

BOOK 152 PAGE 214

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STATE OF UTAH) SS
COUNTY OF CACHE)
FILED AND RECORDED FOR
HILLYARD & GUNNELL
FEB 9 3 21 PM '73

IN BOOK 152 OF RECORD
PAGE 214 to 233 Incl
GRETTA B. SMITH
COUNTY RECORDER
DEPUTY

DECLARATION FOR ASPEN CONDOMINIUM

THIS DECLARATION is made and executed in Cache County, State of Utah, this 5th day of February, 1973, by Modern Builders Supply, a partnership of Smithfield, Utah, called DECLARANT pursuant to the provisions of the Utah Condominium Ownership Act.

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located at Logan City, Cache County, Utah, and more particularly described as follows:

part
A parcel of land situated in/Lots 2, 3, 4, 7, 8, and 1 of Block 36, Plat "A" of the Logan City Survey, in the NE $\frac{1}{4}$ of Section 33, Township 12 North, Range 1 East of the Salt Lake Base and Meridian, being further described as follows:
Beginning at SE corner of said Lot 2; thence North 132.0'; thence East 66.0'; thence North 7.0'; thence East 66.0'; thence North 96.125'; thence East 16.5'; thence North 144.37' (record) 148.5' (measurement) to a point 4 rods South of the North line of Lot 7; thence West 163.5'; thence South 200.0'; thence West 33.0'; thence South 183.625' to the South line of said Lot 2; thence East 48.0' along said South line of Lot 2 to the beginning.

and,

WHEREAS, Declarant is the owner of certain condominium multi-unit dwellings and certain other improvements heretofore constructed or hereafter to be constructed upon the aforesaid premises which property constitutes a condominium project under the terms of the provisions of the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Annotated, 1953) and it is the desire and the intention of the Declarant to develop the project into condominiums and to sell and convey individual dwelling units together with the undivided ownership interests in the common areas and facilities to various purchasers subject to the covenants, conditions and restrictions herein reserved to be kept and observed; and,

WHEREAS, Declarant has had prepared by Erwin U. Moser, Registered Professional Engineer and Land Surveyor, License No. 46, a certain instrument entitled "Record of Survey Map of Aspen Condominium", hereinafter referred to as "Map" which map is dated February 5th, 1973, and filed of record at Book Pages on February 9, 1973, Filing No. 371362, herewith; and,

WHEREAS, this declaration contains and incorporates herein the by-laws required by said Act; and,

WHEREAS, Declarant desires and intends by filing this Declaration and the aforesaid map to submit the above-described property and the condominium apartment home buildings and other improvements constructed thereon together with all appurtenances

FOR *benefit of Satisfaction of Right of First Refusal*
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thereto, to the provision of the aforesaid act as a condominium project and to impose upon said property mutually beneficial restrictions under a general plan of improvement for the benefit of all of said condominium and the owners thereof.

NOW THEREFORE, the Declarant does hereby publish and declare that all of the property described above is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the Act and the following covenants, conditions, restrictions, uses, limitations and obligations all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and the division thereof into a condominium and shall be deemed to run with the land and shall be a burden and a benefit to Declarant, his successors and assigns and any person or persons acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees, assigns, tenants, employees, and any other person who may in any manner use the property or any part thereof:

1. **DEFINITION:** Certain terms are used in this Declaration and shall be defined as follows, unless the context indicates a different meaning therefor:

A. "Declaration" shall mean this instrument by which the named project is established as provided for under the Utah Condominium Ownership Act;

B. "The Project" or "The Condominium Project" shall mean the above-described real property referred to in this Declaration to be divided into condominiums, including all structures, improvements, appurtenances, and common areas located thereon or belonging thereto:

C. "Unit" shall mean the element of a condominium which is independently owned, encumbered or conveyed but not owned in common with the owners of other condominium in the project as shown on the map. The boundary lines of each unit are the interior surfaces of its perimeter walls, bearing walls, floors, ceilings, windows and window frames, doors and door frames, and trim and includes both the portions of the building so described and the space so encompassed;

D. "Common area" shall mean all land and all portions of the property not located within any unit; and also includes, but not by way of limitation, roofs, foundations, pipes, ducts, flues, chutes, conduits, wires and other utility installed to the outlets, bearing walls, perimeter walls, columns and girders, to the interior surfaces thereof, regardless of location; greens, garden, patios, walkways, service streets and parking areas, and any recreational areas and facilities, all installation of power lights, gas, hot and cold water and heating existing for common use and all other parts of the property necessary or convenient to its existence maintenance and safety, or normally in common use;

E. "Limited common area" shall mean those areas designated herein or by the management committee which are reserved for the use of a particular unit owner.

F. "Owner" or "Unit owner" shall mean the person or persons owning a unit in fee simple and an undivided interest in the common areas and facilities.

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G. "Management committee" shall mean the governing body having responsibilities and authority herein delegated and for the operation and maintenance of the projects and elected pursuant to paragraph 6 hereof.

H. "Manager" shall mean the person or firm designated by the management committee to manage the affairs of the project.

I. "Mortgage" shall mean a deed of trust or installment land purchase contract as well as a mortgage.

J. "Mortgagee" shall mean a beneficiary under or holder of a deed of trust or seller under an installment land purchase contract as well as a mortgagee.

K. "Record" means to file a record with the Office of the County Recorder of Cache County, State of Utah.

L. "Condominium Act" or "The Act" shall mean the Utah Condominium Ownership Act (Title 57, Chapter 8, UCA, 1973).

M. The term "Common Expenses" shall mean and refer to all sums lawfully assessed by the Management Committee against the Unit Owners in accordance with the provisions of the Act, this Declaration, such House Rules pertaining to the Condominium project as the Management Committee may from time to time adopt, and any and all agreements and determinations lawfully made and/or entered into by the Management Committee respecting the Condominium Project.

N. The term "Common Profits" shall mean and refer to the balance of all income, rents, profits and revenues received by the Management Committee from or in connection with the management and operation of the Condominium Project which may remain after the deduction of the Common Expenses.

2. OWNERSHIP: The Condominium Project is hereby divided into the units as described in Exhibit "A", attached hereto and by reference made a part hereof, which units, together with their appurtenant interests in the common areas and facilities and limited common areas herein established, shall constitute separate freehold estates for all purposes provided by the Act.

3. VOTING: At any meeting of the owners, each owner, including Declarant shall be entitled to cast a number of votes as shown on Exhibit "A". Any owner may attend and vote at such meeting by person, or by an agent duly appointed by an instrument in writing signed by the owner and filed with the management committee or the manager. Any designation of an agent to act for an owner may be revoked at any time by written notice to the management committee or the manager and shall be deemed revoked when the management committee or the manager shall receive actual notice of the death or judgment declaring the incompetency of such owner or of the conveyance by such owner of his condominium. Where there is more than one record owner, any or all of such persons may attend any meeting of the owners, but it shall be necessary for those present to act unanimously on behalf of any one unit in order to cast the votes to which they are entitled. Any designation of an agent to act for such persons must be signed by all such persons. Declarant shall be entitled to vote with respect to any condominium owned by Declarant.

BY OFFICE: HILLYARD & SUNNELL, 13 EAST SECOND NORTH, LOGAN, UTAH 84301

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In the event that a notice of default is recorded by any mortgagee who holds a mortgage which is a first lien on a condominium against the owner of the condominium covered by the mortgage, then and in that event and until the default is cured, the right of the owner of such condominium to vote shall be transferred to the mortgagee recording the notice of default.

4. **MEETINGS:** The presence at any meeting of owners having a majority of the total votes shall constitute a quorum. In the event that a quorum is not present at any meeting, the owners present, though less than a quorum, may adjourn the meeting to a later date and give notice thereof to all the owners in accordance with the provision of paragraph 5 hereof, and at that meeting the presence of owners holding in excess of thirty percent (30%) of the total votes shall constitute a quorum for the transaction of business; but in the event a quorum is not present at that meeting, the owners present, though less than a quorum, may give notice to all the owners in accordance with paragraph 5 of an adjourned meeting, and, at that meeting, whatever owners are present shall constitute a quorum. Unless otherwise expressly provided in this declaration, any action may be taken at any meeting of the owners upon the affirmative vote of a majority of the voting power of the owners present and voting provided that a quorum is present as provided for above.

A. **Annual meeting:** There shall be a meeting of the owners on the second Monday in September of each year at 7:00 p.m. upon the common area or at such other reasonable place or time (not more than 35 days before or after such date) as may be designated by written notice of the management committee delivered to the owners not less than ten (10) ten days prior to the date fixed for said meeting. At the annual meeting, the management committee shall present an audit of the common expenses, itemizing receipts and disbursements for the calendar year to date, the allocation there to each owner, and the establishment of common expenses for the coming calendar year as set forth in paragraph 10 hereof. Within twenty (20) days after the annual meeting, said statement shall be delivered to all owners.

B. **Special meetings:** Special meetings of the owners may be called at any time for the purpose of considering matters which, by the terms of this declaration require the approval of all or some of the owners or for any other reasonable purpose. Said meeting shall be called by written notice, signed by a majority of the management committee, or by the owners having one-third of the total votes and delivered not less than fifteen (15) days prior to the date fixed for said meeting. Said notices shall specify the date, time and place of the meeting, and the matters to be considered thereat.

5. **NOTICES:** Any notices permitted or required to be delivered as provided herein may be delivered either personally to the owner, left at his residence or by mail. If delivery is made by mail, it shall be deemed to have been delivered 24 hours after a copy of same has been deposited in the U.S. Mail, postage prepaid, addressed to each owner at the address given by such owner. Such address shall be the unit address unless the owner designates in writing to the management committee or the manager another address.

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6. MEMBERSHIP, ELECTION AND PROCEEDINGS OF THE MANAGEMENT COMMITTEE:

A. **Membership:** The management committee shall consist of three (3) members who shall be unit owners. Declarant shall appoint the initial 3 members of the management committee to serve until their successors shall have been duly chosen.

B. **Election:** At each annual meeting the owners shall elect members of the management committee for the forthcoming year. Every owner entitled to vote at any election of members of the management committee may cumulate his votes and give one candidate a number of votes equal to the number of members of the management committee to be election, multiplied by the number of votes to which such owner is otherwise entitled or may distribute his votes on the same principle among as many candidates as he thinks fit. The three candidates receiving the highest number of votes shall be deemed elected.

C. **Term:** Elected members of the management committee shall serve for a term of two (2) years. The members of the management committee shall serve until their respective successors are elected, or until their death, resignation or removal; provided that if any member with the exception of those members appointed by the declarants, ceased to be an owner, his membership on the management committee shall thereupon terminate. Vacancies shall be filled by vote of the owners at the earliest meeting thereof.

D. **Resignation and removal:** Any member may resign at any time by giving written notice to the manager, and any member may be removed from membership on the management committee by vote of the owners; provided that unless the entire management committee is removed, an individual member shall not be removed if the number of votes cast against his removal exceeds thirty + three (33) percent.

E. **Proceedings:** Two members of the management committee shall constitute a quorum and, if a quorum is present, the decision of a majority of those present shall be the act of the management committee. The management committee shall elect a chairman, who shall preside over both its meetings and those of the owners. Meetings of the management committee may be called, held and conducted in accordance with such regulations as the management committee may adopt. The management committee may also act without a meeting by unanimous written consent of its members.

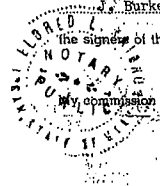
F. **Notice of election:** After the first election of the management committee, Declarant shall execute, acknowledge, record and append hereto an affidavit stating the names of all of the members of the management committee. Thereafter, any two persons who are designated of record as being members of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

STATE OF UTAH, Cache }
County of } ss.

On this 23rd day of January, 1957, personally appeared before me

J. Burke Gunnell and wife, Barneta S. Gunnell

the signers of the above instrument, who duly acknowledged to me that they executed the same.



My commission expires: June 2, 1958

Charles S. Mallory
Notary Public, residing at Logan, Utah

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and proper, and the management committee shall have the exclusive right and duty to acquire the same for the common area; provided, however, that the interior surfaces of each unit shall be painted, maintained and repaired by the owners thereof, all such maintenance to be at the sole cost and expense of the unit owner;

I. Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the management committee is required to secure or pay for pursuant to the terms of this declaration or by law or which in its opinion shall be necessary or proper for the operation of the common area, emergency repairs and protection of individual units, or for the enforcement of this declaration, provided that if any such materials, supplies, labor services, maintenance, repairs, structural alterations, insurance, taxes or assessment is allocatable to less than 3/4 of the units, the costs thereof shall be specially assessed to the owners of such units;

J. Maintenance and repair of any unit, if any such maintenance or repair is reasonably necessary in the discretion of the management committee to protect the common area or preserve the appearance and value of the project, and the owner of said unit has failed or refused to perform necessary maintenance or repair within a reasonable time after written notice delivered by the management committee to said owner of the necessity of said maintenance or repair, provided that the management committee shall levy a special assessment against the condominium of such owner for the cost of said maintenance or repair.

The management committee's power hereinabove enumerated shall be limited in that the management committee shall have no authorization to acquire or pay out of the common expense fund for capital additions and improvements (other than for purposes of replacing portions of the common area, subject to all the provisions of this declaration) having a cost in excess of \$100.00 per year except as expressly authorized by 51% or more of the unit owners or as provided herein.

8. MANAGEMENT COMMITTEE POWERS, EXCLUSIVE: The management committee shall have the exclusive right to contract for all goods, services and insurances, payment for which is to be made from the common expense fund.

9. ALTERATIONS, ADDITIONS AND IMPROVEMENTS OF COMMON AREA: There shall be no structural alterations, capital added to, or capital improvements of the common area requiring an expenditure in excess of \$100.00 without the prior approval of owners holding 51% of the total vote.

10. COMMON EXPENSES:

A. Prior to the annual meeting (paragraph 4A) the management committee shall establish the net charges to be paid during such year (including a reasonable provision for contingencies and replacement and less any expected income and any surplus from the prior years fund. Said "established cash required" shall be assessed to the owners pursuant to the percentages set forth in Exhibit "A". Declarant shall be liable for the amount of any assessment against completed units owned by

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Declarant. If said sum established proves inadequate for any reason, including nonpayment of any owner's assessment, the management committee may at any time levy a further assessment, which shall be assessed to the owners in like proportions, unless otherwise provided herein. Each owner shall be obligated to pay assessments made pursuant to this paragraph to the management committee in equal monthly installments on or before the 1st day of each month during such year, or in such other reasonable manner as the management committee shall designate;

B. The rights, duties and functions of the management committee set forth in this paragraph shall be exercised by Declarant for the period ending thirty (30) days after the election of the first management committee hereunder and until funds collected hereunder shall be expended for the purposes designated herein.

C. The omission by the management committee, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this declaration, or a release of the owners from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed. No owner may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment or any of the common area or by abandonment of his unit.

D. The management committee shall keep detailed, accurate records and appropriate journal and account entries in chronological order of the receipts and expenditures specifying and itemizing the maintenance and repair expenses of the common area, individual unit expenses and any other expenses incurred. Record and vouchers authorizing the payments involved shall be available for examination only by the owner or others authorized by the management committee at convenient hours of week days.

11. DEFAULT IN PAYMENT OF ASSESSMENTS: Regular monthly assessments and initial and each special assessment shall be separately stated, distributed and shall be personal debts and obligations of the owner against whom the same are assessed at the time the assessment is made and shall be collectable as such. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. The amount of any assessments, whether regular or special, assessed to the owner of any condominium plus interest computed at the rate of 8 (eight) percent per annum and costs, including reasonable attorney fees, shall be a lien upon such unit and a notice of such lien shall be recorded as provided in Section 57-8-20 of the Condominium Act. The said lien for nonpayment of common expenses shall have priority over all other liens, 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 recorder prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

A certificate executed and acknowledged by a majority of the management committee stating the indebtedness secured by the lien upon any unit created hereunder, shall be conclusive

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Declarant. If said sum established proves inadequate for any reason, including nonpayment of any owner's assessment, the management committee may at any time levy a further assessment, which shall be assessed to the owners in like proportions, unless otherwise provided herein. Each owner shall be obligated to pay assessments made pursuant to this paragraph to the management committee in equal monthly installments on or before the 1st day of each month during such year, or in such other reasonable manner as the management committee shall designate;

B. The rights, duties and functions of the management committee set forth in this paragraph shall be exercised by Declarant for the period ending thirty (30) days after the election of the first management committee hereunder and until funds collected hereunder shall be expended for the purposes designated herein.

C. The omission by the management committee, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this declaration, or a release of the owners from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed. No owner may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment or any of the common area or by abandonment of his unit.

D. The management committee shall keep detailed, accurate records and appropriate journal and account entries in chronological order of the receipts and expenditures specifying and itemizing the maintenance and repair expenses of the common area, individual unit expenses and any other expenses incurred. Record and vouchers authorizing the payments involved shall be available for examination only by the owner or others authorized by the management committee at convenient hours of week days.

11. DEFAULT IN PAYMENT OF ASSESSMENTS: Regular monthly assessments and initial and each special assessment shall be separately stated, distributed and shall be personal debts and obligations of the owner against whom the same are assessed at the time the assessment is made and shall be collectable as such. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. The amount of any assessments, whether regular or special, assessed to the owner of any condominium plus interest computed at the rate of 8 (eight) percent per annum and costs, including reasonable attorney fees, shall be a lien upon such unit and a notice of such lien shall be recorded as provided in Section 57-8-20 of the Condominium Act. The said lien for nonpayment of common expenses shall have priority over all other liens, 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 recorder prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

A certificate executed and acknowledged by a majority of the management committee stating the indebtedness secured by the lien upon any unit created hereunder, shall be conclusive

upon the management committee and the owners as the amount of such indebtedness of 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 of any encumbrancer or prospective encumbrancer of a unit upon request at a reasonable fee, not to exceed \$10.00. Unless the request for a certificate of indebtedness shall be complied with within ten (10) days, all unpaid common expenses shall which become due prior to the date of the making of such request shall be subordinate to the lien held by the person making the request. Any encumbrancer holding a lien on a unit may pay any unpaid common expenses payable with respect to such unit and upon such payment such encumbrancer shall have a lien on such unit for the amounts paid of the same rank as the lien of his encumbrance.

Upon payment of a delinquent assessment concerning which such a certificate has been 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 the release of the lien thereof. Such lien for nonpayment of assessment may be enforced by sale of 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 law applicable to the exercise of powers of sale or foreclosure in deed of trust or mortgages or in any manner permitted by law. In any foreclosure sale, the owner shall be required to pay the costs and expenses of such proceedings and reasonable attorney fee.

In case of foreclosure the owner shall be required to pay a reasonable rental for the unit 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 mortgaged security. The management committee or manager shall have the power to bid on the unit at foreclosure or other sale and to hold, lease, mortgage and convey the unit.

12. MORTGAGE PROTECTION: Notwithstanding all other provisions hereof:

A. The liens created hereunder upon any unit shall be subject to and subordinate to, and shall not affect the rights of the holders of the indebtedness secured by any recorded first mortgage (meaning a mortgage 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 paragraph 11 hereof on the interest of the purchaser at such foreclosure sale to secure all assets, 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. No amendment to this paragraph shall effect the rights of the holder of any such mortgage recorded prior to the recordation of such amendment who does not join in the execution thereof;

C. By subordinate 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.

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13. DELEGATION TO MANAGER: The management committee may delegate any of its duties, powers or functions, including but not limited to, the authority to give the certificate provided for in paragraph 11 hereof, and the authority to give the subordinate agreements provided for in paragraph 12 hereof, to any person or firm, to act as manager of the project, provided that any such delegation shall be revised upon notice by the management committee. The members of the management committee shall not be liable for any omission or improper exercise by the manager of any such duty, power of function so delegated by written instrument executed by a majority of the management committee. In the absence of any appointment, the chairman of the management committee shall act as manager.

Any manager named or employed by declaration shall be employed to manage only until the first election of a management committee at which time, the new management committee shall have the right to retain or discharge said manager as it determine desirable in its discretion.

14. EXCLUSIVE OWNERSHIP AND POSSESSION BY OWNERS:

Each owner shall be entitled to exclusive ownership and possession of his unit. Each owner shall be entitled to an undivided interest in the common area in the percentage expressed in Exhibit "A" of this declaration. The percentage of the undivided interest of each owner in the common area as expressed in Exhibit "A" shall have a permanent character and shall not be altered without the consent of all owners expressed in an amended declaration duly recorded. The percentage of the undivided interest in the common area shall not be separated from the unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each unit owner may use the common area in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights of the other owners.

The common areas and facilities shall remain undivided and no unit owner or any other person shall bring any action for partition or division of any part thereof except as provided in paragraph 26 unless the property has been removed from the provisions of the Utah Condominium Ownership Act, UCA 57-8-22.

An owner shall not be deemed to own the undecorated nor unfinished surfaces of the perimeter walls, floors, ceilings, windows and doors bounding his unit, nor shall the owner be deemed to own the utilities running through his unit or fixtures or appliances which are utilized for, or served more than one unit, except as a tenant in common with the other owners. An owner shall be deemed to own and shall have the exclusive right to paint, repair, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, floors, ceiling, windows, and doors bounding his unit.

15. OWNER'S OBLIGATION TO REPAIR: Except for those portions which the management committee is required to maintain and repair hereunder (if any) each owner shall at the owner's expense keep the interior of his unit and its equipment and

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appurtenances in good order, condition and repair and in a clean and sanitary condition. It is expressly understood that there are, included with all units, furnaces and air conditioners which are located in the individual units.

The owner shall also, at the owner's own expense, keep the spaces reserved to his use as limited common use area in a clean and orderly condition. The management committee and manager shall not, by virtue of their positions, be responsible to the owner for loss or damage by theft, or otherwise of articles which may be stored by the owners in the common or limited common use areas, storage area, carport or unit.

The owner shall promptly discharge any lien which may hereafter be filed against his unit and shall otherwise abide by the provisions of Section 57-8-19 of the Utah Condominium Act.

16. PROHIBITION AGAINST STRUCTURAL CHANGES BY OWNER:

The owner shall do no act nor any work that will impair the structural soundness or integrity of the buildings or safety of the property or impair any easement or hereditment without the written consent of all owners. The owner shall not paint or decorate any portion of the exterior of the building or other common area or any portion of the fences, carport or storage area contained therein without first obtaining written consent of the management committee.

17. LIMITATION ON THE USE OF UNITS AND COMMON AND LIMITED COMMON AREAS:

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

A. No owner shall occupy or use his unit, or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the owner and the owner's family or the owner's lessee's family and their guests.

B. There shall be no obstruction of the common area except in the case of designated storage and parking areas. Nothing shall be stored in the common area without the prior consent of the management committee.

C. Nothing shall be done or kept in any unit or in the common area and limited common area which will increase the rate of insurance thereon, without the prior written consent of the management committee. No owner shall permit anything to be done or kept in his unit or in the common area or limited common area which will result in the cancellation of insurance on any unit or any part of the common area or limited common area, or which would be in violation of any law. No waste will be committed in the common area.

D. No sign of any kind shall be displayed to the public view on or from any unit or the common or limited common area, without the prior consent of the management committee;

E. No animals, livestock or poultry of any kind shall be raised, bred, or kept in any unit or in the common or limited common area, except that dogs, cats or other household pets may be kept at units, subject to rules and regulations adopted by the management committee.

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F. No noxious or offensive activity shall be carried on in any unit or in the common or limited common area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other owners;

G. Nothing shall be altered or constructed in or removed from the common or limited common area, except upon the written consent of the management committee;

H. There shall be no violations of the House Rules.

I. None of the rights and obligations of the owners created herein or by the deed creating the unit shall be altered in any way by encroachment due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an owner if said encroachment occurred due to the wilful conduct of said owner.

18. ENTRY FOR REPAIRS: The management committee or its agents may enter any unit when necessary in connection with any maintenance, repair, replacement, inspection or construction for which the management committee is responsible. Such entry shall be made with as little inconvenience to the owners as practicable and any damage caused thereby shall be repaired by the management committee out of the common expense fund.

19. FAILURE OF MANAGEMENT COMMITTEE TO INSIST ON STRICT PERFORMANCE OR WAIVER: The failure of the management committee or manager to insist in any one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the future, or such term, covenants, conditions, or restrictions but such term, covenants, conditions or restrictions shall remain in full force and effect. The receipt by the management committee or manager or any assessment from an owner, with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the management committee or manager of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the management committee.

20. LIMITATION OF MANAGEMENT COMMITTEE'S LIABILITY:

The management committee shall not be liable for any failure of water supply or other service to be obtained and paid for by the management committee hereunder or for injury or damage to person or property caused by the elements or by another owner or person in the project, or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any part of the buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place unless caused by gross negligence of the management committee. No diminutive or abatement of common expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the common area or from any action taken to comply with a law, ordinance or order of a governing authority.

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21. INDEMNIFICATION OF MANAGEMENT COMMITTEE MEMBER:

Each member of the management committee shall be indemnified by the owners against all expenses and liability including attorney fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a member of the management committee, or any settlement thereof, whether or not he is a member of the management committee at the time such expenses are incurred, except in such cases wherein the member of the management committee is adjudged guilty of wilful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only when the management committee approves such settlement and reimbursement as being for the best interest of the management committee.

22. SALE OF LEASE RIGHT OF FIRST REFUSAL: In the event any owner of a unit shall wish to resell or lease the same and shall have received a bona fide offer therefor from a prospective purchaser or tenant the remaining owners shall be given written notice thereof together with an executed copy of such offer and the terms thereof. Such notice and copy shall be given to the management committee for examination by all of the owners. The remaining owners through the management committee or a person named by the management committee, shall have the right to purchase or lease subject condominium upon the same terms and conditions as set forth in the offer therefor, provided written notice of such election to purchase or lease is given to the selling or leasing owner and a matching down payment or deposit is provided to the selling or leasing owner during the twenty-one (21) day period immediately following the delivery of the notice of the bona fide offer and copy thereto to purchase or lease.

In the event any owner shall attempt to sell or lease his condominium without affording the other owners the right of first refusal herein provided, such sale or lease shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser or lessee.

The subleasing or subrenting of said interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of the owners under these covenants shall continue notwithstanding the fact that he may have leased or rented said interest as provided herein.

In no case shall the right of first refusal reserved herein effect the right of an owner to subject his unit to a trust deed, mortgage or other security instrument.

The failure of or refusal by the management committee to exercise the right to so purchase or lease shall not constitute or be deemed to be a waiver of such right to purchase or lease when an owner receiving a subsequent bona fide offer from a prospective purchaser or tenant.

23. MORTGAGES NOT AFFECTED BY RIGHT OF FIRST REFUSAL:

In the event of any default on the part of any owner under any first mortgage made in good faith and for value which entitled the holder thereof to foreclose same, any sale under such foreclosure, including delivery of a deed to the first mortgage in

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lieu of such foreclosure, shall be made free and clear of the provisions of paragraph 22, and the purchaser (or grantee under such deed in lieu of foreclosure) of such unit shall be thereupon and thereafter subject to the provisions of this declaration. If the purchaser following such foreclosure sale (or grantee under deed given in lieu of such foreclosure) shall be the then holder of the first mortgage, or its nominee, the said holder or nominee may thereafter sell and convey the unit free and clear of the provisions of paragraph 22, but its grantee shall thereupon and thereafter be subject to all of the provisions thereof.

The transfer of a deceased joint tenant's interest to the surviving joint tenant or the transfer of a deceased's interest to a devisee by will or his heirs at law under interstate law shall not be subject to the provisions of paragraph 22.

If an owner of a unit establishes to the satisfaction of the management committee that a proposed transfer is not a sale or lease, then such transfer shall not be subject to the provisions of paragraph 22.

24. CERTIFICATE OF SATISFACTION OF RIGHT OF FIRST REFUSAL: Upon written request of any prospective transferor, purchaser, tenant or any existing or prospective mortgagee of any unit, the management committee shall forthwith, or where time is specified, at the end of the time, issue a written and acknowledged certificate in a recordable form evidencing that:

A. With respect to a proposed lease or sale under paragraph 22, that proper notice was given by the selling or leasing owner and that the remaining owners did not elect to exercise their option to purchase or lease;

B. With respect to a deed to a first mortgagee or its nominee in lieu of foreclosure and a deed from such first mortgage or installment nominee, pursuant to paragraph 23 that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of paragraph 22.

C. With respect to any contemporaneous transfer which is not in fact a sale or lease, that the transfer is not or will not be subject to the provisions of paragraph 22; such certificate shall be conclusive evidence of the facts contained therein.

25. INSURANCE: The management committee shall obtain and maintain at all times insurance of the type and kind and in at least the amounts provided hereinabove, and including insurance for such other risks of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium projects similar in construction, design and use which insurance shall be governed by the following provision:

A. All policies shall be written with a company licensed to do business in the State of Utah and holding a rating of "AAA" or better by Best's Insurance Reports;

B. Exclusive authority to adjust losses under policies hereafter in force in the project shall be vested in the management committee or its authorized representative.

C. In no event shall the insurance coverage obtained and maintained by the management committee hereunder be brought into contribution with insurance purchased by individual owners of their mortgagees.

D. Each owner may obtain additional insurance at his own expense; provided, however, that no owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the management committee in behalf of all of the owners, may realize under any insurance policy which the management committee may have in force on the project at any particular time;

E. Each owner shall be required to notify the management committee of all improvements made by the owner to his unit the value of which is in excess of \$1,000.00.

F. Any owner who obtains individual insurance policies covering any portion of the project other than personal property belonging to such owner, shall be required to file a copy of such individual policy with the management committee within thirty (30) days after purchase of such insurance.

G. The management committee shall be required to make every effort to secure insurance policies that will provide for the following:

(1) A waiver of subrogation by the insurer as to any claims against the management committee, the manager, the owners and their respective servants, agents and guests.

(2) That the master policy on the project cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual owners.

(3) That the master policy on the project cannot be cancelled, invalidated or suspended on account of the conduct of an officer or employee of the management committee or manager without a prior demand in writing that the management committee or manager cure the defect.

(4) That any "no other insurance" clause in the master policy exclude individual owner's policies from consideration.

H. The annual insurance review which the management committee is required to conduct as provided in paragraph 7 above shall include an appraisal of the improvements in the project by a representative of the insurance carrier writing the master policy.

26. NO PARTITION: There shall be no judicial partition of the project or any part thereof, nor shall declarant or any person acquiring any interest in the project or any part thereof seek any such judicial partition, until the happening of the conditions set forth in paragraph 27 hereof in the case of damage or destruction or unless the property has been removed from the provision of the Condominium Act as provided in Section 57-8-22 thereof.

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27. **DAMAGE AND DESTRUCTION:** In case of fire, casualty or any other disaster, the insurance proceeds, if sufficient to reconstruct the buildings, shall be applied to such reconstruction. Reconstruction of the buildings, as used in this paragraph, means restoring the buildings to substantially the same condition in which they existed prior to the fire, casualty or other disaster, with each unit and the common area having the same vertical and horizontal boundaries as before. Such reconstruction shall be as acceptable by the manager or management committee.

If the insurance proceeds are insufficient to reconstruct the buildings, damage to or destruction of the buildings shall be promptly repaired and restored by the manager or management committee, using proceeds of insurance, if any, on the buildings for that purpose, and the unit owners shall be liable for assessments for any deficiency. However, if three-fourths or more of the buildings are destroyed or substantially damaged and if the owners, by a vote of at least three-fourths of the voting power, do not voluntarily within 100 days after such destruction or damage make provisions for reconstruction, the manager or management committee shall record, with the county recorder, a notice setting forth such facts, and upon the recording of such notice (1) the property shall be deemed to be owned in common by the owners; (2) the undivided interest in the property owned in common which shall appertain to each owner shall be the percentage of undivided interest previously owned by such owner in the common area; (3) any liens affecting any of the units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the owners of the property; and (4) the property shall be subject to an action for partition at the suit of any owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the owners in a percentage equal to the percentage of undivided interest owned by each owner in the common area, after first paying out of the respective shares of the owners, to the extent sufficient for the purposes, all liens on the undivided interest in the property owned by each owner.

Notwithstanding all other provisions hereof, the owners may, by an affirmative vote of at least three-fourth of the voting power, at a meeting of unit owners duly called for such purposes, elect to sell or otherwise dispose of the property. Such action shall be binding upon all unit owners and it shall thereupon become the duty of every unit owner to execute and deliver such instruments and perform all acts as in manner and form may be necessary to effect the sale.

28. **HOUSE RULES:** It shall be the responsibility of the management committee to adopt House Rules and to provide current copies thereof to unit owners and others having a need to know the contents thereof. Such House Rules shall be restricted to the regulation of common and limited common area use. House Rules may be adopted, amended or rescinded by vote of 51% of the unit owners at special meetings and such House Rules shall not thereafter be modified by the management committee.

29. **ENFORCEMENT:** Each owner shall comply strictly with the provisions of this declaration and with the administration rules and regulations drafted pursuant thereto as the same may be lawfully amended from time to time and with decision

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adopted pursuant to said declaration and House Rules, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the management committee or manager on behalf of the owners, or in a proper case, by an aggrieved owner.

30. PERSONAL PROPERTY: The management committee or manager may acquire and hold, for the benefit of the owners, tangible and intangible personal property and may dispose of the same by sale or otherwise; and the beneficiary interest in such personal property shall be owned by the owners in the same proportion as their respective interests in the common area, and shall not be transferable except with a transfer of condominium. A transfer of a unit shall transfer to the transferee ownership of the transferor's beneficiary interest in such personal property.

Within thirty (30) days following the completion of construction of the project, the declarant shall execute and deliver a bill of sale to the management committee in behalf of all the owners, transferring all items of personal property located on the project and furnished by the declarant which property is intended for the common use and enjoyment of the owners.

31. AUDIT: Any owner may at any time at his own expense cause an audit or inspection to be made of the books and records of the manager or management committee. The management committee at the expense of the common expense shall obtain an audit of all books and records pertaining to the project at annual intervals and shall immediately furnish copies thereof to the owners.

32. INTERPRETATION: The provision of this declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project. Failure to enforce any provisions hereof shall not constitute a waiver of the right to enforce said provision or any other provisions hereof.

33. AMENDMENTS: Except as otherwise provided herein, the provisions of this declaration or Record of Survey Map may be amended by an instrument in writing, signed and acknowledged by the record owners holding 75 percent of the total vote hereunder, which amendment shall be effective upon recordation in the office of the records of Cache County, State of Utah. Provided, however, Declarant shall be authorized to amend this Declaration and Record of Survey Map to reflect "as built" measurements and designs of the condominium to be built adjacent west of the Aspen Condominium herein depicted so long as said "as built" design conforms to the general price and architectural scheme of the condominium.

34. SEVERABILITY: The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not effect the validity or enforceability of any other provision hereof.

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35. **PHASE II CONSTRUCTION:** Notwithstanding anything to the contrary contained in this Declaration or Record Survey Map, the same is subject to revision as necessary to facilitate percentage of ownership changes, voting power changes, and other revision as shall be necessary to accommodate Phase II Construction. Phase II Construction shall be the construction by Declarant of an additional seven units of essentially the same construction, design, space, and value, westerly of and facing the existing seven units covered by this Declaration. Said Phase II Construction shall be upon additional land presently owned by Declarant and shall not entail private ownership unit or limited common area construction upon the common area as depicted in the said Recorded Survey Map. At time of construction (which is anticipated to be completed prior to the end of 1973) an amended Declaration shall be filed therein stating the revised percentages of ownership of unit owners under this Declaration and the percentage ownership of unit owners under the Phase II Construction. The Record Survey shall likewise be amended to show the "as built" or "to be built" Phase II condominium units, common areas and areas of limited common ownership. It is understood that there shall be seven additional units thus decreasing unit owners ownership under this Declaration in common areas and voting rights by 50%. The percentage interest of the unit owners under this Declaration shall be automatically divested of such ownership and other percentages as are appropriate and revested in the Declarant to be reconveyed to the unit owners of Phase II units. All areas of common ownership constructed in Phase II Construction shall become upon filing the amended Declaration automatically partly the ownership of the unit owners under this Declaration. The percentage interest of all mortgagees and other lien holders who claim any interest in the property under this Declaration will be similarly reduced with compensated increase in value when newly added Phase II land and building common areas are completed. To the extent that the Declarant or his assigns shall require passage over the common areas for said construction, the same is hereby reserved unto him. Declarant herein reserves the right to make necessary modifications and amendments of this Declaration and Record Survey Map to accommodate such Phase II Construction revisions.

36. **EFFECTIVE DATE:** This Declaration shall take effect upon recording.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 9th day of February, 1973.

MODERN BUILDERS SUPPLY

Amy Beth W. Saxton
Amy Beth W. Saxton

By *Lyle H. Saxton*
Lyle H. Saxton

Annette Saxton
Annette Saxton (their wives)

L. Robert Saxton
L. Robert Saxton (Partners)

STATE OF UTAH)
) ss.
County of Cache)

On the 9th day of February, 1973, personally appeared before me LYLE H. SAXTON and L. ROBERT SAXTON, who duly acknowledged to me that they are all the partners of Modern Builders Supply and Amy Beth W. Saxton and Annette Saxton, in their individual capacity, all signers, acknowledged to me that they executed the same.

My Commission Expires:
March 21, 1976

Harold S. Meeds
Notary Public

Residing at: *Smithfield, Utah*

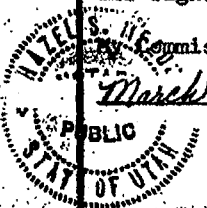


EXHIBIT "A"

TO DECLARATION FOR ASPEN CONDOMINIUM

1. DESCRIPTION:

A. The condominium project consists of a multi-unit family dwelling located upon the property described in this Declaration having an address of 153 West Third North, Logan, Utah, consisting of seven units each unit having an attached double garage in the front. The buildings have wood superstructures and cedar, brick and glass exterior with sloped shingled roofs. Each unit has a full basement under the main floor living portion and each has a ground floor and units 2 and 3 have a partial second story.

B. As shown on the Map, the building consists of seven units with front entrances facing west. The units are designated 1-7 with the lowest number being nearest Third North Street.

C. Each unit includes fee ownership of one double car garage and limited common area for a patio allocated as follows:

Unit 1, garage 1-A, patio 1-B
 Unit 2, garage 2-A, patio 2-B
 Unit 3, garage 3-A, patio 3-B
 Unit 4, garage 4-A, patio 4-B
 Unit 5, garage 5-A, patio 5-B
 Unit 6, garage 6-A, patio 6-B
 Unit 7, garage 7-A, patio 7-B

D. Limited common areas as shown on the Map are patios and garden spaces between units 2 and 3; 4 and 5; and 6 and 7 and concrete walkways. Such limited common areas are hereby allocated to the adjoining unit owner and are reserved for the exclusive use of such unit. To the extent that limited common area sidewalks are shared, they shall be reserved jointly to the adjoining unit owners. To the extent that such walkways are ordinarily and necessarily used by the public, their use is not exclusive. The management committee may from time to time designate or re-designate limited common areas as needed on an equitable basis.

E. The common area consists of all area not otherwise limited or being unit ownership and being bounded by the legal description contained in the Map and in this Declaration.

2. INTEREST: The units being of approximately equal value shall each entitle the unit owner to one of seven votes upon any matter (except when cumulative voting is expressly allowed) upon which the owner is allowed to vote. Each owner or owners of each unit shall own an undivided 1/7 interest in the common area and facilities. SUBJECT, however, to divestment of the percentage approximating 50% upon the completion of Phase II Construction more fully described in paragraph 35 of the Declaration.

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3. SERVICE OF PROCESS: Lyle H. Saxton, whose address is 153 West Third North, Logan, Utah, is hereby designated as the person to receive process in connection with the project for all purposes provided by the Act; provided, however, that the management committee shall appoint a substitute process agent from among the unit owners and duly record an amendment hereto.

4. MANAGER: Declarant, Modern Builders Supply, shall herewith assume the duties of manager and such functions of the management committee as may be necessary to discharge initial obligations pursuant to paragraph 13 of the Declaration.

5. UTILITIES: Each unit will be billed by Logan City Corporation (of its successors in interest) for electricity, sewage and water usage which such billing charge shall be discharged by the unit owner as the same is not a common expense.

Gas for air conditioning and furnaces and other uses are to be treated in like manner.

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