

3415049

DECLARATION AND BYLAWS

of

MILLCREEK VILLAGE CONDOMINIUM

A

Condominium Project Created  
Pursuant to the Utah Condominium  
Ownership Act

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DECLARATION

MILLCREEK VILLAGE CONDOMINIUM

THIS DECLARATION is made and executed by Ray Barton ("declarant"), pursuant to the provisions of the Utah Condominium Ownership Act, as amended, Utah Code Ann. (1953) 57-8-1 through 57-8-36 (Repl. vol. 1974), hereinafter referred to as the "act."

1. Recitals.

1.1 Declarant, and the persons joining in this declaration, are the sole owners of the real property and improvements ("property") located at approximately 3657 South 1300 East hereinafter more particularly described.

1.2 Declarant, by recording this declaration, intends that the provisions of the act shall apply to the property.

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

1.4 Declarant has filed simultaneously herewith a record of survey map ("map"), as required by section 57-8-13(1) of the act.

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

1.6 All terms used in this declaration and the appended by-laws shall have the same definition as the terms defined in the act, unless the act allows for a variation of the terms and such variation is contained herein.

1.7 The property shall be known as Millcreek Village Condominium.

2. Description of the Land.

The land on which the building and improvements are located is particularly described in Appendix C and on the map.

3. Description of the Buildings.

3.1 The project consists of 10 buildings, designated A through J. Each building contains 2 units.

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The map and Appendix A depicts which units are located in each designated building. Each building has water and sewer services which are supplied on a common basis. Each building is 2 stories in height with basement. The buildings are of a contemporary, colonial design and are constructed of wood with brick veneer. The buildings are more fully depicted on the map.

3.2 There are 20 units in the project.

4. Description of Units.

4.1 Appendix A hereto contains a table setting forth the number designation of each unit.

4.2 The units each have a fireplace with a gas log. The interior floors are of insulated wood design with carpets or other floor coverings. Each unit has connection to a master television antenna. Each unit is individually heated by gas and cooled with an electric evaporation unit. Separate meters for gas and electricity are supplied to each unit. The units are more particularly described in the map.

4.3 The boundary lines of each unit are the undecorated and/or unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floor, uppermost ceiling, exterior surfaces of windows, interior surfaces of doors, window frames and door frames and trim. Each unit shall include both the portions of the building that are not so encompassed. Without limitation, a unit shall include the window panes and screens as well as any finishing material applied or affixed to the interior surfaces of the interior walls, floors, and ceilings, nonsupporting interior walls and all utility pipes, lines, systems, fixtures, or appliances found within the boundary lines of the unit and servicing only that unit.

5. Description of Common Areas and Facilities.

The common areas and facilities shall mean and include: the land on which the building is located and all portions of the property not contained within any unit, including, but not by way of limitation: the foundations, columns, girders, beams, supports, main walls, roofs, stairs, grounds, gardens, uncovered parking areas, swimming pool, general uncovered boat or camper storage, installations of all central services, including water, and garbage collection; and in general all apparatus and installations existing for common use; all patios, courts and driveways; any utility pipes, lines or systems servicing more than a single unit and all ducts, flues, chutes, wires, conduits and other accessories and utility installations to the outlets used therewith; all limited common areas and facilities as hereinafter described; all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally common in use, or which have been designated as common areas and facilities in the map; and all repairs and replacements of any of the foregoing.

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The uncovered parking spaces shall be common areas and shall be assigned to individual units according to need buy the management committee. The management committee shall assign at least one such uncovered parking space to a unit if requested by the unit owners, but only if said unit owners have more than one automobile. Unassigned parking spaces shall be assigned to unit owners with more than two automobiles, or shall be available for parking on a first-come, first-served basis or for guest parking if owners request extra parking.

6. Description of Limited Common Areas and Facilities.

Limited common areas and facilities mean and include those portions of the common areas and facilities reserved for the use of certain units to the exclusion of other units. The limited common areas and facilities shall be the assigned covered parking spaces and the storage areas as set forth in the map and bearing the same number as the unit to which they were assigned, as well as all balconies and/or porches that are immediately adjacent to and contiguous with the units, as more particularly identified in the map. The use and occupancy of designated limited common areas and facilities shall be reserved to its associated unit and each unit owner is hereby granted an irrevocable license to use and occupy said limited common areas and facilities.

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

The percentage of undivided interest in the common areas and facilities appurtenant to each unit and its owner for all purposes, including voting, is set forth in Appendix A. Such percentages have been allocated proportionate to the par value of the units as assigned in Appendix A.

8. Purpose of the Property.

8.1 The purpose of the property is to provide residential housing, parking, and recreational facilities for unit owners, their respective families, tenants, guests, and servants.

8.2 The units and common areas and facilities shall be occupied and used as follows:

8.2.1. A unit owner shall not permit his unit to be occupied or used other than as a private residence for a single family, without the express approval of the management committee or its designee.

8.2.2. A unit owner shall not permit his parking space(s) to be used for any other purposes except to park a vehicle.

8.2.3. A unit owner shall not obstruct the common areas and facilities. A unit owner shall not place or store anything within the common areas and facilities without the prior written consent of the management committee or its designee except in the limited common areas and facilities appurtenant to his unit specifically designated or approved by the management committee for storage.

8.2.4. Without the prior written consent of the management committee or its designee, a unit owner shall not permit anything to be done or kept in his unit or in the limited common areas and facilities appurtenant to his unit that would result in an increase in the cost of insurance on the property, or that would result in the cancellation of insurance with respect to all or any part of the property, or that would be in violation of any governmental law, ordinance, or regulation.

8.2.5. Without prior written consent of the management committee or its designee, a unit owner shall not permit any sign of any kind to be displayed to the public view from his unit or from the limited common areas and facilities appurtenant to his unit.

8.2.6. A unit owner shall not permit any animals of any kind to be raised, bred, or kept in his unit or in the limited common areas and facilities appurtenant to his unit, except that the management committee may provide in its rules and regulations that dogs, cats, and other household pets may be kept in units subject to the rules and regulations adopted by the management committee.

8.2.7. A unit owner shall not permit any obnoxious or offensive activity or nuisance to be carried on in his unit or in the limited common areas and facilities appurtenant to his unit.

8.2.8. A unit owner shall not alter, construct in, or remove anything from the common areas and facilities, except with the prior written consent of the management committee or its designee.

8.2.9. A unit owner shall not violate any of the rules and regulations for the use of units, common areas, common areas and facilities, or limited common areas and facilities adopted by the management committee and furnished in writing to the unit owners.

#### 9. Agent for Service of Process.

9.1 The name and address of the person in Salt Lake County, State of Utah, appointed as first agent to receive service of process in matters pertaining to the property is: Ray Barton, 4772 South 7th East, Murray, Utah 84107.

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

10. Association of Unit Owners: Management Committee.

10.1. The persons or entities who are the unit owners constitute an unincorporated association, the characteristics and nature of which are determined by the act, the declaration, and the by-laws. The name in which contracts shall be entered into, title to property shall be acquired, held, dealt in and disposed of, bank accounts shall be opened and suits shall be brought and defended by the management committee or officers thereof on behalf of and agents for the unit owners in the manner specified by the act, this declaration, or the by-laws, is: Millcreek Village Condominium, an association of unit owners under the Utah Condominium Ownership Act."

10.2. The management and maintenance of the property and the business, property and affairs of the Millcreek Village Condominium ("association") shall be managed by a management committee, consisting of five (5) members, who shall be unit owners. The management committee shall be elected as provided in the by-laws. All agreements and determinations with respect to the property lawfully made or entered into by the management committee shall be binding upon all of the unit owners and their successors and assigns.

10.3. The management committee, on behalf of the association and as the association's agent, shall have all the powers, duties, and responsibilities as are now or may hereafter be provided by the act, this declaration and bylaws, including but not limited to the following:

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

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

10.3.3. To operate, maintain, repair, improve, and replace the common areas and facilities, including the entering into of agreements for the use and maintenance of the common areas and facilities and adjacent, contiguous property for the benefit of the association.

10.3.4. To determine and pay the common expenses.

10.3.5. To assess and collect the proportionate share of common expenses from the unit owners.

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

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

10.3.8. To purchase, hold, sell, convey, mortgage or lease any one or more units in the name of the association or its designee.

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10.3.9. To bring, prosecute and settle litigation for itself, the association and the property, provided that it shall make no settlement which results in a liability against the management committee, the association, or the property in excess of \$5,000 without prior approval of a majority of unit owners.

10.3.10. To obtain insurance for the association with respect to the units and the common areas and facilities, as well as workmen's compensation insurance.

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

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

10.3.13. To keep adequate books and records.

10.3.14. To do all other acts necessary for the operation and maintenance of the property, including the maintenance and repair of any unit if the same is necessary to protect or preserve the property.

10.4. The management committee, on behalf of the association, shall at all times employ professional management to manage the project. In the event the management committee decides to terminate professional management and assume self-management of the project, the prior written approval of each mortgagee must be obtained.

10.5. The management committee may delegate to a manager or managing company all of its foregoing powers, duties and responsibilities referred to in paragraph 10.3. above except: the final determination of common expenses, budgets and assessments based thereon; the promulgation of house rules and administrative rules and regulations; the power to enter into any contract involving more than \$5,000 in any one fiscal year; the opening of bank accounts; the power to purchase, hold, sell, convey, mortgage or lease any units in the name of the association or to bring, prosecute and settle litigation.

10.6. Members of the management committee, the officers and any assistant officers, agents and employees of the association (i) shall not be liable to the unit owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith; (ii) shall have no personal

liability in contract to a unit owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the association in their capacity as such; (iii) shall have no personal liability in tort to any unit owner or any person or entity direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, or acts performed for them in their capacity as such; and (iv) shall have no personal liability arising out of the use, misuse or condition of the property, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

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

11. Maintenance, Alteration and Improvement.

11.1. The maintenance, alteration, replacement and repair of all common areas and facilities, including but not limited to the limited common areas and facilities, shall be the responsibility of the management committee and the cost thereof shall be a common expense. All incidental damages caused to a unit by the maintenance, alteration, replacement and repair of the common areas and facilities shall be repaired promptly at the expense of the association.

11.2 The unit owners shall have the responsibility to maintain, repair, replace, and keep in a clean and sanitary condition, at the unit owner's expense, all portions of the owner's unit, including window panes and screens, except those portions to be maintained, altered, repaired and replaced by the management committee. The unit owners shall keep clean and in a sanitary condition their storage areas and balconies and patios, if any. The management committee shall be responsible for cleaning and general maintenance of all parking areas.

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11.3. The management committee or manager shall have the irrevocable right to have access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the common areas and facilities or for making emergency repairs necessary to prevent damage to the common areas and facilities or to another unit or units. Each unit occupant shall deposit a key to the unit with the management committee or manager to be used for emergency access to the unit.

12. Insurance.

12.1. The management committee, on behalf and in the name of the association, shall at all times maintain adequate insurance on the property. All such insurance shall, at a minimum, be of the following amounts, type and kind with the following provisions, endorsements, requirements and/or coverage:

12.1.1. A multi-peril policy covering the entire condominium project shall be maintained providing as a minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost).

12.1.2. If there is a steam boiler in operation in connection with the property, there must be in force boiler insurance evidenced by the standard form of boiler and machinery policy and providing as a minimum, fifty-thousand dollars (\$50,000) per accident per location.

12.1.3. If the condominium project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket" policy of flood insurance on the condominium project must be maintained in the amount of the aggregate of the outstanding principal balances of the mortgage loans on the units comprising the condominium project or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less.

12.1.4. The association must have fidelity coverage against dishonest acts on the part of the members of the management committee, officers, managers, employees, agents or volunteers responsible for handling funds belonging to or administered by the association. The fidelity bond or insurance must name the association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

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12.1.5. A comprehensive policy of public liability insurance covering all of the common areas and facilities, commercial spaces, if any, and public ways in the condominium project must be maintained. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a unit owner because of the negligent acts of the association or other unit owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use. Coverage shall be for at least \$1,000,000 per occurrence, for personal injury and/or property damage.

12.2. The named insured under each required policy must be stated as follows: Millcreek Village Association for the use and benefit of the individual unit owners of the Millcreek Village Condominium."

12.3. Each required insurance policy must contain the standard mortgage clause commonly accepted by private institutional mortgage investors in the Salt Lake County area which must: (i) be endorsed to provide that any proceeds shall be paid to the Millcreek Village Association for the use and benefit of mortgagees as their interests may appear; and (ii) must provide that the insurance carrier shall notify the first mortgagee (or beneficiary) named at least ten (10) days in advance of the effective date of any reduction in or cancellation of any policy.

12.4. Each hazard insurance policy must be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class VI or better. Hazard insurance policies are also acceptable from an insurance carrier which has a financial rating by Best's Insurance Reports of Class V, provided it has a general policy holder's rating of at least A. Each carrier must be specifically licensed or authorized by law to transact business within the state of Utah. Policies are unacceptable where (i) under the terms of the carrier's charter, by-laws or policy, contributions or assessments may be made against a unit owner, a borrower, or any first mortgagee (including the Federal Home Loan Mortgage Corporation); (ii) by the terms of the carrier's charter, by-laws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which would prevent a first mortgagee (including Federal Home Loan Mortgage Corporation) or a unit owner or borrower from collecting insurance proceeds.

12.5. The provisions of paragraphs 10.6 and 10.7 of this declaration shall not apply if the insurance required by this paragraph 12 could not otherwise be obtained.

12.6 The provisions of this paragraph 12 may not be amended without the prior written consent of all mortgagees as hereinafter defined.

13. Destruction or Damage.

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

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

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

13.4. The management committee shall timely notify in writing each mortgagee of a unit whenever damage to a unit exceeds \$1,000 or damage to the common areas and facilities exceeds \$10,000.

14. Termination.

14.1. In the event three-fourths (3/4) of the property is destroyed or substantially damaged and if the unit owners vote not to reconstruct the property, the property shall be removed from the provisions of the act without further agreement one hundred and one (101) days after such destruction or damage.

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

14.3. After removal of the property from the act, the unit owners shall own the property and all assets of the association as tenants in common and the respective mortgagees and lienors shall have mortgages and liens upon the respective undivided interests of the unit owners. Such undivided interests of the unit owners shall be the same as the percentage of undivided interest in the common areas and facilities appurtenant to the owners' units prior to removal from the act.

14.4. This paragraph 14 cannot be amended without consent of all unit owners and first mortgagees.

15. Eminent Domain.

15.1. Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the common areas and facilities or one or more units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation (all of which shall be defined as "eminent domain"), the management committee, each unit owner, and every holder of all liens affecting the units, shall be entitled to timely written notice thereof and the management committee shall and the unit owners at their respective expense may participate in the proceedings incident thereto.

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15.2. The procedures governing the allocation of awards by reason of eminent domain shall be determined in accordance with Section 57-8-32.5 of the act; provided, that the priority of any mortgagees lien shall remain undisturbed.

16. Mortgage Protection.

16.1. As used in this declaration and by-laws:

16.1.1. The term "mortgage" shall mean any recorded mortgage or deed of trust.

16.1.2. The term "mortgagee" shall mean the owner or holder of a mortgage and shall include the beneficiary under a deed of trust.

16.1.3. The term "first mortgage" shall mean a mortgage or deed of trust having priority on all other mortgages or deeds of trust, if any.

16.1.4. The term "first mortgagee" shall mean the owner or holder of a first mortgage and shall include the Federal Home Loan Mortgage Corporation or its servicer.

16.2. The management committee shall maintain a roster of unit owners from the evidence of change of ownership furnished to the management committee, which roster shall include the mailing addresses of the unit owners. If the management committee has been given notice and the necessary information, it shall maintain a "mortgagee" roster which shall contain the name and address of each first mortgagee of a unit. Each notice shall contain a certified copy of the recorded mortgage or assignment of mortgage if the mortgage has been assigned to another holder. The first mortgagee shall be stricken from the mortgagee roster upon the receipt by the management committee of a request from the first mortgagee to remove it from the roster or upon the receipt of a record release or satisfaction of mortgage. Notice of such removal shall be given to the first mortgagee unless the request for removal was at the request of the first mortgagee.

16.3. Should this declaration or related documents be amended to include a "right of first refusal," said right of first refusal shall not impair the rights of a first mortgagee to: (i) foreclose or take title to a condominium unit pursuant to the remedies provided in the mortgage, or (ii) accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or (iii) interfere with a subsequent sale or lease of a unit by the mortgagee.

16.4. Any first mortgagee (or purchaser from such mortgagee) who obtains title to a condominium unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage or deed (or assignment) in lieu of foreclosure, will take the unit free and clear of liens arising from and will not be liable for such unit's unpaid dues, charges or assessments relating to common expenses or other assessments which accrue prior to the acquisition of title to such unit by the first mortgagee.

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16.5. Any first mortgagee shall have the right to examine the books and records of the association during normal business hours and shall be entitled to receive copies of annual reports and other financial data within ninety (90) days following the end of any fiscal year and shall be entitled to receive notice of all meetings of the association and may designate a representative to attend all such meetings.

16.6. Unless all of the first mortgagees of the individual condominium units have given their prior written approval, the association shall not be entitled to:

16.6.1. By act or omission, seek to abandon or terminate the condominium project.

16.6.2. Change the pro rata interest or obligations of any individual condominium unit for the purpose of: (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each condominium unit in the common areas and facilities.

16.6.3. Partition or subdivide any condominium unit.

16.6.4. By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common areas and facilities. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common areas and facilities by the condominium project shall not be deemed to be a transfer within the meaning of this clause.)

16.6.5. Use hazard insurance proceeds for losses to any condominium property (whether to units or to common areas and facilities) for other than the repair, replacement or reconstruction of such condominium project, except as provided by the act for the substantial loss to the units and/or common areas and facilities of the condominium project.

16.7. The provisions of this declaration or the by-laws notwithstanding, no unit owner or any other party shall have priority over any rights of the first mortgagee of the condominium unit pursuant to its mortgages in the case of a distribution to such unit owner of insurance proceeds or condemnation awards or losses or to a taking of condominium units and/or common areas and facilities.

16.8. Assessments for common expenses, dues or charges shall include an adequate reserve fund for maintenance and repairs of the common areas and facilities and replacement of those common areas and facilities that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special assessments.

16.9. A first mortgagee, upon request, will be entitled to written notification from the association, of any default in the

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performance by the individual unit owner of any obligation under this declaration or by-laws which is not cured within sixty (60) days.

16.10. The association shall notify (and shall agree to prepare a letter wherein it agrees to notify) each first mortgagee, including the Federal Home Loan Mortgage Corporation ("FHLMC"), c/o the servicer of FHLMC at said servicer's address, whenever: (i) damage to a unit covered in whole or in part by a mortgage (including a mortgage purchased in whole or in part by FHLMC) exceeds \$1,000, or (ii) damage to the common areas and facilities exceeds \$10,000.

16.11. Any agreement for professional management of the condominium project, or any contract providing for services of the developer, sponsor or builder, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

16.12. This paragraph 16 shall not be amended without the prior written approval of all first mortgagees.

16.13. In the event of a conflict between the provisions of this paragraph 16 and provisions contained in other portions of this declaration or in the by-laws, the provisions of this paragraph 16 shall govern.

17. Encroachments.

17.1. None of the rights and obligations of any unit owners created by this declaration, by-laws, or by any deed conveying a unit shall be affected in any way by an encroachment; (i) by any portion of the common areas and facilities upon any unit; (ii) by any unit upon any portion of the common areas and facilities, or (iii) by any unit upon another unit due to settling or shifting of the building or other structure, including the rebuilding of the building and other structure after fire or other casualty or an eminent domain taking or delivery of a deed in lieu of condemnation, unless there occurs an encroachment that results from the willful or negligent act or omission of the unit owner of the encroaching unit, or of the owners of the units to which the use of the encroaching limited common areas and facilities is appurtenant, or of the management committee in the event of an encroachment by any portion of the common areas and facilities other than the limited common areas and facilities.

17.2. There are hereby created valid easements for the maintenance of any encroachments permitted by this paragraph 17 of this declaration so long as such encroachments exist.

18. Conveyances, Easements.

18.1. Every deed, lease, mortgage, or other instrument may describe a unit by its identifying number and letter designation set

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forth in Appendix A and in the map. Every such description shall be deemed good and sufficient for all purposes and shall be deemed to convey, transfer, encumber or otherwise affect the unit owner's corresponding percentage of undivided ownership in the common areas and facilities, as a tenant-in-common, as set forth in Appendix A even though the same is not exactly mentioned or described.

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

18.2.1. Except and reserve with respect to a unit: (i) easements through said unit, appurtenant to the common areas and facilities and all other units, for support and repair of the common areas and facilities and all other units; and (ii) easements, appurtenant to the common areas and facilities, for encroachment upon the air space of said unit by those portions of the common areas and facilities located within said unit.

18.2.2. Include with respect to a unit nonexclusive easements for ingress and support of said unit through the common areas and facilities, for the repair of said unit through all other units and through the common areas and facilities, and for the use of the balcony, patio, storage area and parking spaces as indicated in Appendix A and the map.

18.2.3. Except and reserve, with respect to the undivided percentage interest in the common areas and facilities, nonexclusive easements appurtenant to all units for ingress, egress, support, and repair and exclusive easements appurtenant to each unit for the use of the balcony, patio, storage area and parking spaces as set forth in Appendix A and the map.

18.2.4. Include, with respect to the undivided percentage interest in the common areas and facilities, nonexclusive easements through each unit for support and repair of the common areas and facilities and nonexclusive easements for encroachments upon the air space of all of the units by and for the portions of the common areas and facilities lying within the units.

19. Amendment.

19.1. Except as otherwise provided in this declaration and except as prohibited by the act, the provisions of this declaration may be amended by an instrument in writing signed and acknowledged by unit owners and their respective mortgagees, if any, who represent three-fourths (3/4) in the aggregate of ownership interest in the common areas and facilities, which amendment shall be effective upon recording.

19.2. Within one year from the recording date hereof, Declarant reserves the right to amend the declaration if required by the Federal Home Loan Mortgage Corporation or by some other governmental agency or lending institution, provided that such amendment does not materially affect the rights of unit owners or first mortgagees.

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20. Assessments.

The making and collection of assessments from unit owners for their share of common expenses shall be pursuant to the by-laws and subject to the following provisions:

20.1. Each owner shall be liable for a proportionate share of the common expenses and shall share in the common profits, such shares being the same as the percentage of undivided interest in the common areas and facilities appurtenant to the unit owned by the unit owner as set forth in Appendix A. Assessments for common expenses with respect to each unit shall commence upon the conveyance of the first unit by declarant.

20.2. Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall bear interest at the rate of ten percent (10%) per annum, or at such rate of interest as may be set by the management committee, from the date when due until paid. All payments on account shall be first applied to interest and then to the assessment payment first due.

20.3. If any unit owner shall fail to refuse to make any payment of assessments for common expenses when due, the amount thereof shall constitute a lien against the interest of the unit owner in accordance with the provisions of the act. Said lien for unpaid assessments shall also secure reasonable attorneys' fees and all costs and expenses including taxes, if any, incurred by the management committee incident to the collection of such assessment or enforcement of such lien. Upon the recording of the notice of the lien for unpaid common expense assessments by the management committee or its designee, said lien shall have priority over all other liens or encumbrances, recorded or unrecorded, except (i) tax and special assessment liens in favor of any assessing unit or special district, and (ii) encumbrances on the interest of the unit owner, including first mortgages, recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

20.4. In any foreclosure of a lien for assessments, the unit owner subject to the lien shall be required to pay a reasonable rental for the unit, and the management committee shall be entitled to the appointment of a receiver to collect the same upon the entry of the decree of foreclosure.

20.5. In assessing the unit owners for improvements to the common areas and facilities, for which there are not sufficient amounts in the reserve accounts established for such purposes, there shall be no single improvement exceeding the sum of Fifteen Thousand Dollars (\$15,000) made by the management committee without the same having been first voted on and approved by two-thirds (2/3) majority of those present in person or by proxy of the association at a meeting duly called for that purpose. The foregoing shall not apply in connection with damage or destruction referred to in paragraph 13

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hereof or to such structural alterations, additions to or improvements of the common areas and facilities as are necessary in the management committee's reasonable judgment to preserve or maintain the integrity of the common areas and facilities of the property.

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

21. Voting.

At any meeting of the Association of Unit Owners, each unit owner, including declarant, either in person or by proxy, shall be entitled to the same number of votes as the percentage of undivided interest of the common areas and facilities assigned to his unit in Appendix A to this declaration. If there is more than one unit owner with respect to a particular unit, any or all of such unit owners may attend any meeting of the association, but it shall be necessary for all such unit owners present to act unanimously in order to cast the votes pertaining to their unit.

22. Notices.

Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to be delivered twenty-four (24) hours after a copy of the same has been deposited in the U.S. postal service, postage prepaid, return receipt requested. Notice to unit owners shall be addressed to each unit owner at the address given by such unit owner to the management committee for the purpose of service of such notice or to the unit of such unit owner if no such address has been given to the management committee. Such address may be changed from time to time by notice in writing to the management committee. Notice to the management committee shall be addressed to: Management Committee, Millcreek Village Condominium.

23. No Waiver.

The failure of the management committee or its contractors to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions, or restrictions of this declaration or the by-laws, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment, for the future, of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the management committee or its contractor

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assessment from a unit owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the management committee of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the management committee.

24. Enforcement.

Each unit owner shall strictly comply with the provisions of the declaration, the by-laws, the house rules and administrative rules and regulations and decisions issued pursuant thereto. Failure to so comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the management committee or its designee on behalf of the unit owners, or in an appropriate case, by an aggrieved unit owner.

25. Declarant's Use.

Declarant and persons he may select from time to time shall have the right of ingress and egress over, upon and across the common areas and facilities and limited common areas and facilities and the right to store materials therein and to make such other use thereof as may be reasonably necessary incident to the refurbishing, development, management, and sale of all of the units.

26. Severability.

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

27. Captions.

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

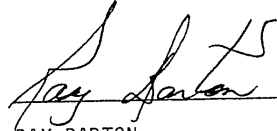
28. Law Controlling.

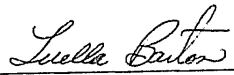
This declaration, the map and the by-laws shall be construed and controlled by and under the laws of the State of Utah. Also, in the event of a conflict between the provisions of this declaration and the by-laws, the provisions of the declaration shall govern.

29. Effective Date.

This declaration shall take effect when recorded.

IN WITNESS WHEREOF, the undersigned has executed this instrument  
this 21st day of March 1980.


  
\_\_\_\_\_  
RAY BARTON

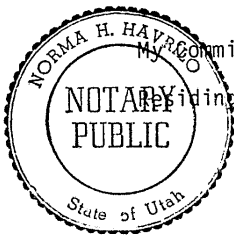
  
\_\_\_\_\_  
LUELLA BARTON, his wife

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

On the 21st day of March, 1980 A.D., personally  
appeared before me Ray Barton and Luella Barton, his wife, who, being  
by me duly sworn, did say, that they executed the foregoing declara-  
tion.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal  
the day and year first above written.

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



My Commission expires: May 22, 1981  
Residing at: Salt Lake City, Utah

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CONSENT TO RECORDING OF CONDOMINIUM DOCUMENTATION

The undersigned, being a trustee and beneficiary under a deed of trust encumbering that certain property located in Salt Lake County, Utah, and being submitted to the jurisdiction of the Utah Condominium Ownership Act by the foregoing Declaration (Millcreek Village Condominium), hereby consents to the recording of such Declaration, together with its attendant By-laws and Record of Survey Map: provided, however, that in giving such consent, the undersigned shall neither be deemed to be a declarant under such documentation nor a developer of said property.

DESERET FEDERAL SAVINGS  
AND LOAN ASSOCIATION

BY: Rodger E. Brown  
Position: Vice-President

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

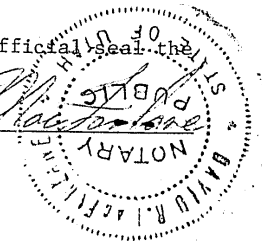
On the 24th day of March, 1980, A.D., personally appeared before me Rodger E. Brown, who, being by me duly sworn, did say, that he was the Vice President of DESERET FEDERAL SAVINGS AND LOAN ASSOCIATION, and that said instrument was signed in behalf of said corporation by resolution of its board of directors and said Rodger E. Brown, acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

David R. [Signature]  
Notary Public

My Commission Expires: August 26, 1981

Residing at: Salt Lake City, Utah



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APPENDIX A

<u>Building No.</u>	<u>Unit No.</u>	<u>Par Value Points</u>	<u>Percentage of Undivided Interest in the Common Areas and Facilities</u>
A	1	5,800	5.000
A	2	5,800	5.000
B	3	5,800	5.000
B	4	5,800	5.000
C	5	5,800	5.000
C	6	5,800	5.000
D	7	5,800	5.000
D	8	5,800	5.000
E	9	5,800	5.000
E	10	5,800	5.000
F	11	5,800	5.000
F	12	5,800	5.000
G	13	5,800	5.000
G	14	5,800	5.000
H	15	5,800	5.000
H	16	5,800	5.000
I	17	5,800	5.000
I	18	5,800	5.000
J	19	5,800	5.000
J	20	5,800	5.000



APPENDIX B

BY-LAWS

MILLCREEK VILLAGE CONDOMINIUM

An Association of Unit Owners Under the  
Utah Condominium Ownership Act

The administration is the Millcreek Village Condominium (the "property") and the Millcreek Village Condominium ("association") shall be governed by these by-laws, by the Utah Condominium Ownership Act, Utah Code Ann. (1953) 57-8-1 through 57-8-36 (Repl. vol. 1974), as amended, (the "act") and by the declaration.

1. Application of By-laws.

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

2. Management Committee.

2.1. The administration of the property on behalf of the association shall be conducted by a management committee of five natural individuals.

2.2. Beginning with the first annual meeting and at every annual meeting thereafter, the association shall elect the members of the management committee for the forthcoming year. At least thirty (30) days prior to any annual meeting of the association, the management committee shall elect from the unit owners a nominating committee of not less than three (3) members (none of whom shall be members of the then management committee) who shall recommend to the annual meeting one nominee for each position on the management committee to be filled at that particular annual meeting. The nominating committee shall notify the unit owners of their selections at least fifteen (15) days prior to the annual meeting of the association. Nominations for

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positions on the management committee may also be made by petition filed with the secretary of the association at least seven (7) days prior to the annual meeting of the association, which petition shall be signed by ten (10) or more unit owners and signed by the nominee named therein indicating his willingness to serve as a member of the management committee, if elected. Members of the management committee shall be unit owners, and must be natural individuals and residents of the State of Utah.

2.3 Members of the management committee shall serve for a term of two (2) years; provided, however, that two members of the management committee elected at the first annual meeting shall serve for an initial term of one (1) year and the three other members shall serve for an initial term of one (1) year and the three other members shall serve for initial terms of two (2) years. Thereafter, all management committee members elected shall serve for a two-year term. The terms of no more than three members will end each year. The members of the management committee shall serve until their respective successors are elected, or until their death, resignation or removal. Any member of the management committee who fails to attend three consecutive management committee meetings or fails to attend at least 25% of the management committee meetings held during any calendar year shall forfeit his membership on the management committee.

2.4. Any member of the management committee may resign at any time by giving written notice to the president of the association, or the remaining management committee members. Any member of the management committee may be removed from membership on the management committee by a two-thirds majority vote of the association. Whenever there shall occur a vacancy on the management committee due to death, resignation, removal or any other cause, the remaining members shall elect a successor member to serve until the next annual meeting of the association, at which time said vacancy shall be filled by the association for the unexpired term, if any.

2.5 The members of the management committee shall receive no compensation for their services unless expressly approved by a majority of the association; provided, however, that any member of the management committee may be employed by the association in another capacity and receive compensation for such employment.

2.6. The management committee, for the benefit of the property and the association, shall manage the business, property and affairs of the property and the association and enforce the provisions of the declaration, these by-laws, the house rules and the administrative rules and regulations governing the property. The management committee shall have the powers, duties and responsibilities with respect to the property as contained in the act, the declaration and these by-laws.

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

2.8. Special meetings of the management committee may be called by the president or by any two management committee members.

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

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

2.11. Until a date three (3) years from the recording of the declaration, or until units to which three-fourths (3/4) of the undivided interest in the common areas and facilities appertain have been conveyed, whichever occurs first, the declarant, or some other person or persons selected or to be selected by declarant, may appoint and remove four (4) members of the management committee and all officers of the association, or at declarant's option, may exercise the powers and responsibilities otherwise assigned by the declaration, these by-laws, and the act to the association. The first annual meeting of the association shall be held within 120 days of the happening of the first event described in the preceding sentence, at which time the association shall elect the members of the management committee.

2.12. After the election of the members of the management committee at the first annual meeting of the association, declarant shall execute, acknowledge and record an affidavit stating the names of the members of the newly elected management committee. Thereafter,

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

2.13. The fiscal year shall be determined by the management committee.

3. Meetings of the Association.

3.1. The presence in person or by proxy at any meeting of the association of fifty percent (50%) of the unit owners in response to notice of all unit owners (according to the roster maintained by the management committee as required in paragraph 16 of the declaration) properly given shall constitute a quorum. In the event that fifty percent (50%) of the unit owners are not present in person or by proxy, the meeting shall be adjourned for twenty-four (24) hours, at which time it shall reconvene and any number of unit owners present at such subsequent meeting shall constitute a quorum. Unless otherwise expressly provided in the declaration, any action may be taken at any meeting of the unit owners upon a majority vote of the unit owners who are present in person or by proxy and two are voting.

3.2. There shall be an annual meeting of the association on the second Thursday of May at 7:00 p.m. at the property or at such other reasonable place or time (not more than sixty (60) days before or after such date) as may be designated by written notice by the management committee delivered to the unit owners not less than fifteen (15) days prior to the date fixed for said meeting. At or prior to an annual meeting, the management committee shall furnish to the unit owners: (i) a budget for the coming fiscal year that shall itemize the estimated common expenses of the coming fiscal year with the estimated allocation thereof to each unit owner; and (ii) an audited statement of the common expenses itemizing receipts and disbursements for the previous and current fiscal year, together with the allocation thereof to each unit owner. Within ten (10) days after the annual meeting, that budget statement shall be delivered to the unit owners who were not present at the annual meeting.

3.3. Special meetings of the association may be held at any time at the property or at such other reasonable place to consider matters which, by the terms of the declaration, require the approval of all or some of the unit owners, or for any other reasonable purpose. Special meetings shall be called by written notice, signed by a majority of the management committee, or by unit owners representing at least one-third (1/3) in interest of the undivided ownership of the common areas and facilities and delivered to all unit owners not less than fifteen (15) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting, and the matters to be considered.

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3.4. Robert's Rules of Order (latest edition) shall govern the conduct of the association's meeting when not in conflict with the declaration or these by-laws.

4. Officers.

4.1. All officers and employees of the association shall serve at the will of the management committee. The officers shall be a president, secretary and treasurer. The management committee may appoint such other assistant officers as the management committee may deem necessary. All officers shall be required to be members of the management committee. No officer shall receive compensation for serving as such. Officers shall be annually elected by the management committee and may be removed and replaced by the management committee.

4.2. The president shall be the chief executive of the management committee and shall preside at all meetings of the unit owners and of the management committee and may exercise the powers ordinarily allowable to the presiding officer of an association, including the appointment of committees. The president shall exercise general supervision over the property and its affairs. He shall sign on behalf of the association all conveyances, mortgages and contracts of material importance to its business. He shall do and perform all acts which the management committee may require.

4.3. The secretary shall keep minutes of all proceedings of the management committee and of the meetings of the association and shall keep such books and records as may be necessary and appropriate for the records of the unit owners and the management committee. In the absence or inability of the president, the secretary shall perform the functions of the president.

4.4. The treasurer shall be responsible for the fiscal affairs of the association, but may delegate the daily handling of funds and the keeping of records to a manager or managing company.

5. Common Expenses; Assessments.

5.1. All assessments shall be made in accordance with the general provisions of paragraph 20 of the declaration.

5.2. Within thirty (30) days prior to the annual meeting of the association, the management committee shall estimate the common expenses and reserve requirements for the following year. (Until the first annual meeting of the association, declarant or the management committee selected by declarant or the designee of declarant, shall prepare annual estimated common expenses and reserve requirements.) The estimated reserves may include such amounts as the management committee may deem proper for general working capital, for the general operating reserve, for a reserve fund for replacements and major maintenance and shall take into account any expected income, surplus or deficit in the common expenses for any prior year. These estimated

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reserves and common expenses shall be presented at the annual meeting and thereafter shall be assessed on a monthly basis to the unit owners in proportion to their percentage of undivided interest in the common areas and facilities as set forth in the declaration. If the estimated common expenses prove inadequate for any reason, including nonpayment of any unit owner's assessments, the management committee may, by resolution duly adopted, make additional assessments, which shall be assessed to the unit owners in the same manner as the estimated common expenses. Each unit owner shall be obligated to pay to the management committee assessments made pursuant to this paragraph on or before the first day of each month, or in such other reasonable manner as the management committee shall designate. The funds received by the management committee from assessments shall be kept in either reserve accounts or in the common expense fund and shall be expended by the management committee only in accordance with the provisions of the act, the declaration and the by-laws.

5.3. Every determination, by the management committee with respect to common expenses and common expenditures necessary to maintain the property, that is made within the bounds of the act, the declaration, and these by-laws, shall be final and conclusive as to the unit owners and shall be deemed necessary and properly made for such purposes.

5.4. The rights, duties and functions of the management committee set forth in this paragraph shall be exercised by declarant until thirty (30) days after the first annual meeting of the association.

5.5. The failure by the management committee before the expiration of any year, to estimate the common expenses as required herein, shall not be deemed a waiver or modification in any respect of the provisions of the declaration or these by-laws or a release of the unit owner from the obligation to pay any past or future assessments, and the estimated common expenses fixed for the previous and current year shall continue until a new estimate is fixed.

5.6. Amendments to this paragraph 5 shall be effective only upon unanimous written consent of the unit owners and their mortgages.

5.7. No unit owner may exempt himself from liability for common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his unit.

5.8. The treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the common areas and facilities, specifying and itemizing the maintenance, repair and replacement expenses of the common areas and facilities and any other expenses incurred. Such record shall be available for examination by the unit owners during regular business hours. In accordance with the actions of the management committee assessing common expenses against the units and unit owners, the treasurer shall keep an accurate record of such assessments and of the payments thereof by each unit owner.

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5.9. All common expense assessments shall be a separate, distinct and personal liability of the owner of the unit at the time each assessment is made. The management committee shall have the rights and remedies contained in the act and in the declaration to enforce the collection of assessments for common expenses.

5.10. Any person who shall have entered into a written agreement to purchase a unit shall be entitled to obtain a written statement from the treasurer setting forth the amount of unpaid assessments charged against the unit and its owners, and if such statement does not reveal the full amount of the unpaid assessments as of the date it is rendered, neither the purchaser nor the unit shall be liable for the payment of an amount in excess of the unpaid assessments shown thereon, provided that the former unit owner grantor shall remain so liable. Any such excess which cannot be promptly collected from the former unit owner grantor shall be reassessed by the management committee as a common expense to be collected from all unit owners, including without limitation the purchaser of the unit, his successors and assigns. The new unit owner shall and the former unit owner shall not be liable for any assessments made after the date of transfer of title to a unit, even though the common expenses for the expenses incurred or the advances made by the management committee for which the assessment is made relate in whole or in part to any period prior to that date.

5.11. In the event that title to a unit is transferred at sheriff's sale pursuant to execution upon any lien against the unit, the management committee shall give notice in writing to the sheriff of any unpaid assessments for common expenses which are a lien against the unit, and for any expenses of or advances by the management committee which have not theretofore been reduced to a lien, which shall be paid out of the proceeds of the sale prior to the distribution of any balance to the former unit owner against whom the execution was issued. The purchaser at such sheriff's sale and the unit involved shall not be liable for unpaid assessments for common expenses and for any expense of or advances by the management committee which became due prior to the sheriff's sale of the unit. Any such unpaid assessments which cannot be promptly collected from the former unit owner shall be reassessed by the management committee as a common expense to be collected from all of the unit owners, including the purchaser who acquired title at the sheriff's sale, his successors and assigns. To protect its rights to collect unpaid assessments for common expenses which are a lien against a unit, and for any expenses of and advances by the management committee, the management committee may on behalf of all the unit owners, purchase the unit at sheriff's sale, provided such action is authorized by the affirmative vote of a majority of the members of the management committee.

5.12. In addition to the statements issuable to purchasers of units, the management committee shall provide a current statement of unpaid assessments for common expenses and for any expenses of and advances by the management committee in respect of the unit, to the

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unit owner, to any person who shall have entered into a binding agreement to purchase the unit and to any mortgagee on request at reasonable intervals.

5.13. In all cases where, all or part of any assessments for common expenses and for any expenses of and advances by the management committee cannot be promptly collected from the persons or entities liable therefor under the act, declaration or by-laws, the management committee shall reassess the same as a common expense, without prejudice to its rights of collection against such persons or entities.

6. Litigation.

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

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

7. Abatement and Enjoinment of Violations by Unit Owners.

The violation of any house rules or administrative rules or regulations adopted by the management committee or the breach of any provision contained herein, or the breach of any provision of the declaration, shall give the management committee the right, in addition to any other rights set forth in these by-laws:

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



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

8. Accounting.

8.1. The books and accounts of the association shall be kept in accordance with generally accepted accounting procedures under the direction of the treasurer.

8.2. At the close of each fiscal year, the books and records of the management committee shall be audited by a certified public accountant approved by the association.

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

9. Special Committees.

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

10. Amendment of By-laws.

These by-laws may be amended by a two-thirds (2/3) affirmative vote of the association at a meeting duly called for such purpose. Upon such an affirmative vote, the management committee shall acknowledge the amended by-laws, setting forth the fact of the required affirmative vote of the unit owners and the amendment shall be effective upon recording.

11. Severability.

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

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12. Captions.

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

13. Effective Date.

These by-laws shall take effect upon recording of the declaration of which they are a part.

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APPENDIX C

Beginning at a point which is N 0° 18'43" E 344.00 feet and N 89°48'00" E 7.00 feet from the Southwest corner of lot 4, block 23, ten acre plat "A", Big Field Survey, said point lies on the East right-of-way line of 1300 East street and running thence N 0°18'43" E along said right-of-way line 311.44 feet; thence N 86°12'00" E 110.64 feet to the center of a canal; thence South along the center line of said canal the following three courses; S 31°10'38" E 171.90 feet; S 31°41'00" E 82.54 feet; S 36°12'30" E 124.37 feet; thence S 89° 48'00" W 317.90 feet to the point of beginning. Contains 1.52 acres.

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KATHLEEN  
RECORDS  
SALT LAKE COUNTY  
UTAH

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