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FIRST AMERICAN TITLE
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DECLARATION

OF

COVENANTS, CONDITIONS AND RESTRICTIONS

AND RESERVATION OF EASEMENTS FOR

ESPRIT HOMES OF MILLCREEK

A Utah Planned Unit Development

5314412

FIRST AMERICAN TITLE
RMP# 274173

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DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS FOR
ESPRIT HOMES AT MILLCREEK
A UTAH PLANNED UNIT DEVELOPMENT

THIS DECLARATION is made on this 12 day of August, 1992, by **SUSSEX GROUP L.C.**

RECITALS:

A. Declarant is the owner of that certain real property in Salt Lake County, Utah, which is more particularly described as follows:

BEGINNING at a point that is South 2334.94 feet and West 1665.86 feet from the North quarter corner of Section 33, Township 1 South, Range 1 East, Salt Lake Base and Meridian; thence North 30°00'00" East 254.380 feet; thence North 60°00'00" West 75.00 feet to a point of a 15.00 foot radius curve to the right (bearing to the center of curve bears South 30°00'00" West), thence southwesterly 23.562 feet along the arc of said curve; thence North 71°43'56" West 30.64 feet; thence West 81.95 feet; thence South 71°14'33" West 40.427 feet; thence West 99.32 feet; thence North 8.955 feet; thence West 51.738 feet; thence North 00°26'04" West 112.57 feet; thence North 89°50'58" East 70.69 feet; thence North 141.78 feet; thence North 89°50'00" West 17.886 feet; thence North 62.04 feet; thence North 89°50'00" West 264.073 feet; thence South 84°57'00" West 110.875 feet; thence South 72°28'00" West 400.800 feet; thence South 35°48'00" East 79.903 feet to the North line of the Millcreek Condominiums, Phase 2, a recorded condominium project, Entry No. 4638446, Book 88-6, Page 56, as found in the office of the Salt Lake County Recorder's Office; thence along the North and East line of said Millcreek Condominium, Phase 2, the following three courses and distances; thence North 72°28'00" East 132.24 feet; thence South 17°32'00" East 22.00 feet; thence North 75°18'33" East 2.00 feet; thence South 17°00'00" East 54.76 feet; thence South 85°00'00" East 117.357 feet; thence South 118.243 feet along said Millcreek Condominiums, Phase 2; thence along said line the following 6 courses and distances; thence North 85°00'00" West 101.40 feet; thence South 30°00'00" West 66.745 feet; thence South 60°00'00" East 60.57 feet; thence South 30°00'00" West 41.635 feet; thence South 89°02'01" East 34.61 feet; thence South 35°48'00" East 132.88 feet; thence East 153.625 feet; thence North 00°18'19" East 5.26 feet; thence East 485.85 feet along the North line of the Highland Cove Condominiums, a recorded condominium project; Entry No. 3651595, Book 82-3, Page 25, as found in the Salt Lake County Recorder's Office, to the point of beginning.

B. Declarant has deemed it desirable, for the efficient preservation of the real property described in Paragraph A above (the "Properties"), to create a non-profit corporation under the Utah Non-Profit Corporation and Cooperative Association Act to which should be delegated and assigned the powers of owning, maintaining, replacing and administering the Common Area, as hereinafter defined, administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created.

C. Declarant shall cause or has caused such corporation, the Members, as hereinafter defined, of which shall be the respective Lot Owners, as hereinafter defined, in the Properties, to be formed for the purpose of exercising the functions aforesaid.

D. Declarant shall develop and convey all of the Properties pursuant to a general plan for all of the Properties and subject to certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all running with the Properties as hereinafter set forth.

E. Declarant hereby declares that all of the Properties shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Properties, or any portion thereof. The covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth herein shall run with the Properties and shall be binding upon all persons having any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon Declarant, its successors in interest, and each Lot Owner and his respective successors in interest; and may be enforced by any Lot Owner and his successors in interest, and by the Association through its Board.

Notwithstanding the foregoing, no provisions of this Declaration shall be construed to prevent or, except as specifically provided herein, to limit Declarant's right to complete the development of the Properties and construction of improvements thereon, nor Declarant's right to market the Lots and maintain model homes, construction, sales or leasing

offices or similar facilities on any property in the Properties owned by Declarant or the Association, nor Declarant's right to post signs incidental to construction, sales or leasing.

ARTICLE I

DEFINITIONS

Unless otherwise expressly provided, the following words and phrases when used herein shall have the meaning hereinafter specified:

Section 1.01 "Architectural Committee" shall mean the committee created pursuant to Article VIII hereof to review all additions to or alterations or changes in the design, color or location of any structural improvements within the Properties.

Section 1.02 "Articles" shall mean the Articles of Incorporation of the Association which have been filed in the office of the Division of Corporations and Commercial Code of the State of Utah, a true copy of which is attached hereto, marked as Exhibit "A," and incorporated herein by this reference, as such Articles may be amended from time to time.

Section 1.03 "Assessment Lien" shall mean the lien in favor of the Association which is a continuing charge on the land and secures all sums assessed against each Lot Owner and such Lot Owner's Lot within the Properties pursuant to Article VI hereof.

Section 1.04 "Association" shall mean ESPRIT HOMES OWNERS' ASSOCIATION, a corporation formed under the Utah Nonprofit Corporation and Co-operative Association Act, its successors and assigns.

Section 1.05 "Board" shall mean the Board of Trustees of the Association, elected in accordance with the Bylaws of the Association.

Section 1.06 "Bylaws" shall mean the Bylaws of the Association, which have been or shall be adopted by the Board substantially in the form of Exhibit "B" attached hereto and incorporated herein by this reference, as such Bylaws may be amended from time to time.

Section 1.07 "Capital Improvement Assessment" shall mean a charge against each Lot Owner and such Lot Owner's Lot, representing a portion of the costs to the Association for installation or construction of any improvements on any portion of the Common Area which the Association may from time to time authorize.

Section 1.08 "Common Area" shall mean all of the real property and improvements, including without limitation any recreation areas and facilities, landscaped areas, fences, Common Area lighting, and private roadways and walkways, which are owned by the Association for the common use and enjoyment of all of the Lot Owners. The Common Area shall specifically not include the Lots. The Common Area to be so owned by the Association at the time of the conveyance of the first Lot shall include the property described in Paragraph A of the Recitals of this Declaration, less all areas which lie within the confines of the Lot boundaries. The Common Area is more particularly described on the Plat.

Section 1.09 "Common Assessment" shall mean the charge against each Lot Owner and his Lot, representing a portion of the total costs to the Association of maintaining, improving, repairing, replacing, managing and operating the Common Area, the Association's proportionate share of the cost of operating, managing and maintaining the common roadways and utilities serving the Properties and the Millcreek Condominiums, a condominium project that adjoins the Properties, and otherwise in connection with the Association's management and operation of the Properties, which are to be paid uniformly and equally by each Lot Owner to the Association, as provided herein, and which shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area that must be replaced on a periodic basis.

Section 1.10 "Common Expenses" shall mean the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Area (including unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments), including those costs not paid by the Lot Owner responsible for payment; management and administration of the Association, including but not limited to compensation paid by the Association to managers, accountants, attorneys and other employees; all utilities, gardening and other services benefiting the Common Area, and all recreational areas and facilities thereon; fire, casualty and liability insurance, workmen's compensation insurance and other insurance covering the Common Areas and the operations of the Association; bonding of the Association's manager, members of the Board, and any agents, employees and volunteers of the Association; taxes paid by the Association; amounts paid the Association for discharge of any lien or encumbrance levied against the Properties or portions thereof; the Association's proportionate share of the cost of operating, managing and maintaining the common roadways and utilities between the Properties and the Millcreek Condominiums; and any other item or items designated by, or in accordance with other expenses incurred by, the Association for any reason whatsoever in connection with the Properties, for the benefit of all of the Lot Owners.

Section 1.11 "Declarant" shall mean and refer to SUSSEX GROUP L.C. and its successors and assigns so long as Declarant assigns such rights of Declarant hereunder to any such person by an express written assignment.

Section 1.12 "Declaration" shall mean this instrument as it may be amended from time to time.

Section 1.13 "Dwelling Unit" shall mean and refer to a building located on a Lot designed and intended for use and occupancy as a residence by a single family.

Section 1.14 "Eligible Insurer or Guarantor" shall mean and include any federal or quasi-federal governmental insurer or guarantor of Mortgages, including, without limitation, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration, the Veterans Administration, and the Government National Mortgage Association.

Section 1.15 "Family" shall mean (1) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (2) a group of not more than three (3) persons not all so related, inclusive of their domestic servants, who maintain a common household in a Dwelling Unit.

Section 1.16 "First Mortgage; First Mortgage; Eligible First Mortgage" The term "First Mortgage" shall mean a Mortgage which constitutes a first mortgage lien on any Lot in the Properties. The term "First Mortgage" shall mean a Mortgage which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, or any federal or state agency which is regularly engaged in residential mortgage lending and has a first mortgage lien on a Lot in the Properties. "Eligible First Mortgage" shall mean a First Mortgage who has requested notice from the Association of any proposed action that requires the consent of a specified percentage of such Eligible First Mortgages.

Section 1.17 "Improvement" shall mean all structures and appurtenances thereto of every type and kind, including but not limited to buildings, out buildings, recreational facilities, walkways, sprinkler pipes, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, patios, terraces, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water-softener fixtures or equipment.

Section 1.18 "Lot" shall mean and refer to any residential lot shown upon and designated as a Lot on the Plat. Lot shall specifically not include the Common Area.

Section 1.20 "Lot Owner" shall mean and refer to the person or persons or other legal entity or entities, including Declarant, holding fee simple interest of record to any Lot which is a part of the Properties, including sellers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation. For purposes of Article X of this Declaration only, unless the context otherwise requires, Lot Owner shall also include the Family, invitees, licensees and lessees of any Lot Owner.

Section 1.21 "Manager" shall mean the person, firm or corporation appointed by the Association hereunder as its agent and to which is delegated certain duties, powers, or functions of the Association.

Section 1.22 "Maintenance Funds" shall mean the accounts created for receipts and disbursements of the Association pursuant to Article VI of this Declaration.

Section 1.23 "Member" shall mean any person or entity holding a membership in the Association as provided herein.

Section 1.24 "Millcreek - Engrit Association" shall mean the master association formed between the Association and The Association of Homeowners For Millcreek Condominiums to maintain, operate, repair and replace the common roadways and the common utility facilities that serve both the Properties and the adjoining Millcreek Condominiums.

Section 1.25 "Mortgage"; "Mortgage"; "Mortgage Servicer". The term mortgage shall mean any mortgage or deed of trust or other conveyance of a Lot to secure the performance of an obligation which will be void and reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage." The term "Mortgages" shall mean a person or entity, its successors and assigns, to whom a Mortgage is made, and shall include the Beneficiary of a Deed of Trust; "Mortgagor" shall mean a person or entity who mortgages his or its property to another (i.e., the maker of a Mortgage), and shall include the Trustor of a Deed of Trust. The term "Mortgage Servicer" shall mean a Mortgagee who services any Mortgage or Deed of Trust on any Dwelling Unit in the Properties on behalf of any Eligible Insurer or Guarantor.

Section 1.26 "Person" shall mean a natural individual or any other entity with the legal right to hold title to real property.

Section 1.27 "Plat" shall mean the subdivision plat of the Properties prepared by Eckhoff Watson And Preator Engineering which has been or shall hereafter be recorded in the office of the County Recorder of Salt Lake County, Utah.

Section 1.28 "Properties" shall mean and refer to all of the real property described in Paragraph A of the Recitals to this Declaration.

Section 1.29 "Reconstruction Assessment" shall mean a charge against such Lot Owner and his Lot, representing a portion of the cost to the Association for reconstruction of any portion or portions of the Improvements on the Common Area pursuant to the provisions of this Declaration.

Section 1.30 "Record, Recorded, Filed and Recordation" shall mean, with respect to any document, the recordation of such document in the office of the County Recorder of Salt County, Utah.

Section 1.31 "Roadways & Utilities Declaration" shall mean that certain Declaration of Roadways and Utilities Covenants, Conditions and Restrictions, And Reservation of Easements which has been or shall hereafter be entered into between the Association and The Association of Homeowners For Millcreek Condominiums with respect to the maintenance, operation, repair and replacement of the common roadways and common utility lines jointly used by the Lot Owners and the owners of condominium units in the Millcreek Condominiums.

Section 1.32 "Special Assessment" shall mean a charge against a particular Lot Owner and his Lot, directly attributable to the Lot Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

Section 1.33 "Total Votes of the Lots" shall mean the total number of votes appurtenant to all of the Lots in the Properties.

The foregoing definitions shall be applicable to this Declaration, unless otherwise expressly provided, recorded pursuant to the provisions of this Declaration.

ARTICLE II

LOT OWNERS' PROPERTY RIGHTS

Section 2.01 Lot Owners' Easements of Enjoyment. Every Lot Owner shall have an unrestricted, perpetual, non-exclusive right and easement of ingress and egress to such Lot Owner's Dwelling Unit and of enjoyment in, to and over the Common Area which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to the following rights:

(a) The right of the Association (by action of the Board) to reasonably limit the number of guests of the Lot Owners using the Common Area facilities.

(b) The right of the Association (by action of the Board) to establish uniform rules and regulations pertaining to the use of the Common Area and the recreational areas and facilities thereof.

(c) The right of the Association in accordance with its Articles, Bylaws and this Declaration, with the vote or written assent of Lot Owners representing at least sixty-seven percent (67%) of the Total Votes of the Lots, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof, and, subject to the provisions of Article XIV of this Declaration, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such Mortgagees shall be subordinated to the rights of the Lot Owners.

(d) The right of the Association (by action of the Board) to suspend any Lot Owner's voting rights and use of the Common Area facilities for any period during which any assessment against his Lot remains unpaid and delinquent, and for a period not to exceed thirty (30) days for any single infraction of the published rules and regulations of the Association.

(e) The right of the Association (by action of the Board) to dedicate, release, alienate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, release, alienation or transfer shall be effective unless approved by the vote or written assent of Lot Owners representing at least sixty-seven percent (67%) of the Total Votes of the Lots.

(f) The right of the Declarant (and its sales agents, customers and representatives) to the reasonable non-exclusive use of the Common Area and the facilities thereof, without charge, for the purpose of marketing the Lots and activities related thereto.

(g) The right of the Association (by action of the Board) to reconstruct, replace or refinish any improvement or portion thereof upon the Common Area, substantially in accordance with the original design, finish or standard of construction of such improvement, or of the general improvements within the Properties, as the case may be; and not substantially in accordance with such original design, finish or standard of construction only with the vote or written consent of at least sixty-seven percent (67%) of the Total Votes of the Lots.

(h) The right of the Association (by action of the Board) to replace destroyed trees or other vegetation and to plant trees, shrubs and ground cover upon any portion of the Common Area.

(i) The right of the Association (by action of the Board) to enter into the Roadways & Utilities Declaration with The Association Of Homeowners For Millcreek Condominiums, the purpose of which is to create and provide for the operation and maintenance of cross-easements for common utility lines and ingress and egress purposes to and from Highland Drive and 1300 South Street over and across the common roadways that service both the Millcreek Condominiums and the Properties.

Section 2.02 Delegation of Use. Any Lot Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his Family, his tenants, or contract purchasers who reside in his Dwelling Unit, subject to reasonable regulation by the Board.

Section 2.03 Easements for Vehicular Traffic. In addition to the general easements for use of the Common Area reserved herein, there shall be, and Declarant hereby reserves and covenants for itself and all future Lot Owners and their successors in interest within the Properties that each and every Lot Owner and their successors in interest shall have, a non-exclusive, perpetual easement appurtenant for vehicular traffic over all private streets within the Properties, subject to the parking provisions set forth in Section 2.03 of this Declaration. Pursuant to the Roadways & Utilities Declaration, the Association shall establish with The Association Of Homeowners For Millcreek Condominiums certain reciprocal easements for ingress and egress purposes to and from Highland Drive and 1300 South Street over and across the common roadways that service both the Millcreek Condominiums and the Properties.

Section 2.04 Easements for City and County Public Service Use. In addition to the foregoing easements over the Common Area, there shall be, and Declarant hereby reserves and covenants for itself and all future Lot Owners within the Properties, easements for city, county and federal public services, including but not limited to the right of the police to enter upon any part of the Common Area for the purpose of enforcing the law.

Section 2.05 Easements for Encroachments. If any part of the Common Area encroaches or shall hereafter encroach upon any Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Dwelling Unit encroaches or shall hereafter encroach upon the Common Area, or upon an adjoining Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Lots. Encroachments referred to herein shall include but are not limited to encroachments caused by any natural movement or settling of any Dwelling Unit located on a Lot, any encroachment of any Dwelling Unit due to minor engineering or construction variances, any encroachment of eaves, roof overhangs and architectural features as parts of the original construction of any Dwelling Unit located on a Lot, and any encroachment caused by improvements constructed or to be constructed within the Common Area, or any part thereof, in accordance with the provisions of this Declaration.

Section 2.06 Utilities Drainage and Access Easements. Reciprocal easements are hereby reserved for the benefit of adjoining Lot Owners for the control, maintenance and repair of the utilities of adjoining Lot Owners. Declarant expressly reserves for the benefit of all of the real property in the Properties, and the Lot Owners, reciprocal easements of access, ingress and egress over all Lots and over the Common Area, for the use and enjoyment of the Lots in accordance with this Declaration, including, without limitation, for installation and repair of utility services, for drainage over, across and upon adjacent Lots for water resulting from the normal use of adjoining Lots. Such easements may be used by Declarant, its successors, purchasers and all Lot Owners, their guests, tenants and invitees residing on or temporarily visiting the Properties, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of the Lots and the Common Area. No Lot Owner shall interfere with the established drainage pattern over his Lot from adjoining Lots, other Lots or the Common Area. Each Lot Owner shall make adequate provision for drainage in the event he changes the established drainage over his Lot. For purposes of this Declaration, "Established Drainage" on any Lot is defined as the drainage pattern and facilities in existence at the time that such Lot is conveyed to a purchaser from Declarant. Pursuant to the Roadways & Utilities Declaration, the Association shall establish with The Association Of Homeowners For Millcreek Condominiums certain reciprocal easements for common utilities that serve both the Properties and the Millcreek Condominiums. Pursuant to the Roadways & Utilities Declaration, the Association shall establish jointly with The Association Of Homeowners For Millcreek Condominiums certain reciprocal easements for common utilities, a sewer system and a storm drainage system and structures that serve both the Properties and the Millcreek Condominiums. Said easements and associated improvements shall be managed, maintained and replaced by the Millcreek - Esprit Association. In the event the Millcreek - Esprit Association fails to properly manage and maintain the common storm drainage system, Salt Lake County shall have the right, but not the obligation, to maintain the storm drainage system, and to charge the costs thereby incurred to the Association and The Association Of Homeowners For Millcreek Condominiums. The Association shall not have the authority to change, by vote, alienation, alteration, transfer, sale, or otherwise, the use of currently existing areas and structures designed to control storm water runoff unless the consent of the Development Services Division of Salt Lake County, or its successor, has first been obtained in writing. Salt Lake County is hereby made a party to the covenants established by this Declaration and the Roadways & Utilities Declaration for the sole purpose of protecting and preserving the use of the common storm drainage system and structures that serve both the Properties and the Millcreek Condominiums. Salt Lake County shall not be a member of the Millcreek - Esprit Homeo Association or the Association and shall have no vote. Salt Lake County is hereby granted a right of enforcement as set forth in Section 18.01 of this Declaration.

Section 2.07 Easements for Maintenance, Cleaning, Repair and Replacement. A portion of the Common Area is or may be conveniently accessible only through the Dwelling Units. The Association shall have the irrevocable right to have access to each Dwelling Unit and to the Common Area from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair or replacement of any portion of the Common Area or for making emergency repairs at

any time therein necessary to prevent damage to the Common Area. In addition, agents of the Association may enter any Dwelling Unit when necessary in connection with any cleaning, maintenance, repair, replacement, landscaping, construction, or reconstruction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Lot Owners as practicable, and any damage caused thereby shall be repaired by the Association with funds from the Maintenance Funds.

Section 2.08 Waiver of Use. No Lot Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot or other property owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his Lot or any other property in the Properties.

Section 2.09 Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns that it will convey fee simple title to the Common Area described in Section 1.08 of this Declaration to the Association, free and clear of all encumbrances and liens, except easements, conditions and reservations set forth in this Declaration. Said conveyance shall be made prior to the conveyance of the first Lot to a purchaser from Declarant.

Section 2.10 Taxes. Each Lot Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain separate real estate tax assessment of each Lot. If any taxes or assessments may, in the opinion of the Association, nevertheless be a lien on more than one Lot not under common ownership, or any part thereof, they may be paid by the Association and each Lot Owner shall be obligated to pay or to reimburse the Association therefor on a uniform basis.

ARTICLE III

MEMBERSHIP IN ASSOCIATION

Section 3.01 Membership. Every Lot Owner shall be a Member of the Association, and no Lot Owner shall have more than one membership in the Association. Memberships in the Association shall not be assignable, except to the successor-in-interest of the Lot Owner, and every membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Lot. Ownership of such Lot shall be the sole qualification for membership in the Association.

Section 3.02 Transfer. The Association membership held by any Lot Owner shall not be transferred, pledged or alienated in any way except upon the sale or encumbrance of such Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. A Class A Member who has sold his Lot to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser his membership rights in the Association. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his Lot until fee title to the Lot sold is transferred. In the event the Lot Owner shall fail or refuse to transfer the membership registered in his name to the purchaser of such Lot upon transfer of fee title thereto, the Board shall have the right to record the transfer upon the books of the Association. The Board shall have the right to charge a reasonable Special Assessment against any Lot Owner, and his Lot, equal to the cost to the Association of effectuating any such transfer of his membership upon the books of the Association.

ARTICLE IV

VOTING RIGHTS

Section 4.01 Classes of Voting Membership. The Association shall have two (2) classes of voting membership as follows:

Class A. Class A Members shall originally be all Lot Owners with the exception of the Declarant for so long as there exists a Class B membership. Class A Members shall be entitled to one (1) vote for each Lot owned. Declarant shall become a Class A Member with regard to Lots owned by Declarant upon conversion of Declarant's Class B membership as provided below. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised in accordance with Section 4.02 of this Declaration, and in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant and it shall be entitled to three (3) votes for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of any one of the following events, whichever occurs first:

- (a) Four (4) months after seventy-five percent (75%) of the Dwelling Units in the Properties have been conveyed to Lot Owners; or
- (b) Five (5) years after the first Dwelling Unit is conveyed to a Lot Owner; or
- (c) Upon the voluntary written cancellation of the Class B membership by Declarant.

Section 4.02 Vote Distribution. When fee simple title to a Lot is held by more than one person ("co-owners"), all such co-owners shall be Members and may attend any meetings of the Association, but only one such co-owner shall be entitled to exercise the vote appurtenant to such Lot. Such co-owners may from time to time all designate in writing one of their number to vote. Fractional votes shall not be allowed, and the Class A vote for each Lot shall be exercised, if at all, as a unit. Where no voting co-owner is designated, or if such designation has been revoked, the vote for such Lot shall be exercised as the majority of the co-owners of the Lot mutually agree. Unless the Board receives a written objection from a co-owner, it shall be presumed that the voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for any Lot where the majority of the co-owners present in person or by proxy and representing such Lot cannot agree to said vote or other action. The non-voting co-owner or co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or by the Bylaws of the Association, shall be deemed to be binding on all Lot Owners, their successors and assigns. Said voting rights shall be subject to the restrictions and limitations provided in this Declaration and in the Articles and Bylaws of the Association.

ARTICLE V

DUTIES AND POWERS OF ASSOCIATION

Section 5.01 Duties and Powers of Association. The Association, acting through the Board, shall also have the power and duty to:

- (a) Maintain, repair, replace and otherwise manage the Common Area and all facilities, improvements and landscaping thereon (other than the common roadways and the common utilities facilities that serve both the Project and the Millcreek Condominiums and which are to be maintained by the Millcreek - Esprit Association pursuant to the Roadways & Utilities Declaration) in accordance with the provisions of Article VI of this Declaration.
- (b) Grant easements or rights of way, where necessary, for utilities, storm drainage and sewer facilities over the Common Area to serve the Common Area and the Lots.
- (c) Grant easements or rights of way pursuant to the Roadways & Utilities Declaration, for roadways, utilities, storm drainage and sewer facilities over the Common Area in exchange for similar easements and rights of way over and across the common area of the Millcreek Condominiums to provide for the common utilities, storm drainage and sewer facilities that run between the two projects and to provide the Lot Owners and the owners of condominium units in the Millcreek Condominiums access to and from Highland Drive and 1300 East Street over and across the common roadways that connect the Properties and the Millcreek Condominiums.
- (d) Maintain such policy or policies of liability and fire insurance with respect to the Common Area and personal property, if any, owned by the Association as provided herein in furthering the purposes of and protecting the Association and the Members as directed by this Declaration and the Bylaws of the Association.
- (e) Employ or contract with a professional manager to perform all or any part of the duties and responsibilities of the Association, and shall have the power to delegate its powers to committees, officers and employees. Any such agreement shall be for a term not in excess of three (3) years, subject to cancellation by either party without cause or payment of a termination fee upon ninety (90) days prior written notice.
- (f) After fifteen (15) days written notice, without being liable to any Lot Owner, enter upon any Lot for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining or repairing any such area if for any reason whatsoever the Lot Owner thereof fails to maintain or repair any such area as required by this Declaration.
- (g) Keep and maintain current books, records and financial statements of the Association in accordance with the requirements of the Utah Nonprofit Corporation and Co-operative Association Act and generally accepted accounting principles.
- (h) Have available for inspection by the Lot Owners or any First Mortgagee current copies of this Declaration, the Articles, the Bylaws, and other rules concerning the Properties and the Association, as well as the Association's books, records and financial statements.
- (i) Fulfill such joint maintenance, repair and replacement obligations as are set forth in the Roadways & Utilities Declaration.
- (j) Employ or contract with third party service providers such as attorneys, accountants and garbage collection companies, to provide services to the Association, in connection with the Common Areas or in relating to the general operation of the Properties.

The conveyance of each Lot shall be subject to the covenants, conditions, restrictions, easements, charges and liens as contained in this Declaration, and any supplements or amendments thereto recorded in the Office of the County

Recorder of the County wherein the Properties are located, prior to the conveyance of any Lot. The Declaration provides, inter alia, that all Lot Owners shall, upon becoming Owners, automatically become members of the Association, which shall maintain the Common Area in the Properties, and enforce the covenants and restrictions as imposed in this Declaration, and collect and disburse the assessments and charges created herein through its Board elected by the Lot Owners, as described herein.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 6.01 Creation of Assessment Liens and Personal Obligation for Assessments. Declarant, for each Lot owned by it within the Properties, hereby covenants, and each Lot Owner by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following assessments: (1) annual Common Assessments for Common Expenses, (2) Capital Improvements Assessments, (3) Special Assessments, and (4) Reconstruction Assessments. All such assessments shall be established and collected as hereinafter provided, and such assessments, together with interest, costs and reasonable attorney's fees for the collection thereof, shall be a charge on the land and shall be a continuing Assessment Lien upon the Lot against which such assessments are made. All Assessment Liens shall be in favor of the Board and shall inure to the benefit of any successor of the Board or Association. Each such assessment, together with interest, costs and reasonable attorney's fees, shall be the personal obligation of the person who was the Lot Owner of such Lot at the time when the assessment fell due, and shall not pass to any successor in interest of such Lot Owner unless such successor agrees to assume the obligation. The Board shall establish no fewer than three (3) separate accounts (the "Maintenance Funds") which shall include: (1) an "Operating Fund" for current expenses of the Association, (2) a "Reserve Fund" for maintenance, repair, replacement, and painting (which would not reasonably be expected to recur more often than annually) of the Common Area that must be replaced on a periodic basis, and (3) a "Working Capital Fund" to permit the Association to meet unforeseen expenditures or to purchase any additional equipment or services deemed necessary to the operation of the Common Area or the proper functioning of the Association. Monies paid to the Association shall be deposited into the Maintenance Funds, and disbursements shall be made therefrom, as provided herein, in the performance of functions by the Association under the provisions of this Declaration. The Board shall not commingle any amounts deposited into the Maintenance Funds with one another.

Section 6.02 Purpose of Common Assessments. The assessments levied by the Association shall be used to promote the common health, safety, benefit, recreation and welfare of the Lot Owners and for the improvement, maintenance and replacement of the Common Area, and to pay the Association's prorata share of the cost of the improvement, maintenance and replacement of the common roadways and utilities that service the Millcreek Condominiums and the Properties as provided in the Roadways & Utilities Declaration. The assessments shall also include an adequate Reserve Fund to be used as appropriate for maintenance, repair and replacement of those elements of the Common Area that must be replaced on a periodic basis. However, disbursements from the Reserve Fund shall be made by the Board only for the specific purposes specified in this Article VI. Disbursements from the Operating Fund shall be made by the Board for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all of the Lot Owners, other than those purposes for which disbursements from the Reserve Fund are to be used. Nothing in this Declaration shall be construed in such a way as to permit the Association to use any assessments to abate any nuisance or annoyance emanating from outside the boundaries of the Properties. Nothing contained herein shall limit, preclude or impair the establishment of additional Maintenance Funds by the Association, so long as the amounts deposited into any such Maintenance Fund are earmarked for specified purposes authorized by this Declaration.

Section 6.03 Damage to Common Area by Lot Owners. The foregoing maintenance, repairs or replacements within the Common Area arising out of or caused by the willful or negligent act of the Lot Owner, his Family, guests or invitees shall be done at said Lot Owner's expense, or a Special Assessment therefor shall be made against his Lot; provided, however, that the liability of an individual Lot Owner for such damage to the Common Area shall not be absolute, but shall only be that for which the Lot Owner is legally responsible under State law.

Section 6.04 Capital Improvement and Reconstruction Assessments. In addition to the Common Assessments authorized above, the Board may levy, in any assessment year, a Capital Improvement Assessment or Reconstruction Assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement or other such addition upon the Common Area, including fixtures and personal property related thereto; provided that any such assessment in excess of Fifty Thousand Dollars (\$50,000) shall have the vote or written assent of a majority of the Total Votes of the Lots who are subject to such assessments, excluding therefrom the votes of Declarant.

Section 6.05 Notice and Quorum for Certain Authorized Actions. Written notice of any meeting called for the purpose of taking any action by the Members authorized under Sections 6.04 and 6.05 of this Declaration shall be sent to all Members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of the Total Votes of the Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty-five percent (25%) of the Total Votes of the Lots. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

Section 6.06 Uniform Rate of Assessment. Common Assessments (other than the portion thereof attributable to common water use), Capital Improvement Assessments and Reconstruction Assessments provided for in this Article VI must be fixed at a uniform rate for all Lots within the Properties; provided, however, that the Association may, subject to the provisions of Section 6.03 of this Declaration, levy Special Assessments against selected Lot Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Lot Owners, their family, lessees, licensees, guests or agents. Since water use by each of the Lots in the Properties will be measured by individual submeters, the determination of the proportionate share of the common water expense allocable to each Lot Owner shall be determined by multiplying the total amount of the water expense charged to the Association by the Millcreek - Esprit Association by a fraction the numerator of which is the amount of water used by each Lot as measured by the individual water submeter for such Lot, and the denominator of which is the aggregate amount of water used by the Common Area and all other Lots in the Properties as measured by the individual submeters. All Common Assessments shall be payable in regular installments rather than by special assessment and shall be collected on a regular basis by the Board, at such frequency as the Board shall determine.

Section 6.07 Date of Commencement of Common Assessments: Due Date. The annual Common Assessments provided for herein for the Properties shall commence as to all Lots within the Properties sixty (60) days after the date the first Dwelling Unit within the Properties is conveyed. The first annual Common Assessment shall be adjusted according to the number of months remaining in the fiscal year as set forth in the Bylaws. The Board shall fix the amount of the annual Common Assessment against each Lot at least thirty (30) days in advance of each Common Assessment period. Written notice of any change in the amount of the annual Common Assessment shall be sent to every Lot Owner subject thereto at least thirty (30) days prior to the effective date of such change. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments against a Lot is binding upon the Association as of the date of its issuance.

The Board shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year, including deposits in and withdrawals from the Reserve Fund and the Operating Fund, and shall cause to be distributed a copy of each such statement to each Member, and to each First Mortgagee who has filed a written request for copies of the same with the Board. At least thirty (30) days prior to the beginning of each fiscal year, the Board shall prepare and distribute to the membership of the Association a written, itemized estimate (budget) of the expenses expected to be incurred by the Association during such year in performing its functions under this Declaration (including a reasonable provision for contingencies and deposits into the Reserve Fund, less any expected income and accounting for any surplus from the prior year's respective Maintenance Fund).

Each annual Common Assessment shall constitute an aggregate of separate assessments for each of the Maintenance Funds, reflecting an itemization of the amounts assessed and attributable to prospective deposits into the Reserve Fund, the Operating Fund and any other Maintenance Fund established by the Association. If the estimated sums prove inadequate for any reason, including nonpayment of any Lot Owner's annual Common Assessment, the Board may, at any time, levy supplemental Common Assessments, subject to the provisions of Section 6.04 of this Declaration, for any of the Maintenance Funds which shall be assessed equally against each Lot Owner in the Properties.

Each annual Common Assessment may be paid by the Lot Owner to the Association in one check or payment or in separate checks, as payments attributable to deposits into a specified Maintenance Fund. In the event that any installment of a Common Assessment payment is less than the amount assessed and the payment does not specify the Maintenance Fund and Funds into which it should be deposited, the receipt by the Association from that Lot Owner shall be credited in order of priority first to the Operating Fund until that portion of the Common Assessment has been satisfied, and second to the Reserve Fund.

At the end of any fiscal year of the Association, the Board may determine that all excess funds remaining in the Operating Fund over and above the amounts used for the operation of the Properties may be returned to the Members proportionately or may be retained by the Association and used to reduce the following year's Common Assessments. Notwithstanding anything contained in the Articles or Bylaws to the contrary, if prior to dissolution of the Association the Association has not obtained non-profit status from both the Federal and State government, then upon such dissolution of the Association any amounts remaining in the Common Area Reserve Fund shall be distributed to or for the benefit of the Members in a proportion equal to their individual, respective contributions.

Section 6.08 Exempt Property. The Common Area shall be exempt from the assessments herein.

Section 6.09 Working Capital Fund. In order to insure that the Association shall have sufficient funds to meet unforeseen expenditures and to purchase any additional equipment or services, Declarant shall establish a working capital fund (the "Working Capital Fund") which shall at least be equal to two (2) months Common Assessments for each Dwelling Unit. Amounts paid into the Working Capital Fund shall not be deemed to be advance payments of regular assessments. Each Dwelling Unit's share of the Working Capital Fund shall be collected at the time that the sale of the Dwelling Unit is closed and shall then be transferred to the Association for deposit to the segregated Working Capital Fund. Within sixty (60) days after closing has been held for the first sale of a Dwelling Unit, Declarant shall pay each unsold Dwelling Unit's share of the Working Capital Fund to the Association, for which payment Declarant shall thereafter reimburse itself from funds collected at closing when each unsold Dwelling Unit is sold.

ARTICLE VII

EFFECT OF NON-PAYMENT OF ASSESSMENTS, REMEDIES OF THE ASSOCIATION

Section 7.01 Effect of Non-Payment of Assessments; Remedies of the Association. Any installment of a Common Assessment, Capital Improvement Assessment, Special Assessment or Reconstruction Assessment not paid within thirty (30) days after the due date shall bear interest from the due date of such installment of an assessment at the rate of eighteen percent (18%) per annum. If any installment of an assessment is not paid within thirty (30) days after it is due, the Lot Owner responsible therefor may be required further by the Board to pay a late charge of Five Dollars (\$5.00) or five percent (5%) of the amount of the delinquent installment, whichever is greater. The Association may bring an action at law against the Lot Owner personally obligated to pay the same, or foreclose the Assessment Lien against the Lot. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. If any installment of a Common Assessment is not paid within (30) days after its due date, the Board shall mail an acceleration notice to the Lot Owner and to each First Mortgagee of a Lot which has requested a copy of such notice. The notice shall specify (1) the fact that the installment is delinquent, (2) the action required to cure the default, (3) a date, not less than thirty (30) days from the date the notice is mailed to the Lot Owner, by which such default must be cured, and (4) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the Common Assessments for the then current fiscal year, and the sale of the Lot. If the delinquent installments of Common Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board at its option may declare all of the unpaid balance of the annual Common Assessment to be immediately due and payable without further demand and may enforce the collection of the full Common Assessments and all charges thereon in any manner authorized by law and this Declaration.

Section 7.02 Notice of Assessments. No action shall be brought to enforce any Assessment Lien herein unless at least thirty (30) days has expired following the date a Notice of Assessment (hereinafter referred to as the "Notice of Assessment") is deposited in the United States mail, certified or registered, postage prepaid, to the Lot Owner, and a copy thereof has been recorded by the Association in the office of the County Recorder in which the Properties are located. The Notice of Assessment must recite a good and sufficient legal description of any such Lot, the Lot Owner of record or the reputed Lot Owner thereof, the amount claimed (which may at the Association's option include interest on the unpaid assessment at eighteen percent (18%) per annum, plus reasonable attorney's fees and expenses of collection in connection with debt secured by said lien), and the name and address of the claimant. The Notice of Assessment shall be prior to any declaration of homestead recorded after the date on which this Declaration is recorded, to the extent allowed by law. The lien shall continue until fully paid or otherwise satisfied.

Section 7.03 Foreclosure Sale. Any such sale provided for above may be conducted by the Board, its attorneys or other persons authorized by the Board in accordance with the provisions of Utah Code Annotated (1953), as amended, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The Association, through its duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same.

Section 7.04 Curing of Default. Upon the timely curing of any default for which a Notice of Assessment was filed by the Association, the officers thereof shall record an appropriate Release of Lien, upon payment by the defaulting Lot Owner of a fee, to be determined by the Association, but not to exceed One Hundred Dollars (\$100), to cover the cost of preparing and recording such release. A certificate executed and acknowledged by any two (2) members of the Board stating the indebtedness secured by the Assessment Lien upon any Lot created hereunder shall be conclusive upon the Association and the Lot Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Lot Owner upon request at a reasonable fee, not to exceed Twenty Five Dollars (\$25.00).

Section 7.05 Cumulative Remedies. The Assessment Liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as provided above.

ARTICLE VIII

ARCHITECTURAL CONTROL

Section 8.01 Members of Committee. The Architectural Committee, sometimes referred to in this Declaration as the "Committee," shall consist of three (3) members. The initial members of the Committee shall consist of representatives of Declarant. Each of said persons shall hold office until the election of the first Board by the membership of the Association. Thereafter, new members of the Committee shall be appointed by the Board and shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein. Members of the Committee may be removed at any time without cause. The Board shall have the right to appoint and remove all members of the Committee.

Section 8.02 Review of Proposed Construction. Subject to Section 10.12 of this Declaration, no Dwelling Unit, building, fence, wall, patio cover or other structure shall be commenced, painted, erected or maintained upon the Properties, nor shall any exterior addition to or change or alternation therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design, construction, materials, color and location in relation to surrounding structures and topography by the Architectural Committee. Only stucco and either brick or stone may be used on the front elevations of any Dwelling Unit. Roofing materials shall be gray or black asphalt shingles. The exterior color scheme of a Dwelling Unit must be compatible with the exterior color schemes of other Dwelling Units in the Properties. The exterior color schemes of Dwelling Units constructed on adjoining Lots shall not be same. No chain link fences shall be permitted within the Properties. Rear and side yard fences shall be constructed of 6' cedar fencing material and shall be constructed to subdivision standard. In the event Declarant sells a Lot to a builder who constructs a Dwelling Unit on the Lot, said builder shall on or before the date the Dwelling Unit is sold or occupied, whichever first occurs, (a) landscape the front yard, and (b) install fencing from the sides of the Dwelling Unit to the side lines of the Lot. If it is not feasible to landscape the front yard of the Lot prior to the sale or occupancy of the Dwelling Unit due to adverse weather, such installation deadline shall be extended to a date which is 45 days following the date it is again feasible to landscape the front yard. Said front yard landscaping shall include as a minimum the following: full sod, two trees, six shrubs and an automatic sprinkler system. All of a yard shall be landscaped or and the side and rear fencing completed within one year following the closing of the sale or occupancy of the Dwelling Unit. The Committee shall approve plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Properties as a whole, that the structures affected thereby will be in harmony with the surrounding structures in terms of appearance, quality and materials used, and that the upkeep and maintenance thereof will not become a burden on the Association. The floor area of any Dwelling Unit (exclusive of open porches, basements, breeze ways and garages) constructed on any Lot in the Properties other than Lots 1, 17, 18, 27, 28, 29 and 50 shall be subject to the following minimum floor area square footage requirements:

<u>Dwelling Unit Type</u>	<u>Minimum Footage</u>
Single Story	1,200
Two-Story	1,400
Tri-Level	1,400
Split-Level	1,300

The plans and specifications of the Dwelling Units to be constructed on Lots 1, 17, 18, 27, 28, 29 and 50 shall be subject to the review and approval of the Architectural Committee, but shall not be subject to the minimum floor area square footage requirements. The Committee may condition its approval of plans and specifications on such changes therein as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The Committee may also issue rules or guidelines setting forth procedures for the submission of plans for approval, requiring a fee payable to the Association to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Committee may require such detail in plans and specifications submitted for its review as it deems proper, including without limitation floor plans, site plans, drainage plans, elevation drawing and description and/or samples of exterior material and colors. Until receipt by the Committee of any required plans and specifications, the Committee may postpone review of any plans submitted for approval.

Section 8.03 Meeting of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time, by resolution unanimously adopted in writing, designate a Committee representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Section 8.08 of the Declaration. In the absence of such designation, the vote of any two (2) members of the Committee taken without a meeting shall constitute an act of the Committee.

Section 8.04 No Waiver of Future Approvals. The approval of the Committee to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatsoever subsequently or additionally submitted for approval or consent.

Section 8.05 Compensation of Members. The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by such members in the performance of their duties hereunder.

Section 8.06 Inspection of Work. Inspection of work and correction of defects therein shall proceed as follows:

(a) Upon the completion of any work for which approved plans are required under this Article VIII, the Lot Owner shall give written notice of completion to the Committee.

(b) Within sixty (60) days thereafter, the Committee or its duly authorized representative may inspect such improvement. If the Committee finds that such work was not done in substantial compliance with the approved plans, it shall notify the Lot Owner in writing of such noncompliance within such period of sixty (60) days, specifying the particulars of noncompliance, and shall require the Lot Owner to remedy the same.

(c) If upon the expiration of thirty (30) days from the date of such notification the Lot Owner shall have failed to remedy such noncompliance, the Committee shall notify the Board in writing of such failure. The Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Lot Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling. If the Lot Owner does not comply with the Board ruling within such period, the Board, at its option, may either remove the noncomplying improvement or remedy the noncompliance, and the Lot Owner shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Lot Owner to the Association, the Board shall levy a Special Assessment against such Lot Owner for reimbursement. The Association shall institute judicial proceedings before demolishing or altering any items of construction on a Lot by means of summary abatement or similar means of enforcing restrictions against a Lot or its use.

(d) If for any reason the Committee fails to notify the Lot owner of any noncompliance within sixty (60) days after receipt of said written notice of completion from the Lot Owner, the improvement shall be deemed to be in accordance with said approved plans.

Section 8.07 Non-Liability of Committee Members. Neither the Committee nor any member thereof nor the Committee's duly authorized representative shall be liable to the Association or to any Lot Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Committee. The Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Properties generally. The Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformances with building codes or other codes.

Section 8.08 Variance. The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Board and two (2) members of the Committee. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall it affect in any way the Lot Owner's obligation to comply with all governmental laws and regulations affecting his use of the premises, including but not limited to zoning ordinances and lot set-back lines or requirements imposed by any governmental or municipal authority.

ARTICLE IX

MAINTENANCE AND REPAIR OBLIGATIONS

Section 9.01 Maintenance Obligations of Lot Owners. Subject to the duty of the Association to provide for maintenance as provided in Section 9.02 of this Declaration, it shall be the duty of each Lot Owner, at his sole cost and expense, subject to the provisions of this Declaration regarding Architectural Committee approval, to maintain, repair, replace and restore areas subject to his exclusive control, in a neat, sanitary and attractive condition. Areas subject to the exclusive control of the Lot Owner shall be deemed to include, but not be limited to, the Lot Owner's Lot and all improvements located thereon other than Common Area improvements. Such improvements on the Lot Owner's Lot shall be deemed to include, but not be limited to, the interior, exterior and all glass portions of the Lot Owner's Dwelling Unit. In the event that any Lot Owner shall permit any improvement, which is the responsibility of such Lot Owner to maintain, to fall into disrepair or not to be so maintained so as to create a dangerous, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration, the Architectural Committee shall have the right, but not the duty, upon fifteen (15) days prior written notice to the Lot Owner, to correct such condition and to enter upon such Lot to make such repairs or to perform such maintenance, and the cost thereof shall be charged to the Lot Owner. Said cost shall become the obligation of the Lot Owner in the same manner as other assessments as set forth in this Declaration. The Lot Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection may be added, at the option of the Board, to the amounts payable by each Lot Owner as Common Assessments.

Section 9.02 Maintenance Obligations of Association. Subject to the provisions of Section 9.01 of this Declaration and except for the maintenance of the common roadways and common utilities by the Millcreek - Esprit Association or set forth in the Roadways & Utilities Declaration, the Association shall maintain or provide for the maintenance of all of the Common Area and all improvements thereon in good order and repair, and shall likewise provide for

the painting and repair and replacement as necessary of the Common Area, including commonly metered utilities and any and all utility laterals and buildings. In addition to Common Area improvement maintenance, the Association shall provide all necessary landscaping and gardening to properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation which is on the Common Area. The Association shall further maintain, reconstruct, replace and refinish any paved surface in the Common Area, other than the common roadways that are required to be maintained by the Millcreek - Esprit Association. The Association through the Millcreek - Esprit Association shall see to it that the common roadways and utilities between the Properties and the Millcreek Condominiums are properly operated, maintained, replaced and refinished. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board shall determine in its judgment to be appropriate.

Section 9.03 Damage and Destruction Affecting Dwelling Units: Duty to Rebuild. If all of or any portion of any Lot or Dwelling Unit is damaged or destroyed by fire or other casualty, it shall be the duty of the Lot Owner to rebuild, repair, or reconstruct said Dwelling Unit in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

Section 9.04 Variance in Exterior Appearance and Design. Any Lot Owner who has suffered damage may apply for approval to the Architectural Committee for reconstruction, rebuilding or repair of his residence in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing together with full and complete plans and specifications, working drawings and elevations showing the proposed reconstructions and the end result thereof. The Architectural Committee shall grant such approval upon determining that the design proposed by the Lot Owner should result in a finished residence in harmony with the exterior design and construction of other residences on the Properties. Failure of the Architectural Committee to act within thirty (30) days after receipt of such a request in writing, coupled with the drawings and plot plans showing the full and complete nature of the proposed changes, shall constitute approval thereof. If the obligation for repair falls upon the Association, Architectural Committee approval will not be required prior to the commencement of such work.

Section 9.05 Time Limitation. The Lot Owner or Lot Owners of any damaged Dwelling Unit, the Association and the Architectural Committee shall be obligated to proceed with all due diligence hereunder, and the responsible party shall commence reconstruction within six (6) months after the damage occurs and complete reconstruction within one (1) year after damage occurs, unless prevented by causes beyond such party's reasonable control.

ARTICLE X

USE RESTRICTIONS

All real property within the Properties shall be held, used and enjoyed in accordance with the following limitations and restrictions.

Section 10.01 Single Family Residence. Subject to Section 10.03 of this Declaration, each Lot shall be used as a residence for a single Family and for no other purpose.

Section 10.02 Business or Commercial Activity. Subject to Section 10.03 of this Declaration, no part of the Properties shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such nonresidential purposes, except that Declarant, its successors or assigns may use any portion of the Properties for a model home site and display and sales office during the construction and sales period in accordance with Section 2.01(f) of this Declaration, and except that professional and administrative occupations without external evidence thereof shall be permissible so long as such occupations are in conformance with Salt Lake County ordinances and are merely incidental to the use of the Dwelling Unit as a single family residence.

Section 10.03 Real Estate Business. No Dwelling Unit, Lot, Improvement or portion of the Common Area shall be used in conduct of any real estate business, gainful occupation, profession, trade office or other nonresidential activity, provided, however, that Declarant, or its designee, shall have the non-exclusive right, subject to the provisions of Section 2.01(f) of this Declaration, to use without additional cost the portions of any Common Area or Dwelling Unit owned by Declarant for purposes of sales of Lots within the Properties, so long as such use does not unreasonably interfere with the use of the Common Area by the Members of the Association. Furthermore, as to any Lots owned by Declarant, Declarant shall have the unrestricted right to maintain model homes thereon for sales purposes.

Section 10.04 Nuisances. No noxious or offensive activity (including but not limited to the repair of motor vehicles other than inside an enclosed garage or the storage in any uncovered parking space of inoperable or unlicensed motor vehicles) shall be carried on, in or upon any Lot or the Common Area, nor shall anything be done therein, which may be or become an unreasonable annoyance or a nuisance to any other Lot Owner. No loud noises or noxious odors shall be permitted on the Properties, and the Board shall have the right to determine in accordance with the Bylaws if any noise, odor or activity producing such noise, odor or interference constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smokey vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably interfere with television or radio reception of any Lot Owner in the Properties shall be located, used or placed on any portion of the Properties or exposed to the view of other Lot Owners without the prior written approval of the Architectural Committee.

Section 10.05 Signs. No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Properties or any Lot without the prior written consent of the Architectural Committee, except one sign for each Dwelling Unit, of not more than three (3) feet by two (2) feet, advertising the property for sale or rent, or except signs, regardless of size, used by Declarant, its successors or assigns, to advertise the Properties during construction and sale period. All signs or billboards and the conditions promulgated for the regulation thereof shall conform to the requirements of the Salt Lake County ordinances.

Section 10.06 Parking and Vehicular Restrictions. No Lot Owner shall park, store or keep any vehicle except wholly within the garage or driveway on the Owner's Lot, and any inoperable or unlicensed vehicle shall be stored only in enclosed garages. No Lot Owners shall park, store or keep on any property or street (public or private) within the Properties any large commercial-type vehicle (dump truck, cement-mixer truck, oil or gas truck, delivery truck and any other vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board), any recreational vehicle (camper unit, motor home, truck, trailer, boat or other similar vehicle), or any inoperable or unlicensed motor vehicle upon any uncovered parking space, so as to be visible from anywhere in the Properties (except as otherwise provided by the Board); provided that an Owner shall be entitled to park a recreational vehicle on the driveway in front of the Owner's Dwelling Unit for up to two days for purposes of loading or unloading the recreational vehicle. No Lot Owner shall conduct major repairs or major restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of any Lot (other than inside an enclosed garage) or upon the Common Area.

Section 10.07 Animal Restriction. No animals, livestock, reptiles or poultry of any kind shall be raised, bred or kept on any Lot or in the Common Area, except that usual and ordinary household pets such as dogs, cats, fish, and birds may be kept on Lots, subject to the prior written approval of the Board and rules and regulations adopted by the Association, provided that such pets are not kept, bred or maintained for commercial purposes or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than one (1) pet per household, provided, however, that the Association (or the Architectural Committee or such other person or entity as the Association may from time to time designate) may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to any other Lot Owner. Animals (whether belonging to Lot Owners, occupants or their licensees, tenants, or invitees within the Properties) must be either kept within a Dwelling Unit, within a fully fenced rear yard of a Lot or on a leash being held by a person capable of controlling the animal. Should any animal belonging to a Lot Owner be found unattended out of the Dwelling Unit, out of a fully fenced rear yard or not being held on a leash by a person capable of controlling the animal, such animal may be removed by the Association or the Manager, to a pound under the jurisdiction of the local municipality in which the Properties are situated and subject to the laws and rules governing said pound, or to a comparable animal shelter. The cost of such removal shall be borne by the Lot Owner to whom the pet belongs. Furthermore, any Lot Owner shall be absolutely liable to each and all remaining Lot Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Properties by a Lot Owner or by members of his Family, his tenants or his guests. Animals shall not be allowed to urinate or defecate in the Common Area, and it shall be the absolute duty and responsibility of each Lot Owner to clean up after the Lot Owner's animal in the event such animal inadvertently urinates or defecates in any portion of the Common Area.

Section 10.08 Trash. No rubbish, trash or garbage or other waste material shall be kept or permitted upon any Lot or Common Area, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Properties or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. There shall be no exterior fires whatsoever except barbecue fires contained within appropriate barbecue equipment. No clothing or household fabrics shall be hung, dried or aired in such a way in the Properties as to be visible to other property, and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Properties except within an enclosed structure or appropriately screened from view.

Section 10.09 View Obstructions. No fence, hedge, wall or other dividing instrumentality (other than trees) over six (6) feet in height measured from the ground on which it stands shall be constructed or maintained on any Lot, except that Declarant may vary or exceed said height or location of any fence in accordance with its architectural plans. Each Lot Owner, by accepting a deed to a Lot, hereby acknowledges that any construction by Declarant may impair the view of such Lot Owner and hereby consents to such impairment.

Section 10.10 Temporary Buildings. No outbuildings, basement, shack or other temporary building or improvement of any kind shall be placed upon any portion of the Properties either temporarily or permanently. No garage, trailer, camper, motor home or recreation vehicle shall be used as a residence in the Properties, either temporarily or permanently.

Section 10.11 No Alteration or Construction. Nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Board.

Section 10.12 Declarant Exemption. Declarant or its successors or assigns will undertake the work of developing the Lots and the subdivision improvements within the Properties and Declarant or its successors or assigns will undertake the work of constructing the Dwelling Units within the Properties. The completion of that work and sale, rental and other disposal of Dwelling Units is essential to the establishment and welfare of the Properties as a residential community. As used in this Section 10.12 and its subparagraphs, the words "its successors or assigns" specifically do not include purchasers of Lots improved with completed Dwelling Units. In order that said work may be completed and the Properties

be established as a fully occupied residential community as rapidly as possible, no Lot Owner nor the Association shall do anything to interfere with, and nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant or its contractors or subcontractors, from doing on any Lot owned by them whatever they determine to be necessary or advisable in connection with the completion of said work, including without limitation the alteration of its construction plans and designs as Declarant deems advisable in the course of development; or

(b) Prevent Declarant or its representatives, from erecting, constructing and maintaining on any Lot, or portion thereof, owned or controlled by Declarant, such structures as may be reasonably necessary for the conduct of its business of completing said work and establishing the Properties as a residential community and disposing of the same in Lots by sale, lease or otherwise; or

(c) Prevent Declarant or its contractors and subcontractors, from conducting on any Lot, or any portion thereof, owned or controlled by Declarant, or its successors or assigns, its business of developing, subdividing, grading and constructing Dwelling Units and other improvements in the Properties as a residential community and of disposing of Dwelling Units thereon by sale, lease or otherwise; or

(d) Prevent Declarant or its contractors or subcontractors from maintaining such sign or signs on any Lot owned by or controlled by it as may be deemed necessary by Declarant in connection with the sale, lease or other marketing of Lots and Dwelling Units in the Properties; or

(e) Prevent Declarant, at any time prior to acquisition of title to a Lot in the Properties by a purchaser from Declarant, from establishing on the Properties additional licenses, reservations and rights-of-way to itself, to utility companies, to the Millcreek - Esprit Association, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Properties.

Section 10.13 Outside Installations. No radio station or shortwave operators of any kind shall operate from any Lot or Dwelling Unit unless approved by the Board. Exterior radio antenna, television antenna, or other antenna system may not be erected or maintained in the Properties.

Section 10.14 Insurance Rates. Without prior approval by the Board, nothing shall be done or kept in the Properties which will increase the rate of insurance on any property insured by the Association, nor shall anything be done or kept in the Properties which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law.

Section 10.15 Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of any Lot or within five hundred (500) feet below the surface of the Properties. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 10.16 Further Subdivision. No Lot Owner shall further partition or subdivide his Lot; provided however, that this provision shall not be construed to limit the right of a Lot Owner to do the following: (1) rent or lease all or any portion of his Lot by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Lot is not leased for transient or hotel purposes; (2) sell his Lot; or (3) transfer or sell any Lot to more than one person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. The terms of any such lease or rental agreement shall be subject in all respects to the provisions of this Declaration and Bylaws of the Association, and any failure by the lessee of such Lot to comply with the terms of this Declaration or the Bylaws of the Association shall constitute a default under the lease.

Section 10.17 Drainage. There shall be no interference with the established drainage pattern over any Subdivision within the Properties unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Architectural Committee. For the purposes hereof, "established" drainage is defined as the drainage which exists at the time the overall grading of any Subdivision is completed by Declarant, or that which is shown on any plans approved by the Architectural Committee, which may include drainage from the Common Area over any Lot or Lots in the Properties.

Section 10.18 Water Supply Systems. No individual water supply or sewage disposal system shall be permitted on any Lot in the Properties unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of Salt Lake County, the Architectural Committee, and all other applicable governmental authorities.

Section 10.19 Leasing. Any lease or rental agreement of a Dwelling Unit must be in writing and be subject to the requirements of this Declaration, the Articles, the Bylaws and such additional reasonable requirements and restrictions as may be imposed hereafter by the Association. No Dwelling Unit may be leased or rented for less than thirty (30) days.

Section 10.20 Right to Mortgage. Each Lot Owner shall have the right to mortgage his interest in the Dwelling Unit.

ARTICLE XI

PARTY FENCES AND PARTY WALLS

Section 11.01 General Rules of Law to Apply to Party Walls. Each fence or wall placed on the dividing line between the Lots shall constitute a "Party Fence" or "Party Wall," and, to the extent not inconsistent with the provisions of this Article XI, the general rules of law regarding Party Fences and Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Each Lot Owner adjoining a Party Fence or Party Wall shall be an "Owner" of the wall for purposes of this Article XI.

Section 11.02 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Fence and Party Wall shall be shared by the Owners in proportion to their ownership thereof.

Section 11.03 Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Owner thereof may restore it, and the other Owner(s) thereof shall contribute to the cost of restoration thereof in proportion to such ownership without prejudice, however, to the right of any such Owner(s) to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 11.04 Right to Contribution Runs with Land. The right of any Lot Owner to contribution from any other Lot Owner under this Article XI shall be appurtenant to the land and shall pass to such Lot Owner's successors-in-interest.

Section 11.05 Arbitration. In the event any dispute arises concerning a Party Fence or Party Wall, or under the provisions of this Article XI, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators in accordance with the arbitration rules of the American Arbitration Association.

ARTICLE XII

DAMAGE OR DESTRUCTION TO COMMON AREA

Section 12.01 Damage or Destruction to Common Area. Damage to or destruction of all or any portion of the Common Area shall be handled in the following manner, notwithstanding any provision in this Declaration to the contrary:

(a) If the Common Area is damaged or destroyed, and if the insurance proceeds are sufficient to effect total restoration, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed.

(b) If the insurance proceeds are within Ten Thousand Dollars (\$10,000.00) or less of being sufficient to effect total restoration, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed, and the difference between the insurance proceeds and the actual cost shall be levied as a Reconstruction Assessment equally against each of the Lot Owners, in accordance with the provisions of Section 6.04 of this Declaration.

(c) If the insurance proceeds are insufficient by more than Ten Thousand Dollars (\$10,000.00) to effect total restoration to the Common Area, then by written consent or by vote a majority of the Total Votes of the Lots shall determine whether (1) to rebuild and restore in substantially the same manner as the improvements in the Common Area existed prior to damage, and to raise the necessary funds over the insurance proceeds by levying equal Reconstruction Assessments against all Lots, (2) to rebuild and restore in a way which utilizes all available insurance proceeds and an additional amount not in excess of Ten Thousand Dollars (\$10,000.00), and which is assessable equally to all Lot Owners but which is less expensive than replacing these improvements in substantially the same manner as they existed prior to being damaged, or (3) to not rebuild and to distribute the available insurance proceeds first to Mortgagees to the extent of the then remaining balance of their Mortgages, and then to the Lot Owners as their respective interests may appear.

(d) Each Lot Owner shall be liable to the Association for any damage to the Common Area not fully covered by insurance which may be sustained by reason of the negligence or willful misconduct of said Lot Owner or of his family and guests, both minor and adult. Notwithstanding the foregoing, the Association reserves the right to charge a Special Assessment equal to the increase, if any, in the insurance premium directly attributable to the damage caused by such Lot Owner. In the case of joint ownership of a Lot, the liability of such Lot Owners shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint owners to the contrary. The cost of correcting such damage shall be a Special Assessment against the Lot and may be collected as provided herein for the collection of Common Assessments.

ARTICLE XIII

INSURANCE

Section 13.01 Hazard Insurance. The Association shall obtain and maintain hazard insurance coverage on the Common Area. The Common Area, for purposes of this paragraph, shall include, without limitation, all Common Area buildings and other improvements (except for those that are normally excluded from coverage, such as land, foundation, and excavation), fixtures and building service equipment that are considered part of the Common Area, and common personal property and supplies owned by the Association.

(a) **Scope of Coverage.** The hazard insurance shall at least (i) provide "all risk" coverage on the Common Area for 100% of its insurable value and providing for loss or damage settlement on a replacement cost basis, (ii) protect against loss or damage by fire and all other perils that are normally covered within the scope of standard extended coverage, and (iii) include any additional coverage commonly required by private mortgage investors for developments similar in construction, location, and use. The Association shall also obtain and maintain any additional coverage commonly required by private mortgage investors for projects similar in construction, location, and use, including the following where applicable and available:

- (i) agreed amount;
- (ii) demolition cost;
- (iii) increased cost of construction; and
- (iv) boiler and machinery.

The insurer's minimum liability per accident under boiler and machinery coverage must equal the insurable value of the building housing such boiler or machinery or \$2,000,000.00, whichever is less.

(b) **Deductibles.** Deductibles may not exceed the lower of \$10,000 or one percent (1%) of the applicable amount of coverage. Funds for such deductibles shall be included in the Association's Common Area Reserve Fund and be so designated.

(c) **Named Insured.** The named insured under the hazard insurance coverage shall be: "Esprit Homes Owners' Association for the use and benefit of the individual Lot Owners (designated by name, if required by law or the constituent documents)."

(d) **Miscellaneous.** The Association shall represent the Lot Owners in any proceedings, negotiations, settlements, or agreements, and each Lot Owner hereby appoints the Association as its attorney-in-fact for all such purposes. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in the Common Assessments made by the Association.

Section 13.02 Insurance Obligations of Lot Owners. Each Lot Owner shall insure his entire Dwelling Unit and all other improvements located on his Lot against loss or damage by fire or by any other casualty, under the standard form of fire and extended coverage, which coverage shall be at least equal to that commonly required by private mortgage investors for developments similar in construction, location, and use, or under such other insurance as may be required by any First Mortgage against the Dwelling Unit. Deductibles in such insurance policies may not exceed the lower of One Thousand Dollars (\$1,000) or one percent (1%) of the applicable amount of coverage. All such insurance shall provide, at a minimum, protection against loss or damage from fire and other perils covered within the scope of standard extended coverage. Insurance must at least equal the lesser of 100% of the insurable value of the Dwelling Unit and all other improvements located on his Lot or the unpaid balance of any First Mortgage against the Lot. Each Lot Owner shall, within thirty (30) days after recordation of the conveyance of his Lot from Declarant and thereafter at least ten (10) days prior to the expiration, termination, cancellation or modification of any existing policy, furnish to the Association duplicate copies of policies or certificates thereof showing that such insurance is currently in force certified by the insurance company or by its duly authorized agent. All such policies shall contain a provision that the same shall not be cancelled or terminated except upon at least thirty (30) days written notice to the Association. All such policies shall contain an "Agreed Amount" Endorsement, if obtainable, and shall contain construction code endorsements if there is a construction code provision that requires changes to undamaged portions of the buildings even when only part of the project is destroyed by an insured hazard. If the area where the Properties are located has been or shall hereafter be identified by the Secretary of Housing and Urban Development (HUD) or the Director of the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard Area, each Lot Owner shall obtain flood insurance on his entire Dwelling Unit and all other improvements located on his Lot that provides coverage at least equivalent to that provided under the National Flood Insurance Program (NFIP). Such coverage must be maintained in an amount at least equal to the least of the following: (a) the maximum available under the NFIP's regular program; (b) the maximum available under the NFIP's emergency program if the regular program is not yet in effect in the area where the Dwelling Unit is located; or (c) the minimum amount required under the terms of coverage to compensate for any damage or loss on a replacement cost basis, or the unpaid balance of any First Mortgage against the Lot if replacement cost compensation is not available for the type of building insured. All such policies shall be compatible with and not diminish the coverage obtained by the Association on the Common Area.

Section 13.03 Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area, or other improvements in the Properties insured by the Association, the Association shall repair or replace

the same from the insurance proceeds available, subject to the provisions of Article XII of this Declaration. If such insurance proceeds are insufficient to cover the costs of such repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessments made against such Lot Owners, in accordance with the provisions of Section 6.04 of this Declaration. In the event of total destruction of all of the improvements on the Properties, the proceeds of the insurance carried by the Association shall be divided proportionately among the Lot Owners, such proportion being based upon the original base sales price of each improved Lot at the time it was initially sold by Declarant as compared to the aggregate original base sales prices of all Lots, provided that the balance then due on any valid encumbrance of record shall be first paid in order of priority, before the distribution of any proceeds to a Lot Owner whose Lot is so encumbered.

Section 13.04 Liability Insurance. The Association shall obtain comprehensive general liability insurance covering all of the Common Area and public ways within the Properties.

(a) The liability insurance shall provide coverage, without limitation, for the following: (i) bodily injury and property damage that results from the operation, maintenance or use of the Common Area; (ii) any legal liability that results from lawsuits related to employment contracts and worker's compensation claims in which the Association is a party; and (iii) all additional coverage commonly required by private mortgage investors for developments similar to the Properties in construction, location, and use, including the following coverage where applicable and available: contingent liability from operation, of building lease, comprehensive automobile liability, workers' compensation and employer's liability, bailee's liability, garage keeper's liability, host liquor liability and contractual liability. Said policy shall also include the Millcreek - Esprit Association as an additional insured.

(b) Amount of Coverage. Liability coverage per occurrence for personal injury, bodily injury or property damage under the terms of the above coverage shall be for at least One Million Dollars (\$1,000,000).

(c) Severability of Interest. Such insurance shall contain a "Severability of Interest" clause or endorsement which shall preclude the insurer from denying the claim of a Lot Owner because of negligent acts of the Association, the Millcreek - Esprit Association, any owner of a condominium unit in the Millcreek Condominiums, or other Lot Owners.

(d) Certificate of Insurance. Such insurance shall require the issuer of the insurance, upon the written request of any Mortgage Servicer who services Mortgages on Lots in the Properties, to provide said Mortgage Servicer with a certificate of insurance respecting such insurance, with the Mortgage

Section 13.05 Fidelity Coverage. The Association shall obtain fidelity insurance coverage covering losses resulting from dishonest or fraudulent acts committed by the Association's trustees, managers, employees or volunteers who manage the funds collected and held for the benefit of the Association and the Lot Owners. A professional management firm must be insured to the same extent as the Association. Any such professional management firm employed by the Association must submit evidence of such coverage to the Association. Fidelity insurance coverage must have all of the following characteristics: (a) The policy must name the Association as the insured, and premiums must be paid as a common expense by the Association; and (b) The coverage must equal no less than the maximum amount of funds in the Association's custody (or in the custody of the professional management firm if a professional management firm is employed by the Association). In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. Such fidelity bond must provide for at least ten (10) days written notice before the bond can be cancelled or substantially modified for any reason, such notice to be given to the Association or insurance trustee and each Mortgage Servicer of a mortgage on any of the Properties owned by an Eligible Insurer or Guarantor.

Section 13.06 Other Insurance and General.

(a) Worker's Compensation and Other Insurance. The Association shall also obtain, through the Board, Worker's Compensation insurance and other liability insurance as it may deem desirable insuring each Lot Owner and the Association, Board and Manager, from liability in connection with the Common Area, the premiums for which are Common Expenses included in the Common Assessments made against the Lot Owners. Such insurance policies shall have severability of interest clauses or endorsements which shall preclude the insurer from denying the claim of a Lot Owner because of the negligent acts of the Association or other Lot Owners.

(b) Annual Policy Review. All policies shall be reviewed at least annually by the Board and the limits increased at its discretion.

(c) Qualifications of Carrier. Each insurance policy must be written by an insurance carrier which has a financial rating by Best's Insurance Reports of A/II, B/III or better. Each carrier must be specifically licensed or otherwise authorized by law to transact business within the State of Utah.

(d) Mortgage Clause. All policies of hazard and flood insurance must contain or have attached the insurance industry's standard mortgage clause. Such mortgage clause must provide that the insurance carrier shall notify in writing the Association and the named First Mortgagee at least ten (10) days before any reduction in coverage or cancellation of the policy. Such mortgage clause must be endorsed to fully protect any Eligible Insurer or Guarantor or the

Interest or interests of any Eligible Insurer or Guarantor where applicable. Regardless of how the mortgage clause is endorsed, all insurance drafts, notices, policies, invoices, etc., shall be delivered directly to the named First Mortgagee with a copy to the Association.

(g) Compliance with State Law. All policies and the coverage provided thereunder shall be consistent with local and state insurance laws.

(h) Waiver of Subrogation. As to each policy of insurance maintained by the Association, which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Lot Owners, the Manager, Declarant, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

(i) Flood Insurance. If the area where the Properties are located has been or shall hereafter be identified by the Secretary of Housing and Urban Development (HUD) or the Director of the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard Area, the Association shall obtain flood insurance on the Common Areas sufficient to compensate for any damage or loss on a replacement cost basis, if available.

(j) Other Insurance Clause. Any "other insurance" clause in any policy shall specifically exclude policies obtained by the individual Lot Owners.

ARTICLE XIV

MORTGAGE PROTECTION

Section 14.01 First Mortgage Protection. Notwithstanding any and all provisions hereof to the contrary, in order to induce the Eligible Insurers and Guarantors to participate in the financing of the sale of Lots within the Properties, this Article XIV is included herein (and to the extent the provisions of this Article XIV conflict with any other provisions of this Declaration, the provisions of this Article XIV shall control).

Section 14.02 No Limitations on Transfer. The Association shall not restrict the Lot Owners' right to sell, transfer or convey their Lots, whether by reserving to the Association a right of first refusal to purchase the Lots in the Properties, or otherwise.

Section 14.03 Liability for Common Assessment Liens. Any Assessment Lien that is recorded against a Lot by the Association shall be subordinate to a First Mortgage on such Lot if such First Mortgage was recorded in the office of the County Recorder of the county wherein the Properties are located prior to the date the delinquent Common Assessments or other charges secured by such Assessment Lien were due. An Assessment Lien shall not be affected by the sale or transfer of the Lot against which it has been recorded unless such sale or transfer occurs as a result of the foreclosure of the First Mortgage on such Lot. Such foreclosure of the First Mortgage shall extinguish any Assessment Lien recorded against the Lot which secures any Common Assessments or other charges that were payable prior to the date of the foreclosure sale, but shall not relieve any subsequent Lot Owners of such Lot from paying any further Common Assessments and other charges assessed against the Lot by the Association.

Section 14.04 Right to Make Payments. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any common property located within the Common Area, and said First Mortgagee may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such common property within the Common Area, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 14.05 Priority of First Mortgagees. No provision contained in this Declaration or in the Articles or Bylaws of the Association shall give a Lot Owner or any other party priority over any rights of a First Mortgagee pursuant to its Mortgage in the case of a distribution to such Lot Owners of insurance proceeds or condemnation awards for losses to or a taking of all or any portion of the Common Area.

Section 14.06 Right to Examine Books and Records. First Mortgagees shall have the right to examine the books and records of the Association during normal business hours.

Section 14.07 Satisfaction of Eligible Insurer or Guarantor Requirements. In addition to the foregoing, the Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of Eligible Insurers or Guarantors, or any similar entity so as to allow for the purchase, insurance or guaranty, as the case may be, by such Eligible Insurers or Guarantors of first Mortgages encumbering Lots in the Properties. Each Owner hereby agrees that it will benefit the Association and the membership of the Association as a class of potential Mortgage borrowers and potential sellers of their Dwelling Units, if such Eligible Insurers or Guarantors approve the Properties as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time.

ARTICLE XV

CONDEMNATION

Section 16.01 Condemnation: Proceeds. Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of at least seventy-five percent (75%) of the Total Votes of the Lots) by any authority having the power of condemnation or eminent domain, each Lot Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto, unless otherwise prohibited by law. The award made for such taking shall be payable to the Association as Trustee for all Lot Owners to be disbursed as follows:

(a) If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking at least seventy-five (75%) percent of the Total Votes of the Lots shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the above provisions in Article XII hereof regarding assessments for and the disbursement of funds required to repair or restore casualty damage or destruction shall apply.

(b) If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are not funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

ARTICLE XVI

GENERAL PROVISIONS

Section 16.01 Enforcement. This Declaration, the Articles and the Bylaws may be enforced by the Association and any Lot Owner as follows:

(a) Breach of any of the covenants contained in the Declaration or the Bylaws and the continuation of any such breach, as well as noncompliance with decisions of the Association, may be enjoined, abated or remedied by appropriate legal proceedings by an aggrieved Lot Owner, by the Association, or by any successor-in-interest of the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorney's fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

(b) The result of every act or omission whereby any of the covenants contained in this Declaration or the Bylaws are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Lot Owner, by the Association, or by its successors-in-interest.

(c) The remedies herein provided for breach of the covenants contained in this Declaration or in the Bylaws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) The failure of the Association to enforce any of the covenants contained in this Declaration or in the Bylaws shall not constitute a waiver of the right to enforce the same thereafter.

(e) A breach of the covenants, conditions or restrictions contained in this Declaration or in the Bylaws shall not affect or impair the lien or charge of any bona fide first Mortgage or Deed of Trust made in good faith and for value on any residential Lot or the improvements thereon, provided, however, that any subsequent Lot Owner of such property shall be bound by said covenants, whether such Lot Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

Section 16.02 Severability. Invalidation of any one of the covenants or restrictions in this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 16.03 Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association, the Lot Owner or the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, perpetually; provided that this Declaration and the covenants and restrictions set forth herein may be terminated at any time upon the affirmative vote at a special meeting of the Lot Owners duly called for such purpose or the written consent of at least seventy-five percent (75%) of the Total Votes of the Lots.

Section 16.04 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of community recreational facilities and Common Area. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

Section 16.05 Amendments. This Declaration may be amended only upon obtaining the affirmative vote or written consent of Lot Owners representing not less than sixty-seven percent (67%) of the Total Votes of the Lots.

Section 16.06 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Properties to the public, or for any public use.

Section 16.07 Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Properties does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties or any portion thereof.

Section 16.08 Notice. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery of such notice is made by mail, the notice shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

Section 16.09 No Representations or Warranties. NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DECLARANT OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH THE PROPERTIES OR ANY PORTION OF THE PROPERTIES, OR ANY IMPROVEMENT THEREON, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, FITNESS FOR INTENDED USE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF AS A PLANNED DEVELOPMENT.

Declarant has executed this Declaration on the date first above written.

"DECLARANT"

SUSSEX GROUP L.C., a Utah limited liability company

By: 

Its: Member

By: 

Its: Member

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 12th day of August, 1992, by RODNEY M. PIPELLA
and Michael W. Saxon the members of Sussex Group L. C.

RMP
NOTARY PUBLIC

My Commission Expires:
10-10-93

Residing At:
SLC, UT

NAME:RAC-1

NOTARY PUBLIC
RODNEY M. PIPELLA
First American Title Co. of Utah
330 East 400 South
Salt Lake City, Utah 84111
My Commission Expires 10/10/93
STATE OF UTAH

CONSENT TO DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS AND RESERVATIONS OF EASEMENTS
FOR ESPRIT HOMES OF MILLCREEK

Zions First National Bank, N.A. is the present Trustee and Beneficiary of a Deed of Trust that encumbers the real property of Sussex Group, L.C. as the same is described in the foregoing Declaration. The Deed of Trust is identified as follows:

(a) Dated: August 12, 1992
Recorded: August 13, 1992
Entry No: 5310967
Securing Note in the amount of: \$764,000.00

POOR COPY -
CO. RECORDER

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

Dated this 12th day of August, 1992.

Zions First National Bank, N.A.

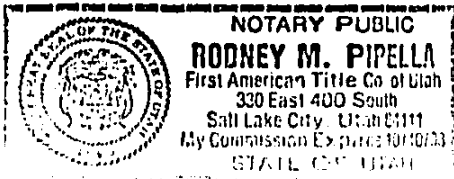
By: *Paul Williams*

Its: *Vice Pres.*

86504PE0176

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

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



RMP

Notary Public

Residing in: Salt Lake City,
Utah

My commission expires: 10-10-93

POOR COPY -
CO. RECORDED

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