require that all lease agreements be reviewed and approved by the Association or the management company and that any tenants be screened and approved by the Association or the management company before renting the Unit; so long as approval of the Association or the management company is not unreasonably withheld. However, the Association may only institute such regulations, limitations, prohibitions, and review and screening procedures by a vote of at least 67% of the votes allocated to all Units.

(b) Before renting a Unit, the Owner and its tenant will execute a written lease agreement that will include the following provisions:

- (i) the tenant agrees to comply with the Association Documents;
- (ii) the tenant agrees not to allow or commit any nuisance, waste, unlawful or illegal act upon the Project; and
- (iii) the Owner and the tenant acknowledge that: (A) the Association is an intended third-party beneficiary of the lease agreement; (B) the Association has the right to enforce compliance with the Declaration and the Bylaws and to abate any nuisance, waste, unlawful or illegal activity upon the Project; and (C) the Association will be entitled to exercise all of the Owner's rights and remedies under the lease agreement to do so.

(c) Before a tenant occupies a Unit, the Owner must provide to the Association the name, address, and telephone number of the tenant and a copy of the written lease agreement.

(d) The Association will have the right and the obligation to enforce compliance with this Declaration and the Bylaws against any Owner or occupant of a Unit, and will have all rights and remedies available under applicable law, in addition to its rights and remedies as a third-party beneficiary under any lease agreement, to enforce such compliance.

**11.20 Declarant's Exemption.** Nothing contained in this Declaration or in any other Association Document will be construed to prevent Declarant's exercise and enjoyment of any Special Declarant Right or any other rights of Declarant under the Association Documents.

**Section 12**  
**EASEMENTS AND RESERVATIONS**

**12.1 Declarant's Easements over Common Areas.**

(a) Declarant reserves a general, transferable easement over, across, through, and under the Common Areas to:

- (i) discharge Declarant's obligations under this Declaration;
- (ii) make improvements to the Project or any other real estate owned by Declarant; and
- (iii) exercise any other Special Declarant Right.

(b) Declarant reserves the right to:

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

(ii) create other reservations, exceptions, or exclusions as long as: (A) each party benefitted by the easement, permit, license, reservation, exception, or exclusion uses reasonable efforts to locate the easement, permit, license, reservation, exception, or exclusion so as to minimize interference with the Owners' use of the Project; and (B) each benefitted party promptly repairs, at its cost, any damage caused to the Project because of the benefitted party's exercise of its rights under this Section 12.1(b).

**12.2 Utility Easement.**

(a) Subject to the Association Documents and the Association's prior written approval as to the location of particular facilities, Declarant creates a general easement over, across, through, and under the Project for ingress to, egress from, and installation, replacement, repair, and maintenance of, all utility and service lines and systems, including water, sewer, gas, telephone, electricity, and cable communications that service all or part of the Project.

(b) Subject to Sections 11.12 and 11.14, a utility or service company may install and maintain facilities and equipment on the Project and affix and maintain wires, circuits, and conduits on, in, and under the roof and exterior walls of the Building to provide service to the Units or the Common Areas. Any utility or service company using this general easement will use its best efforts to install, repair, replace, and maintain its lines and systems without disturbing the uses of Owners, the Association, Declarant, and other utility and service companies.

(c) If any utility or service company furnishing utilities or services to the Project requests a specific easement by separate recordable document, the Association may grant the easement in its discretion.

12.3 **Association's Easement.** The Association will have a general easement over, across, through, and under each Unit and the Common Areas to exercise any right or obligation of the Association under the Association Documents. However, the Association will not enter any Unit without reasonable prior notice to the Unit Owner, except in cases of emergency.

12.4 **Easements for Encroachments.** If any portion of the Project encroaches on any other portion of the Project as a result of construction, reconstruction, repair, shifting, settlement, or movement of a portion of the Project, an easement for such encroachment will automatically be created and will continue so long as the encroachment exists, but the easement will not relieve an Owner of liability in the case of willful misconduct.

12.5 **Emergency Access Easement.** Declarant grants a general easement to all police, sheriff, fire protection, ambulance, and other similar emergency personnel to enter upon the Project in the proper performance of their duties.

### **Section 13** **DAMAGE OR DESTRUCTION**

13.1 **Management Committee as Attorney-in-Fact.** The Owners irrevocably appoint the Management Committee as their true and lawful attorney-in-fact for dealing with damage to or destruction of the Project. As attorney-in-fact, the Management Committee will be authorized to negotiate and execute any agreement necessary to carry out this purpose.

13.2 **Definition of Restoration.** Restoration of the Project will mean restoring the Project to substantially the same condition it was in before the damage or destruction.

13.3 **Procedures.** If any part of the Project is damaged or destroyed, the Association will proceed as follows:

(a) **Cost Estimate.** As soon as practicable after the damage or destruction occurs, the Management Committee will obtain an estimate of the cost to restore the Project.

(b) **Sufficient Insurance.** If the property insurance proceeds exceed the estimated cost of restoration, then the Management Committee will promptly undertake the restoration. If the property insurance proceeds turn out to be less than the actual costs of restoration, the Association will levy a Special Assessment to cover the deficiency.

(c) **Insufficient Insurance: Less than 75% Destruction.** If the property insurance proceeds are less than the estimated cost of restoration, and if the Management Committee determines that less than 75% of the Building is destroyed or substantially damaged, then the Management Committee will promptly undertake the restoration and will levy a Special Assessment to cover the estimated cost of restoration (less insurance proceeds).

(d) **Insufficient Insurance: 75% or More Destruction.** If the property insurance proceeds are less than the estimated cost of restoration, and the Management Committee determines that at least 75% of the Building is destroyed or substantially damaged, then the Management Committee will notify the Owners of the determination and call a special



meeting of the Owners to decide whether to restore or terminate the Project. If the Owners by Majority vote decide to restore the Project, the Management Committee will promptly undertake restoration of the Project and levy a Special Assessment to cover the estimated cost of restoration (less insurance proceeds). If the Owners by Majority vote decide to terminate the Project, the Management Committee will record a notice of termination in the County Records and dispose of the Project in accordance with Section 57-8-31(1)-(4) of the Act, except that the Management Committee will sell the Project and disburse the proceeds of sale, insurance, and condemnation regardless of whether an Owner sues for partition of the Project.

(e) **Prompt Repair.** To the extent that the Association is not obligated to make any such repairs or replacements, each Owner will repair or replace any damage or destruction to its Unit as soon as reasonably practical after such damage or destruction occurs.

#### **Section 14 CONDEMNATION**

14.1 **Condemnation.** This Section will apply if all or part of the Project is taken by condemnation, or if all or part of the Project is voluntarily conveyed in lieu of condemnation.

14.2 **Complete Taking.** If the entire Project is taken by condemnation, the Project will terminate and the Association will distribute the condemnation award among the Owners in proportion to their respective Interests in Common Areas.

14.3 **Partial Taking.** If less than the entire Project is taken by condemnation, the Association will proceed as follows:

(a) **Allocation of Award.** As soon as practicable, the Management Committee will allocate the condemnation award among the Owners as follows:

(i) The total amount apportioned to taking of the Common Areas will be distributed among the Owners in proportion to their respective Interests in Common Areas.

(ii) The amount apportioned to the taking of a particular Unit will be distributed to the Owner of that Unit.

(b) **Continuation and Reorganization.** The Project will be reorganized as follows:

(i) If any partial taking results in the taking of an entire Unit, then the Unit Owner will no longer be a member of the Association, and the voting rights and the Interest in Common Areas appurtenant to that Unit will be reallocated among the remaining Units in proportion to their respective Interests in Common Areas.

(ii) If any partial taking results in the taking of a portion of a Unit and the Management Committee determines that the taking does not make it impractical to use the remaining portion of the Unit for any lawful purpose permitted by this Declaration, then the fair market value of the remaining portion of the Unit will be determined and the voting rights and

the Interest in Common Areas appurtenant to that Unit will be reduced in proportion to the diminution in fair market value resulting from the taking. The voting rights and Interest in Common Areas divested from the Unit will be reallocated among the Unit and the other Units in the Project in proportion to their respective Interests in Common Areas.

(iii) If any partial taking results in the taking of a portion of a Unit and the Management Committee determines that the taking makes it impractical to use the remaining portion of the Unit for any lawful purpose permitted by this Declaration, then the Unit Owner will no longer be a member of the Association, and the voting rights and the Interest in Common Areas appurtenant to that Unit will be reallocated among the remaining Units in proportion to their respective Interests in Common Areas, and the remaining portion of the condemned Unit will become part of the Common Areas.

(iv) The Management Committee is obligated and authorized to make all determinations and to take all actions necessary or appropriate to reorganize the Project under this Section 14.3(b).

(c) **Restoration.** Any restoration required as a result of condemnation will be governed by Section 13.

## **Section 15** **MORTGAGEE PROTECTIONS**

15.1 **Notice of Actions.** The Association will give prompt written notice of the following to each Eligible Mortgagee who requests such notice in writing:

(a) any condemnation loss or casualty loss that affects a material portion of the Common Areas or any Unit in which an interest is held by the Eligible Mortgagee;

(b) any delinquency in the payment of an Assessment or other charge that remains uncured for more than 60 days by an Owner whose Unit is encumbered by a Mortgage held by the Eligible Mortgagee;

(c) any lapse, cancellation, or material modification of an insurance policy or fidelity bond maintained by the Association;

(d) any proposed action that would require the consent of Mortgagees as provided in this Section 15; and

(e) any judgment rendered against the Association.

15.2 **Consent Required.** The Association may not take any of the following actions without the consent of 51% of the Eligible First Mortgagees (based on one vote for each Unit covered by a First Mortgage held by an Eligible First Mortgagee):

(a) by act or omission seek to abandon or terminate the Project, except after condemnation or substantial casualty;

(b) change the Interests in Common Areas or votes in the Association of any Unit, except as provided in this Declaration for condemnation, casualty, subdivision of a Unit by Declarant, the merger of two or more adjoining Units, or the relocation of adjoining Unit boundaries;

(c) subdivide, partition, or relocate the boundaries of any Unit, except as provided in this Declaration;

(d) abandon, subdivide, partition, encumber, sell, or transfer the Common Areas (the granting of easements for public utilities or for other purposes provided for in this Declaration will not be deemed transfers);

(e) use property insurance proceeds for losses to any portion of the Common Areas for other than repair, replacement, or reconstruction of such Common Areas, except as provided by this Declaration; or

(f) merge the Project with any other common interest community.

**15.3 Notice of Objection.** Unless an Eligible First Mortgagee provides the Association with written notice of its objection, if any, to any proposed amendment or action requiring the approval of Eligible First Mortgagees within 30 days following the delivery of notice of such proposed amendment or action, the Eligible First Mortgagee will be deemed conclusively to have consented to or approved the proposed amendment or action.

**15.4 First Mortgagee's Rights.**

(a) First Mortgagees, jointly or singly, may pay taxes or other charges that are in default and that may or have become a charge against any of the Common Areas, and may pay overdue premiums on property insurance policies for the Common Areas. The Association will promptly reimburse any First Mortgagee who makes such payment.

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

**15.5 Limitations on First Mortgagee's Rights.** No requirement for approval or consent by an Eligible First Mortgagee provided in this Section 15 will operate to:

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

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

(c) prevent any insurance trustee or the Association from receiving and distributing any insurance proceeds in accordance with Section 10.

15.6 **Declarant Rights.** This Section 15 will not apply to any Special Declarant Rights.

**Section 16**  
**ENFORCEMENT AND REMEDIES**

16.1 **General.** If an Owner fails to pay any Assessment when due, the Management Committee may, after giving notice and an opportunity to be heard in accordance with Sections 16.2 and 16.3: (a) terminate the Owner's right to receive utility services paid for as a Common Expense, and (b) terminate the Owner's right to access and use any recreational facilities in the Project.

16.2 **Notice.** Before terminating utility services or the right to access and use the Project's recreational facilities, the Management Committee will give written notice to the Owner in accordance with the Association Documents. The notice will include:

(a) a statement that utility services or the right to access and use recreational facilities will be terminated if payment of the overdue Assessment is not received within two days after receiving the notice;

(b) the amount of the Assessment due, including any interest or late payment fee; and

(c) notification of the Owner's right to request a hearing under Section 16.3.

16.3 **Hearing.** An Owner who is given notice under Section 16.2 may request an informal hearing to dispute the Assessment by submitting a written request to the Board within 30 days after receiving the notice. The hearing will be conducted in accordance with the standards provided in the Association Documents. If a hearing is requested, utility services or the right to access and use the Project's recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been rendered. If a hearing is requested, no interest or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

16.4 **Reinstatement.** Upon payment of the Assessment due, including any interest or late payment fee, the Management Committee will immediately take action to reinstate the Unit's terminated utility services.

16.5 **Rental Payments.** If an Owner is leasing its Unit and fails to pay an Assessment for a period of more than 60 days after it is due and payable, the Management Committee, upon compliance with this Section 16.5, may demand that the tenant pay to the Association all future lease payments due the Owner, commencing with the next monthly or other periodic payment, until the amount due to the Association is paid. If the Association elects to exercise this remedy, it must do so in accordance with Section 57-8-20(6) of the Act.

16.6 **Fines.** Subject to Section 57-8-37 of the Act, the Management Committee may assess a fine against an Owner for violation of a rule, covenant, condition, or restriction that is specifically listed in the Association Documents. A fine must be in the amount specifically

provided for in the Association Documents for the specific type of violation, not to exceed the amount set forth in Section 57-8-37(3)(a)(ii) for any single violation or the cumulative amount set forth in Section 57-8-37(3)(b) in any month for a continuing violation. Any Owner assessed a fine may request an informal hearing before the Management Committee to protest or dispute the fine within 30 days after the fine is assessed. The hearing will be conducted in accordance with the standards set forth in the Association Documents. No interest or late fees may accrue on a fine until after the hearing has been conducted and a final decision has been rendered, unless the fined Owner fails to request a hearing within the 30-day time period. A fine assessed under this Section 16.6 that remains unpaid after the 30-day appeal period has expired will become a lien against the Unit and the Owner in accordance with Section 7.9.

**16.7 Interest, Expenses, and Attorneys' Fees.** Any fine not paid to the Association when due in accordance with this Declaration will bear interest from the due date (unless a hearing is timely requested, in which case no interest or late fees may accrue until after the hearing has been conducted and a final decision has been rendered) until paid at a rate three percentage points per annum above the prime rate published in the *Wall Street Journal* at the time, or such other rate as may be established by the Management Committee, but not to exceed the lawful rate of interest under Utah law. A late charge may be levied for each delinquent fine in an amount established from time to time by the Management Committee. If the Association files a notice of lien, the lien amount will also include the recording fees associated with filing the notice and a fee for preparing the notice of lien, which fee will be established from time to time by the Management Committee. If the Association prevails in any procedure to enforce the Association Documents, the Association will be entitled to an award of its costs and reasonable attorneys' fees associated with the action.

**16.8 Other Remedies.** An election by the Association to pursue any remedy provided for in this Declaration will not prevent concurrent or subsequent exercise of another remedy permitted under this Declaration. Failure by the Association to enforce any provision of the Association Documents will not be deemed a waiver of the right to do so thereafter. Any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate, or remedy any violation of the Association Documents by appropriate legal proceedings.

**16.9 Remedies Cumulative.** An election by the Association to pursue any remedy provided for in this Declaration will not prevent concurrent or subsequent exercise of another remedy permitted under this Declaration. Failure by the Association to enforce any provision of the Association Documents will not be deemed a waiver of the right to do so thereafter. Any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate, or remedy any violation of the Association Documents by appropriate legal proceedings.

## **Section 17 AMENDMENT**

This Declaration may be amended only with the consent of at least 67% of the votes allocated to the Units and, during the Declarant Control Period, the consent of Declarant. However, no amendment may create, limit, or diminish Special Declarant Rights without

Declarant's written consent. This Section is subject to the rights of First Mortgagees under Section 15. Notwithstanding anything in this Declaration to the contrary, Declarant will have the right to amend this Declaration or the Plat to correct technical errors, to clarify the meaning of certain provisions, or to comply with the requirements of any applicable statute, ordinance, regulation, or lending requirement of the Federal Housing Administration, the Department of Veterans Affairs, the Farmers Home Administration, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the state of Utah, or any corporation wholly owned, directly or indirectly, by the United States or the state of Utah that insures, guarantees, or provides financing for a condominium or units in a condominium.

## **Section 18**

### **MISCELLANEOUS**

**18.1 Interpretation of the Association Documents.** The Association, by its Management Committee, will have the exclusive right to interpret the Association Documents. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's interpretation of the Association Documents will be final, conclusive, and binding as to all Persons and property benefited or bound by the Association Documents.

**18.2 Severability.** Any determination by a court of competent jurisdiction that a provision of this Declaration is invalid or unenforceable will not affect the validity or enforceability of any other provision of this Declaration.

**18.3 Disclaimer.** Declarant makes no warranty or representation that the Project will be carried out as presently envisioned.

**18.4 Declarant's Successors and Assigns.** Any reference in this Declaration to Declarant will include any successors or assignees of Declarant's rights and powers under this Declaration. Declarant's rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers.

**18.5 Captions and Headings.** Captions and headings of Sections in this Declaration are for convenience of reference only and may not be used in interpreting this Declaration. Unless the context otherwise requires, all references to Articles, Sections, and Exhibits in this Declaration refer to Articles, Sections, and Exhibits, respectively, of this Declaration.

**18.6 Exhibits.** All exhibits attached to this Declaration are incorporated into this Declaration.

**18.7 Gender and Number.** Wherever the context requires in this Declaration, (a) words used in the masculine gender include the feminine and neuter genders; (b) words used in the neuter gender include the masculine and feminine genders; (c) words used in the singular include the plural; and (d) words used in the plural include the singular.

**18.8 Governing Law.** This Declaration will be governed by Utah law.

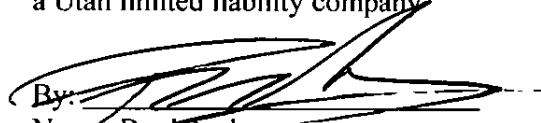
**18.9 Notices.** Each Unit and its Owner or Owners will register a single mailing address to be used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or Owners of a Unit will provide the notice address, together with a contact phone number and email address, to the secretary of the Association within ten days after taking title to the Unit. If no notice address is provided to the Association or if all of the Owners of a Unit cannot agree on a notice address, then the notice address for the Unit will be deemed to be the address of the Unit itself, and any notice will be deemed duly given if delivered to the Unit. All notices and demands to be served on Declarant or the Association must be sent to the following address or such other address or addresses as Declarant or the Association may designate from time to time by notice to the Owners:

Sterling Partners L.L.C.  
c/o Bridge Realty Capital  
Attn: Brad Andrus  
5295 Commerce Dr, Ste 175  
Murray, UT 84107-4786

**18.10 Service of Process.** The name and place of business of the Person to receive service of process is as set forth in the Articles and initially will be Brad Andrus, whose place of business within Utah is c/o Bridge Realty Capital, 5295 Commerce Dr, Ste 175, Murray, UT 84107-4786.

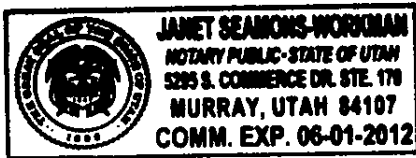
Declarant has executed this Declaration as of the date first mentioned above.

**Sterling Partners, L.L.C.**  
a Utah limited liability company

By:   
Name: Brad Andrus  
Title: Manager

State of Utah            )  
                                  ) ss.  
County of Salt Lake    )

The foregoing instrument was acknowledged before me on September 23, 2008, by Brad Andrus, a manager of Sterling Partners, L.L.C.



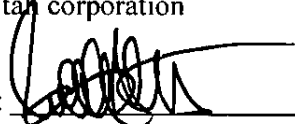
  
Notary Public



**CONSENT OF LIENHOLDER**

MagnetBank, as the holder of a lien encumbering the above-referenced Land and Improvements arising under that certain Construction Deed of Trust with Assignment of Leases and Rents, Security Agreement and Fixture Filing recorded October 11, 2006, as Entry No. 9873060 in Book 9364 at Page 717 in the official records of Salt Lake County, Utah, consents to the submission of the Land and Improvements to the Act under the terms of this Declaration and subordinates its lien to the encumbrance created by this Declaration.

**MagnetBank**  
a Utah corporation

By: 

Name: Russell Miller

Title: Senior Vice President

State of Utah            )  
                                  ) ss.  
County of Salt Lake    )

The foregoing instrument was acknowledged before me on September 23, 2008, by Russ Miller, S. Vice President of MagnetBank.

Shannon Lara  
Notary Public



## Exhibit A

### Legal Description of the Land

Beginning at the northwest corner of Lot 6, Block 51, Plat "A", Salt Lake City Survey; and running thence east 66 feet, thence south 165 feet, thence west 66 feet, thence north 165 feet to the point of beginning.

[For Reference Only: Tax Parcel Number 15-01-281-006]

Together with and subject to that certain easement for light, dated January 17, 1902, executed by and between Mathew H. Walker, *et ux.*, and John J. Daly, recorded January 23, 1902, as Entry No. 154640, in Book 2P of Liens and Leases, at Page 106 of the Salt Lake County Records.

Together with a right of way, so far as the same is appurtenant to and affects the above-described land, over, across, and along the following:

Beginning at a point on the north line of Post Office Place, 33 feet north and 165 feet west of the southeast corner of Lot 7, Block 51; and running north 132 feet; thence west 165 feet; thence south 16 feet; thence east 147 feet; thence south 45 degrees east 11.25 feet; thence south 108 feet to the north line of Post Office Place; thence east 10 feet to the point of beginning.

**Exhibit B**

Bylaws

(attached)

**BYLAWS  
OF  
35 WEST BROADWAY CONDOMINIUM ASSOCIATION, INC.**

**Section 1  
DEFINITIONS**

1.1 **Declaration.** The Amended and Restated Declaration of Condominium for 35 West Broadway Condominiums, to which these Bylaws are attached as Exhibit B, recorded in the official records of Salt Lake County, Utah.

1.2 **Other Definitions.** Any capitalized term used but not defined in these Bylaws will have the meaning attributed to it in the Declaration or the Articles.

**Section 2  
MEETINGS OF OWNERS**

2.1 **Annual Meetings.** The first annual meeting of the Association will be held in 2008 at a time and in a month specified by the Management Committee. Subsequent annual meetings will be held during the same month each year. Annual meetings will be held for the purpose of electing Directors, approving the annual budget, and transacting such other business as may come before the annual meeting.

2.2 **Special Meetings.** A special meeting of the Association may be called at any time by the Management Committee or the president of the Association, or upon the written request of at least 30% of the votes entitled to be cast by the Owners. A special meeting may only be held for the purposes set forth in the notice for that special meeting.

2.3 **Place of Meetings.** The Management Committee may designate any place within Salt Lake County as the place for any annual or special meeting of the Association. Owners may participate in meetings by any means of electronic or telephonic communication through which all Owners and other participants may simultaneously hear one another during the meeting. Owners who participate in a meeting by such means will be considered present for all purposes, including the presence of a quorum.

2.4 **Notice of Meetings.** Notice of each meeting stating the place, date, and time of the meeting and the purpose or purposes for which the meeting is called, will be delivered personally or by mail to each Owner entitled to vote at the meeting, not less than 10 nor more than 50 days before the date of the meeting. If mailed, the notice will be deemed to be delivered when deposited in the United States mail, postage prepaid, and addressed to the Owner at its address as it appears in the records of the Association. The Management Committee may set a record date for determining the Owners entitled to notice. The Association will give notice at the Association's expense of any special meeting called by the Owners under Section 2.2.

**Section 3**  
**VOTING; QUORUM**

- 3.1 **Voting.** Votes will be allocated as set forth in Section 3.2 of the Declaration.
- 3.2 **Quorum.** The number of Owners participating in a meeting in person, by proxy, or by written ballot will constitute a quorum.
- 3.3 **Voting Method.** Votes may be cast in person, by proxy, or by written ballot.
- 3.4 **Action by Proxy.** Every proxy must be executed in writing by the Owner or its duly authorized attorney-in-fact and filed with the secretary of the Association before or at the time of the meeting. No proxy will be valid after the expiration of one year from the date of its execution unless otherwise provided in the proxy.
- 3.5 **Action by Written Ballot.**
- (a) Any action that may be taken at any meeting of the Association may be taken without a meeting if the Association delivers a written ballot to every Owner entitled to vote on the matter. Such written ballot will set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot will be valid only when the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot. Owners submitting a written ballot will be considered to have participated in the meeting for all purposes.
- (b) All solicitations for votes by written ballot will: (i) indicate the number of responses needed to meet the quorum requirements; (ii) state the percentage of approvals necessary to approve each matter other than election of Directors; (iii) specify the time by which a written ballot must be received by the Association in order to be counted; and (iv) be accompanied by written information sufficient to permit each Owner casting a written ballot to reach an informed decision on the matter.
- (c) A written ballot may not be revoked.
- (d) Action by written ballot will have the same effect as action taken at a meeting.
- (e) The number of votes cast by written ballot will constitute a quorum for action on the matter.
- (f) A written ballot may also be used in connection with any meeting of the Association, thereby allowing Owners the choice of either voting in person or by written ballot delivered by an Owner to the Association in lieu of attendance at such meeting. A valid written ballot will be counted equally with the votes of Owners in attendance at any meeting for every purpose.

3.6 **Majority Vote.** The affirmative vote of a majority of the votes entitled to be cast by the Owners participating in a meeting in person, by proxy, or by written ballot will be the act of the Owners, unless the vote of a greater number is required by the Declaration, the Articles, or these Bylaws.

3.7 **Greater Quorum or Voting Requirements.** An amendment to the Articles or these Bylaws that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote required to take action under the greater of the quorum and voting requirements then in effect or proposed to be adopted.

#### **Section 4 MANAGEMENT COMMITTEE**

4.1 **Declarant Control Period.** During the Declarant Control Period, the Management Committee will consist of three Directors, who will be appointed by Declarant in its sole discretion and will serve until replaced by Declarant or until their successors take office following the end of the Declarant Control Period, whichever occurs earlier. Declarant will have the exclusive right to appoint, remove, and replace all Directors during the Declarant Control Period. Sections 4.2 through 4.9 are subject to this Section 4.1.

4.2 **Number, Election, Term of Directors.** The Management Committee will consist of four Directors. Two of the Directors (each, a "**Residential Director**") will be elected by a majority of the votes allocated to the Residential Owners and two of the Directors (each, a "**Commercial Director**") will be elected by a majority of the votes allocated to the Retail Owners and Office Owners (collectively, "**Commercial Owners**"). Directors will be elected at the annual meetings of the Association and will hold office for a term of one year. To protect the interests of Residential Owners with respect to Commercial Owners, and vice versa, the Management Committee may not take any action without the affirmative vote of at least one Residential Director and at least one Commercial Director.

4.3 **Removal.** A Director may be removed before the expiration of his term only at a special meeting of the Association called in accordance with Section 2.2. The consent of 67% or more of the votes allocated to the Units will be required for the removal of a Director. A vacancy created by the removal of a Director will be filled at the same meeting at which the Director was removed. Only the Residential Owners may fill a vacancy on the Management Committee created by the removal of a Residential Director. Only the Commercial Owners may fill a vacancy on the Management Committee created by the removal of a Commercial Director. The replacement Director will hold office until the next annual meeting of the Association and until his successor is duly elected.

4.4 **Resignation or Death.** A Director may resign before the expiration of his term by giving written notice to the president or to the secretary of the Association. Such resignation will take effect on the date specified in the notice. Upon the resignation or death of a Residential Director, the remaining Residential Director will appoint a replacement Director to serve until his successor is elected at the next annual meeting of the Association or at the next special meeting of the Association called for that purpose, whichever occurs first. Upon the resignation or death of a Commercial Director, the remaining Commercial Director will appoint a

replacement Director to serve until his successor is elected at the next annual meeting of the Association or at the next special meeting of the Association called for that purpose, whichever occurs first.

4.5 **Meetings.** A meeting of the Management Committee will be held immediately after, and at the same place as, each annual meeting of the Association. This meeting will be without call or formal notice. Additional meetings of the Management Committee may be held at any time when called by the president of the Association or by two or more Directors, upon the giving of at least five days' prior notice of the time and place of the meeting to each Director by hand-delivery, prepaid United States mail, fax, email, or telephone. Any business may be transacted at a Management Committee meeting. No notice of a Management Committee meeting need state the purposes for holding the meeting, and no notice of any adjourned Management Committee meeting will be required.

4.6 **Place of Meetings.** The Management Committee may designate any place within Salt Lake County or Summit County to hold a Management Committee meeting. Directors may participate in any Management Committee meeting by means of any electronic or telephonic communication by which all participants may simultaneously hear one another during such meeting. Directors who participate in a Management Committee meeting by such means will be considered present for all purposes, including the presence of a quorum.

4.7 **Quorum.** A majority of Directors (but in any event at least one Residential Director and at least one Commercial Director) will constitute a quorum for the transaction of business, but a lesser number may adjourn any Management Committee meeting from time to time. When a quorum is present at any Management Committee meeting, a majority of the Directors in attendance will, unless otherwise required by the Articles or these Bylaws (particularly the last sentence of Section 4.2), decide any question brought before such meeting.

4.8 **Waiver of Notice.** Before, at, or after any Management Committee meeting, any Director may, in writing, waive notice of such meeting and such waiver will be deemed equivalent to the giving of such notice. Attendance by a Director at a Management Committee meeting will constitute a waiver of notice by such Director except when such Director attends the meeting for the express purpose of objecting to the transaction of business based on a claim that the meeting was not duly called or convened.

4.9 **Informal Action by Directors.** Any action required or permitted to be taken at a Management Committee meeting may be taken without such meeting if a written consent setting forth the action so taken is signed by all of the Directors entitled to vote with respect to the subject matter thereof. Such consent will have the same force and effect as a unanimous vote of the Directors.

## **Section 5 OFFICERS AND AGENTS**

5.1 **General.** The Officers of the Association will be a president (who will be chosen from among the Directors), a vice president, a secretary, and a treasurer. The Management Committee may appoint such other Officers, assistant Officers, committees, and agents,

including assistant secretaries and assistant treasurers, as it may consider necessary or advisable, who will be chosen in such manner and hold their offices for such terms and have such authority and duties as from time to time may be determined by the Management Committee. One person may hold any two offices, except that no person may simultaneously hold the offices of president and secretary. In all cases where the duties of any Officer, agent, or employee are not prescribed by these Bylaws or by the Management Committee, such Officer, agent, or employee will follow the orders and instructions of the president.

5.2 **Removal of Officers.** The Management Committee may remove any Officer, with or without cause, and elect a successor at any Management Committee meeting.

5.3 **Vacancies.** A vacancy in any office will be filled by the Management Committee for the unexpired portion of the term.

5.4 **President.** The president will be the chief Officer of the Association. The president will preside at all Association meetings and Management Committee meetings. The president will have the general and active control of the affairs and business of the Association and general supervision of its Officers, agents, and employees. The president is designated as the Officer with the power to prepare, execute, certify, and record amendments to the Declaration and the Articles on behalf of the Association.

5.5 **Vice President.** The vice president will assist the president and will perform the duties assigned to him by the president or the Management Committee. In the absence of the president, the vice president will have the powers and perform the duties of the president.

5.6 **Secretary.** The secretary will:

(a) keep the minutes of the proceedings of Association meetings and Management Committee meetings;

(b) see that all notices are duly given in accordance with the provisions of these Bylaws and the Declaration;

(c) maintain the records of the Association, including a record containing the names and registered addresses of all Owners, the designation of the Unit owned by each Owner, and, if a Unit is Mortgaged, the name and address of each Mortgagee; and

(d) perform all other duties incident to the office of secretary and the duties assigned to him by the president or the Management Committee.

5.7 **Treasurer.** The treasurer will be the principal financial Officer of the Association and will have the care and custody of all funds, securities, evidences of indebtedness, and other personal property of the Association. The treasurer will receive and give receipts and acquittances for moneys paid in on account of the Association and will pay out of the funds on hand all bills, payrolls, and other just debts of the Association upon maturity. The treasurer will perform all other duties incident to the office of treasurer and, upon request of the Management Committee, make such reports to it as may be required at any time. The treasurer will, if required by the Management Committee, give the Association a bond for the faithful performance of his



duties and for the restoration to the Association of all books, papers, vouchers, money, and other property in his possession or under his control belonging to the Association. The treasurer will have such other powers and perform such other duties assigned to him by the president or the Management Committee.

## **Section 6**

### **PROOF OF OWNERSHIP; CONTACT INFORMATION; ASSOCIATION ADDRESS; MORTGAGES**

6.1 **Proof of Ownership.** Each Person on becoming a Unit Owner will furnish to the Association a copy of the recorded instrument vesting that Person with an ownership interest in the Unit. Such copy will remain in the records of the Association. An Owner who fails to satisfy this requirement will not be deemed an Owner in good standing and will not be entitled to vote at any Association meeting.

6.2 **Contact Information.** Each Owner is required to register a mailing address, a phone number, and an email address with the Association within ten days after becoming an Owner. The contact information of each Owner will be kept in the records of the Association. Owners must notify the Association of any change in contact information within ten days after the change. Any notice mailed to an Owner's registered address or—if the Owner fails to register an address with the Association—to the address on file with the County Recorder will be deemed duly delivered.

6.3 **Address of the Association.** The initial address of the Association will be 78 Thaynes Canyon Dr, Park City, UT 84060-5144. The Association's address may be changed from time to time upon written notice to all Owners and all listed Mortgagees.

6.4 **Mortgages.** Any Owner who Mortgages its Unit will give the Association written notice of the name and address of the Mortgagee and will file true, correct, and complete copies of the note and security instrument with the Association.

## **Section 7**

### **SECURITY INTEREST IN MEMBERSHIP**

A Unit Owner will have the right to appoint the Mortgagee of its Unit as its true and lawful attorney-in-fact to exercise any and all rights, privileges, and powers that the Owner has as a member of the Association by filing a proxy with the secretary of the Association. A release of the Mortgage covering the Unit will operate to revoke the proxy. An Owner who appoints its Mortgagee as attorney-in-fact will not be relieved of its duties and obligations as an Owner, nor will the appointment impose upon the Mortgagee the duties or obligations of an Owner.

## **Section 8**

### **FISCAL MANAGEMENT**

8.1 **Fiscal Year.** The fiscal year of the Association will be as established by the Management Committee from time to time.

**8.2 Assessment Procedures.** The General Assessment will be payable in monthly installments and will be due on the first business day of each month. All other Assessments will be due within 30 days after the Management Committee delivers written notice of the Assessment to the Owner.

**Section 9**  
**AMENDMENT**

During the Declarant Control Period, these Bylaws may be amended with the consent of Declarant and at least 67% of the votes allocated to the Units. After the Declarant Control Period expires, these Bylaws may be amended with the consent of at least 67% of the votes allocated to the Units.

### Exhibit C

#### Units, Square Footages, Interests in Common Areas

Unit No.	Legal Square Footage	Interest in Common Areas	Usable Square Footage	Salable Square Footage
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#### Retail Units

101	518	1.35%	577	704
102	1,430	3.73%	1,566	1,910
200	1,041	2.72%	1,127	1,374

#### Office Units

103	1,020	2.66%	1,160	1,415
104	1,150	3.00%	1,250	1,524
105	927	2.42%	1,030	1,256
201	504	1.31%	609	743
201A	267	0.70%	323	394
202	825	2.15%	981	1,196
203	965	2.52%	1,033	1,260
204	1,211	3.16%	1,320	1,610
205	1,434	3.74%	1,692	2,063
301	2,265	5.91%	2,521	3,074
302	2,008	5.24%	2,102	2,563
303	1,520	3.97%	1,629	1,987
304	1,419	3.70%	1,683	2,052

#### Residential Units

401	2,198	5.73%	2,485	3,030
402	1,512	3.94%	1,603	1,955

Unit No.	Legal Square Footage	Interest in Common Areas	Usable Square Footage	Salable Square Footage
403	1,685	4.40%	1,779	2,170
404	2,529	6.60%	2,679	3,267
501	2,136	5.57%	2,424	2,956
502	1,540	4.02%	1,664	2,029
503	2,064	5.38%	2,161	2,635
504	1,877	4.90%	2,158	2,632

**Storage Units**

S-1	259	0.68%	N/A	N/A
S-2	226	0.59%	N/A	N/A
S-3	322	0.84%	N/A	N/A
S-4	322	0.84%	N/A	N/A
S-5	322	0.84%	N/A	N/A
S-6	350	0.91%	N/A	N/A
S-7	177	0.46%	N/A	N/A
S-8	328	0.86%	N/A	N/A
S-9	358	0.93%	N/A	N/A
S-10	259	0.68%	N/A	N/A
S-11	274	0.71%	N/A	N/A
S-12	274	0.71%	N/A	N/A
S-13	274	0.71%	N/A	N/A
S-14	274	0.71%	N/A	N/A
S-15	274	0.71%	N/A	N/A

<b>Total</b>	<b>38,338</b>	<b>100.00%</b>
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*Exhibit C to Declaration of Condominium (35 West Broadway)*