

AFTER RECORDING, RETURN TO:
James R. Blakesley
2102 East 3300 South
Salt Lake City, Utah 84109

5888399
08/02/94 09:50 AM 151.00
KATIE L. DIXON
RECORDER, SALT LAKE COUNTY, UTAH
JAMES R. BLAKESLEY
REC BY: Z JOHANSON , DEPUTY - MP

POLO CLUB DELEGATION OF POWERS AGREEMENT

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5888399
This POLO CLUB Delegation of Powers Agreement is made this 25th day of May, 1994, by the MILLCREEK HOMEOWNERS ASSOCIATION of Salt Lake City, Utah (hereinafter the "ASSOCIATION") and the POLO CLUB PARCEL ASSOCIATION of Salt Lake City, Utah (hereinafter "POLO CLUB").

RECITALS

A. On or about May 24, 1985, McKellar Development of La Jolla created the Millcreek Condominiums by filing for record in the office of the Recorder of Salt Lake County, Utah an instrument entitled "Declaration of Covenants, Conditions, and Restrictions establishing a plan of condominium ownership for Millcreek Condominiums (hereinafter called the "Original Declaration") as Entry No. 4090275 in Book 5657 at Page 804 and the related Record of Survey Map recorded as Entry No. 4090276 in Book 85-5 of Plats (hereinafter called the "Record of Survey Map").

B. The Original Declaration and Record of Survey Map relate to certain real property located in Salt Lake County, Utah, and improvements thereto, known as PHASE I (hereinafter called "POLO CLUB"). The legal description for POLO CLUB is more particularly set forth on Exhibit "A" attached hereto and incorporated herein by

this reference.

C. Declarant has improved POLO CLUB by construction thereon of certain condominium units, Common Areas improvements, recreational facilities and amenities, under the provisions of the Utah Condominium Ownership Act, Title 57, Chapter 8, Utah Code Annotated, 1953, as amended (the "Act"). POLO CLUB consists of 5 buildings and 64 units, recreational facilities and amenities including but not limited to a swimming pool, tennis courts, clubhouse, social center, sidewalks, roadways, patios, and porches located thereon.

D. POLO CLUB Unit Owners received title to a PHASE I Unit together with an undivided fractional ownership interest as a tenant-in-common to all Common Areas at the Millcreek Condominiums.

E. On or about the 15th day of June, 1988, McKellar Development of La Jolla executed and recorded an instrument entitled the First Supplement to Declaration of Covenants, Conditions and Restrictions establishing a Plan of Condominium Ownership for Millcreek Condominiums (hereinafter referred to as the "Supplemental Declaration"), recorded as Entry No. 4640291 in Book 6040 at Page 2219, official records of the Salt Lake County Recorder and the related Supplemental Record of Survey Map (hereinafter referred to as the "Supplemental Record of Survey Map").

F. The Supplemental Declaration and Supplemental Record of

Survey Map relate to certain real property located in Salt Lake County, Utah, and improvements thereto, known as PHASE II (hereinafter called "ESPRIT"). The legal description for ESPRIT is more particularly set forth on Exhibit "B" attached hereto and incorporated herein by this reference.

G. Declarant has improved ESPRIT by construction thereon of certain condominium units, Common Area improvements, recreational facilities and amenities, under the provisions of the Act. ESPRIT consists of 6 buildings and 42 units, recreational facilities and amenities including but not limited to a swimming pool, clubhouse, social center, sidewalks, roadways, patios, and porches located thereon.

H. POLO CLUB Unit Owners received title to a PHASE I Unit together with an undivided fractional ownership interest as a tenant-in-common to all Common Areas at the Millcreek Condominiums.

I. On or about the 19th day of August, 1992, the ASSOCIATION and the POLO CLUB HOMEOWNER'S ASSOCIATION executed a Declaration of Roadways and Utilities Covenants, Conditions and Restrictions, and Reservation of Easements as Entry No.: 5314413, in Book 6504, at Page 0178, Salt Lake County Records (hereinafter referred to as the "Roadways and Utilities Agreement"). The land subject to the Roadways and Utilities Agreement is more particularly described on Exhibit "C" attached hereto and incorporated herein by this reference.

J. Section 4.1 of the Original Declaration provides as follows:

The purpose of the Association is to manage, maintain and preserve the Common Areas and to perform such other duties as specifically set forth in this Declaration, the Articles, and By-Laws of the Millcreek Homeowners Association.

K. Section 4.3 of the Original Declaration provides in relevant part that:

. . .the Affairs of the Association shall be conducted by the Management Committee and such officers as the Management Committee may elect or appoint."

L. Section 4.3.1.3 of the Original Declaration provides in relevant part that:

"The ASSOCIATION, acting by and through the [Millcreek Condominiums] Management Committee, can delegate its powers, duties and responsibilities to committees or employees, and may employ a professional managing agent for the Development. . . The Management Committee may appoint an executive committee and any other committees . . . and delegate to such committees . . . any of the powers and duties of the Management Committee, subject to any limitations contained in the Bylaws." [Emphasis Added]

M. Control of Millcreek Condominiums, Phase I and Phase II, has been transferred from McKellar Development of La Jolla to the ASSOCIATION.

N. The original Declaration created two classes of voting membership: Class A members were all Owners with the exception of the Declarant. Each Class A member was given one vote for each Unit owned. The Class B member was the Declarant. Each Class B member was given three votes. At the present time, there are only Class A Members of the ASSOCIATION.

O. The ESPRIT PARCEL ASSOCIATION is an incorporated mandatory association of all unit owners at ESPRIT.

P. The POLO CLUB PARCEL ASSOCIATION is an incorporated mandatory association of all unit owners at POLO CLUB.

Q. The ASSOCIATION and the MANAGEMENT COMMITTEE of the ASSOCIATION desire to delegate to the POLO CLUB PARCEL ASSOCIATION and the ESPRIT MANAGEMENT COMMITTEE the duty and responsibility to operate and maintain POLO CLUB and those Common Areas located on the land described on Exhibit "B" not covered by the Roadways and Utilities Agreement (hereinafter referred to collectively as the "POLO CLUB PARCEL").

R. The POLO CLUB PARCEL ASSOCIATION and the POLO CLUB MANAGEMENT COMMITTEE desire to accept the delegation of powers and responsibilities and to assist the ASSOCIATION and the MANAGEMENT COMMITTEE of the ASSOCIATION in the operation and management of the POLO CLUB PARCEL.

NOW, THEREFORE, for the reasons recited above and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Purpose. The POLO CLUB PARCEL ASSOCIATION shall manage, maintain and preserve the POLO CLUB PARCEL, and perform such other duties as specifically set forth in the Act, Declaration and By-Laws for and on behalf of the ASSOCIATION and the MANAGEMENT COMMITTEE of the ASSOCIATION as they relate to the POLO CLUB PARCEL.

2. Membership.

2.1 Qualifications. Each Unit Owner at POLO CLUB shall be a member of the POLO CLUB PARCEL ASSOCIATION. Each Owner shall be and become a Member of the POLO CLUB PARCEL ASSOCIATION contemporaneously with his or her acquisition of a Unit at POLO CLUB without further documentation of any kind. Persons or entities who hold an interest in a Unit at POLO CLUB pursuant to an executory contract of sale shall not be considered the Unit Owner entitled to membership in the POLO CLUB PARCEL ASSOCIATION, unless the contract parties shall so agree and the Contract Seller has notified the POLO CLUB MANAGEMENT COMMITTEE of such agreement in writing.

2.2 Members' Rights and Duties. Each Member of the POLO CLUB PARCEL ASSOCIATION shall have the rights, duties and obligations set forth in the Act, Declaration and By-Laws.

2.3 Transfer of Membership. The POLO CLUB PARCEL ASSOCIATION membership of each person or entity who owns in fee or has an interest in a Unit at POLO CLUB shall be appurtenant to each such Unit, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to each such Unit or interest therein and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Unit at POLO CLUB or an interest therein shall operate automatically to transfer the appurtenant membership rights in the POLO CLUB PARCEL ASSOCIATION to the new Owner.

3. POLO CLUB PARCEL ASSOCIATION Action; MANAGEMENT COMMITTEE and Officers. In POLO CLUB, the operational and maintenance duties of the ASSOCIATION as defined in the Act, Declaration and By-Laws shall be performed by the POLO CLUB PARCEL ASSOCIATION, its MANAGEMENT COMMITTEE and such officers as the POLO CLUB MANAGEMENT COMMITTEE may elect or appoint. Such election or appointment shall be in accordance with the Act, Declaration, By-Laws or the POLO CLUB Articles of Incorporation.

4. Powers and Duties of POLO CLUB PARCEL ASSOCIATION.

4.1 Powers. The POLO CLUB PARCEL ASSOCIATION shall be a corporation organized under the laws of the State of Utah subject only to such limitations on the exercise of such powers as are set forth in the Act, Declaration and By-Laws. It shall have the power as it affects POLO CLUB to do any lawful thing, by and through the POLO CLUB MANAGEMENT COMMITTEE, that may be authorized, required, or permitted to be done by the ASSOCIATION or the MANAGEMENT COMMITTEE of the ASSOCIATION under the Act, Declaration and the By-Laws, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the ASSOCIATION or the MANAGEMENT COMMITTEE of the ASSOCIATION, including, without limitation, the following:

4.1.1 Assessments. The power to adopt a budget for the operation and maintenance of POLO CLUB, to establish, fix and levy assessments against the Owners of Units at POLO CLUB, and to enforce payment of such assessments in accordance with the

provisions of Article 6 of the Declaration. The Common Area fees shall be due and payable on the first day of each month unless otherwise determined by the POLO CLUB MANAGEMENT COMMITTEE.

4.1.2 Right of Enforcement. To commence and maintain in its own name and on its own behalf, or on behalf of the ASSOCIATION or the MANAGEMENT COMMITTEE of the ASSOCIATION actions for damages, including attorneys fees, or to restrain or enjojn any actual or threatened breach of any provisions of this Agreement, the Act, Declaration or By-Laws, and to enforce by mandatory injunction, or otherwise, all of those provisions.

4.1.3 Delegation of Powers. The POLO CLUB PARCEL ASSOCIATION, acting by and through the POLO CLUB MANAGEMENT COMMITTEE, can delegate its powers, duties, and responsibilities to committees or employees, and may employ a professional managing agent for POLO CLUB. Any agreement for professional management of POLO CLUB shall be terminable by either party with or without cause and without payment of a termination fee on thirty (30) days prior written notice. The term of any such agreement shall not exceed one (1) year (although such agreement may be renewed from year to year by the MANAGEMENT COMMITTEE) unless the terms thereof have been approved by the Federal Housing Administration and the Veterans Administration. The MANAGEMENT COMMITTEE may appoint an executive committee and any other committees or may hire employees and delegate to such committees or employees any of the powers and duties of the MANAGEMENT COMMITTEE, subject to any limitations contained in the Act, Declaration or By-Laws.

4.1.4 POLO CLUB PARCEL ASSOCIATION Rules and Regulations. The POLO CLUB PARCEL ASSOCIATION, acting by and through the POLO CLUB MANAGEMENT COMMITTEE, shall have the power to adopt, amend and repeal administrative rules and regulations as it deems reasonable. The POLO CLUB PARCEL ASSOCIATION rules and regulations shall govern the use of the POLO CLUB PARCEL (including, but not limited to the use and assignment of all parking areas, recreational facilities, amenities and private streets), by POLO CLUB unit owners or occupants, their families, guests or invitees. However, POLO CLUB PARCEL ASSOCIATION rules shall not be inconsistent with or materially alter any other provisions of the Act, Declaration or the By-Laws. A copy of the POLO CLUB PARCEL ASSOCIATION rules as adopted, amended or repealed, shall be mailed or otherwise delivered to each Unit Owner at POLO CLUB and a copy shall be posted in a conspicuous place within POLO CLUB. In case of any conflict between any POLO CLUB PARCEL ASSOCIATION rules and regulations and any other provisions of the Act, Declaration or By-Laws, the latter in all instances shall prevail.

4.1.5 Actions. The POLO CLUB PARCEL ASSOCIATION, by the POLO CLUB MANAGEMENT COMMITTEE, may prosecute or defend, in its own name or in the name of the ASSOCIATION or the MANAGEMENT COMMITTEE of the ASSOCIATION, any action affecting or relating to POLO CLUB, or property owned by the POLO CLUB PARCEL ASSOCIATION, and any action relating to more than one Unit at POLO CLUB in which two or more of the Owners of Units at POLO CLUB have an interest.

4.2 DUTIES OF THE POLO CLUB PARCEL ASSOCIATION and POLO CLUB MANAGEMENT COMMITTEE. In addition to the powers delegated to it by its Articles of Incorporation or By-Laws, and without limiting their generality, the POLO CLUB PARCEL ASSOCIATION, acting by and through the POLO CLUB MANAGEMENT COMMITTEE, or persons or entities described in Section 4, 4.1.3 of the Declaration, has the obligation to conduct all business affairs of common interest to all Unit Owners at POLO CLUB and to perform each of the following duties:

4.2.1 Operation and Maintenance of Common Areas at POLO CLUB. The POLO CLUB PARCEL ASSOCIATION, by the POLO CLUB MANAGEMENT COMMITTEE shall operate, maintain, and otherwise manage or provide for the operation, maintenance and management of the POLO CLUB PARCEL, and all its amenities, facilities, improvements and landscaping, including but not limited to the use and assignment of any undesignated parking areas, any private driveways and private streets, and any other property acquired by the POLO CLUB PARCEL ASSOCIATION, including personal property, in a good condition and in a good state of repair. The term of any such service contract shall not exceed one (1) year and shall be terminable by either party with or without cause and without payment of a termination fee upon thirty (30) days prior written notice.

4.2.2 Gas, Power, Water and Other Utilities. The POLO CLUB PARCEL ASSOCIATION, by the POLO CLUB MANAGEMENT COMMITTEE, shall acquire or make available water, sewer, garbage

pick-up, electrical, gas and other necessary utility services for the POLO CLUB PARCEL. The term of any contract to supply any of the listed services shall not exceed one (1) year or, if the supplier is a regulated public utility, the shortest term not to exceed one (1) year for which the supplier will contract at the applicable regulated rate.

4.2.3 Insurance. The POLO CLUB PARCEL ASSOCIATION, by the POLO CLUB MANAGEMENT COMMITTEE, shall purchase and maintain, from reputable insurance companies, for POLO CLUB the insurance described in Section 8 of the Original Declaration.

4.2.4 Enforcement of Restrictions and Rules. The POLO CLUB PARCEL ASSOCIATION, by the POLO CLUB MANAGEMENT COMMITTEE, shall perform such other acts, including the maintenance of reserves for legal fees and costs, whether or not expressly authorized by the Declaration, that may be reasonably necessary to enforce any of the provisions of the Act, Declaration or By-Laws as they relate to POLO CLUB, and the POLO CLUB PARCEL ASSOCIATION rules and regulations.

4.2.5 Reserves. The POLO CLUB PARCEL ASSOCIATION, by the POLO CLUB MANAGEMENT COMMITTEE, shall maintain an adequate reserve fund for unexpected costs and capital improvements, including but not limited to maintenance, repair and replacement of those common elements at POLO CLUB that must be replaced on a periodic basis, and such reserve shall be funded by monthly Common Area fees and special assessments.

4.3 Limitations on Authority of POLO CLUB MANAGEMENT

COMMITTEE. Except with the vote or written assent of holders of a majority of the voting power of the POLO CLUB PARCEL ASSOCIATION, the POLO CLUB MANAGEMENT COMMITTEE shall not take any of the following actions.

4.3.1 Incur expenditures for capital improvements to the Common Area at POLO CLUB exceeding \$5,000 in any fiscal year; or

4.3.2 Sell property of the POLO CLUB PARCEL ASSOCIATION other than surplus or obsolete personal property not exceeding \$3,000 per year; or

4.3.3 Pay compensation to members of the POLO CLUB MANAGEMENT COMMITTEE or to officers of the POLO CLUB PARCEL ASSOCIATION for services performed in the conduct of the POLO CLUB PARCEL ASSOCIATION's business. However, the MANAGEMENT COMMITTEE may cause a member of the MANAGEMENT COMMITTEE or an officer to be reimbursed for expenses incurred in carrying on the business of the POLO CLUB PARCEL ASSOCIATION; or

4.3.4 Purchase liability insurance for a term of more than three (3) years unless the policy shall provide for short term cancellation; or

4.3.5 Fill permanently a vacancy on the POLO CLUB MANAGEMENT COMMITTEE caused by the resignation or removal of a MANAGEMENT COMMITTEE member; provided, however, that the remaining members of the MANAGEMENT COMMITTEE may select a temporary replacement to serve on the COMMITTEE until the time of the annual meeting when a permanent replacement shall be elected by the

members of the POLO CLUB PARCEL ASSOCIATION; or

4.3.6 Create any special assessment for POLO CLUB Unit Owners pursuant to Section 6.4.2 of the Declaration.

5. Personal Liability. No Member of the POLO CLUB MANAGEMENT COMMITTEE, or of any committee of the POLO CLUB PARCEL ASSOCIATION, or any officer of the POLO CLUB PARCEL ASSOCIATION, or any manager or agent, shall be personally liable to any POLO CLUB Unit Owner or to any other party, including the ASSOCIATION or the MANAGEMENT COMMITTEE of the ASSOCIATION, for any damage or loss suffered or claimed on account of any act, omission, error or negligence of any such person or entity if such person or entity has acted in good faith without willful or intentional misconduct.

6. Owners Meetings. The day, time and place of the annual meeting of the Unit Owners at POLO CLUB shall be determined by the POLO CLUB MANAGEMENT COMMITTEE. At least ten (10) but not more than thirty (30) days before the date of the annual meeting, a written notice thereof shall be personally delivered or mailed postage prepaid to each person who appears as an Owner, at the latest address for such person appearing, in the records of the POLO CLUB MANAGEMENT COMMITTEE at the time of delivery or mailing. Such notice shall state the time, place and general purpose of the meeting.

Special meetings of the Unit Owners at POLO CLUB may be called by the President of the POLO CLUB PARCEL ASSOCIATION, by any two

members of the POLO CLUB MANAGEMENT COMMITTEE, or by Unit Owners cumulatively holding at least twenty-five percent (25%) of the undivided ownership interest in the Common Areas at POLO CLUB. At least two (2) but not more than thirty (30) days before the date set for a special meeting, written notice thereof shall be given in the manner described in the immediately preceding Paragraph.

No notice of any Unit Owners at POLO CLUB meetings shall be required if a waiver of such notice is signed by all of the Owners. Whenever all the Owners meet in person or by proxy, such meeting may not be challenged on grounds of inadequate notice. The presence of Owners entitled to cause a majority of all the undivided ownership interest in POLO CLUB shall constitute a quorum for the transaction of business at any Owners meeting. In the event a quorum is not present at any Owners meeting, whether regular or special, the meeting may be adjourned and rescheduled for a time no earlier than forty-eight (48) hours, and no later than thirty (30) days, after the time set for the original meeting. No notice of such rescheduled meeting shall be required. The presence of Owners entitled to cast twenty-five percent (25%) of all the undivided ownership interest in POLO CLUB shall constitute a quorum at the rescheduled meeting. Notwithstanding the foregoing provisions of this Paragraph, however, in any case in which the Act or Declaration require the affirmative vote of at least a specified percentage of POLO CLUB'S undivided ownership interest for authorization or approval of a matter, the presence of Owners entitled to cause such percentage shall be necessary to constitute

a quorum at any meeting (whether original or rescheduled) at which action on such matter is taken.

7. Voting - Multiple Ownership. The vote attributable to and exercisable in connection with a Unit at POLO CLUB shall be the percentage of undivided ownership interest which is then appurtenant thereto. If there is more than one Owner of a particular Unit, then the vote relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any meeting by any of such Owners shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. If such an objection is made, then the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

8. Lists of Unit Owners, Eligible Mortgagees, Insurers or Guarantors. The POLO CLUB MANAGEMENT COMMITTEE shall maintain up to date records showing: (a) the name, address and phone number of each person or entity who owns a Unit at POLO CLUB; (b) the name, address and phone number of each person or entity who is a Lender on a Unit at POLO CLUB -- and a description of the Unit so affected. If a Unit is sold or the mortgage is refinanced, then the Unit Owner or the Buyer, as the case may be, shall notify the POLO CLUB MANAGEMENT COMMITTEE of the change within thirty (30) days after the closing. The street address of the Unit shall be

the mailing address of the Unit Owner unless the POLO CLUB MANAGEMENT COMMITTEE is advised to the contrary in writing.

9. Document Availability. A current copy of the Declaration, By-Laws and Rules and Regulations governing POLO CLUB, and the most recent annual financial statement, together with all other books, records and financial statements of the POLO CLUB PARCEL ASSOCIATION, shall be made available for inspection, upon request, at the office of the POLO CLUB PARCEL ASSOCIATION during normal business hours to Unit Owners at POLO CLUB and Lenders.

10. Ratification. The ASSOCIATION hereby ratifies and confirms all decisions and acts which the POLO CLUB PARCEL ASSOCIATION has made or done, or caused to be made or done, for or on behalf of the ASSOCIATION in the operation and maintenance of POLO CLUB PARCEL.

11. Term of Contract. This contract is to continue in force for a term of one (1) year, subject to the right of either party, to cancel this agreement upon at least thirty (30) days prior written notice to be delivered in person or by certified mail to the other party. Unless terminated on notice, as set forth above, the rights and privileges herein granted, together with all other

provisions of this contract, shall continue in full force and effect for additional, successive periods of one (1) year from the date of expiration mentioned above, unless either party shall, at least thirty (30) days prior to the date of expiration, notify the other party in writing that it does not desire the contract to be extended for an additional period.

12. Governing Law. It is mutually understood and agreed that this contract shall be governed by the laws of the State of Utah.

13. Severability. It is mutually understood and agreed that if any part, term or provision of this contract is declared by the courts to be illegal, invalid, unenforceable or in conflict with any applicable local, state or federal law, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term or provision.

14. Entire Agreement. This instrument contains the entire agreement between the parties, and no statement, promise, or inducement made by any party or agent of any party that is not contained in the written contract shall be valid or binding, and this contract may not be enlarged, shortened, modified or altered except in writing signed by all the parties hereto.

15. Binding Effect. This contract shall inure to the benefit of and be binding upon the heirs, executors, administrators, assignees, and successors of the respective parties.

16. Attorneys Fees. In the event of default, the non-defaulting party may recover its reasonable attorneys fees made necessary to enforce this contract, regardless of whether a lawsuit is filed.

17. Duly Authorized. The execution of this Agreement is duly authorized and the individuals named below are authorized to execute this agreement on behalf of the ASSOCIATION.

EXECUTED the day and year first above written.

MILLCREEK HOMEOWNERS ASSOCIATION

By: 
Sheron Christenson

By: 
Dixie Smith

By: 
DeAnne Nelson

By: 
Jess Harrison

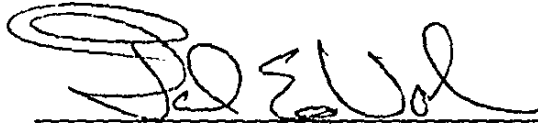
By: 
Clair Argust

By: 
Rick Flack

By: 
Steve Boss

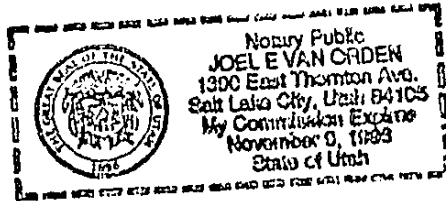
STATE OF UTAH)
) ss:
COUNTY OF SALT LAKE)

On the 19th day of July, 1994, personally appeared before me Sheron Christenson, who by me being duly sworn, did say that s/he is a member of the Management Committee of the Millcreek Homeowners Association, and that the within and foregoing instrument was signed in behalf of said Association by authority of a Resolution of its Management Committee, and said Sheron Christenson, duly acknowledged to me that said Association executed the same.



NOTARY PUBLIC
Residing at: SALT LAKE

My Commission Expires:
Nov. 9, 1996



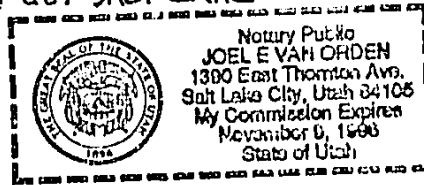
STATE OF UTAH)
) ss:
COUNTY OF SALT LAKE)

On the 14th day of July, 1994, personally appeared before me Dixie Smith who by me being duly sworn, did say that s/he is a member of the Management Committee of the Millcreek Homeowners Association, and that the within and foregoing instrument was signed in behalf of said Association by authority of a Resolution of its Management Committee, and said Dixie Smith duly acknowledged to me that said Association executed the same.



NOTARY PUBLIC
Residing at: SALT LAKE

My Commission Expires:
Nov. 9, 1996



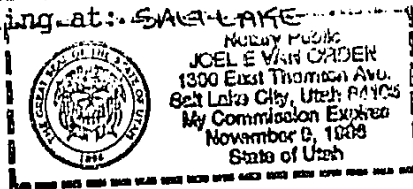
STATE OF UTAH)
) ss:
COUNTY OF SALT LAKE)

On the 19th day of July, 1994, personally appeared before me DeAnne Nelson who by me being duly sworn, did say that s/he is a member of the Management Committee of the Millcreek Homeowners Association, and that the within and foregoing instrument was signed in behalf of said Association by authority of a Resolution of its Management Committee, and said DeAnne Nelson duly acknowledged to me that said Association executed the same.



NOTARY PUBLIC
Residing at: SALT LAKE

My Commission Expires:
Nov. 9, 1996



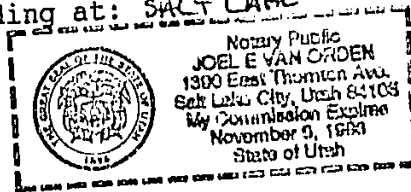
STATE OF UTAH)
COUNTY OF SALT LAKE) ss:

On the 19th day of July, 1994, personally appeared before me Jess Harrison who by me being duly sworn, did say that s/he is a member of the Management Committee of the Millcreek Homeowners Association, and that the within and foregoing instrument was signed in behalf of said Association by authority of a Resolution of its Management Committee, and said Jess Harrison duly acknowledged to me that said Association executed the same.



NOTARY PUBLIC
Residing at: SALT LAKE

My Commission Expires:
Nov. 9, 1996



STATE OF UTAH)
COUNTY OF SALT LAKE) ss:

On the 19th day of July ¹⁹⁹⁴, 1994, personally appeared before me Clair Argust who by me being duly sworn, did say that s/he is a member of the Management Committee of the Millcreek Homeowners Association, and that the within and foregoing instrument was signed in behalf of said Association by authority of a Resolution of its Management Committee, and said Clair Argust duly acknowledged to me that said Association executed the same.



NOTARY PUBLIC
Residing at: SALT LAKE
Notary Public
JOEL E VAN ORDEN
1303 East Thomson Ave.
Salt Lake City, Utah 84103
My Commission Expires
November 9, 1996
State of Utah

My Commission Expires:
Nov. 9, 1996

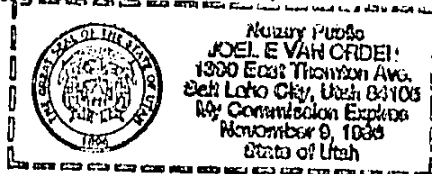
STATE OF UTAH)
) ss:
COUNTY OF SALT LAKE)

On the 19th day of July, 1994, personally appeared before me Rick Flack who by me being duly sworn, did say that s/he is a member of the Management Committee of the Millcreek Homeowners Association, and that the within and foregoing instrument was signed in behalf of said Association by authority of a Resolution of its Management Committee, and said Rick Flack duly acknowledged to me that said Association executed the same.




NOTARY PUBLIC
Residing at: SALT LAKE

My Commission Expires:
Nov. 9, 1996



STATE OF UTAH)
) ss:
COUNTY OF SALT LAKE)

On the 14th day of July, 1994, personally appeared before me Steve Boss who by me being duly sworn, did say that s/he is a member of the Management Committee of the Millcreek Homeowners Association, and that the within and foregoing instrument was signed in behalf of said Association by authority of a Resolution of its Management Committee, and said Steve Boss duly acknowledged to me that said Association executed the same.



NOTARY PUBLIC
Residing at:

My Commission Expires:
Nov. 9, 1996

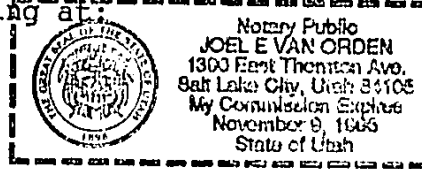


EXHIBIT "A"
PHASE I - POLO CLUB PROPERTY DESCRIPTION

A parcel of land located in the northwest one-quarter (1/4) of Section 33, Township 1 South, Range 1 East, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at a point South 2363.71 feet, West 1670.26 feet and North 30°00'00" East 313.30 feet from the North one-quarter (1/4) corner of Section 33, Township 1 South, Range 1 East, Salt Lake Base and Meridian; thence North 60°00'00" West 83.55 feet; thence South 30°00'00" West 6.00 feet; thence North 60°00'00" West 12.00 feet; thence North 30°00'00" East 6.00 feet; thence North 60°00'00" West 33.72 feet; thence West 114.55 feet; thence South 88.00 feet; thence West 111.50 feet; thence North 76.50 feet; thence East 15.00 feet; thence North 14.00 feet; thence East 12.00 feet; thence North 24.00 feet; thence West 8.00 feet; thence North 18.00 feet; thence West 19.00 feet; thence North 19.00 feet; thence North 89°50'0" West 83.11 feet; thence South 181.96 feet; thence West 124.00 feet; thence North 244.36 feet; thence South 89°50'00" East 867.32 feet to the Westerly right of way line of Highland Drive; thence along said Westerly right of way line, South 24°47'27" East 115.55 feet; thence leaving said Westerly right of way line West 257.99 feet; thence South 30°00'00" West 225.34 feet to the point of beginning in Salt Lake County Utah.

Contains 4.05 acres more or less.

EXHIBIT "B"
PHASE II - ESPRIT PROPERTY DESCRIPTION

A parcel of land located in the Northwest 1/4 of Section 33, Township 1 South, Range 1 East, Salt Lake Base & Meridian, said parcel being more particularly described as follows:

Beginning at a point on the South line of Millcreek (Phase 1) said point lying 2115.68 feet South and 1851.51 feet West from the North 1/4 corner of said Section 33; thence West 83.11 feet; thence North, 118.30 feet; thence East 83.11 feet; thence South 118.30 feet to the point of beginning containing approximately 0.225 acres.

Together with the following described parcel:

Beginning at a point on the West line of Millcreek (Phase 1) said point lying 2115.68 feet South and 1851.51 feet West and 7.65 feet North from the North 1/4 corner of said Section 33; thence North 56.00 feet; thence East 19.00 feet; thence South 18.00 feet; thence East 8.00 feet; thence South 24.00 feet; thence West 12.00 feet; thence South 14.00 feet; thence West 15.00 feet to the point of beginning containing approximately 1200 square feet.

RECORDED
CO. 123456789

AFTER RECORDING, PLEASE RETURN TO:

Steven L. Ingley, Esq.
CALLISTER, DUNCAN & NEBKER
800 Kennecott Bldg.
Salt Lake City, Utah 84133

4400

5314413
19 AUGUST 92 10:50 AM
KATIE L. DIXON
RECORDER, SALT LAKE COUNTY, UTAH
FIRST AMERICAN TITLE
REC BY: REBECCA GRAY DEPUTY

2

5314413

**DECLARATION OF ROADWAYS AND UTILITIES
COVENANTS, CONDITIONS AND RESTRICTIONS, AND
RESERVATION OF EASEMENTS**

THIS DECLARATION OF ROADWAYS AND UTILITIES COVENANTS, CONDITIONS AND RESTRICTIONS, AND RESERVATION OF EASEMENTS (this "Declaration") dated this 12 day of August, 1992, is executed by THE ASSOCIATION OF HOMEOWNERS FOR MILLCREEK CONDOMINIUMS, a Utah nonprofit corporation, of Salt Lake City, Utah, and ESPRIT HOMES OWNERS' ASSOCIATION, a Utah nonprofit corporation, of Salt Lake City, Utah.

RECITALS:

A. By recording the Millcreek Declaration (as hereinafter defined) in the office of the County Recorder of Salt Lake County, Utah, and the Millcreek Map (as hereinafter defined), that certain real property located in Salt Lake County, Utah and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference was submitted to the provisions of the Utah Condominium Ownership Act, Utah Code Annotated 1977-1-1 through 1977-1-36, thereby creating the Millcreek Project (as hereinafter defined).

B. By recording the Esprit Homes Declaration (as hereinafter defined) in the office of the County Recorder of Salt Lake County, Utah, and the Esprit Homes Plat (as hereinafter defined), the Esprit Homes Project (as hereinafter defined) was created on that certain real property located in Salt Lake County, Utah and more particularly described in Exhibit "B" attached hereto and incorporated herein by reference.

C. Pursuant to the provisions of Section 15 of the Millcreek Declaration, the Millcreek Association (as hereinafter defined) may, having obtained the prior approval of at least 75% of the Percentage of Undivided Ownership Interest in the Common Areas (as defined in the Millcreek Declaration) of the Millcreek Project, grant and convey for the use and benefit of the Esprit Homes Association (as hereinafter defined) and each of the Esprit Homes Owners, (as hereinafter defined) and their Permittees (as hereinafter defined), (1) a non-exclusive easement over and across the portion of the Roadways (as hereinafter defined) located within the Millcreek Project for ingress, egress and related purposes, and (2) a non-exclusive easement over and across the portion of the Roadways and the Common Utilities Area (as hereinafter defined) located within the Millcreek Project for the installation, use, operation, maintenance, repair, replacement, relocation and removal of the Common Utility Facilities (as hereinafter defined).

D. Pursuant to the provisions of the Esprit Homes Declaration, the Esprit Homes Association may, having obtained the prior approval of 100% of the Total Votes of the Lots (as defined in the Esprit Homes Declaration), grant and convey for the use and benefit of the Millcreek Association and each of the Millcreek Owners (as hereinafter defined) and their Permittees, (1) a non-exclusive easement over and across the portion of the Roadways located within the Esprit Homes Project for ingress, egress and related purposes, and (2) a non-exclusive easement over and across the portion of the Roadways and the Common Utilities Area located within the Esprit Homes Project for the installation, use, operation, maintenance, repair, replacement, relocation and removal of the Common Utility Facilities.

E. The Millcreek Association and the Esprit Homes Association desire to set forth in this Declaration the terms of their agreement respecting the maintenance, repair and replacement of the Roadways and the Common Utility Facilities.

NOW, THEREFORE, for the foregoing purposes and in consideration of the reciprocal benefits to be derived from the easements, covenants, restrictions, and requirements set forth below, the parties hereto and each of them hereby consent, acknowledge, and agree to all of the following terms and provisions.

1. **Definitions.** As used in this Declaration each of the following terms shall have the indicated meanings:

1.1 **Common Utility Facilities** shall mean and refer to all storm drainage facilities, sanitary sewer systems and water system to the extent such facilities serve both the Millcreek Project and the Esprit Homes Project, including, without limitation, the master water meter, the main water and sewer distribution lines, the common storm drainage lines and retention pipes, and all related improvements that serve both the Millcreek Project and the Esprit Homes Project. The Common Utility Facilities shall specifically not include the water and sewer line laterals and any other water, sewer and storm drainage lines that do not service in common the Millcreek Project and the Esprit Homes Project.

1.2 **Common Utility Area** shall mean and refer to (a) all of the Common Area (as defined in the Millcreek Declaration) of the Millcreek Project as described on the Millcreek Map and (b) all of that certain real property located within the Esprit Homes Project that is made subject to and burdened by an easement for the laying, installation, operation, servicing, and maintenance of the Common Utility Facilities, and all easements as described on the Esprit Homes Plat. The Common Utility Area shall specifically include, without limitation, the following real property located

FIRST AMERICAN TITLE
RMP# 274173

-2000 6077-
CO. RECORDER

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EX 504 PC 0178

within the Millcreek Project, which is made subject to an easement for the laying, installation, operation, servicing, and maintenance of the Common Utility Facilities:

Lot 40--Easement:

Beginning at a point that is South 1780.812 feet and West 1872.348 feet from the North Quarter Corner of Section 33, Township 1 South, Range 1 East, Salt Lake Base and Meridian; thence South 57.04 feet; thence East 17.38 feet; thence North 57.04 feet; thence West 17.68 feet to the point of beginning.

1.3 Esprit Homes Association shall mean and refer to the Esprit Homes Homeowners' Association, a Utah nonprofit corporation.

1.4 Esprit Homes Plat shall mean and refer to that certain subdivision plat of the Esprit Homes Project, affecting a portion of the Roadways and recorded concurrently with this Declaration in the office of the County Recorder of Salt Lake County, Utah.

1.5 Esprit Homes Declaration shall mean and refer to that certain Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Esprit Homes Of Millcreek, a Utah Planned Unit Development recorded concurrently with this Declaration in the office of the County Recorder of Salt Lake County, Utah.

1.6 Esprit Homes Project shall mean and refer to each of the Lots (as defined in the Esprit Homes Declaration) and the Common Area comprising the Esprit Homes Of Millcreek, a Utah planned unit development, as more particularly described in the Esprit Homes Plat and defined in the Esprit Homes Declaration.

1.7 Esprit Homes Owners shall mean and refer to each of the owners of one or more of the Lots in the Esprit Homes Project.

1.8 Esprit Homes Permittees shall mean and refer to all of the tenants of the Esprit Homes Owners pursuant to written lease agreements, and the respective agents, contractors, visitors, invitees, subtenants, licensees, successors and assigns of the Esprit Homes Owners and their tenants.

1.9 Maintenance Assessments shall mean and refer to the assessments made against Esprit Homes Association and Millcreek Association by the Millcreek - Esprit Homes Association for their respective portion of the total costs incurred by and on behalf of Esprit Homes Association and Millcreek Association to maintain, improve, repair, replace, manage and operate the Roadways and the Common Utility Facilities, and shall include an adequate reserve fund for resurfacing of the Roadways and replacing the Common Utility Facilities.

1.10 Millcreek Association shall mean and refer to the Millcreek Homeowners Association.

1.11 Millcreek Declaration shall mean and refer to that certain Declaration of Covenants, Conditions and Restrictions recorded in the office of the County Recorder of Salt Lake County, Utah on May 24, 1985, as Entry No. 4090275, in Book E657, at Page 204, et seq.

1.12 Millcreek - Esprit Homes Association shall mean and refer to Millcreek - Esprit Homeowners' Association, a Utah nonprofit corporation. The Millcreek - Esprit Homes Association is responsible for maintaining, repairing and replacing the Roadways and the Common Utility Facilities.

1.13 Millcreek Owners shall mean and refer to each of the owners of one or more of the Condominium Units (as defined in the Millcreek Declaration) in the Millcreek Project.

1.14 Millcreek Permittees shall mean and refer to all of the tenants of the Millcreek Owners pursuant to written lease agreements, and the respective agents, contractors, visitors, invitees, subtenants, licensees, successors and assigns of the Millcreek Owners and their tenants.

1.15 Millcreek Map shall mean and refer to that certain Record of Survey Map (the "Millcreek Map"), recorded in the office of the County Recorder of Salt Lake County, Utah as Entry No. 4090275, in Book 65-8 of Plats.

1.16 Millcreek Project shall mean and refer to all of the Units (as defined in the Millcreek Declaration) and the Common Areas (as defined in the Millcreek Declaration) comprising the Millcreek Condominiums, as more particularly described in the Millcreek Declaration and the Millcreek Map.

1.17 Roadways shall mean and refer to Saltlake Drive, Vineyard Court, Revelle Way, Foxberg Drive and Europa Drive, common roadways located within the Millcreek Project and the Esprit Homes Project as more particularly described in Exhibit "C" attached hereto and incorporated herein by this reference.

1.18 Operating Expenses shall mean and refer to all of the following: (a) All costs and expenses which are incurred by the Millcreek - Esprit Homes Association for and on behalf of Esprit Homes Association and

Millcreek Association during the period in question or which are reasonably allocable to said period in connection with the operation, maintenance, repair or replacement of the Roadways and the Common Utility Facilities, including, without limitation, charges for the costs of repairing or replacing the Common Utility Facilities, cleaning, sweeping, and servicing the Roadways, the costs of removing ice and snow from the Roadways, the costs of resurfacing and restriping the Roadways, the costs of replacing damaged or worn-out Roadways and Common Utility Facilities, the costs of traffic regulation and control along the Roadways, the costs of the personnel (other than managerial personnel) necessary to perform any of the foregoing, and depreciation allowances on any machinery and equipment used in connection with the aforesaid matters; and (b) common water charges as measured by the master water meter that services both the Millcreek Project and the Esprit Homes Project. All of the aforesaid costs, expenses, and sums and the allocation thereof to the period in question shall be determined in accordance with such reasonable and usual accounting procedures and business practices as are agreed to by the Millcreek - Esprit Homes Association and as provided herein.

2. Easements for Utilities and Roadways. Millcreek Association and Esprit Homes Association hereby create a nonexclusive, perpetual right-of-way and cross-easement, together with the right to construct, operate, repair, replace and maintain the Roadways and the Common Utility Facilities, upon, under, across and through the Roadways and the Common Utility Area for the benefit of the Millcreek Association, the Millcreek Owners, the Millcreek Permittees, the Esprit Homes Association, the Esprit Homes Owners and the Esprit Homes Permittees. Said easement is to be used in common by the Millcreek Association, the Millcreek Owners, the Millcreek Permittees, the Esprit Homes Association, the Esprit Homes Owners and the Esprit Homes Permittees for the benefit of the Millcreek Project and the Esprit Homes Project, subject to all of the terms, covenants, conditions and restrictions hereinafter set forth. It is specifically understood and agreed between the parties that the cross-easement and right-of-way hereby created is intended to be used as a private roadway and utility easement for the use and benefit of Millcreek Association, the Millcreek Owners, the Millcreek Permittees, the Esprit Homes Association, the Esprit Homes Owners and the Esprit Homes Permittees.

3. Liability Insurance Covering Roadways & Common Utility Area. Millcreek Association and Esprit Homes Association shall each at all times maintain or cause to be maintained continuously in force public liability and property damage insurance providing coverage against personal injury, death, and property damage occurring on or about, or by reason of activities within, the portion of the Roadways and the Common Utility Area located within their respective projects. Such insurance shall be carried with a responsible company or companies licensed in the State of Utah and the limits thereof shall be such as to afford at least the coverage provided by a "combined single limit" of not less than \$1,000,000.00 for bodily injury, death, and property damage. The insurance policies shall name the Millcreek - Esprit Homes Association as an additional insured and loss payee. The Millcreek Association and the Esprit Homes Association shall each, upon the written request of the Millcreek - Esprit Homes Association, furnish to the Millcreek - Esprit Homes Association written evidence that the liability insurance required by this paragraph is in force. Such policies shall give the Millcreek - Esprit Homes Association not less than thirty (30) days prior written notice of any material changes or cancellation of such insurance policies. The Millcreek - Esprit Homes Association, the Millcreek Association and the Esprit Homes Association hereby each waive any and all right of recovery against the other waiving parties or against the officers, employees, agents and representatives of the other waiving parties, on account of loss or damage occasioned to such waiving party or its property or the property of others under its control to the extent that such loss or damage is insured against under any policy of insurance which any of the waiving parties may have in force at the time of such loss or damage. In the event that either the Millcreek Association or the Esprit Homes Association fail to obtain the policies of insurance required to be obtained by this paragraph, the Millcreek - Esprit Homes Association shall have the right to obtain a policy of insurance satisfying the requirements of this paragraph and to include the cost thereof in the Operating Expenses and the Maintenance Assessments.

4. Operation and Maintenance. The Millcreek - Esprit Homes Association, for and on behalf of Esprit Homes Association and Millcreek Association, shall have the power and duty to operate, maintain and replace the Roadways and the Common Utility Facilities in good repair and condition, including, without limitation, the management, maintenance and replacement of the storm drainage system located within the Common Utility Area, and the cleaning, striping, snow removal and periodic resurfacing of the Roadways. Esprit Homes Association and Millcreek Association hereby authorize the Millcreek - Esprit Homes Association to act for and on behalf of Esprit Homes Association and Millcreek Association to incur Operating Expenses, assess Maintenance Assessments, enter into contracts relating to the maintenance and operation of the Roadways, the Common Utility Facilities, and take such further actions as may be reasonably necessary to perform its duties under this Declaration. All goods and services procured by the Millcreek - Esprit Homes Association in performing its duties under this Declaration shall be paid for with funds received from the Maintenance Assessments. All cost incurred for management, maintenance and repair of the Common Utility Facilities and the Roadways.

5. Maintenance Assessments. In order to provide for payment of the Operating Expenses, Esprit Homes Association and Millcreek Association each covenant and agree to pay all Maintenance Assessments made by the Millcreek - Esprit Homes Association. The Millcreek - Esprit Homes Association shall base annual Maintenance Assessments upon budgeted estimates of the Operating Expenses expected to be incurred during the coming calendar year and amounts required to establish an adequate reserve for periodic resurfacing and replacement of the Roadways and for periodic replacement of the Common Utility Facilities. All of the Operating Expenses other than common water expenses shall be apportioned between Esprit Homes Association and Millcreek Association based upon the number of condominium units in the Millcreek Project and the number of lots in the Esprit Homes Project. Since water use by the Common Area and each of the lots in the Esprit Homes Project will be measured by individual submeters, the determination of the proportionate share of the common water expenses allocable to the Esprit Homes Association shall be determined on the basis of the aggregate amount of water used by the Common Area and each of the lots in the

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Esprit Homes Project as measured by said individual submeters compared to the total amount of water used for the Milloreek Project and the Esprit Homes Project as measured by the master water meter for both projects. The proportionate share of the common water expense allocable to the Milloreek Association shall be determined by subtracting the amount of the proportionate share of the common water expense allocable to the Esprit Homes Project as determined in the manner described above from the total common water expense incurred by the Milloreek - Esprit Homes Association. The Milloreek - Esprit Homes Association shall prepare and furnish to Milloreek Association and Esprit Homes Association an operating budget for the coming calendar year at least thirty days prior to the beginning of each year. Each annual Maintenance Assessment shall be payable in twelve equal monthly installments, one such installment due on the first day of each calendar month during the calendar year to which the assessment relates; provided that the Maintenance Assessment for the first calendar year shall be based upon such portion of the first calendar year and shall be payable in such installments and at such times as the Milloreek - Esprit Homes Association, in its discretion, may determine. Milloreek Association and Esprit Homes Association shall each pay monthly, on or before the first day of each month their respective Maintenance Assessment. Any amount required to be paid by this paragraph 5 which is not timely paid shall accrue interest from and after the due date of the amount in question at the rate of 18% per annum.

6. Composition of Milloreek - Esprit Homes Association. The Milloreek - Esprit Homes Association shall be governed by a Board of Trustees composed of five (5) members. The Esprit Phase of the Milloreek Association shall select one (1) member of the Milloreek - Esprit Homes Association Board of Trustees who shall be an owner of a condominium unit in the Esprit Phase of the Milloreek Project. The Polo Club Phase of the Milloreek Association shall select one (1) member of the Milloreek - Esprit Homes Association Board of Trustees who shall be an owner of a condominium unit in the Polo Club Phase of the Milloreek Project. The Esprit Homes Association shall select one (1) member of the Milloreek - Esprit Homes Association Board of Trustees who shall be an owner of a lot in the Esprit Homes Project. The fourth and fifth members of the Milloreek - Esprit Homes Association Board of Trustees shall be selected by the other three members of the Milloreek - Esprit Homes Association Board of Trustees and may be (but need not be) owners in either the Esprit Phase or the Polo Club Phase of the Milloreek Project, or the Esprit Homes Project. The initial Milloreek - Esprit Homes Association Board of Trustees shall be selected as follows: The Parcel Management Committee of the Esprit Phase of the Milloreek Association shall select one member of the Milloreek - Esprit Homes Association Board of Trustees for a term of two years; The Parcel Management Committee of the Polo Club Phase of the Milloreek Association shall select one member of the Milloreek - Esprit Homes Association Board of Trustees for a term of two years; The Board of Trustees of the Esprit Homes Association shall select one member of the Milloreek - Esprit Homes Association Board of Trustees for a term of two years. The remaining fourth and fifth members of the Board of Trustees shall be selected for a term of one year by the other members of the Board of Trustees. Thereafter, each member of the Milloreek - Esprit Homes Association Board of Trustees shall serve for a term of two (2) years. New members of the Milloreek - Esprit Homes Association Board of Trustees shall be selected prior to the second Tuesday in March of each calendar year. In the event the members of the Milloreek - Esprit Homes Association Board of Trustees are unable to select the fourth or fifth member of the Milloreek - Esprit Homes Association Board of Trustees, such member(s) of the Milloreek - Esprit Homes Association Board of Trustees shall be selected by an arbitrator selected as provided in paragraph 12 below.

7. Instruments to Run with Land. This Declaration and all of the covenants, provisions, and requirements hereof are intended to be and shall constitute covenants running with the land, and shall be binding upon and shall inure to the benefit of the parties to this Declaration and any other party which has, acquires, or comes to have any interest in or which occupies or comes to occupy a lot in the Esprit Homes Project or a condominium unit in the Milloreek Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. This Declaration and all of the covenants, provisions, and requirements hereof shall be binding upon the Milloreek Project and the Esprit Homes Project and all interests in each such project shall be subject to this Declaration and all of such covenants, provisions, and requirements. By acquiring, in any way coming to have any interest in, or occupying a lot in the Esprit Homes Project or a condominium unit in the Milloreek Project, the party so acquiring, coming to have such interest, or occupying such lot or unit, consents to, and agrees to be bound by, this Declaration and all of the covenants, provisions and requirements hereof.

8. Amendment. Any provision contained in this Declaration may be amended by, but only by, a Declaration filed for record with the County Recorder of Salt Lake County, Utah which is executed by each of the parties to this Declaration.

9. Dedication of Roadways. In the event the Roadways are dedicated for public use to the appropriate governmental entity, the right-of-way and easements dealt with in paragraph 2 above and the maintenance and other obligations created by this Declaration shall, upon such dedication, automatically terminate with respect to the Roadways provided, however, that any monetary obligation that has then accrued shall survive such dedication until such obligation is fully satisfied.

10. Partial Invalidity. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, and if any provision of this Declaration or the application thereof to any party to this Declaration, or circumstances should to any extent be invalid, the remainder of this Declaration or the application of such provision to any party to this Declaration, or circumstances other than those as to which a holding of invalidity is reached shall not be affected thereby (unless necessarily conditioned or dependent upon the provisions or circumstances as to which a holding of invalidity is reached), and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

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11. **Effective Dates and Duration.** This Declaration and all of the provisions hereof (except any provisions hereof which by their terms may cease to be effective at an earlier time) shall remain effective until this Declaration is terminated and extinguished by a Declaration filed with the County Recorder of Salt Lake County, Utah, and executed by all of the parties hereto.

12. **Arbitration.**

12.1 Any controversy or claim between or among the parties to this Declaration, including but not limited to those arising out of or relating to this Declaration or any agreements or instruments relating hereto or delivered in connection herewith, and including but not limited to a claim based on or arising from an alleged tort, shall at the request of Millorek Association or Esprit Homes Association be determined by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration proceedings shall be conducted in Salt Lake City, Utah. The arbitrator(s) shall have the qualifications set forth in subparagraph 12.3 hereto. All statutes or limitations which would otherwise be applicable in a judicial action brought by Millorek Association or Esprit Homes Association shall apply to any arbitration or reference proceeding hereunder.

12.2 In any judicial action or proceeding arising out of or relating to this Declaration or any agreements or instruments relating hereto or delivered in connection herewith, including but not limited to a claim based on or arising from an alleged tort, if the controversy or claim is not submitted to arbitration as provided and limited in subparagraph 12.1 hereto, all decisions of fact and law shall be determined by a reference in accordance with Rule 53 of the Federal Rules of Civil Procedure or Rule 53 of the Utah Rules of Civil Procedure or other comparable, applicable reference procedure. Millorek Association and Esprit Homes Association shall designate to the court the referee(s) selected under the auspices of the American Arbitration Association in the same manner as arbitrators are selected in Association-sponsored arbitration proceedings. The referee(s) shall have the qualifications set forth in subparagraph 12.3 hereto.

12.3 The arbitrator(s) or referee(s) shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the Association. A single arbitrator or referee shall be knowledgeable in the subject matter of the dispute. Where three arbitrators or referees conduct an arbitration or reference proceeding, the claim shall be decided by a majority vote of the three arbitrators or referees, at least one of whom must be knowledgeable in the subject matter of the dispute and at least one of whom must be a practicing attorney. The arbitrator(s) or referee(s) shall award recovery of all costs and fees (including reasonable attorneys' fees, administrative fees, arbitrators' fees, and court costs). The arbitrator(s) or referee(s) also may grant provisional or ancillary remedies such as, for example, injunctive relief, attachment, or the appointment of a receiver, either during the pendency of the arbitration or reference proceeding or as part of the arbitration or reference award.

12.4 Judgment upon an arbitration or reference award may be entered in any court having jurisdiction, subject to the following limitation: the arbitration or reference award is binding upon Millorek Association and Esprit Homes Association only if the amount does not exceed One Million Dollars (\$1,000,000.00); if the award exceeds that limit, either Millorek Association or Esprit Homes Association may commence legal action for a court trial de novo. Such legal action must be filed within thirty (30) days following the date of the arbitration or reference award; if such legal action is not filed within that time period, the amount of the arbitration or reference award shall be binding. The computation of the total amount of an arbitration or reference award shall include amounts awarded for arbitration fees, attorneys' fees, interest, and all other related costs.

12.5 Notwithstanding the applicability of other law to any other provision of this Agreement, the Federal Arbitration Act, 9 U.S.C. 11 et seq., shall apply to the construction and interpretation of this arbitration paragraph.

13. **Conformity to Common Law.** The captions which precede the paragraphs of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context or circumstance so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. This Declaration shall be governed by and construed in accordance with the laws of the State of Utah.

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DATED the day and year first above written.

"ESPRIT HOMES ASSOCIATION"

ESPRIT HOMES OWNERS' ASSOCIATION,
a Utah nonprofit corporation

By: Michael W. Sisson
Its: President

ATTEST:

[Signature]
Secretary

"MILLCREEK ASSOCIATION"

THE ASSOCIATION OF HOMEOWNERS FOR MILLCREEK
CONDOMINIUMS, a Utah nonprofit corporation

By: [Signature]
Its: President

COPIES
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CO. RECORDS

ATTEST:

[Signature]
Secretary

STATE OF UTAH

COUNTY OF SALT LAKE CO.

The foregoing instrument was acknowledged before me this 12 day of AUGUST, 1992, by Michael W. Sisson
and [Signature], the President and Secretary, respectively of the ESPRIT HOMES OWNERS' ASSOCIATION.

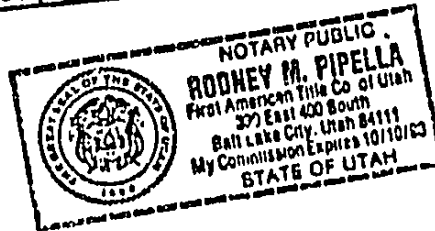
[Signature]
NOTARY PUBLIC

Residing At:

SALT LAKE CITY, UT

My Commission Expires:

10-10-93



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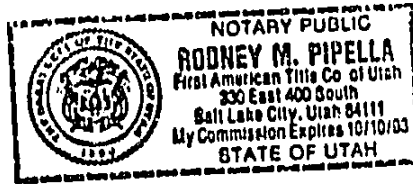
STATE OF UTAH
COUNTY OF SALT LAKE

The foregoing instrument was acknowledged before me this 22nd day of August 1992, by KIM D. LUTIN
and RODNEY M. PIPELLA, the President and Secretary, respectively of THE ASSOCIATION OF HOMEOWNERS FOR
MILLCREEK CONDOMINIUMS.

[Signature]
NOTARY PUBLIC

My Commission Expires
10-10-93

Residing At
SLC, UT



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EXHIBIT "A"

DESCRIPTION OF PROPERTY IN McLOPSE PROJECT

Parcel 1:

A parcel of land located in the Northwest one-quarter (1/4) of Section 33, Township 1 South Range 1 East, Salt Lake Base and Meridian, being more particularly described as follows:

BEGINNING at a point South 2369.71 feet; West 1670.20 feet and North 30°00'00" East 313.38 feet from the North one-quarter (1/4) corner of Section 33, Township 1 South, Range 1 East, Salt Lake Base and Meridian; thence North 80°00'00" West 83.88 feet; thence South 80°00'00" West 8.00 feet; thence North 80°00'00" West 12.00 feet; thence North 30°00'00" East 8.00 feet; thence North 80°00'00" West 28.72 feet; thence West 114.88 feet; thence South 83.00 feet; thence West 111.86 feet; thence North 283.30 feet; thence North 88°20'00" West 83.11 feet; thence South 181.86 feet; thence West 124.00 feet; thence North 244.38 feet; thence South 88°50'00" East 867.32 feet to the Westerly right of way line of Highland Drive; thence along said Westerly right of way line South 24°47'27" East 118.85 feet; thence leaving said Westerly right of way line West 257.99 feet; thence South 30°00'00" West 225.84 feet to the point of beginning in Salt Lake County, Utah.

Containing 4.08 acres more or less.

Parcel 2:

BEGINNING at a point that is 2231.86 feet South and 2417.81 feet West from the North quarter corner of Section 33, Township 1 South, Range 1 East, Salt Lake Base and Meridian; thence West 476.26 feet; to the East right-of-way line of 1300 East, a 40-foot right-of-way line being 40.00 feet east of and parallel to the centerline of 1300 East street; thence North 00°18'43" East 247.88 feet along said right-of-way line to the southwest corner of Mill Creek Village Condominiums as recorded in the office of the Salt Lake County Recorder; thence North 88°40'00" East 317.50 feet along the South line of said Mill Creek Village Condominiums to the southeast corner of said condominium, and to the centerline of said canal and the easterly boundary line of said Mill Creek Village Condominium; thence North 72°28'00" East 142.88 feet; thence South 17°32'00" East 22.00 feet; to a point on a 15.00 foot radius curve bearing to the center of curve bears South 17°32'00" East; thence 23.42 feet along the arc of said curve (short bearing bears South 37°48'58" West); thence South 17°00'00" East 44.43 feet; to a point on a 15.00 foot radius curve bearing to the center of curve bears North 73°00'00" East; thence 17.80 feet along the arc of said curve (short bearing bears South 81°00'00" East); thence North 08°00'00" East 18.00 feet; thence South 88°00'00" East 27.00 feet; thence South 03°00'00" West 18.00 feet; thence South 85°00'00" East 78.82 feet; thence East 18.82 feet; thence South 88.32 feet; thence North 85°00'00" West 101.40 feet; thence South 30°00'00" West 48.78 feet; thence South 80°00'00" East 80.87 feet; thence South 30°00'00" West 41.84 feet to the point of beginning. Contains area of 18885.338 sq. ft. or 3.06888 acres. Back-sight bearing to the centerline of 1300 East from the 8900 South monument to the 3300 South monument, which is North 00°18'43" East.

-P00R G0P1Y-
G0. R0C0RDR0N

BK 6992 PG 1268

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EXHIBIT "B"

DESCRIPTION OF PROPERTY IN EQUIT TRUST PROJECT

BEGINNING at a point that is South 2334.34 feet and West 1888.38 feet from the North quarter corner of Section 33, Township 1 South, Range 1 East, Salt Lake Base and Meridian; thence North 80°00'00" East 254.390 feet; thence North 80°00'00" West 78.00 feet to a point of a 15.00 foot radius curve to the right bearing to the center of curve South 30°00'00" West; thence southwesterly 23.868 feet along the arc of said curve; thence North 71°43'58" West 30.84 feet; thence West 31.95 feet; thence South 71°14'33" West 40.427 feet; thence North 00°28'04" West 112.87 feet; thence North 89°58'38" East 70.89 feet; thence North 141.73 feet; thence North 89°00'00" West 17.456 feet; thence North 81.04 feet; thence South 72°28'00" West 400.300 feet; thence South 84°57'00" West 110.578 feet; thence South 72°28'00" West 400.300 feet; thence South 88°46'00" East 70.503 feet to the North line of the Millersack Condominium, Phase 2, a recorded condominium project, Entry No. 4438448, Book 85-8, Page 58, as found in the office of the Salt Lake County Recorder's Office; thence along the North and East line of said Millersack Condominium, Phase 2, the following three courses and distances; thence North 78°18'33" East 2.00 feet; thence South 17°33'00" East 22.00 feet; thence North 78°18'33" East 2.00 feet; thence South 116.243 feet; thence South 17°00'00" East 84.78 feet; thence South 88°00'00" East 117.357 feet; thence South 116.243 feet along said Millersack Condominium, Phase 2; thence along said line the following 8 courses and distances; thence North 88°00'00" West 101.40 feet; thence South 30°00'00" West 86.748 feet; thence South 80°00'00" East 80.87 feet; thence South 30°00'00" West 41.635 feet; thence South 89°02'01" East 34.81 feet; thence South 88°48'00" East 122.65 feet; thence East 153.025 feet; thence North 00°18'10" East 8.38 feet; thence East 23.85 feet along the North line of the Highland Cove Condominium, a recorded condominium project, Entry No. 3681886, Book 82-2, Page 28, as found in the Salt Lake County Recorder's Office, to the point of beginning.

BK 6992 PG 1269

6504 PC 186

EXHIBIT "C"

DESCRIPTION OF ROADWAYS EASEMENTS BY REPORT HOMES PROJECT

Europa Drive

The following is street center line description and is inclusive of 17.00 feet each side for the first call and inclusive of 11.00 feet each side of the following description:

Beginning at a point on the East right-of-way line of Highland Drive, said point begin South 2020.648 feet and West 2892.882 feet from the North quarter corner of Section 33, Township 1 South, Range 1 East, Salt Lake Base and Meridian; thence South 08°41'17" East 08.858 feet (inclusive of 17.00 feet each side); thence South 30°00'00" East 38.488 feet (inclusive of 11.00 feet each side to end of description) to a point on a 95.205 feet radius curve to the left (bearing to the center of curve bears North 00°00'00" East thru a central angle of 60°01'43"), thence southeasterly 89.748 feet along the arc of said curve; thence North 88°58'12" East 41.00 feet to a point of a 279.812 feet radius curve to the right (bearing to the center of curve bears South 00°01'48" East thru a central angle of 30°01'48"), thence southeasterly 148.850 feet along the arc of said curve; thence South 00°00'00" East 128.680 feet to the terminus point and the West line of the New Esprit Homes of Millcreek Subdivision.

Goddards Drive

The following is street center line description and is inclusive of 11.00 feet each side of the following description:

Beginning at a point on the center line of Europa Drive, said point begin South 2108.36 feet and West 2814.810 feet from the North Quarter Corner of Section 33, Township 1 South, Range 1 East, Salt Lake Base and Meridian; thence North 08°00'00" East 80.427 feet to a point of a 41.00 feet radius curve to the right (bearing to the center of curve bears South 52°00'00" East thru a central angle of 42°00'00"), thence northeasterly 30.054 feet along the arc of said curve; thence North 50°00'00" East 151.108 feet; thence North 72°28'00" East 28.753 feet; thence South 72°28'00" West 128.28 feet to the terminus point.

Foxboro Drive and Vineyard Ct.

The following is street center line description and is inclusive of 17.00 feet each side of the following description:

Beginning at a point on the west line of Highland Drive, said point begin South 1820.811 feet and West 1189.708 feet from the North quarter corner of Section 33, Township 1 South, Range 1 East, Salt Lake Base and Meridian; thence West 243.788 feet; thence South 80°00'00" West 262.28 feet; thence North 80°00'00" West 78.00 feet; thence South 80°00'00" West 27.02 feet to the terminus point and the North line of the New Esprit Homes of Millcreek Subdivision.

Esprit Homes at Millcreek -- Street Description:

Beginning at a point on the East line of Vineyard Court, said point begin South 1824.112 feet and West 2052.631 feet from the North quarter corner of Section 33, Township 1 South, Range 1 East, Salt Lake Base and Meridian; thence South 30°00'00" West 87.862 feet to a point on a 128.882 feet radius curve to the right (bearing to the center of curve bears North 00°00'00" West thru a central angle of 60°00'00"), thence Southwesterly 130.117 feet along the arc of said curve; thence West 232.648 feet to a point of a 15.00 feet radius curve to the left (bearing to the center of curve bears South thru a central angle of 43°20'25"), thence Southwesterly 11.840 feet along the arc of said curve to a point of a 40.00 feet radius curve (bearing to the center of curve bears North 48°20'50" West thru a central angle of 207°31'28"), thence Northwesterly 144.89 feet to a point of a 15.00 feet radius curve to the left (bearing to the center of curve bears North 18°48'28" West thru a central angle of 74°10'24"), thence Northwesterly 19.418 feet along the arc of said curve; thence North 280.884 feet to a point of a 18.00 feet radius curve to the left (bearing to the center of curve bears West thru a central angle of 69°50'00"), thence Northwesterly 28.818 feet along the arc of said curve; thence North 88°00'00" West 101.821 feet to a point of a 148.883 feet radius curve to the left (bearing to the center of curve bears South 09°10'00" West thru a central angle of 17°42'00"), thence Southwesterly 44.883 feet along the arc of said curve; thence South 72°28'00" West 94.917 feet to a point of a 18.00 feet radius curve to the left (bearing to the center of curve bears South 17°22'00" East thru a central angle of 72°28'00"), thence Southwesterly 18.872 feet along the arc of said curve; thence South 218.01 feet to a point of a 18.00 feet radius curve to the left (bearing to the center of curve bears East thru a central angle of 86°29'40"), thence Southwesterly 14.808 feet along the arc of said curve to a point of a 40.00 feet radius curve to the

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right bearing to the center of curve bears South 23°03'20" West thru a central angle of 228°44'00"), thence Southwesterly 166.888 feet along the arc of said curve to a point of a 18.00 foot radius curve to the left (bearing to the center of curve bears North 88°12'41" West thru a central angle of 81°47'20"), thence Northwesterly 16.178 feet along the arc of said curve; thence North 80°00'00" West 78.888 feet; thence North 30°00'00" East 22.00 feet; thence South 80°00'00" East 16.014 feet; thence South 64°04'48" East 88.223 feet to a point of a 18.00 foot radius non-tangent curve to the left (bearing to the center of curve bears North 30°00'00" East thru a central angle of 126°00'00"), thence Northeasterly 31.416 feet along the arc of said curve; thence North 286.387 feet along the arc of said curve to a point of a 18.00 foot radius curve to the left (bearing to the center of curve bears West thru a central angle of 104°41'37"), thence Northwesterly 27.408 feet along the arc of said curve; thence South 78°18'32" West 128.138 feet; thence North 17°22'00" West 22.00 feet; thence North 73°18'32" East 82.883 feet; thence North 73°22'00" East 167.463 feet to a point of a 178.883 foot radius curve to the right (bearing to the center of curve bears South 17°22'00" East thru a central angle of 17°42'00"), thence Northeasterly 64.228 feet along the arc of said curve; thence South 88°20'00" East 121.834 feet to a point of a 40.00 foot radius curve to the right (bearing to the center of curve bears South 00°03'48" West thru a central angle of 148°52'58"), thence Southeasterly 102.843 feet along the arc of said curve to a point of a 18.00 foot radius curve to the left (bearing to the center of curve bears South 23°03'20" East thru a central angle of 83°56'40"), thence Southwesterly 14.908 feet along the arc of said curve; thence South 281.718 feet to a point of a 18.00 foot radius curve to the left (bearing to the center of curve bears East thru a central angle of 80°00'00"), thence Southeasterly 22.532 feet along the arc of said curve; thence East 228.400 feet to a point of a 88.882 foot radius curve to the left (bearing to the center of curve bears North thru a central angle of 80°00'00"), thence Northeasterly 104.701 feet; thence North 30°00'00" East 81.132 feet; thence South 71°43'58" East 30.84 feet to the point of beginning.

6-10-1961-179-1

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CONSENT TO DECLARATION OF ROADWAYS AND UTILITIES, COVENANTS,
CONDITIONS AND RESTRICTIONS, AND RESERVATION OF EASEMENTS

Zions First National Bank, N.A. is the present Trustee and Beneficiary of a Deed of Trust that encumbers the real property of Esprit Homes Owners' Association as the same is described in the foregoing Agreement. The Deed of Trust is identified as follows:

Dated: August 12, 1992

Recorded: August 13, 1992

Entry No: 5310967

Securing Note in the amount of: \$764,000.00

Zions First National Bank, N.A. hereby consents to the creation of the easements, covenants, conditions, and restrictions described in the foregoing Agreement and hereby agrees and acknowledges that the foreclosure of the Deed of Trust described herein shall not effect the use of the easement property by the parties entitled thereto nor shall such a foreclosure effect the validity nor the enforceability of the terms and provisions of the Agreement.

Dated this 12th day of August, 1992.

Zions First National Bank, N.A.

By: [Signature]

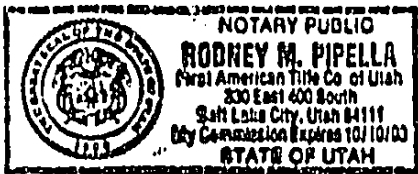
Its: [Signature]

4023 027-
CA. BIRCHER

65504760189

STATE OF UTAH)
) 199.
County of Salt Lake)

On the 12th day of August, 1992, personally appeared before me Paul Williams, who being by me duly sworn, did say that he the said Paul Williams is the Vice President of Sions First National Bank, N.A., and that said instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and said Paul Williams, duly acknowledged to me that said corporation executed the same.



[Signature]
Notary Public

Residing in: Salt Lake City,
Utah

My commission expires: 10-10-93

1992 OCT-
03 10:00 AM

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1992 OCT-
03 10:00 AM

BK6504FB0199