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**AMENDED AND RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CAITHNESS CONDOMINIUMS  
A CONDOMINIUM DEVELOPMENT**

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**THIS AMENDED AND RESTATED DECLARATION** (the “Declaration”) is made and executed by Caithness Condominiums Homeowners Association, a Utah Nonprofit Corporation, (hereinafter referred to as "the Association"), pursuant to the provisions of the Utah Condominium Ownership Act (the “Act”), Title 57-8-1 et seq. of the Utah Code (1953), as may be amended from time to time.

### RECITALS

A. This Amended and Restated Declaration of Condominium supersedes and replaces in its entirety the previously recorded Declaration recorded as: **Entry No. 2116038, Book 2385, Page 241 et seq., recorded on October 7, 1965**, Salt Lake County Recorder.

B. The Bylaws attached hereto supersedes and replaces in its entirety the previously recorded Bylaws (and any amendments thereto).

C. The Association is the authorized representative of the owners of certain real property containing approximately .277 acres and 33 units located at 86 ‘B’ Street, Salt Lake County, Utah, previously known as the Caithness Apartments, hereinafter described 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

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

E. It is intended that all Owners, guests, invitees, tenants and residents abide by these covenants, conditions and restrictions in order to maintain property values and a desirable living environment.

NOW, THEREFORE, for the benefit of the Project and the Unit Owners thereof, the Association hereby executes this Amended and Restated Declaration of Covenants, Conditions and Restrictions for the Association, for and on behalf of all of the Unit Owners.

## ARTICLE 1

### Definitions.

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, 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. The terms used herein shall have the following meanings:

1.1 “**Association**” or “**Homeowners 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.

1.2 “**Common Areas**” and “**Common Facilities**” are used interchangeably. The terms shall mean the property interests (including the improvements thereon) owned collectively by the Owners based upon their respective undivided ownership interests in the Common Areas 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, lawns, curbs, sidewalks, driveways, sprinkling systems, foundations, columns, guides, beams, supports, stairs, hallways and stairways and the boiler room, in the Caithness. The term Common Facilities shall include all common utility services which might be obtained for the common benefit of the Units.

1.3 “**Common Expenses**” shall mean and refer to: all expenses of administration, insurance, maintenance, repair or replacement of the Common Areas and Facilities, including an reserve fund, the amount of which to be determined by the Board of Trustees, 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, window frames, screens and entry doors, door frames, casings and jams 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.

1.4 “**Declaration**” shall mean this instrument by which CAITHNESS CONDOMINIUMS is established as a Condominium Development and as may be amended from time to time.

1.5 “**Eligible Mortgage Holders**” means those owners or holders of a first mortgage or first deed of trust on a Unit 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.

1.6 “**Map**” or “**Plat**” shall mean and refer to the Plat Map of the CAITHNESS CONDOMINIUMS, recorded by Declarant.

1.7 “**Property**” shall mean all of the property subject to the Declaration.

1.8 “**Project**” or “**Condominium Project**” shall mean and refer to the Property, as defined in the recitals and Article 1 above, together with all rights and obligations established by this Declaration.

1.9 “**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, window frames, doors, door frames, casing and jams 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 and drain lines from the point in the line where service to that particular unit begins.

1.10 “**Unit Owner**” or “**Owner**” shall mean and refer to the owner of record, 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.

1.11 “**Unit Number**” shall mean and refer to the number designating the Unit in the Declaration and in the Map.

## ARTICLE 2

### Description of Units.

2.1 The Units shall include the interior walls, finished flooring (as an example but not a limitation, carpet would be considered finished flooring; the sub-floor would be considered common area), plasterboard, wallpaper, tiles, paint and ceiling surfaces (and interior non-load bearing walls), all windows and all of the interior spaces contained within the Unit, as more fully outlined in the definition in Section 1.9. 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. Water and drain lines that service only a single Unit are deemed part of that particular Unit.

2.2 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 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".

### ARTICLE 3

#### Ownership of Common Areas and Facilities.

3.1 Ownership. The Common Areas and Facilities to be held and administered according to the provisions of this Declaration. Collectively, the Owners shall have an undivided interest in the Common Areas and Facilities for each Unit owned in the percentages set forth in Appendix "B." The Common Areas and Facilities may not be subject to a lease between Unit Owners or the Owner's Association and any other party.

3.2 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. 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; during any period in which a provision of this Declaration or the Association's rules remain in violation; and
- (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.
- (d) the right of the Association to limit and/or deny access, as it deems necessary, to the boiler room and storage areas to protect the Common Areas and Facilities.

3.3 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.

3.4 Limitations. The Association may not seek to abandon, partition, subdivide, encumber, sell or transfer any part of the Common Areas without the prior written approval of all of the lien holders (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.

## **ARTICLE 4**

### **Use Restrictions.**

4.1 The purpose of the Project is to provide single-family residential housing for Unit Owners, their respective families and tenants. No part of the Project may be used for commercial purposes. However, those activities contained solely within a Unit that do not cause noise, smells or additional vehicular or pedestrian traffic, shall not be deemed “commercial” for purposes of this Article. Any change of use of a Unit shall first be authorized by the Board of Trustees.

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

4.2.1 A Unit shall be occupied as a single family residence.

4.2.2 A Unit Owner shall not permit his Unit to be occupied or used other than as a private residence for a single family.

4.2.3 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 except, however, that the Board may create and designate an area for parking motorcycles, scooters, bicycles and the like on such terms and conditions that the Board deems reasonable and necessary. Any such parking areas may be terminated if deemed in the Association’s best interests.

4.2.4 A Unit Owner shall keep his Unit, including the areas surrounding his Unit, clean and sightly at all times.

4.2.5 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 unless designated as a parking/storage area.

4.2.6 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.



4.2.7 No signs are permitted to be displayed from any Unit interior or exterior or from the Common Areas which are visible to the public except as permitted by the rules and regulations of the Association.

4.2.8 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. In the event that a permitted pet causes an annoyance or nuisance to other Unit Owners, then the Association may require its removal from the Property.

4.2.9 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. Owners must receive prior approval from the Board before constructing any improvements within a Unit.

4.2.10 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.

4.2.11 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. However, the Board may designate a specific area for the parking of motorcycles, scooters, bicycles and the like. In such cases, parking is permitted as established by the Board. There is not, however, any guaranteed parking of any kind.

4.2.12 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 washers, dryers, dishwashers, garbage disposals, or air cooling systems may be installed on the Property on upon the express written consent of the Board of Trustees as there is limit ability to accommodate such features. The Board shall consider the amount of electricity and power required to operate any such feature, the size, the location and the affect upon other Unit Owners, and other Unit Owner's ability to operate any such approved features, when rendering its decision. There is no absolute right to operate a dishwasher, garbage disposal or air cooling system. However, one (1) cooling unit emitting under 10,000 BTUs may be permitted in each Unit.

## **ARTICLE 5**

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

5.1 The management of the Association shall be governed by this Declaration, the Articles of Incorporation and Bylaws of the Association. The Unit Owners shall elect 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 or more than five persons who shall be elected as provided in the Bylaws. Officers of the Association shall be appointed by the Board of Trustees. 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.

5.2 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:

5.2.1 To make and enforce all house rules and administrative rules and regulations covering the operation and maintenance of the property, including the imposition of fines which shall be collected as an unpaid assessment.

5.2.2 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.

5.2.3 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.

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

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

5.2.6 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.

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

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

5.2.9 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.

5.2.10 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 and to require that Unit Owners provide proof of insurance as required by this Declaration and the policies of the Association.

5.2.11 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.

5.2.12 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.

5.2.13 To keep adequate books and records.

5.2.14 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 14.2 must be approved as set forth in that Section. In the event that the Association undertakes maintenance and repair of a Unit and the need for the repair was caused by the Owner, then the Association shall be entitled to charge all related costs back to the Owner as an assessment specific to that Unit and Owner.

5.2.15 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.

5.3 The Association may delegate to a manager or management company all of its foregoing powers, duties and responsibilities referred to in paragraph 5.2 above subject to the

provisions of paragraphs 5.2.2, 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 anyone 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.

5.4 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. The Association shall purchase a fidelity bond, in an amount to be determined by the Board, for the Association's manager.

5.5 The Association shall indemnify and hold harmless, any person, his heirs, and personal representatives (whether named individually or collectively), 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 anyone 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.

## **ARTICLE 6**

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

#### **6.1 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 may cast only a single vote. Conflicting votes between co-

owners of a single Unit shall be null and void. 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.

6.2 Voting. The Association shall have one (1) class of voting membership. Each 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 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 members.

## **ARTICLE 7**

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

7.1 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. 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 5.2.13. 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 except that the radiator and related valves shall be the responsibility of the Unit Owner. 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 within 30 days of billing.. The cost of this maintenance shall be added to and become part of the assessment applicable to the Unit and may be collected as an unpaid assessment. The maintenance of the Units for which the Association shall be responsible shall not include windows, window frames, screens or doors, door frames, casing and jams, said 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. In the event that the Association incurs a cost to enter a Unit (locksmith, etc.), then any such costs shall be charged back to the Owner as an assessment.

7.2 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 7.1 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), door frames, casing and jams and windows, window frames and screens that open into or are a part of their Unit. Unit Owners shall be responsible for the maintenance of their interior walls, floors 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 the point in the line where service to that particular unit begins and throughout the Unit.

7.3 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. To help ensure uniformity in colors, materials and quality, the Board of Trustees shall first approve any replacement doors and windows in a Unit.

## **ARTICLE 8**

### **Insurance.**

8.1 Association Insurance. 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:

8.1.1 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;

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

8.1.3 Each Unit Owner shall obtain insurance covering his real and personal Property interests at his or her own expense in addition to any coverage provided by the

Association. The unit owner is primarily responsible to maintain, repair, replace and insure items that are appurtenant to their unit. Claims for damage from loss caused by fire, water damage or other hazards that (1) originate within the unit; (2) are caused by accident or the negligence of the unit owner, their tenant or guests; or (3) are caused by items that are the unit owner's responsibility to maintain, repair or replace are to be the unit owner's primary responsibility to insure. Anything to the contrary notwithstanding, the insurance coverage of a Unit Owner or resident shall be primary for the first \$20,000 of any covered loss and the insurance of the Association shall be secondary for loss that originates within the unit, or is caused by accident or negligence by the unit owner, their renters or guests or caused by items that are the responsibility of the unit owner to maintain, repair and replace. All unit owners shall have a minimum COVERAGE A BUIDLING for \$20,000 added to their individual unit owner's policies. If a unit owner fails to maintain insurance, unit owners will still be responsible for the first \$20,000 on any claim arising from losses that originate within their unit and/or from items that are their responsibility to repair or replace, including any improvement which is a permanent part of their unit. In the event a claim is filed on the Association policy involving a unit, it is the unit owner's responsibility to pay the Association deductible. Coverage for the Association deductible may be covered under the unit owner's policy. Insurance protection for personal property and personal liability is the sole responsibility of the unit owner.

The amount of required coverage to be obtained and maintained by the unit owners may be changed by resolution of the Board of Trustees, from time to time.

8.1.4 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;

8.1.5 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;

8.1.6 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

8.1.7 The insurance coverage shall provide that coverage may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days prior written notice to any and all insureds named thereon, including all mortgagees of the Units.

8.1.8 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.

8.2 Blanket Coverage. The Association must maintain blanket "all risk" coverage for the general elements within the condominium including fixtures, machinery, equipment, and supplies maintained for the service of the condominium.

8.2.1 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.

8.2.2 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. In the event a claim on the insurance policy is made as a result of an Owner's negligence, fault or intentional action, as determined by the Board, then the deductible shall be charged to that Owner and collected in the same manner as an individual assessment.

8.2.3 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.

8.2.4 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

8.2.5 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.

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

8.2.7 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 8.2. 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.

8.2.8 The insurance coverage with respect to the 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.

8.3 Comprehensive General Liability. 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.

8.4 Owner Insurance not to Decrease Association Insurance. 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.

8.5 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 anyone time.

8.6 Review of Policies. 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.

8.7 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.

8.8 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).

## ARTICLE 9

### Termination, Eminent Domain.

9.1 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).

9.2 The administration of a termination shall be conducted as set forth in Section 8.8 and as required by U.C.A. § 57-8-22(2).

9.3 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.

9.4 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 8.8.

## ARTICLE 10

### Mortgage Protection.

**NOTE: As used in this section 10, 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 1.5.**

10.1 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"

10.2 The Association shall maintain a roster of Unit Owners from the evidence of change of ownership furnished to the Association 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 including mortgage account numbers. 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.

10.3 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).

10.4 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.

10.5 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).

10.6 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.

10.7 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).

10.8 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.

10.9 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:

10.9.1 Any proposed amendment to the Declaration effecting a change in: (1) the boundaries of any Unit or the exclusive easement rights appertaining thereto; (2) the interests in the Common Areas and Facilities appertaining to any Unit or the liability for Common Expenses appertaining thereto; (3) the number or votes in the Association appertaining to any Unit; (4) the purposes to which any Unit or the Common Elements are restricted; or (5) any other “material change” as listed in Section 13.2;

10.9.2 Any proposed termination of the Condominium Development regime;

10.9.3 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;

10.9.4 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;

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

10.9.6 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;

10.9.7 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.

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

10.9.9 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.

## ARTICLE 11

### Leasing and Rental of Units.

11.1 Association Regulation. The Association may regulate or limit rentals of Units. The Association may require the rental of Units to be conducted through the Association or a designated management company, and may require that all lease agreements be reviewed and approved by the Association or that management company. The Association may also require that all Owners use a specified lease addendum informing tenants that they are subject to this Declaration, the Bylaws and the rules and regulations of the Association. The addendum shall also notify tenants that in the event the Owner is delinquent with their assessments, the tenant may be required to pay their rent to the Association consistent with Utah law. The Association may require that tenants be screened and approved by the 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 Association or the designated management company shall not be unreasonably withheld and decisions shall be rendered promptly. In the event a manager is employed to screen and approve tenants, the costs of this service shall be the obligation of the Owner.

11.2 Leases. 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 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 Association is an intended third party beneficiary of the lease agreement, that the 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 Association shall be entitled to exercise all of the owner's rights and remedies under the lease. The name of each and every individual residing in a leased Unit shall be included on the lease. The Association may also require that all Owners use a specified lease addendum informing tenants that they are subject to this Declaration, the Bylaws and the rules and regulations of the Association. The addendum shall also notify tenants that in the event the Owner is delinquent with their assessments, the tenant may be required to pay their rent to the Association consistent with Utah law.

11.3 Copy of Lease. When the leasing of a Unit is approved, a copy of the lease (and each replacement lease), signed by the lessee and lessor, shall be submitted to the Board within ten (10) days after it has been signed by both parties. The Board may recover from the Owner its attorney's fees and costs incurred in obtaining a copy of the lease if one is not provided in a timely manner or within ten (10) days of its request in writing. The Association may impose a standardized fee in connection with the occupancy of a Unit by a tenant to offset costs incurred.

11.4 Enforcement, Fines, Citations and Sanctions. The Board shall have the power to enforce this Declaration, the Bylaws and rules and regulations ("governing documents") and to issue fines, citations, and sanctions in order to maintain and operate the Association and to implement these leasing restrictions. The Association shall have the right and the obligation to enforce compliance with the governing documents 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.

11.4.1 Owner Responsible for Tenant's Compliance. Any Owner who leases his Unit shall be responsible for assuring the tenant's compliance with Utah's Condominium Ownership Act ("Act") and the governing documents.

11.4.2 Failure to Take Legal Action. Failure by an Owner to take legal action against his tenant who is in violation of the Act or the governing documents within ten (10) days after delivery of written demand to so do from the Committee, shall entitle the Association to take any and all such action for and in behalf of said Owner and as his agent, including but not limited to the institution of legal proceedings on behalf of such Owner against his tenant for eviction (unlawful detainer), injunctive relief or damages. Neither the Association nor any agent retained by the Association to manage the Project shall be liable to the Owner or tenant for any legal action commenced under this Section that is made in good faith. Any expenses incurred by the Association, including reasonable attorneys' fees and costs of suit, shall be repaid to it by such Owner. The amount of the costs and expenses is a debt of the Owner at the time the assessment is made and is collectible as such. If any Owner fails or refuses to make payment that amount constitutes a lien on the interest of the Owner in the property. Delivery of the notice of default shall be deemed effective the date it is hand delivered or three (3) days after it is deposited with U.S. Postal Service, regular mail, postage prepaid, addressed to the Unit Owner at his last known mailing address. If notice in writing of the Unit Owner's change of address has not been received by the Secretary of the Association the address of the Unit shall be deemed to be the Owner's mailing address;

11.5 Rental Cap. **No more than seven (7) Units within the Project may be rented or leased at any given time.** No rentals or leases shall be permitted except as approved, in writing, by the Board. Board permission shall be consistent with the restrictions contained in this Declaration. A written request for a rental or lease shall be made to the Board who shall approve or disapprove the lease or rental of a Unit based on its determination that the lease or rental will not exceed more than seven (7) Units.

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

11.7 Length of Ownership. No Owner may lease or rent his or her Unit if such Owner has owned the Unit for a period of less than twelve (12) months.

11.8 Mortgagees. The provisions of this Article 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.

11.9 Requesting Unpaid Assessments from Tenant. In the event that a Unit is leased or rented, and the absentee owner fails to pay their regular, special, or any other assessment, the Board may demand that the tenant pay his or her rental payment to the Association until such time as the delinquent assessment is cured, in accordance with Section 14.18 below.

11.10 Voidable Transactions. Any transaction which does not comply with this Section shall be voidable at the option of the Board.

11.11 Non-resident Owners. Owners who do not reside in their Unit are solely responsible for providing current addresses and phone numbers to the Association.

11.12 Grandfather Clause. As of the date of recording of this Amended and Restated Declaration, any present Owner of record of a Unit (hereafter "Grandfathered Owner") has the right to rent or lease their Unit until such time as the Unit is sold or title is otherwise transferred to a new owner of record. When legal title to a Unit is changed to a new owner for anything other than a family trust or other estate planning purposes, then the new owner of record shall not be permitted to lease their Unit except as otherwise stated herein. The Association shall keep a list of all such "Grandfathered Owners" as of the date of recording this document.

## **ARTICLE 12**

### **Conveyances, Easements, and Encroachments.**

12.1 Conveyances. 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.

12.2 Easements. 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 Board member or authorized agent 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.

12.3 Each Unit Owner 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. Access to the boiler room and storage area, however, may be restricted by the Board.

12.4 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.

12.5 All conveyances of Units within the Project 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.

12.6 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.

12.7 Encroachment. 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.

12.7.1 There are hereby created valid easements for any encroachment described in paragraph 12.7 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.

12.8 Combination of Units. An Owner of two or more adjoining Units may petition the Association or the Board in writing to combine one or more adjoining units or portions thereof and to alter or amend the Declaration and plat map to reflect such combination. This

proposed combination shall be deemed a material amendment requiring approval as set forth herein.

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

12.8.2 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.

12.8.3 Any proposed amendment of the Declaration or Map pursuant to this Article 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.

## **ARTICLE 13**

### **Amendment.**

13.1 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 at any time, which amendment shall be recorded and be effective upon recording.

13.2 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 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 Units that are subject to mortgages held by eligible holders). For purposes of this Article, a change is considered material if it affects any of the following:

- voting rights;
- elimination of 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;
- 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 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.

## **ARTICLE 14**

### **Assessments.**

14.1 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.

14.2 Agreement to Pay. Each 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 assessments (which may be payable monthly) and special assessments for capital improvements, and individual assessments, such assessments to be established, made and collected as provided in this Declaration. The annual, special, and individual 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/Unit 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 on the first of each month.

14.3 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.

14.4 Purpose of Assessments; Maintenance of Reserves.

14.4.1 Working Capital Fund. The Association shall establish and maintain a fund known as the working capital fund. At the closing of each Unit, an amount equal to two months of estimated common charges for each Unit shall be collected and contributed to the fund. These payments shall not be considered as advance payments of regular assessments. The Association shall maintain this fund consistent with its obligations described in this Declaration.

14.4.2 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.

#### 14.5 Determination of Amount of Assessments.

14.5.1 Regular Assessments. Each Owner of any Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) annual common assessments for common expenses (which may be paid on the monthly basis), (2) special assessments, and (3) individual assessments; such assessments to be established and collected as hereinafter provided. 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 twenty percent (20%) per annum from the date when such installment shall become due to the date of the payment thereof.

14.5.2 Individual Assessments. An individual assessment shall mean a charge against a particular Owner and his Unit, directly attributable to the Owner, equal to any fines levied or costs incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

14.5.3 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 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 and the payment of any deficit remaining from the previous period.

Subject to the limitations set forth in paragraph 14.5.5, 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.

14.5.4 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.

14.5.5 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. 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.

14.6 Special Assessments. In addition to the annual regular assessments authorized above, the Board of Trustees of the Association may levy, in any assessment year, special assessments 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, provided that any such assessment that exceeds \$500 per Unit, shall require the approval of sixty-seven percent (67%) of the Members who vote at a meeting once a quorum has been established. As deemed necessary, more than one special assessment may be levied in any given year. All proceeds from any special assessment 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. In the event that there are excess funds resulting from a special assessment, such funds may be allocated to any other fund deemed appropriate by the Board.

14.7 Member Action. Any action authorized under Section 14.5.5 or 14.6 above requiring membership approval may be taken either through mail-in written ballot or at a meeting called for that purpose, written notice of which shall be sent to all Members not less than thirty (30) days or more than sixty (60) days in advance of the meeting. A quorum for such meeting or mail-in vote, is 40% of the Members of the Association. If the required quorum is not present, another meeting may be called with not less than 15 days notice and the required quorum at the subsequent meeting shall be 20% of the Members of the Association. 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.

14.8 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.

14.9 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. The annual assessment period is based on the calendar year.

14.10 Notice and Assessment 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 ten (10) 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 twenty percent (20%) of the payment due.

14.10.1 Acceleration. In the event an Owner shall fail to pay any assessment installment within (10) days after which it is due, the Board may, at its option, declare immediately due and payable all monthly or other regular installments which would otherwise fall due for the remainder of the annual assessment period.

14.11 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 \$25.00 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.

14.12 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: 14.12.1.1 valid tax and special assessment liens on the Unit in favor of any governmental assessing authority; and 14.12.1.2 a lien for all sums

unpaid on a first Mortgage 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 levied. 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 or non-judicial foreclosure by the Association in the same manner in which mortgages or trust deeds may be foreclosed in Utah, at the Association's election, or in any other manner provided by Utah law. In the event of foreclosure or any method of collection other than foreclosure, such as through the judicial process, the Owner shall be required to pay all of the costs and expenses of such proceeding, including the costs and expenses of recording documents such as the lien, and all reasonable attorney 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 person or entity 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 person or entity 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.

14.13 Trust Deed for Assessments. By acceptance of a deed for a Unit, each Owner as Trustor, conveys and warrants to Trustee in trust for the Association as Beneficiary, with power of sale, the Owner's Unit for the purpose of securing payment of all assessments (including basis of collection) provided for in this Declaration. For purposes of this Section and Utah Code Ann.



§§ 57-1-19, *et seq.*, as amended from time to time, the Trustee shall mean the attorney for the Association and the Association may provide notice and disclosure of a substitution of Trustee by recording a “Substitution of Trustee” in the records of the County Recorder. Each Owner hereby also grants to the Association and Trustee, all powers and rights of non-judicial trust deed foreclosure provided for in Utah Code Ann. §§ 57-1-19, *et seq.*

14.14 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.

14.15 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 it 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.

14.16 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 capital 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 10 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.

14.17 Fines. The Board of Trustees may assess and impose fines against a unit owner after the requirements of Subsection 14.17.1 have been met for a violation of the rules and regulations of the association of unit owners which have been promulgated in accordance with this chapter and the declaration and bylaws.

14.17.1 Before assessing a fine, the Board or property manager shall give notice to the Unit Owner of the violation and inform the owner that a fine will be imposed if the violation is not cured within 48 hours.

14.17.2 (a) A fine assessed under Subsection 14.17.1 shall:

- (i) be made only for a violation of a rule or regulation which is specifically listed in the declaration, bylaws, or association rules as an offense which is subject to a fine;

(ii) be in the amount specifically provided for in the declaration, bylaws, or association rules for that specific type of violation, not to exceed \$500; and

(iii) accrue interest and late fees in the same manner as assessments.

(b) Cumulative fines for a continuing violation may not exceed \$500 per month.

14.17.3 A unit owner who is assessed a fine under Subsection 14.17.1 may request an informal hearing to protest or dispute the fine within 30 days from the date the fine is assessed. No interest or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

14.17.4 A unit owner may appeal a fine issued under Subsection 14.17.1 by initiating a civil action within 180 days after:

(a) a hearing has been held and a final decision has been rendered by the management committee under Subsection 14.17.3; or

(b) the time to request an informal hearing under Subsection 14.17.1 has expired without the unit owner making such a request.

14.17.5 A fine assessed under Subsection 14.17.1 which remains unpaid after the time for appeal under Subsection 14.16.4 has expired becomes a lien against the unit owner's interest in the property in accordance with the same standards as a lien for the nonpayment of common expenses under Section **57-8-20** of the Utah Code, or as may be amended from time to time.

14.18 Transfer Fee and Record of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract) conveying title to the Owner. Each Owner shall file a copy of such conveyance document (or contract) with the secretary, or authorized agent, of the Association with a transfer fee, who shall maintain a record of ownership of the Units.

The transfer fee shall be in an amount determined by the Board from time to time for the purposes of recoupment of the costs of changing ownership records, copy costs for CC&Rs, bylaws, and rules and regulations, and other costs associated with the obligations of the Association when a Unit is conveyed and/or changes Owners. In no case shall the transfer fee exceed \$500. Any Owner who mortgages his Unit or any interest therein by a mortgagee which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the secretary of the Association shall maintain all such Information in the records of ownership. Any cost incurred by the Association in obtaining the information about an Owner as

specified herein which is not furnished by such Owner shall nevertheless be at the expense of such Owner and shall be reimbursed to the Association as an individual Assessment.

14.19 Future Lease Payments. If the Owner of a Unit who is leasing the Unit fails to pay an assessment for more than 60 days after the assessment is due, the Board of Directors, upon compliance with this section, may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid.

(a) Notice to the Owner. The manager or Board of Directors shall give the Owner written notice, in accordance with the Declaration, Bylaws, or Association rules, of its intent to demand full payment from the tenant under this section. The notice shall:

(1) provide notice to the tenant that full payment of the remaining lease payments, beginning with the next monthly or other periodic payment unless the assessment is received within the time period provided in the Declaration, must be paid directly to the Association at the following address: (address to which payment should be mailed, payment must go to the attorney if the account has been turned over for collection);

(2) state the amount of the assessment due, including any interest or late payment fee; and

(3) state that any costs of collection, and other assessments that become due, may be added to the total amount due.

(b) Notice to the Tenant. If the Owner fails to pay the assessment due by the date specified in the notice described in Subsection (a), the manager or Board of Directors may deliver written notice to the tenant that demands future payments due to the Owner be paid to the Association pursuant to Subsection (c).

(1) The manager or Board of Directors shall mail a copy of the notice described in this Subsection (b) to the Owner.

(2) Content of Notice. The notice provided to the tenant under this Subsection (b) shall state:

(i) that due to the Owner's failure to pay the assessment within the time period allowed, the Owner has been notified of the intent of the Board of Directors to collect all lease payments due to the Association;

(ii) that until notification by the Association that the assessment due, including any interest, collection cost, or late payment fee, has been paid, the tenant shall pay to the Association all future lease payments due to the Owner; and

(iii) that payment by the tenant to the Association in compliance with this Section will not constitute a default under the terms of the lease agreement.

(3) If a tenant makes payments in compliance with this Section, the Owner may not initiate an action against the tenant.

(c) All funds paid to the Association pursuant to this section shall be deposited in a separate account and disbursed to the Association until the assessment that is due is paid in full. Any remaining balance shall be paid to the Owner within five (5) business days after payment in full to the Association.

(d) Within five business days after payment in full of the assessment, including any interest, late payment fee, and costs of collection, the manager or Board of Directors shall notify the tenant in writing that future lease payments are no longer due to the Association. The Association shall mail a copy of the notification to the Owner.

#### 14.20 Termination of Common Utility Service and Facility Use.

(a) If an Owner fails or refuses to pay an assessment when due, the Board of Directors may, after giving notice and an opportunity to be heard in accordance with Section (b), terminate an Owner's right:

(1) to receive any utility services paid as a common expense; and

(2) of access and use of recreational facilities.

(b) Notice to Owner. Before terminating utility services or the right of access and use of the recreational facilities, the Board or its agent shall give written notice to the Owner. The notice shall state:

(1) utility service or the right of access and use of the recreational facilities will be terminated if payment of the assessment is not received within 48 hours;

(2) the amount of the assessment due, including any late fees, interest, and costs of collection; and

(3) that the Owner has a right to request a hearing by submitting a written request to the Board of Directors within 14 days from the date the notice is received.

(c) If a hearing is requested, utility services or right of access and use of the recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been entered. In the event that the Association incurs costs to terminate any such utility service, the defaulting Owner shall be responsible for all such costs. Upon payment of the assessment due, including any interest, late charge, and costs of collection, the Board shall immediately take action to reinstate the terminated utility services to the Unit.

## **ARTICLE 15**

### **Party Walls.**

15.1 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.

15.2 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.

15.3 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.

15.4 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.

## **ARTICLE 16**

### **Miscellaneous.**

16.1 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.

16.2 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.

16.3 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.CA §57-8-1, et seq., as it may be amended. If any provision in the Declaration, the Articles or Bylaws is inconsistent with U.CA §57-8-1, et seq. (the "Statute"), the Statute shall control.

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

16.5 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.

16.6 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, 2008 being the base year.

16.7 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.

IN WITNESS WHEREOF, the Caithness Homeowners Association has caused this Declaration to be executed by its duly authorized officers on the \_\_\_\_day of \_\_\_\_\_, 2008.

**CAITHNESS CONDOMINIUMS  
HOMEOWNERS ASSOCIATION**

\_\_\_\_\_  
By:  
Its:

\_\_\_\_\_  
By:  
Its:

STATE OF UTAH )  
                          ) ss.  
County of Salt Lake )

On this \_\_\_\_ day of \_\_\_\_\_, personally appeared before me \_\_\_\_\_, and \_\_\_\_\_ who being by me duly sworn, did say that they are the authorized agents of the Association, to execute this Declaration.

\_\_\_\_\_  
NOTARY PUBLIC

APPENDIX "A"

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

**ARTICLE I  
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., 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 II MEETINGS**

SECTION 1. Meeting. The annual meeting of the Members shall be held on the second Wednesday in the month of November of each year beginning with the year 2008, 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 is 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 Members of this Association shall be held whenever called by a majority of the Board of Trustees, or whenever one or more Members 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 anyone 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 records of the Association unless he shall have filed with the Secretary 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 of record (i.e., 17 Units represented) in person or by proxy shall constitute a quorum.

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 for which the original quorum requirement of a majority in interest of all Members is represented) may proceed if ten percent (10%) of the total votes within the Association are present, which ten percent (10%) 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 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 Articles of Incorporation or of these Bylaws 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.

SECTION 7. 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 either three (3) or (5) trustees. The then sitting Board of Trustees shall determine, prior to any election, whether to increase or reduce the number of Trustee positions. 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 January 1, 2008, 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 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 Bylaws, 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 \$25.00 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, the Board may 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 faxing 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 faxing (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 Bylaws.

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. Reimbursement. By resolution of the Board of Trustees, Trustees may be reimbursed for actual costs incurred by them on behalf of the Association 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 Board of Trustees shall elect the officers. 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 and/or 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.

SECTION 2. Eligibility of Officers. The officers of the Association shall be Unit Owners. Any person may hold more than one office provided the duties thereof can be consistently performed by the same person except that the offices of Secretary and Treasurer cannot be held by the same person. A trustee may also be an officer.

SECTION 3. 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 4. President. The President shall be the chief executive officer of the Association 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 5. 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 6. Secretary. The Secretary 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 may be designated to perform his duties thereat.

SECTION 7. Treasurer. The Treasurer shall 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 our 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.

## **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 confirmed to specific instances.

SECTION 2. Authorization Required. 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.

## **ARTICLE VI CERTIFICATES FOR SHARES AND THEIR TRANSFER**

SECTION 1. Membership. 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. Fiscal Year. 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. Decisions of Board. 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. Inspection of Records. 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 Bylaws 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 4. Assessment Obligation. As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments, and any individual 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. Amendments Permitted. Unless otherwise provided herein or in the Declaration, the Bylaws 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 all members.

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



**IN WITNESS WHEREOF**, the Caithness Condominiums Homeowners Association has caused these Bylaws to be executed by its duly authorized officers on the date first stated above.

**CAITHNESS CONDOMINIUMS  
HOMEOWNERS ASSOCIATION**

\_\_\_\_\_  
By:  
Its:

\_\_\_\_\_  
By:  
Its:

STATE OF UTAH )  
                          )ss.  
County of Salt Lake )

On this \_\_\_\_ day of \_\_\_\_\_, personally appeared before me \_\_\_\_\_  
\_\_\_\_\_, and \_\_\_\_\_ who being by me duly  
sworn, did say that they are the authorized agents of Caithness Condominiums to execute these  
Bylaws on behalf of the Caithness Condominiums Homeowners Association.

\_\_\_\_\_  
NOTARY PUBLIC

APPENDIX “B”

Unit #	% of Interest	Par Votes and No. of Votes Allocated to Unit
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

The configuration of some Units may not match exactly the floor plans recorded in connection with this Declaration. In addition, there is no Unit 13, resulting in a total of 33 units, not 34 units.