

56  
114

February 28, 2006

9722750  
05/12/2006 04:12 PM \$234.00  
Book - 9293 Pg - 8767-8822  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
BONNEVILLE TOWER ASSOCIATION  
777 E SOUTH TEMPLE  
SALT LAKE CITY UT 84102-1207  
BY: KAM, DEPUTY - WI 56 P.

**AMENDED AND RESTATED  
DECLARATION AND BY-LAWS**

**TABLE OF CONTENTS**

<b>DECLARATION:</b>	<b>PAGE</b>
1. Recitals . . . . .	1
2. Description of the Land . . . . .	2
3. Description of the Building. . . . .	2
4. Description of the Units . . . . .	2
5. Description of the Common Areas and Facilities . . . . .	3
6. Description of Limited Common Areas and Facilities . . . . .	3
7. Percentages of Undivided Interest in Common Areas and Facilities . . . . .	4
8. Purpose of the Property. . . . .	4
9. Agent for Service of Process . . . . .	6
10. Association of Unit Owners: Management Committee . . . . .	7
11. Maintenance, Structural Alterations and Improvements . . . . .	10
12. Insurance. . . . .	12
13. Destruction or Damage. . . . .	14
14. Termination. . . . .	15
15. Eminent Domain . . . . .	16
16. Mortgage Protection. . . . .	18
17. Ownership and Leasing Restrictions . . . . .	20
18. Encroachments. . . . .	21
19. Conveyances, Easements . . . . .	22
20. Combination of Units . . . . .	23
21. Amendment. . . . .	24
22. Assessments. . . . .	24
23. Voting . . . . .	29
24. Notices. . . . .	30
25. No waiver. . . . .	30
26. Enforcement. . . . .	30
27. Severability . . . . .	31
28. Captions . . . . .	31
29. Law Controlling. . . . .	31
30. Smoking. . . . .	31
31. Sanctions and Fines. . . . .	32
32. Binding Effect . . . . .	35
33. Effective Date . . . . .	35

**APPENDIX B BY-LAWS**

1. Application of By-Laws . . . . .	B- 1
2. Management Committee . . . . .	B- 1
3. Meetings of the Association . . . . .	B- 4
4. Officers . . . . .	B- 5
5. Common Expense; Assessments . . . . .	B- 6
6. Litigation . . . . .	B-10
7. Abatement and Enjoinment of Violations by Unit Owners . . . . .	B-11
8. Accounting . . . . .	B-11
9. Ad Hoc Committees. . . . .	B-12
10. Amendment of the By-Laws . . . . .	B-12
11. Meetings . . . . .	B-12
12. Conflicts . . . . .	B-13
13. Order of Business . . . . .	B-14
14. Severability . . . . .	B-14
15. Captions . . . . .	B-14
16. Effective Date . . . . .	B-14

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM FOR  
BONNEVILLE TOWER CONDOMINIUM

This Declaration is made and executed by The Bonneville Tower Condominium Association, Inc., a Utah Non-Profit Corporation, of 777 East South Temple, Salt Lake City, Utah 84102 pursuant to the provisions of the Utah Condominium Ownership Act, Utah Code Ann. 57-8-1 through 57-8-35 (1963), hereinafter referred to as the "Act."

1. Recitals.

1.1. The Association is managing the real property and improvements ("property") located at 777 East South Temple, Salt Lake City, Salt Lake County, Utah, hereinafter more particularly described, for and in behalf of the Unit owners.

1.2. The Declaration of Condominium for Bonneville Tower Condominium, dated March 27, 1974, was recorded March 28, 1974 as Entry No. 2609076, in Book 3445, at page 145, of Official Records of the County Recorder of Salt Lake County, Utah. The recording of this Declaration resubmits the property to the provisions of the Act.

1.3. The covenants, conditions and restrictions contained in this Declaration and in the appendices hereto shall be enforceable equitable servitudes and shall run with the land.

1.4. The original Declarant has previously filed a record of survey Map ("Map"), as required by section 57-8-13 of the Act.

1.5. The administration of the Association shall be governed by By-Laws which are embodied in a separate instrument, a true copy of which is appended to and recorded with this Declaration as Appendix B.

1.6. Except as defined herein, all terms used in this Declaration and the appended By-Laws shall have the same definition as the terms defined in the Act, unless the context clearly requires otherwise.

1.7. The property shall be known as Bonneville Tower Condominium. The address of the property is 777 East South Temple, Salt Lake City, Utah 84102.

## 2. Description of the Land.

The land on which the Building and improvements are located is particularly described as follows: All of Lots 2 and 3, Block 3, Plat "D", Salt Lake City Survey.

## 3. Description of the Building.

3.1. The Building has a subbasement, three parking levels, thirteen full floors above the third parking level, and a superstructure located above the highest full floor, all of which comprise eighteen stories above grade. The main entrance, which is located on South Temple, leads to a lobby, a mail room, a manager's office, and the entrance to the elevator lobby. There is a laundry room for use of the occupants on the second floor or third parking level. Storage spaces for the use of the occupants are located in the subbasement and in designated areas in the parking levels, as well as designated storage closets on floors three through fifteen. Each of the three parking levels has an individual entrance and exit which are located at the front, side, and rear of the Building, respectively.

3.2. There are 115 Units in the Building.

3.3. The Building is constructed of steel frame with re-enforced concrete slabs. The exterior consists of brick, masonry panels and glass windows. The interior floors are of concrete with carpet or wood veneer coverings and ceilings are of plaster. Most interior partitions between Units are of concrete block construction with plaster finishes. The Building is currently supplied with electricity, water and sewage service, a central garbage collection system, cable T.V. for each Unit, centrally monitored smoke detectors in each Unit, and a swimming pool. The Building is centrally heated and centrally air conditioned with an energy management system. Each Unit has individual heat and air conditioning controls. There are two fully automatic passenger elevators. The Building is more fully depicted in the Plat Map.

## 4. Description of Units.

4.1. Each Unit has immediate access to a central hallway which is part of the Common Areas and Facilities. Appendix A hereto contains a table setting forth the number and letter designation of each Unit, the number portion designating the floor on which the Unit is located. The Units are more particularly described in the Plat Map.

4.2. The boundary lines of each Unit are the undecorated and/or unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floor, uppermost ceiling, interior services of windows and doors, window frames, and or frames and trim. Each Unit shall include both the portions of the Building that are not Common Areas and Facilities within such boundary lines and the space so encompassed. Without limitations, a Unit shall include any finishing material applied or affixed to the interior surfaces of the interior walls, floor, and ceiling, non-supporting interior walls and all utility pipes, lines, systems, fixtures, or appliances found within the boundary line of the Unit and/or servicing only that Unit.

5. Description of Common Areas and Facilities.

The Common Areas and Facilities shall mean and include: the land on which the Building is located and all portions of the property not contained within any Unit, including, but not by way of limitation: the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, and entrances and exits of the Building; the basements, grounds, gardens, parking areas, laundry room, swimming pool, changing rooms and storage spaces; the manager's office, the mail room, and the areas used for storage of janitorial supplies, maintenance equipment and materials; installations of all central services, including power, light, gas, hot and cold water, heating, air conditioning, and garbage collection; the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use; all patios, courts and driveways; any utility pipes, lines or systems servicing more than a single Unit and all ducts, flues, chutes, wires, conduits and other accessories and utility installations to the outlets used therewith; all Limited Common Areas and Facilities as hereinafter described; all other parts of the property necessary or convenient to its existence, maintenance and safety or normally common in use, or which have been designated as Common Areas and Facilities in the Map; all portions of the Project not specifically included within the individual Units; all other parts of the project normally in common use or necessary or convenient to the use, existence, safety, operation or management of the common property; all repairs and replacements of any of the foregoing.

6. Description of Limited Common Areas and Facilities.

Limited Common Areas and Facilities mean and include those portions of the Common Areas and Facilities reserved for the use of certain Units to the exclusion of other Units. The

Limited Common Areas and Facilities shall be the assigned parking spaces and the storage areas as set forth in Appendix A, as well as all balconies and/or those patios that are immediately adjacent to and contiguous with certain Units located on the third, tenth and fifteenth floors, as more particularly identified in the Map. The use and occupancy of designated Limited Common Areas and Facilities shall be reserved to its associated Unit and each Unit owner is hereby granted an irrevocable license to use and occupy said Limited Common Areas and Facilities.

7. Percentages of Undivided Interest in Common Areas and Facilities.

The percentage of undivided interest in the Common Areas and Facilities appurtenant to each Unit and its unit owner for all purposes, including voting, is set forth in Appendix A. Such percentages of undivided ownership interest are based upon par value. "Par Value" means a number of dollars or points assigned to each Unit by the Declaration. Substantially identical Units shall be assigned the same Par Value, but Units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics might result in differences in market value, may, but need not, be considered substantially identical within the meaning of this section. If Par Value is stated in terms of dollars, that statement may not be considered to reflect or control the sales price or fair market value of any Unit and no opinion, appraisal or fair market transaction at a different figure may affect the Par Value of any Unit, or any undivided interest in the Common Areas and Facilities, voting rights in the Association, liability for Common Expenses, or right to common profits, assigned on the basis thereof. The undivided interest of each Owner shall have a permanent character and shall not be altered without the affirmative consent of at least two-thirds of the Units owners expressed in an amendment to the declaration duly recorded.

8. Purpose of the property.

8.1. The purpose of the property is to provide Residential housing, parking and recreational Facilities for Unit owners and their respective families, tenants, guests and servants.

8.2. A Unit owner shall not permit his Unit to be occupied or used other than as a private residence for a single family, without the express approval of the Management Committee or its designee. The term "Single Family Residence" refers to both the architectural style of the Building and the

activities permitted therein. The term a "family" shall mean one of the following: (1) a single person living alone; (2) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, such as a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, great-grandparent or great-grandchild or (3) a group of not more than three unrelated persons who live together, cook together, and maintain a common household and single housekeeping unit. In addition, an additional person or persons may reside with the family under subsection (2) as domestic help or as a caretaker.

No commercial trade or business may be conducted in or from any Unit unless: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; (b) the business activity conforms to all zoning requirements for the Project; (c) the business activity does not involve persons coming on to the Project who do not reside in the Project or door to door solicitation of residents within the Project; and (d) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Committee. The terms "business and trade" as used in this subsection shall be construed to have their ordinary, generally accepted meanings and shall include without limitations any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services other than for the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (1) such activity is engaged in full or part time; (2) such activity is intended to or does generate a profit; (3) a license is required therefore. Notwithstanding the foregoing, the leasing of a Unit shall not be considered a trade or business within the meaning of this subsection.

8.2.1. A Unit owner shall not permit his parking space(s) to be used for any other purpose except to park vehicle(s).

8.2.2. A Unit owner shall not obstruct the Common Areas and Facilities. A Unit owner shall not place or store anything within the Common Areas and Facilities without the prior written consent of the Management Committee or its designee.

8.2.3. A Unit Owner shall not permit anything to be done or kept in his Unit, the Common Area, or in the Limited Common Areas and Facilities appurtenant to his Unit that would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of

any governmental body, result in an increase in the cost of insurance on the property, or that would result in the cancellation of insurance with respect to all or any part of the property, or that would be in violation of any governmental law, ordinance, or regulation.

8.2.4. Without prior written consent of the Management Committee or its designee, a Unit owner shall not permit any sign of any kind to be displayed to the public view from his Unit or from the Limited Common Areas and Facilities appurtenant to his Unit.

8.2.5. A Unit owner shall not permit any animals of any kind to be raised, bred, or kept in his Unit or in the Limited Common Areas and Facilities appurtenant to his Unit.

8.2.6. A Unit owner shall not permit any noxious or offensive activity or nuisance to be carried on in, on or about his Unit, the Common Area, or in the Limited Common areas and Facilities appurtenant to his Unit.

8.2.7. A Unit owner shall not alter, construct in, or remove anything from the Common Areas and Facilities, except with the prior written consent of the Management Committee or its designee.

8.2.8. A Unit owner shall not violate any of the rules and regulations for the use of Units, Common Areas and Facilities, or in the Limited Common Areas and Facilities adopted by the Management Committee and furnished in writing to the Unit owners.

8.2.9. No damage to or waste of the Common Areas and Facilities or Limited Common Areas and Facilities shall be committed by any Unit owner or resident, their family members, guests or invitees, and each Unit owner and resident shall indemnify and hold the Association and other Unit owners in the Project harmless against all loss resulting from any such damage or waste.

## 9. Agent for Service of Process.

9.1. The agent to receive service of process in matters pertaining to the property is the Office Manager or any member of the Management Committee, at which service may be made at 777 East South Temple, Salt Lake City, Utah 84102 - phone (801) 355-7549.

9.2. The agent for service of process may be changed from time to time by recording an appropriate affidavit.



10. Association of Unit Owners: Management Committee.

10.1. The term "Association" shall mean and refer to all of the Unit Owners in the Project taken or acting as a group in accordance with the Declaration. The Association is currently a nonprofit corporation organized pursuant to the provisions of the Utah Revised Nonprofit Corporation Act, U.C.A., Section 16-6a-1 et seq. The name of the nonprofit corporation is currently the "Bonneville Tower Condominium Association, Inc." and it is doing business as the "Bonneville Towers Homeowners Association". The name in which contracts shall be entered into, title to property shall be acquired, held, dealt in and disposed of, bank accounts shall be opened and suits shall be brought and defended by the Management Committee or officers thereof on behalf of and as agents for the Unit owners in the manner specified by the Act, this Declaration, or the By-Laws, is either the "Bonneville Tower Condominium Association Inc." or "Bonneville Tower Homeowners Association".

10.2. The management and maintenance of the property and the business, property and affairs of the Association shall be managed by a Management Committee, consisting of five (5) members. The Management Committee shall be elected as provided in the By-Laws.

10.3. The Management Committee shall have all the powers, duties, and responsibilities as are now or may hereafter be provided by the Act, this Declaration and By-Laws, including but not limited to the following:

10.3.1. To make and enforce all house rules and administrative rules and regulations covering the operation and maintenance of the property.

10.3.2. To engage the services of a manager or managing company, accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefor.

10.3.3. To operate, maintain, repair, improve and replace the Common Areas and Facilities.

10.3.4. To determine and pay the Common Expenses.

10.3.5. To assess and collect the proportionate share of Common Expenses from the Unit owners.

10.3.6. To enter into contracts, deeds, leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

10.3.7. To open bank accounts on behalf of the Association and to designate the signatures therefor.

10.3.8. To establish a reserve account or accounts, which may only be deposited or invested as follows:

10.3.8.1. Savings Account in financial institutions offering FDIC or U.S. Government agency trusts.

10.3.8.2. United States Treasury Bills or Notes purchased through the Federal Reserve Bank.

10.3.8.3. Certificates of Deposit or money market trusts guaranteed by an agency of the United States Government.

10.3.9. To purchase, hold, sell, convey, mortgage or lease any one or more Units in the name of the Association or its designee.

10.3.10. To bring, prosecute and settle litigation for itself, the Association and the property, provided that it shall make no settlement which results in a liability against the Management Committee, the Association, or the property in excess of 5% of the total annual operating budget without prior approval of a majority of the undivided ownership interest in the Common Areas and Facilities.

10.3.11. To obtain insurance for the Association with respect to the Units and the Common Areas and Facilities, as well as workmen's compensation insurance.

10.3.12. To repair or restore the property following damage or destruction, or a permanent taking by the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation, not resulting in the removal of the property from the provisions of the Act.

10.3.13. To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Unit owners, items of personal property necessary to or convenient in the management of the business and affairs of the Association and the Management Committee and in the operation of the property, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances, and office supplies.

10.3.14. To keep adequate books and records.

10.3.15. To do all other acts necessary for the operation and maintenance of the property, including the

maintenance and repair of any Unit if the same is necessary to protect or preserve the property.

10.3.16. To sell, acquire, exchange, transfer or convey any interest in common area and facilities and personal property of the Association, not private ownership property, so long as it has the prior written consent of at least 75% of the undivided ownership in the Common Areas and Facilities.

10.3.17. To adopt, publish and enforce design guidelines and restrictions for the Common Area and Limited Common Area, including without limitation a description of the personal property permitted on the balconies, decks and patios.

10.3.18. To adopt, publish and enforce rules of decorum or order for presiding over and conducting meetings of the Management Committee and the Association.

10.3.19. To make reasonable accommodations for the handicapped in accordance with the requirements of the Fair Housing Acts.

10.4. The Management Committee may delegate to a manager or managing company all of its foregoing powers, duties and responsibilities referred to in paragraph 10.3 above except: the final determination of Common Expenses, budgets and assessments based thereon; the promulgation of house rules and administrative rules and regulations; the power to enter into any contract involving more than 2% of the total annual operating budget in any one fiscal year; the opening of bank accounts; the power to purchase, hold, sell, convey, mortgage or lease any Units in the name of the Association or to bring, prosecute and settle litigation.

10.5. Members of the Management Committee, the officers and any assistant officer, agents and employees of the Association (a) shall not be liable to the Unit owners as a result of their activities as such for any mistake of judgement, negligence or otherwise, except for their own willful misconduct or bad faith; (b) shall have no personal liability in contract to a Unit owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such; (c) shall have no personal liability in tort to any Unit owner or any person or entity direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, or acts performed for them in their capacity as such; and (d) shall have no personal liability arising out of the use, misuse or condition of the

property, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

10.6. The Unit owners shall indemnify and hold harmless, any person, his heirs and personal representatives, from and against all personal liability and all expenses including counsel fees, incurred or imposed, or arising out or in settlement of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative instituted by any one or more Unit owners, or any other persons or entities, to which he shall be or shall be threatened to be made a party by reason of the fact that he is or was a member of the Management Committee or an officer or assistant officer, agent or employee of the Association, other than to the extent, if any, that such liability or expense shall be attributable to his willful misconduct or bad faith, provided, in the case of any settlement, that the Management Committee shall have approved the settlement, which approval is not to be unreasonably withheld. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled as a matter of law or agreement or vote of Unit owners or of the Management Committee, or otherwise. The indemnification by the Unit owners as contained herein shall be paid by the Management Committee on behalf of the Unit owners and shall constitute a Common Expense and shall be assessed and collectible as such.

#### 11. Maintenance, Structural Alterations and Improvements.

11.1. The maintenance, replacement and repair of the Common Areas and Facilities shall be the responsibility of the Management Committee and the cost thereof shall be a Common Expense. The Management Committee shall also maintain, replace and repair all parking areas, balconies and patios and all conduits, ducts, plumbing and wiring and other facilities for the furnishing of heat, gas, light, power, air conditioning, water and sewer contained in the portions of the Units that service part or parts of the property other than the Unit in which they are contained. All incidental damages caused to a Unit by the maintenance, replacement and repair of the Common Areas and Facilities or utility services shall be repaired promptly at the expense of the Association. A written application must be submitted to and approved by the Management Committee by a Unit owner prior to making any structural alterations, including but not limited to any electrical, plumbing and/or structural modifications, other pertinent information including contractor, and contractor license number, evidence of permits and inspections and intent to comply with all local, state and national requirements and building codes, work schedule, and

completion of the contractor compliance form, and other information as may be required by the Management Committee. The approval of the Management Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawing or matters whatever subsequently or additionally submitted for approval or consent. The Management Committee may authorize variances from compliance with any of the provisions of the Design Guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations require, but only in accordance with its duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the Committee from denying a variance in other circumstances. For purposes of this subsection, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of financing shall not be considered a hardship warranting a variance. Neither the Association, Management Committee or any agent thereof, nor their employees, representatives or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications. In all events, such parties shall be defended and indemnified by the Association. Any construction, alteration or other work done in violation of this section shall be deemed to be non-conforming. Upon written request from the Management Committee, owner shall at their own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existing prior to the construction, alteration or other work. Should a Unit owner fail to remove or restore as required hereunder, the Management Committee or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work, without being guilty of a trespass, conversion or other tort. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as an assessment.

11.2. The Unit owners shall have the responsibility to maintain, repair, replace and keep in a clean and sanitary condition, at the Unit owner's expense, all portions of the

Unit owner's Unit. The Unit owners shall keep clean and in a sanitary condition their storage areas and balconies and patios, if any. The Management Committee shall be responsible for cleaning and general maintenance of all parking areas.

## 12. Insurance.

12.1. The Management Committee shall obtain and maintain at all times insurance of the type and kind as provided herein and including insurance for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other properties similar to the property in construction, design and use. In accordance with Section 57-8-9 (2002) of the Act, the Manager, Management Committee, or Association shall obtain insurance against loss or damage by fire and other hazards for (a) all Common Areas and Facilities; and (b) all buildings that contain more than one condominium unit, including any improvement which is a permanent part of the building. The Management Committee shall make every reasonable effort to obtain insurance with the following provisions or endorsements:

12.1.1. Exclusive authority to adjust losses or claims shall be vested in the Management Committee as insurance trustee;

12.1.2. The insurance coverage shall not be brought into contribution with insurance purchased by individual Unit owners or their respective mortgagees. In the event of duplicate coverage of a claim, the insurance coverage of the Unit owner or resident may be deemed by the Management Committee in its sole discretion to be primary and the coverage of the Association shall be deemed to be secondary;

12.1.3. The insurer waives its right of subrogation as to any claims against each Unit owner;

12.1.4. The insurance coverage cannot be canceled, invalidated or suspended because of the conduct of any one or more individual Unit owners or their respective lessees, employees, agents, contractors, and guests;

12.1.5. The insurance coverage cannot be canceled, invalidated or suspended because of the conduct of any officer or employee of the Association or Management Committee or their employees, agents or contractors, without prior demand in writing that the Management Committee cure the defect and then only if the defect is not cured within thirty (30) days.

12.1.6 The deductible on a claim on the Association's property insurance or its equivalent shall be paid for by the

party or parties who would be liable for the loss, damage, claim or repair in the absence of insurance, and in the event of multiple responsible parties, the deductible shall be allocated in relation to the amount each party's responsibility bears to the total; however, if a loss is caused by an act of God or nature, or by an element beyond the control of the parties, then the deductible shall be paid for by the Association.

12.2. The Management Committee, for the benefit of the property and the Unit owners, shall maintain a policy or policies of property, casualty and multi-risk, insurance using the special all risk property forms, for the full insurable replacement value of the Units, Common Areas and Facilities, items of common personal property and fixtures, payable to the Management Committee as insurance trustee to be disbursed in accordance with the terms of this Declaration. The limits and coverage of said insurance shall be reviewed annually and bid at least every third year by the Management Committee and may, at the discretion of the Management Committee, include an appraisal of the property. Said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees, if any, of each Unit. The deductible, if any, may be up to \$10,000.00.

12.3. The Management Committee shall obtain a policy or policies of insurance insuring the Management Committee, the Unit owners and their respective lessees, servants, agents or guests against any liability to the public or to the Unit owners, members of the households of Unit owners and their respective invitee or tenants, incident to the ownership and/or use of the property. Limits of liability under such insurance shall not be less than One Million Dollars (\$1,000,000) combined single limit for any one occurrence and Two Million Dollars (\$2,000,000) aggregate. The limits in coverage of said liability policy or policies shall be reviewed at least every third year by the Management Committee and increased at its discretion. Said policy or policies shall be issued on a comprehensive liability basis.

12.4. The Management Committee shall obtain a policy of Directors and Officers insurance in an amount not less than One Million Dollars (\$1,000,000.00).

12.5. The Management Committee shall obtain a blanket fidelity bond in an amount not less than three (3) months of Assessments plus reserves. Such bond shall be endorsed to cover all employees of the Association as well as the non-compensated officers and members of the Management Committee.

12.6. The Management Committee shall obtain a policy of Boiler and Machinery Insurance written on a comprehensive basis (if appropriate), covering all boilers and air conditioning equipment.

12.7. Responsibility to Common Area and Facilities or Adjoining or Nearby Units: Each Unit owner is strictly liable for damage to the Common Area and Facilities or other Units caused by him, his family members, guests or inductees, or his Unit.

12.8. Unit owners (and renters) should consult their own attorneys, accountants or insurance agents and purchase, at their sole expense, adequate additional or supplemental liability, contents and property insurance coverage as they deem necessary or appropriate, including insurance to pay for the deductible on the Association's master policy. An HO6 policy or its equivalent is generally recommended for Unit owners and an HO4 policy or its equivalent is generally recommended for renters. Unit owners and residents shall provide the Association with a Certificate of Insurance upon request.

12.9. No Unit owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount that the Management Committee, on behalf of all of the Unit owners, may realize under any insurance policy that the Management Committee may have in force covering the property or any part thereof at any time.,

### 13. Destruction or Damage.

13.1. In case of fire or any other disaster which causes damage or destruction to all or part of the property, the Management Committee, with the help of an independent appraisal, shall determine the percentage of the Building that was destroyed or substantially damaged. If less than seventy-five percent (75%) of the Building was destroyed or substantially damaged, the Management Committee shall arrange for the prompt repair and restoration of the Building using the proceeds of insurance on the Building for that purpose, and the Unit owners shall be liable for assessment for any deficiency, if any, in proportion to their respective percentages of undivided interest in the Common Areas and Facilities. Reconstruction of the Building shall mean the restoring of the Building to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas and Facilities having the same vertical and horizontal boundaries as before, unless the destruction or damage is by reason of eminent domain, in which event the provisions of paragraph 15 hereof shall apply.



13.2. If seventy-five percent (75%) or more of the Building is destroyed or substantially damaged, the Management Committee shall, within one hundred (100) days after such destruction or damage, call a special meeting of the Unit owners for the purpose of deciding whether or not the Building shall be repaired and restored. If at least three-fourths (3/4) of the Unit owners, in person or by proxy, vote to repair or restore the Building, the Management Committee shall promptly arrange for the reconstruction of the Building, using the proceeds of insurance on the Building for that purpose, and the Unit owners shall be liable for assessment for any deficiency, if any, in proportion to their respective percentage of undivided interest in the Common Areas and Facilities. If the destruction or damage is by reason of eminent domain, the provisions of paragraph 15 hereof shall apply. However, if at least three-fourths (3/4) of the Unit owners vote not to make provision for reconstruction, the Management Committee shall record, with the County Recorder, a notice setting forth such facts, and upon the recording of such notice: (a) the property shall be deemed to be owned in common by the Unit owners; (b) the undivided interest in the property owned in common which shall appertain to each Unit owner shall be the percentage of undivided interest previously owned by such Unit owner in the Common Areas and Facilities; (c) any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Unit owner in the property; and (d) the property shall be subject to an action for partition at the suit of any Unit owner, in which event the net proceeds of sale, together with the net proceed of the insurance on the property, shall be considered as one fund and shall be divided among all Unit owners in a percentage equal to the percentage of undivided interest owned by each Unit owner in the property, after first paying out of the respective shares of the Unit owners, to the extent sufficient for such purposes, all sums necessary to satisfy liens on the undivided interest in the property owned by each Unit owner.

13.3. For purposes of this paragraph 13, the terms "disaster," "destruction" or "substantial damage" shall mean and include a temporary or permanent taking, injury or destruction of all or part of the Common Areas and Facilities or one or more Units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation.

#### 14. Termination.

14.1. In the event three-fourths (3/4) of the Building is destroyed or substantially damaged and if the Unit owners

vote not to reconstruct the Building, the property shall be removed from the provisions of the Act without further agreement one hundred and one (101) days after such destruction or damage.

14.2. All of the Unit owners may remove the property from the provisions of the Act by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the Units consent or agree by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the Unit owners in the property.

14.3. After removal of the property from the Act, the Unit owners shall own the property and all assets of the Association as tenants in common and the respective mortgagees and lien or shall have mortgages and liens upon the respective undivided interests of the Unit owners. Such undivided interests of the Unit owners shall be the same as the percentage of undivided interest in the Common Areas and Facilities appurtenant to the Unit owners' Units prior to removal from the Act.

14.4. This paragraph 14 cannot be amended without consent of all Unit owners and all record owners or mortgages on Units.

15. Eminent Domain.

15.1. Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Areas and Facilities or one or more Units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation, the Management Committee and each Unit owner shall be entitled to notice thereof and the Management Committee shall and the Unit owners at their respective expense may participate in the proceedings incident thereto.

15.2. With respect to Common Areas and Facilities, any damages or awards shall be determined for such taking, injury or destruction as a whole and not for each Unit owner's interest therein. After such determination, each Unit owner shall be entitled to a share in the damages in the same proportion as his percentage of undivided interest of the Common Areas and Facilities. This provision does not prohibit a majority of Unit owners from authorizing the Management Committee to use such damages or awards for replacing or restoring the Common Areas and Facilities so taken on the remaining land or on other acquired land, provided that this Declaration and Map are duly amended.

15.3. With respect to one or more Units or portions thereof, the damages or awards for such taking shall be deemed to be proceeds from insurance on account of damage or destruction pursuant to paragraph 13 hereof and shall be deposited with the Management Committee as trustee. Even though the damage or awards may be payable to one or more Unit owners, the Unit owners shall deposit the damages or awards with the Management Committee as trustee, and in the event of failure to do so, at the option of the Management Committee, either a special assessment shall be made against a defaulting Unit owner in his Unit in the amount of this award or the amount of such award shall be set off against the sums hereafter made payable to such Unit owner. The proceeds of the damages or awards shall be distributed or used in a manner and the Unit owners of affected Units shall have the rights provided in paragraph 13 for insurance proceeds provided the property is removed from the provisions of the Act. If the property is not removed from the provisions of the Act and one or more Units are taken, in whole or in part, the taking shall have the following effects:

15.3.1. If the taking reduces the size of a Unit and the remaining portion of the Unit may be made tenantable, the Unit shall be made tenantable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Unit owner. The balance of the award, if any, shall be distributed to the Unit to the extent of the unpaid balance of its mortgage and the excess, if any, shall be distributed to the Unit owner. If there is a balance of the award distributed to the Unit owner or a mortgagee, the Unit owner's percentage of undivided interest in the Common Areas and Facilities shall be equitably reduced. This shall be done by reducing such interest in the proportion by which the floor area of the Unit is reduced by the taking, and then re-computing the percentages of undivided interests of all Unit owners in the Common Areas and Facilities.

15.3.2. If the taking destroys or so reduces the size of a Unit that it cannot be made tenantable, the award shall be paid to the mortgagee of the Unit to the extent of the unpaid balance of its mortgage and the excess, if any, shall be paid to the Unit owner. The remaining portion of such Unit, if any, shall become a part of the Common Areas and Facilities and shall be placed in condition for use by all Unit owners in the manner approved by the Management Committee. If the cost of such work shall exceed the balance of the fund from the award for the taking, such work shall be done only if approved by a majority of the Unit owners. The percentages of undivided interests in the Common Areas and Facilities appurtenant to the Units that continue as part of

the property shall be equitably adjusted to distribute the ownership of the Common Areas and Facilities among the reduced number of Unit owners.

15.3.3. Changes in Units, in the Common Areas and Facilities and in the ownership of the Common Areas and Facilities that are affected by the taking referred to in this paragraph 15 shall be evidenced by an amendment to this Declaration and Map, which need be approved by all Unit owners.

#### 16. Mortgage Protection.

16.1. The term "mortgage" as used herein shall mean any recorded mortgage having priority over other mortgages and shall include a recorded deed of trust. The term "eligible mortgagee" shall mean and refer to a mortgagee, beneficiary under a trust deed or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

16.2. The Management Committee may maintain a roster of Unit owners, which shall include the mailing addresses of Unit owners. The Management Committee may maintain another roster which shall contain the name and address of each eligible mortgagee.

16.3. Any eligible mortgagee or any Unit is entitled to written notification from the Management Committee of any default by the mortgagor of such Unit in the performance of such mortgagor's obligation under the Declaration which is not cured within thirty (30) days.

16.4. A mortgagee of any Unit who comes into possession of the Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall take the property free of any claims or unpaid assessments or charges against the mortgaged Unit which accrued prior to the time such mortgagee comes into the title and/or possession of the Unit, whichever first occurs (except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessment or charges to all Units, including the mortgaged Unit).

16.5. The consent of at least 67% of the eligible mortgagees shall be required for any amendment which would terminate the legal status of the project. The consent of at least 51% of the eligible mortgagees shall be required to add to or amend any material provision of this Declaration or the Map which establishes, provides for, governs, or regulates any of the following:

16.5.1. Voting

16.5.2. Assessments, assessment liens, or subordination of liens;

16.5.3. Reserves for maintenance, repair, and replacement of the Common Areas and facilities;

16.5.4. Insurance or fidelity bonds;

16.5.5. Limitations and restrictions on the right to use of the Common Areas and facilities;

16.5.6. Responsibility for maintenance and repair of the several portions of the project;

16.5.7. Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project;

16.5.8. The boundaries of any Unit;

16.5.9. The percentage of ownership interest in the Common Areas;

16.5.10. The conversion of Units into Common Area, or vice versa, the conversion of Common Areas into Limited Common Area, or vice versa;

16.5.11. Express benefits or rights of mortgagees, eligible mortgagees, or eligible insurers or guarantors; and

16.5.12. The change between professional management and, self management.

16.6 Any addition or amendment shall not be considered material for purposes of this section if it is for the clarification of the document only or to correct a clerical error. Notice of any proposed amendment to any eligible mortgagee to whom a written request to approve an addition or amendment to this Declaration is required shall be mailed, postage prepaid, to the address for such eligible mortgagee. Any eligible mortgagee who does not deliver to the Management Committee or the Association a negative response to the notice of the proposed amendment or addition within thirty (30) days from such mailing shall be deemed to have approved the proposal.

## 17. Ownership and Leasing Restrictions

17.1. No Person (or his Affiliate) may own more than two (2) Units. For purposes of this section, the term "Person" means a natural person, corporation, partnership, trust, limited liability company, or other legal entity and the term "Affiliate" means any Person: (a) who is an immediate family member of said person; (b) which directly or indirectly controls, or is controlled by, or is under common control with a Unit owner; (c) which directly or indirectly beneficially owns or holds five percent (5%) or more of any class of equity shares or interests of said Unit owner; or (d) five percent (5%) or more of the voting shares of voting interests of which is directly or indirectly beneficially owned or held by said Unit owner. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

17.2. Regarding Leases, In order to: (a) Protect the equity of the individual property owners at the Bonneville Tower Condominium Project (the "Project"); (b) Carry out the purpose for which the Project was formed by preserving the character of the Project as a residential community of predominantly owner-occupied Units and by preventing the Project from assuming the character of an apartment, renter-occupied complex; and (c) Comply with the eligibility requirements for financing in the secondary mortgage market insofar as such criteria provide that the project be substantially owner-occupied, leasing of a Unit or Units shall be prohibited, except in the case of undue hardship as provided below. The Management Committee shall be empowered to allow up to fifteen (15%) percent of the Units in the Project to be leased or occupied by non-owner residents. Any Unit owner who intends to lease his Unit shall submit a written application to the Management Committee requesting permission to do so, which consent shall not be unreasonably withheld so long as at least eighty-five (85%) percent of the Units in the Project are owner occupied. No Unit may be leased without the prior written consent of the Management Committee.

17.3 The Management Committee, in its sole discretion, shall be empowered to allow reasonable leasing of Units beyond the percentage limitation set forth above upon written application to avoid undue hardship on an Owner. By way of illustration and not by limitations, examples of circumstances which would constitute undue hardship are those in which: (a) an Owner must relocate his residence and cannot, within ninety (90) days from the date the Unit was placed on the market, sell the Unit while offering it for

sale at a reasonable price no greater than its current appraised market value; (b) the Owner dies and the Unit is being administered by his estate; (c) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Unit; (d) the Unit is to be leased to a member of the Owner's immediate family, which shall be deemed to encompass children, grandchildren, grandparents, brothers, sisters, parents, and spouses. Those Unit owners who have demonstrated that the inability to lease their Unit would result in undue hardship and have obtained the requisite approval of the Management Committee may lease their Units for such duration as the Management Committee reasonably determines is necessary to prevent undue hardship.

17.4 Any Owner who believes that he must lease his Unit to avoid undue hardship shall submit a written application to the Management Committee setting forth the circumstances necessitating the leasing, a copy of the proposed lease, and such other information as the Management Committee may reasonably require. Leasing in the case of undue hardship shall be permitted only upon the Management Committee's written approval of the Owner's application. When a lease is approved, a copy of the lease, signed by the lessee and lessor, shall be submitted to the Management Committee within ten (10) days after it has been signed by both parties.

17.5 The leasing restriction shall not apply to a mortgagee, lender or beneficiary of a deed of trust who has obtained title to a Unit through foreclosure and is considered exempt until such time as the Unit is conveyed.

17.6 Leasing Rules and Regulations. Any transaction which does not comply with this Section shall be voidable at the option of the Management Committee. No Unit owner may lease his Unit for short term, transient, hotel, resort, vacation, seasonal, or corporate use, including by way of illustration but not limitation any rental for an initial lease term of less than one (1) year. This is not a boarding house. Daily or weekly rentals are prohibited. No Unit Owner may lease individual rooms to separate persons or less than his entire Unit without the written permission of the Management Committee. No rental shall be allowed to create or maintain a nuisance.

## 18. Encroachments.

18.1. None of the rights and obligations of any Unit owners created by this Declaration, By-Laws or by any deed conveying a Unit shall be affected in any way by an encroachment: (a) by any portion of the Common Areas and Facilities upon any Unit; (b) by any Unit upon any portion of the Common Areas and Facilities, or (c) by any Unit upon another Unit due to

settling or shifting of the Building or other structure, including the rebuilding of the Building and other structure after fire or other casualty or an eminent domain taking or delivery of a deed in lieu of condemnation, unless there occurs an encroachment that results from the willful or negligent act or omission of the Unit owner of the encroaching Unit, or of the owners of the Units to which the use of the encroaching Limited Common Areas and Facilities is appurtenant, or of the Management Committee in the event of an encroachment by any portion of the Common Areas and Facilities other than the Limited Common Areas and Facilities.

18.2. There are hereby created valid easements for the maintenance of any encroachments permitted by this paragraph 18 of this Declaration so long as such encroachments exist.

19. Conveyances, Easements.

19.1. Every deed, lease, mortgage or other instrument may describe a Unit by its identifying number and letter designation set forth in Appendix A and in the Map. Every such description shall be deemed good and sufficient for all purposes and shall be deemed to convey, transfer, encumber or otherwise affect the Unit owner's corresponding percentage of undivided ownership in the Common Areas and Facilities, as a tenant-in-common, as set forth in appendix A even though the same is not exactly mentioned or described.

19.2. Every deed, lease, mortgage or other similar instrument shall be deemed to:

19.2.1. Except and reserve with respect to a Unit: (a) any portion of the Common Areas and Facilities lying within said Unit; (b) easements through said Unit, appurtenant to the Common Areas and Facilities, and all other Units, for support and repair of the Common Areas and Facilities and all other Units; and (c) easements, appurtenant to the Common Areas and Facilities, for encroachment upon the air space of said Unit by those portions of the Common Areas and Facilities located within said Unit.

19.2.2. Include with respect to a Unit nonexclusive easements for ingress and support of said Unit through the Common Areas and Facilities, for the repair of said Unit through all other Units and through the Common Areas and Facilities, and for the use of the balcony, patio, storage area and parking spaces as indicated in Appendix A and the Map.



19.2.3. Except and reserve, with respect to the undivided percentage interest in the Common Areas and Facilities, nonexclusive easements appurtenant to all Units for ingress, egress, support and repair and exclusive easements appurtenant to each Unit for the use of the balcony, patio, storage area and parking spaces as set forth in Appendix A and the Map.

19.2.4. Include, with respect to the undivided percentage interest in the Common Areas and Facilities, nonexclusive easements through each Unit for support and repair of the Common Areas and Facilities and nonexclusive easements for encroachments upon the air space of all of the Units by and for the portions of the Common Areas and Facilities lying within the Units.

## 20. Combination of Units.

20.1. Unit owner of two adjoining Units shall have the right upon express written approval of the Management Committee to combine one or more adjoining Units or portions thereof and to alter or amend the Declaration and Map to reflect such combination.

20.2. Such amendments may be accomplished by the Unit owner recording an amendment or amendments to this Declaration, together with an amended Map or Maps containing the same information with respect to the altered Units as required in the initial Declaration and Map with respect to the initial Units. All costs and expenses required in such amendments shall be borne by the Unit owner desiring such combination.

20.3. All such amendments to the Declaration and Map must be approved by attorneys employed by the Management Committee to insure the continuing legality of the Declaration and the Map. The cost of such review by the attorney(s) shall be borne by the person wishing to combine the Units.

20.4. Any amendment of the Declaration or Map pursuant to this paragraph 20 shall reflect the changes occasioned by the alteration. Such changes shall include a change in the percentage of undivided interest in the Common Areas and Facilities which are appurtenant to the Units involved in the alterations. The remaining combined Unit, if two or more Units are totally combined, will acquire the total of the percentage of undivided interest in the Common Areas and Facilities appurtenant to the Units that are combined as set forth in Appendix A. If a portion of one Unit is combined with another, the resulting Units shall acquire a proportionate percentage of the total undivided interest in the Common Areas and Facilities of the Units involved in the combination on the basis of area remaining in the respective,

combined Units. The percentage of undivided interest in the Common Areas and Facilities appurtenant to all other Units shall not be changed. All such amendments must, in all instances, be consented to by the Management Committee and also all other persons holding interest in the Units affected. The consent of other Unit owners need not be obtained to make such amendments or alterations valid, providing the percentages of undivided interest in the Common Areas and Facilities of the other Unit owners remain unchanged.

## 21. Amendment.

21.1. Except as otherwise provided in this Declaration and except as prohibited by this Declaration and except as prohibited by the Utah Condominium Ownership Act, the provisions of this Declaration may be amended by a two-thirds (2/3) affirmative vote of the undivided ownership interest in the Common Area and Facilities. Upon such an affirmative vote, the Management Committee shall certify to the vote, execute and record an amendment or amendments to the Declaration, which shall be effective upon recording.

21.2. The Management Committee shall maintain records of parking and/or storage spaces, and may from time to time amend Appendix A to reflect changes in assignment and or use of parking spaces and/or storage spaces. Assigned parking and storage spaces may only be traded or exchanged among Unit owners and the Management Committee must be notified in writing of the transaction. No Unit may have less than one (1) assigned parking space and (1) assigned storage space at any time, and any transaction which should violate either of the foregoing conditions is voidable at the option of the Management Committee.

## 22. Assessments.

The making and collection of assessments from Unit owners for their share of Common Expenses shall be pursuant to the By-Laws and subject to the following provisions:

22.1. Each Unit owner shall be liable for a proportionate share of the Common Expenses and shall share in the common profits, such shares being the same as the percentage of undivided interest in the Common Areas and Facilities appurtenant to the Unit owned by the Unit owner as set forth in Appendix A.

22.2. A late fee of \$25.00 or 5% of the payment, whichever is greater shall be charged on all late payments. Delinquent accounts shall bear interest at the rate of eighteen percent (18%) per annum or at such rate of interest as may be set by

the Management Committee, from the date when due until paid. All payments on account shall be first applied to interest and then to the assessment payment first due. Each Unit owner's portion of the Common Expenses and all Assessments or fines levied against each Unit or Unit owner is a debt of the Unit owner at the time the Assessment or fine is made and is collectible as such. The duty to pay Assessments is independent of the duty to maintain the Common Areas and Facilities. A suit to recover a money judgment for unpaid Common Expenses, Assessments or fines is maintainable without foreclosing or waiving the lien securing it. If any Unit owner fails or refuses to make any payment of his portion of the Common Expenses or an Assessment or fines when due, that amount constitutes a lien on the interest of the Unit owner in the Property, and upon the recording of notice of lien, it is a lien upon the Unit owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except: (a) tax and special assessment liens on the Unit in favor of any assessing Unit or special improvement district; and (b) encumbrances on the interest of the Unit owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

22.3. If any Assessments remain unpaid, the Association may, as determined by the Committee, institute suit to collect the amounts due and/or to foreclose the lien. Each Unit owner, by acceptance of a deed or other document of conveyance or transfer, vests in the Association or its agents the right and power to bring all actions against him personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed. No Unit owner may waive or otherwise exempt himself from liability for the Assessments provided for herein, including but not limited to the non-use of Common Areas or the abandonment of his Unit. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Committee to take some action or perform some function required to be taken or performed by the Association or committee under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Unit owner. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Unit owner's interest therein by the Committee. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other

manner permitted by law. In any foreclosure or sale, the Unit owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's Assessments, and a reasonable rental for the Unit during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Committee may bid for the Unit at foreclosure or other sale and hold, lease, mortgage, or convey the same. If the Committee elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Unit owner by accepting a deed to the Unit hereby irrevocably appoints the attorney of the Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah code Annotated, Section 57-7-23 (1953), as amended. In addition, Unit owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein. Each Unit owner by accepting a deed to a Unit hereby irrevocably appoints the Association as his attorney in fact to collect rent from any person renting his Unit, if the Unit is rented and Unit owner is delinquent in his Assessments. Rent due shall be paid directly to the Association, upon written demand, until such time as the Unit owner's Assessments are current; and the Unit owner shall credit the Renter, against rent due, for the amount of money paid to the Association.

22.4. If the owner of a unit who is leasing the unit fails to pay any assessment for a period of more than sixty (60) days after it is due and payable, the Management Committee may demand the tenant to 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; provided, however, the Manager or Management Committee must give the owner written notice, in accordance with the declaration, bylaws, or Association rules, of its intent to demand full payment from the tenant. This notice shall:

22.4.1. provide notice to the tenant that full payment of remaining lease payments will commence with the next monthly or other periodic payment unless the assessment is received within the time period provided in the declaration, bylaws, or Association rules.

22.4.2. state the amount of the assessment due, including any interest or late payment fee;

22.4.3. state that any costs of collection, not to exceed \$150, and other assessments that become due may be added to the total amount due; and

22.4.4. provide the requirements and rights described herein.

22.5 If the owner fails to pay the amount of the assessment due by the date specified in the notice, the Manager or Management Committee may deliver written notice to the tenant, in accordance with the Declaration, Bylaws, or Association rules, that demands future payments due to the owner be paid to the Association pursuant hereto. A copy of the notice must be mailed to the owner at his last known address as shown on the books and records of the Association. The notice provided to the tenant must state:

22.5.1. that due to the owner's failure to pay the assessment within the time period allowed, the owner has been notified of the Management Committee's intent to collect all lease payments due to the Association pursuant hereto.

22.5.2. that until notification by the Association that the assessment due, including any interest or late payment fee, has been paid, all future lease payments due to the owner are to be paid to the Association; and

22.5.3. payment by the tenant to the Association in compliance herewith will not constitute a default under the terms of the lease agreement. If payment is in compliance with this Subsection (6) suit or other action may not be initiated by the owner against the tenant for failure to pay.

22.6. All funds paid to the Association pursuant hereto shall be deposited in a separate account and disbursed to the Association until the assessment due, together with any cost of administration which may not exceed \$25, is paid in full. Any remaining balance must be paid to the owner within five (5) business days of payment in full to the Association.

22.7. Within five (5) business days of payment in full of the assessment, including any interest or late payment fee, the Manager or Management Committee must notify the tenant in writing that future lease payments are no longer due to the Association. A copy of this notification must be mailed to the owner.

22.8. As used in this section, the terms "lease" or "leasing" shall mean and refer to regular, exclusive occupancy of a unit by any person or persons, other than the owner, for which the owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

22.9. If the aggregate of all monthly payments on all of the Units is too large or too small as a result of unanticipated income or expenses, the Committee may from time to time effect an equitable change in the amount of said payments, but, without the prior approval of a majority of the percentage of ownership interest in the Common Area, not greater than fifteen (15%) percent of the Assessment in any calendar year. Unit owners shall be given at least thirty (30) days written notice of any changes. The Management Committee may include in the monthly assessment amounts representing contributions to the capital of the Association to be used for the replacement of or additions to capital items or improvements in the property. Said amounts shall be set up as capital accounts for each Unit. In the event of transfer of a Unit, the capital account shall be deemed transferred to the Unit transferee.

22.10. In assessing the Unit owners for Capital Improvements or Major Repairs to the Common Areas and Facilities, for which there are not sufficient amounts in the respective capital accounts, there shall be no single improvement exceeding the sum of 5% of the annual operating budget made by the Management Committee without the same having been first voted on and approved by two-thirds (2/3) majority of those present in person or by proxy of the Association at a meeting duly called for that purpose. The foregoing shall not apply in connection with damage or destruction referred to in paragraph 13 hereof or to such structural alterations, capital additions to or capital improvements of the Common Areas and Facilities as are necessary in the Management Committee's reasonable judgment to preserve or maintain the integrity of the Common Areas and Facilities or the property.

22.10.1. Committee Based Assessment. So long as the special assessment does not exceed the sum of Five Hundred and 00/100ths Dollars (\$500.00) (the "Special Assessment Limits") per Unit in any one fiscal year, the Committee may impose the special assessment without any additional approval.

22.10.2. Association Approval. Any special assessment which would exceed the Special Assessment Limit shall be effective only if approved by a majority of the members of the Association.

22.10.3. The term "Capital Improvements" shall mean and refer to all new improvements intended to add to, enhance or upgrade the nature, scope, utility, value, or beauty of the Project, as opposed to ordinary repair and maintenance.

22.10.4. The term "Repair" shall mean and refer to merely correcting the damage done sometimes by accident or fire or other cause, but more often due to the ravages of time and deterioration resulting from ordinary wear and tear, by substituting for the damage, decayed or worn-out parts, new material, usually similar to that replaced, and so restoring the structure to its original sound condition.

22.11. Specific Assessment. The Committee may specifically assess Unit owner in a particular area in the manner set forth below provided the Unit owner has the choice to accept or reject the benefit; If the expense benefits less than all of the Units, then those Units benefited may be specifically assessed, and the specific assessment shall be equitably apportioned among those Units according to the benefit received. If the expense benefits all Units, but does not provide an equal benefit to all Units, then all Units shall be specifically assessed, but the specific assessment shall be equitably apportioned among all Units according to the benefit received. Failure of the Committee to exercise its authority under this Section shall not be grounds for any action against the Association or the Committee and shall not constitute a waiver of the Committee's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Committee has not previously exercised its authority under this Section.

22.12. Individual Assessments may be levied by the Association against Unit owner for: (a) fines levied and costs incurred in enforcing the Project Documents; (b) costs associated with the maintenance, repair or replacement of Common Area for which the Unit owner is responsible; (c) any other charge, fee, due, expense, or cost designated as an Individual Assessment in the Project Documents; and (d) attorneys' fees, interest, and other charges relating "hereto as provided in this Declaration."

22.13. That the reserve fund be renamed the RESERVE AGENCY ACCOUNT. That this fund be one of two funds maintained by the Association, the other being the OPERATING ACCOUNT.

22.14. To allow the RESERVE AGENCY ACCOUNT to be safely and prudently invested to accrue interest at the best possible rate consistent with the fiduciary duties of the Management Committee and the provisions of the Declaration and By-Laws.

23. Voting.

When any vote, consent of Owners or balloting is necessary, regardless of whether a meeting is called, each Unit Owner, either in person or by proxy, shall be entitled to the same

number of votes as the percentage of undivided interest of the Common Areas and Facilities assigned to his Unit in Appendix A to this Declaration. If there is more than one Unit Owner with respect to a particular Unit, all of the Unit owners present and voting or who sign the ballot or consent form must agree or the vote will be null and void.

#### 24. Notices.

Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to be delivered three (3) business days after a copy of the same has been deposited in the U.S. postal service, postage prepaid, return receipt requested. Notice to Unit owners shall be addressed to each Unit owner at the address given by such Unit owner to the Management Committee for the purpose of service of such notice or to the Unit of such Unit owner if no such address has been given to the Management Committee. Such address may be changed from time to time by notice in writing to the Management Committee. Notice to the Management Committee shall be addressed to: Management Committee, Bonneville Tower Condominium Association, 777 East South Temple, Salt Lake City, Utah 84102.

#### 25. No Waiver.

The failure of the Management Committee or its contractors to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions, or restrictions of this Declaration or the By-Laws, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment, for the future, of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Management Committee or its contractor of the payment of any assessment from a Unit owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Management Committee of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Management Committee.

#### 26. Enforcement.

Each Unit owner shall strictly comply with the provisions of the Declaration, the By-Laws, the house rules and administrative rules and regulations and decisions issued pursuant thereto, Failure to so comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, including but not limited to the recovery by



the prevailing party of a reasonable attorney's fees and costs incurred in construing and/or enforcing the project documents, maintainable by the Management Committee or its designee on behalf of the Unit owners, or in an appropriate case, by an aggrieved unit owner.

27. Severability.

The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

28. Captions.

The captions in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

29. Law Controlling.

This Declaration, the Map and the By-Laws shall be construed and controlled by and under the laws of the State of Utah.

30. Smoking

The Association expressly reserves the right to prohibit smoking or the use of tobacco products in the Common Area and Facilities, although the Unit owners and residents shall be given at least thirty (30) days prior written notice of any change in policy. In addition:

30.1. Nuisance Defined. Utah Code Annotated, Section 76-3-203.1 (1997) defines a "nuisance" so as to include tobacco smoke that drifts into any Unit a person rents, leases or owns from another Unit more than once in each of two (2) or more consecutive seven (7) day periods which is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. The Association adopts this definition until such time as it is amended or repealed by the Utah legislature at which time this definition shall be similarly and automatically amended or repealed.

30.2. Release, Waiver & Indemnity. By accepting a deed or other document of conveyance to a Unit, each Unit owner hereby expressly waives, releases and forever discharges, and further agrees to indemnify, save and hold the Association, Management Committee and members of the Management Committee

harmless against any and all claims, suits, actions, debts, damages, costs, charges and expenses, including court costs and attorney's fees, and against all liability, losses and damages of any nature whatever as it relates to the creation or maintenance of a nuisance arising out of the smoking of tobacco products in, on or about the Project, including but not limited to any claim that the Association or Management Committee abate or attempt to abate any nuisance caused or allegedly caused by smoking tobacco products.

30.3. Reservation of Right of Action. The Manager, Management Committee or Association may but are not required to bring an action to abate a nuisance caused by drifting tobacco smoke between Units. Anything to the contrary notwithstanding, the right of action of a Unit owner or resident created by Utah Code Annotated, Section 78-38-1 (1997) against another Unit owner or resident who creates a nuisance by generating tobacco smoke is expressly recognized and reserved, conditioned upon the existence of the statutory remedy or its equivalent, and the Association shall approve any reasonable structural alterations to the Common Areas and Facilities provided the alterations (1) do not impair the structural integrity of the Building or improvements, (2) do not materially alter the nature of the Project, (3) do not damage another Unit, (4) are completed consistent with the final plans and specifications, which must be approved in writing by the Management Committee in advance; and (5) are paid for by the Unit owner or resident.

### 31. Sanction and Fines.

To assure compliance with the Declaration, the Management Committee may, inter alia:

- Suspend voting rights;
- Suspend right to use recreation facilities;
- Assess fines; and
- Immobilize, tow and impound vehicles.

31.1 Each Owner and resident is responsible for adhering to the project documents governing the project. Pursuant to U.C.A., section 57-8-37 (2001) a breach of these restrictive covenants and rules is subject to enforcement pursuant to the declaration and may include the imposition of a fine. Each Unit Owner is also accountable and responsible for the behavior of his or her residents, tenants, and/or guests. Fines levied against resident, tenants, and guests are the responsibility of the Unit owners. The Management Committee shall react to each material violation in the following manner:

31.1.1. Fines imposed are final unless appealed in writing to the Management Committee within thirty (30) days of written notification of the violation. If a request for a hearing is not submitted to the Management Committee within thirty (30) days, the right to a hearing is waived, and the fine imposed will stand. A request for a hearing to appeal should be sent in writing to the Manager or Secretary of the Association.

31.1.2. Before assessing a fine under subsection

31.1.1, the Management Committee shall give written notice to the Unit Owner of the violation and inform the Owner that the fine will be imposed if the violation is not cured within the time provided in the declaration, bylaws, or rules, which shall be at least forty-eight (48) hours.

31.1.3.(a) A fine assessed under Subsection 31.1.1 shall:

31.1.3.1. be made only for a violation of a restrictive covenant, rule or regulation;

31.1.3.2. be in the amount specifically provided for in the declaration, bylaws, or Association rules for that specific type of violation, not to exceed \$500.00; and

31.1.3.3. accrue late fees as provided in the declaration, bylaws, or Association rules.

31.1.4. Cumulative fines for a continuing violation may not exceed \$500.00 per month.

31.1.5 A Unit Owner who is assessed a fine under subsection 31.1.1 may request an informal hearing to protest or dispute the fine within thirty (30) days from the date the fine is assessed. The hearing shall be conducted in accordance with standards of due process adopted by the Management Committee. No default interest, finance charge, or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

31.1.6 A Unit Owner may appeal a fine issued under subsection 31.1.1. by initiating a civil action within one-hundred-and-eighty (180) days after: (1) a hearing has been held and a final decision has been rendered by the Management Committee under subsection 31.1.5; or (2) the time to request an informal hearing under subsection 31.1.5 has expired without the Unit Owner making such a request.

31.1.7 A fine assessed under subsection 31.1.1 which remains unpaid after the time for appeal has expired becomes a lien against the Unit Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of common expenses hereunder.

31.2 Termination of Utilities and Right to Use Amenities for Non-Payment of Assessments.

31.2.1. If a Unit Owner fails or refuses to pay any assessment when due, the Management Committee may (1) terminate the Unit Owner's right to receive utility services paid as a common expense; and (2) terminate the Unit Owner's right of access and use of recreational facilities, after giving notice and an opportunity to be heard.

31.2.2. Before terminating utility services or right of access and use of recreational facilities, the Manager or Management Committee shall give written notice to the Unit owner in the manner provided in the Declaration, Bylaws, or Association rules. The notice shall state:

31.2.2.1. utility services or right of access and use of recreational facilities will be terminated if payment of the assessment is not received within the time provided in the Declaration, Bylaws, or Association rules, which time shall be stated and be at least forty-eight (48) hours;

31.2.2.2. the amount of the assessment due, including any interest or late payment fee; and

31.2.2.3. the right to request a hearing.

31.2.3. A Unit Owner who is given such notice may request an informal hearing to dispute the assessment by submitting a written request to the Management Committee within fourteen (14) days from the date the notice is received. A notice shall be considered received on the date (a) it is hand delivered, (b) it is delivered by certified mail, return receipt requested, or (c) five (5) days after it is deposited in the U.S. mail, postage prepaid, addressed to the Unit Owner's last known address on the books and records of the Association.

31.2.4. The hearing shall be conducted in accordance with the standards provided in the Declaration, Bylaws, or Association rules.

31.2.5. If a hearing is requested, utility services or right of access and use of recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been entered.

31.2.6. Upon payment of the assessment due, including any interest or late payment fee, the Manager or Management Committee shall immediately take action to reinstate the terminated utility services to the unit and right to use of recreational facilities.

32. Binding Effect.

This Declaration and all of the provisions hereof shall constitute covenants to run with the land or equitable servitude as the case may be, and shall be binding upon and shall inure to the benefit of the Association, all other signatories hereto, all parties hereafter who acquire any interest in a Unit or in the project and their respective grantees, transferors, heirs, devisees, personal representatives, successors and assigns. Each Unit Owner and resident shall comply with, and all interests in all Units shall be subject to, the Act, the terms of this Declaration, the By-Laws and the provisions of any rules and regulations agreements, instruments, supplements, amendments and determinations contemplated hereby.

33. Effective Date.

This Amended and Restated Declaration shall be effective on the date it is recorded in the Office of the County Recorder of Salt Lake County, Utah.



APPENDIX B

BY-LAWS OF THE<sup>1</sup>

BONNEVILLE TOWER CONDOMINIUM ASSOCIATION

An Association of Unit Owners Under  
the Utah Condominium Ownership Act

The Administration of the Bonneville Tower Condominium (the "property") and the Bonneville Tower Condominium Association ("Association") shall be governed by these By-Laws, by the Utah Condominium Ownership Act, Utah Code Ann. ss 57-8-1 through 57-8-35 (Repl. vol. 1963) (the "Act") and by the Declaration.

1. Application of By-Laws.

All present and future Unit owners, mortgagees, lessees and occupants of Units and their employees, and any other persons who may use the facilities of the property in any manner are subject to the Declaration, these By-Laws and all rules made pursuant hereto and any amendment thereof. The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a Unit shall constitute an agreement that the provisions of the Declaration and these By-Laws (and any rules and regulations made pursuant thereto), as they may be amended from time to time, are accepted, ratified and will be complied with.

2. Management Committee.

2.1. The administration of the property on behalf of the Association shall be conducted by a Management Committee of five natural individuals.

2.2. At every annual meeting, the Association shall elect the members of the Management Committee for the forthcoming year. At least thirty (30) days prior to any annual meeting of the Association, the Management Committee shall appoint from the Unit owners a nominating committee of not less than three (3) members (none of whom shall be members of the then Management Committee) who shall recommend to the annual meeting at least one nominee for each position on the Management Committee to be filled at that particular annual

---

<sup>1</sup>BYLAWS.05

meeting. Nominations for positions on the Management Committee may also be made by petition filed with the secretary of the Association at least seven (7) days prior to the annual meeting of the Association, which petition shall be signed by ten (10) or more Unit owners and signed by the nominee named therein indicating his willingness to serve as a member of the Management Committee, if elected. Members of the Management Committee shall be required to be individual Unit owners, the legal agent or representative of an institutional Unit owner, and must be natural individuals.

2.3. Members of the Management Committee shall serve for a term of two (2) years. However, the terms of no more than three (3) members will end each year. The members of the Management Committee shall serve until their respective successors are elected, or until their death, resignation or removal. Any member of the Management Committee who fails to attend three consecutive Management Committee meetings in person or electronically or fails to attend at least 25% of the Management Committee meetings held during any calendar year shall forfeit his membership on the Management Committee.

2.4. Any member of the Management Committee may resign at any time by giving written notice to the president of the Association, or the remaining Management Committee members. Any member of the Management Committee may be removed from membership on the Management Committee by the affirmative vote of at least 2/3 of the undivided ownership interest in the Common Area and Facilities. Whenever there shall occur a vacancy on the Management Committee due to death, resignation, removal or any other cause, the remaining members of the Management Committee shall elect a successor member to serve until the next annual meeting of the Association, at which time said vacancy shall be filled by the Association for the unexpired term, if any. Provided, however, the replacement for any member of the Management Committee removed by the members of the Association shall be elected by the members of the Association present in person or by proxy at a special meeting called for that purpose.

2.5. The members of the Management Committee shall receive no compensation for their services unless expressly approved by a majority of the undivided ownership interest in the Common Areas and Facilities; provided, however, that any member of the Management Committee may be employed by the Association in another capacity and receive compensation for such employment.



2.6. The Management Committee, for the benefit of the property and the Association, shall manage the business, property and affairs of the property and the Association and enforce the provisions of the Declaration, these By-Laws, the house rules and the administrative rules and regulations governing the property. The Management Committee shall have the powers, duties and responsibilities with respect to the property as contained in the Act, the Declaration and these By-Laws.

2.7. The meetings of the Management Committee shall be held at such places within the State of Utah as the Management Committee shall determine. Three (3) members of the Management Committee shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the Management Committee. The Management Committee shall annually elect all of the officers of the Association. The meeting for the election of officers shall be held at the first meeting of the Management Committee immediately following the annual meeting of the Association.

2.8. Special meetings of the Management Committee may be called by the president or by any two Management Committee members.

2.9. Regular meetings of the Management Committee may be held without call or notice. The person or persons calling a special meeting of the Management Committee shall, at least ten (10) days before the meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called; if an agenda is prepared for such a meeting, the meeting need not be restricted to discussions of those items listed on the agenda.

2.10. Any member of the Management Committee may, at any time, waive notice of any meeting of the Management Committee in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Management Committee at a meeting shall constitute a waiver of notice of such meeting except if a Management Committee member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the members of the Management Committee are present at any meeting of the Management Committee, no notice shall be required and any business may be transacted at such meeting.

2.11. Any two (2) persons who are designated of record as being members of the most recent Management Committee (regardless of whether or not they shall still be members) may execute, acknowledge and record an affidavit stating the names of all of the members of the then current Management Committee. The most recently recorded of such affidavits shall be prima facie evidence that the persons named therein are all of the incumbent members of the Management Committee and shall be conclusive evidence thereof in favor of all persons who rely thereon in good faith.

2.12. The fiscal year shall be determined by the Management Committee.

### 3. Meetings of the Association.

3.1. The presence in person or by proxy at any meeting of the Association of fifty percent (50%) of the Unit owners in response to notice of all Unit owners of record properly given shall constitute a quorum. In the event that fifty percent (50%) of the Unit owners are not present in person or by proxy, the meeting shall be adjourned for twenty-four (24) hours, at which time it shall reconvene and any number of Unit owners present at such subsequent meeting shall constitute a quorum. No notice except for a verbal announcement at the original meeting shall be required for a rescheduled meeting. Unless otherwise expressly provided in the Declaration, any action may be taken at any meeting of the Unit owners upon a majority vote of the Unit owners who are present in person or by proxy and who are voting.

3.2. There shall be an annual meeting of the Association on the second Thursday of January at 7:00 p.m. at the property or at such other reasonable place or time (not more than sixty (60) days before or after such date) as may be designated by written notice by the Management Committee delivered to the Unit owners not less than thirty (30) days prior to the date fixed for said meeting. Ten (10) days prior to an annual meeting, the Management Committee shall furnish (i) the estimated Common Expenses of the coming fiscal year with the estimated allocation thereof to each Unit owners; and (ii) a statement of the Common Expenses itemizing receipts and disbursements for the previous and current fiscal year, together with the allocation thereof to each Unit owner. Within ten (10) days after the annual meeting, that statement shall be delivered to the Unit owners who were not present at the annual meeting.

3.3. Special meetings of the Association may be held at any time at the property or at such other reasonable place to

consider matters which, by the terms of the Declaration, require the approval of all or some of the Unit owners, or for any other reasonable purpose. Special meetings shall be called by written notice, signed by a majority of the Management Committee, or by Unit owners representing at least one-third (1/3) in interest of the undivided ownership of the Common Areas and Facilities and delivered to all Unit owners not less than thirty (30) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of meeting and matters to be considered.

3.4. Robert's Rules of Order (latest edition) shall govern the conduct of the Association's meeting when not in conflict with Declaration or the By-Laws.

#### 4. OFFICERS.

4.1. All officers and employees of the Association shall serve at the will of the Management Committee. The officers shall be a President, Vice President, Secretary and Treasurer."

4.1.1. No officer shall receive compensation for serving as such. Officers shall be annually elected by the Management Committee and may be removed and replaced by the Management Committee. The Management Committee shall purchase and maintain a fidelity bond covering members of the Management Committee, officers of the Association and other employees or agents handling common funds.

4.2. The President shall be the chief Executive of the Management Committee and shall preside at all meetings of the Unit owners and of the Management Committee and may exercise the powers ordinarily allocated to the presiding officer of an Association, including the appointment of committees. The President shall exercise general supervision over the property and its affairs. He shall sign on behalf of the Association all conveyances, mortgages and contracts of material importance to its business. He shall do and perform all acts which the Management Committee may require.

4.3. In the absence or the inability of the President, the Vice President shall perform the functions of the President.

4.4. The Secretary shall keep minutes of the proceedings of the Management Committee and of the meetings of the Association. The Management Committee may delegate the responsibility to keep such books and records as may be necessary and appropriate for the records of the Unit owners and the Management Committee.

4.5. The Treasurer shall be responsible for the fiscal affairs of the Association. The Management Committee may delegate the daily handling of all funds and the keeping of records to the Office Manager or Managing Company.

5. COMMON EXPENSES; ASSESSMENTS.

5.1. All assessments shall be made in accordance with the general provisions of paragraph 22 of the Declaration.

5.2. Within thirty (30) days prior to the annual meeting of the Association, the Management Committee shall estimate the Common Expenses for the following year. The estimated Common Expenses shall include such amounts as the Management Committee may deem proper for the operating account, and for the reserve agency account, and shall take into account any expected income, surplus, or deficit in the Common Expenses for any prior year. These estimated Common Expenses shall be presented at the annual meeting and thereafter shall be assessed on a monthly basis to the Unit owners in proportion to their percentage of undivided interest in the Common Areas and Facilities as set forth in the Declaration. If the estimated Common Expenses prove inadequate for any reason, including nonpayment of any Unit owner's assessments, the Management Committee may, by resolution duly adopted, make additional assessments, which shall be assessed to the Unit owners in the same manner as the estimated Common Expenses. Each Unit owner shall be obligated to pay to the Management Committee assessments made pursuant to this paragraph between the first and the tenth day of the month, or in such other reasonable manner as the Management Committee shall designate. The funds received by the Management Committee from assessments shall be kept in a separate account and shall be expended by the Management Committee only in accordance with the provisions of the Act, the Declaration and these By-Laws.

5.3. The rights, duties and functions set forth in this section shall be exercised by the Management Committee.

5.4. The failure by the Management Committee before the expiration of any year, to estimate the Common Expenses as required herein, shall not be deemed a waiver or modification in any respect of the provisions of the Declaration or these By-Laws or a release of the Unit owner from the obligation to pay any past or future assessments, and the estimated Common Expenses fixed for the previous and current year shall continue until a new estimate is fixed.

5.5. Amendments to this paragraph 5 shall be effective only upon unanimous written consent of the Unit owners and their mortgagees.

5.6. No Unit owner may exempt himself from liability for Common Expenses by abandonment of the use or enjoyment of any of the Common Areas and Facilities or by abandonment of his Unit.

5.7. In accordance with generally accepted accounting practices, the Treasurer or his designee shall keep detailed records of all receipts and expenditures including investments, expenditures affecting the Common Areas and Facilities, specifying and itemizing the maintenance, repair and replacement expenses of the Common Areas and Facilities and any other expenses incurred. Such record shall be available for examination by the Unit owners during regular business hours. In accordance with the actions of the Management Committee assessing Common Expenses against the Units and Unit owners, the treasurer shall keep an accurate record of such assessments and of the payments thereof by each Unit owner.

5.7.1. Monies identified by the Management Committee may be invested under the general money management concepts at Bonneville Tower, which shall include:

5.7.1.1. Safety of principal.

5.7.1.2. Need for liquidity.

5.7.1.3. Yield on investments.

5.7.1.4. Recognition of the different investment objectives of operating and permanent funds.

5.7.1.5. A maturity date of the investment that does not exceed the anticipated date of the expenditure of funds.

5.7.1.6. The recognition that fees, commissions or charges for money management are authorized ONLY with prior written approval of the Bonneville Tower Management Committee.

5.7.1.7. An annual review of all financial accounts completed 30 days prior to the annual meeting, and a written report provided by the treasurer of the Association.

5.7.1.8. A review of each security held 30 days prior to the due date.

5.7.1.9. The recognition that all monies paid into all accounts are jointly owned by the members of the Association and that these monies are to be used as directed by the Management Committee, and the Declaration and By-Laws.

5.7.1.10. No more than the maximum guaranteed by FDIC or appropriate U.S. government agency of the Association's Reserve agency account funds may be invested at any one financial institution

5.7.2. Under the administration and management of the Management Committee two accounts are authorized: an OPERATING ACCOUNT AND A RESERVE AGENCY ACCOUNT.

5.7.2.1. OPERATING ACCOUNT: This is the operating account for the Association, and is designed to address the current business transactions.

5.7.2.1.1. Income. The income for the OPERATING ACCOUNT is primarily derived from Maintenance Fees, which are paid by all Unit owners according to the Declaration and By-Laws. Other income includes late fees, in-house services, laundry, moving and storage fees, operating account interest, long term lease, reimbursements, credits and miscellaneous income. Monies in this account must be kept in a federally insured account in a commercial institution with a local office, preferably in an interest bearing checking account. With advice from an investment committee, consisting of at least three unit owners and chaired by the treasurer of the Association, the Management Committee will annually review the services provided by the institution containing the funds.

5.7.2.1.2. Expenses: The expenses paid from the OPERATING ACCOUNT include the following operating expenses: building, grounds, swimming pool, repairs and replacements, service contracts, utilities, insurance, payroll expenses, payroll taxes, office expenses, bank service charges, professional services, seminars, employee education and training and miscellaneous expenses.

5.7.2.2. RESERVE AGENCY ACCOUNT: This fund account is designed to address anticipated, planned, future capital expenses identified by the 20-year plan.

5.7.2.2.1. Income. Income into the RESERVE AGENCY ACCOUNT is derived from reserve payments paid by all Unit owners, and the any earned interest therefrom.

5.7.2.2.2. Under the direction of the Management Committee, and advice from the investment committee, funds in the RESERVE AGENCY ACCOUNT, must be deposited in a savings account and/or used to purchase Certificates of Deposit, and/or United States Treasury Bills and/or Notes. Certificates of Deposit must be purchased at an FDIC insured institution. The Reserve Agency Account fund must maintain a balance in an amount determined by the Management Committee.

5.8. Every unit owner shall pay his proportionate share of the common expenses. Payment shall be in the amounts and at the times determined by the management committee in accordance with the terms of the declaration or the bylaws.

5.9. An assessment levied against each unit is a debt of the owner at the time the assessment is made and is collectible as such. The association is entitled to recover all expenses incurred by the association in collecting any unpaid assessment, including reasonable attorneys' fees, whether an action is brought against an owner hereunder, or whether a suit to foreclose the lien upon the unit is instituted hereunder.

5.10. Suit to recover a money judgment for any unpaid assessment is maintainable without foreclosing or waiving the lien securing it. The prevailing party in the action is entitled to recover its costs of suit and reasonable attorneys' fees.

5.11. If any unit owner fails or refuses to pay an assessment when due, that amount constitutes a lien on the interest of the owner in the property, and upon the recording of notice of lien by the manager or management committee it is a lien upon the unit owner's interest in the property prior to all other liens and encumbrances, recorded or unrecorded, except: (i) tax and special assessment liens on the unit in favor of any assessing unit or special improvement district; and (ii) encumbrances on the interest of the unit owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances. The lien for nonpayment of an assessment may be enforced by sale or foreclosure of the unit owner's interest by the manager or management committee. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of

trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the unit owner shall pay the costs and expenses of such proceedings and reasonable attorneys' fees. If so provided in the declaration or bylaws, in the case of foreclosure, the owner shall pay a reasonable rental for the unit, and the plaintiff in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The manager or management committee may bid in the unit at foreclosure or other sale and hold, lease, mortgage, or convey the unit.

5.12. In a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. However, any such grantee shall be entitled to a statement from the manager or management committee setting forth the amounts of the unpaid assessments against the grantor, and such grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount set forth.

## 6. Litigation.

6.1. If any action is brought by one or more but less than all Unit owners on behalf of the Association and recovery is had, the plaintiff's expenses, including reasonable counsel's fees, shall be a Common Expense; provided, however, that if such action is brought against the Unit owners or against the Management Committee, the officers, employees, or agents thereof, in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all the Unit owners, the plaintiff's expenses, including counsel fees, shall not be charged to or borne by the other Unit owners, as a Common Expense or otherwise.

6.2. Complaints brought against the Association, the Management Committee or the officers, employees or agents thereof, in their respective capacities as such, or the property as a whole, shall be directed to the Management Committee, which shall promptly give written notice thereof to the Unit owners and any mortgagees and shall be defended by the Association, and the Unit owners and mortgagees shall have no right to participate other than through the Management Committee in such defense. Complaints against one or more, but less than all Unit owners shall be directed



to such Unit owners, who shall promptly give written notice thereof to the Management Committee and to the mortgagees affecting such Units, and shall be defended by such Unit owners.

## 7. Abatement and Enjoinment of Violations by Unit Owners.

7.1 The violation of any house rules or administrative rules or regulations adopted by the Management Committee or the breach of any provision contained herein, or the breach of any provision of the Declaration, shall give the Management Committee the right, in addition to any other rights set forth in these By-Laws:

7.1.1. To enter the Unit in which or as to which such violation or breach exists and to similarly abate and remove, at the expense of the defaulting Unit owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Management Committee shall not thereby be deemed guilty in any manner of trespass, conversion or other tort; or

7.1.2. To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

7.1.3. To recover all reasonable attorneys fees and costs incurred in interpreting or enforcing the project documents.

## 8. Accounting

8.1. All books and records shall be kept in accordance with generally accepted accounting practices.

8.2. For each fiscal year the Management Committee shall obtain (from a CPA who is neither an Owner nor resident of a Unit at Bonneville Tower) either a Compilation Report, Reviewed Financial Statement or Audited Financial Statement; provided, however, at least every third year (or upon a resolution approved by the affirmative vote of either a majority of the (a) members of the Management Committee or (b) Unit Owners), the Management Committee shall obtain an Audited Financial Statement.

8.3. The books and accounts of the Association shall be available for inspection at the office of the Association by any Unit Owner or his authorized representative during regular business hours.

## 9. Ad Hoc Committee(s)

The Management Committee by resolution may designate one or more ad-hoc committees, each committee to consist of two (2) or more Unit owners, which to the extent provided in said resolution, shall have and may exercise the powers set forth in said resolution. Such special committee or committees shall have such name or names as may be determined from time to time by the Management Committee. Such special committees shall keep regular minutes of their proceedings and report the same to the Management Committee when required. The members of such special committee or committees designated shall be appointed by the Management Committee or the president. The Management Committee or the president may appoint Unit owners to fill vacancies on each of said special committees occasioned by death, resignation, removal or inability to act for any extended period of time.

## 10. Amendment of By-Laws

These By-Laws may be amended by the affirmative vote of a majority of the undivided ownership interest in the Common Area and Facilities of the Association at a meeting duly called for such purpose. Upon such an affirmative vote, the Management Committee shall acknowledge the amended By-Laws, setting forth the fact of the required affirmative vote of the Unit owners and the amendment shall be effective upon recording.

## 11. Meetings

11.1. If any meetings of the Association or Management Committee cannot be held because a quorum is not present, a majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than twenty-four (24) hours nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to members in the manner prescribed for regular meetings.

11.2. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough

members to leave less than a quorum, provided that any action taken shall be approved by at least a majority of the members required to constitute a quorum.

11.3. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Unit or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a member or upon the expiration of eleven (11) months from the date of the proxy. A proxy holder must be a Unit owner or the legal agent of an institutional Unit owner.

11.4. Any action which may be taken by the vote of members at a regular or special meeting, except the election of members of the Management Committee, may be taken without a meeting as and to the extent permitted by Utah law.

11.5. All meetings of the Management Committee shall be opened to all members of the Association a visiting owner/resident may not disrupt the meeting and must abide by the rules of order or decorum adopted by the Management Committee. The Management Committee may, with approval of a majority of quorum, adjourn a meeting and reconvene an executive session to discuss and vote upon personnel matters, privileged or confidential issues, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered an executive session shall first be announced in open session.

11.6. The Management Committee shall not impose a fine, suspend voting or infringe upon any other rights of a member or other resident for violations of the Act, Declaration, By-Laws or rules and regulations unless and until the party has received written notice of the alleged violation and a reasonable opportunity to be heard. The hearing shall be held in an executive session.

## 12. Conflicts

If there are any conflicts, incongruities or inconsistencies between the provisions of the Act, Utah law, the Articles of Incorporation, Declaration and these By-Laws, the provisions of Utah law, the Act, the Declaration, the Articles of Incorporation and By-Laws (in that order) shall prevail.

### 13. Order of Business

The order of business at all meetings of the Association and Management Committee shall be as follows:

- a. Roll call;
- b. Proof of notice of meeting;
- c. Reading minutes of preceding meeting;
- d. Reports of officers;
- e. Report of special committees, if any;
- f. Election of inspectors of election, if applicable;
- g. Election of Committee members, if applicable;
- h. Unfinished business; and
- i. New business.

### 14. Severability

The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

### 15. Captions

The captions herein are inserted only as a matter of convenience and for reference and in no way to define, limit or describe the scope of these By-Laws nor the intent of any provisions hereof.

### 16. Effective Date

These By-Laws shall take effect upon recording of the Declaration of which they are a part.



AMENDED APPENDIX A  
BONNEVILLE TOWER CONDOMINIUM

UNIT DESIGNATION AND SQ. FT.		PERCENTAGE OF UNDIVIDED INTEREST IN THE COMMON AREAS AND FACILITIES	ASSIGNED LIMITED COMMON AREAS AND FACILITIES PARKING SPACE(S)	STORAGE SPACE
3AB	2342	1.93999	2-45/2-46	D-21/D-22
3C	809	.60884	2-16	B-19
3D	839	.60884	2-26	A-16
3E	1155	.84888	2-13	C-23
3F	1155	.84888	B-52/ (S) 2-30AB	A-2
3G	1125	.84888	2-50	C-7
3H	1125	.84888	2-24/ (S) B-36	A-17
3I	1133	.84888	L-2/ (S) L-3	B-12
3J	1130	.84888	B-5	D-24/3S
4A	1171	.89253	2-9	C-4
4B	1171	.89253	L-13	B-21
4C	809	.57829	2-40	A-9/4S
4D	839	.57829	2-39	A-19
4E	1155	.80524	2-48	C-32
4F	1155	.80524	L-46	D-13
4G	1125	.80524	2-8	C-6
4H	1125	.80524	L-55	B-1
4I	1133	.80524	B-45	D-28
4J	1130	.80524	2-21	C-25
5A	1171	.90562	L-48	A-5
5B	1171	.90562	B-37/B-30	D-29
5C	809	.58702	2-12	D-20
5D	839	.58702	L-47	B-3
5E	1155	.81833	B-25/ (S) B-57	C-3
5F	1155	.81833	2-35	C-8
5G	1125	.81833	B-50/ (S) B-3B	D-2
5H	1125	.81833	B-7	D-17
5I	1133	.81833	2-42	D-6
5J	1130	.81833	2-6	B-10/5S
6A	1171	.91435	B-27	C-29
6B	1171	.91435	B-40	D-9
6C	809	.60011	B-6	C-22
6D	839	.60011	L-1	C-20
6E	1155	.82706	B-8	D-1
6F	1155	.82706	B-4	B-7
6G	1125	.82706	B-14	C-33
6H	1125	.82706	B-48/ (S) B-3A	C-34
6I	1135	.82706	2-27	C-11
6J	1130	.82706	L-56	D-4
7A	1171	.92744	L-37	7A
7B	1171	.92744	B-53	7B
7C	809	.60884	B-13	B-20
7D	830	.60884	L-15	B-4
7E	1155	.84015	B-26	D-10
7F	1155	.84015	B-22	A-10
7G	1125	.84015	L-50	D-23
7H	1125	.84015	2-52/2-53/2-54/ (S) 2-51	D-18
7I	1135	.84015	B-21/ (S) B-33	A-12
7J	1130	.84015	B-46	C-27

UNIT DESIGNATION AND SQ. FT.	PERCENTAGE OF UNDIVIDED INTEREST IN THE COMMON AREAS AND FACILITIES	PARKINGSPACE (S)	STORAGE SPACE
8A 1171	.93617	2-19	8A
8B 1171	.93617	L-21	8B
8C 809	.62193	B-47	C-5
8D 830	.62193	2-25	B-9
8E 1155	.84888	L-19	C-19
8F 1155	.84888	2-56	B-2
8G 1125	.84888	B-51	D-14
8H 1125	.84888	B-24	A-4
8I 1135	.84888	B-55	D-11
8J 1130	.84888	L-41/L-42 (S) B-34	8S
9A 1171	.94926	L-33/(S) L-38	9A
9B 1171	.94926	B-42/B-43/B-44	9B
9C 809	.63066	L-52	D-25
9D 830	.63066	L-36	D-19
9E 1155	.86198	B-9	B-13
9F 1155	.86198	2-43	C-24
9G 1125	.86198	B-38	B-6
9H 1125	.86198	L-45	A-8
9I 1135	.86198	B-23	B-17/9S
9J 1130	.86198	L-32	D-15
10A 1265	1.08892	L-35/B-16	10A
10B 1298	1.08892	B-49	10B
10C 1155	.87070	B-32	B-5
10D 1155	.87070	B-54	A-3
10E 1155	.87070	B-31	D-7
10F 1155	.87070	2-14	C-15
10G 1118	.87070	L-39	A-20
10H 1118	.87070	2-55/(S) 2-33	B-18/10S
11A 1265	1.04528	L-9/(S) 2-3	11A/B15/B16
11B 1298	1.04528	2-7/2-36/(S) 2-34	11B
11C 1155	.88380	L-14	C-30
11D 1155	.88380	2-23	C-18
11E 1155	.88380	2-47	D-3
11F 1155	.88380	2-4/2-5 (S) 2-32	11S
11G 1118	.88380	2-17	C-1
11H 1118	.88379	B-39	D-8
12A 1265	1.05837	L-16/L-17/(S) L-29	12A
12B 1298	1.05837	L-8/L-27/L-30	12B
		(S) B1/B2/L26	
12C 1155	.89253	L-24	A-7
12D 1155	.89253	L-40	A-1
12E 1155	.89253	L-49	C-21
12F 1155	.89253	B-41	C-9/12S
12G 1118	.89253	L-25	D-5
12H 1118	.89253	2-15	C-31
13A 1265	1.06710	L-54/(S) 2-29	13A
13B 1298	1.06710	L-4/L-5	13B
		(S) 2-31A/2-31B	
13C 1155	.90562	L-53	A-11/A13
13D 1417	1.12311	2-10/2-11/2-58	B-11
		(S) 2-1/2-2	
13E 1155	.90562	B-12	D-12
13F 893	.68813	L-18	C-2
13G 1118	.90562	B-11	D-16
13H 1118	.90562	2-57/(S) 2-20	D-26/13S

UNIT DESIGNATION AND SQ. FT.	PERCENTAGE OF UNDIVIDED INTEREST IN THE COMMON AREAS AND FACILITIES	PARKING SPACE (S)	STORAGE SPACE
14A 1265	1.08019	L-10	14A
14B 1298	1.08019	L-31	A-14/14B
14C 1155	.91435	2-49	A-15
14D 1155	.91435	L-11/L-20	A-21/14S
14E 1155	.91435	2-28/2-44	A-18
14F 1155	.91435	2-37/2-38/(S)2-22	C-12
14G 1118	.91435	B-10	B-14
14H 1118	.91435	B-15	C-13
15A 1455	1.28750	2-18/(S)2-41	15A
15B 1497	1.28750	L-6/L-7/(S)B-35	15B/15S
15C 1248	1.08019	L-51	15C
15D 1248	1.08019	L-34	15D/A-6
15E 700	.60884	B-56	15E
15F 700	.60884	L-12	15F

This amendment is filed pursuant to paragraph 21 of the Declaration of the Bonneville Tower Condominium which was recorded May 23, 1975 as Entry No. 2710943, in Book 3869, at page 263, 264, 265, of the Official Records of the Salt Lake County Recorder and an amendment which was recorded July 14, 1993 as Entry No. 5553039, in Book 6708, at pages 882, 883, 884 of the Official Records of the Salt Lake County Recorder. An amendment recorded August 2, 1995 as Entry No. 6133049, in Book 7198 PG 2276,2277,2278 of the Official Records of the Salt Lake County Recorder. An amendment recorded August 15, 1997 as Entry No. 6715060, in Book 7734 PG 749,750,751 of the Official Records of the Salt Lake County Recorder.

BONNEVILLE TOWER HOMEOWNERS ASSOCIATION  
Management Committee

By Helle LeRette  
Helle LeRette, President

STATE OF Utah )  
COUNTY OF Salt Lake ) ss.

The foregoing instrument was acknowledged before me this 12 day of May, 2006, by Helle LeRette.

My Commission Expires: July 14, 2009

Marilyn S. Peterson  
NOTARY PUBLIC  
Residing at: West Valley City

