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AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR MONTE CRISTO
A CONDOMINIUM PROJECT

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF MONTE CRISTO, A CONDOMINIUM
PROJECT, hereinafter called the "DECLARATION", is made on the
3rd day of March, 1997, by the MONTE CRISTO HOMEOWNERS
ASSOCIATION, a Utah corporation, hereinafter referred to as the
"Association", pursuant to the provisions of the Utah Condominium
Ownership Act, as follows:

WITNESSETH:

WHEREAS, the original declarant submitted the real property
described on Exhibit "A" and incorporated herein by this
reference and situated in the County of Salt Lake, State of Utah
to the Act.

WHEREAS, the Association desires to re-submit this real
property, exclusive of the adjacent project, and all improvements
to the provisions of the Utah Condominium Ownership Act, as a
Condominium Project, known as MONTE CRISTO.

WHEREAS, the following documents are those which are on file
at the Salt Lake County Recorders Office and which have been or
will be incorporated into the Amended and Restated Declaration of
Covenants, Conditions and Restrictions of Monte Cristo, a
Condominium Project which follows:

<u>ITEM</u>	<u>ENTRY NUMBER</u>	<u>in BOOK</u>	<u>at PAGE</u>
DECLARATION	2559806	3389	144
FIRST AMENDMENT	2590397	3484	384
SECOND AMENDMENT	2590399	3484	393
THIRD AMENDMENT	2625839	3599	255
FOURTH AMENDMENT	2666379	3727	173
FIFTH AMENDMENT	3328206	4931	1227
SIXTH AMENDMENT	3331108	4935	1302

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AMENDED AND RESTATED
DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MONTE CRISTO
A CONDOMINIUM PROJECT

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WHEREAS, the Original Declaration as heretofore amended, the By-Laws, and the administrative rules and regulations adopted by the Management Committee from time to time are hereafter referred to collectively as the "Project Documents";

WHEREAS, management of the Common Areas and Facilities at the MONTE CRISTO CONDOMINIUM PROJECT have been transferred by the original developer to the Association;

WHEREAS, the vote required by Article XXIII of the Declaration, as amended, to modify the Project Documents has been obtained; and

WHEREAS, the Association desires to amend and restate the Project Documents.

NOW THEREFORE, for the reasons set forth above and for such purposes, the Association does hereby make the following declarations:

ARTICLE I

DEFINITIONS

The terms used herein shall have the meanings stated in the Utah Condominium Ownership Act (the "Act") and as follows unless the context otherwise requires.

Section 1. The term "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of the Monte Cristo Homeowners Association, as filed with the State of Utah.

Section 2. The term "Association" shall mean and refer to all of the Owners of Units at Monte Cristo taken as, or acting as, a group.

Section 3. The term "Building" shall mean and refer to the structures within which the dwelling Units are constructed.

Section 4. The term "By Laws" shall mean and refer to the By Laws of Monte Cristo Homeowners Association, a copy of which is attached to and incorporated in this Declaration by reference as Exhibit "C".

Section 5. The term "Capital Improvement" shall mean and refer to non-recurring expenses (as opposed to day-to-day items) to repair, maintain and replace significant fixed assets in the Project, such as the swimming pool, clubhouse, recreational amenities, entry and exit area, roads, roofs, exteriors of

buildings, carports, sidewalks, and green space intended to restore, enhance, improve or ameliorate the utility, value or beauty of the Common Areas.

Section 6. The term "Common Areas" or "Common Areas and Facilities" shall mean and refer to:

- a) The above-described land;
- b) Those Common Areas and Facilities specifically set forth and designated as such in the Maps;
- c) That part of the Condominium Project not specifically included in the respective Units as hereinafter defined;
- d) All foundations, columns, girders, beams, supports, main walls, roofs, exterior walkways, parking areas, streets, the clubhouse, swimming pool, recreational areas and yards, gardens, fences, patios, decking and porches, all installations of power, light and other utilities to the outlets, and in general all other apparatus, installations and other parts of the property necessary or convenient to the existence, maintenance and safety of the Common Area, or normally in common use;
- e) The swimming pool, clubhouse, and recreational amenities and facilities.
- f) All Common Areas and Facilities as defined in the Act, whether or not expressly listed herein.
- g) All Limited Common Area.

Section 7. The term "Common Expenses" shall mean and refer to all items, things and sums described in the Act which are lawfully assessed against the Unit Owners in accordance with the provisions of the Act, this Declaration, the By-Laws, such rules and regulations pertaining to the Condominium Project as the Management Committee may from time to time adopt, and such other determinations and agreements lawfully made and entered into by the Management Committee.

Section 8. The term "Community" shall mean and refer to the real property and interests which comprise the Monte Cristo Condominium Project.

Section 9. The term "Community Wide Standard" shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in the Community and other first class subdivisions in the county. Such standard may be more specifically determined by the Management Committee.

Section 10. The term "Condominium Project" shall mean and refer to the entire parcel of real property referred to in this Declaration.

Section 11. The term "Declaration" shall mean and refer to this Amended & Re-stated Declaration of Covenants, Conditions and Restrictions of the Monte Cristo Condominium Project.

Section 12. The term "Eligible Insurer" shall mean and refer to an insurer or governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

Section 13. The term "Eligible Mortgagee" shall mean and refer to a mortgagee, beneficiary under a trust deed or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

Section 14. The term "Eligible Votes" shall mean and refer to those votes available to be cast on the issue at hand. A vote which is for any reason suspended is not available to be cast.

Section 15. The term "Limited Common Areas and Facilities" shall mean and refer to the fenced-in patio and garden area, normally at the rear of each Unit, any entrance patios, wood decking, balconies and porches, the exterior walkway to the entrance of each Unit and the driveway to the garage of each Unit which are set aside and reserved for the use of the respective Units to which they are attached or appurtenant and as designated on the Maps to the exclusion of the other Units.

Section 16. The term "Majority" shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

Section 17. The term "Manager" shall mean and refer to the person, persons or corporation selected by the Management Committee to manage the affairs of the Condominium Project in whole or in part.

Section 18. The term "Management Committee" shall mean and refer to those persons duly elected thereto by the Unit Owners to manage and operate the Common Areas as provided by this Declaration and also in accordance with the By-Laws hereto attached.

Section 19. The term "Map" shall mean and refer to the Record of Survey Map or Maps of Monte Cristo - Phase I, filed for record, together with additional Record of Survey Maps covering the other phases of the Condominium Project.

Section 20. The term "Member" shall mean and refer to an Owner -- who, as such, is obligated to be a Member of the mandatory association of Unit Owners at Monte Cristo.

Section 21. The term "Mortgage" shall mean and refer to both a first mortgage or first deed of trust on any Unit, but it shall not mean or refer to the holder any executory contract (e.g. uniform real estate contract, land sales contract) or other similar security instrument.

Section 22. The term "Mortgagee" shall mean and refer to a mortgagee under a first mortgage or a beneficiary under a first deed of trust on any Unit, but does not mean or refer to the holder of an executory contract or sale of other similar security instrument.

Section 23. The term "Notice and Hearing" shall mean and refer to the procedure which gives an Owner notice of an alleged violation of the Declaration, By Laws or administrative Rules and Regulations and the opportunity to be heard before the Committee or its designated agent.

Section 24. The term "Person" shall mean and refer to a natural person, a corporation, a partnership, trust, limited liability company, or other legal entity.

Section 25. The term "Phase" shall mean and refer to two or more Units including the corresponding Membership in the Association, which has been made subject to the provisions of this Declaration.

Section 26. The term "Project" shall mean and refer to the Monte Cristo Condominium Project.

Section 27. The term "Property" shall mean and refer to the land or real estate and improvements appurtenant thereto, submitted by the Declaration or a supplement thereto to the terms of the Act, including but not limited to all buildings, physical improvements and structures on the land, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

Section 28. The term "Record of Survey Map" shall mean and refer to the Map.

Section 29. The term "Survey Map" shall mean and refer to the Record of Survey Map.

Section 30. The term "Tract" shall mean and refer to the real property and improvements appurtenant thereto submitted by this Declaration or a supplement thereto to the terms of the Act.

Section 31. The term "Unit" shall mean and refer to a part of the property intended for any type of independent use as defined in the Act, and as designated in the Map, consisting of rooms or spaces located in a dwelling structure. Units are shown in the Map by single cross-hatching. Mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only the Unit, such appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, fixtures and the like, shall be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim, consisting of, among other things and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wire, conduits, or other public utility lines or installations constituting a part of the Unit and serving only the Unit, and any structural Members or any other property of any kind, including fixtures and appliances within any Unit, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the building within which the Unit is situated shall be considered part of the Unit.

Section 32. The term "Unit Owner" shall mean and refer to the legal owner of a condominium Unit and his proportionate share of the Common Areas and Facilities as those terms are defined herein.

Section 33. The term "Unit Number" shall mean and refer to the number, letter or symbol used to designate or identify a Unit.

ARTICLE II

SUBMISSION TO CONDOMINIUM OWNERSHIP

Association hereby re-submits the above-described tract of land, buildings, and other improvements constructed thereon or hereafter to be constructed, together with all appurtenances thereto, to the provisions of the Act as a Condominium Project to be known as "Monte Cristo." This Declaration is re-submitted in accordance with the terms and provisions of the Act and shall be construed in accordance therewith:

SUBJECT TO the described easements and rights of way.

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

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or

quasi-governmental authorities; all Patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies shown on or revealed by the Survey Maps or otherwise existing; an easement for each and every common area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Tract; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such common area improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

ARTICLE III

COVENANTS TO RUN WITH THE LAND

This Declaration and the covenants, restrictions, conditions and uses therein provided, shall constitute equitable servitudes and covenants which run with the land and are hereby submitted to the Condominium Project and shall be binding upon the Association, its successors and assigns, and upon all subsequent Owners and Residents of all or any part of the Condominium Project, and upon their grantees, successors, heirs, executors, administrators, devisees, tenants, family members, and assigns.

ARTICLE IV

PLAN OF CONDOMINIUM OWNERSHIP

This Declaration is designed to re-establish a plan of condominium ownership for the Project. The Project consists of and is hereby divided into various phases, comprised of 74 Units, some with basements, described in the Maps and by reference made a part hereof, which residential Units, together with the residential Units of the subsequent phases, and their appurtenant interests in the Common Areas and Facilities, as hereinafter established, shall constitute separate freehold estates for all purposes provided by the Act. The percentage of ownership of the Common Areas and Facilities appurtenant to each Unit shall be as set forth in Exhibit "B", attached hereto and incorporated herein

by reference as though fully set forth.

ARTICLE V

EASEMENT FOR ENCROACHMENTS AND UTILITIES

If any portion of the Common Areas and Facilities encroaches upon any of the residential Units, a valid easement shall exist for such encroachment, and for the maintenance of the same, so long as such encroachment exists. In the event the Condominium Project is partially or totally destroyed, and then rebuilt, minor encroachments shall be permitted, as required, upon the individual Units, and easements for such encroachments, and for the maintenance of same, shall exist for such period of time as may be reasonably required for the reconstruction or repair of said premises.

Easements are reserved through the Condominium Property as may be required for utility services.

Each phase of the Project shall have access to and across every other phase for ingress and egress. These rights of access shall not be extinguished by foreclosure.

In the event of the invalidity of the phasing provisions, each phase shall be a separate project in accordance with its particular Map and the Declaration and each Unit in all phases shall have a right of access to and across all other phases and shall have the right to use and enjoy all of the Common Areas and Facilities of all phases and shall pay a proportionate share of the common expenses equal to its percentage of ownership of the Common Areas and Facilities.

ARTICLE VI

OWNERSHIP OF COMMON AREAS AND FACILITIES

The proportionate share of the separate Owners of the respective Units in the Common Areas and Facilities will be based on the proportionate value that each Unit bears to the total value of all of the Units. The percentage of ownership in the Common Areas and Facilities of the Condominium Project shall be for all purposes, including voting; and the common expenses, profits and losses shall be allocated among the Unit Owners in accordance therewith. The aggregate percentage of undivided ownership in the Common Areas and Facilities shall equal one hundred (100%) percent.

ARTICLE VII

MANAGEMENT

The business, property and affairs of Monte Cristo, including all phases, shall be managed by a Management Committee consisting of not less than three (3) nor more than seven (7) Members who have ownership of Units in the Project, to be elected as provided in the By-Laws. The Management Committee shall secure the services of a professional manager to manage all of the business, property and affairs of this Condominium Project and shall fix and determine a reasonable fee or compensation for such services. The Committee shall have the right to change professional managers from time to time as it deems necessary. Through the professional manager, the Management Committee shall keep in good condition, order and repair, the foundations, columns, girders, beams, supports, main walls, roof, exterior walkways, parking areas, streets, the clubhouse, swimming pool, recreational areas and facilities, yards, gardens, fences, patios, decking, porches, and all pipes and conduits for carrying water and electricity through the buildings, together with all plumbing, heating and other apparatus intended for the general service of the development, except those portions of any of the foregoing which it is the duty of the Unit Owners to maintain and keep in good repair as hereinafter provided.

Each Unit Owner and Resident shall give the Management Committee prompt notice of any defects or dangerous conditions which require repairs. All such repairs required to be made by the Management Committee shall be common expenses, unless the same have been rendered necessary by the act, negligence or carelessness of a Unit Owner or Resident, or their family members, guests, employees, representatives, agents, or tenants, in which case the expense is to be paid by the Unit Owner. The Management Committee shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Act, this Declaration and any amendments subsequently filed thereto.

The Management Committee shall be responsible for the control, operation and management of the Condominium Project in accordance with the provisions of the Act, this Declaration and such administrative, management and operational rules, and regulations as it may adopt from time to time as herein provided, and all agreements and determinations lawfully made and entered into by the Committee, and the Management Committee shall be responsible for the services and performance of the professional manager.

The Management Committee shall have the authority to provide such facilities and services, in addition to those for which provision has already been made, as it may deem to be in the best

interest of the Unit Owners and to effect the necessary amendment of documents and maps as may be necessary.

The Management Committee shall be known by such name or designation as it, or the Unit Owners at any meeting shall determine.

Any instrument executed by the Management Committee that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Committee, acting in behalf of the Association and all Unit Owners shall have the specific powers delineated in subparagraphs (a) through (j) below. The Management Committee shall have, and is hereby granted, the following specific authority and powers:

(a) To Enter. After reasonable notice (except in a situation deemed by the Committee to be an emergency), the right, power and authority to enter into, go upon, or pass through any Unit or Unit to make repairs and to do other work reasonably necessary for the proper maintenance and operation of the Common Areas in the Project.

(b) Grant Easements. The right, power and authority, without the vote or consent of the Unit Owners, Mortgagees, insurers or guarantors of Mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance and operation of the Project.

(c) Execute Documents. The right, power and authority to execute and record, on behalf of all the Association or Unit Owners, any amendment to the Declaration or Record of Survey Map which has been approved by the vote or consent necessary to authorize such amendment.

(d) Standing. The right, power and authority to sue and be sued.

(e) Enter Into Contracts. The right, power and authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

(f) Transfer Interests in Real Property. The right, power and authority to exchange, convey or transfer any interest in real property, so long as it has been approved

by at least 75% of the undivided ownership interest in the Common Areas.

(g) To Add Property. The right, power and authority to purchase, add any real property, or interest therein, acquire, accept title to the Project, so long as it has been approved by at least 75% of the undivided ownership interest in the Common Areas.

(h) Promulgate Rules. The authority to promulgate such reasonable administrative guidelines, rules, regulations, and procedures as may be necessary or desirable to aid the Committee in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with this Declaration, including the power to levy assessments and fines, or issue citations, suspend privileges, or make sanctions.

(i) Meetings. To establish procedures for the conduct of its meetings, including but not limited to the right, power and authority to determine if they shall be open or closed to Owners and/or Residents, if the Committee should retire to executive session, and to regulate record keeping; that is, to allow or disallow hand written notes, a reporter, electronic reproductions (audio or video) and the like of its meetings.

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

ARTICLE VIII

CHANGE IN OWNERSHIP OR POSSESSION

Whenever there is a change of ownership or possession of a residential Unit and its appurtenant rights, for whatever reason, the Management Committee or the Manager may require, as a condition to recognizing the new Unit Owner or Resident as such, that the new Unit Owner or Resident do the following:

(a) Owner or Resident. Furnish the Committee with the name and address of each new Owner or Resident; and

(b) Written Acknowledgment. Provide the Committee with a written acknowledgement of receipt by the new Owner or Resident of a copy of the Declaration, By-Laws and any administrative rules and regulations the Association may adopt from time to time.

ARTICLE IX

BUDGET AND ASSESSMENTS

The cash requirements above referred to for each year, or portions of the year, are hereby defined and shall be deemed to be such aggregate sum as the Management Committee from time to time shall determine, in its judgment, is to be paid by all the Owners of the Condominium Project then in existence to enable the Management Committee to pay all estimated expenses and outlays of the Management Committee to the close of such year, growing out of or in connection with the maintenance and operation of such land, buildings and improvements, and recreational areas and facilities as are located within the Project. The sum may include, among other things, the cost of management, fire, casualty, public liability and other insurance premiums, common utilities, power, gas and lighting, landscaping and the care of grounds, repairs and renovations to Common Areas and Facilities, clubhouse, swimming pool, recreational facilities, snow removal, wages, water and charges, legal and accounting fees, management fees, expenses and liabilities incurred by the Management Committee under or by reason of this Declaration, the payment of any deficit remaining from a previous period, the creation of a reasonable contingency or other reserve or surplus fund, as well as all other costs and expenses relating to the Condominium Project. The Management Committee may, from time to time, up to the close of the year for which such cash requirements have been so filed or determined, increase or diminish the amount previously fixed or determined for such year as it deems, in its sole discretion, necessary or appropriate. It may include in the cash requirements for any year, any liabilities or items of expense which accrued or became payable in the previous year, or which might have been included therein; and also any sums which the Management Committee may deem necessary or prudent to provide a reserve against liabilities or expenses then accrued or thereafter to accrue although not payable in that year.

a) Proportionate Share. Each Owner shall pay his portion of the Common Expenses in such amounts and at such times as the Management Committee determines in accordance with the Act, the Declaration and the By-Laws.

b) Equitable Adjustments. If the aggregate of all monthly payments on all of the Units is too large or too small as a result of unanticipated income or expenses, the Committee may from time to time effect an equitable change in the amount of said payments. Owners shall be given at least thirty (30) days written notice of any changes.

c) Reserves. The Committee shall establish and maintain adequate reserve accounts to pay for unexpected operating expenses and capital improvements. The reserve accounts shall be

funded out of regular Assessments. The Association shall pay out of the reserve accounts for unanticipated or extraordinary expenses and those costs that are attributable to the maintenance, repair or replacement of Capital Improvements for which reserves have been collected and held. No portion of a reserve designated for a particular Capital Improvement may be expended for any purpose other than the maintenance or replacement of that Capital Improvement without the approval of a majority of the undivided ownership interest in the Common Area. Except for funds collected for such contingencies, no funds collected for the Reserve Account may be used for ordinary current maintenance and operation purposes.

d) Capital Improvements. Capital improvements to the Project which cost less than 20% of the Association's total annual budget, and do not materially alter the nature of the Project, may be authorized by the Management Committee alone. Capital improvements the cost of which will exceed such amount must, prior to the commencement of construction, be authorized by at least a Majority of the Members. Any capital improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least 67% of the Members.

e) Special Assessments. In addition, the Association may levy special assessments in any year. So long as the special assessment does not exceed Two Hundred and 00/100s Dollars (\$200.00) per Unit in any one fiscal year, the Committee may impose the special assessment. Any special assessment which would exceed this amount shall be effective only if approved by at least 67% of the Members of the Association. The Committee in its discretion may allow any special assessment to be paid in installments.

f) Specific Assessments. Further, the Committee shall have the power specifically to assess the Owners of an individual Unit or Units in a particular area, phase or parcel pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Committee to exercise its authority under this Section shall not be grounds for any action against the Association or the Committee and shall not constitute a waiver of the Committee's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Committee has not previously exercised its authority under this Section. If the Unit Owner has the option of accepting or rejecting the benefit, the Committee may specifically assess a Unit or Units in a particular area, phase or parcel as follows:

1) Expenses of the Association which benefit less than all of the Units, parcels or phases may be specifically assessed, equitably among all of the Units in an area, parcel or phase which are benefitted, according to the benefit received; or

2) Expenses of the Association which benefit all Units, but which do not provide an equal benefit to all Units, parcels or phases, may be specifically assessed equitably among all Units, parcels or phases according to the benefit received.

g. Individual Assessments. Individual Assessments shall be levied by the Committee against a Lot and its Owner to reimburse the Association for:

a) fines levied and costs incurred in enforcing the Project Documents;

b) costs associated with the maintenance, repair or replacement of Common Area for which the Lot Owner is responsible;

c) any other charge, fee, due, expense, or cost designated as an Individual Assessment in the Project Documents; and

d) attorneys' fees, interest, and other charges relating thereto as provided in this Declaration.

ARTICLE X

DESTRUCTION OR DAMAGE

The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Project. Each of the following terms shall have the meaning indicated:

(a) Destruction. "Substantial destruction" shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. "Partial destruction" shall mean any other damage or destruction to the Project or any part thereof.

(b) Condemnation. "Substantial condemnation" shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. "Partial condemnation" shall mean any other such taken

by eminent domain or grant or conveyance in lieu thereof.

(c) Obsolescence. "Substantial obsolescence" shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. "Partial-obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

(d) Restored Value. The term "Restored Value" shall mean the fair market value of the Project after Restoration as determined by an MAI or other qualified appraisal.

(e) Estimated Costs of Restoration. The term "Estimated Cost of Restoration" shall mean the estimated costs of restoring the Project to its former condition.

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

(g) Determination by Committee. Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grant or conveyance in lieu thereof, the Committee shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. In addition, the Committee shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations the Committee may retain and rely upon one or more qualified appraisers or other professionals.

(h) Restoration of the Project. Restoration of the Project shall be undertaken by the Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven percent (67%) of the Project's undivided ownership interest and is further consented to by Eligible Mortgagees holding Mortgages on Units which have appurtenant at

least fifty-one percent (51%) of the undivided ownership interest in the Common Areas and Facilities which is then subject to Mortgages held by Eligible Mortgagees.

(i) Notices of Destruction or Obsolescence. Within thirty (30) days after the Committee has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.

(j) Excess Insurance. In the event insurance proceeds condemnation awards, or payments in lieu of condemnation actually received by the Committee or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Unit is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

(k) Inadequate Insurance. In the event the cost of Restoration exceeds Available Funds, all of the Units shall be assessed for the deficiency on the basis of their respective percentages of undivided ownership interest in the Common Areas.

(l) Reallocation in Event of Partial Restoration. In the event that all or any portion of one or more Units will not be the subject of Restoration (even though the Project will continue as a condominium project) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided ownership interest in the Common Areas and Facilities shall be immediately reallocated to the remaining Units.

(m) Sale of Project. Unless Restoration is accomplished as set forth above, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, condominium ownership under this Declaration and the Survey Map shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Committee to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

(n) Authority of Committee to Represent Owners in Condemnation or to Restore or Sell. The Committee, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations,

settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Facilities. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Unit Owners and their mortgagees as their interests may appear. The Committee, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Unit therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

ARTICLE XI

TAXES

It is understood that under the Utah Condominium Ownership Act each Unit, and its percentage of undivided interest in the Common Areas and Facilities in the Project, are subject to separate assessment and taxation by each assessing Unit and the special district of all types of taxes authorized by law, and that as a result thereof, no taxes will be assessed or payable against the Project as such. Each Unit Owner will, accordingly, pay and discharge any and all taxes which may be assessed against him and his percentage of undivided interest in the Common Areas and Facilities.

ARTICLE XII

INSURANCE

The Management Committee shall secure and maintain the following insurance coverage on the Condominium Project:

(a) Property Insurance. Blanket property insurance using the standard "Special" or "All-Risk" building form. Loss adjustment shall be based upon replacement cost. For purposes of this sub-section, the term "casualty insurance" shall not mean or refer to "earthquake" or other special risks not included in the standard condominium casualty policy. This additional coverage may be added by the Committee as it deems necessary in its best judgment and in its sole discretion.

(b) Flood Insurance. If the property is or comes to be situated in an area having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program ("NFIP"), or any successor program, a policy of flood insurance shall be maintained covering the property in an amount deemed appropriate, but not less than the lesser of: (1)

the maximum limit of coverage available under NFIP for Insurable Property within a designated flood hazard area; or (2) one hundred percent (100%) of current replacement cost of the Insurable Property. Such policy shall be in a form which meets the criteria set forth in the most current Guidelines on the subject issued by the Federal Insurance Administrator.

(c) Liability Insurance. Liability insurance with adequate limits of liability for bodily injury and property damage, consistent with that of similarly situated first class subdivisions in the county. If possible, the policy should be written on the comprehensive form and shall include not-owned and hired automobile liability protection.

(d) Director's and Officer's Insurance. Adequate director's and officer's liability insurance (aka Errors and Omissions or E & O insurance).

(e) Fidelity Bond. A separate fidelity bond in a reasonable amount to be determined by the Management Committee to cover all non-compensated officers as well as all employees for theft of Association funds, subject to the following:

1) Agents. Furthermore, where the Committee or the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds are required for the management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Committee or the Association.

2) Amount of Coverage. The total amount of fidelity bond coverage required shall be based upon the Committee's best business judgment, but shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Committee, the Association, or the management agent, as the case may be, at any given time during the term of each bond. Nevertheless, in no event may the amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Units, plus reserve funds.

3) Quality of Coverage. The bonds required shall meet the following additional requirements:

a) they shall name the Committee, the Owners Association, and the Property Manager as obligee;

b) if the insurance contract or bond excludes coverage for damages caused by persons serving without compensation, and may use that exclusion as a defense or reason not to pay a claim, the insurance company shall, if possible, be required to waive that exclusion or defense;

c) the premiums on all bonds required herein for the Committee and the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Committee or the Association as part of the Common Expenses; and

d) the bonds shall provide that they may not be canceled or substantially modified, including cancellation for nonpayment of premium, without at least ten days' prior written notice to the Committee and the Association, to any Insurance Trustee, and to each service of loans on behalf of any Mortgagee, the VA, FHA and FNMA.

(f) Earthquake Insurance shall not be required unless requested by a least Seventy five percent (75%) of the Members of the Association.

(g) Miscellaneous Items. The following provisions shall apply to all insurance coverage:

1) The Insured. The name of the insured under each policy required to be maintained hereby shall be set forth therein substantially as follows: "Association of Unit Owners of Monte Cristo, a Condominium Project, for the use and benefit of the individual Owners."

2) Designated Representative. The Association may designate an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners.

3) Beneficiary. In any policy covering the entire Project, each Owner and his or her Mortgagee, if any, shall be beneficiaries of the policy in an amount equal to the Owner's percentage of undivided ownership interest in the Common Areas and Facilities.

4) Certificate of Insurance. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

5) Mortgage Provisions. Each policy shall contain a standard mortgage clause or its equivalent and shall provide that the policy may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association and to each Mortgagee.

6) Waiver of Subrogation. Each policy shall contain a waiver of the right of a subrogation against Owners individually;

7) Individual Neglect. Each policy shall contain a provision that the insurance is not prejudiced by any act or neglect of any individual Owner; and

8) Deductible. The deductible on a claim made against the Association's liability insurance policy shall be paid by the party who would be liable for the loss, damage, claim or repair in the absence of insurance, and in the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. Provided, however, if the loss is caused by an act of god or nature, or by an element beyond the control of the Association, then the Owner shall be responsible for and shall pay the deductible.

9) Individual Insurance. No Owner shall be entitled to exercise his or her right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all the Owners and their mortgagees, may realize under any insurance policy which the Association may have in force on the Property at any particular time.

10) Primary Coverage. Anything to the contrary notwithstanding, the insurance coverage of an Owner shall, in the event the Association also has insurance covering the loss, be primary and the insurance of the Association shall be secondary.

11) Prompt Repair. Each Owner further covenants and agrees that in the event of any partial loss, damage or destruction of his or her Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction.

12) Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed to repair promptly and reasonably the damages. Any excess proceeds shall be paid and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Unit is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

13) Special Endorsements. Each policy shall also contain or provide those endorsements commonly purchased by other Condominium Homeowners Associations in Salt Lake County, Utah.

14) Quality of Insurance Carrier. Each insurance policy required hereby shall be written by an insurance carrier licensed to transact business in the State of Utah and who has the highest rating by Best's Key Rating Guide.

15) Restrictions on Policies. No such insurance policy shall be maintained where:

a) Individual Assessments Prohibited. Under the term of the carrier's charter, By-Laws, or policy, contributions may be required from, or assessments may be made against, an Owner, a borrower, a Mortgagee, the Management Committee, the Association, FNMA, or the designee of FNMA.

b) Payments Contingent. By the terms of the Declaration, By-Laws, or policy, payments are contingent upon action by the carrier's board of directors, policyholder, or member; or

c) Mortgagee Limitation Provisions. The policy includes any limited clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Committee, the Association, an Owner, FNMA, or the borrowers) from collecting insurance proceeds.

16) Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association, Committee or Owners to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Management Committee or Association may deem appropriate from time to time.

ARTICLE XIII

PAYMENT OF ASSESSMENTS

a) Manner of Payment. Each Unit Owner shall pay the Management Committee or the professional manager, as directed, his allocated portion of the cash requirement deemed necessary by the Management Committee to manage and operate the Condominium Project, including the recreational facilities thereof, upon the terms, at the times, and in the manner herein provided without any deduction on account of any set-off or claim which the owner may have against the Management Committee. Payments are due on the first day of each month. A late fee in the sum of at least Twenty-five and no/100s Dollars (\$25.00) per month is assessed on all payments received after the 10th day of the month; interest at the delinquency rate of at least eighteen (18.0%) per cent per annum shall accrue on all accounts thirty (30) days or more past due until paid, unless otherwise determined by the Management Committee, who shall have the authority to modify the late fee charge and the delinquency interest rate from time to time as it deems necessary or appropriate. Provided, however, no such change shall become effective until the Unit Owners have been given at least thirty (30) days prior written notice of the proposed modification.

b) Allocation. The portion of Common Expenses payable by

the Owner in and for each year or for a portion of a year shall be a sum within the limits and on the conditions hereinabove provided bearing to the aggregate amount of such cash requirements for such year, or portion of year, determined as aforesaid, the same ratio as the Owner owns an undivided interest in the Common Areas and Facilities, and such assessments, together with any additional sums accruing under this Declaration shall be payable monthly in advance, or in such payments and installments as shall be required by the Management Committee, and at such times as shall be provided by the, Management Committee.

c) Discretionary Powers. The Management Committee shall have discretionary powers to prescribe the manner of maintaining and operating the Condominium Project and to determine the cash requirements of the Management Committee to be paid as aforesaid by the Owners under this Declaration. Every such reasonable determination by the Management Committee within the bounds of the Act, and this Declaration, shall be final and conclusive as to the Owners, and any expenditures made by the Management Committee, within the bounds of the Act and this Declaration, shall, as against the Owner, be deemed necessary and properly made for such purpose. The professional manager shall also have such discretionary powers and rights to make reasonable determinations as the Management Committee shall prescribe and delegate to it.

d) Rental Income. If the Owner shall at any time let or sublet the Unit and shall default for a period of one (1) month in the payment of any assessments, the Management Committee may, at its option, so long as such default shall continue, demand and receive from any tenant or sub-tenant of the Owner occupying the Unit the rent due or becoming due and the payment of such rent to the Management Committee shall be a sufficient payment and discharge of such tenant or sub-tenant and the Owner to the extent of the amount paid.

e) Collection and Remedies. Each monthly assessment and each special or specific assessment shall be separate, distinct and personal debts and obligations of the Owner against whom the same are assessed at the time the assessment is made and shall be collectible as such by judgment, lien or foreclosure. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same.

f) Lien. The amount of any assessment, whether regular, special or specific, assessed to the owner of any condominium, plus interest at the rate eighteen per cent (18%) per annum, late fees and costs, including reasonable attorney's fees, shall become a lien upon such Unit upon recordation of a notice of assessment as provided by the Act. The said lien for non-payment

of Common Expenses shall have priority over all other liens and encumbrances, recorded or unrecorded, except only:

1) Tax and special assessment liens on the Unit in favor of any assessment Unit, and special district, and,

2) Encumbrances on the Owner's Condominium Unit (and Common Areas and Facilities) recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

g) Certificate of Indebtedness. A certificate executed and acknowledged by a majority of the Management Committee or by the professional manager, stating the indebtedness secured by the lien upon any Condominium Unit created hereunder, shall be conclusive upon the Management Committee and its manager, and the Owners as to the amount of such indebtedness on the date of the certificate in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Owner or encumbrance or prospective encumbrance of a Condominium Unit upon request at a reasonable fee. Unless the request for a certificate of indebtedness shall be complied with during a period of ten (10) days following such request, all unpaid Common Expenses which become due prior to the date of making of such request shall be subordinate to the lien held by the person making the request.

h) Release of Lien. Upon payment of a delinquent assessment concerning which such certificate has been so recorded, or other satisfaction thereof, the Management Committee shall cause to be recorded in the same manner as the certificate of indebtedness a further certificate stating the satisfaction and release of the lien thereof.

i) Foreclose. Such lien for non-payment of assessment may be enforced by sale by the Management Committee or by a bank or trust company or title insurance company authorized by the Management Committee, such sale to be conducted in accordance with the provisions of the law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any manner permitted by law. In any foreclosure or sale, the Owner shall be required to pay the costs and expenses of such proceedings including reasonable attorney's fees.

j) Rental Value. In the event of foreclosure, the Owner shall be required to pay a reasonable rental for the Condominium and the plaintiff in the foreclosure action shall be entitled to the appointment of a Receiver to collect the rental without regard to the value of the mortgage security. The Management Committee or Manager shall have the power to bid in the Condominium at foreclosure or other sale and hold, lease, mortgage and convey the Condominium Unit.

k) Agreement To Be Bound. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

l) Waiver. No Owner may waive or otherwise exempt himself or herself from liability for the Assessments provided for herein, including but not limited to the non-use of Common Areas, Recreational Facilities or the abandonment of the Unit.

m) Reduction or Abatement. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Committee to take some action or perform some function required to be taken or performed by the Association or Committee under this Declaration or the By Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments is a separate and independent covenant on the part of each Owner.

n) Application of Payments. All payments shall be applied as follows: To collection costs, accruing interest, late fees, delinquent assessments and current Assessments.

o) Cost of Foreclosure. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Unit Owner's interest therein by the Committee. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Unit Owner shall pay: (1) the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, (2) reasonable attorney's fees, and (3) a reasonable rental for the Unit during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Committee may bid for the Unit at foreclosure or other sale and hold, lease, mortgage, or convey the Unit.

p) Trustee. If the Committee elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Unit hereby irrevocably appoints the attorney of the Association, provided s/he is a Member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. Owner hereby transfers in trust to the Trustee all of his or her right, title

and interest in and to the real property for the purpose of securing his or her performance of the obligations set forth herein.

q) Attorney In Fact. Each Owner by accepting a deed to the Unit hereby irrevocably appoints the Association as his attorney in fact to collect rent from any person renting his Dwelling Unit, if the Unit is rented and Owner is delinquent in the payment of his Assessments, rent due shall be paid directly to the Association, upon written demand, until such time as the Unit Owner's Assessments are current; and the Unit Owner shall credit the Renter, against rent due, for the amount of money paid to the Association.

r) Homestead Exemption. All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled.

s) Termination of Services. At the discretion of the Committee, the utility service (e.g., water, power and gas) to any Owner or Resident of any Unit paid for by Assessments, or the right to use the Common Areas and Facilities or Amenities, may be terminated if the Owner or Resident is in arrears on his obligation to pay Assessments and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

t) Suspension of Voting Rights. At the discretion of the Committee, the right of an Owner to vote on issues concerning the Association may be suspended if the Owner is delinquent in the payment of his Assessments, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten days.

ARTICLE XIV

MORTGAGE PROTECTION

Notwithstanding all other provisions hereof:

a) Subordination. The liens created hereunder upon any Condominium Unit shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage (meaning a mortgage or a trust deed with first priority over other mortgages) upon such interest made in good faith and for value, provided that after the foreclosure of any such mortgage there may be a lien created pursuant to Article XV hereof against the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an Owner after the date of such foreclosure sale, which said

lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein;

b) Amendments. No amendment to this paragraph shall affect the rights of the holder of any mortgage recorded prior to recordation of such amendment who does not join in the execution thereof;

c) Extension. By subordination agreement executed by a majority of the Management Committee, the benefits of (a) and (b) above may be extended to mortgages not otherwise entitled thereto.

ARTICLE XV

MAINTENANCE OF UNITS & COMMON AREA

Operation, Maintenance and Alterations. Each Unit, the Limited Common Area and the Common Area shall be maintained, repaired and replaced in accordance with the following covenants, conditions and restrictions:

(1) Clean & Attractive Condition. The Units, Limited Common Area and Common Area shall be maintained in a usable, clean, functional, attractive and good condition, consistent with Community Standards.

(2) Neglect. If the Committee determines that any Owner has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder; or that the need for maintenance, repair, or replacement of the Common Area is caused through the willful or negligent act of any Owner or Resident, his family Members, guests or invitees, and it is not covered or paid by insurance, in whole or in part, then the Association may, but is not obligated to, provide such maintenance, repair or replacement at the Owner's sole cost and expense, subject to the following:

a) Assessment/Lien. Such costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against his or her Unit, as provided below.

b) Notice of Intent to Repair. Except in an

emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Committee. The Owner shall have ten (10) days after receipt of notice within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days.

c) Emergency Situation. If the Committee determines that an emergency exists, then notice and the opportunity to cure the default is not necessary.

d) Optional Repairs. The Association may, but is not obligated to, provide any such maintenance, repair, or replacement in the manner described above.

e) Right of Entry. The Association or its agents or employees shall have a right to entry upon or into any Unit or Limited Common Area as necessary to perform such work and shall not be liable for trespass for such entry or work.

(3) Alterations to the Common Area. No Owner or Resident may make any structural alterations to the Common Area (including the Limited Common Area) without the prior written consent of the Committee.

(4) Landscaping. All landscaping in the Project shall be maintained and cared for in a manner consistent with the standards of design and quality originally established by Association and in accordance with Community Standards. Specific written guidelines, standards, controls, and restrictions on landscaping may be adopted or amended by the Committee from time to time. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs and bushes shall be neatly trimmed. In a word, all landscaping shall be tasteful, so as not to affect adversely the value or use of any other Unit, or to detract from the uniform design and appearance of the Project.

(5) Area of Common Responsibility. The Association shall maintain, repair and replace all of the Area of Common Responsibility which shall include but is not limited to the common landscaping and green space, the common sprinkler system, the entrance to and exit from the Project, all private roads and roadways, all foundations, columns, girders, beams, supports, main walls, roofs, stairs, stairways, sidewalks, walkways, wood garage exteriors, common (exterior) utilities (e.g. power,

lights, gas, water and sewer), common street, clubhouse and front exterior lights and fixtures, and any Common Area item not included in the Area of Personal Responsibility. The Association shall also be responsible to repair and replace all Limited Common Area improvements.

(6) Area of Personal Responsibility. Each Owner shall maintain, repair and replace his or her Unit and Limited Common Area which shall include but is not limited to the interior of his Unit and its equipment and appurtenances in good order, condition and repair, and in a clean and sanitary condition, and shall do all interior redecorating and painting which may at any time be necessary to maintain the good appearance of his Unit. The Owner shall be responsible for the maintenance or replacement of any plumbing and electrical fixtures, refrigerators, dishwashers, disposals, ranges, and other appliances, equipment or fixtures that may be in or connected with the Unit, all individual services such as personal utilities (e.g. power, lights, gas and telephone), hot and cold water, heating, refrigeration, air conditioning, interior fixtures, faucets, all glass, windows, screens and doors (including the garage door, front door, jams, frames and casing), garage door systems, garage door openers, locks and dead bolts, patios, balconies and decks, BBQs, interior and exterior carpet, driveways, doorbells, exterior (excluding the exterior lights on the front of the building, in the street and at the clubhouse) and interior lights and fixtures, garage floor and louvers, intercoms, mailboxes, interior drains, toilets, baths and showers. The Owner shall be entitled to the exclusive use and possession of the fenced-in patio and garden area, normally at the rear of each Unit, the entrance patio, any wood decking, balconies and porches, the exterior walkway to the entrance of each Unit and the driveway to the garage of each Unit and the Owner shall have the right to plant appropriate flowers and small shrubbery in his own garden areas. Each Unit Owner shall be responsible for keeping his or her Limited Common Area clean, attractive, tidy, uncluttered, safe, sanitary and functional so as not to detract from the uniform appearance or design of the Project. The Owner shall not make or permit to be made any structural alteration, improvement or addition thereto or to the Unit, Limited Common Area, or to the exterior of any building (hereinafter referred to as the "Area of Personal Responsibility").

ARTICLE XVI

USE RESTRICTIONS

The use of the Property shall be in accordance with the following provisions:

(a) Residential Nature of Project. Each of the Units shall be occupied only by a single family, its servants, and guests, as

a private residence and for no other purpose.

(b) Partition. No Unit may be partitioned, divided or subdivided into a smaller Unit.

(c) Right to Quiet Enjoyment. The Common Areas and Facilities shall be used only for the purposes for which they were intended, to provide services and facilities for the enjoyment of the Owners of the Condominium Units.

(d) Nuisance. No use or practice shall be permitted in, on or about the Project which disturbs or is the source of annoyance to residents, or which interferes unreasonably with the peaceful possession and proper use of the Property by its residents.

(e) Clean Project. All parts of the property shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage allowed to accumulate nor any fire hazard allowed to exist.

(f) Insurance. No Unit Owner shall permit any use of his Unit or of the Common Areas which will cause cancellation of insurance or increase the rate of insurance for the Property.

(g) Lawful Use. No immoral, improper, offensive, or unlawful use shall be made of the Project or any part thereof.

(h) Business Use. No commercial trade or business may be conducted in or from any Unit unless: (1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (2) the business activity conforms to all zoning requirements for the Project; (3) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation of residents of the Project; and (4) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Committee. The terms business and trade, as used in this sub-Section, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: such activity is engaged in full or part-time; such activity is intended to or does generate a profit; or a license is required therefor.

Notwithstanding the above, the leasing of a Unit shall not be considered a trade or business within the meaning of this sub-

Section.

(I) Aerials and Satellite Dishes. No aerials, antennas, satellite dishes or satellite tv systems shall be erected, maintained or used in, on or about any Unit, the Common Areas, outdoors and above ground, whether attached to a building, structure, Unit or otherwise, within the Project without the prior written consent of the Management Committee, which shall not be unreasonably withheld.

ARTICLE XVII

RIGHT OF ENTRY

The Management Committee and its duly authorized agents shall have the right to enter any and all of the Units in case of an emergency originating in or threatening such Unit or any other part of the Project, or any residents therein, whether or not the Owner or Resident thereof is present at the time. The Committee and its duly authorized agents shall also have the right to enter into any and all of said Units at all reasonable times and after reasonable notice has been given, as required for the purpose of making necessary repairs to the Common Areas and Facilities of the Project, for the purpose of performing emergency installations, alterations, or repairs to the mechanical or electrical devices or installations located therein or thereon; provided, however, such emergency installations, alterations, or repairs are necessary to prevent damage or threatened damage to other Units in the Project; and provided further, that the Owner affected by such entry shall first be notified thereof if available and if time permits.

ARTICLE XIII

ADMINISTRATIVE RULES AND REGULATIONS

The Management Committee shall have the power to adopt and establish by resolution, such building management, and operational rules as it may deem necessary for the maintenance, operation, management and control of the Project, and the Committee may, from time to time by resolution alter, amend and repeal such rules. When a copy of any amendment or alteration or provision for repeal of any rule or rules has been furnished to the Unit Owners, such amendment, alteration and provision shall be taken to be a part of such rules. Unit Owners shall at all times obey such rules and see that they are faithfully observed by those persons over whom they have or may exercise control and supervision, it being understood that such rules shall apply and be binding upon all Unit Owners and Residents of the Project. This includes the right and power to levy fines, issue citations,

suspend privileges and sanctions.

ARTICLE XIX

OBLIGATION TO COMPLY HEREWITH

Each Unit Owner, tenant, or Resident of a Unit, shall comply with the provisions of the Act, this Declaration, the By-Laws, and the administrative rules and regulations adopted from time to time, all agreements and determinations lawfully made and entered into by the Management Committee or the Unit Owners, when acting in accordance with their authority. Any failure to comply with any of the provisions thereof, shall be grounds for an action by the Management Committee to recover any loss or damage resulting therefrom, including but not limited to attorney's fees and costs, or for injunctive relief.

ARTICLE XX

INDEMNIFICATION OF MANAGEMENT COMMITTEE

Each Member of the Management Committee shall be indemnified and held harmless by the Unit Owners against all costs, expenses and liabilities whatsoever, including, without Limitation, attorney's fees, reasonably incurred by him in connection with any proceeding to which he may become involved by reason of his being or having been a Member of said Committee, except in cases of gross negligence, bad faith or willful misconduct.

ARTICLE XXI

AMENDMENTS

In addition to the amendment provisions provided in other Articles where the same may be mentioned, the Unit Owners have the right to amend this Declaration and the Maps, or either of them, upon the approval and consent of Unit Owners representing not less than two-thirds (2/3) of the undivided interests in the Common Areas and Facilities, which approval and consent shall be evidenced by a duly recorded instrument.

ARTICLE XXII

RENTING OR LEASING OF UNITS

Each Unit Owner shall give the Management Committee at least ten (10) days' advance written notice of his intent to rent or lease his Unit, which notice shall state the name and address of

the prospective renter or lessee, as the case may be, and the terms and conditions upon which said person agrees to occupy the Unit. In order to assure a Community of congenial owners and thus protect the value of the Units, the lease of a Unit by any Owner (other than as herein provided for certain mortgagees) shall be subject to the following provisions:

(a) Enforcement. The Committee shall have authority to make and to enforce reasonable rules and regulations in order to enforce this section, including the right to impose fines for failure to comply, and to file a notice of lien against the Unit sold or leased to secure the obligation.

(b) Restrictions. Each lease shall be deemed to be subject to the following restrictions:

1) Units may be rented only in their entirety and no fraction or portion thereof may be rented; provided, however, an individual room may be rented to a third person if the Owner also occupies the Unit and it does not interfere with parking.

2) No transient Lessees may be accommodated therein. All Rentals or Leases must be for a term of no less than six months and no seasonal, resort, hotel, corporate, executive or rental pool uses are permitted.

3) All Leases and Lessees shall be subject to the provisions of the Declaration, By Laws, Rules and Regulations.

4) The Unit Owner must make available to the Lessee, upon request, copies of the Declaration, By Laws, Rules and Regulations.

5) Any Lease affecting a Unit at Monte Cristo, whether written or oral, shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner covenants and agrees that any Lease on a Unit shall contain the following language, and further agrees that if such language is not expressly contained therein, then, such language shall be incorporated into the Lease by this reference. Any Lessee, by occupancy in a Unit, agrees to be bound by following:

a) Lessee acknowledges that promises made to Lessor are made for the benefit of the Association for the purpose of discharging Lessor's duties to the Association through Lessee's performance. Therefore, the Association may bring an action against Lessee in law or equity to recover damages or to obtain injunctive relief. Failure by the Association to enforce any of its rights shall in no event be deemed a waiver of the right to do so thereafter.

b) Lessee shall comply strictly with all

provisions of the Act, Declaration, By Laws, and with the administrative rules and regulations adopted pursuant thereto, as any of the foregoing may be lawfully amended from time to time. Lessee shall control the conduct and behavior or his or her family, their guests and invitees.

c) Upon written request by the Association, Lessee shall pay to the Association all unpaid monthly Assessments, special assessments, and specific assessments, as lawfully determined and made payable during and prior to the term of this Agreement and any other period of occupancy by Lessee; provided, however, Lessee need not make such payments to the Association in excess of or prior to the due dates for monthly rental payments unpaid at the time of the Association's request. All payments made to the Association shall reduce by the same amount Lessee's obligation to make monthly rental payments to Lessor under the Lease. If Lessee fails to comply with the Association's request to pay Common Area Fees, Lessee shall pay to the Association all late or delinquent charges, fines, interest, and costs of collection, including, but not limited to, reasonable attorney's fees actually incurred, to the same extent Lessee would be required to make such payments to the Association if Lessee were the owner of the Unit during the term of this Agreement and any other period of occupancy by Lessee.

d) Lessee's rights shall be subject to all rights of the Association and any bona fide mortgage or deed of trust given to secure debt which is now or may hereafter be placed upon the Unit by Lessor.

6) The Committee may recover from the Owner and the Lessee all costs incurred in enforcing this Section, regardless of whether suit is filed, including reasonable attorneys fees.

7) Any Lessee charged with a violation of the Declaration, By Laws, or Administrative Rules and Regulations is entitled to the same rights to which the Owner of a Unit would be entitled.

8) Anything to the contrary notwithstanding, the provisions of this Section shall not apply to impair the rights of any Mortgagee to:

a. foreclose or take title to a Unit pursuant to remedies contained in any Mortgage;

b. take a deed or assignment in lieu of foreclosure, or

c. sell, lease, or otherwise dispose of a Unit acquired by the Mortgagee.

ARTICLE XXIII

LIABILITY FOR DAMAGES

Any Owner or Resident shall be liable to the Association or other Owners or Residents for damages to person or property in the Community caused by his negligence.

ARTICLE XXIV

UTILITIES

Water, in sufficient supply, and sewer service shall be furnished to each Unit and the costs of these services shall be Common Expenses to be divided among the Unit Owners as set forth above in this Declaration. The costs of utilities for the Common Areas and Facilities are also Common Expenses and shall be similarly apportioned. Each Unit Owner will separately pay the costs of all other utilities which are furnished to his Unit.

ARTICLE XXV

NOTICES

Any notice required or desirable to be given under this Declaration, the By-Laws, the Act or other rules and regulations, shall be in writing and either personally delivered or mailed postage prepaid to the Unit Owner at his street address in the Condominium Project, or such other place as the Unit Owner shall have designated in writing and to the President of the Association at 6350 South Highland Drive, Salt Lake City, Utah 84121 or such other name and address as the Management Committee shall subsequently designate.

ARTICLE XXVI

SEVERABILITY

The invalidity of any one or more phrases, sentences, clauses, paragraphs, or sections hereof shall not affect the remaining portions of this instrument or any part thereof, all of which are inserted conditionally on their being held valid in law and in the event that one or more should be invalid or should operate to render this agreement invalid, this instrument shall be construed as if such invalid portion had not been inserted.

ARTICLE XXVII

GENDER

The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply to either corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

ARTICLE XXIII

WAIVERS

No provision contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

ARTICLE XXIX

TOPICAL HEADINGS

The topical headings of the paragraphs contained in this Declaration are for convenience only and do not define, limit or construe the contents of the paragraphs or of this Declaration.

ARTICLE XXX

CONVEYANCING

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

Unit No. _____ contained within the Monte Cristo Planned Residential Development Project, Phase _____, as the same is identified in the Record of Survey Map recorded in Salt Lake County, Utah as Entry No. _____, in Book _____, at Page _____ (as said Record of Survey Map may have heretofore been amended or supplemented) and in the Declaration of Planned Residential Development of the Monte Cristo Planned Residential Development Project recorded in Salt Lake County, Utah as Entry No. _____, in Book _____, at Page _____, (as said Declaration may have heretofore been amended or supplemented).

TOGETHER WITH the appurtenant Membership in the Monte Cristo Homeowners Association as more particularly described in said

SK 7612PG2975

Declaration.

ARTICLE XXXI

LISTS

The Committee shall maintain up-to-date records showing:

(a) Owner or Resident. The name of each person who is an Owner and/or Resident, the address of such person, and the Unit which is owned by him or her;

(b) Mortgagees. The name of each person or entity who is an Eligible Mortgagee, the address of such person or entity, and the Unit which is encumbered by the Mortgage held by such person or entity; and

(c) the name of each person or entity who is an Eligible Insurer or Guarantor, the address of such person or entity, and the Unit which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Committee with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Salt Lake County, Utah. The Committee may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Committee may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder of Salt Lake County, Utah. The address of any Owner shall be deemed to be the address of the Unit owned by such person unless the Committee is otherwise advised in writing.

ARTICLE XXXII

CONSENT IN LIEU OF VOTE

In any case in which this Declaration requires the vote of a Unit Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Unit Owners who collectively hold the required percentages.

ARTICLE XXXIII

SECURITY

The Association may, but shall not be obligated to, maintain or support certain activities or provide certain systems within the Project designed to make the Project safer than they otherwise might be. Neither the Association, nor the Committee shall in any way be considered insurers or guarantors of security within the Project. Neither the Association, nor the Committee shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and Residents, their guests and invitees, acknowledge and understand that the Association and Committee are not insurers of their safety and they hereby assume all risks for loss or damage to their person or property and further acknowledge that the Association and Committee have made no representations or warranties, nor have they relied upon any representations or warranties, expressed or implied, including any warranty or merchantability or fitness for any particular purpose, relative to any security systems or measures recommended, implemented or installed within the Project.

ARTICLE XXXIV

MECHANICS LIENS

Any and all liens for materials, supplies or labor, or money judgments or judicial liens against the Association or Committee or for work performed or materials provided exclusively to the Common Areas are to be indexed in the public records under the name of the Association and the name of the Community.

To remove a lien affecting adversely his Unit, an Owner may pay the pro rata share of the amount of any lien against the Association or Committee and that shall be sufficient to release the lien on his Unit.

Liens for work performed or materials provided to any Unit will not constitute a lien on the Common Areas of the Community, but rather on each Unit within the Community and its appurtenant interest in the Common Area. Any person or entity who elects to perform labor or provide materials at this Project shall do so subject to the terms of this Section.

On the other hand, if the Association has incurred a debt for materials provided or labor performed on the Common Area, and a lien is filed, the lienholder must exercise its rights against the Common Areas before it may proceed against a particular Unit.

ARTICLE XXXV

PROCESS AGENT

The President of the Association is the person to receive service of process in the cases authorized by the Act and the office of the registered agent is 6350 South Highland Drive, Salt Lake City, Utah 84121.

ARTICLE XXXVI

REQUEST FOR NOTICE

The Association hereby requests that a copy of any notice of default and a copy of notice of sale under any mortgages or deeds of trust filed for record against any Units at Monte Cristo be mailed to the Monte Cristo Homeowner's Association at 6350 South Highland Drive, Salt Lake City, Utah 84121. To satisfy the requirements of U.C.A. Section 57-1-26 (1953), as amended, this request shall be deemed to be rerecorded after the recording of each deed or trust, mortgage or other security instrument affecting a Unit.

ARTICLE XXXVII

EFFECTIVE DATE

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

DATED the day and year first above written.

MONTE CRISTO HOMEOWNERS ASSOCIATION

By: Annette Hibbard
Title: Annette Hibbard, President

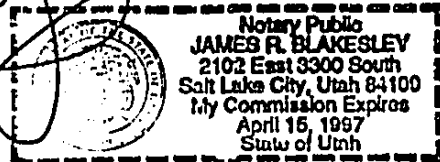
By: Joseph C. Woodward
Title: Joseph C. Woodward, Secretary

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

On the 3 day of MARCH, 1997, personally appeared before me Annette Hibbard and Joseph C. Woodward, who by me being duly sworn, did say that they are the President and Secretary of the MONTE CRISTO HOMEOWNERS ASSOCIATION, and that the within and foregoing instrument was signed in behalf of said Association by authority of a Resolution of its Board of Directors and Annette Hibbard and Joseph C. Woodward duly acknowledged to me that said Association executed the same.

NOTARY PUBLIC
Residing at:

My Commission Expires:
4-15-97



LEGAL DESCRIPTION

The LAND described in the foregoing documents is described more particularly as follows:

Beginning at a point which is South 0 degrees 07' 45" West 539.55 feet and West 313.80 feet from the Northeast Corner of Section 21, Township 2 South, Range 1 East, Salt Lake Base and Meridian, thence South 0 degrees 07' 45" West 470.25 feet; thence West 877.50 feet; thence North 470.27 feet; thence East 874.58 feet to the point of beginning.

VTDI 22-21-231-001-0000 Dist 22
Monte Cristo Phases 1,2,3 and 4

SK 7612 PG 2980

EXHIBIT "B"

Percentage (%) of ownership in the Common Areas and Facilities of Monte Cristo

<u>Unit</u>	<u>%</u>	<u>Unit</u>	<u>%</u>	<u>Unit</u>	<u>%</u>
A-1	1.4802	C-26	1.4287	M-51	1.0478
A-2	1.4287	C-27	1.4802	M-52	1.0478
A-3	1.4287	D-28	1.4802	M-53	1.0478
A-4	1.4287	D-29	1.4287	M-54	1.0478
A-5	1.4287	D-30	1.4287	M-55	1.0478
A-6	1.4287	D-31	1.4287	M-56	1.0478
A-7	1.4802	D-32	1.4287	M-57	1.0734
B-8	1.4802	D-33	1.4802	L-58	1.0734
B-9	1.4287	H-34	1.4802	L-59	1.0478
B-10	1.4287	H-35	1.4287	L-60	1.0478
B-11	1.4287	H-36	1.4287	L-61	1.0478
B-12	1.4287	H-37	1.4802	L-62	1.0478
B-13	1.4802	I-38	1.4802	L-63	1.0478
F-14	1.4802	I-39	1.4287	L-64	1.0478
F-15	1.4287	I-40	1.4287	L-65	1.0734
F-16	1.4287	I-41	1.4802	J-66	1.4802
F-17	1.4802	K-42	1.4802	J-67	1.4287
G-18	1.4802	K-43	1.4287	J-68	1.4287
G-19	1.4287	K-44	1.4287	J-69	1.4287
G-20	1.4287	K-45	1.4287	J-70	1.4287
G-21	1.4802	K-46	1.4287	J-71	1.4287
C-22	1.4802	K-47	1.4802	J-72	1.4287
C-23	1.4287	M-48	1.0734	J-73	1.4287
C-24	1.4287	M-49	1.0478	J-74	1.4802
C-25	1.4287	M-50	1.0478		