

UTAH
Kelle & Rippen, Recorder, Salt Lake County

JUN 18 3 23 PM '79

AFTER RECORDING PLEASE RETURN TO:

Robert J. Grow
Martineau, Rooker, Larsen
& Kimball
1800 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111

REQ OF Grant Lill

REF _____

54.54 Scott DeLund

3296131

DECLARATION OF CONDOMINIUM

OF THE

MONTE VISTA CONDOMINIUM PROJECT

[An Expandable Condominium Project]

THIS DECLARATION is made and executed this 23 rd day of April, 1979, by HERITAGE PLANNING CONSULTANTS, INC., a Utah corporation (hereinafter referred to as "Declarant").

REQ OF
REF

JUN 18 3 23 PM '79

SALT LAKE COUNTY,
UTAH

RECITALS:

A. Declarant is the record owner of that certain Tract of real property more particularly described in Article II hereof.

B. Various improvements have been or will be made to the Tract so as to enable its use and operation as a Condominium Project. The construction of all of such improvements has been or will be performed in accordance with the information contained in this Declaration and in the Record of Survey Map.

C. Declarant desires, by filing this Declaration and the Survey Map, to submit said Tract and all improvements now or hereafter constructed thereon to the provisions of the Act as a Condominium Project to be known as the "Monte Vista Condominium Project." As more fully set forth in Article III hereof, Declarant reserves the right to expand the Project to include certain additional real property and improvements thereto.

D. Declarant intends to sell and convey to various persons fee title to the individual Units now or hereafter (through expansion) contained in the Project, together with the undivided ownership interests in the Common Areas and Facilities appurtenant to such Units, subject to the covenants, restrictions, and limitations herein set forth.

NOW, THEREFORE, for the foregoing purposes, Declarant hereby makes the following Declaration:

I. DEFINITIONS

When used in this Declaration, (including in that portion hereof entitled "Recitals") each of the following terms 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.

BOOK 4883 PAGE 1162

1. Act shall mean and refer to the Utah Condominium Ownership Act [Sections 57-8-1 through 57-8-36, Utah Code Annotated (1953)], as amended and expanded by Laws of Utah 1975, Chapter 173, Sections 1 through 20.

2. Declaration shall mean and refer to this Declaration of Condominium of the Monte Vista Condominium Project, as the same may hereafter be modified, amended, supplemented, or expanded in accordance with law and the provisions hereof (and in particular, in accordance with the provisions of Article III, Sections 36 through 40 hereof concerning amendments and supplements to this Declaration which are to occur in conjunction with each addition to the Project of a portion of the Additional Land).

3. Record of Survey Map, Survey Map, or Map shall mean and refer to the Record of Survey Map, filed herewith, entitled "Record of Survey Map of the Monte Vista Condominium Project," executed and acknowledged by Declarant on the 23rd day of April, 1979, consisting of two (2) sheets, and prepared and certified to by Lee E. Robinson, a duly registered Utah Land Surveyor holding Certificate No. 4102, as the same may hereafter be modified, amended, supplemented, or expanded in accordance with law and the provisions hereof (and in particular, in accordance with the provisions of Article III, Sections 36 through 40 hereof concerning amendments and supplements to the Survey Map which are to occur in conjunction with each addition to the Project of a portion of the Additional Land).

4. Management Committee or Committee shall mean and refer to the Management Committee of the Monte Vista Condominium Project.

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

(a) The real property and interests in real property which this Declaration submits to the terms of the Act, including the entirety of the Tract (but excluding individual Units).

(b) All Common Areas and Facilities designated as such in the Survey Map.

(c) All Limited Common Areas and Facilities.

(d) All foundations, roofs, and lobbies constituting a portion of or included in the improvements which comprise a part of the Project, and any halls, corridors, stairs, stairways, entrances, and exits which are designed for the use of more than one Unit.

(e) All installations for and all equipment connected with the furnishing of Project utility services such as electricity, gas, water, and sewer.

BOOK 4883 PAGE 1163

(f) All tanks, pumps, motor, fans, compressors, ducts, and in general all apparatus, installations, and facilities included within the Project and existing for common use.

(g) The Project outdoor lighting, fences, landscaping, sidewalks, open parking spaces, and roads.

(h) All portions of the Project not specifically included within the individual Units.

(i) All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety, or management.

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

7. Unit shall mean and refer to one of the apartment spaces which is designated as a Unit on the Record of Survey Map and in Exhibit "A" attached hereto (and incorporated herein by this reference). Unless a wall on the perimeter of a Unit separates and is common to two or more Units, such perimeter wall shall constitute a part of the Common Areas and Facilities. A wall on the perimeter of a Unit which separates such Unit from, and is common to, another Unit shall, from and including the surface of such wall to its center, constitute a part of the Unit to which it relates. A Unit shall include any walls, partitions, floors, ceilings, and stairs which are wholly contained within its vertical and horizontal perimeters and the surfaces of any floors, ceilings, walls, or coverings which bound it. A Unit shall not include pipes, wires, conduits, or other utility lines running through it which are utilized for or which serve more than one Unit and, notwithstanding anything to the contrary contained herein, shall not include any load-bearing walls or floors comprising a part of the Building in which the Unit is contained.

8. Unit Number shall mean and refer to the number, letter, or combination thereof which designates a Unit in the attached Exhibit "A" and on the Record of Survey Map.

9. Condominium Unit shall mean, refer to, and include a Unit together with its appurtenant undivided ownership interest in the Common Areas and Facilities.

10. Unit Owner or Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Salt Lake County, State of Utah) of a fee or an undivided fee interest in a Condominium Unit. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Unit Owner or Owner shall not mean or include a mortgagee or a beneficiary

BOOK 4883 PAGE 1164

or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

11. Building shall mean and refer to a structure containing or to contain Units.

12. Building Number shall mean and refer to the number, letter, or combination thereof (if any) which designates a Building in the attached Exhibit "A" and on the Record of Survey Map.

13. Size shall mean and constitute the area of the floor space within a Unit, in square feet, rounded to the nearest whole number ending in zero (e.g., 1020, 1180, 1510), and computed and determined as follows on the basis of dimensions shown on the Survey Map. Notwithstanding the provisions of Section 7 of this Article I (defining the boundaries of a Unit), the measurements used in determining Size shall run from the interior surfaces of the walls surrounding the Unit concerned and each separate level, story, or floor contained within or making up the Unit shall be taken into account and, subject to the following provisions, shall augment the Size thereof. For purposes of determining Size: (i) The area of any space in a Unit intended for garage or vehicle parking purposes shall be completely excluded; (ii) With respect to any Unit which includes or contains more than one separate level, story, or floor, the area of any basement shall be considered to be one-half (1/2) of its actual area and the area of any level, story, or floor located one or more full levels or stories above the first (ground) level or story shall be considered to be three-fourths (3/4) of its actual area; but (iii) If a Unit includes or contains only one level, story, or floor, wherever located, the area thereof shall not be discounted as provided in the preceding item (ii). So long as it substantially complies with the provisions of this Section 13 and is not arbitrary, Declarant's determination of the Size of a Unit, as set forth in this Declaration or in any amendment or supplement hereto prepared pursuant to Article III, Section 38 hereof, shall be conclusive.

14. Additional Land shall mean, refer to, and consist of the following-described parcel of real property situated in Salt Lake County, State of Utah:

See Exhibit "C" attached hereto and incorporated herein by this reference.

A description of the Additional Land is set forth in this Declaration solely for purposes of identification. This Declaration is not intended as and should not be deemed to constitute any lien, encumbrance, restriction, or limitation upon any portion of the Additional Land unless and until such portion is added to the Project in accordance with law and the provisions hereof (and in particular, in accordance with the provisions of Article III, Sections 36 through 40 hereof).

BOOK 4883 PAGE 1165

15. Common Expenses shall mean and refer to all sums which are expended on behalf of all the Unit Owners and all sums which are required by the Management Committee to perform or exercise its functions, duties, or rights under the Act, this Declaration, any Management Agreement which may be entered into for operation of the Project, and such rules and regulations as the Management Committee may from time to time make and adopt.

16. Association of Unit Owners or Association shall mean and refer to all of the Owners taken as, or acting as, a group.

17. Mortgage shall mean and include both a first mortgage on any Condominium Unit and a first deed of trust on any Condominium Unit.

18. Mortgagee shall mean and include both a mortgagee under a first mortgage on any Condominium Unit and a beneficiary under a first deed of trust on any Condominium Unit.

19. Tract shall mean, refer to, and consist of the real property which Article II of this Declaration submits to the terms of the Act, together with each and every portion of the Additional Land which is added (from and after the time such portion is added) to the Project in accordance with law and the provisions of this Declaration.

20. Condominium Project or Project shall mean and refer to the Monte Vista Condominium Project.

21. Declarant shall mean and refer to HERITAGE PLANNING CONSULTANTS, INC., a Utah corporation, and/or any successor to said corporation which, either by operation of law or through a voluntary conveyance, transfer, or assignment, comes to stand in the same relation to the Project and/or to the Additional Land (or a portion thereof) as did its predecessor.

II. SUBMISSION

There is hereby submitted to the provisions of the Act, as the Tract initially associated with the Monte Vista Condominium Project, the following-described parcel of real property situated in Salt Lake County, State of Utah:

See Exhibit "B" attached hereto and incorporated herein by this reference.

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.

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges

BOOK 4883 PAGE 1166

imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; any 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, any mortgage or deed of trust; all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, 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.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the above-described Tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or for any assignee or successor of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (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 Additional Land or any portion thereof such improvements as Declarant or said assignee or successor shall determine to build in its sole discretion (and whether or not the Additional Land or said portion has been or thereafter will be added to the Project); (iii) To improve portions of the Tract with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant or as such assignee or successor 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 20 years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

BOOK 4883 PAGE 1167

III. COVENANTS, CONDITIONS,
AND RESTRICTIONS

The foregoing submission is made upon and under the following covenants, conditions, and restrictions:

1. Description of Improvements. The improvements included in the Project are now or will be located upon the Tract. The significant improvements contained in the Project (other than improvements located on or otherwise associated with portions of the Additional Land) include one (1) Building, thirty-two (32) carports, asphalt driveways and parking areas, concrete sidewalks or walkways, and a swimming pool. The location and configuration of the improvements referred to in the foregoing sentence are depicted on the Survey Map. The Project (excluding that part thereof located on or otherwise associated with the Additional Land) also contains other improvements of a less significant nature, such as outdoor lighting, fencing, and landscaping, all of which are to be of the type and in the location reasonably determined to be appropriate by Declarant. The Survey Map shows the basement, the number of stories, and the number of Units which are contained in the Building initially included in the Project. Said Building is composed of the following materials: exterior and certain load bearing walls of cement block or cinder block; certain other load bearing walls and all non-load bearing walls are wooden frame and studded with wood; basement walls and floors of concrete; first and second floors and roof of precast concrete; roof surfaced with tar and gravel; interior walls of either cinder block or surfaced with sheetrock or gypsum board; and exterior walls surfaced in places with brick, aluminum siding, or steel siding.

2. Description and Legal Status of Units. The Record of Survey Map shows the Unit Number of each Unit not located within the boundaries of the Additional Land, its location, dimensions from which its Size may be determined, and the Common Areas and Facilities to which it has immediate access. Each Unit shall be capable of being separately owned, encumbered, and conveyed.

3. Contents of Exhibit "A." Exhibit "A" to this Declaration furnishes the following information with respect to each Unit contained in the Project (other than within the boundaries of the Additional Land); (i) The Unit Number; (ii) The Number of the Building in which it is contained; (iii) The Size of the Unit; (iv) The percentage of undivided ownership interest in the Common Areas which is initially appurtenant to the Unit; (v) The number of carport shown on the Record of Survey Map which is reserved for the exclusive use of the Unit, and (vi) The number of the storage space located in the basement of the Building and shown on the Survey Map which is reserved for the exclusive use of the Unit.

4. Computation of Undivided Interests. The percentage of undivided ownership interest in the Common Areas and Facilities which, at any point in time, is appurtenant to

BOOK 4883
PAGE 1168

a Unit shall be equal to the ratio between the Size of such Unit and the aggregate Size of all Units then included in the Project. The percentage of undivided ownership interest which is initially appurtenant to each Unit currently contained in the Project has been computed in the aforesaid manner and through use of the minor adjustments described at the end of this Section 4. From time to time in the future and under the circumstances described in Sections 36 through 40 of this Article III, the undivided ownership interest appurtenant to each Unit theretofore contained in the Project may be recomputed and redetermined, but always through use of the formula described at the outset of this Section 4. In utilizing said formula, however, Declarant shall have the right to make minor adjustments in some or all of the percentage interests which result from a strict application thereof for the purpose, but only for the purpose, of assuring that at all times the total undivided ownership interest respecting the Project equals 100.00%.

5. Limited Common Areas. The Limited Common Areas and Facilities which are contained or to be contained in the Project (other than Limited Common Areas located on or otherwise associated with portions of the Additional Land) consist of all of the following which are labelled as such on the Survey Map: (i) All patios, porches, and balconies attached or adjacent to a Building; (ii) The thirty-two (32) numbered carports shown on the Survey Map; and (iii) The thirty-two (32) numbered storage space located in the basement of the Building and shown on the Survey Map. The exclusive use of each patio, porch, or balcony is reserved to the Unit which it adjoins or with which it is associated. The exclusive use of each carport and each storage space is reserved as set forth in Section 3 of this Article III.

6. Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Condominium Unit shall describe the interest or estate involved substantially as follows:

Unit No. _____ contained within the Monte Vista Condominium Project as the same is identified in the Record of Survey Map recorded in Salt Lake County, Utah as Entry No. _____ in Book _____ at Page _____ (as said Record of Survey Map may have heretofore been amended or supplemented) and in the Declaration of Condominium of the Monte Vista Condominium Project recorded in Salt Lake County, Utah as Entry No. _____ in Book _____ at Page _____ (as said Declaration may have heretofore been amended or supplemented). TOGETHER WITH the undivided ownership interest in said Project's Common Areas and Facilities which is appurtenant to said Unit (the referenced Declaration of Condominium providing for periodic alteration both in the magnitude of said undivided ownership interest and in the composition of the Common Areas and Facilities to which said interest relates).

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions

BOOK 4883 PAGE 1169

of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit. Neither the percentage of undivided ownership interest in the Common Areas and Facilities nor the right of exclusive use of a Limited Common Area and Facility shall be separated from the Unit to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such percentage of undivided ownership interest and such right of exclusive use shall automatically accompany the transfer of the Unit to which they relate.

7. Permissible Use and Age Restriction. All Units are intended to be used for residential housing and are restricted to such use. No Unit shall be used, occupied, or altered in violation of law, so as to detract from the appearance or value of any other Unit, so as to create a nuisance or interfere with the rights of any Unit Owner, or in a way which would result in an increase in the cost of any insurance covering the Project as a whole. The Common Areas and Facilities shall be used only in a manner which is consistent with their community nature and with the use restrictions applicable to the Units. No automobile or other vehicle shall be parked in front of a carport, in front of a walkway, or at any location within the Project which impairs or tends to impair vehicular or pedestrian access within the Project or to and from its various parts. No leases, charges for use, rental agreements, licenses, or similar arrangements shall be employed or entered into with respect to any portion of the Common Areas and Facilities. No animals other than small household pets (small dogs and cats) in reasonable numbers shall be kept or allowed in any part of the Project. Whenever a pet is allowed to leave a Unit, it shall be on a leash or in a cage.

8. Declarant's Sales Program. Notwithstanding the provisions of the foregoing Section 7, until the happening of the event described in the second Paragraph of this Section 8. Declarant shall have the following rights in furtherance of any sales, promotional, or other activities designed to accomplish or facilitate the sale of all Units owned or to be owned (including, but not limited to, those Units owned or to be owned upon portions of the Additional Land added to the Project) by Declarant:

(i) Declarant shall have the right to maintain four (4) or less sales offices and/or model apartments. Such offices and/or model apartments may be one or more Units (of any floor area and at any location) owned by it, one or more apartments (of any floor area and at any location) situated on any portion of the Additional Land, one or more separate structures or facilities placed on the Tract or any portion of the Additional Land for the purpose of aiding Declarant's sales efforts, or any combination of the foregoing. If one or more separate structures or facilities is so employed by Declarant, each shall be reasonably located given the layout of the Project and each shall have an aggregate floor area not substantially in excess of the aggregate floor area of the largest Unit then

BOOK 4883 PAGE 1170

contained in the Project or the largest apartment then situated on any portion of the Additional Land, whichever is larger.

(ii) Declarant shall have the right to maintain a reasonable number of promotional, advertising, and/or directional signs, banners, or similar devices at any place or places on the Tract, but any such device shall be of a size and in a location as is reasonable and customary.

Declarant shall have the right from time to time to locate or relocate any of its sales offices, model apartments, and/or signs, banners, or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Within a reasonable period of time after the happening of the event described in the second Paragraph of this Section 8 Declarant shall have the right to remove from the Project any signs, banners, or similar devices and any separate structure or facility which was placed on a portion of the Tract for the purpose of aiding Declarant's sales effort.

The event referred to in the first Paragraph of this Section 8 shall be the first to occur of the following:

(a) Declarant ceases to be a Unit Owner or all of the Additional Land has been added to the Project, whichever last occurs; or

(b) The expiration of seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

9. Completion Obligation. Declarant hereby covenants in favor of each person who contracts with Declarant for the purchase of a Unit located or to be located on any portion of the Tract or the Additional Land that no later than eighteen (18) months after the date on which such contract is entered into: (i) The Unit which such person has contracted to purchase, the Building within which such Unit is contained or is to be contained, and each Limited Common Area appurtenant to such Unit shall be fully constructed and ready for use or occupancy (as the case may be); and (ii) There shall be substantially completed and usable as part of the Common Areas all proposed or planned roadways, parking spaces, sidewalks, fences, outdoor lighting, landscaping, and utility lines and conduits necessary to enable full use and enjoyment of the Unit concerned.

10. Condition and Maintenance of Units and Limited Common Areas. Each Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Project and so as not to affect adversely the value or use of any other Unit or other portions of the Project. Each Unit Owner shall keep his storage space and his appurtenant patio(s), porch(es), and/or balcony(s) in a clean and orderly condition, but shall not

BOOK 4883 PAGE 1171

otherwise maintain the same. The Committee shall have no obligation regarding maintenance or care which is required to be accomplished by the Owners.

11. Encroachments. In the event that any portion of a Unit and/or Building (whether constructed by Declarant or reconstructed so as to substantially duplicate a Unit or Building originally constructed by Declarant) encroaches or comes to encroach on the Common Areas, Limited Common Areas, another Unit, and/or another Building, an easement for such encroachment is created hereby and shall exist perpetually.

12. Status and General Authority of Committee.
The Condominium Project shall be managed, operated, and maintained by the Management Committee on behalf of the Unit Owners. The Committee shall, in connection with its exercise of any of the powers delineated in subparagraphs (a) through (i) below, constitute a legal entity capable of dealing in its Committee name. The Management Committee shall have, and is hereby granted, the following authority and powers (all of which are, however, subject to the provisions of Sections 20, 39, and 42 of this Article III):

(a) The authority, without the vote or consent of the Unit Owners or of any other person(s), to grant or create, on such terms as it deems advisable, reasonable 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 the Unit Owners, any amendment to the Declaration or Record of Survey Map which has been approved by the vote or consent necessary to authorize such amendment.

(c) The power to sue and be sued.

(d) The authority to enter into contracts which in any way concern the Project, so long as any vote or consent 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 any vote or consent necessary under the circumstances has been obtained.

(f) The power and authority to purchase, 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 power and authority to add any interest in real property obtained pursuant to subparagraph (f) above to the Condominium Project, so long as such action has been authorized by the necessary vote or consent.

BOOK 4883
PAGE 1172

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

(i) The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Management Committee to perform its functions on behalf of the Unit Owners.

Any instrument executed by the Management Committee 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.

13. Manager. The Committee may carry out through a Project Manager any of its functions which are properly the subject of delegation. Any Manager so engaged shall be an independent contractor and not an agent or employee of the Committee, shall be responsible for managing the Project for the benefit of the Committee and the Unit Owners, and shall, to the extent permitted by law and the terms of the agreement with the Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself. Any agreement for professional management of the Project which may be entered into by the Management Committee or the Association shall call for a term not exceeding three (3) years and shall provide that for cause such management agreement may be terminated by the Management Committee or by the Association upon not in excess of ninety (90) days written notice.

14. Composition of Management Committee. The Committee shall be composed of five members. At the first regular Owners meeting three Committee members shall be elected for two-year terms and two members for one-year terms. At each annual Owners meeting thereafter any vacant seat on the Committee shall be filled with a member elected for a two-year term. Only Unit Owners and officers and agents of Owners other than individuals shall be eligible for Committee membership. At each annual meeting the percentage of undivided ownership interest appurtenant to a Unit may be voted in favor of as many candidates for Committee membership as there are seats on the Committee to be filled; provided, however, that until the happening of the event described in the second Paragraph of this Section 14 Declarant alone shall be entitled to select three of the five Committee members. Notwithstanding the foregoing provisions, until the first annual meeting of the Owners the members of the Committee, although numbering less than five, shall be the following persons and each shall hold the office(s) indicated opposite his name:

BOOK 4883
PAGE 1173

L. Kelly Sheppard
Daniel K. Sheppard
Linda W. Sheppard

President
Vice President
Secretary-Treasurer

Any Committee member who fails on three successive occasions to attend Committee meetings (whether regular or special or who has failed to attend at least 25% of all Committee meetings (whether regular or special) held during any 12-month period shall automatically forfeit his seat. In the event a Committee seat which was filled by Declarant becomes vacant prior to the happening of the event described in the second Paragraph of this Section 14 whether by reason of forfeiture or due to another cause, Declarant shall 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. Unless he forfeits or otherwise loses his seat as herein provided, a member shall serve on the Committee until his successor is elected and qualifies. Committee members shall be reimbursed for all expenses reasonably incurred in connection with Committee business. The Committee may fix such compensation for any member as may be reasonable in light of the Committee duties which that member is required to perform.

The event referred to in the first Paragraph of this Section 14 shall be the first to occur of the following:

(a) Units to which an aggregate of at least three-fourths (3/4) of the undivided ownership interest in the Common Areas then appertain have been conveyed by Declarant, or all Additional Land has been added to the Project, whichever last occurs; or

(b) The expiration of six (6) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

15. Committee Officers and Agents. The Committee shall perform its functions through those members who are elected as officers by the Committee and through such agents or employees as the Committee may appoint. Any Committee officer, agent, or employee may at any time be removed with or without cause by the vote of a majority of the Committee members. The officers of the Committee, and their respective powers and functions, shall be as follows:

(a) President. The President shall be the chief executive of the Committee and shall exercise general supervision over the property and affairs of the Project. He shall preside over all meetings of the Committee and of the Unit Owners. He shall execute all instruments on behalf of the Committee.

BOOK 4883 PAGE 1174

(b) Vice-President. The Vice-President shall have all the powers of the President in the event of the latter's absence or inability to act.

(c) Secretary. The Secretary shall keep minutes of meetings of the Committee and of the Unit Owners and shall keep all records which are required or made necessary by the Act, this Declaration, or the Committee.

(d) Treasurer. The Treasurer shall have custody and control of the funds available to the Committee. Upon request of the Committee he shall furnish it with a bond, in the amount specified by the Committee, conditioned upon the faithful performance of his duties. The offices of Secretary and Treasurer or of Vice-President and Treasurer may be held by the same Committee member.

16. Committee Meetings. A regular meeting of the Committee shall be held immediately after the adjournment of each annual Owners meeting. Other regular meetings shall be held at periodic intervals at such time and place as the Committee may provide. No notice need be given of regular Committee meetings. Special Committee meetings shall be held whenever called by the President or by any two members of the Committee. Reasonable effort shall be made to give either oral or written notice of a special meeting to each Committee member at least 24 hours before the time fixed for the meeting. Adequate notice of a special meeting shall be deemed to have been given to a member if such effort is made, even though the member concerned does not actually receive notice. The propriety of holding any meeting which is attended by all Committee members may not be challenged on grounds of inadequate notice. A quorum for the transaction of business at any Committee meeting shall consist of a majority of all the members then in office.

17. Owners Meetings. The annual meeting of the Unit Owners shall be held at 7:00 p.m. on the second Monday in May, 1980, and on the second Monday in May of each succeeding year. Whenever such day is a legal holiday, the meeting shall occur on the first business day thereafter. The place of meeting shall be at a location in Salt Lake County, Utah specified in the notice of meeting. At least ten but not more than 30 days before the date of the annual meeting a written notice thereof shall be personally delivered or mailed postage prepaid to each person who appears as an Owner, at the latest address for such person appearing, in the records of the Committee at the time of delivery or mailing. Such notice shall state the time, place, and general purpose of the meeting.

Special meetings of the Owners may be called by the President, by any two members of the Committee, or by Unit Owners cumulatively holding at least one-fourth of the undivided ownership interest in the Project. At least two but not more than 30 days before the date set for a special

BOOK 4883 PAGE 1175

meeting written notice thereof shall be given in the manner described in the immediately preceding Paragraph.

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

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

19. Ownership List. The Committee shall maintain up-to-date records showing the name of each person who is an Owner, the address of such person, and the Unit which is owned by him. In the event of any transfer of a fee or undivided fee interest in a Unit either the transferor or transferee shall furnish the Committee with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Salt Lake County, Utah. The Committee may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Committee may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder of Salt Lake Utah County, Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Committee is otherwise advised.

BOOK 4883 PAGE 1176

20. Limitation on Improvements by Association.

Until occurrence of the event described in the second Paragraph of Section 8 of this Article III, neither the Association nor the Management Committee shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas and Facilities other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally created or constructed by Declarant.

21. Capital Improvements. Additions or capital improvements to the Project which cost no more than \$1,000.00 may be authorized by the Management Committee alone. Additions or capital improvements the cost of which will exceed such amount must, prior to being constructed or accomplished, be authorized by at least a majority of the undivided ownership interest in the Project. Any addition or capital improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least 65% of the Project's undivided ownership interest. All provisions of this Section 21 are subject to the limitations imposed by the foregoing Section 20.

22. Operation and Maintenance. The Management Committee shall, as a portion of the Common Expenses, pay for, or provide for the payment of, all utility services furnished to the Project which are not separately metered and billed to individual Units by the utility or other party furnishing such service. Except as otherwise provided in the balance of this Section 22 or in Section 10 of this Article, the Committee shall provide for such maintenance and operation of the Common and Limited Common Areas and Facilities as may be reasonably necessary to make them appropriately usable in conjunction with the Units and to keep them clean, functional, attractive, and generally in good condition and repair. Until such time as any given Unit situated within the boundaries of the Additional Land becomes subject to full assessment for Common Expenses (i.e., so long as such Unit is being assessed in accordance with the proviso which appears at the end of the first Paragraph of the following Section 23), Declarant, rather than the Committee, shall provide for maintenance and operation of such of the Common and Limited Common Areas and Facilities located within the Additional Land as are either appurtenant to the Unit concerned or fairly characterized as reasonably proximate, in location, to such Unit.

23. Payment of Expenses. Before April 15 of each year the Committee shall prepare a budget which sets forth an itemization of the Common Expenses which are anticipated for the 12-month period commencing with the following June 1. Such budget shall take into account any deficit or surplus realized during the current fiscal year and such sums as may be necessary to fund an appropriate reserve to cover major repair or replacement of portions of the Common Areas and Facilities. The total of such expenses shall be apportioned among all the Units on the basis of their respective appurtenant percentages of undivided ownership interest (subject,

BOOK 4883 PAGE 1177

however, to the proviso which appears at the end of this Paragraph). Prior to the tenth (10th) day of each month during the fiscal year covered by the budget each Unit Owner shall pay to the Committee as his share of the Common Expenses one-twelfth of the amount so apportioned to his Unit. If the aggregate of monthly payments attributable to all of the Units is too large or too small as a result of unanticipated income or expenses, or if the monthly payments attributable to a particular Unit or Units are too large or too small either as a result of an additional Unit or Units being produced by the addition to the Project of a portion of the Additional Land or as a result of a Unit's being occupied for the first time or title thereto no longer being vested in Declarant (as hereinafter provided), the Committee may from time to time effect an equitable change in the amount of said payments. The dates and manner of payment shall be determined by the Committee. The foregoing method of assessing the Common Expenses to the Units may be altered by the Committee so long as the method it adopts is consistent with good accounting practice and requires that the portion of Common Expenses borne by each Unit during a 12-month period be determined on the basis of its appurtenant undivided ownership interest as it may from time to time be adjusted in accordance with this Declaration; provided, however, that the share of Common Expenses required to be borne by a Unit shall be ten percent (10%) of the amount otherwise applicable until both of the following have occurred: (i) Title to such Unit is no longer vested in Declarant or such Unit is occupied for the first time for residential purposes following recordation of this Declaration, whichever first occurs; and (ii) That portion of the Building containing such Unit has been fully constructed and completed.

Each time legal title to a Unit (including a Unit situated within the boundaries of the Additional Land) passes from one person to another (including from Declarant to a purchaser), within thirty (30) days after the effective date of such title transaction the new Unit Owner shall pay to the Committee, in addition to any other required amounts, the sum of \$100.00. The provisions of the following Section 24 shall apply to the collection of such sum. The sums received by the Committee pursuant to this Paragraph shall be held by it as a contingency reserve and shall be used at such times and for such purposes as the Committee may determine.

24. Remedies for Nonpayment. Should any Unit Owner fail to pay when due his share of the Common Expenses, the delinquent payment shall bear interest at the rate of 18% per annum and the Committee may enforce any remedy provided in the Act or otherwise available for collection of delinquent Common Expense assessments. Regardless of the terms of any agreement to the contrary, liability for the payment of Common Expense assessments shall be joint and several, and any remedy for the collection of such assessments may be enforced against any Owner of the Unit concerned or against the Unit itself. Any relief obtained, whether or not through foreclosure proceedings, shall include the Committee's costs

BOOK 4883 PAGE 1178

and expenses and a reasonable attorney's fee. In the event of foreclosure, after institution of the action the Committee shall, without regard to the value of the Unit or the extent of the Owner's equity therein, be entitled to the appointment of a receiver to collect any income or rentals which may be produced by the Unit concerned.

25. Management Committee Liability. No member of the Management Committee shall be liable to the Unit Owners for any mistake of judgment, for negligence, or on other grounds, except for such member's own individual and willful misconduct or bad faith. The Unit Owners shall indemnify and hold harmless each member of the Management Committee from and against all liability to third parties arising out of any contract made by the Management Committee on behalf of the Owners, unless such contract was made in bad faith or contrary to the provisions of the Act or this Declaration. The liability of any Unit Owner arising out of any contract made by the Management Committee or out of the indemnification provision set forth in the foregoing portion of this Section 25 shall be limited to the total liability concerned multiplied by such Owner's undivided ownership interest in the Common Areas.

26. Hazard Insurance. The Management Committee or Association of Unit Owners shall at all times maintain in force hazard insurance meeting the following requirements:

(i) A multi-peril type policy covering the entire Condominium Project (both Units and Common Areas and Facilities) shall be maintained. As a minimum, such policy shall provide fire and extended coverage insurance (as well as all other coverage of the kinds and in the amounts commonly required by private institutional Mortgage investors for projects similar to the Project 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).

(ii) If a steam boiler is or comes to be in operation in the Project, there shall be maintained boiler explosion insurance evidenced by the standard form of boiler and machinery insurance policy. Said insurance shall, as a minimum, provide coverage in the amount of Fifty Thousand Dollars (\$50,000.00) per accident per location.

(iii) If the Project is or comes to be situated in a locale identified by the Secretary of Housing and Urban Development as an area having special flood hazards and the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, a "blanket" policy of flood insurance on the Condominium Project shall be obtained and maintained. The minimum amount of coverage afforded by such policy

BOOK 4883 PAGE 1179

shall be the lesser of the maximum limit of coverage available under said Act or the aggregate of the unpaid principal balances of the Mortgages affecting the individual Units.

(iv) The name of the insured under each policy required to be maintained by the foregoing items (i), (ii), and (iii) shall be in form and substance essentially as follows: "Association of Unit Owners of the Monte Vista Condominium Project for the use and benefit of the individual Owners." [Said Owners shall be designated by name, if required.]

(v) Each such policy shall include the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Project is located, which clause either shall be endorsed to provide that any proceeds shall be paid to the Association of Unit Owners for the use and benefit of Mortgagees as their interests may appear or shall be otherwise endorsed to fully protect the interests of Mortgagees. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each Mortgagee named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

27. Fidelity Insurance. If the Project contains or comes to contain more than thirty (30) Units, the Management Committee or Association shall at all times while such state of affairs exists maintain in force fidelity coverage against dishonest acts on the part of managers, trustees, employees, Committee members, or volunteers responsible for handling funds belonging to or administered by the Management Committee or Association of Unit Owners. The fidelity bond or insurance shall name the Association as the insured and shall be written in an amount sufficient to afford the protection reasonably necessary, but in no event less than one and one-half times the Project's estimated annual operating expenses and reserves. An appropriate endorsement to the policy shall be secured to cover persons who serve without compensation if the policy would not otherwise cover volunteers.

28. Liability Insurance. The Management Committee or Association of Unit Owners shall at all times maintain in force a comprehensive policy of public liability insurance covering all of the Common Areas and Facilities and all public ways located within the Project. Such insurance shall include a "Severability of Interest Endorsement" which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of other Owners, the Management Committee, or the Association of Unit Owners. The scope of coverage shall be such as to include all coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location, and

BOOK 4883 PAGE 1180

use. If the Project contains or comes to contain more than thirty (30) Units, coverage for personal injury and/or property damage shall be for at least \$1,000,000.00 per occurrence.

29. General Requirements Concerning Insurance. Each insurance policy maintained pursuant to the foregoing Sections 26, 27, and 28 shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a financial rating by Best's Insurance Reports of Class VI or better. No such policy shall be maintained where: (i) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, a Unit Owner, a Mortgagee, the Management Committee, or the Association of Unit Owners; (ii) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled from collecting insurance proceeds. The provisions of this Section 29 and of the foregoing Sections 26, 27, and 28 shall not be construed to limit the power or authority of the Management Committee or Association of Unit Owners to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Management Committee or Association may deem appropriate from time to time.

30. Destruction, Condemnation, and Obsolescence. The provisions of this Section 30 and of the following Sections 31 through 34 shall apply with respect to the destruction, condemnation, or obsolescence of the Project. As used in such Sections each of the following terms shall have the meaning indicated:

(a) Destruction. "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of Estimated Costs of Restoration over Available Funds is fifty percent (50%) or more of the estimated Restored Value of the Project. "Partial Destruction" shall mean any other damage or destruction to the Project or any part thereof.

(b) Condemnation. "Substantial Condemnation" shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the Estimated Costs of Restoration over Available Funds is fifty percent (50%) or more of the estimated Restored Value of the Project. "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.

(c) Obsolescence. "Substantial Obsolescence" shall exist whenever the Project or any part thereof

BOOK 4883 PAGE 1181

has reached such a state of obsolescence or disrepair that the excess of Estimated Costs of Restoration over Available Funds is fifty percent (50%) or more of the estimated Restored Value of the Project. "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

(d) Restoration. "Restoration," in the case of any damage or destruction, shall mean restoration of the Project to a condition the same or substantially the same as the condition in which it existed prior to the damage or destruction concerned; in the case of condemnation, shall mean restoration of the remaining portion of the Project to an attractive, sound, and desirable condition; and, in the case of obsolescence, shall mean restoration of the Project to an attractive, sound, and desirable condition.

(e) Restored Value. "Restored Value" shall mean the value of the Project after Restoration.

(f) Estimated Costs of Restoration. "Estimated Costs of Restoration" shall mean the estimated costs of Restoration.

(g) Available Funds. "Available Funds" shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Management Committee or Association, including amounts contained in any reserve or contingency fund. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a Mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee of a Condominium Unit for the condemnation or taking of the Unit in which they are interested.

31. Determination by Committee. Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grant or conveyance in lieu thereof, the Committee shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is fifty percent (50%) or more of the estimated Restored Value of the Project. In addition, the Committee shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations the Committee may retain and rely upon one or more qualified appraisers or other professionals.

32. Restoration of Project. Restoration of the Project shall be undertaken by the Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence, but shall be

BOOK 4883 PAGE 1182

undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence only with the consent of Owners collectively holding at least seventy five percent (75%) of the Project's undivided ownership interest and with the consent of at least seventy five percent (75%) of the Mortgagees (based upon one vote for each Mortgage). Within thirty (30) days after the Committee has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Committee or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Condominium Unit is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee. In the event the cost of Restoration exceeds Available Funds, all of the Units shall be assessed for the deficiency on the basis of their respective percentages of undivided ownership interest in the Common Areas.

33. Sale of Project. The Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the consents required by Section 32 hereof have been obtained within six (6) months after the Committee sends the written description contemplated by said Section 32. In the event of such sale, condominium ownership under this Declaration and the Survey Map shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Committee to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Condominium Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

34. Authority of Committee to Restore or Sell. The Committee, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Condominium Unit therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided. Such authority shall include the right and power to enter into any contracts, deeds, or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

35. Consent in Lieu of Vote. In any case in which the Act or this Declaration requires the vote of a stated percentage of the Project's undivided ownership interest for authorization or approval of an act or a transaction, such

BOOK 4883
PAGE 1183

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 stated percentage of undivided ownership interest. The following additional provisions shall govern any application of this Section 35:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner.

(b) Any change in ownership of a Condominium Unit which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

(c) Unless the consent of all Owners having an interest in the same Unit are secured, the consent of none of such Owners shall be effective.

36. Right to Expand and State of Title to New Units. There is hereby granted unto Declarant, and Declarant hereby reserves, the absolute right and option to expand the Project at any time (within the limits herein prescribed) and from time to time by adding to the Project the Additional Land or a portion or portions thereof. Notwithstanding any provision of the Act or this Declaration which might be construed to the contrary, such right and option may be exercised without obtaining the vote or consent of any other person (including any Unit Owner) and shall be limited only as specifically provided in the Act and this Declaration. Any given portion of the Additional Land shall be deemed added to the Project at such time as a supplement to this Declaration and to the Survey Map containing the information required by the Act and by Section 38 below has been recorded with respect to the portion of the Additional Land concerned. After the recordation of such supplements, title to each Unit thereby created within the portion of the Additional Land concerned and its appurtenant percentage of undivided ownership interest in the Common Areas shall be vested in and held by Declarant, and none of the other Unit Owners shall have any claim or title to or interest in such Unit or its appurtenant percentage of undivided ownership interest. If at the time a particular portion of the Additional Land is added to the Project there is of record a mortgage or deed of trust which by its terms describes the real property thereby encumbered by a metes and bounds description or other description describing the lateral or perimetric boundaries of such real property (as distinguished from the description of a Condominium Unit), and if the parcel of real property defined by the description set forth in such mortgage or trust deed includes the portion of the Additional Land then being added to the Project, and irrespective of whether or not any partial release or reconveyance pertaining to such mortgage or trust deed has theretofore been recorded with respect to any other Condominium Unit in the Project, then and in that event such mortgage or trust deed shall, upon the addition to the

BOOK 4883 PAGE 1184

Project of that portion of the Additional Land concerned and whether or not such mortgage or trust deed does so by its terms, automatically cover, encumber, and include each Unit thereby created within such portion of the Additional Land and such Unit's appurtenant undivided ownership interest in the Common Areas. Nothing herein shall prevent the granting of a mortgage or trust deed on any Condominium Unit produced by the addition to the Project of a portion of the Additional Land, but any such mortgage or trust deed shall be subject and inferior to the lien on or interests in such Condominium Unit which arise by operation of the immediately preceding sentence.

37. Rights and Statements Respecting Additional Land.
Declarant hereby furnishes the following information and statements respecting the Additional Land and Declarant's right and option concerning expansion of the Project by the addition thereto of the Additional Land or a portion or portions thereof:

(a) All of the Additional Land need not be added to the Project if any of such Land is added. Rather, a portion or portions of the Additional Land may be added to the Project at any time (within the limits herein prescribed) and from time to time.

(b) Except for the limitations and requirements set forth in the following item (d), there are no limitations or requirements relative to the size, location, or configuration of any given portion of the Additional Land which can be added to the Project or relative to the order in which particular portions of the Additional Land can be added to the Project.

(c) There are no limitations or requirements relative to the location of improvements that may be made on any portion of the Additional Land which is added to the Project.

(d) Assuming that the entirety of the Additional Land is added to the Project, the maximum number of Units which may be created on the Additional Land is one hundred and thirty (130). At any given time the total number of Units created on such portion(s) of the Additional Land as has (have) theretofore been added to the Project divided by the total acreage of such portion(s) shall be no greater than one hundred and thirty (130) divided by the total acreage of the entirety of the Additional Land.

(e) Each Unit created on any portion of the Additional Land which is added to the Project shall be used only for residential housing (subject, however, to the matters set forth in Section 8 of this Article III).

BOOK 4883 PAGE 1185

(f) Any Building or other structure erected on a portion of the Additional Land added to the Project need not be of the same architectural style or comprised of the same materials as structures within the preexisting Project. Nevertheless, any such Building or other structure shall be constructed in a good and workmanlike manner.

(g) In addition to the Building or Buildings, if any, created on a portion of the Additional Land added to the Project, the significant improvements made to such portion may include asphalt roadways, open parking spaces, fully enclosed garages designed to accommodate one or two automobiles each or carports, concrete sidewalks or walkways, fences, concrete patios, and porches, outdoor lighting, landscaping, additional recreational facilities, and other related improvements. All of the mentioned improvements may be of the type and in the location reasonably determined to be appropriate by Declarant, so long as such determination is not inconsistent with any limitation imposed by this Declaration.

(h) Each Building which is created on a portion of the Additional Land added to the Project may have a basement, may consist of either one, two, three or four above-ground stories, may include one or more patios, porches, balconies, and/or decks, and may contain one or more Units. The aggregate floor space of any Unit (computed by measurements running from the interior surfaces of the walls surrounding the Unit, taking into account all finished and unfinished areas at each separate level, story, or floor contained within or making up the Unit, and not excluding areas underlying interior partitions, utilized in stairwells, and the like) contained in such a Building may range from a minimum of approximately 600 square feet to a maximum of approximately 5,200 square feet. Any such Unit may be of either a townhouse (multifloor) or apartment (single floor) style, and may include space located on one, two, or three levels. The overall configuration of any such Unit shall be reasonable in light of the total floor area thereof and the configuration of the Building within which it is contained.

(i) In conjunction with the addition to the Project of a portion of the Additional Land Declarant shall have the right to create Limited Common Areas within such portion. Each of said Limited Common Areas shall be appurtenant to a Unit located within such portion of the Additional Land. Such Limited Common Areas may include and consist of: (1) patios, porches, balconies, and/or decks attached or adjacent to a Building located on the portion of the Additional Land concerned; and (2) storage

BOOK 4883 PAGE 1186

areas or spaces, open parking spaces, carports, and/or fully enclosed garages located anywhere on such portion of the Additional Land. The size, type, and total number of Limited Common Areas created within each portion of the Additional Land which is added to the Project shall be reasonable in light of the number and nature of Units created within the portion of Additional Land concerned and those Limited Common Areas which are located on other portions of the Tract.

(j) In conjunction with the addition to the Project of a portion of the Additional Land Declarant shall have the right to reserve, in the instruments through which the addition is accomplished, reasonable rights-of-way and/or easements for purposes of enabling access to, furnishing utilities to, and facilitating or enabling development of, such of the Additional Land as has then not been added to the Project.

(k) Any expansion(s) of the Project through the addition thereto of the Additional Land or portions thereof and through the creation on the portions of the Additional Lands concerned of additional Units shall be such that the percentage of undivided ownership interest in the Common Areas which at any point in time is appurtenant to any Unit then in the Project is not more than 5% and not less than .2%.

38. Procedure for Expansion. The supplements to this Declaration and to the Survey Map by which addition to the Project of any portion of the Additional Land is accomplished shall be executed by Declarant, shall be in recordable form, must be filed for record in the office of the County Recorder of Salt Lake County, Utah on or before seven (7) years from the date that this Declaration is recorded, and when taken together shall contain the following information for that portion of the Additional Land which is being added to the Project:

(a) Data sufficient to identify this Declaration and the Record of Survey Map.

(b) The legal description of the portion of the Additional Land being added to the Project.

(c) A description of the Building(s), if any, located or to be located on the portion of the Additional Land concerned and of all other significant improvements located or to be located on such portion. Such description shall provide essentially the same type of information as is provided in this Declaration with respect to the Buildings and improvements initially included in the Project.

BOOK 4883 PAGE 1187

(d) The Unit Number of each Unit being created within the portion of the Additional Land concerned and any other data necessary for the proper identification thereof.

(e) A description of any Limited Common Areas being created within the portion of the Additional Land concerned, together with a designation of the Unit to which each is appurtenant.

(f) The Survey Map information required to be furnished by Section 57-8-13(2) of the Act.

(g) Such rights-of-way and/or easements as are being reserved by Declarant pursuant to item (j) of the foregoing Section 37.

(h) An amended Exhibit "A" to this Declaration setting forth the percentage of undivided ownership interest which, after addition of that portion of the Additional Land concerned, shall appertain to each Unit in the Project, computed and derived as described in Section 4 of this Article III.

(i) Such other matters as may be necessary, desirable, or appropriate and as are not inconsistent with any limitation imposed by this Declaration.

Upon the recordation of the supplements contemplated above, the revised schedule of undivided interests contained therein shall automatically become effective for all purposes and shall completely supersede any similar schedule which was contained in any Declaration or supplement previously recorded in connection with the Project or any portion of the Additional Land. And upon the recordation of such supplements they shall automatically supplement this Declaration, the Survey Map, and any supplements previously recorded. At any point in time, the Declaration and Survey Map for the Project shall consist of this Declaration and the Survey Map initially effective hereunder, as amended and expanded by all supplements theretofore recorded pursuant to the terms hereof.

39. Additional Land -- Miscellaneous. Such parts of or interests in a portion of the Additional Land which is added to the Project as do not become Units shall be and remain Common Areas and Facilities. Until such time as any given portion of the Additional Land added to the Project has been fully developed and improved in the manner contemplated by the instruments through which such portion was added, unless Declarant gives its prior written consent thereto, neither the Management Committee nor the Association shall grant or create any easement, right-of-way, or similar matter affecting any part of such portion, improve or work on any part of such portion, or take any other action with respect to such portion which would or might impair Declarant's ability to exercise its rights concerning the same.

BOOK 4883 PAGE 1188

40. No Obligation to Expand. Except to the extent specifically indicated herein, this Declaration is not intended, and shall not be construed so as, to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to: (i) The addition to the Project of any or all of the Additional Land; (ii) The creation or construction of any Unit, Building, or other improvement; (iii) The carrying out in any particular way or within any particular time of any development or addition to the Project which may be undertaken; or (iv) The taking of any particular action with respect to the Tract, the Project, or any portion of the Additional Land. Except to the extent specifically indicated herein, no covenant, restriction, limitation, representation, or commitment in this Declaration concerning anything that is or is not to occur, apply, or be done on or relative to the Additional Land or any portion thereof shall be binding as to such of the Additional Land as is never added to the Project.

41. Mortgagee Protection. From and after the time a Mortgagee makes written request to the Management Committee or the Association of Unit Owners therefor, the Committee or the Association shall notify such Mortgagee in writing in the event that the Owner of the Condominium Unit encumbered by the Mortgage held by such Mortgagee neglects for a period of thirty (30) or more days to cure any failure on his part to perform any of his obligations under this Declaration.

At least eighty percent (80%) of the Units sold in the Project shall be sold to individuals for use as their primary year-round residences.

The lien or claim against a Condominium Unit for unpaid assessments or charges levied by the Management Committee or by the Association of Unit Owners pursuant to this Declaration or the Act shall be subordinate to the Mortgage affecting such Condominium Unit, and the Mortgagee thereunder which comes into possession of or which obtains title to the Condominium Unit shall take the same free of such lien or claim for unpaid assessments or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the Mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure (except for claims for a pro rata share of such prior assessments or charges resulting from a pro rata reallocation thereof to all Condominium Units including the Condominium Unit in which the Mortgagee is interested). No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a Mortgage or as not to burden a Mortgagee which comes into possession or which obtains title shall be collected or enforced by either the Management Committee or the Association from or against a Mortgagee, a successor in title to a Mortgagee, or the Condominium Unit affected or previously affected by the Mortgage concerned.

Unless at least seventy-five percent (75%) of the Mortgagees (based upon one vote for each Mortgage) of Owners

BOOK 4883 PAGE 1189

(other than Declarant) of the individual Condominium Units have given their prior written approval, neither the Management Committee nor the Association of Unit Owners shall be entitled, by act, omission, or otherwise:

(a) To abandon or terminate the Condominium Project or to abandon or terminate the arrangement which is established by this Declaration and the Record of Survey Map;

(b) To partition or subdivide any Unit;

(c) To abandon, partition, subdivide, encumber, sell, or transfer all or any part of the Common Areas and Facilities (except for the granting of easements for utilities and similar purposes consistent with the intended use of the Common Areas, and except as such matters [arguably] might result from Declarant's addition to the Project of some or all of the Additional Land);

(d) To use hazard insurance proceeds resulting from damage to any part of the Condominium Project (whether to Units or to the Common Areas) for purposes other than the repair, replacement, or reconstruction of such improvements, except as provided in Sections 30 through 34 of this Article in the event of Substantial Destruction;

(e) To change the pro rata interests or obligations of any Unit which apply for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and for (ii) determining the pro rata share of ownership of each Unit in the Common Areas and Facilities, except as such changes may occur as a result of Declarant's addition to the Project of some or all of the Additional Land;

Neither the Management Committee nor the Association of Unit Owners shall: (i) alter the provisions of Sections 26 through 29 of this Article III in such a way as to diminish the insurance protection required to be afforded to the parties designed to be protected thereby; or (ii) fail to maintain the insurance coverage described in said Sections.

Any Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Management Committee, of the Association of Unit Owners, or of the Condominium Project. The Management Committee and the Association shall establish an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacements of the Common Areas and Facilities and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Units rather than by special assessments.

Any agreement for professional management of the Condominium Project which may be entered into by the Management

BOOK 4883 PAGE 1190

Committee or the Association of Unit Owners, and any contract (to which the Management Committee or Association is a party) providing for services by Declarant, shall call for a term not exceeding three (3) years and shall provide that either party, with or without cause and without payment of any termination fee, may terminate same upon not in excess of ninety (90) days written notice.

From and after the time a Mortgagee makes written request to the Management Committee or the Association of Unit Owners therefor, the Committee or the Association shall notify such Mortgagee in writing in the event that there occurs any damage or loss to, or taking or anticipated condemnation of: (i) The Common Areas involving an amount in excess of, or reasonably estimated to be in excess of, Ten Thousand Dollars (\$10,000.00); or (ii) Any Unit encumbered by the Mortgage held by such Mortgagee, if the amount involved in such damage, loss, or taking is in excess of, or reasonably estimated to be in excess of, One Thousand Dollars (\$1,000.00). Said notice shall be given within ten (10) days after the Management Committee or said Association learns of such damage, loss, taking, or anticipated condemnation.

No provision of this Declaration gives or may give a Unit Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for loss to or taking of Units and/or the Common Areas and Facilities.

Any Mortgagee which obtains title to the Unit encumbered by its Mortgage pursuant to the remedies provided for in said Mortgage, pursuant to foreclosure of said Mortgage, pursuant to exercise of a power of sale available under said Mortgage, or pursuant to deed or assignment in lieu of foreclosure, shall be exempt from and shall in no way be governed by or subject to any "right of first refusal" which may be contained in or provided for in this Declaration.

In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Section 41, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Management Committee and Association of Unit Owners with respect to the subject concerned.

No amendment to this Section 41 which has the effect of diminishing the rights, protection, or security afforded to Mortgagees shall be accomplished or effective unless all of the Mortgagees of the individual Units have given their prior written approval to such amendment. Any amendment to this Section 41 shall be accomplished by an instrument executed by the Management Committee and filed for record in the office of the Salt Lake County Recorder. In any such instrument an officer of the Management Committee shall certify that any prior written approval of Mortgagees

BOOK 4883
PAGE 1191

required by this Section 41 as a condition to amendment has been obtained.

42. Amendment. Except as provided in and/or subject to the terms of items (a) through (c) below, the vote of at least 65% of the undivided ownership interest in the Common Areas and Facilities shall be required to amend this Declaration 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. The foregoing right of amendment shall, however, be subject to the following:

(a) Any amendment to the foregoing Section 41 ("Mortgagee Protection") shall be subject to the matters treated by the last Paragraph of said Section.

(b) Declarant shall have the right unilaterally to amend and supplement this Declaration and the Survey Map in conjunction with its addition to the Project of each portion of the Additional Land, all in the manner and to the extent, but only in the manner and to the extent, provided for in Sections 36 through 40 of this Article III.

(c) Until the happening of the event described in the second Paragraph of Section 8 of this Article III, no amendment to the Survey Map or to any provision of this Declaration which has or may have the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant (in its capacity as Declarant) herein shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Declarant.

43. Declarant's Rights Assignable. All of the rights of Declarant under this Declaration, or the rights of Declarant hereunder respecting any given portion of the Additional Land, may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer, or assignment.

44. Interpretation. To the extent the provisions of the Act are consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

BOOK 4883
PAGE 1192

45. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all other signatories hereto, all parties who hereafter acquire any interest in a Unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Condominium Units shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Unit or in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

46. Agent for Service of Process. L. Kelly Sheppard, whose address is 2026 Leonard Circle, Sandy, Utah, is the person to receive service of process in the cases authorized by the Act. The Management Committee shall, however, have the right to appoint a successor or substitute process agent. Such successor or substitute agent and his address shall be specified by an appropriate instrument filed in the office of the County Recorder of Salt Lake County State of Utah.

47. Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Survey Map shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

EXECUTED by Declarant on this 23rd day of April, 1979.

"Declarant":

HERITAGE PLANNING CONSULTANTS, INC.,
a Utah corporation

ATTEST:

Jordan Q. Rasmussen
Jordan Q. Rasmussen,
Secretary

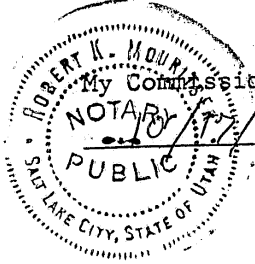
By L. Kelly Sheppard
L. Kelly Sheppard,
President

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

On this 23rd day of April, 1979, personally appeared before me L. KELLY SHEPPARD and JORDAN Q. RASMUSSEN, who being by me duly sworn, did say that they are the President and Secretary, respectively, of HERITAGE PLANNING CONSULTANTS, INC., a Utah corporation, and that the foregoing Declaration was signed on behalf of said corporation by

BOOK 4883 PAGE 1193

authority of its Bylaws or a resolution of its Board of Directors, and said Officers acknowledged to me that said corporation executed the same.



My Commission Expires: _____

Robert K. Mountsen
NOTARY PUBLIC
Residing at: Sandy, Utah

BOOK 4883 PAGE 1194

EXHIBIT "A"

TO

DECLARATION OF CONDOMINIUM
OF THE MONTE VISTA CONDOMINIUM PROJECT

[An Expandable Condominium]

<u>Unit No.</u>	<u>Building No.</u>	<u>Size</u>	<u>Ownership Percentage</u>	<u>Carport No.</u>	<u>Storage Space No.</u>
101	A	600	2.55%	203	101
102	A	870	3.70%	102	102
103	A	870	3.70%	103	103
104	A	600	2.55%	104	104
105	A	600	2.55%	201	105
106	A	870	3.70%	106	106
107	A	870	3.70%	107	107
108	A	600	2.55%	108	108
109	A	600	2.55%	109	109
110	A	870	3.70%	110	110
111	A	870	3.70%	111	111
112	A	600	2.55%	112	112
113	A	600	2.55%	113	113
114	A	870	3.70%	114	203
115	A	870	3.70%	115	115
116	A	600	2.55%	116	116
201	A	600	2.55%	105	201
202	A	870	3.70%	202	202
203	A	870	3.70%	101	114
204	A	600	2.55%	204	204
205	A	600	2.55%	205	205
206	A	870	3.70%	206	206
207	A	870	3.70%	207	207
208	A	600	2.55%	208	208
209	A	600	2.55%	209	209
210	A	870	3.70%	210	210
211	A	870	3.70%	211	211
212	A	600	2.55%	212	212
213	A	600	2.55%	213	213
214	A	870	3.70%	214	214
215	A	870	3.70%	215	215
216	A	600	2.55%	216	216

BOOK 4883 PAGE 1195

EXHIBIT "B"

TO

DECLARATION OF CONDOMINIUM
OF THE MONTE VISTA CONDOMINIUM PROJECT

[An Exandable Condominium]

The "Tract" which is referred to in and affected by said Declaration is situated in Salt Lake County, State of Utah, and is described as follows:

Beginning at a point which is South 868.21 feet and West 821.20 feet from the center of Section 33, T.1S., R.1E., S.L.B.&M., said point of beginning also being S 89°48' W along the monument line 397.48 feet from a county monument at the intersection of 3900 South Street and Highland Drive; thence North 314.13 feet; thence N 89°15' W 10.50 feet; thence West 142.99 feet; thence N 0°32'02" E 60.32 feet; thence N 89°44'43" W 45.00 feet; thence S 0°32'14" W 64.00 feet; thence N 89°43'53" W 59.97 feet; thence South 117.91 feet to a point on the easterly right-of-way line of the Salt Lake and Jordan canal; thence S 43° E along said right-of-way line 264.49 feet to said 3900 South Street monument line; thence N 89°48' E along said monument line 78.11 feet to the point of beginning.

Subject to a right-of-way over the South 33 feet of said Tract for the purposes of 3900 South Street.

BOOK 4883 PAGE 1196

EXHIBIT "C"

TO

DECLARATION OF CONDOMINIUM

OF THE MONTE VISTA CONDOMINIUM PROJECT

[An Expandable Condominium]

The "Additional Land" which is referred to in said Declaration is situated in Salt Lake County, State of Utah, and is described as follows:

Parcel I:

Commencing 43.8 rods West and South 24°15' East 211.2 feet from the center of Section 33, Township 1 South, Range 1 East, Salt Lake Meridian, thence running North 24°15' West 9.08 feet; thence West 333.1 feet; thence North 34.78 feet; thence West 181.5 feet; thence South 111.5 feet; thence East 140.0 feet; thence South 78.3 feet; thence East to a point South 24°15' East 9.9 rods from the place of beginning; thence North 24°15' West 9.9 rods to the place of beginning. Containing 2.07 acres, more or less.

Parcel II:

Commencing 15.7 rods South and 307.6 feet East from the Northwest corner of the Northeast Quarter of the Southwest Quarter of Section 33, Township 1 South, Range 1 East, Salt Lake Meridian, thence running South 78.3 feet; thence West 140.0 feet; thence North 78.3 feet; thence West 140.0 feet; thence North 78.3 feet; thence East 140.0 feet to the place of beginning. Containing 0.25 acres, more or less.

Parcel III:

Beginning at a point which is South 553.94 feet and West 831.70 feet from the Center of Section 33, T.1S., R.1E., S.L.B.&M.; said point of beginning also being South 89°48' West along the monument line 397.48 feet, North 314.13 feet and North 89°15' West 10.50 feet, from a county monument at the intersection of 3900 South Street and Highland Drive; thence North 212.44 feet; thence West 345.21 feet to a point on the Easterly right-of-way line of the Salt Lake and Jordan Canal; thence South 16°15' East along said right-of-way line 347.43 feet; thence North 117.91 feet; thence South 89°43'53" East 59.97 feet; thence North 0°32'14" East 64.00 feet; thence South 89°44'43" East 45.00 feet; thence South 0°32'02" West 60.32 feet; thence East 142.99 feet to the point of beginning.

BOOK 4883 PAGE 1197