

AFTER RECORDING PLEASE RETURN TO:

John K. M. Olsen, Esq.
Attorney at Law
Bonneville Bank Building, Suite 200
1675 North Freedom Boulevard
Provo, UT 84604

ENT 60820 BK 3036 PG 119
NINA B. REID UTAH CO RECORDER BY MB
1992 NOV 10 1:28 PM FEE 31.00
RECORDED FOR ROWLEY LAND TITLE COMPANY

DECLARATION OF CONDOMINIUM
OF
MILLRACE TOWNHOUSE CONDOMINIUMS
[An Expandable Condominium Project]

THIS DECLARATION is made as of this 23rd day of September, 1992, by SLC DEVELOPMENT, L.C., a Utah limited liability company ("Declarant"), pursuant to the provisions of Sections 57-8-1 et suite of the Utah Code, as amended, known as the Condominium Ownership Act (the "Act").

RECITALS:

- A. Declarant is the record owner of that certain Tract of land, more particularly described in Article II hereof.
- B. Declarant has constructed, or is in the process of constructing, upon said Tract the Condominium Project, including certain Units and other improvements in accordance with the plans and drawings reflected in the Record of Survey Map.
- C. Declarant desires, by filing this Declaration and the Record of Survey Map, to submit said Tract and all improvements constructed thereon to the provisions of the Act as a Condominium Project to be known as "MILLRACE TOWNHOUSE CONDOMINIUMS".
- D. Declarant intends to sell to various purchasers fee title to the individual Units contained in the Project, together with an undivided percentage interest in and to the Common Areas and Facilities appurtenant to such Units, subject to the covenants, conditions, restrictions, limitations, and easements herein set forth.

NOW, THEREFORE, for the foregoing purposes, Declarant hereby declares as follows:

ARTICLE I

DEFINITIONS

When used in this Declaration (including that portion hereof captioned "Recitals") each of the following terms used shall have the meaning indicated. Any term used herein which is defined by the Act shall, to the extent permitted by the context hereof, have the meaning ascribed by the Act.

1.01 Act shall mean and refer to the Condominium Ownership Act, Title 57, Chapter 8, *Utah Code* (1953), as the same may be amended from time to time, including any successor statutory provisions thereof.

1.02 Association of Unit Owners or the Association shall mean and refer to the Unit Owners acting as a group in accordance with this Declaration and the Act.

1.03 Building shall mean and refer to a structure containing Units and comprising a part of the Project.

1.04 Bylaws shall mean and refer to the Bylaws of the Association as set forth and embodied herein.

1.05 Common Areas or Common Areas and Facilities shall mean, refer to and include:

(a) The real property and interests in real property which this Declaration submits to the provisions of the Act, including the entirety of the Tract and all landscaping, sidewalks, walkways, parking areas, private drives or roadways located thereon, and exterior Building surfaces (but excluding all Condominium Units);

(b) Those Common Areas and Facilities and Limited Common Areas and Facilities specifically set forth and designated as such on the Map;

(c) All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management, including any central services such as power, water, gas and light; and

(d) All Common Areas and Facilities and all Limited Common Areas and Facilities as defined in the Act, whether or not expressly listed herein or on the Map.

1.06 Common Expenses shall mean and refer to all items and sums described in the Act which are lawfully assessed against the Unit Owners in accordance with the provisions of the Act, this Declaration and such rules, regulations and other determinations and agreements pertaining to the Condominium Project as the Management Committee or the Association may from time to time adopt.

1.07 Condominium Project or Project shall mean and refer to **MILLRACE TOWNHOUSE CONDOMINIUMS** as the same shall exist from time to time.

1.08 Condominium Unit or Unit shall mean and refer to one of the residential living units in the Project intended for independent use as defined in the Act, together with the undivided interest in and to the Common Areas and Facilities appertaining to that Unit, and shall include anything located within or without said Unit but designated and designed to serve only that Unit, such as decks, appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, but specifically excluding the exterior surfaces of Buildings and Units. Fixtures and the like shall also be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim consisting of, among other things and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits, or other public utility lines or installation constituting part of a particular Unit or serving only that Unit, and any structural members of any other property of any kind, including fixtures and appliances within any Unit which are not removable without jeopardizing the soundness, safety or usefulness of the remainder of the Building within which the Unit is situated, shall be considered part of the Unit.

1.09 Declaration shall mean and refer to this Declaration as the same may hereafter be supplemented or amended in accordance with law and the provisions hereof. Any ambiguities, omissions, and/or conflicts herein shall be construed to comply with the provisions of the Act.

1.10 Expansion Land shall mean and refer to that real property, together with all improvements constructed thereon, situated in the City of Provo, County and State of Utah, more particularly described in Exhibit A, attached hereto and incorporated herein by this reference. A description of the Expansion Land is set forth in this Declaration solely for purposes of identification and this Declaration is not deemed to constitute a lien, encumbrance or restriction upon all or any portion of the Expansion Land unless and until the same is added to the Project in accordance with law and the provisions of Article II hereof.

1.11 Limited Common Areas and Facilities or Limited Common Areas shall mean and refer to those Common Areas designated in this Declaration or the Act or shown on the Map as reserved for the exclusive use of a certain Unit or Units to the exclusion of other Units.

1.12 Management Committee or Committee shall mean and refer to the Committee as provided in this Declaration charged with and having the responsibility and authority to administer the Project and to make and to enforce reasonable rules and regulations covering the operation and maintenance thereof.

1.13 Member shall mean and refer to an Owner as a member of the Association.

1.14 Millrace Mall Amended Declaration shall mean and refer to that certain Amended Declaration of Protective Covenants, Agreements and Restrictions, The Millrace Mall, recorded in the office of the Utah County Recorder on August 20, 1992, in Book 2986, Page 738, Entry No. 42895 (as the same may have heretofore been amended or supplemented) containing provisions pertaining to the Entire Tract as well as certain real property adjacent thereto governing common interests of the Entire Tract and such other property including matters of ingress, egress, parking, and maintenance assessments.

1.15 Millrace Property Owners Association shall mean and refer to the association of property owners as set forth and described in the Millrace Mall Amended Declaration.

1.16 Mortgage shall mean and include both a recorded first mortgage on one or more Condominium Units and a recorded first deed of trust on one or more Condominium Units.

1.17 Mortgagee shall mean and include both a mortgagee and a beneficiary under a recorded Mortgage as defined in Section 1.16, above.

1.18 Record of Survey Map, Survey Map or Map shall mean and refer to the Record of Survey Map filed concurrently herewith entitled "Millrace Townhouse Condominiums, Phase I, Provo City, Utah County, Utah", executed and acknowledged by Declarant, consisting of two (2) sheets prepared by Roger D. Dudley, a duly registered Utah Land Surveyor holding Certificate No. 3553, as said Map may hereafter be modified, supplemented, or amended in accordance with law and the provisions hereof.

1.19 Tract or Entire Tract shall mean and refer to the real property described in Section 2.01, which Article II of this Declaration submits to the Act, together with any other land annexed into the Project as provided in this Declaration.

1.20 Unit Number shall mean and refer to the number, letter or combination thereof which designates a Unit on the Map.

1.21 Unit Owner or Owner shall mean and refer to the person or persons owning a fee simple interest in a Condominium Unit. The Declarant shall be deemed to be the Owner of all completed but unsold Units. In the event a Unit is the subject of an executory contract of sale, the buyer shall, unless the seller and the buyer have otherwise agreed and have informed the Committee in writing of such agreement, be considered the Unit Owner for all purposes.

ARTICLE II

SUBMISSION OF THE PROJECT AND ANNEXATION

2.01 Submission, Description, and Reservations. Declarant hereby submits to the provisions of the Act the following described real property situated in the City of Provo, County and State of Utah:

Commencing North 00° 47' 00" West along the Section line 669.22 feet and West 1436.95 feet from the Southeast corner of Section 25, Township 6 South, Range 2 East, Salt Lake Base and Meridian (Bases of Bearings is the Utah State Coordinate System, Central Zone); thence North 88° 07' 00" West 158.18 feet; thence North 01° 53' 00" East 86.50 feet; thence South 88° 07' 00" East 158.78 feet; thence South 02° 22' 19" West 76.78 feet; thence South 01° 32' 33" West 9.72 feet to the point of beginning. Area = 0.31 Acres

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

RESERVING UNTO DECLARANT, however such easements and rights of ingress and egress over, across, through, and under the above-described Tract and any improvements (other than Buildings) now or hereafter constructed thereon as may be reasonably necessary for Declarant: (i) to construct and complete each of the Buildings and all of the other improvements described in this Declaration or in the Survey Map recorded concurrently herewith, and to do all things reasonably necessary or proper in connection therewith; (ii) to construct and complete on the Expansion Land or any portion thereof such improvements as Declarant shall determine to build in its sole discretion (and whether or not the Expansion Land or any portion thereof has been or hereafter will be added to the Development); and (iii) to improve portions of the said property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the above-described Tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire twenty (20) years after the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, Utah.

ALL OF THE FOREGOING IS SUBJECT TO all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, without limitation, the Millrace Mall Amended Declaration to the extent set forth therein and any Mortgage (and nothing in this paragraph shall be deemed to modify or amend such Mortgage); all visible easements and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on or revealed by the Survey Map or otherwise

existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described Tract at such time as construction of all Project improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities; AND TO EACH OF THE COVENANTS, EASEMENTS, CONDITIONS, AND RESTRICTIONS CONTAINED IN THIS DECLARATION AND, TO THE EXTENT APPLICABLE, IN THE MILLRACE MALL AMENDED DECLARATION.

2.02 Division into Condominium Units, Minimum and Maximum Ownership Interests. The Project is hereby divided into five (5) Condominium Units as set forth on the Map, each such Condominium Unit consisting of a Unit and an appurtenant undivided but equal interest in and to the Common Areas and Facilities. Such Units comprise the minimum number of Units in the Project and give each Owner a maximum of twenty (20) percent undivided interest in the Common Areas and Facilities. If all of the Expansion Land is annexed into the Project pursuant Sections 2.03 and 2.04, the maximum number of Units in the Project will be thirty (30) and each Unit Owner will have a minimum of three and one-third percent (3-1/3 %) undivided interest in the Common Areas and Facilities.

2.03 Annexation by Declarant. Declarant may, from time to time, expand the Project subject to this Declaration by the annexation of all or part of the lands constituting the Expansion Land. Subject to compliance with the conditions imposed by the following Section 2.04, the annexation of any such land shall become effective upon the concurrent recordation in the office of the County Recorder of Utah County, Utah, of a Map of such Expansion Land or portion thereof signed by the owner thereof and of a Supplemental Declaration which (a) is signed by the then owner(s) of such Expansion Land as Declarant; (b) describes the land to be annexed; (c) declares that the annexed land is to be held, transferred, sold, conveyed, and occupied as part of the Tract subject to this Declaration; and (d) sets forth such additional limitations, restrictions, easements, covenants and conditions, not inconsistent with those of this Declaration, as are applicable to the annexed land, including any adjustments in the appurtenant undivided interests pertaining to new Condominium Units resulting from the annexation of such Expansion Land into the Project. When any such annexation becomes effective, the annexed land shall become part of the Tract and the Project and subject to the provisions of this Declaration and any amendment or supplement thereto.

2.04 Limitation on Annexation. Declarant's right to annex Expansion Land into the Project shall be subject to the following limitations:

- (a) The annexed land must be part of the Expansion Land set forth and described herein;
- (b) Declarant shall not effectuate any annexation of land which would cause the total number of Units existing in the Project to exceed thirty (30);
- (c) The holder of each mortgage, deed of trust or other security device affecting any part of the Expansion Land being annexed into the Project must subordinate, through appropriate instruments recorded in Utah County, Utah, the encumbrance held by such holder to the Supplemental Declaration and to the Map to which such Supplemental Declaration relates;
- (d) The Expansion Land added to the Project must be subdivided into Condominium Units and Common Areas designed to be used for purposes similar to those contemplated by this Declaration; provided, however, that in each succeeding phase of the Project the architectural style of the Units within such phase shall not vary from that of Units in prior phases but must remain consistent throughout such succeeding phases and be in harmony with that of prior phases; and
- (e) Declarant's right to annex land to the Project shall expire seven (7) years after this Declaration is filed for record in the office of the County Recorder of Utah County, Utah.

2.05 No Obligation to Annex or Develop. Declarant has no obligation hereunder to annex any Expansion Land to the Project or to develop or preserve any portion of Expansion Land in any particular way or according to any particular time schedule. No land other than the Tract, as defined on the date hereof, and land annexed thereto in accordance with the terms of this Article, shall be deemed to be subject to this Declaration, whether or not shown on any Map filed by Declarant or described or referred to in any documents executed or recorded by Declarant, including Exhibit A to this Declaration.

2.06 Other Annexation. Anything herein to the contrary notwithstanding, to the extent that Declarant does not now or in the future may not own all of the Expansion Land, the then owners of such Expansion Land or parts thereof ("Adjoining Owners") may annex all or any part of the Expansion Land to the Project and subject the same to the terms of this Declaration, provided that (a) the same limitations which are imposed on Declarant under Section 2.04 of this Article II shall be applicable to Adjoining Owners; and (b) Adjoining Owners make the recordations and comply with all the other requirements referred to in Section 2.03 of this Article II.

ARTICLE III

IMPROVEMENTS

3.01 Improvements. The improvements included in the Project are now or will be located on the Tract and all of such improvements are described on the Map, including the number of Units which are to be contained in the Buildings which comprise a part of such improvements, the dimensions of the Units, and other significant facts relating to such Buildings, Units and to the Common Areas and Facilities.

3.02 Description of Buildings and Units. Initially there is one (1) Building containing five (5) Units. Each Unit has two (2) levels of living area and a basement carport and storage area. The construction will consist of brick and siding. The Common Areas will consist of private driveways, parking areas, sidewalks and landscaped area throughout the Project. Two-car carports and a storage area are located in the basement level under each Unit. Each Unit is basically of the same size (approximately 1436 sq. ft. exclusive of basement carport but including storage areas) with limited floor plan options.

3.03 Description and Legal Status of Units. The Map shows the Unit Number of each Unit, its location and dimensions from which its areas may be determined, the Limited Common Areas, if any, which are reserved for its use, and the Common Areas of the Project. Each Unit shall be legally designated and described by a Unit Number.

3.04 Common and Limited Common Areas. The Common Areas contained in the Project are described and identified in Article I hereof and on the Map. Neither the ownership of undivided interests in and to the Common Areas nor the right of exclusive use of a Limited Common Area shall be separated from the Unit to which they appertain, and even though not specifically mentioned in the instrument of conveyance, such percentage of undivided interest and such right of exclusive use shall automatically accompany the conveyance of the Unit to which they relate.

3.05 Conveyance Description of a Unit. Each conveyance or contract for the sale of a Unit and every other instrument affecting title to a Unit may describe that Unit by the Unit Number shown on the Map with the appropriate reference to the Map and to this Declaration, as each shall appear on the records of the County Recorder of Utah County, Utah, and in substantially the following form:

Unit ____ contained within MILLRACE TOWNHOUSE CONDOMINIUMS as the same is identified in the Record of Survey Map therefor recorded in Utah County, Utah as Entry

No. _____ (as said Record of Survey Map may have heretofore been amended or supplemented) and in the Declaration of Condominium of Millrace Townhouse Condominiums recorded in Utah County, Utah; as Entry No. _____ in Book _____, Page _____ (as said Declaration may have heretofore been amended or supplemented), TOGETHER WITH the undivided ownership interest in and to the Common Areas and Facilities which is appurtenant to said Unit as more particularly described in said Declaration (as said Declaration may have heretofore been amended or supplemented).

Such description will be construed to describe the Unit, together with an equal undivided ownership interest in and to the Common Areas and Facilities as the same are established and identified in the Declaration and on the Map, and to incorporate all the rights incident to ownership of a Unit and all the limitations of such ownership as described in this Declaration. Each such conveyance shall be subject to all of the provisions of this Declaration.

ARTICLE IV

NATURE AND INCIDENTS OF OWNERSHIP

4.01 Holding Title. Title to a Unit shall be in fee simple and may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State of Utah, including, but without limitation, joint tenancy or tenancy in common. An Owner's right to sell or otherwise convey title to such Owner's Unit shall not be subject to any right of first refusal or similar restrictions in favor of Declarant or the Association.

4.02 No Separation. No part of a Unit, nor any part of the legal rights comprising ownership of a Unit, may be separated from any other part thereof during the period of condominium ownership described herein, so that each Unit, the undivided interest in and to the Common Areas appurtenant to such Unit, and the exclusive right to use and occupy the Limited Common Areas appurtenant to each Unit, shall always be conveyed, devised, encumbered, and otherwise effected only together and may never be separated from one another. Every gift, devise, bequest, transfer, encumbrance or other disposition of a Unit or any part thereof, shall constitute a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law or by this Declaration.

4.03 Membership in Association. Every Unit Owner shall be a Member of the Association of Unit Owners. Membership in the Association shall be mandatory, shall be appurtenant to, and shall not be separated from the Unit to which it appertains.

4.04 Undivided Interest in Common Areas. Each Unit Owner shall have, for each Unit owned, an equal, undivided ownership interest in and to the Common Areas.

4.05 No Partition. The Common Areas and Facilities shall be owned in common by all the Owners of Units and no Unit Owner may bring action for partition thereof.

4.06 Use of Common Areas and Limited Common Areas. Subject to the limitations contained in this Declaration, each Unit Owner shall have the non-exclusive right to use and enjoy the Common Areas and shall have the exclusive right to use and enjoy the Limited Common Areas designated herein or on the Map or inferred by the Act which appertain to his Unit.

4.07 Duty of Owner to Pay Taxes on Unit Owned. It is understood that under the Act each Unit (and its percentage of undivided interest in and to the Common Areas) in the Project is subject to separate

assessment and taxation of each taxing authority and special district which has such jurisdiction over the Project for all types of taxes and assessments authorized by law, and that as a result thereof no taxes will be assessed or levied against the Project as such. Accordingly, each Unit Owner will pay and discharge any and all taxes and assessments which may be assessed against such Owner relative to his Condominium Unit.

4.08 Duty to Pay Association Assessments. Each Unit Owner is obligated to pay and discharge all assessments and charges levied by the Association as set forth herein.

4.09 Unit Maintenance. Each Owner shall at his own cost and expense maintain, repair, paint, re-paint, tile, paper or otherwise finish and decorate the interior walls and trim the interior surfaces of the walls, ceilings, floors, and windows and doors forming the boundaries of his Unit and all walls, ceilings, floors, windows and doors within such boundaries. In addition to decorating and keeping the interior of his Unit in good repair and in a clean and sanitary condition, he shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heater, heating equipment, air conditioner, lighting fixtures, refrigerator, dishwasher, disposal equipment, range, or other appliances or fixtures that may be in, or connected with his Unit.

4.10 Maintenance of Limited Common Areas. Each Owner shall keep the Limited Common Areas designed for use in connection with his Unit in a clean, sanitary and attractive condition at all times.

ARTICLE V

EASEMENTS

5.01 Encroachment. If any part of the Common Areas encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance for the same, shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit or Units, an easement for such encroachment and for maintenance shall and does exist. Such encroachments shall not be considered to be encumbrances either in the Common Areas or the Units. Encroachments referred to herein include, but are limited to, encroachments caused by error in the original construction of the Buildings on the Tract, by error in the Map, by settling, raising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

5.02 Repair of Common Areas. If any of the Common Areas are or may be located within any of the Units or may be conveniently accessible only through the Units, the Owners of the other Units shall have the irrevocable right, to be exercised by the Committee as their agent, to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas or another Unit or Units. The Committee shall also have such rights independent of the agency relationship. Damage to the interior of any part of the Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs within another Unit at the instance of the Committee or of Unit Owners, shall be an expense of all the Unit Owners and assessed proportionately; provided, that if such damage is the result of negligence of the Owner of the Unit, then such Owner shall be financially responsible for all such damage. Amounts owing by Owners pursuant hereto shall be collected by the Committee by assessment pursuant to this Declaration.

5.03 Management Committee. The Management Committee shall have non-exclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

5.04 Utility Services. There is hereby created a blanket easement upon, across, over and under the Tract for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to, water, sewer, gas, telephone, electricity, and other utility services.

5.05 Right of Ingress, Egress, and Support. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his Unit, and to any Limited Common Area designated for use in connection with his Unit, and each Owner shall have the right to the horizontal, vertical and lateral support of his and any adjoining Unit, and such rights shall be appurtenant to and pass with the title to each Unit. In addition, each Owner shall have through the Association such rights of ingress and egress over, upon and across property adjacent to the Project as are granted pursuant to the provisions of the Millrace Mall Amended Declaration.

ARTICLE VI

RESTRICTIONS

6.01 Residential Use. The Tract is zoned R-4 (High Multiple Residential, PD) pursuant to Provo City Ordinance Chapters 14.13 and 14.31. Each Unit and Unit Owner are subject to the uses and restrictions imposed thereby.

6.02 Leasing. A Unit Owner may lease his Unit for an initial term of not less than six (6) months evidenced by a writing executed by the Owner and the lessee/tenant and containing a specific statement that such is subject to the provisions of this Declaration. No Owner shall lease less than his entire Unit; provided, however, that "housing contracts" entered into with not more than four (4) tenants per Unit shall be permitted.

6.03 Restrictions Concerning Common Areas. There shall be no obstructions of the Common Areas by the Owners, their tenants, guests or invitees without the prior written consent of the Management Committee. The Management Committee may by rules and regulations prohibit or limit the use of the Common Areas and Facilities as may be reasonably necessary for protecting the interests of all the Owners or protecting the Units or the Common Areas. Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Management Committee, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Areas except upon consent of the Management Committee.

6.04 Miscellaneous Restrictions. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would result in the cancellation of the insurance of the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof over what the Management Committee, but for such activity, would pay, without the prior written consent of the Management Committee. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Management Committee and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees; provided, however, that any invitee of the Declarant shall not, under any circumstances, be deemed to be an invitee of any other Owner. No noxious, destructive or offensive

activity shall be carried on in any Unit or in the Common Areas or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project.

6.05 Animals. No livestock or poultry of any kind shall be raised, bred, or kept in any Unit or in the Common Areas, except that household pets may be kept in Units, subject to strict observance of rules and regulations adopted by the Management Committee.

6.06 No Violation of Rules and Regulations. No Owner shall violate the rules and regulations for the use of the Units and the Common Areas as adopted from time to time by the Management Committee.

6.07 Restrictions on Alterations. No structural alterations to any Unit shall be made by any Owner without the prior written consent of the Management Committee.

6.08 Declarant's Right to Sell Units. Notwithstanding anything contained herein to the contrary, until the Declarant has completed and sold all of the Units, the Unit Owners who have purchased Units from the Declarant shall not interfere with the completion of the contemplated improvements and sale of the remaining Units. The Declarant may make such use of the unsold Units and the Common Areas as may facilitate such completion and sale, including but not limited to, the maintenance of a sales office, the showing of the Units, and the display of signs.

6.09 Signs. No signs or other advertising shall be displayed which are visible from the exterior of any Unit or on the Common Areas, including "For Sale" signs, except in conformity with the rules and regulations promulgated by the Management Committee.

6.10 Parking. The parking of recreational vehicles or boats or other than operational passenger vehicles within the Project is prohibited unless approved in writing by the Management Committee.

ARTICLE VII

INSURANCE

7.01 Insurance and Bonds. The Management Committee shall secure or caused to be secured and maintained at all times the following insurance and bond coverage with respect to the Project:

(a) A policy or policies of fire and casualty insurance with extended coverage endorsement, for the full insurable replacement value of the entire Project. Such policy or policies shall be made payable to the Committee and all persons holding an interest in the Project or any of the Units, as their interests may appear.

(b) An appropriate fidelity bond coverage for any person or entity handling funds of the Management Committee, including, but not limited to, employees of a professional manager, if any, the amount of such coverage to be not less than the estimated maximum of funds, including reserves, in the custody of such person or entity at any given time during the bond term, all as determined by the Management Committee, but in no event less than a sum equal to three months' aggregate assessments on all Units, plus reserve funds.

(c) A policy or policies insuring the Committee, the Manager, and the Unit Owners against any liability incident to the ownership, use or operation of the Project, or of any Unit, which may arise among themselves, to the public, and to any invitees or tenants of the Project or of the

Unit Owners. Limits of liability under such insurance shall not be less than \$300,000.00 for any person injured, \$1,000,000.00 for all persons injured in any one accident, and \$1,000,000.00 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced.

7.02 Additional Insurance Provisions. The following additional provisions shall apply with respect to such insurance:

(a) In addition to the insurance described above, the Committee shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with condominium projects similar to the Project in construction, nature and use.

(b) The Committee shall have the authority to adjust losses.

(c) Insurance secured and maintained by the Committee shall not be brought into contribution with insurance held by the individual Unit Owners or their Mortgagees.

(d) Each policy of insurance obtained by the Committee shall, if possible, provide: A waiver of the insurer's subrogation rights with respect to the Committee, the Manager, the Unit Owners, and their respective servants, agents, and guests; that it cannot be canceled, suspended, or invalidated due to the conduct of any member, officer, or employee of the Committee or of the Manager without prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Unit Owners.

(e) Any Unit Owner may obtain additional insurance at his own expense, so long as such additional insurance does not have the effect of decreasing the amount which may be realized under any policy maintained by the Committee. Any Unit Owner who individually obtains insurance covering any portion of the Project (other than for Unit contents) shall supply the Committee with a copy of his policy within thirty (30) days after he acquires such insurance.

(f) Notwithstanding anything herein contained to the contrary, insurance coverages must be in such amounts and meet other requirements of the Federal National Mortgage Association and the Department of Veterans Affairs.

ARTICLE VIII

DAMAGE, DESTRUCTION AND RESTORATION

In the event of damage to or destruction of part or all of the improvements in the Condominium Project, the following procedures shall apply:

(a) If proceeds of the insurance maintained by the Management Committee are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out as quickly as possible.

(b) If less than seventy-five percent (75%) of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Committee are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out, and, upon

approval of at least 50 percent of the affected Unit Owners all affected Owners shall be assessed equally for any deficiency.

(c) If seventy-five percent (75%) or more of the Project's improvements are destroyed or substantially damaged, and if proceeds of insurance maintained by the Management Committee are not alone sufficient to accomplish restoration, and if the Unit Owners within one hundred (100) days after the destruction or damage by a vote of at least seventy-five percent (75%) elect to repair or reconstruct the affected improvements, restoration and assessment therefor shall be accomplished in the manner directed under subsection (b), above.

(d) If seventy-five percent (75%) or more of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Committee are insufficient to accomplish restoration, and if the Unit Owners do not, within one hundred (100) days after the destruction or damage and by a vote of at least seventy-five percent (75%), elect to repair or reconstruct the affected improvements, the Management Committee shall promptly record with the Utah County Recorder a notice setting forth such facts. Upon the recording of such notice, the provisions of Section 57-8-31 (1) through (4) of the Act shall apply and govern the rights of all parties having an interest in the Project or any of the Units.

(e) Any reconstruction or repair which is required to be carried out by this Article shall be accomplished at the instance and direction of the Management Committee. Any determination which is required to be made by this Article regarding the extent of the damage to or destruction of Project improvements, shall be made by three qualified appraisers selected by the Management Committee. The decision of any two such appraisers shall be conclusive.

ARTICLE IX

MORTGAGES AND MORTGAGEE PROTECTION

9.01 Notice of Mortgage. Any Owner who mortgages his Unit shall furnish the Committee the name and address for such Mortgagee, and the Committee shall maintain such information in a book entitled "Mortgages of Units." The Committee shall report to such Mortgagee any unpaid assessments due from the Owner of such Unit at the same time as the Committee makes demand on the Owner thereof for payment of such assessment. Each Mortgagee shall also be entitled to written notification from the Committee of any other default by its Owner-Mortgagor in the performance of such Owner's obligations under the term and provisions of this Declaration which shall not have been cured within thirty (30) days after written notice to such Owner-Mortgagor by the Committee specifying such default.

9.02 Right to Examine. A Mortgagee shall have the right to examine the books and records of the Association and Committee upon request and to require annual reports of the financial status of the Association.

9.03 Notice of Damage. In the event of substantial damage to or destruction of any Unit or any part of the Common Areas, the Mortgagee of any Unit shall be entitled to timely written notice of any such damage or destruction. No Owner or other party shall be entitled to priority over such Mortgagee with respect to the distribution to such Unit of any insurance proceeds.

9.04 Notice of Default. Any Mortgagee is entitled to written notification from the Management Committee of any default by the Owner of such Unit in the performance of any obligation under the Declaration which is not cured within thirty (30) days.

9.05 Effect of Foreclosure on Liens. Each Mortgagee of a Unit who comes into possession of such Unit by virtue of foreclosure of the Mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any unpaid claims or assessments and charges against the Unit which accrued prior to the time such holder comes into possession of the Unit, except for claims for a pro-rata share of such assessments or charges resulting from a pro-rata reallocation of such assessments or charges to all Units in the Project, including the mortgaged Unit.

9.06 General Mortgagee Protection. Unless at least seventy-five percent (75%) of the Mortgagees (based on one vote for each Mortgage owned) of Units have given their prior written approval, neither the Management Committee nor the Association of Unit Owners shall:

- (a) By act or omission, seek to abandon or terminate the Project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;
- (b) Change the pro-rata interest or obligations of any Unit for (i) purposes of 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 Unit in the Common Areas;
- (c) Make any material amendment to the Declaration or to the Bylaws of the Association including but not limited to, any amendment which would change the percentage interest of the Unit Owners in the Common Areas;
- (d) By act or omission, seek to amend, 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 of the Project shall not be deemed a transfer within the meaning of this Section; or
- (e) Use hazard insurance proceeds for losses to any Project property (whether to Units or to the Common Areas) for other than the repair, replacement or reconstruction of such improvements, except as provided by the Act in cases of substantial loss to the Units and/or the Common Areas of the Project.

PURSUANT TO SECTION 57-8-15 OF THE ACT, THE ASSOCIATION'S BYLAWS ARE HEREBY EMBODIED IN THIS DECLARATION AS ARTICLES X, XI AND XII. THE GENERAL PROVISIONS OF ARTICLE XIII OF THIS DECLARATION SHALL BE APPLICABLE TO BOTH THE DECLARATION AND BYLAWS PROVISIONS, AS THE CASE MAY BE.

ARTICLE X

BYLAWS **MANAGEMENT COMMITTEE**

10.01 Status and General Authority. Except as otherwise herein provided, the Condominium Project shall be managed, operated, and maintained by the Management Committee as agent for the Unit Owners. The Committee shall, in connection with its exercise of any of the powers hereinafter provided, constitute a legal entity capable of dealing in the Committee's name. The Management Committee shall have, and is hereby granted, the following authority and powers:

(a) The authority without the vote or consent of the Unit Owners or of any other person, except for Mortgagees if required by the terms of their Mortgage, to grant or create on such reasonable terms as it deems advisable, utility and similar easements over, under, across, and through the Common Areas and Facilities;

(b) The authority to execute and record, on behalf of all Unit Owners, any amendments to the Declaration or the Map which have been approved by the vote or consent of Unit Owners necessary to authorize such amendments as set forth in Section 13.03 of this Declaration;

(c) The power to sue and be sued;

(d) The authority to enter into contracts relating to the Common Areas and other matters over which it has jurisdiction, so long as any vote or consent of the Unit Owners necessitated by the subject matter of the agreement has been obtained;

(e) The power and authority to convey or transfer any interest in real property, so long as the vote or consent necessary under the circumstances has been obtained, including that of any Mortgagee if required by the terms of its Mortgage;

(f) The power and authority to purchase, or otherwise acquire, and accept title to, any interest in real property so long as such action has been authorized by any vote or consent which is necessary under the circumstances;

(g) The authority to promulgate such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Committee in carrying out its functions or to insure that the Project is maintained and used in a manner consistent with the interests of the Unit Owners; and

(h) The power and authority to perform any other acts and to enter into any other transactions, subject to the rights of the Management Committee, which may be reasonably necessary for the Management Committee to perform its functions as agent for the Unit Owners. Any instrument executed by the Management Committee relating to the Common Areas of the Project that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

10.02 Composition of Committee: Declarant Control. Until the happening of the first of the following two events, The Management Committee shall be composed of three (3) members, who need not be Owners, selected solely by Declarant:

(a) The expiration of one hundred twenty (120) days following the conveyance of title to Units representing seventy five percent (75%) of the total outstanding Association votes; or

(b) The expiration of three (3) years after the first conveyance of title to any Unit purchaser.

Provided, however, that Declarant may waive such right, in whole or in part at any time prior to the occurrence of either or both of the aforesaid events by (i) notifying Unit Owners in writing of such waiver, and (ii) filing for record in the Office of the Utah County Recorder a written notice of waiver of such right, whereupon Unit Owners shall promptly hold a meeting to elect a new Management Committee, it being established hereby that the control of the Unit Owners in the Management Committee shall automatically vest thirty (30) days following the date such waiver is recorded by Declarant. In the event a Committee seat

which was filled by an appointee of or by Declarant becomes vacant, Declarant has the right to select a replacement member to sit on the Committee for the balance of the term associated with the vacated seat. In all other cases of vacancy the remaining Committee members shall elect a replacement to sit on the Committee until the expiration of the term for which the member being replaced was elected. The Management Committee may be expanded up to seven (7) members at such time as Declarant or the Unit Owners deem the same to be warranted depending upon the annexation and development of the Expansion Land.

10.03 Management Committee: Composition, Election, Vacancies. Subject to the provisions of Section 10.02, above, the Committee shall be composed of three (3) members, one to be elected to a three-year term, one to a two-year term and one to a one-year term. As members' terms expire, new members shall be elected for three-year terms. Members shall serve on the Committee until their successors are elected. Committee members must be Owners or officers, directors, agents or employees of non-individual Owners. Vacancies in the Committee membership may be filled by appointment by the remaining members or member of the Committee and said appointees shall serve until the next annual meeting when their successor shall be elected for the unexpired term of the member they were appointed to replace. The Management Committee may be expanded up to seven (7) Members at such time as the Unit Owners deem the same to be warranted depending upon the annexation and development of the Expansion Land.

10.04 Rights and Duties. The Management Committee, subject to the rights and duties of the Unit Owners, this Declaration, and the Bylaws, shall be responsible for the general management and administration of the Project. It is understood that the Committee has the obligation to maintain the Common Areas. However, and notwithstanding anything contained herein to the contrary, in the event of the failure or refusal of the Committee to maintain all the Common Areas of this Project, as contemplated in this Declaration, then the Unit Owners shall maintain the same.

10.05 Exterior Maintenance. In connection with its duty to maintain Common Areas, the Committee will provide maintenance upon the exterior of each Building and Unit, fencing, carports, and the Common Area as follows: Paint, repair, replace, and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, driveways, parking areas and other exterior improvements except glass surfaces.

10.06 Right of Delegation to Manager. The Management Committee may carry out any of its functions which are capable of delegation through a Manager. The Manager so engaged shall be responsible for managing the Common Areas and shall, to the extent permitted by law and the terms of the agreement with the Management Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself. Any such management agreement shall be terminable for cause upon thirty (30) days notice and may run for a reasonable period of from one (1) to three (3) years, renewable by consent of the Association and the Committee. A management agreement negotiated by Declarant shall not exceed two (2) years' duration.

10.07 Payment for Services, Etc. The Management Committee may obtain and pay for the services of such personnel as the Management Committee shall determine to be necessary or desirable for the proper operation of its function in the Project, including the enforcement of this Declaration. The Committee may also hire other persons to furnish snow removal, ground maintenance and other common services to the Project.

10.08 Personal Property Ownership and Use. The Management Committee may acquire and hold for the use and the benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interests in and to the Common Areas and transferable only with the transfer of a Unit.

10.09 Rules and Regulations. The Management Committee may make reasonable rules and regulations governing the operation and use of the Common Areas and of other matters over which it has jurisdiction, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Management Committee may suspend any Owner's voting rights at any meeting of Unit Owners or for periods during which such Owner fails to comply with such rules and regulations, or with any other obligations under this Declaration. The Management Committee may also take judicial action against any Owner to enforce compliance with such rules and regulations or other obligations or to obtain damages for noncompliance, all to the extent provided by law.

10.10 Capital Improvements. There shall be no structural alterations, capital additions to, or capital improvements of the Common Areas without the prior approval of the Unit Owners holding a majority of the voting power.

10.11 Extended Rights. The Management Committee may exercise any other right or privilege given to it expressly by this Declaration or by law and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

10.12 Architectural Control. The Committee shall act in all matters pertaining to architectural control and shall establish rules and procedures for submitting plans for approval of any proposed construction, alteration, remodeling, etc., involving any Unit.

10.13 Indemnification of Management Committee. Each member of the Management Committee shall be indemnified and held harmless by the Unit Owners against all costs, expenses, and liabilities whatsoever (excluding fraudulent and/or criminal actions) including, without limitation, attorney's fees reasonably incurred by him in connection with any proceeding to which he may become involved by reason of his being or having been a member of said Committee.

ARTICLE XI

BYLAWS ASSOCIATION VOTING, MEETINGS AND OFFICERS

11.01 Voting. The Association shall initially have a total of five (5) votes, one (1) for each Unit. Upon annexation of Expansion Land into the Project and development of additional Units, the total of Association votes shall increase to provide one (1) vote for each additional Unit, up to a maximum of thirty (30), including any Units owned by Declarant.

11.02 Multiple Ownership. Multiple record Owners of a single Unit shall be unanimous in their single vote for such Unit; otherwise such Unit shall not be represented by a vote. Votes may be cast in person or by proxy designated in writing and filed with the Secretary of the Association.

11.03 Place of Meeting. Meetings of the Association shall be held at such suitable place convenient to the Owners as may be designated by the Management Committee in its notice.

11.04 Annual Meetings. Annual meetings of Members of the Association shall be held in the month of September of each year beginning in the year 1993 on such day and time as is set forth in the notice therefor; provided, that after the first such annual meeting, a month other than September may be chosen if it is deemed by the Members to be more convenient. At such annual meetings there shall be

elected members of the Management Committee, as needed, pursuant to the provisions of this Declaration. Financial and budget reports shall also be presented at such meetings as well as other business of the Association properly placed before each meeting.

11.05 Special Meetings. The President shall call a special meeting of the Owners as directed by a resolution of the Management Committee or on a petition signed by Owners holding at least thirty percent (30%) of the total votes of the Association and having been presented to the Secretary. No business shall be transacted at a special meeting except as stated in the notice therefor unless consented to by eighty percent (80%) or more of the Owners present, either in person or by proxy.

11.06 Notice of Meetings. The Secretary shall mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place of the meeting to each Owner of record at least ten (10), but not more than twenty (20), days prior to such meeting. The mailing of notice by prepaid U.S. Mail or by delivery in person shall be considered notice served.

11.07 Quorum. Owners present at any meeting of Members duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special; provided, however, that such Members collectively be entitled to cast at least thirty percent (30%) of the total Association votes eligible to vote.

11.08 Adjourned Meetings. If any meeting of Owners cannot be organized because a quorum is not present, the Owners who are present either in person or by proxy may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called at which time the requirements for a quorum shall be reduced by one-half that required in Section 8.08.

11.09 Officers. The Association shall have a President, a Vice President and a Secretary/Treasurer all of whom shall be elected by and from the Management Committee. The Committee may appoint an Assistant Secretary and Assistant Treasurer. Only the offices of Secretary and Treasurer may be filled by the same person. The officers shall be elected by the Management Committee in an organizational meeting of the Committee immediately following each annual meeting of Members at which the new Management Committee has been elected.

(a) President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Management Committee. He shall have all of the general powers and duties that are usually vested in the office of president of a similar type association.

(b) Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor Vice President is able to act, the Management Committee shall appoint some other Member of the Committee to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed on him by the Management Committee.

(c) Secretary. The Secretary shall keep the minutes of all meetings of the Management Committee and the minutes of all meetings of the Association. He shall have charge of such books and records as the Management Committee may direct and he shall, in general, perform all duties incident to the office of secretary of a similar type association.

(d) Treasurer. The Treasurer shall have responsibility for Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all money and any other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Management Committee.

ARTICLE XII

BYLAWS
ASSESSMENTS

12.01 Agreement to Pay Assessments. Each Owner of a Unit, by the acceptance of a deed or contract therefor, whether or not it be so expressed in the deed or contract, shall be deemed to covenant and agree with all other Unit Owners and with the Management Committee to pay annual assessments for the purposes provided in this Declaration, and special assessments for capital improvements and other matters as provided in this Declaration. Such assessments shall be fixed, established and collected from time to time in the manner provided herein by the Management Committee which alone shall have such power to assess.

12.02 Basis of Assessments. All assessments shall be uniform in application. The total annual assessments against all Units shall be based upon a budget of advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated Common Expenses growing out of or connected with the maintenance and operation of the Common Areas and/or the Project, which estimates may include among other things, expenses of management, taxes and special assessments, if any, levied by governmental authorities; premiums for all insurance which the Management Committee is required or permitted to maintain pursuant hereto; common lighting, water, repair and maintenance of the Common Areas; wages for employees of the Committee; legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve; fees required to be paid pursuant to the Millrace Mall Amended Declaration; surplus and/or sinking fund; and any other expenses and liabilities which may be incurred by the Committee for the benefit of the Owners or by reason of this Declaration.

12.03 Apportionment of Expenses. Expenses attributable to the Common Areas and to the Project as a whole shall be apportioned among all Units in proportion to their respective undivided interest in and to the Common Areas; provided, however, that for this purpose Declarant shall be deemed to own only the undivided interest in the Common Areas based upon Units which have been completed but not yet conveyed by Declarant.

12.04 Method, Payment of Assessments, Etc. Annual assessments shall be made on a calendar year basis. The Committee shall give written notice to each Owner as to the amount of the annual assessment with respect to his Unit not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year; provided, however, that the first annual assessment shall be for the balance of the calendar year remaining after the day fixed by the Committee as the date of commencement of the assessment. Such annual assessment may be paid in twelve (12) equal monthly payments. The first such monthly assessment shall become due and payable upon the date a Unit Owner purchases his Unit, whether by conveyance of title or by entering into a contract of sale and purchase, and thereafter each monthly payment shall be due and payable on the first day of each and every month, in advance. The Committee may, if it is deemed best to alleviate administrative time and effort, require that the annual assessment be paid in four (4) quarterly installments, in advance. Each monthly payment shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable if not paid within fifteen (15) days after such date.

12.05 Initial Fees. In addition, each Owner (other than Declarant), shall be required to prepay at the time of initial Unit purchase, whether as a first time or subsequent Owner, a sum equal to three times the then monthly installment of the annual assessment. Such fees shall become part of the Association's general fund to be utilized as necessary.

12.06 Maximum Annual Assessment. Until January 1 of the calendar year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be \$708 per Unit. From and after January 1 of the calendar year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each calendar year thereafter by not more than fifteen percent (15%) above the maximum annual assessment for the previous year without the vote of Owners entitled to cast a majority of the Association votes.

12.07 Special Assessments. In addition to the annual assessments authorized hereunder, the Management Committee may levy in any assessment year special assessments, subject to the provisions of Section 10.10, above, payable over such period as the Management Committee may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Common Areas of the Project or any other part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Management Committee to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized herein. Any amount assessed pursuant hereto shall be assessed to Owners in proportion to their respective undivided interest in and to the Common Areas. Declarant's interest in and to the Common Areas shall be determined on the same basis set forth in Section 12.03, above. Notice in writing of the amount of such special assessment and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. A special assessment, or any portion thereof as determined by the Committee, shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

12.08 Liens for Unpaid Assessments. All sums assessed to any Unit pursuant to this Article, together with interest thereon as provided herein, and all costs and expenses incurred, with or without suit or before or after judgment, in collecting delinquent accounts or foreclosing against the Condominium Units concerned, shall be secured by a lien on such Unit in favor of the Association and, upon recording of a notice of lien by the Management Committee, shall be a lien upon the Unit prior to all other liens and encumbrances, recorded or unrecorded, except:

- (a) Tax and special assessment liens on the Unit in favor of any assessing agency or special improvement district; and
- (b) Liens of Mortgagees; and
- (c) Any other encumbrances on the interest of the Unit Owner recorded prior to the date notice of the lien provided for herein is recorded, which by law would be a lien prior to subsequently recorded encumbrances.

To evidence a lien for sums assessed pursuant to this Article, the Management Committee shall prepare a written notice of lien setting forth the amount of the assessment, the due date, the amount remaining unpaid, the name of the Owner of the Unit, and a description of the Unit. Such notice shall be signed by or on behalf of the Management Committee and may be recorded in the Office of the County Recorder of Utah County, Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by foreclosure by the Management Committee in the same manner in which a mortgage or trust deed on real property may be foreclosed in Utah. In any such foreclosure, the Owner shall be required to pay the cost and expenses of such proceeding, the cost and expenses of filing the notice of lien, and all reasonable attorney's fees. All such costs, expenses and fees shall be secured by the lien being foreclosed. The lien shall also secure, and the Owner shall also be required to pay to the Management Committee any assessments against the Unit which shall become due during the period of foreclosure. The Management Committee shall have the right and the power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and, if it is the purchaser, to acquire, hold,

convey, lease, rent, encumber, use and otherwise deal with the subject Condominium Unit as the Owner thereof.

12.09 Release of Lien. A release of notice of lien shall be executed by the Management Committee and recorded in the Office of the County Recorder of Utah County, Utah, upon payment of all sums owed and secured by a lien which has been made the subject of a recorded notice of lien.

12.10 Payment by Encumbrancer. Any encumbrancer holding a lien on a Unit may, but shall not be required to, pay any amounts secured by the lien created by this Article, and upon such payments such encumbrancer shall be subrogated to all rights of the Management Committee with respect to such lien, including priority. The Management Committee, upon written request and evidence of such encumbrance, shall report to any encumbrancer of a Unit any unpaid assessments remaining unpaid for longer than thirty (30) days after the same shall have become due.

12.11 Personal Obligation of Owner. The amount of any annual or special assessment against any Unit shall be the personal obligation of the Owner thereof to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Management Committee, as agent for the Association, without foreclosing or waiving the lien securing the same. No Owner may avoid, diminish or abate such personal obligation by waiver of the use and enjoyment of any of the Common Areas, by abandonment of his Unit, or by making a claim for inconvenience or discomfort caused by construction or repairs within the Project.

12.12 Information Concerning Unpaid Assessments. Upon payment of a reasonable fee not to exceed Twenty Dollars (\$20.00) and upon written request of any Owner, Mortgagee, prospective Mortgagee or prospective purchaser of a Unit, the Management Committee shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit; the amount of the current annual assessment and the portion thereof, if any, which has theretofore been paid; and credit for advance payments of prepaid items, including but not limited to, an Owner's share of prepaid insurance premiums. Such statement shall be conclusive upon the Management Committee in favor of persons who rely thereon in good faith.

12.13 Purchaser's Obligation. A purchaser of a Unit shall be jointly and severally liable with the seller thereof for all unpaid assessments against the Unit up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

ARTICLE XIII

GENERAL PROVISIONS

13.01 Enforcement. Each Unit Owner shall comply strictly with the provisions of this Declaration, the Bylaws, the administrative rules and regulations promulgated pursuant thereto as the same may be lawfully adopted from time to time, and with the decisions adopted pursuant to this Declaration, Bylaws and such administrative rules and regulations. Defaulting Unit Owners shall pay all costs and expenses incurred in enforcing the provisions hereof, including reasonable attorney's fees and costs and moneys paid and due for damages or injunctive relief, or both, maintainable by the Management Committee on behalf of the Association of Unit Owners, or in a proper case, by an aggrieved Unit Owner.

13.02 Party Walls. Each wall which is built as a part of the original construction of the Units upon the Project and placed on the dividing line between Units shall constitute a party wall, and the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

13.03 Amendments. Except as provided below, the vote of at least seventy five percent (75%) of the undivided ownership interest in and to the Common Areas and Facilities shall be required to amend this Declaration (including the Association Bylaws set forth herein) or the Record of Survey Map. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Management Committee. In such instrument the Committee shall certify that the vote required by this Section for amendment has occurred. Notwithstanding the above, until Units representing seventy five percent (75%) of the undivided ownership interest in the Project have been sold, Declarant alone shall have and is hereby vested with the right to effect such amendments; provided, however, that during any period of time in which Declarant controls the Association and selects the Management Committee, any such amendments must also be approved by the Administrator of the Department of Veterans Affairs. Such right in Declarant to amend shall obtain without regard to the subject matter of amendment, so long as the amendment involved is consistent with the Act.

13.04 Consent Equivalent to Vote. In those cases in which the Act or this Declaration requires the vote of a stated percentage of the Project's undivided ownership interest for the authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Unit Owners who collectively hold at least the necessary percentage of undivided ownership interest.

13.05 Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land, and/or equitable servitudes, as the case may be, and shall be binding upon and inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Unit or in the Project, and their respective grantees, lessees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Units shall be subject to, the terms of the Act, the provisions of this Declaration and the rules, regulations, agreements, instruments, and determinations contemplated by this Declaration, and failure to comply therewith shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Committee on behalf of the Association of Unit Owners, or, in a proper case, by an aggrieved Unit Owner. By acquiring any interest in a Unit or in the Project, the party acquiring such interest consents and agrees to be bound by each and every provision of this Declaration.

13.06 Agent for Service of Process. Sherman L. Cloward, whose address is 1397 North 1450 East, Provo, UT 84604, is designated initially as the person to receive service of process in cases authorized by the Act; provided, however, that the Management Committee shall have the right to appoint a successor agent for service of process who shall be a resident of Provo, Utah. Such successor and his or her address shall be specified by an appropriate instrument filed in the Office of the Recorder of Utah County, Utah.

13.07 Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of time lapse or the number of violations or breaches which may occur.

13.08 Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural and the plural the singular. The use of any gender shall include all genders.

13.09 Severability. If any of the provisions of this Declaration or any Article or Section, sentence, clause, phrase or word or the application thereof in any circumstances be invalidated, such invalidity shall not affect the validity of the remainder of the Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstance shall not be affected by such invalidity.

13.10 Topical Headings. The headings appearing at the beginning of the Sections or Articles of this Declaration are only for convenience of reference and are not intended to describe, interpret, define or otherwise affect the content, meaning or intent of this Declaration or any Section or provision hereof.

13.11 Effective Date. This Declaration shall take effect upon recording in the Office of the County Recorder of Utah County, Utah.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed the day and year first set forth above.

DECLARANT:

SLC DEVELOPMENT, L.C.

By: *Sherman L. Cloward*
Sherman L. Cloward, Co-Manager

By: *Sheryle L. Cloward*
Sheryle L. Cloward, Co-Manager

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

On this 23rd day of September, 1992, personally appeared before me, Sherman L. Cloward and Sheryle L. Cloward who, being by me duly sworn, did say that they are Co-Managers of SLC DEVELOPMENT, L.C., a Utah limited liability company; that said instrument was signed in behalf of said limited liability company by authority of its Articles of Organization and pursuant to its operating agreement; and they did further acknowledge to me that said limited liability company executed the same.

V. Lee Budell
NOTARY PUBLIC

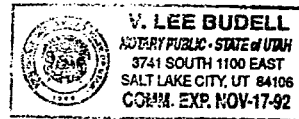


EXHIBIT A

ENT60820 BK 3036 PG 141

to

DECLARATION OF CONDOMINIUM

of

MILLRACE TOWNHOUSE CONDOMINIUMS

Provo, Utah

THIS DESCRIPTION OF THE EXPANSION LAND IS SET FORTH AND ATTACHED IN THIS EXHIBIT A TO THE DECLARATION SOLELY FOR PURPOSES OF IDENTIFICATION. THE DECLARATION IS NOT INTENDED AS AND SHOULD NOT BE DEEMED TO CONSTITUTE ANY LIEN, ENCUMBRANCE, RESTRICTION, OR LIMITATION UPON ANY PORTION OF THE EXPANSION LAND UNLESS AND UNTIL SUCH PORTION IS ADDED TO THE DEVELOPMENT IN ACCORDANCE WITH THE PROVISIONS OF THE DECLARATION.

Real property located in the City of Provo, County and State of Utah described as follows:

Commencing at a point located North $0^{\circ}47'00''$ West along the Section line 674.42 feet and West 1594.97 feet from the Southeast corner of Section 25, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence South $88^{\circ}07'00''$ East 158.18 feet; thence South $1^{\circ}32'33''$ West 65.59 feet; thence North $88^{\circ}27'00''$ West 30.00 feet; thence South $1^{\circ}32'33''$ West 17.00 feet; thence South $88^{\circ}27'27''$ East 21.00 feet; thence South $1^{\circ}32'33''$ West 61.92 feet; thence North $89^{\circ}44'13''$ West 286.98 feet; thence North $1^{\circ}16'59''$ West 239.53 feet; thence South $88^{\circ}07'00''$ East 150.06 feet; thence South $1^{\circ}53'00''$ West 86.50 feet to the point of beginning.