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**DECLARATION**  
**FOR**  
**CAITHNESS CONDOMINIUMS**  
**A CONDOMINIUM DEVELOPMENT**

**86 "B" Street  
Salt Lake City, Utah**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**CAITHNESS CONDOMINIUMS**

**A CONDOMINIUM DEVELOPMENT**

THIS DECLARATION (the "Declaration") is made and executed by University Partners, Ltd. III, a Utah limited partnership, Bruce W. Manka, General Partner, c/o P.O. Box 11008, Salt Lake City, Utah 84147 (hereinafter referred to as "Declarant").

**R E C I T A L S :**

WHEREAS, Declarants are the sole owner of the real property and improvements ("Property") located at 86 "B" Street, Salt Lake County, Utah, previously known as the Caithness Apartments, hereinafter more particularly as follows:

in Salt Lake County, State of Utah:

Beginning at the Northwest corner of Lot 3, Block 17, Plat "D", Salt Lake City Survey, thence South 110 feet; thence East 110 feet; thence North 110 feet; thence West 110 feet, to the place of beginning.

Address: 86 "B" Street, Salt Lake City  
Tax Id. No: 09-31-454-001

WHEREAS, Declarant, by recording this Declaration, intends and desires to create a Condominium Development, to wit: a residential condominium with permanent open spaces, utilities, and common areas for the benefit of said condominium.

WHEREAS, 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.

WHEREAS, Declarant has filed simultaneously herewith a Plat Map ("Map") which is incorporated herein by reference.

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in said community to create a Home Owners Association (the "Association") which will be assigned and delegated the powers of maintaining and

administering the common area properties and facilities and administering and enforcing the covenants, restrictions and bylaws within this Declaration and collecting and disbursing the assessments and charges hereinafter created.

NOW THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit and burden of each owner thereof.

1 **Dedication.**

1.1 Declarant, by the filing and recordation of this Declaration, and the aforesaid Map, submits the herein described real property and the buildings and other improvements constructed thereon to the provisions of this Declaration for the development of a Condominium Development. In so doing, Declarant hereby submits the Property to the terms, conditions and restrictions of the Utah Condominium Ownership Act (U.C.A. §57-8-1, et seq. (1994, as amended)). Declarant desires and intends to sell fee simple title to each Unit of the Condominium to purchasers and transfer to the Association all of the common areas and facilities appurtenant thereto. All units, as well as the common areas, shall be subject to the covenants, limitations and restrictions contained herein and in the Bylaws of the Association. This Declaration is hereby incorporated into and made a part of the Map.

1.2 The administration of the Association and the Property shall be governed by Articles of Incorporation and Bylaws which are embodied in separate instruments, copies of which are appended to and recorded with this Declaration as Appendix A1 and A2. The Declarant and/or the Homeowners Association shall make available to owners, lenders and mortgagees copies of the Declaration, Articles of Incorporation and Bylaws of the Association and any other books, records, rules and regulations, as well as copies of an annual audited financial statement, if any is prepared.

1.3 All terms used in this Declaration and the appended Articles of Incorporation and Bylaws shall have the same definition as provided herein unless the context or other statutory regulation shall require otherwise. The definitions contained in U.C.A. §57-8-3 (1994, as amended) are also included herein, except that if any definition in the statute is inconsistent with the definition in this Declaration, the definition in this Declaration shall control.

1.4 The property shall be known as CAITHNESS CONDOMINIUMS. The mailing address of the Declarant is: University Partners, Ltd. III, c/o Bruce W. Manka, General Partner, c/o P.O. Box 11008, Salt Lake City, Utah 84147.. The address of the property is 86 "B" Street, Salt Lake City, Utah.

**2      Description of the Land.**

The Property shall be that certain real property and improvements located in Salt Lake County, State of Utah known as the Caithness, containing approximately .277 acres and 33 units, as more particularly described in the Recitals of this Declaration.

**3      Definitions.** The terms used herein shall have the following meanings.

3.1      The words "Homeowners Association" or the "Association" shall mean and refer to CAITHNESS CONDOMINIUMS HOMEOWNERS' ASSOCIATION, a nonprofit corporation, its successors and assigns. The Association is charged with and shall have the responsibility and authority to make and to enforce all the reasonable rules and regulations covering the operation and maintenance of the Project.

3.2      The terms Common Areas and Common Facilities are used interchangeably. The terms shall mean the property (including the improvements thereon) owned by the Association for the common use and enjoyment of the owners, subject to the Declaration, other than the interior spaces and walls (including windows) of the Units designated upon the Map as more specifically described below. These Common Areas and Facilities shall include, but not necessarily be limited to, the distribution systems for all utilities to a Unit or Common Areas, all hallways, the spaces between party walls, the structure of party walls, the roof and exterior walls of the structure, as well as a reasonable means of access to each such Common Area and Facility. The Common Areas shall also include the central courtyard, all of the yards (except for a portion of the yard located in the south east corner of the property which is shown as a Limited Common Area designated for the use of a particular unit, but which shall be maintained as if it were a Common Area)), lawns, curbs, sidewalks, driveways, sprinkling systems, foundations, columns, guides, beams, supports, stairs, hallways and stairways and the boiler room, in the Caithness. The porte cochere that exists along the south property line is owned by the adjoining property, and an easement agreement exists to allow for it to be maintained and kept in place. The Common Areas and Common Facilities shall be owned by the Homeowners Association for the common use and enjoyment of Unit Owners. The term Common Facilities shall include all common utility services which might be obtained for the common benefit of the Units.

3.3      The words "Common Expenses" shall mean and refer to: all expenses of administration, insurance, maintenance, repair or replacement of the Common Areas and Facilities, including an adequate reserve fund for maintenance, repair and replacement of those Common Areas, and Facilities that must be replaced or repaired on a periodic basis. Common expenses shall also include all costs and expenses associated with the repair and maintenance of the exteriors of all units (excluding windows and entry doors, which are the responsibility of Unit Owners, subject to specifications which shall be established by the Homeowners Association to maintain uniformity), hallways, stairways, roofs, landscaping, asphalt, sidewalks, Fire escapes, the operation and maintenance of the boiler and the

entire steam heating system and repair of the exterior walls and roof of the Units and other items which are lawfully assessed to the Unit Owners in accordance with the provisions of this Declaration, the Articles of Incorporation, Bylaws and such rules and regulations pertaining to the Condominium Project as the Association may from time to time adopt; and such other expenses incurred pursuant to agreements lawfully made and/or entered into by the Association.

3.4 The word "Declarant" or "Declarants" shall mean University Partners, Ltd. III, a Utah limited partnership, which has made this Declaration and/or any successor to or assignee of the Declarant which, either by operation of law or through a voluntary conveyance, transfer or assignment, comes to stand in the same relation to the project as did its predecessor.

3.5 The words "Declaration" shall mean this instrument by which CAITHNESS CONDOMINIUMS are established as a Condominium Development.

3.6 The term "eligible mortgage holders" means those owners or holders of a first mortgage or first trust on a Unit estate who have submitted a written request that the Owners Association notify them of any proposed action requiring the consent of a specified percentage of eligible mortgage holders.

3.7 The words "Map" or "Plat" shall mean and refer to the Plat Map of the CAITHNESS CONDOMINIUMS, recorded by Declarant.

3.8 The "Property" shall mean all of the property subject to the Declaration.

3.9 The word "Project" or "Condominium Project" shall mean and refer to the Property, as defined in the recitals and paragraphs 1 and 2 above, together with all rights and obligations established by this Declaration.

3.10 "Unit" shall mean any area within the building which is designated as a Unit or as a Private Area upon the Map. Units are identified upon the recorded Map by number. Units do not include the Common Areas and Facilities as defined herein which are immediately contiguous to the Unit or otherwise within the Project. A Unit shall include the interior wall and ceiling surface (and drywall), floor surface, windows, and doors of the Unit. The Unit shall also include all electric service from and including the breaker box into and throughout the Unit. A Unit shall also include all water lines, drain lines from the fixtures up to the common drains and fixtures beyond (and including) the shut-off valves for the Unit and/or fixture.

3.11 The words "Unit Owner" or "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Unit which is a part of the Property. Contract Buyers shall be treated as a Unit Owner unless expressly agreed otherwise in their purchase agreement.

3.12 The words "Unit Number" shall mean and refer to the number designating the Unit in the Declaration and in the Map.

#### 4 **Description of Units.**

4.1 Title to the Units shall be transferred by "fee simple" transfers from the Declarant. The Units shall include the interior wall, floor and ceiling surfaces (and interior walls), all windows and all of the interior space contained within the Unit, as more fully outlined in the definition in Section 3.10. The Condominium Structures consist of one building containing 33 units on four levels, consisting generally of masonry construction and interior walls with plaster and/or sheet rock.

4.2 Each Unit shall include an undivided interest in all of the Common Areas and Facilities, the right to use those Common Areas and Facilities, travel through and over the Common Areas (the roof and fire escapes should only be for emergency use only) and any other easements available to the Association or the units. The sole exception is the area shown as a Limited Common Area in the Southeast corner of the property on the Plat. The percentage of undivided interest in the Association and the Common Areas and Facilities owned by the Association appurtenant to each Unit for all purposes shall be as set forth in Appendix "B". Each Unit, regardless of purchase price or location, shall have a voting interest in the Association and an undivided percentage of Ownership of Common Areas and Facilities for assessment purposes, all as set forth in Appendix "B".

#### 5 **Ownership of Common Areas and Facilities.**

5.1 **Ownership.** The Declarant, with the recordation of this Declaration, does hereby convey and dedicate all of its right, title and interest by means of a Quit Claim Conveyance in the Common Areas and Facilities, **but not the Units**, to CAITHNESS CONDOMINIUMS HOMEOWNERS ASSOCIATION for its use and the enjoyment of its members, to be held and administered according to the provisions of this Declaration. The Association shall own all Common Areas and Facilities. The Common Areas and Facilities may not be subject to a lease between Unit Owners or the Owner's Association and any other party. This Conveyance shall not constitute a dedication of the Common Areas and Facilities for the general public.

5.2 **Owners' Easement of Enjoyment.** Every Unit and every Unit Owner shall have a non-exclusive easement for the use and enjoyment of the Common Areas and Facilities which non-exclusive easement shall be appurtenant to and shall pass with the title to every Unit. Each Unit Owner shall be subject to all the rights and duties assigned to Owners under this Declaration, and the Articles and Bylaws of the Homeowners Association. (When there are unsold Units in the Project, the Declarant shall also enjoy the same rights and assume the same duties as they relate to each individual unsold Unit). These rights shall be subject to the following provisions:



(a) the right of the Association to charge fees for the use and maintenance of the Common Areas and Facilities (including the Limited Common Areas);

(b) the right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Unit remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to grant easements through all or any part of the Common Area to any public agency, authority, or utility for the common benefit of the Units.

**5.3 Delegation of Use.** Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants for those lease agreements that have been approved by the Association, or contract purchasers who reside on the Property. The Common Areas may not be leased by the Homeowners Association, and may not be leased by any Unit Owner except as the use thereof may be included and be made appurtenant to an approved lease of the Unit.

**5.4 Limitations.** The Homeowners Association may not seek to abandon, partition, subdivide, encumber, sell or transfer any part of the common elements or Common Areas without the prior written approval of all of the lienholders (based on one vote for each first Mortgage owned) and all of the Owners of the individual Units. This limitation shall not apply to the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Areas. Approval of lienholders may be obtained as described in Sections 11.1 and 13.9.

## **6 Purpose of the Property.**

6.1 The purpose of the Project is to provide single-family residential housing for Unit Owners, their respective families, tenants and servants. No part of the Project may be used for commercial purposes.

6.2 The Units and Common Areas and Facilities shall be occupied, maintained and used as follows:

6.2.1 A Unit shall be occupied as a permanent single family residence.

6.2.2 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 prior written approval of the Association.

6.2.3 No parking of vehicles may occur anywhere upon the Property except as expressed in Rules that may be adopted by the Association. At the present time, no parking exists on the Property, and none is expected to exist in the future.

6.2.4 A Unit Owner shall keep his Unit, including the areas surrounding his Unit, clean and sightly at all times. No charcoaling or outdoor cooking shall be permitted on the Property, except by the owner of the Unit with the Limited Common Area in the southeast corner of the property in the Limited Common Area.

6.2.5 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 Association or its designee.

6.2.6 Without the prior written consent of the Association or its designee, a Unit Owner shall not permit anything to be done or kept in or about his Unit or in any Common Areas that would result in an increase in the cost of insurance on the Property, or that would result in the cancellation 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.

6.2.7 Without the prior written consent of the Association or its designee, a Unit Owner shall not permit any sign of any kind to be displayed to the public view from his Unit except for a small sign (not to exceed 17" x 22") stating that the Unit is for sale.

6.2.8 A Unit Owner shall not permit any animals of any kind to be raised, bred, or kept in his Unit or upon the Property, except that the Association may provide in its rules and regulations that dogs, cats, and other household pets may be kept in Units subject to the rules and regulations adopted by the Association. If a dog, cat, or other household pet is kept in the Unit, the Association shall have the right to charge additional common area fees for any Unit having a dog, cat, or other household pet reflecting the cost, if any, to the Association for additional upkeep and maintenance to the Common Areas and Facilities directly attributed to the animal. Said fee shall be applied uniformly to all such dog, cat or household pet owners.

6.2.9 A Unit Owner shall not permit any obnoxious or offensive activity or nuisance to be carried on in his Unit or upon any other part of the Project. A Unit Owner shall not conduct any activities, including the construction of improvements, in his Unit, which are or may become unsafe or hazardous to any person or property.

6.2.10 A Unit Owner shall not violate any of the rules and regulations for the use of Units or Common Areas and Facilities, adopted by the Association and furnished in writing to the Unit Owners.

6.2.11 No recreational vehicles (RV's), boats, watercraft, snowmobiles, four wheel or three wheel ATV's, mobile homes, trailers, fifth wheels, or camper shells,

or motorcycles (of any type) may be stored on the Property. There are no parking spaces available on the property.

6.2.12 No Owner shall, without the prior written consent of the Association, make or permit to be made any structural alteration, improvement or addition in or to his Unit or to the Common Areas. No Owner shall, without the prior written consent of the Association, do any act that would impair the structural soundness or integrity of the building or the safety of property or impair any easement or hereditament appurtenant to the Project. At the present time, no dishwashers, garbage disposals, or air cooling systems may be installed on the Property, and there is not present ability to accommodate them.

## **7 Association of Unit Owners: Board of Trustees.**

7.1 The management of the Association shall be governed by the Articles of Incorporation and Bylaws of the Association. The Association shall be entitled to choose a Board of Trustees or Board of Directors as such is referred to in the Articles of Incorporation and Bylaws, consisting of not less than three nor more than five persons who shall be elected as provided in the Bylaws. The initial number of Trustees shall be three. All agreements and determinations with respect to the Property lawfully made or entered into by the Association shall be binding upon all the Unit Owners, their successors and assigns. All rights and powers referred to in this Declaration as belonging to the Association, unless specifically provided for otherwise, shall belong to the Association and shall be carried out by the Association's Board of Trustees. The Board of Trustees is authorized and empowered to take all actions necessary on behalf of the Association unless specifically provided for otherwise in this Declaration.

7.2 The Association and the Board of Trustees shall have all the powers, duties and responsibilities as are now or may hereafter be provided to the Board of Trustees by this Declaration, the Articles of Incorporation and Bylaws, and by Utah law, including but not limited to the following:

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

7.2.2 After transfer of control of the Association is given to the Unit Owners by the Developer, The Association shall employ at all times a professional property manager or management company and may also employ accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefore; provided, however, that any such agreement and every agreement that the professional property manager or management company may enter into on behalf of the Association, must be terminable by the Association for cause upon thirty (30) days written notice and without cause with sixty (60) days prior written notice without any penalty, cost or fee, and that the term of any said management agreement may not exceed one (1) year, renewable by agreement for successive one-year periods. Any such contract cannot require the payment of any penalty by the Association or any advance notice of more than 60 days. If the Declarant has

entered into a contract for professional management or for management by the Declarant, the contract shall be subject to the Owners' rights to terminate it without cause at any time after transfer of control of the Association is given to the Unit Owners by the Developer.

7.2.3 To operate, maintain, repair, improve and replace the Common Areas and Facilities, Limited Common Area, including the entering into of agreements for the maintenance of the Common Areas, and adjacent, contiguous property for the benefit of the Association.

7.2.4 To determine and pay expenses related to the Common Areas and Facilities, including, but not limited to, the costs of the Common Utilities, water, steam heat, and sewer.

7.2.5 To assess and collect the proportionate share of Common Expenses from the Unit Owners.

7.2.6 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.

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

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

7.2.9 To bring, prosecute and settle litigation for itself, the Association and the property, provided that it shall make no settlement which results in an uninsured liability against the Association, or the Property in excess of \$10,000.00 without prior approval of a majority of Unit Owners.

7.2.10 To obtain insurance for the Association with respect to the Common Areas and Facilities as well as workman's compensation insurance, and other insurance it deems appropriate and as provided herein.

7.2.11 To repair or restore the Common Areas following damage or destruction, or a permanent taking by the power of eminent domain or by an action or deed in lieu of condemnation, not resulting in the removal of the property from provisions of this Declaration.

7.2.12 To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Unit Owners, items of real and personal property necessary to or convenient in the management of the business and affairs of the Association and in the operation of the property.

7.2.13 To keep adequate books and records.

7.2.14 To do all other acts necessary for the operation and maintenance of the Property, including the maintenance and repair of any Unit as the same is necessary to protect or preserve the Property; provided, however, that any act which constitutes a "material change" as defined in Section 18.2 must be approved as set forth in that Section.

7.2.15 The Trustees and the Association shall establish and maintain an adequate reserve fund for the replacement of improvements to the Common Areas and the Limited Common Areas that the Association is obligated to maintain. This fund shall be maintained out of regular assessments for common expenses, and shall be an amount not less than 10% of such assessments.

7.3 The Association may delegate to a manager or management company all of its foregoing powers, duties and responsibilities referred to in paragraph 7.2 above subject to the provisions of paragraphs 7.2.2, 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 \$5,000.00 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. The foregoing excepted powers shall be maintained by the Association or the Board of Trustees at all times.

7.4 Members of the Board of Trustees, the officers and any assistant officer, agents and employees of the Association (i) shall not be liable to the Unit Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or intentional bad faith; (ii) 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; (iii) shall have no personal, direct or imputed liability in tort to any Unit Owner or any person or entity, by virtue of acts performed by them, except for their own willful misconduct or intentional bad faith, or acts performed for them in their capacity as such; and (iv) 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.

7.5 The Association 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 of 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 Board of Trustees 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 intentional bad faith, provided, in the case of any settlement, that the Board of Trustees shall have approved the settlement, which approval shall 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 Board of Trustees or otherwise. The indemnification by the Unit Owners as contained herein shall be paid by the Association on behalf of the Unit Owners and shall constitute a Common Expense and shall be assessed and collectible as such.

## **8 Association of Unit Owners: Membership and Voting.**

### **8.1 Membership.**

Each Unit Owner shall be entitled and required to be a member (referred to herein as a "shareholder" or "member") of the Association; membership shall begin immediately and automatically upon becoming an Owner of a Unit and shall terminate immediately and automatically upon ceasing to be an Owner of a Unit. If title to a Unit is held by more than one person, the Owners of that Unit must designate in a writing filed with the Association, the name of the Owner who may vote, unless the tenancy is a joint tenancy, in which event either Owner (but only one vote) may vote. An Owner shall be entitled to one membership for each Unit owned by him. Each membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically by conveyance of that Unit. Ownership of a Unit within the Project cannot be separated from membership in the Association appurtenant thereto. Any devise, conveyance or other disposition of a Unit shall be construed to be a devise, conveyance or other disposition, respectively, of the Owner's membership in the Association, and the rights appurtenant thereto. No person or entity, other than an Owner, may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Unit.

### **8.2 Voting.**

The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be Unit Owners, with the exception of the Declarant. Each Class A member shall be entitled to the number of votes appurtenant to each respective Unit as shown on Appendix B. In the event more than one Class A member owns an interest in a Unit, the votes of such Unit shall be exercised as the Owners of the Unit themselves determine and advise the Association in writing, but in no case shall more than the applicable number of votes designated on Appendix B be cast with respect to any one Unit by Class A members.

Class B. The Class B member shall be the Declarant, his successor or assigns, who shall be entitled to three times (3x) the number of votes appurtenant to each respective Unit as shown in Appendix B for each Unit owned by the Declarant. The Class B voting interests shall be converted to Class A interests and retained by Declarant until sold, upon the earlier of the two events described in the next Section, 8.3.

**8.3 Declarant's Control of Board of Trustees.** The Declarant, or some other person or persons selected by the Declarant, may appoint and/or remove all members of the Board of Trustees and all officers of the Association, or at the Declarant's option, may

exercise the powers and authority otherwise assigned by the Declaration, the Bylaws and the Articles of Incorporation to the Association or the Board of Trustees from the date of recordation of this Declaration until the earlier of a) the date upon which 75% of the Units in the Project have been conveyed to Unit purchasers, or b) three years after the first Unit estate is conveyed. Unless otherwise required by law, the first annual meeting of the Association shall be held on the second Monday in December, 2005.

## **9 Maintenance, Alteration and Improvement.**

9.1 **Association Responsibility.** The maintenance, alteration, replacement and repair of the Common Areas and of the structural elements of the building shall be the responsibility of the Association, and the cost thereof shall be a Common Expense. The Association shall maintain to the extent that the same is not provided by utility services, utility service to the boundary of each Unit. All incidental damages caused to a Unit by the maintenance, alteration, replacement and repair of the Common Areas and utility services shall be repaired promptly at the expense of the Association. The Association shall maintain a reserve fund for the replacement and repair of Common Areas as described in Section 7.2.15. The Association shall be responsible for and shall provide exterior maintenance upon each Unit and the Project, including any stairways, landings, including painting, repair and replacement of roofs, gutters, downspouts, exterior building surfaces (except glass), lawns, sidewalks, fire escapes, the Courtyard and fountain, as necessary or as deemed desirable, which shall be paid for as a Common Expense. The Association shall be responsible for the maintenance of all boilers and all aspects of the steam heating system. For all Units that receive heat and hot water from common systems, the utility costs shall be paid by the Association. Any damage to the exterior of a Unit or to any Limited Common Area in excess of normal wear and tear caused by a Unit Owner or an occupant of a Unit or guest of a Unit Owner shall be repaired by the Association but shall be paid for by the Unit Owner directly. The cost of this maintenance shall be added to and become part of the assessment applicable to the Unit. The maintenance of the Units for which the Association shall be responsible shall not include windows or doors that open into a Unit, which doors and windows shall be the responsibility of and at the cost of that Unit Owner. In addition to the maintenance of exterior surfaces, the Association shall be responsible for and shall maintain the Common Areas. The Association shall have the irrevocable right to have access to each Unit and to the property as may be necessary, to meet its maintenance obligations, including the Common Areas and Facilities as reasonably required under this paragraph or as otherwise permitted in this Declaration. The Association shall maintain such financial reserves as necessary to timely anticipate the expenses and responsibilities provided herein.

9.2 **Unit Owner Responsibility.** 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 Owner's Unit except as provided in Section 9.1 hereof. Unit Owners shall be responsible for the maintenance of utility connections used in their Unit. Unit Owners shall be required to keep the areas adjacent to their Units in a clean and sanitary condition. Unit Owners shall be responsible for the complete and timely maintenance of doors (including locks) and windows that open into or are a part of their Unit. Unit Owners shall be responsible for the maintenance of their interior wall, floor and

ceiling surfaces. Unit Owners shall also be responsible for all electrical service from and including their breaker box and throughout their Unit. Unit Owners shall be responsible for all water fixtures and appliances within their Units, beginning at and including shut-offs, throughout the Unit.

9.3 **Additional Amenities.** Declarant expressly reserves the right and authority to modify the layout and design of the Common Areas, including the provision of additional amenities thereon, without the consent of the Association or the Unit Owners, during any time while Declarant is in control of the Board of Trustees as provided under paragraph 8.3 hereof *provided* the Declarant shall pay all costs, expenses and fees associated with the provision, construction and development of the additional amenities and facilities. Declarant shall have the right, without the consent of the Association or the individual Unit Owners, to amend this Declaration and the Map, as necessary, to maintain technical compliance with applicable laws and regulations imposed by governmental or other institutions financing or guaranteeing the financing of the Project or Units therein. Declarant shall have sole discretion regarding the style, placement, design and method of construction regarding any additional amenities as provided hereunder provided such is constructed in a good workmanlike manner and shall be in compliance with and subject to the provisions of Chapter 21A.34.020 "H" Historic Preservation Overlay District, based upon the fact that the property is located in the Avenues Historic District.

9.4 **Architectural Control.** No Unit Owner may alter the configuration of his Unit by building or removing walls or other structures within or without his Unit until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Board of Trustees. The Board of Trustees has the right to require that all Unit Owners' plans and specifications be reviewed by an architect or engineer, with the cost for such a review to be paid by the Unit Owner before review is commenced.

## 10 **Insurance.**

10.1 The Association 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, covering the Common Areas and Facilities as are or shall hereafter customarily be covered with respect to other properties similar to the Property in construction, design and use. The Association shall obtain insurance with the following minimum provisions or endorsements:

10.1.1 Exclusive authority to adjust losses shall be vested in the Association and/or the Board of Trustees as insurance trustee or any successor trustee as designated by the Association;

10.1.2 The insurance coverage shall not be brought into contribution with insurance purchased by individual Unit Owners or their respective mortgages;

10.1.3 Each Unit Owner shall obtain insurance covering his real and personal Property interest at his own expense.



10.1.4 The insurer shall be required to waive its right of subrogation as to any and all claims against the Association, each Unit Owner, and/or their respective agents, employees or tenants, and of all defenses based upon co-insurance or upon invalidity arising from the acts of the insured;

10.1.5 The policy shall provide that 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; or the conduct of any officer or employee of the Board of Trustees or Association or their employees, agents, or contractors, without prior demand in writing that the Association cure the defect and then only if the defect is not cured within thirty (30) days;

10.1.6 Such policies shall provide that coverage shall not be prejudiced by any act or neglect of the individual Unit Owners or their respective lessees, employees, agents, contractors or guests; or by failure of the Association to comply with any warranty or condition with regard to any portion of the premises over which the Association has no control; and

10.1.7 The insurance coverage shall provide that coverage may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to any and all insureds named thereon, including all mortgagees of the Units.

10.1.8 Each policy of insurance coverage must have the insurance industry's standard mortgage clause. Such clause must provide that the insurer will notify the named mortgagee at least ten days before reduction in coverage or cancellation of the policy.

10.2 The Association must maintain blanket "all risk" coverage for the following:

- general elements within the condominium including fixtures, machinery, equipment, and supplies maintained for the service of the condominium.

Coverage must be for 100 percent of the insurable value of the common elements or Property described above and provide for loss or damage settlement on a replacement cost basis.

Deductibles may not exceed the lower of \$10,000.00 or one percent of the applicable amount of coverage. Funds for such deductibles must be included in the association's reserves and be so designated.

The insurance policy of the Association must name the insured in substantially the same language indicated below:

Homeowners Association of the Caithness Condominium for  
the use and benefit of the individual owners.

The Association must also obtain any additional coverage commonly required by private mortgage investors for developments similar in construction, location and use, including the following where available:

- agreed amount
- demolition cost
- increased cost of construction
- boilers (if any should exist) and machinery
- *flood insurance if in a designated flood area*

The insurer's minimum liability per accident under boiler and machinery coverage must equal the insurable value of the building housing such boiler or machinery or \$2 million, whichever is less. Funds for any deductibles must be included in the Association's reserves and be so designated.

Premiums for all insurance carried by the Association are Common Expenses included in the Common Assessments made by the Association.

*In addition to casualty insurance on the Common Area, the Association, through the Board of Trustees, may elect to obtain and continue in effect, on behalf of all Owners, adequate blanket casualty and fire insurance in such forms as the Board of Trustees deems appropriate in an amount not less than the full replacement value, without deduction for depreciation or coinsurance, of all of the Dwelling Units, including the structural portions and fixtures thereof, owned by such Owners. This insurance, if obtained, shall conform to the requirements of the preceding paragraphs in Section 10.2. Insurance premiums from any such blanket insurance coverage, and any other insurance premiums paid by the Association, shall be a Common Expense of the Association to be included in the regular Common Assessments of the Owners, as levied by the Association.*

*The insurance coverage with respect to the Dwelling Units shall be written in the name of, and the proceeds thereof shall be payable to the Association as Trustee of the Homeowners. Deductibles may not exceed the lower of \$1,000.00 or one percent of the Unit's insurable value. Funds for any deductibles must be included in the Association's reserves and be so designated.*

10.3 The Condominium Owners Association must carry comprehensive general liability (CGL) insurance covering all common areas, common elements, and public ways in the Project.

If not already included in the terms of the CGL coverage, there must be a "severability of interest" endorsement precluding the insurer's denial of a Unit Owner's claim because of negligent acts by the Association or other Unit Owners.

The Association must also carry any additional coverage commonly required by private mortgage investors for developments similar in construction, location, and use, including the following where applicable and available:

- comprehensive automobile liability
- bailee's liability
- host liquor liability
- worker's compensation and employer's liability
- contractual liability

The insurer's limit of liability per occurrence for personal injury, bodily injury, or property damages under the terms of the above coverage must be at least \$1 million.

10.4 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 Association and/or the unit owners, on behalf of all of the Unit Owners, may realize under any insurance policy that the Association may have in force covering the Property or any part thereof at any time.

10.5 **Fidelity Insurance.** The Condominium Owners Association must carry fidelity insurance covering losses resulting from dishonest or fraudulent acts committed by the Association's directors, managers, trustees, employees, or volunteers who manage the funds collected and held for the benefit of the condominium Unit Owners. A professional management firm must be insured to the same extent as a Condominium Owners Association.

Fidelity insurance coverage must have all of the following characteristics:

- The policy must name the Owners Association as the insured, and the premiums must be paid as a common expense by the Association.
- The coverage must equal no less than the maximum amount of funds in the Association's or management firm's custody at any one time.

10.6 The Board of Trustees shall review all policies of insurance obtained pursuant to this article on no less than an annual basis in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Property which may be damaged or destroyed.

**10.7 Replacement or Repair of Property.** In the event of damage to or destruction of any part of the Common Area, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the Property damaged or destroyed, the Association may make a Reconstruction Assessment against all Unit Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessments made against such Unit Owner. In the event that the Association is maintaining blanket casualty and fire insurance on the Dwelling Units, the Association shall repair or replace the same from the insurance proceeds available.

**10.8 Allocation and Procedures.** In connection with any losses, awards, or proceeds from the condemnation, destruction or liquidation of all or part of the Project, or the termination of the Project:

(a) the Owners Association is designated to represent the Unit Owners in any related proceedings, settlements or agreements;

(b) each Unit Owner irrevocably appoints the Owners Association as its attorney in fact for these purposes;

(c) any proceeds from a settlement or collection resulting from a loss, award, or proceeding shall be payable to the Owners Association for the benefit of the affected Unit Owners and their mortgage holders, and where appropriate, in accordance with the percentage of a Unit Owner's interest in the Common Areas (Appendix B).

## **11 Termination.**

11.1 The Unit Owners may terminate the legal status of the Project and remove the Property from the provisions of this Declaration after substantial destruction or condemnation by an instrument duly recorded to that effect, provided that all of the Unit Owners and all of the holders of eligible mortgage holders affecting any of the Units consent or agree, by instruments duly recorded, that their liens be transferred to the percentage of undivided interest of the Unit Owner in the Property. If termination or removal occurs for any other reason, approval of all of the Unit Owners and all of the eligible mortgage holders shall be required. In either event, if any eligible mortgage holder fails to submit a response to any written proposal for amendment within 30 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, "return receipt requested", the approval of the eligible mortgage holder may be implied. In the event of any distribution of funds by the Owners Association in conjunction with termination, such distribution of funds should be in accordance with the percentage of a Unit Owner's interest in the Common Areas (Appendix B).

11.2 The administration of a termination shall be conducted as set forth in Section 10.8 and as required by U.C.A. § 57-8-22(2).

## **12 Eminent Domain.**

12.1 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 in the nature of eminent domain or by an action or deed in lieu of condemnation (all of which shall be defined as "eminent domain"), the Association, each Unit Owner, each holder, insurer and guarantor of a mortgage of any Unit shall be entitled to timely written notice thereof. The Owners Association is designated to represent the Unit Owners in any related proceedings, negotiations, settlements, or agreements. Each Unit Owner hereby appoints the Owners Association as its attorney in fact for these purposes.

12.2 Any awards by reason of eminent domain or in proceedings in lieu thereof, shall be payable to the Owners Association for the benefit of the affected Unit Owners and their mortgage holders as provided in U.C.A. §57-8-32.5, provided that the priority of any mortgagee's lien shall remain undisturbed, to be distributed as set forth in Section 10.8.

### 13 **Mortgage Protection.**

13.1 The term "mortgage" as used in this Declaration shall mean any recorded mortgage and shall include a recorded deed of trust. The term "mortgagee", unless otherwise stated, shall mean an "eligible mortgage holder".

13.2 The Association shall maintain a roster of Unit Owners from the evidence of change of ownership furnished to the Association by the Declarant and by Unit Owners, which roster shall include the mailing addresses of Unit Owners. It shall be the obligation of Unit Owners, both buying and selling, to provide current information to the Association regarding the names and addresses of Owners and of mortgagees. If the Association has been given notice of the necessary information, the Association shall maintain another roster which shall contain the name and address of each mortgagee of a unit. Notice shall consist of a certified copy of the recorded instrument evidencing the title of the mortgagee. The mortgagee shall be stricken from the roster upon receipt by the Association of a request from the mortgagee or of a certified copy of a recorded release or satisfaction of the mortgage. Notice of such removal shall be given to the mortgagee unless the removal is requested by the mortgagee.

13.3 Any mortgagee on any unit is entitled to written notification, if requested in writing by the mortgagee from the Association, 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 (except for assessments, which shall be as set forth in Section 13.9.4).

13.4 Any mortgagee, upon written request, shall have the right to examine the books and records of the Association during normal business hours and shall be entitled to receive copies of annual reports and other financial data within ninety (90) days following the end of any fiscal year and shall be entitled to receive notice of all meetings of the Association and may designate a representative to attend all such meetings. A mortgage holder may also have an audited financial statement prepared at its own expense.

13.5 An eligible mortgage holder of any Unit who comes into possession of the Unit pursuant to the remedies provided in the mortgage, foreclosure of mortgage, or deed (or assignment) in lieu of foreclosure, shall take the Property free of any claims of unpaid assessments or charges against the mortgaged Unit which accrued prior to the time such mortgagee comes into the possession of the unit (except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all units, including the mortgaged Unit).

13.6 The liens created pursuant to this Declaration, the Articles or Bylaws, upon any unit shall be subordinate to, and shall not affect the rights of a mortgagee whose interest was recorded prior to the recordation of the Notice of Lien, provided such mortgagee's interest would have priority, by law, over subsequently recorded encumbrances, or liens arising from tax and special assessment liens in favor of the assessing unit or special improvement district.

13.7 No unit may be partitioned, subdivided or combined without the prior written approval of the mortgagee of the affected Unit (and such other approval as required herein).

13.8 No amendment to this paragraph shall affect the rights of a mortgagee recorded prior to the recordation of any such amendment, unless otherwise agreed by the mortgagee.

13.9 Notices of Action. A holder, insurer and guarantor of a mortgage, upon written request to the Association, (such request to state the name and address of such holder, insurer or guarantor and the unit number), will be entitled to timely written notice of:

13.9.1 Any proposed amendment to the Declaration effecting a change in 13.9.1.1 the boundaries of any Unit or the exclusive easement rights appertaining thereto, 13.9.1.2 the interests in the Common Areas and Facilities appertaining to any Unit or the liability for Common Expenses appertaining thereto; 13.9.1.3 the number or votes in the Association appertaining to any Unit; 13.9.1.4 the purposes to which any Unit or the Common Elements are restricted; or (e) any other "material change" as listed in Section 18.2;

13.9.2 Any proposed termination of the Condominium Development regime;

13.9.3 Any condemnation or casualty loss which affects a material portion of the Project, the common areas of the Condominium, or the Unit securing its mortgage;

13.9.4 Any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the mortgage of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of 60 days;

13.9.5 Any lapse, cancellation or material modification of any insurance policy maintained by the Association;

13.9.6 Any restoration or repair of the Common Areas after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the Declaration and the original plans and specifications unless the approval of the eligible holders of first mortgages on units to which at least 51% of the votes of units subject to mortgages held by such eligible holders are allocated, is obtained. A higher percentage may be required for other changes as described elsewhere herein;

13.9.7 Any election to terminate the Condominium after substantial destruction or taking by condemnation of the Common Areas shall require the approval of at least 51% of the holders of eligible holders of mortgages on Units.

13.9.8 Any proposed action that requires the consent of more than 50% of the eligible mortgage holders.

13.9.9 Unless the formula for reallocation of interests in the Common Areas after a partial condemnation or partial destruction of the Common Areas is fixed in advance by the Declaration or by applicable law, no reallocation of interests in the Common Areas resulting from a partial condemnation or partial destruction of the Common Areas may be effected without the approval of at least 51% of the eligible holders of first mortgages of Units.

NOTE: As used in this section 13, the term "eligible holder, insurer or guarantor" shall mean a holder, insurer or guarantor of a first mortgage upon the Unit who has given notice of their interest as required by Section 3.6.

#### **14 Leasing and Rental of Units.**

14.1 The Association may regulate or limit rentals of condominium units.

14.2 The Association may require the rental of condominium units to be conducted through the Homeowner's Association or a designated management company, and may require that all lease agreements be reviewed and approved by the Homeowners Association or that management company. The Homeowners' Association may require that tenants be screened and approved by the Homeowners' Association or the designated management company prior to any rental or leasing of a unit. Provided, however, that with respect to any of these approvals, the approval of the Homeowners' Association or the designated management company shall not be unreasonably withheld and decisions shall be rendered promptly.

14.3 All leases of units shall be in writing, with the writing being executed before occupancy begins, and shall provide that the terms of the lease shall be subject in all

respects to the provisions of the Declaration and Bylaws of the Homeowners Association and that failure of the lessee to comply with the terms of said documents shall be a default under the lease. In addition, the lease shall contain a provision wherein the tenant shall agree not to allow or commit any nuisance, waste, unlawful or illegal act upon the premises. The lease shall acknowledge that the Homeowners' Association is an intended third party beneficiary of the lease agreement, that the Homeowners' Association shall have the right to enforce compliance with the Declaration, Bylaws, and any house rules, and to abate any nuisance, waste, unlawful or illegal activity upon the premises. The lease shall also provide that the Homeowners' Association shall be entitled to exercise all of the owner's rights and remedies under the lease.

14.4 Prior to a tenant's occupancy of a Unit, the Unit owner must provide to the Homeowners' Association the name, address and telephone number of the tenant and a copy of the written lease agreement. The Association may impose a standardized fee in connection with the occupancy of a Unit by a Tenant to offset costs incurred.

14.5 The Homeowners' Association shall have the right and the obligation to enforce compliance with the Declaration, Bylaws, and house rules against any owner and/or occupant of any unit, and shall have all rights and remedies available under state or local law, in addition to its rights and remedies as a third party beneficiary under any lease to enforce such compliance.

14.6 No Unit Owner shall be permitted to lease his Unit for a period of less than six (6) months.

14.7 No Unit Owner shall lease less than the entire unit.

14.8 The name of each and every individual residing in a leased unit shall be included on the lease.

14.9 The provisions of this paragraph shall not apply to a lender in possession of a Unit following a default in a first mortgage, but shall apply to any subsequent purchaser of the Unit.

14.10 No Limited Common Area may be leased by a Unit Owner apart from a lease of the entire Unit. No part of the Common Area may be leased.

## 15 **Encroachments.**

15.1 None of the rights and obligations of any Unit Owners created by this Declaration 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 or resulting from an error in construction, reconstruction, preparation of the Plat, repair, settling, shifting or other movement of the building or any part of it, or the rebuilding of the building or any part of it 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 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 Common Areas and Facilities is appurtenant, or of the Association in the event of an encroachment by any portion of the Common Areas and Facilities.

15.2 There are hereby created valid easements for any encroachment described in paragraph 15.1 and for the maintenance of any such encroachments so long as such encroachments exist, and so long as the physical boundaries of the Units are in substantial accordance with the Unit boundaries described in the recorded plat.

## 16 **Conveyances, Easements.**

16.1 Every deed, lease, mortgage or other instrument may describe a Unit by its identifying number and letter designation set forth upon the Map, as amended. 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 in the Association even though the same is not exactly mentioned or described as well as the Unit's Limited Common Areas and Facilities.

16.2 A portion of the Common Areas may be conveniently accessible only through the Units. In those instances, the Association shall have the irrevocable right to have access to each Unit from time to time during normal business hours or upon giving notice to the Owner and during such reasonable hours as may be necessary for the maintenance, landscaping, upkeep, mowing, cleaning, repair or replacement thereof or for making emergency repairs at any time herein necessary to prevent damage to the Common Areas or to any Unit or as necessary for the Association to fulfill its obligations under this Declaration. In the event of emergency repairs necessary to avoid damage to other units or the Common Areas, access shall be permitted upon request, and if no Owner is present, then without consent so long as at least one Trustee and one other person is present and notice is left advising of the entry and its purpose. In addition, upon giving notice to the Owner and during such reasonable hours as may be necessary, the Association or its agents may enter any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, landscaping, construction or reconstruction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association and paid as a Common Expense.

16.3 Each Unit Owner and the Declarant shall have the right to ingress and egress and reasonable enjoyment over, upon, and across the Common Areas and shall have the right to horizontal, vertical and lateral support of such Unit, and such rights shall be appurtenant to and pass with the title to each Unit. Each Unit shall carry with it, in perpetuity, and inseparable from the Unit, the unrestricted right of ingress and egress to the Unit.

16.4 The Association shall have an easement to make such use of the Common Areas and Limited Common Areas as may be necessary or convenient to perform the

duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain in the Common Areas facilities for use by Owners generally or by the Association and its agents exclusively.

16.5 All conveyances of Units within the Project hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance. Any attempt to transfer, by conveyance, encumbrance, judicial sale or otherwise (voluntarily or involuntarily) of an individual interest in the common elements will be void unless the Unit to which that interest is allocated is transferred as a part of the same instrument.

16.6 The Association shall have power to grant and convey to any third party permits, licenses, easements and rights of way, including but not limited to rights of ingress and egress, in, on, over and/or under the Common Areas and Facilities for the purpose of ordinary use including ingress and egress as well as for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits or other devices for electricity, cable television, power, telephone, public sewers, storm drains and pipe, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, including roads, to provide common utility services to the Project or for the proper operation of the Project.

## 17 **Combination of Units.**

17.1 An Owner of two or more adjoining Units may petition the Association or the Board of Trustees in writing to combine one or more adjoining units or portions thereof and to alter or amend the Declaration and Map to reflect such combination. This proposed combination shall be deemed a material amendment requiring approval as set forth in Section 18.

17.2 All costs and expenses required in such amendments shall be borne by the Unit Owner desiring such combination.

17.3 Before the proposed amendment may be put to a vote of Unit Owners and mortgage holders, the proposed amendments to the Declaration and Map must be approved by attorneys employed by the Association to insure the continuing legality of the Declaration and the Map. The cost of such review by the attorney, and all expenses related thereto, shall be borne by the person wishing to combine the Units.

17.4 Any proposed amendment of the Declaration or Map pursuant to this section 17 shall reflect the changes occasioned by the alteration. Such changes include a change in the percentage of ownership or interest in the Association which are appurtenant to the Units involved in the alterations. The remaining combined Unit will acquire the total percentage of undivided interest in the Association of Units that are combined as set forth on Appendix B. 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 Association of the Units involved in the combination on the basis of area remaining in the respective altered

Units. A combined Unit shall have the number of votes that previously existed, except that fractional votes shall be reduced to the next lowest whole number.

**18 Amendment.**

18.1 The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded. After that time they shall be automatically extended for successive periods of ten (10) years. Except as otherwise provided in this Declaration, the provisions of this Declaration may be amended in a writing, which amendment shall be recorded and be effective upon recording.

18.2 If the Board of Trustees reasonably determines that a proposed change to the Declaration, Articles or Bylaws is not material, it shall submit the proposed change to the Unit Owners for approval by a majority of all Unit Owners based upon one vote per Unit. If a Unit Owner or eligible mortgage holder has not responded within 30 days after he receives notice of the proposal, his approval shall be implied, provided that notice was delivered by certified or registered mail, with a return receipt requested.

Any amendments which are material to the rights of Unit Owners or their eligible mortgage holders must be approved by at least sixty-seven percent (67%) of the total allocated votes in the Owners Association (some matters require 100% owner approval where required by statute or by this Declaration) and by eligible mortgage holders who represent at least fifty-one percent (51%) (unless a higher percentage is set forth elsewhere in this Declaration, in which event the higher percentage shall control the votes of unit estates that are subject to mortgages held by eligible holders). For purposes of this Section 18, a change is considered material if it affects any of the following:

- voting rights (for which 100% of the owners must give approval);
- increases in assessments that raise the previously assessed amount by more than 25% from year to year, assessment liens, or the priority of assessment liens;
- reductions in reserves for maintenance, repair and replacement of common elements;
- responsibility for maintenance and repairs;
- reallocation of interests in the general or limited common elements, or rights to their use (for which 100% approval is required);
- redefinition of any unit boundaries;
- convertibility of units into common elements or vice versa;

- expansion or contraction of the project, or the addition, annexation, or withdrawal of Property to or from the project;
- hazard or fidelity insurance requirements;
- imposition of any additional restrictions on the leasing of Units;
- imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- a decision by the Owner's Association of a project to establish self-management if professional management had been required previously by the project documents or by an eligible mortgage holder;
- restoration or repair of the project (after damage or partial condemnation) in a manner other than that specified in the documents; or
- any provisions that expressly benefit mortgage holders, insurers, or guarantors.

## 19 **Assessments.**

19.1 **Power to Assess.** The Association, through its Board of Trustees, shall have the duty, power and authority as prescribed by law and set forth herein to make and collect regular and special assessments from the Unit Owners for their share of Common Expenses pursuant to the Articles and Bylaws and as further set forth below. All rights, powers and authority conferred hereunder to the Association shall also apply to the Board of Trustees as provided herein.

19.2 **Agreement to Pay.** The Declarant, for each Unit owned by it, covenants and agrees, and each subsequent purchaser and Owner of a Unit by his acceptance of a deed, whether or not it shall be so expressed in such deed, is deemed to and covenants and agrees, for each Unit so owned, to pay to the Association annual or regular assessments and special assessments for capital improvements, such assessments to be established, made and collected as provided in this Declaration. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the Unit and shall be a continuing lien upon the Property against which such assessment is made. Each Owner shall be liable for a proportionate share of the Common Expenses, such shares being the same as the percentage of undivided interest in the Common Areas appurtenant to the Unit owned by the Unit Owner as set forth in Appendix "B". Except as otherwise set forth herein, such assessments shall accrue from the date the first Unit is conveyed to a purchaser and will be due and payable in advance.

19.3 **Personal Obligations.** Each assessment or installment, together with any interest, collection costs and reasonable attorney's fees, shall be the personal obligation of

the person or entity who was an Owner at the time such assessment, or installment, became due and payable. If more than one person or entity was the Owner of a Unit, the personal obligation to pay such assessment, or installment, respecting such Unit shall be both joint and several. The voluntary Grantee of a Unit, by his acceptance of a Deed subject to the terms and conditions of this Declaration, including personal liability for assessments shall be jointly and severally and personally liable for previous unpaid assessments. Those assessments shall also remain the personal obligation of the seller. No Unit Owner may exempt himself from payment of assessments, or installments, by waiver of the use or enjoyment of all or any portion of the Common Areas by waiver of the use or enjoyment of, or by abandonment of his Unit.

**19.4 Purpose of Assessments; Maintenance of Reserves.**

**19.4.1 Working Capital Fund.** The Declarant shall establish the initial working capital fund in an amount equal to two months of estimated common charges for each Unit. Each Unit's share of the working capital fund shall be collected by the Association either i) at the time the sale of the Unit is closed or, ii) when control of the Project is transferred to the Unit Owners, whichever is earlier. The Declarant may recover this amount as a cost at the time of closing the sale of a Unit.

These payments shall not be considered as advance payments of regular assessments. This working capital fund shall be transferred by the Declarant to a segregated fund in the name of the Owners Association not later than when control of the Owner's Association is transferred to the Unit Owners.

The Declarant may not use these funds to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Owners Association. However, the Declarant may recover its contribution to the working capital fund for any Unit from funds collected at closing when the Unit is sold.

The Association shall maintain this fund consistent with its obligations described in Section 7.2.15.

**19.4.2 Regular Assessment.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Members of the Association, and for the improvement, replacement, repair, operation and maintenance of the Common Areas and Facilities and the performance of the duties of the Association as set forth in this Declaration. Assessments may also be used to cover expenses for repair of defects or failures in the Project. The regular assessments shall include adequate reserve funds for contingencies and for maintenance, repairs, and replacement of the Common Area and improvements and facilities. Unless the Association is exempt from federal or state taxes, all reserves shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal

Revenue Service and the Utah State Tax Commission that will prevent such funds from being taxed as income of the Association.

**19.5 Determination of Amount of Assessments.**

**19.5.1 Regular Assessments.** It is the duty of the Board of Trustees, in accordance with this Declaration, to determine the assessments. Each Unit Owner shall pay the Association his allocated portion, as set forth upon Appendix "B" hereof, of the cash requirement required to manage in the manner herein provided without any deduction on account of any set-off or claim which the Owner may have against the Association. If the Unit Owner shall fail to pay any installment within thirty (30) days of the time when the same becomes due, the Owner shall pay interest thereon at the rate of ten percent (10%) per annum from the date when such installment shall become due to the date of the payment thereof.

**19.5.2 Other Assessments.** The cash requirements above referred to for each year, or portion of the year, are hereby defined and shall be deemed to include an adequate reserve fund for maintenance, repairs and replacement of those common areas and facilities that must be replaced on a periodic basis (which amount is originally established at 10%, and may be increased but not decreased), plus such aggregate sum as the Association or the Board of Trustees from time to time shall determine, in its judgment, is to be paid by all the Owners then in existence to enable the Association to pay all estimated expenses and outlays of the Association to the close of such year, growing out of or in connection with the maintenance and operation of such land, buildings, and improvements; which sum may include, among other things, the cost of management, special assessments, fire, casualty, flood, fidelity, public liability and other insurance premiums, common lighting, landscaping and the care of the grounds, repairs and renovations to Common Areas, snow removal, wages, water charges, natural gas and electricity charges and all other utility services (except telephone, and other services which are separately billed or metered to the individual Units by the utility or party furnishing such service), legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, the payment of any deficit remaining from the previous period, the creation of a reasonable contingency or other necessary reserve or surplus fund, as well as all other costs and expenses relating to the Project. Subject to the limitations set forth in paragraph 19.5.5!, the Association or the Board of Trustees may, from time to time, up to the close of the year for which such cash requirements have been so fixed or determined, increase or diminish the amount previously fixed or determined for such year. It may include in the cash requirements for any year, any liabilities or items of expense which accrued or became payable in the previous year, or which might have been included in the cash requirements for a previous year, but were not included therein; and also any sums which the Association may deem necessary or prudent to provide a reserve against liabilities or expenses then accrued or thereafter to accrue although not payable in that year.

**19.5.3 Amount of Assessment.** The portion payable with respect to each Unit in and for each year or for a portion of a year shall be determined by application of the fraction as shown on Appendix "B". Such assessments, together with any additional sums accruing under this Declaration, shall be payable monthly in advance, or in such payments and installments as shall be provided by the Association or the Board of Trustees. The percentage attributable to each Unit is set forth on Appendix "B" as the percentage of undivided interest.

This percentage may not be changed unless at least fifty one percent (51%) of all eligible mortgage holders (based on one vote per first mortgage owned) and all of the Owners (other than the Declarant) have given their written approval.

**19.5.4 Maintenance and Operation.** The Association through the Board of Trustees shall have discretionary powers to prescribe the manner of maintaining and operating the Project and to determine the cash requirements of the Association to be paid as aforesaid by the Owners under this Declaration. Except as provided in paragraph 19.5.5. below, every such reasonable determination by the Association within the bounds of this Declaration shall be final and conclusive as to the Owners, and any expenditures made by the Association, within the bounds of the Act and this Declaration shall as against the Owner be deemed necessary and properly made for such purpose.

**19.5.5 Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum assessment shall not exceed One Hundred Fifty Five Dollars (\$155.00) per Unit per month. Notwithstanding the foregoing, any increase or modification of the regular annual assessment shall be subject to the following limitations: 19.5.5.1 From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year by not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership; 19.5.5.2 From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above five percent (5%) only by a vote of sixty-seven percent (67%) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose; and 19.5.5.3 The Board of Trustees may fix the annual assessment at an amount not in excess of the maximum. Any increase in any assessment by twenty five percent (25%) or more shall require the approval of eligible mortgage holders as set forth in Section 18.2, and of 67% of the total number of members in each class.

**19.6 Special Assessments.** In addition to the annual regular assessments authorized above, the Board of Trustees of the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area including fixtures and personal Property related thereto, (but not during the development stage), provided that any such assessment shall require the approval of sixty-seven percent (67%) of each class of

Members. All proceeds from any special assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which it was levied or it shall be otherwise handled and used in a manner authorized by law or regulations of the Internal Revenue Service and the Utah State Tax Commission in order to avoid, if possible, its taxation as income of the Association.

19.7 **Member Action.** Any action authorized under Section 19.6 or 19.5.5 above requiring membership approval shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. A quorum for such meeting shall be sixty percent (60%) of each class of members of the Association. If the required quorum is not present, another meeting may be called subject to the same notice requirement (but with not less than 15 days notice) and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum for the preceding meeting. If the proposed action is favored by a two thirds (2/3) majority of the votes cast at such subsequent meeting, but such vote is less than required, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers of the Association not later than thirty (30) days from the date of such meeting. This subsequent (second) meeting shall be held no more than 60 days following the first meeting.

19.8 **Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate and shall be based upon the Unit's percentage interest set forth in Appendix "B" and shall be collected on a monthly basis.

19.9 **Assessment Period.** The initial assessment period for all Units, including those owned by Declarant, shall commence on the first day of the calendar month following the date on which the first sale of a Unit to a purchaser is closed and recorded (the "initiation date") and shall terminate on December 31 of the year in which the initial sale is closed and recorded. If the Declarant has unsold and unoccupied Units on the initiation date, its assessment on those Units shall be two-thirds of the normal assessment per period until the sooner of the sale or occupancy of the Unit or 60 days from the date the first Unit is conveyed. Thereafter, the regular assessment period shall commence on January 1 of each year and shall terminate on December 31 of such year, and regular assessments shall be payable in equal monthly installments unless the Board of Trustees adopts some other basis for collection. The Board of Trustees shall fix the amount of the annual assessment at least thirty (30) days in advance of each annual assessment period.

19.10 **Notice and Assessment Installation Due Dates.** The due dates for the payments of installments shall be the first day of each month unless some other due date is established by the Board of Trustees and notice thereof given to the Unit Owners. These payments shall be due whether or not notice is sent or received. Each installment, regular assessment and special assessment shall become delinquent if not paid within thirty (30) days after its due date. There shall accrue with each delinquent installment, including any late charge previously assessed and unpaid, a late charge which shall be equal to ten percent (10%) of the payment due.

19.11 **Estoppel Certificate.** The Association or the Board of Trustees, on not less than twenty (20) days' prior written request and upon the payment of a handling fee not exceeding \$10.00 per certificate, shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not to the knowledge of the



Association, a particular Owner is in default as to his Unit assessments under the provisions of this Declaration and further stating the dates to which installments of assessments, regular or special, have been paid as to such unit. Any such certificate delivered pursuant to this Section may be relied on by any prospective purchaser or mortgagee of the Unit. The Estoppel Certificate shall not supersede any default in the payment of regular or special assessments of which the requesting party had actual knowledge.

**19.12 Lien.** All sums assessed to any Unit pursuant to this Declaration, together with interest, collection costs and attorney's fees as provided herein, shall be secured by a lien on such Unit in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Unit, except only for: 19.12.1.1 valid tax and special assessment liens on the Unit in favor of any governmental assessing authority; and 19.12.1.2 a lien for all sums unpaid on a first Mortgage, or any Mortgage to Declarant, duly recorded in the Official Records of Salt Lake County, Utah, prior to the date the delinquent assessment was due, including all unpaid obligatory advances to be made pursuant to such Mortgage and all amounts advanced pursuant to such Mortgage and secured by the lien thereof in accordance with the terms of such instrument. All other lienors acquiring liens on any Unit after this Declaration shall have been recorded in said records shall be deemed to consent that such liens shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

The lien for assessment shall accrue on the date the assessment is due. To evidence a lien for sums assessed hereunder, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. Such a notice shall be signed by the Association, or its designee, and may be recorded in the office of the County Recorder of Salt Lake County, Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real Property may be foreclosed in Utah or, at the Association's election, in the manner provided by Utah law. In the event foreclosure or any method of collection other than foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of lien and all reasonable attorneys fees. All such costs, expenses and attorneys fees shall be secured by the lien being foreclosed. The Owner shall also be required to pay the Association any assessments against the Unit which shall become due during the period of foreclosure. The Association shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and, if a successful buyer, to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the Unit as the Owner thereof.

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

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

Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to foreclosure of a first mortgage of an eligible mortgage holder or any proceeding in lieu thereof, shall extinguish the lien of such assessments (but not the obligation of the foreclosed owner) as to payments which became due more than five (5) months prior to such sale or transfer. No sale or transfer, whether by foreclosure or otherwise, shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

**19.13 Foreclosure.** In any foreclosure of a lien for assessments, the Unit Owner subject to the lien, if not evicted or removed by the purchaser at the sale by the Association, shall be required to pay a reasonable rental for the Unit, and the Association shall be entitled to the appointment of a receiver to collect the same, without the requirement of a bond.

**19.14 Capital Reserve Accounts.** The Association shall include in the monthly assessments amounts representing contributions to the capital of the Association to be used for the replacement of or additions to capital items or improvements in common elements of the Property, and those limited common elements which is obligated to maintain, or for reserves for improvements to or replacement of capital items or improvements in or to the Property. Said amounts shall be set up as capital accounts for each unit. This amount shall be not less than ten percent (10%) of the total assessment. In the event of transfer of a unit, the capital account shall be deemed transferred for the benefit of the unit transferee.

**19.15 Capital Improvements.** In assessing the Unit Owners for capital improvements to the Common Areas, Limited 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 Five Thousand Dollars (\$5,000.00) made by the Association or the Board of Trustees without the same having been first voted on and approved by a majority of those present in person or by proxy at a meeting of the Association duly called for that purpose. The foregoing shall not apply in connection with damage or destruction referred to in Section 12 hereof or to such structural alterations, capital additions to or capital improvements of the Common Areas as are necessary in the Association's reasonable judgment to preserve or maintain the integrity of the Common Areas of the Property.

**19.16 Assignment of Rents.** If the Unit Owner shall, at any time, let or sublet his unit and shall default for a period of one month in the payment of assessments, the Association may, at its option, so long as such default shall continue, demand and receive from any tenant or subtenant of the owner the rent due or becoming due and the payment of such rent to the Association shall be sufficient payment and discharge of such tenant or subtenant and the owner to the extent of the amount so paid. The Unit Owner does

hereby assign to the Association any such rent in the event of a default by Owner in paying an assessment.

19.17. **Fines.** The Board of Trustees may assess and impose fines against a unit owner for violation of rules and regulations of the Association in accordance with the requirements of U.C.A. §57-8-37, as it may be amended from time to time, the terms of which are incorporated into this Declaration.

## 20 **Declarant's Sales Program.**

20.1 **Sales, Models, Etc.** Notwithstanding any other provisions of this Declaration, until Declarant ceases to be a Unit Owner (hereinafter referred to as the "Occurrence"), Declarant, its successors or assigns shall have the following rights in furtherance of any sales, promotional, or other activities designed to accomplish or facilitate the sale of all units owned by Declarant.

20.1.1 Declarant, its successor or assigns shall have the right to maintain a sales office and/or model Unit. Such office and/or model Units may be Units (at any location) owned by Declarant may be relocated and may be sold by the Declarant as provided for in this Declaration.

20.1.2 Declarant, its successor or assigns shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places on the Project, or upon real Property directly adjacent to the Project owned by the Declarant, but any such device shall be of a size and in a location as is reasonable and customary.

20.1.3 Declarant shall have the right to use the Common Areas and Facilities of the Project to entertain prospective purchasers, to facilitate completion or to otherwise facilitate Unit sales, provided said use is reasonable as to both time and manner.

20.1.4 Declarant shall have the right from time to time to locate or relocate its sales office, model Units and/or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Article. Within a reasonable period of time after the happening of the Occurrence, Declarant shall have the right to remove from the project any signs, banners or similar devices.

## 21 **Party Walls.**

21.1 **General Rules of Law to Apply.** Each wall which is placed on the dividing line between the units at the time of this declaration shall constitute a party wall and to the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for Property damage due to negligence or willful acts or omissions shall apply thereto.

21.2 **Weatherproofing.** Notwithstanding any other provision of this section, an Owner who by negligence or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

21.3 **Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this section shall be appurtenant to the land and shall pass to such Owner's successors in title.

21.4 **Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this section, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

## 22 **Miscellaneous.**

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

22.2 **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.

22.3 **Law Controlling.** This Declaration, the Map, the Articles and the Bylaws shall be construed and controlled by and under the laws of the State of Utah, including U.C.A. §57-8-1, et seq., as it may be amended. If any provision in the Declaration, the Articles or Bylaws is inconsistent with U.C.A. §57-8-1, et seq. (the "Statute"), the Statute shall control.

22.4 **Effective Date.** This Declaration shall be effective as of the date of its recording.

22.5 **Declarant's Rights Assignable.** All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any mortgage covering all Units in the Project, title to which is vested in the Declarant, shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protections and controls which are accorded to Declarant (in its capacity as Declarant herein).

22.6 **Enforcement.** The Association, and any aggrieved Owner, or eligible mortgagee holder of an aggrieved Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the

Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Unit estate owners shall also be granted a right of action against the Owners Association for the purpose of enforcement of the Project Documents (the Articles, the Bylaws and the Declaration). In the event that any party seeks to enforce rights granted by this Declaration, the successful party shall be entitled to recover their attorneys fees and costs reasonably incurred as a result of a breach, whether with or without litigation.

**22.7 Allowances for Inflation.** Any dollar amounts set forth in this Agreement may be adjusted by the approval of a majority of the Board of Trustees to allow for inflation as measured by the Consumer Price Index for Urban Consumers or its equivalent, with January 1, 1996 being the base year.

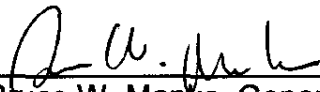
**22.8 Notice.** As used herein, and unless stated otherwise, "notice" to a Unit Owner or to the Association or Declarant shall include i) the physical delivery of the writing containing the notice to the Unit Owner as his name appears in the records of the Association, or ii) certified mail sent to the Unit Owner at his address as it appears in the records of the Association. Notice shall be complete upon the sooner of the physical delivery or the second day after the date of mailing.

**23 Agent for Service of Process.**

The name and address of the person in Salt Lake County, State of Utah, appointed as first agent to receive service of process in matters pertaining to the Property is: Bruce Manka, whose address for service is, c/o Keith W. Meade, 257 East 200 South, #700, Salt Lake City, Utah 84111.

4 IN WITNESS WHEREOF, the undersigned has executed this instrument on this day of August, 2005.

University Partners, Ltd. III, a Utah general partnership

  
\_\_\_\_\_  
Bruce W. Manka, General Partner



**APPENDIX "A-1"**  
**ARTICLES OF INCORPORATION**

RECEIVED

AUG 26 2004

UT. DIV. of CORP. & COMM. CODE

ARTICLES OF INCORPORATION

FOR

CAITHNESS CONDOMINIUM HOMEOWNERS ASSOCIATION, Inc.

a Utah Non-Profit Corporation

In compliance with the requirements of Utah Revised Nonprofit Corporation Act, §16-6a-101. et seq., Utah Code Annotated, 1953, as amended, the undersigned, is a resident of the State of Utah and of full age, and hereby certifies that the following are the Articles of Incorporation of Caithness Condominiums Homeowners Association, Inc. (the "Association").

ARTICLE I  
Corporate Purpose

The sole and specific purpose for which the Corporation is formed is to provide for the maintenance, preservation and control of the Condominium Development known as Caithness Condominiums located at 86 "B" Street in Salt Lake City, Utah, and to promote the health, safety and welfare of the residents within the Development. The Association may not perform any act contrary to the terms of the Declaration of Condominium for the Caithness Condominiums. This Association does not contemplate pecuniary gain or profit to the members thereof.

ARTICLE II  
Corporate Name

The name of the corporation is the "Caithness Condominium Homeowners Association, Inc.", hereinafter called the "Association".

ARTICLE III  
Initial Registered Office

The initial registered office of the Association is located at Caithness Condominium Homeowners Association, attn: Bruce W. Manka, c/o Keith W. Meade, whose address is 257 East 200 South, Suite 700, Salt Lake City, Utah 84111.

ARTICLE IV  
Registered Agent

Keith W. Meade, whose address is 257 East 200 South, Suite 700, Salt Lake City, Utah 84111 is the initial registered agent of the Association.

Date: 08/26/2004  
Receipt Number: 1236174  
Amount Paid: \$22.00  
BK 9201 PG 1802

CLS

08-26-04P03:39 RCVD



**ARTICLE V  
Incorporators**

The sole incorporator of the Association is Bruce Manka, whose address is set forth in Article III above.

**ARTICLE VI  
Voting Rights**

The Association shall have two (2) classes of voting membership. There will be 34 shares total, as follows:

Class A. Class A members shall be all owners, with the exception of the Declarant (as defined in the Declaration), and shall be entitled to the number of votes reflected in the Declaration. When more than one person holds an interest in any unit, all persons shall be members. The vote for such unit shall be exercised as they determine, but in no event shall more than the allocated number of votes be cast with respect to any unit.

Class B. The Class B member(s) shall be the Declarant, who shall be entitled to three (3) votes for each unit owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or three years from the date the first Unit is conveyed, whichever occurs first.

**ARTICLE VII  
Membership**

The Association shall not issue stock. However, every owner of a condominium unit in the Development shall be a member of the association.

**ARTICLE VIII  
Dissolution**

The Association may be dissolved with the assent required by Section 11 of the Declaration, which requires the approval of not less than 67% of the number of votes (34) listed in the Declaration. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be distributed as set forth in the Declaration, and otherwise as provided by law. Written notice of any meeting wherein dissolution will be considered must be given as required by law.



**APPENDIX "A-2"**

**BYLAWS**

**BYLAWS OF  
CAITHNESS CONDOMINIUM HOMEOWNERS ASSOCIATION  
a Utah non-profit corporation**

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**ARTICLE I  
OFFICES**

The initial offices of the Association in the State of Utah shall be located at c/o Bruce Manka, 257 East Second South, Ste. 700, Salt Lake City, Utah 84111.

**ARTICLE II  
DEFINITIONS**

**SECTION 1.** "Association" shall mean and refer to the Caithness Condominium Homeowners Association, its successor and assigns.

**SECTION 2.** "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

**SECTION 3.** "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. For purposes hereof, it shall also include the sole area of Limited Common Area.

**SECTION 4.** "Unit" shall mean and refer to each Unit shown upon any recorded subdivision map of the Property with the exception of the Common Area.

**SECTION 5.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Unit which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**SECTION 6.** "Declarant" shall mean and refer to University Partners, Ltd. III, a Utah limited partnership, its successors and assigns if such successors or assigns should acquire more than one undeveloped Unit from the declarant for the purpose of development.

**SECTION 7.** "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions (as it may be amended) applicable to the Properties recorded in the Office of the Salt Lake County Recorder, State of Utah.

**SECTION 8.** "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

## ARTICLE III

### MEETINGS

**SECTION 1. Annual Meeting.** The annual meeting of the Members shall be held at 7:00 p.m. on the second Wednesday in the month of December of each year beginning with the year 2005, for the purpose of electing trustees and for the transaction of such other business as may come before the meeting. In the event that such annual meeting is omitted by oversight or otherwise during the month provided for, the trustees shall cause a meeting in lieu thereof to be held as soon thereafter as may be convenient, and any business transacted or elections held at such meeting shall be as valid as if transacted or held during the month in which the annual meeting was to be called. If the election of trustees shall not be held during the month designated herein for the holding of the annual meeting of Members or at any adjournment of any meeting so called, such subsequent meetings shall be called in the same manner as is provided for the calling of the annual meeting of the Members. Such meeting may also be called without the required advance notice if all of the Members consent to the meeting and a quorum are present at such a meeting. Written waiver of notice of such meeting shall be attached to the minutes of the annual Members' meeting so called, in the corporate minute book. Meetings of Members must be held at least annually, and not more frequently than every other month.

**SECTION 2. Special Meetings.** Except as otherwise provided by law, special meetings of the stockholders of this Association shall be held whenever called by a majority of the Board of Trustees, or whenever one or more stockholders who are entitled to vote and who hold at least twenty-five percent (25%) of the undivided interests in the Association issued and outstanding shall make written application therefor to the Board of Trustees stating the time, the place and the purpose of the meeting called.

**SECTION 3. Place of Meeting.** The Board of Trustees may designate any place, within Salt Lake City, Utah, unless otherwise prescribed by statute, as the place of meeting for any annual meeting or for any special meeting called by the Board of Trustees. A waiver of notice signed by all Members entitled to vote at a meeting may designate any place within the State of Utah, unless otherwise prescribed by statute, as the place for the holding of such meeting. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the registered office of the Association in the State of Utah.

**SECTION 4. Notice of Members' Meeting.** Notice of all Members' meetings stating the time and the place and the objects for which such meeting(s) are called shall be given by the President or by a Vice-President or by the Secretary-Treasurer or by any one or more Members entitled to call a special meeting of the Members not less than fifteen (15) days nor more than thirty (30) days prior to the date of the meeting. The notices shall be sent by first class mail, postage prepaid, to each Member of record at his address as it appears on the stock record books of the Association unless he shall have filed with the Secretary-Treasurer of the Association a written request that notice intended for him be mailed to some other address, in which case it shall be mailed to the address designated in such request. The person giving such notice shall make an affidavit stating how he has complied with this requirement. The Notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the purpose of the meeting.

Any meeting of which all Members shall, at any time, waive or have waived notice in writing shall be a legal meeting for the transaction of business notwithstanding that notice has not been given as hereinbefore provided.

**SECTION 5. Waiver of Notice.** Whenever any notice whatever is required to be given by these By-Laws, or by the Certificate of Incorporation of this Association, or by any of the Association laws of the State of Utah, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated herein, shall be deemed equivalent thereto.

**SECTION 6. Quorum of Members.** Except as herein provided and as otherwise provided by law, at any meeting of Members a majority in interest of all Members (by Class) of record in person or by proxy shall constitute a quorum, but a less interest may adjourn any meeting, and the meeting may be held as adjourned without further notice; provided. Trustees may only be elected at a meeting at which a quorum is present. If a meeting has been adjourned because a quorum is not present, the rescheduled and re-noticed meeting on the same subject (except the election of trustees) may proceed if one-tenth of the votes in each class are present, which one-tenth shall constitute a quorum. If, however, such one-tenth quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than the announcement at the meeting, until a quorum (10%) shall be present or represented. When a quorum is present at any meeting, a majority in interest of the stock represented thereat shall decide any question brought before such meeting (except the election of trustees), unless the question is one upon which by express provision of law or of the Certificate of Incorporation or of these By-Laws or by the Declaration, a larger or different vote is required, in which case such express provision shall govern and control the decision of such question. In all events, the minority attendance standards set forth in the Declaration of Condominium shall control on matters addressed in the Declaration, so that if there is any conflict between the Declaration and these Bylaws, the Declaration shall control.

**SECTION 7. Closing of Transfer Books or Fixing Record Date.** For the purpose of determining Members entitled to notice or vote at any meeting of Members or at any adjournment thereof, or in order to make a determination of Members for any other proper purpose, the Board of Trustees of the Association may provide that the membership books shall be closed for a period not to exceed, in any case, fifteen (15) business days prior to the date that Notice of the meeting is to be given. If the membership books shall be closed for the purpose of determining Members entitled to notice or to vote at a meeting of Members, such books shall be closed for at least ten (10) business days immediately preceding the date determined to be the date of record. If no shorter date of record is determined, it shall be the date that is thirty days prior to the annual meeting, or the scheduled meeting. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this section, such determination shall apply to any adjournment thereof.

**SECTION 8. Proxy and Voting.** Members of record may vote at any meeting, either in person or by proxy in writing. All proxies shall be in writing and filed with the Secretary-Treasurer of the meeting before being voted. Such proxy shall entitle the holders thereof to vote at any adjournment of such meeting but shall not be valid after the final adjournment thereof. No proxy shall be valid after the expiration of eleven (11) months from the date of execution unless the Member executing it shall have specified therein the length of time said proxy is to continue in force, which shall be for some limited period of time. Each proxy shall be revocable and shall automatically cease upon conveyance by the member of his Unit. Each Member, except as otherwise provided, shall be entitled to one vote for each Unit owned by him.

### ARTICLE III

### BOARD OF TRUSTEES

**SECTION 1. General Powers.** The business and the affairs of the Association shall be managed by its Board of Trustees.

**SECTION 2. Number, Tenure and Qualifications.** The number of trustees shall be not less than three (3), nor more than (5) trustees. Each trustee shall hold office for three years or until his successor shall have been duly elected and qualified. Provided, however, that of the initial elected Board of Trustees, one shall be elected for one year, one for two years and one for three years. Each trustee elected after December 31, 2004 must be an Owner of a Unit. If a trustee sells his Unit, he must resign as a trustee not later than the closing of the sale of his Unit.

**SECTION 3. Election of Board of Trustees.** The Board of Trustees shall be chosen by a secret written ballot at the annual meeting of Members or at any meeting held in place thereof, as provided by law. Cumulative voting is not permitted.

Nomination for election to the Board of Trustees may be made from the floor at the annual meeting or by a writing received by the Secretary prior to the meeting if the writing is signed by a Member..

Every election of trustees by the Members shall be conducted by two (2) inspectors, neither of whom shall be a candidate for the office of trustee. These inspectors shall be appointed by the presiding officer of the meeting, but inspectors of the first election of trustees and all subsequent meetings of the Members shall be appointed by the Board of Trustees. Before entering upon the discharge of their duties, the inspectors shall be sworn as provided by law. The appointment of such inspectors may be waived by the unanimous consent of all Members present or represented by proxy at any given meeting. Voting shall be by secret ballot, or if there is no contest for positions on the board, then by voice vote upon motion from the floor for such a vote.

**SECTION 4. Powers of Trustees.** The Board of Trustees shall have the responsibility for the entire management of the business of this Association as described herein and in the Declaration. The Board of Trustees shall have power to adopt and publish rules and regulations governing the use of the Common Area and Facilities, and the personal conduct of the members and their guests thereon, and to establish penalties and fines for the infraction thereof; suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period of not to exceed 60 days for infraction of published rules and regulations; exercise for the Association all power duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration; declare the office of a member of the Board of Trustees to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Trustees and employ a manager, an independent contractor or such other employees as they deem necessary and to prescribe their duties. In the management and control of the property, business and affairs of the Association, the Board of Trustees is vested with all of the powers possessed by the Association itself insofar as this delegation of authority is not inconsistent with the laws of the State of Utah and with the Certificate of Incorporation or with these By-Laws. The Board of Trustees shall have the power to determine what constitutes net earnings, profit and surplus, respectively, and what amounts shall be reserved for working capital and of any other purpose. Such determination by the Board of Trustees shall be final and conclusive.

**SECTION 5. Duties of Trustees.** It shall be the duty of the Board of Trustees to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A members who are entitled to vote;

(b) elect or employ and supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) unless otherwise provided in the Declaration as required by the Declaration, to:

(1) fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period;

(2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period (provided, however, that failure to do so shall not affect the validity of the assessment after it is made); and

(3) foreclose the lien against any property for which assessments are not paid within sixty (60) days after due date or to bring an action at law against the owner personally obligated to pay the same.

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge not to exceed \$10.00 may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain insurance as required by the Declaration on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, consistent with the Declaration or in addition thereto as it may deem appropriate;

(g) cause the Common Area to be maintained;

(h) levy and collect general and special assessments for common expenses;

(i) by majority vote, establish and amend administrative rules governing the details of the operation and use of common areas and facilities, which rules shall not be inconsistent with the Declaration;

(j) to give notice as required by the Declaration, and to perform the tasks set forth in the Declaration for the Trustees.

**SECTION 6. Meeting of Trustees.** Regular meetings of the Board of Trustees shall be held at such places and at such time as the Board of Trustees by vote may determine, and if so determined, no notice thereof need be given. Special meetings of the Board of Trustees may be held at any time or any place within the State of Utah whenever called by the President, Vice-President, Secretary-Treasurer or two (2) trustees, notice thereof being given to each trustee by the Secretary-Treasurer or by the officer calling the meeting, or by delivering the same to him



personally or telegraphing or telefaxing the same to him at his residence or business address not later than seventy-two (72) hours prior to the date on which the meeting is to be held. In case of emergency, the chairman of the Board of Trustees or the President may prescribe a shorter notice to be given personally or by telefaxing (with confirmation) each trustee at his residence or business address. Such special meeting shall be held at such time and place as the notice thereof or waiver shall specify. The officers of the Association shall be elected by the board of Trustees after its election by the Members, and a meeting may be held without notice of this purpose immediately after the annual meeting of Members and at the same place.

**SECTION 7. Quorum of Trustees.** A majority of the members of the Board of Trustees as constituted for the time being shall constitute a quorum for the transaction of business, but a lesser number not less than one (1) may adjourn any meeting and the meeting may be held as adjourned without further notice. When a quorum is present at any meeting, the majority of the members present thereat shall decide any questions brought before such meeting except as otherwise provided by law or by these By-laws.

**SECTION 8. Vacancies.** Any vacancy occurring in the board of Trustees may be filled by an affirmative vote of the majority of the remaining trustees, though not less than a quorum of the Board of Trustees, unless otherwise provided by law or by the Certificate of Incorporation. A trustee elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any trusteeship to be filled by reason of an increase in the number of trustees shall be filled by election at the annual meeting or at a special meeting of Members called for the purpose.

**SECTION 9. Compensation.** By resolution of the Board of Trustees, trustees may be paid their expenses, if any, for attendance at each meeting of the Board of Trustees, but shall not be paid a fixed sum for attendance at each meeting of the Board of Trustees or a stated salary as trustee. A trustee may serve the Association in any other capacity and receive compensation therefor if approved by the Association.

**SECTION 10. Presumption of Assent.** A trustee of the Association who is present at a meeting of the Board of Trustees at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent of such action with the person acting as secretary of the meeting or the adjournment thereof, or shall forward such dissent by registered mail to the Secretary-Treasurer of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a trustee who voted in favor of such action.

**SECTION 11. Formal Action by Trustees.** Unless otherwise provided by law, any action required to be taken at a meeting of the Board of Trustees or any other action which may be taken at a meeting of the Board of Trustees may be taken without a meeting if a consent in writing, setting forth the action so taken shall be signed by all the trustees entitled to vote with respect to the subject matter thereof.

## ARTICLE IV

### OFFICERS

**SECTION 1. Officers of the Association.** The officers of this Association shall be a President, a Vice-President (both of whom shall at all times be members of the Board of Trustees) and a Secretary-Treasurer. The President who, when present, shall preside at all meetings of the Board of Trustees, shall have other such powers as the Board of Trustees may, from time to time, prescribe. All of the officers shall be elected by the Board of Trustees.

**SECTION 2. Eligibility of Officers.** After January 1, 2006, the President, Vice-President and chairman of the Board of Trustees shall be Unit Owners. Prior to that time, the officers may include partners in or persons nominated by the Declarant. The Secretary-Treasurer and such other officers as may be elected or appointed, need not be Members of the Association. Any person may hold more than one office provided the duties thereof can be consistently performed by the same person; provided, however, that no person shall, at any time, hold the three (3) offices of President, Vice-President and Secretary-Treasurer. A trustee may also be an officer.

**SECTION 3. Additional Officers and Agents.** The Board of Trustees at its discretion, may appoint a General Manager, one or more Assistant Secretary-Treasurers and one or more Assistant Secretaries and such other officers or agents as may be deemed advisable and prescribe the duties thereof, subject to the provisions of the Declaration.

**SECTION 4. Election and Term of Office.** The officers of the Association to be elected by the Board of Trustees shall be elected annually by the Board of Trustees at the first meeting of the Board of Trustees held after each annual meeting of the Members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as may be convenient. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall resign or have been removed in the manner hereafter provided.

**SECTION 5. President.** The President shall be the chief executive officer of the Association and, when present, shall preside at all meetings of the Members and shall preside at meetings of the Board of Trustees. The President or Vice-President, unless some other person is specifically authorized by vote of the Board of Trustees, shall sign all certificates of stock (if any may be issued), bonds, deeds, mortgages, extension agreements, modification of mortgage agreements, leases and contracts of the Association. He shall perform all the duties commonly incident to his office and shall perform such other duties as the board of Trustees shall designate from time to time.

**SECTION 6. Vice-President.** Except as specifically limited by vote of the Board of Trustees, the Vice President shall perform the duties and have the powers of the President during the absence or disability of the President and shall have the power to sign all certificates of stock, bonds, deeds and contracts of the Association. He shall perform such other duties and have other powers as the Board of Trustees shall, from time to time, designate.

**SECTION 7. Secretary-Treasurer.** The Secretary-Treasurer shall keep accurate minutes of all meetings of the Members and of the Board of Trustees and shall perform such other duties and have such other powers as the Board of Trustees shall, from time to time, so designate. In his absence at any meeting, an Assistant Secretary-Treasurer or a Secretary-Treasurer Pro Tempore may be designated to perform his duties thereat. The Secretary-Treasurer and any Secretary-Treasurer Pro Tempore shall be sworn to the faithful discharge of their duties.

The Secretary-Treasurer, subject to the order of the Board of Trustees, shall also have the care and custody of the money, funds, valuable papers, records, and documents of the Association (other than his own bond, if any, which shall be in the custody of the President), and shall have and exercise, under the supervision of the Board of Trustees, all the powers and duties commonly incident to his office and shall give bond in such form and with such sureties as shall be required by the Board of Trustees. He shall deposit all funds of the Association in such bank or banks, trust company or trust companies, or with such firm or firms doing a banking business as the trustees shall, from time to time, so designate. The treasurer may endorse for deposit for collection all checks and notes payable to the Association or to its order, may accept drafts on

behalf of the Association and, together with the President or Vice-President, may sign certificates of stock. He shall keep accurate books of account of the Association's transactions which shall be the property of the Association and, together with all property in his possessions, shall be subject at all times to the inspection and control of the Board of Trustees.

All checks, drafts, notes or other obligations for the payment of money shall be signed by such officer or officers or agent or agents as the Board of Trustees shall, by general or special resolution, direct. The Board of Trustees may also in its discretion, require by general or special resolutions, that checks, drafts, notes and other obligations for the payment of money shall be countersigned or registered as a condition to their validity by such officer or officers or agent or agents as shall be directed in such resolution.

**SECTION 8. Resignations and Removals.** Any trustee or officer of the Association may resign at any time by giving written notice to the Association, to the Board of Trustees, or to the Chairman of the Board, or to the President or Secretary-Treasurer of the Association. Any such resignation shall take effect at the time specified therein or, if the time be not specified therein, upon its acceptance by the Board of Trustees.

The Members at any meeting called for the purpose of removing an officer or trustee, may by vote of a majority of Members, remove from office any trustee or other officer elected or appointed by the Members or Board of Trustees and elect or appoint his successor. The Board of Trustees, by vote of not less than a majority of the entire board, may remove from office any officer or agent elected or appointed by it with or without cause.

**SECTION 9. Vacancies.** If the office of an officer or agent becomes vacant by reason of death, resignation, removal, disqualification or otherwise, the trustees may, by vote of a majority of a quorum, choose a successor or successors who shall hold office for the unexpired term. Vacancies may also be filled for the unexpired term by the Members at a meeting called for that purpose, unless such vacancy shall have been filled by the trustees prior to the meeting.

**SECTION 10. Salaries.** The salaries of the officers shall be fixed from time to time by the Board of Trustees, and no officer shall be prevented from receiving such salary by reason of the fact that he is also a trustee of the Association.

## ARTICLE V

### CONTRACTS. LOANS, CHECKS AND DEPOSITS

**SECTION 1. Contracts.** The Board of Trustees may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument which is not inconsistent with the Declaration in the name and on behalf of the Association, and such authority may be general or confined to specific instances.

**SECTION 2. Loans.** No loans shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authorized by a unanimous resolution of the Board of Trustees, and if required by the Declaration, by vote of the Members. Such authority may be general or confined to specific instances.

**SECTION 3. Checks, Drafts, Etc.** All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association shall be

signed by such officer or officers, agent or agents of the Association, and in such manner as shall, from time to time, be determined by a resolution of the Board of Trustees.

**SECTION 4. Deposits.** All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board of Trustees may, in its sole discretion, select.

**SECTION 5.** Nothing contained in this Article V shall, in any way conflict, or in any way otherwise, hamper the duties and obligations as set forth for the Secretary-Treasurer of the Association, as provided in Article IV, Section 7 hereof.

## ARTICLE VI

### CERTIFICATES FOR SHARES AND THEIR TRANSFER

**SECTION 1. Certificates of Stock.** Every Unit Owner in the Caithness Condominiums shall be entitled to be a Member as provided in the Declaration of Condominiums. No Certificate of Membership or shares shall be issued but such membership shall be appurtenant to the Condominium Unit owned by the Member. Membership shall automatically transfer in conjunction with conveyance of the Condominium Unit.

If a Unit is owned by more than one person or entity, those owners shall be entitled to only the number of votes allocated to that Unit in the Declaration, and shall designate among themselves the person entitled to vote on behalf of the Unit. If the owners of a single Unit cannot agree on who is entitled to vote, no vote may be cast on behalf of the Unit.

It shall be the buyer's obligation to notify the Association of any assignment or sale of a unit and to request that the membership be transferred on the books of the Association promptly after the closing.

It shall be the duty of each Member to notify the Association of his current mailing address. It is also the duty of each Member to notify the Association of the holders of any mortgage secured by the Members unit, and of the purchaser of his unit if and when the unit is sold.

## ARTICLE VII

### MISCELLANEOUS

**SECTION 1.** The Board of Trustees shall have the power to fix, and from time to time, to change the fiscal year of the Association. Unless otherwise fixed by the Board of Trustees, the calendar year shall be the fiscal year.

**SECTION 2.** The Board of Trustees shall, at all times, keep themselves informed and take such steps and necessary actions as a reasonable, prudent man would do to serve the best interest of the Association.

**SECTION 3.** The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws. In addition, the Board of Trustees shall appoint other committees as deemed appropriate in carrying

out its purpose. If no Architectural Control Committee is created, the Board of Trustees shall fill that function.

**SECTION 4.** The books, records (including all financial reports and statements), rules and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member, Unit Owner, holder, insurer or guarantor of any first mortgages secured by a Unit in the Project. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall also be available for inspection by the same persons and entities at the principal office of the Association during normal business hours. Copies may be purchased at reasonable cost.

**SECTION 5.** As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate established by the Declaration, or the rate as changed by the Board of Trustees as permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Unit.

## ARTICLE VII

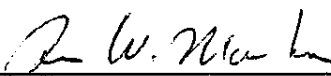
### AMENDMENTS

**SECTION 1:** Unless otherwise provided herein or in the Declaration, the By-Laws of the Association, regardless of whether made by the Members or by the Board of Trustees, may be amended, added to or replaced by a vote of a majority of a quorum of members present in person or by proxy. The number of votes allocated to a Unit shall be considered in determining whether a quorum exists.

**SECTION 2:** In the case of any conflict between the Articles of Incorporation and these By-Laws, the Bylaws shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

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The foregoing By-Laws were adopted by the Incorporators of the Caithness Condominium Homeowners Association at a meeting of the Incorporators of said Association held on the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

  
\_\_\_\_\_  
Bruce W. Manka

**APPENDIX "B"**

<u>Unit #</u>	<u>% of Interest</u>	<u>Par Votes and No. of Votes Allocated to Unit</u>
1	3.03	1
2	3.03	1
3	3.03	1
4	3.03	1
5	3.03	1
6	3.03	1
7	3.03	1
8	3.03	1
9	3.03	1
10	3.03	1
11	3.03	1
12	3.03	1
14	3.03	1
15	3.03	1
16	3.03	1
17	3.03	1
18	3.03	1
19	3.03	1
20	3.03	1
21	3.03	1
22	3.03	1
23	3.03	1
24	3.03	1
25	3.03	1
26	3.03	1

27	3.03	1
28	3.03	1
29	3.03	1
30	3.03	1
31	3.03	1
32	3.03	1
33	3.03	1
34	3.03	1
	100.00%	33

Declarant has allocated equal percentages of interest to each unit.

The configuration of some Units may not match exactly the floor plans recorded in connection with this Declaration.