



MT. AIRE GARDENS
HOMEOWNERS ASSOCIATION
CC&R'S



DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
MT. AIRE GARDENS CONDOMINIUM

This Declaration of Covenants, Conditions and Restrictions, hereinafter called "Declaration", is made and executed in Cache County, State of Utah, this 14th day of March, 1973, by Elwood L. Nielsen and Lois L. Nielsen his wife, hereinafter called "Declarant", pursuant to the provisions of the Utah Condominium Ownership Act.

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in Cache County, State of Utah, and more particularly described as follows: Mt. Aire Gardens, legally described:

Beginning at the Northeast corner of Lot 6, Block 8, Plat "C" Logan City Survey, and running thence South 9 rods; thence East 8 rods; thence South 4 rods; thence West 37 feet; thence South 5 rods; thence West 95 feet; thence South $4\frac{1}{2}$ rods; thence West 160.75 feet; thence North $4\frac{1}{2}$ rods; thence East 12.25 feet to the Southeast corner of Lot 5, said Block 8; thence North to the East right of way line of the Logan, Hyde Park and Smithfield Canal; thence Northeasterly in said right of way to the South line of Fourth North Street; thence East to beginning. ALSO, beginning at the Northeast corner of Lot 7, Block 8, Plat "C" Logan City Survey, and running thence West 1 rod; thence South 13 rods; thence East 1 rod; thence North 13 rods to beginning, and being situate in the Northwest quarter of-section 34, Township 12 North, Range 1 East of the Salt Lake Base and Meridian.

WHEREAS, Declarant is the owner of certain condominium apartment home buildings 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 divide the project into condominiums and to sell and convey the same to various purchasers, subject to the covenants, conditions, and restrictions herein reserved to be kept and observed; and

WHEREAS, on the 14th day of March, 1973, Declarant filed for record in the office of the County Recorder of Cache County, State of Utah, a certain instrument entitled "Record of Survey Map of Mt. Aire Gardens hereinafter referred to

371835
\$25.00

STATE OF UTAH)
COUNTY OF CACHE) SS
FILED AND RECORDED FOR
Elwood L. Nielsen
MAR 14 12 08 PM '73

IN BOOK 153 OF RECORD
PAGE 56 to 79 Incl.
GRETTA B. SMITH
COUNTY RECORDER
DEPUTY

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as "Map" which Map is filed of record herewith; 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 thereto, to the provisions 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 condominiums 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 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 condominiums, and shall be deemed to run with the land and shall be a burden and a benefit to Declarant its successors and assigns and any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

1. Definitions: "Certain terms as used in this Declaration shall be defined as follows, unless the context clearly indicates a different meaning therefore:

(a) "Declarant" shall mean Elwood L. Nielsen and Lois L. Nielsen, husband and wife, who have made and executed this Declaration;

(b) "Declaration" shall mean this instrument by which the Mt. Aire Gardens Condominium Project is established as provided for under the Utah Condominium Ownership Act;

(c) "Project" shall mean the entire parcel of real property referred to in this Declaration to be divided into condominiums, including all structures thereon;

(d) "Unit" shall mean the elements of a condominium which are not owned in common with the Owners of other condominiums 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;

(f) "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 installations to the outlets, bearing walls, perimeter walls, columns and girders, to the interior surfaces thereof, regardless of location, stairways, hallways, foyers, walkways, gardens, balconies, patios, storage areas, recreational areas and facilities, all installations 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;

(g) "Condominium" shall mean the entire estate in the real property owned by any Owner, consisting of an undivided interest in the Common Area and ownership of a separate interest in a Unit;

(h) "Owner" shall mean any person with an ownership interest in a condominium in the project;

(i) "Management Committee" shall mean the governing body of the Project, elected pursuant to paragraph 5 hereof;

(j) "Manager" shall mean the person or firm designated by the Management Committee to manage the affairs of the Project;

(k) "Mortgage" shall mean a Deed of Trust as well as a Mortgage;

(l) "Mortgagee" shall mean a beneficiary under or holder of a deed of trust as well as a mortgagee;

(m) "Record" means to file of record with the office of the County Recorder of Cache County, State of Utah;

(n) "Condominium Act" shall mean the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Annotated 1953).

2. **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, attached hereto and incorporated herein by reference thereto. Any Owner may attend and vote at such meeting in 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 Manager, and shall be deemed revoked when the Management Committee or the Manager shall receive actual notice

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of the death or judicially declared incompetence 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 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.

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.

3. 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 provisions of paragraph 4 hereof, and at that meeting the presence of Owners holding in excess of thirty per cent 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 4 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 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 Saturday of March, of each year at 8:00 P.M. at Mt. Aire Gardens or at such other reasonable place or time (not more than sixty (60) 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) 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 preceding calendar year, the allocation thereof to each Owner, and the estimated common expenses for the coming calendar year. Within ten (10) days after the annual meeting, said statement shall be delivered to the Owners not present at said meeting.

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(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 meetings shall be called by written notice, signed by a majority of the Management Committee, or by the Owners having one-third (1/3) 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.

4. Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed to each such person at the address given by such person to the Management Committee or Manager for the purpose of service of such notice or to the Unit of such person if no address has been given to the Manager. Such address may be changed from time to time by notice in writing to the Management Committee or the Manager.

5. Membership, Election and Proceedings of the Management Committee.

(a) Membership. The management Committee shall consist of five members, three of whom shall be appointed by the Declarant and two of whom shall be elected by the Owners. The Declarant shall have the option at any time after a date two years from the date of execution of this Declaration, to turn over to the Owners the responsibility of electing all of the members of the Management Committee.

(b) Election. At each annual meeting, the Owners shall elect two members of the Management Committee for the forthcoming year; provided, however, that the Owners' representatives on the first Management Committee elected hereunder may be elected at a special meeting duly called, said representatives to serve until the first annual meeting held thereafter. Every Owner entitled to vote at any election of members of the Management Committee may cumulate his vote and give one candidate a number of votes equal to the number of members of the Management Committee to be elected, multiplied by the number of votes to which such Owner is otherwise entitled, or distribute his votes on the same principle among as many candidates as he thinks fit. The candidates

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receiving the highest number of votes up to the number of members of the Management Committee to be elected shall be deemed elected.

(c) Term. Members of the Management Committee shall serve for a term of two (2) years; provided that one of the two members of the first Management Committee elected shall serve for a one-year term. The other member shall serve for a two-year term. 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 ceases to be an Owner, his membership on the Management Committee shall thereupon terminate.

(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.

(e) Proceedings. Three (3) members of the Management Committee shall constitute a quorum and, if a quorum is present, the decision of a majority of those present 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 and record on 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 affidavits 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.

6. Authority of the Management Committee. The Management Committee, for the benefit of the condominiums and the Owners,

shall enforce the provisions hereof and shall acquire and shall pay for out of the common expense fund hereinafter provided for, the following:

(a) Water, sewer, garbage collection, snow removal, electrical, telephone, gas, pool, laundry, recreation area, maintenance, and other necessary utility service for the Common Area (and to the extent not separately metered or charged, for the Units);

(b) A policy or policies of fire insurance as the same are more fully set forth in paragraph 21 of this Declaration, with extended coverage endorsement, for the full insurable replacement value of the Units and Common Area, payable as provided in paragraph 23, or such other fire and casualty insurance as the Management Committee shall determine gives substantially equal or greater protection to the Owners, and their mortgagees, as their respective interest may appear, which said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees of each condominium if any;

(c) A policy or policies as the same are more fully set forth in paragraph 21 of this Declaration insuring the Management Committee, the Owners and the Manager against any liability to the public or to the Owners (of Units and of the Common Area, and their invitees, or tenants), incident to the ownership and /or use of the project, and including the personal liability exposure of the Owners. Limits of liability under such insurance shall not be less than Three Hundred Thousand Dollars (\$300,000.00) For any one person injured, for any one accident, and shall not be less than One Hundred Thousand Dollars (\$100,000.00) for property damage each occurrence (such limits and coverage to be reviewed at least annually by the Management Committee and increased in its discretion). Said policy or policies shall be issued on a comprehensive liability basis and shall provide cross liability endorsement wherein the rights of named insured under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

(d) Workmen's compensation insurance to the extent necessary to comply with any applicable laws;

(e) The services of a person or firm to manage its affairs (herein called "the Manager") to the extent deemed advisable by the Management Committee as well as such other personnel as the Management Committee shall determine shall

be necessary or proper for the operation of the Common Area, whether such personnel are employed directly by the Management Committee or are furnished by the Manager;

(f) Legal and accounting services necessary or proper in the operation of the Common Area or the enforcement of this Declaration;

(g) Painting, maintenance, repair and all landscaping of the Common Area, and such furnishings and equipment for the Common Area as the Management Committee shall determine are necessary 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 particular Owner;

(h) 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 or for the enforcement of this Declaration, provided that if any such materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments are provided for particular Units, the cost thereof shall be specially assessed to the Owners of such Units.

(i) Maintenance and repair of any Unit, if 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 or Owners of said Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Management Committee to said Owner or Owners, provided that the Management Committee shall levy a special assessment against the condominium of such Owner or Owners 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 authority to acquire and pay for out of the common expense

fund 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 Three Thousand Dollars (\$3,000.00) except as expressly provided herein.

(7). Management Committee Powers, Exclusive. The Management Committee shall have the exclusive right to contract for all goods, services and insurance, payment for which is to be made from the common expense fund.

(8). Alterations, Additions and Improvements of Common Area.

There shall be no structural alterations, capital additions to, or capital improvements of the Common Area requiring an expenditure in excess of Three Thousand Dollars (\$3,000.00) without the prior approval of Owners holding a majority of the total votes.

(9). Common Expenses: Assessments.

(a) Within thirty (30) days prior to the beginning of each calendar year the Management Committee shall estimate the net charges to be paid during such year (including a reasonable provision for contingencies and replacements and less any expected income and any surplus from the prior year's fund). Said "estimated cash requirement" shall be assessed to the Owners pursuant to the percentages set forth in the schedule attached hereto and marked Exhibit A. Declarant will be liable for the amount of any assessment against completed Units owned by Declarant. If said sum estimated 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 first 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;

(c) All funds collected hereunder shall be expended for the purposes designated herein.

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(d) 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 Owner 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. Amendments to this paragraph shall be effective only upon unanimous written consent of the Owners and their mortgagees. No Owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Unit.

(e) The Manager or Management Committee shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the Common Area, specifying and itemizing the maintenance and repair expenses of the Common Area and any other expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by the Owner at convenient hours of week days.

10. Default in Payment of Assessments. Each monthly assessment and each special 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. 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 assessment, whether regular or special, assessed to the Owner of any condominium plus interest at seven per cent (7%), and costs, including reasonable attorneys' fees, shall become a lien upon such condominium upon recordation of a notice of assessment 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 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 recorded 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 condominium created hereunder, shall be conclusive upon

the Management Committee 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 any encumbrancer or prospective encumbrancer of a condominium upon request at a reasonable fee, not to exceed Ten Dollars (\$10.00). Unless the request for a certificate of indebtedness shall be complied with within ten days, all unpaid common expenses 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 condominium may pay any unpaid common expenses payable with respect to such condominium and upon such payment such encumbrance shall have a lien on such condominium 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 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 the release of the lien thereof. Such lien for nonpayment 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 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 and reasonable attorney's fees.

In case 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 to hold, lease, mortgage and convey the condominium.

11. Mortgage Protection. Notwithstanding all other provisions hereof:

(a) The liens created hereunder upon any condominium 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 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 10 hereof on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser or 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 affect the rights of the holder of any such mortgage recorded prior to recording of such amendment who does not join in the execution thereof;

(c) 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.

12. Delegation to Manager. The Management Committee may delegate any of its duties, power or functions, including, but not limited to, the authority to give the certificate provided for in paragraph 10 hereof, and the authority to give the subordination agreements provided for in paragraph 11 hereof, to any person or firm, to act as Manager of the project, provided that any such delegation shall be revocable 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 or 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.

13. Exclusive Ownership and Possession by Owner.

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 Owner may use the Common Area in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other Owners.

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An Owner shall not be deemed to own the undecorated and/or 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 which are utilized for, or serve more than one Unit, except as a tenant in common with the other Owners. An Owner, however, shall be deemed to own and shall have the exclusive right to paint, repaint, tile walls, paper or otherwise refinish and decorate the inner surfaces of the walls, floors, ceilings, windows, and doors bounding his Unit.

14. Owners 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 appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance and condition of his Unit. In addition to decorating and keeping the interior of the Unit in good repair, the Owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heaters, heating equipment, lighting fixtures, refrigerators, dishwashers, disposals or ranges that may be in, or connected with the Unit.

The Owner shall also, at the Owner's expense, keep the storage area which has been assigned to his Unit in a clean and sanitary condition. The Management Committee and Manager shall not be responsible to the Owner for loss or damage by theft or otherwise of articles which may be stored by the Owner in the storage area, garage stall or Unit.

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

15. Prohibition Against Structural Changes by Owner.

The Owner shall not, without first obtaining written consent of the Management Committee, make or permit to be made any structural alteration, improvement or addition in or to his Unit or in or to the exterior of the buildings or other Common Area. 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 hereditament without the written consent of all owners. The Owner shall not paint or decorate any portion of the exterior of the buildings or other Common Area or any portion.

of any balcony, patio, or storage area, without first obtaining written consent of the Management Committee.

16. Limitation on use of Units and Common Area.

The Units and Common Area 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 Lessees or Guests.

(b) There shall be no obstruction of the Common Area. Except in the case of designated storage 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 which will increase the rate of insurance on the Common Area, 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 which will result in the cancellation of insurance on any Unit or any part of the 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 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 Area, except that dogs, cats or other household pets may be kept in Units, subject to rules and regulations adopted by the Management Committee;

(f) No noxious or offensive activity shall be carried on in any Unit or in the 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 Area, except upon the written consent of the Management Committee;

(h) There shall be no violation of rules for the use of the Common Area adopted by the Management Committee and furnished

in writing to the Owners, and the Management Committee is authorized to adopt such rules.

(1) None of the rights and obligations of the Owners created herein, or by the Deed creating the condominiums shall be altered in any way by encroachments 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 or Owners if said encroachment occurred due to the wilful conduct of said Owner or Owners.

17. Entry for Repairs. The Management Committee or its agents may enter any Unit when necessary in connection with any maintenance, landscaping 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.

18. Failure of Management Committee to Insist on Strict Performance No 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, of such term, covenant, condition or restriction but such term, covenant, condition or restrictions shall remain in full force and effect. The receipt by the Management Committee or Manager of 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 or Manager.

19. 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, snow or ice which may leak or flow from outside or from any parts 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 diminution or abatement of common expense assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements to the Common Area or from any action taken to comply with any law, ordinance or orders of a governmental authority.

20. Indemnification of Management Committee Members. Each member of the Management Committee shall be indemnified by the Owners against all expenses and liabilities including attorneys' 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, 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 interests of the Management Committee.

21. 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 provisions:

(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 or 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 One Thousand Dollars (\$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 or policies 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 any 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 owners' policies from consideration;

(h) The annual insurance review which the Management Committee is required to conduct as provided in Paragraph 6 above shall include an appraisal of the improvements in the project by a representative of the insurance carrier writing the master policy.

22. 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 23 hereof in the case of damage or destruc-

tion or unless the property has been removed from the provisions of the Condominium Act as provided in Section 57-8-22 thereof; provided, however, that if any condominium shall be owned by two or more cotenants as tenants-in-common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants. But such partition shall not affect any other condominium.

23. 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 accomplished by the Manager or Management Committee.

If the insurance proceeds are insufficient to reconstruct the building, damage to or destruction of the building 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 assessment 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 one hundred days after such destruction or damage, make provision 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 condominiums shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owner in 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 fourths of the voting power, at a meeting of Unit Owners duly called for such purpose, 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 to perform all acts as in manner and form may be necessary to effect the sale.

24. Enforcement. Each Owner shall comply strictly with the provisions of this Declaration and with the administrative rules and regulations drafted pursuant thereto as the same may be lawfully amended from time to time and with decisions adopted pursuant to said Declaration and administrative rules and regulations, 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.

25. 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 beneficial interest in such personal property shall be owned by the Owners in the same proportion as their respective interest in the Common Area, and shall not be transferable except with a transfer of a condominium. A transfer of a condominium shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property.

Within 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 Owners.

26. 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 expenses, shall obtain an audit of all books and records pertaining to the project at no greater than annual intervals and furnish copies thereof to the Owners.

27. Interpretation. The provisions 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 provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

28. Amendment. Except as otherwise provided herein, the provisions of this Declaration may be amended by an instrument in writing signed and acknowledged by record Owners holding seventy-five per cent (75%) of the total vote hereunder, which amendment shall be effective upon recordation in the Office of the Recorder of Cache County, State of Utah.

29. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

30. Resale of Units by Owner. In the event of the resale of any Units of Mt. Aire Gardens by any of its owners, other than the declarant, the right of first refusal is hereby granted and retained in the Management Committee to any sale for the benefit, protection and welfare of the Mt. Aire Gardens Condominium Project and shall be complied with in the following manner. Upon the decision to sell by any owner of any unit of said condominium project, said owner shall notify the Management Committee of said decision and of the sale price and terms expected by said owner. Said notice shall be mailed to the Manager or the Chairman of the Management Committee of Mt. Aire Gardens, 248 East 4th North, Logan, Utah, not less than thirty (30) days prior to anticipated sale. The Management Committee may in its monthly meeting elect to purchase the Unit on behalf of the

owners of Mt. Aire Gardens Condominium Project, or in the event they elect not so to do, the Declarant may purchase the unit for his own account or in the event of inability to arrive at an agreeable sale price between Owner and the Management Committee or Declarant, the owner may then seek an offer to purchase from sources outside the Management Committee and/or Declarant control, at which time and upon receipt of outside offer the owner is required to give Fifteen (15) days notice in writing to the Management Committee or Manager at Mt. Aire Gardens Condominium Project, 24 East 4th North, Logan, Utah of the price and terms of said offer. At this time the Management Committee and Declarant shall have Fifteen (15) days within which to exercise the right of purchase under the first right of refusal upon terms and conditions of said outside offer, or to reject this right of refusal by one of the following:

1. By written notice to Owner at his home address at anytime during the negotiations as stated in Paragraph # 31, or;
2. By default, having not notified owner within the Fifteen (15) days after notice of the outside offer as provided above.

This Declaration shall take effect upon recording.

IN WITNESS WHEREOF, the undersigned have executed this instrument this 14th day of March, 1973.

MT. AIRE GARDENS, INC.

By Elwood L. Nielsen
Elwood L. Nielsen

Lois L. Nielsen
Lois L. Nielsen

STATE OF UTAH }
COUNTY OF CACHE } SS

On the 14th day of March, 1973, personally appeared before me, Elwood L. Nielsen and Lois L. Nielsen, known to me to be the signers of the within instrument, who duly acknowledged to me that they executed the same.



Margaret L. Hansen
Notary Public

Residing In: Logan, Utah
My Commission Expires: December 7, 1976

EXHIBIT A

MT. AIRE GARDENS CONDOMINIUM PROJECT

Unit Number	Building Number	%Ownership in Common Area (also determinative of Voting Rights and Pro-Rata Share of Common Expenses)
1	I	1.923%
2	H	1.923%
3	I	1.923%
4	H	1.923%
5	I	1.923%
6	H	1.923%
7	I	1.923%
8	H	1.923%
9	I	1.924%
10	H	1.923%
11	I	1.924%
12	H	1.923%
14	D	1.923%
15	E	1.923%
16	D	1.923%
17	E	1.923%
18	D	1.923%
19	E	1.923%
20	D	1.923%
21	E	1.923%
22	D	1.923%
23	E	1.923%
24	D	1.923%
25	E	1.923%
26	F	1.923%
27	G	1.923%
28	F	1.923%
29	G	1.923%
30	F	1.923%
31	G	1.923%
32	F	1.923%
33	G	1.923%
34	F	1.924%
35	G	1.923%
36	F	1.924%
37	G	

