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MILLCREEK COVE CONDOMINIUM

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

BOOK 5281 PAGE 1453

KATIE L. DIXON  
RECORDER  
SALT LAKE COUNTY,  
UTAH

AUG 14 3 59 PM '81

REC'D *[Signature]*

4402

3865 So Wooded Blvd  
#102

*[Signature]*  
SCOTT DICKMOUTH

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF  
MILLCREEK COVE PHASE I

This Declaration is made at the date hereinafter set forth by Artistic Homes, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in Salt Lake County, State of Utah which is more particularly described on Exhibit "A" hereto attached; and

WHEREAS, there are certain buildings and other improvements now existing upon the land all of which are to be included within the property.

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

ARTICLE I

SECTION I: Definitions:

As used herein or elsewhere in the Condominium Documents, unless otherwise provided, or unless the context requires otherwise, the following terms shall be defined as in this article provided.

1. Unit: Any one of those parts of the building which are separately described on the Record of Survey Map.
2. Unit Owner: The person, persons or entity holding title in fee to a unit in the Condominium Project and an undivided interest in the common areas and facilities as shown on the records of the County Recorder of Salt Lake County, Utah.
3. Assessment: That portion of the cost of maintaining

and managing the property which is to be paid by each unit owner as set forth in Article VII hereof.

4. Association: Millcreek Cove Homeowners Association and its successors a non-profit corporation duly organized under the laws of the State of Utah with its principal place of business in Salt Lake City, Utah. Copies of the By-laws of the corporation and certain of its rules and regulations are annexed hereto and made a part hereof as exhibits.

5. Buildings: The structure or structures containing the units located on the property.

6. Property: Shall mean and refer to that certain real property hereinbefore described.

7. Common Areas and Facilities: The common areas and facilities are that part of the property which is not within the units as such units are shown on the Record of Survey Map or which exist within the units by virtue of an easement herein created.

8. Common Expenses: The actual estimated costs of:

a. maintenance, management operation, repair and replacement of the common areas and facilities and those parts of the units as to which, pursuant to other provisions hereof, it is the responsibility of the Association to maintain, repair and replace; and adequate reserves to assure payment of the above costs;

b. management and administration of the Association, including without limiting the same to compensation paid by the Association to a managing agent, accountants, attorneys, and other employees;

c. all liens of any nature, including taxes and special assessments levied by government authority which are liens upon more than one unit or upon any portion of the common areas;

d. any other items held by or in accordance with other provisions of this Declaration or the corporation bylaws to be common expense.

9. Condominium Documents: This Declaration and exhibits annexed hereto as the same from time to time may be amended.

Exhibit "A" - Legal description of land comprising the condominium;

Exhibit "B" The Record of Survey Map

Exhibit "C" A schedule of parking spaces assigned to each such unit;

Exhibit "D" Bylaws of Millcreek Cove Homeowners Association.

Exhibit "E" Regulations of the Common Areas.

#### ARTICLE II

SECTION I: Condominium Name:

The name of the condominium is:

MILLCREEK COVE CONDOMINIUM

SECTION II: Statement of Applicability of the Laws of Utah:

This Declaration is made pursuant to the provisions of the "Condominium Ownership Act" of the State of Utah (Title 57-8-1 et seq., as amended).

#### ARTICLE III

SECTION I: Name of Organization of Unit Owners:

The name of the organization of unit owners is:

MILLCREEK COVE HOMEOWNERS ASSOCIATION

a non-profit corporation duly organized under the laws of the State of Utah with its principal place of business at Salt Lake City, Utah. Millcreek Cove Homeowners Association, herein referred to as "Association" has enacted bylaws pursuant to the Non-Profit Corporation Act of the State of Utah.

#### ARTICLE IV

SECTION I: Description of Buildings:

The condominium project contains 3 buildings all of which are constructed of wood with asphalt shingle roof. The buildings are one-half story below ground and two and one-half stories above ground level. The Condominium will contain certain recreational facilities.

#### ARTICLE V

SECTION I: Description of Units:

Each building contains six (6) units with two units on each of the three levels. The approximate area of the units and access to the common areas and facilities are as shown on the record of survey map.

area of the units and access to the common areas and facilities are as shown on the record of survey map.

#### ARTICLE VI

#### SECTION I: Description of Common Areas and Facilities and Proportionate Interest of Each Unit Therein:

1. General Common Areas and Facilities: Except as otherwise in this Declaration provided, the common areas and facilities shall consist of the areas and facilities described in the definitions and constitute in general all of the parts of the property except the units and the permanent parking space assigned to each unit. The general common areas and facilities shall include the following whether located within the bounds of the unit or not;

- a. All structural parts of the buildings including, without limitation, foundations, columns, joists, beams, supports, supporting walls, floors, ceilings and roofs;
- b. driveways, parking areas, lawns, shrubs, trees, entrance ways, exterior stairways, and service areas;
- c. recreational facilities;
- d. any utility pipe or line or system servicing more than a single unit, and all ducts, wires, conduits, and other accessories used therewith;
- e. all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as common areas and facilities in the Record of Survey Map;
- f. all repairs and replacements of any of the foregoing.

2. Use of Common Areas and Facilities: No person shall use the common areas and facilities or any part thereof in any manner contrary to or not in accordance with the rules and regulations pertaining thereto as from time to time may be promulgated by the Association.

3. Ownership of Common Areas: Each unit owner shall be a member of Millcreek Cove Association, and through such membership shall own in common with the other unit owners an undivided (1/18) interest in the general common area.

#### SECTION II: Unit Description:

1. Real Property: Each unit, together with the space within it as shown on the Record of Survey map and together with all appurtenances thereto, together with the furnace, water heater, air conditioning unit (whether contained in the unit or not) built-in appliances and plumbing

fixtures, shall for all purposes constitute a separate parcel of real property which may be owned in fee simple and which may be conveyed, transferred and encumbered in the same manner as any other parcel of real property independently of all other parts of the property, subject only to the provisions of this Declaration.

2. Boundaries: Each unit shall be bounded as to both horizontal and vertical boundaries as shown on the Record of Survey Map subject to such encroachments as are contained in the buildings or movement of the buildings or permissible repairs, reconstruction or alterations. Said boundaries are intended to be as follows:

a. Horizontal Boundaries:

- i. the upper boundary shall be the plane of the lower surface of the ceiling of the upper most living level of each unit;
- ii. the lower boundary shall be the plane of the upper surface of the floor of the lower living level.

b. Vertical Boundaries:

- i. between units - the plane formed by the center line of the wall between the units;
- ii. exterior boundaries shall be the plane formed by the interior side of the wall in which windows are located.

It is not intended that the unit owners shall own the undecorated or unfinished surfaces of the perimeter walls, floors and ceilings surrounding the respective unit spaces, nor shall owners be deemed to own pipes, wires, conduits or other public utility lines running through the respective unit spaces that are utilized for, or served by, more than one unit space. The owners, however, shall be deemed to own the walls and partitions except support walls and joists that are contained in their respective units and shall be deemed to own the inner-decorated or finished surfaces of the perimeter walls, floors and ceilings, including plaster, paint, wall paper, floor coverings and the like.

3. Appurtenances: Each unit shall include, and the same shall pass with each unit as an inseparable appurtenance thereto, whether or not separately described, conveyed or encumbered, all of the rights, title and interest of the unit owner in the property, which shall include but not be limited to:

a. Common areas and facilities, an undivided share in the common areas and facilities, such undivided share to be that portion as set forth in Article VI hereof.

- b. A license to maintain private passenger automobiles at and on parking space or spaces assigned to the unit by Declarant or by the Association, subject to the rules and regulations of the Association and the imposition, if any, of a reasonable charge therefor.
- c. Easements for the benefit of the unit.
- d. Association membership and funds and assets held by the Association for the benefit of the unit owner.
- e. All such appurtenances, however, shall be and continue to be subject to the easements for the benefit of other units.
- f. The following easements from each unit owner to each other unit owner and to the Association.
  - i. Ingress and Egress. Easements through the common areas and facilities for ingress and egress for all persons making use of such areas and facilities in accordance with the terms of the condominium documents.
  - ii. Maintenance, Repair and Replacement. Easements through the units and common areas and facilities for maintenance, repair and replacement of the units and common areas and facilities. Use of these easements however, for access to units shall be limited to reasonable hours, except that access may be had at any time in an emergency.
  - iii. Utilities. Easements through the units and common areas and facilities for the furnishing of utility services within the building.
  - iv. Structural Supports. Every portion of a unit which contributes to the structural support of the building shall be burdened with an easement of structural support.
  - v. Emergency Easements of Ingress and Egress. Easements whenever reasonable required for emergency ingress and egress.

#### ARTICLE VII

##### SECTION I: Assessments:

Assessments against the unit owners shall be made and approved by the Board of Directors of the Association and paid by the unit owners to the association in accordance with the following provisions:

1. Share of Expense. Each unit owner shall be proportionately liable for his share of the common expenses in the same percentage as his share of ownership in the general common areas and facilities and membership in the Association of unit owners.

2. Assessments Other Than Common Expenses. Any assessments, the authority to levy which is granted to the Association or its Board of Directors by the condominium documents, shall be paid by the unit owners to the Association in the proportions set forth in the provisions of the condominium documents authorizing the assessment.

3. Assessments for Common Expenses: Assessments for common expenses shall be made for the calendar year annually in advance on or before the 15th day of December and at such other and additional times and in the judgment of the Board of Directors additional expense assessments are required for the property management, maintenance and operation of the common areas and facilities. Such annual assessments shall be due and payable in twelve (12) equal consecutive monthly payments, on the first day of each month, beginning with January of the year for which the assessments are made. The total of the assessment shall be in the amount of the estimated common expenses for the year, including a reasonable allowance for contingencies and reserves for replacements, less the amounts of unneeded common expense account balances. If an annual assessment is not made as required, a payment in the amount required by the last prior assessment shall be due upon each assessment payment date until changed by management.

4. Assessment for Emergencies: Assessments for common expenses of emergencies which cannot be paid by the common expense account shall be made only by the Board of Directors of the Association.

5. Assessments for Liens. All liens of every nature, including taxes and special assessments levied by governmental authority which are a lien upon more than one unit or upon any portion of the common areas and facilities, shall be paid by the Association as a common expense.

6. Assessment Roll. The assessments against all unit owners shall be set forth upon a roll of the units which shall be available in the office of the Association for inspection at all reasonable times by the unit owners or their duly authorized representatives. A certificate made by the Association as to the status of the unit owner's assessment account shall limit the liability of any person for whom made other than the unit owner. The Association shall issue such certificate to such persons as a unit owner shall request in writing.

7. Liability for Assessments. The owners of a unit and his grantees shall be jointly and severally liable for all unpaid assessments due and payable at the time of a conveyance but without prejudice to the



rights of the grantee to recover from the grantor the amounts paid by the grantee therefor. Such liability may not be avoided by a waiver of the use or enjoyment of any common areas or facilities or by abandonment of the unit for which the assessments are made. A purchaser of a unit at a judicial or foreclosure sale or a first mortgagee who accepts a deed in lieu of foreclosure shall be liable only for assessments coming due after such sale and for that portion of due assessments prorated to the period after the date of such sale. Such a purchaser as aforesaid shall be entitled to the benefit of all pre-paid assessments paid beyond the date such purchaser acquired title.

8. Lien for Assessments. The unpaid portion of any assessment which is due shall be secured by a lien upon the unit and all appurtenances thereto and shall be enforced in the manner provided for the foreclosure of liens by the laws of the State of Utah. Such lien shall have priority over all other liens except liens for general taxes and first mortgages or trust deeds of record. Such a claim of lien shall also secure all assessments which come due thereafter until the claim of lien is satisfied.

9. Application.

a. Interest: Application of Payments. Assessments and installments thereof paid on or before fifteen (15) days after the date when due shall not bear interest, but all sums not paid on or before fifteen (15) days after the due date shall bear interest at the rate of eighteen percent (18%) per annum from the date when due until paid. All payments upon account shall be applied first to interest and then to the assessment payment first due. All interest collected shall be credited to the common expense account.

b. Suit. The Association, at its option, may enforce collection of delinquent assessments by suit at law or by foreclosure of the liens securing the assessments or by any other competent proceeding and in any event the Association shall be entitled to recover in the same action, suit or proceeding the payments which are delinquent at the time of judgment or decree together with interest thereon at the rate of eighteen percent (18%) per annum, and all costs incident to the collection and the action, suit or proceeding, including, without limiting the same to reasonable attorney's fees.

ARTICLE VIII

SECTION I: Purpose and Use Restriction.

The purpose of this Condominium is to provide for the operation of the property and buildings with the condominium form of ownership,

In order to provide for a congenial occupation of the buildings and to provide for the protection of the values of the units, the use of the property shall be restricted to be and in accordance with the following provisions:

1. No part of the properties shall be used for other than housing and the related common purpose for which the properties were designed. Each unit shall be used and occupied as a residence for a single family and for no other purpose.

2. There shall be no obstruction of the common areas and facilities nor shall anything be stored in the common areas and facilities without the prior written consent of the Association except as is otherwise provided herein.

3. Nothing shall be done or kept in any unit or in the common areas and facilities which will increase the rate of insurance on the buildings or contents thereof beyond that customarily applicable for residential use without the prior written consent of the Association. No owner shall permit anything to be done or kept in his unit or in the common areas and facilities which will result in the cancellation of insurance on any building, or the contents thereof, or which would be in violation of any law or regulation of any governmental authority. No waste shall be committed in the common areas and facilities.

4. No owner shall cause or permit anything (including, without limitation, a sign, awning, canopy, shutter, storm door, screen door, radio or television antenna) to be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or the outside of windows or doors, without the prior written consent of the association.

5. No animals or birds or any kind shall be raised, bred or kept in any unit or in the common areas and facilities, except that dogs, cats and other household pets may be kept in units, subject to the rules adopted by the Association and provided that they are not kept, bred or maintained for any commercial purpose and provided further that any such pet causing or creating a nuisance or disturbance shall be permanently removed from the property upon ten (10) days written notice from the Association.

6. No noxious or offensive activity shall be carried on in any unit or in the common areas and facilities, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other unit owners or occupants.

7. Nothing shall be done in any unit or in, on or to the common areas and facilities which will impair the structural integrity of the buildings or any part thereof or which would structurally change the buildings or any part thereof except as is otherwise provided herein.

9. No industry, business, trade, occupation, or profession of any kind, whether for commercial, religious, educational, charitable or other purposes shall be conducted, maintained, or permitted on any part of the property except such as may be permitted by the management committee and subject to the rules, nor shall any "for sale" or "for rent" signs or other window displays or advertising be maintained or permitted by any unit owner on any part of the property or in any unit therein, except that:

- a. During the period of time that units are being sold, Declarant may maintain a sales office and/or model unit on the properties and may conduct sales activity on the property. At all times the Association of unit owners may maintain an office on the property for the purpose of conducting Association activities and business.
- b. The Declarant may perform or cause to be performed such work as is incident to the completion of the development of the property, or to the sale or lease of units owned by the Declarant.
- c. The Declarant or its agent may place "for sale" or "for rent" signs on any unsold, unoccupied or reacquired units and may place such other signs on the property as may be required to facilitate the sale or lease of unsold units.
- d. The Association of Unit owners or its agent or representative may place "for sale" or "for rent" signs on any unit or on the property for the purpose of facilitating the disposal of units by any unit owner, mortgagee or the Association of Unit owners.
- e. A unit owner with respect to a unit and the Association of unit owners or its agents or representatives with respect to the common areas and facilities, may perform or cause to be performed any maintenance, repair or remodeling work, required or permitted by this Declaration.

#### ARTICLE IX

##### SECTION I: Insurance.

The insurance which shall be carried upon the property shall be governed by the following provisions:

1. Authority to Purchase. All insurance policies upon the property shall be purchased by the Association for the benefit of the unit owners and their respective mortgagees as their interest may appear and

shall provide for the issuance of certificates of insurance mortgage endorsements to the holders of first mortgages on the units or any of them, and, if insurance companies will agree, shall provide that the insurer waive its rights of subrogation as to any claims against unit owners, developer, and the Association and their respective employees, agents and invitees.

2. Unit Owners. Each unit owner may obtain insurance, at his own expense, affording coverage upon his personal property and for his personal liability, but all such insurance shall contain the same waiver of subrogation as that referred to in Article IX 1 above and must be obtained from an insurance company for which the Association obtains coverage against the same risk, liability or peril, if the Association has such coverage.

3. Coverage.

a. Casualty. The building and all other insurable improvements upon the land and all personal property as may be owned by the Association shall be insured in an amount equal to the maximum insurable replacement value thereof as determined annually by the insurance company affording such coverage. Such coverage shall afford such protection against:

i. loss or damage by fire and other hazards covered by the standard extended coverage endorsement;

ii. such other risks as from time to time customarily shall be covered with respect to buildings, including but not limited to, vandalism, malicious mischief, windstorm, water and flood damage.

b. Public liability and property damage in such amounts and in such forms and shall be required by the Association including but not limiting the same to general liability, water damage, legal liability, hired automobile, non-owner automobile and off-premises employee coverages.

c. Workmens compensation policy to meet the requirements of law.

d. All liability insurance shall contain endorsements to cover liabilities of the Association as a group to a unit owner.

4. Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a group to a unit owner.

5. Ownership and Payment of Proceeds. All insurance policies

purchased by the Association shall be for the benefit of the Association and the unit owners and their mortgagees as their respective interest may appear and shall provide that all proceeds payable as a result of casualty loss shall be paid to the Association as trustee. The Association shall hold such proceeds as may be paid on account of loss in trust for the purposes elsewhere stated herein, and for the benefit of the Association, the unit owners and their respective mortgages as their interest may appear. If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such cost shall be retained by the Association or distributed to the unit owners and their mortgagees as their interest may appear. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the unit owner and his mortgagee jointly.

6. Reconstruction or Repair of Casualty Damage.

a. General Common Areas and Facilities. If any part of the general common areas and facilities shall be damaged by casualty the damage shall be promptly repaired and restored by the Association using proceeds of insurance, if any, on the improvements for that purpose and the unit owner shall be liable for assessments for any deficiency.

b. Single Unit. If the casualty damage is only to those parts of one unit for which the responsibility of maintenance and repair is that of the unit owner, then the unit owner shall be responsible for reconstruction and repair and the Association shall pay over to said unit owner all insurance proceeds received on account of such loss.

c. Buildings. If the casualty damage affects more than one unit and contiguous common area in a building or buildings, and if less than three-fourths (3/4) of the building or buildings is destroyed or substantially damaged, the Association shall immediately proceed to repair and restore the building or buildings and all insurance proceeds shall be used therefor. Reconstruction and repair shall be carried out in the following manner:

i. Estimate of Cost. Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, the Association will obtain reliable and detailed estimates of cost to replace the damaged property in condition as good as that before the casualty.

ii. Assessments. If the proceeds of insurance are not sufficient to defray the estimated cost of reconstruction or repair by the Association, assessments shall be made

against the unit owners in sufficient amounts to provide funds to pay the estimated cost. If at any time during the reconstruction and repair, or upon completion of reconstruction and repair, it is determined that the insurance funds and assessment are insufficient to carry out restoration and repair, assessment shall be made against the unit owners in sufficient amount to provide funds for the payment of such additional costs.

iii. Damage exceeding Three-Fourths of the Building; Insufficient Insurance Proceeds for Reconstruction. If three-fourths or more of a building is destroyed or substantially damaged and if the insurance proceeds are insufficient to reconstruct the building and if the unit owners do not voluntarily, within one hundred twenty (120) days after such destruction and damage, make provision for reconstruction the Association shall record, with the County Recorder, a notice setting forth such facts, and upon recording such notice:

- (a) the property shall be deemed to be owned in common by the unit owners in said building;
- (b) the undivided interest in the property owned in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by such owner in the common areas;
- (c) the property shall be subject to an action for partition at the suit of any unit owner, in which event the net proceeds of the insurance, if any, shall be considered as one fund and shall be divided among the unit owners in said building in a percentage equal to the percentage of undivided interest owned by each unit owner in the property after first paying out of the respective shares of the unit owners, to the extent sufficient for the purposes, all liens on the undivided interest in the property owned by each unit owner.

#### ARTICLE X

##### SECTION I: Maintenance and Repair of Units.

- I. The Association, at its expense, shall be responsible for the maintenance, repair and replacement of:
  - a. All portions of the unit which contribute to the support

of the building, excluding, however, interior wall, ceiling and floor surfaces, and including, without intending to limit the same to, outside walls of the building, structural slabs, roof, interior boundary walls of units and load-bearing columns;

b. all conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services which may be contained in the unit but excluding therefrom appliances, office machinery and plumbing fixtures;

c. all incidental damage caused to a unit by such work as may be done or caused to be done by the Association in accordance herewith;

d. cause the building, appurtenances and grounds of the condominium to be maintained according to reasonably acceptable standards, including, but not limited to, lawn care, exterior cleaning, exterior painting, plumbing, carpentry, and such other normal maintenance and repair work as may be necessary;

e. make contracts for sewer, water, exterior lights, refuse collection, exterior electric service, vermin extermination, and other necessary services. Also, place orders for such equipment, tools, appliances, materials and supplies as are necessary to properly maintain the condominium;

f. cause to be placed and kept in force necessary insurance needed adequately to protect the Association, its members and mortgagees holding mortgages covering condominium parcels, as their respective interest may appear (or to require by law), including, but not limited to, public liability insurance, fire and extended coverage insurance, as is more particularly set forth in the Declaration of Condominium.

Funds for the payment of the above and foregoing shall be assessed against the unit owners as a common expense.

2. The Responsibility of Unit Owner. The responsibility of the unit owner shall be as follows:

a. to maintain, repair and replace at his expense, all portions of the unit, including but not limited to exterior door and all glass windows and doors associated with the unit;

b. to perform his responsibilities in such manner so as not unreasonably to disturb the rights or other persons occupying with the building;

c. not to paint or otherwise decorate or change the appearance

of any portion of the building not within the walls of the unit, unless the written consent of the Association is obtained.

d. to promptly report to the Association or its agent any defect or need for repairs or maintenance, the responsibility for the remedying of which is with the association.

e. not to make any alterations in the portions of the unit or the building which are to be maintained by the Association or remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety or soundness of the building without first obtaining the written consent of the Board of Directors of the Association and all first mortgagees of individual units, nor shall any unit owner impair any easement without first obtaining the written consents of the Association and of the unit owner or owners for whose benefit such easement exists.

3. Nothing herein contained, however, shall be construed so as to impose and contractual liability upon the Association for Maintenance, repair and replacement, but the Association's liability shall be limited to damages resulting from negligence.

#### ARTICLE XI

##### SECTION 1: Mortgagee and Voting Rights.

1. Every owner of a unit which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any unit which is subject to assessment. When more than one person holds an interest in any unit, all such persons shall be members. The vote for such unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any unit.

2. During the period of three (3) years from the date this Declaration is recorded the Declarant shall name the Board of Directors of the Association. This section shall not be subject to amendment during this term.

#### ARTICLE XII

##### SECTION 1: Mortgage Protection.

Unless two-thirds of the mortgagees (based upon one vote for each first mortgage owned), or owners (other than the Declarant) of the individual condominium units have given their prior written approval, the Association shall not be entitled to:

1. By act or omission, seek to abandon or terminate the



condominium project;

2. Change pro rate the interest or obligation of any individual condominium for the purpose of
  - a. levying assessments or changes or allocating distributions of hazard insurance proceeds or condemnation awards, or
  - b. determining the pro rata share of ownership of each condominium unit in the common areas.
3. Partition or subdivide any condominium unit;
4. By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common areas. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common areas by the condominium project shall not be deemed a transfer with the meaning of this clause.);
5. Use hazard insurance proceeds for losses to any condominium property (whether to the Units or common areas) for other than the repair, replacement or reconstruction of such condominium property, except as provided by statute, in cases of substantial loss to the units and/or common areas of the condominium project;
6. A first mortgagee, upon request, is entitled to written notification from the Association of any default in the performance by an individual unit owner of any obligation to the Association by the owner which is not cured within sixty (60) days. First mortgagees may jointly or singly pay taxes or other charges which are in default and which are or may become a charge against any of the common property and may pay overdue premium or hazard insurance policies or secure new hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy. First mortgagees making such payment shall be owed immediate reimbursement therefor from the Association.

#### ARTICLE XIII

##### SECTION 1: Administration.

The administration of the property, including but not limited to the acts required of the Association, shall be governed by the following provisions:

1. The Association shall be incorporated under the name Millcreek Cove Phase I Homeowners Association, as a non-profit corporation under the laws of the State of Utah.

2. The Bylaws of the Association shall be adopted pursuant to the Non-profit Corporation Code of the State of Utah.

3. The duties and powers of the Association shall be those set forth in this Declaration, the Articles of Incorporation and the Bylaws together with those reasonably implied to effect the purposes of the Association and this Declaration; provided, however, that if there are conflicts or inconsistencies between this Declaration or the Bylaws, the terms and provisions of this Declaration shall prevail and the unit owners covenant to vote in favor of such amendments in the Articles of Incorporation and/or Bylaws as will remove such conflicts or inconsistencies. The powers and duties of the Association shall be exercised in the manner provided by the Articles of Incorporation and the Bylaws and any duties or rights of the Association which are granted by or to be exercised in accordance with the provisions of this Declaration, shall be so exercised except that wherever this Declaration requires the act or approval of the Board of Directors of the Association, such act or approval must be that of the Board done or given in accordance with the Bylaws.

4. The association, by and through its Board of Directors is hereby vested with the power to delegate its powers, duties and authority granted by this Declaration by entering into a management contract with such persons or organizations or corporations, and upon such terms and conditions as the Board of Directors may elect. Subject, however, to the rights granted to Declarant in this Declaration.

#### ARTICLE XIV

##### SECTION 1: Compliance and Default.

Each unit owner shall be governed by and shall comply with the terms of the Condominium Documents and Regulations adopted pursuant thereto and said documents and regulations as they may be amended from time to time. A default shall entitle the Association or other unit owners to the following relief:

1. Legal Proceeding. Failure to comply with any of the terms of the Condominium Documents and regulations adopted pursuant thereto shall be ground for relief which may include, without intending to limit the same, to an action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, and which relief may be sought by the Association or if appropriate, by an aggrieved unit owner.

2. All unit owners shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect, or carelessness or by that of any employees, invitees, agents, or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any in-

crease in fire insurance rates occasioned by the use, misuse, occupancy or abandonment of any unit or its appurtenances. Nothing herein contained however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

3. Costs and attorneys fees. In any proceedings arising because of an alleged default by a unit owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be determined by the Court.

4. No Waiver of Rights. The failure of the Association or of a unit owner to enforce any right, provision, covenant or condition which may be granted by the Condominium Documents shall not constitute a waiver of the right of the Association or unit owner to enforce such right, provision, covenant or condition in the future.

5. All rights, remedies and privileges granted to the Association or a unit owner pursuant to any terms, provisions, covenants or conditions of the Condominium Documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such party by the Condominium Documents or at law or in equity.

#### ARTICLE XV

##### SECTION 1: Termination.

The Condominium shall be terminated, if at all, in the following manner:

1. Seventy-five percent (75%) of the unit owners may remove all of the Condominium or a portion thereof from the provisions of the Utah Condominium Ownership Act by an instrument to the effect, duly recorded in the Salt Lake County Recorder's Office, provided that the holders of all liens upon any of the units affected consent thereto by instruments duly recorded.

2. Destruction. If it is determined in the manner elsewhere provided that the property shall not be reconstructed after casualty, this condominium, including all units, shall be subject to partition at the suit of any unit owner. Such suit shall be subject to dismissal at any time prior to entry of an order to sell if an appropriate agreement to rebuild is filed. The net proceeds of a partition sale together with any common funds shall be divided proportion to the unit owners' respective undivided ownership in the common areas and facilities. Upon such sale, the condominium shall

be deemed removed from the provisions of the Utah Condominium Ownership Act.

3. The removal of the condominium from the provisions of the Utah Condominium Ownership Act shall not bar the subsequent resubmission of the land and buildings involved to the provisions of the act.

#### ARTICLE XVI

##### SECTION 1: Liens.

1. Protection of Property. All liens against a unit other than for mortgages, trust deeds, taxes or special assessments will be satisfied or otherwise removed within thirty (30) days from the date the lien attaches. All taxes and special assessments upon a unit shall be paid before becoming delinquent.

2. Notice of Lien. A unit owner shall give notice to the Association of every lien upon his unit other than for trust deeds, mortgages, taxes and special assessments within five (5) days after the attaching of the lien herein.

3. Notice of Suit. Unit owners shall give notice to the Association of every suit or other proceeding which will or may affect the title to his unit or any other part of the property, such notice to be given within five (5) days after the unit owner receives notice thereof.

4. Failure to Comply. Failure to comply with this Article concerning liens will not affect the validity of any judicial sale.

#### ARTICLE XVII

##### SECTION 1: Condemnation.

Should any part of the common property or units be condemned and an award given therefor, it shall be allocated as follows:

1. If any portion of the common areas and facilities are taken by eminent domain the award for it shall be allocated to the unit owners in proportion to their respective undivided interest in the common areas and facilities.

2. If any units are taken by eminent domain, the undivided interest in the common areas and facilities appertaining to these units shall thence forth appertain to the remaining units, being allocated to them in proportion to their respective undivided interest in the common areas and facilities.

3. Condemnation proceedings and the awards given therefor shall be governed by the provisions of Title 57-8-32.5 Utah Code Annotated, 1953.

ARTICLE XVIII

SECTION 1: Covenants Running with the Land.

All provisions of the Condominium Documents shall be construed to be covenants running with the land and with every part thereof and interest therein including but not limited to every unit and the appurtenances thereto; and every unit owner and claimant of the property or any part thereof or interest therein, and his heirs, executors, administrators, successors and assigns shall be bound by all of the provisions of the Condominium Documents.

ARTICLE XIX

SECTION: General Provisions.

1. Provisions Relating to Declarant.

a. Declarant may amend this Declaration without the vote of the membership during the term of three (3) years from the date this Declaration is recorded.

b. The Declarant specifically disclaims any intent to have made any warranty or representation in connection with the property or the Condominium Documents except as specifically set forth therein and no person shall rely upon any warranty or representation not so specifically made therein. Estimates of common expenses are deemed accurate, but no warranty or guaranty is made or intended, nor may one be relied upon.

c. In order to maintain high standards and to assure the proper development of the Condominium the Declarant hereby reserves for a period of three (3) years from the date of the recording of this Declaration the power to contract with persons, firms or corporations of the Association in regard to maintenance, repair, management and operation of the Association. The management costs and fees as may be contained in such management contract shall be common expenses.

2. Service of Process. The person to receive service of process in cases provided herein or in the Utah Condominium Act is:

Artistic Homes

The person so designated may be changed from time to time by the Association.

3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

4. Captions. Captions used in the Condominium Documents are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of Condominium Documents.

IN WITNESS WHEREOF, the undersigned Declarant, Artistic Homes, has executed this instrument this 14 day of Aug, 1981.

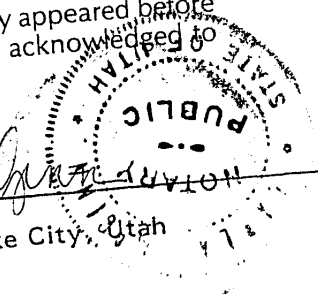
DECLARANT:

[Signature]  
ARTISTIC HOMES

STATE OF UTAH     )  
                              : ss  
County of Salt Lake )

On the 14<sup>th</sup> day of August, 1981, personally appeared before me, Artistic Homes, the signer of the foregoing instrument who acknowledged to me that she executed the same.

[Signature]  
NOTARY PUBLIC  
Residing at Salt Lake City, Utah



My commission expires:  
December 18, 1981