

When Recorded mail to:
Nathan K. Fisher
444 East Tabernacle B-201
St. George Utah 84770

3A
DOC # 20150004153

Amended Restrictive Covenants
Russell Shirts Washington County Recorder
02/06/2015 04:10:05 PM Fee \$ 18.00
By FISHER & HUNTER

Page 1 of 5



FIRST AMENDMENT TO DECLARATION

OF MILLCREEK SPRINGS SUBDIVISION PHASE I

This First Amendment to Declaration of Millcreek Springs Subdivision Phase I is made this 14th day of January, 2015, by the undersigned Management Committee of Millcreek Springs Subdivision Phase I.

RECITALS

- A. On April 18, 2007, Declarant caused to be filed for record in the office of the County Recorder of Washington County, Utah, the Declaration of Millcreek Springs Subdivision Phase I, (the "Declaration"), which was recorded as Doc # 2007001995, of the Official Records of Washington County.
- B. On January 21, 2014, a meeting of the Owners was held, in which, pursuant to the Agenda, the issue of rental restrictions was discussed and voted upon.
- C. The Owners have determined that to provide for the preservation and enhancement of the property value that said Declaration be amended as hereinafter set forth.

NOW, THEREFORE, for the foregoing purposes, the Owners hereby amend said Declaration as follows:

ARTICLE II COVENANTS, CONDITIONS, AND RESTRICTIONS shall be amended to insert the following provision as Section 39 of ARTICLE II:

39. Rental Restrictions. No more than Forty Nine Percent (49%) of the Units or Lots in the Association may be leased or rented at any given time to a Third Party. Any Owner engaged in leasing activities as of the date of this Amendment shall be allowed to continue leasing activities until said Unit or Lot is sold or conveyed to a Third Party. Any Unit or Lot Owner engaged in leasing or renting activities must, upon the sale or conveyance of said Unit or Lot, notify any potential buyer or person taking title that no more than Forty Nine Percent (49%) of the Units or Lots in the Association may be leased or rented at any given time to a Third Party. For the purpose of this provision, "Third Party" shall be defined as any person or entity who is not an Owner as that term is defined in the Declaration.

Notwithstanding the foregoing, and pursuant to Utah Code Ann. Section 57-8a-209, the following lot owner and lot owner's lot shall be exempt from the rental restrictions:

- i. a lot owner in the military for the period of the lot owner's deployment;

- ii. a lot occupied by a lot owner's parent, child, or sibling;
- iii. a lot owner whose employer has relocated the lot owner for no less than two years; or
- iv. a lot owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for:
 - a. the estate of a current resident of the lot; or
 - b. the parent, child, or sibling of the current resident of the lot.

Notwithstanding the foregoing, and pursuant to Utah Code Ann. Section 57-8a-209, each Owner who has a rental in the association before the time the rental restriction described in Subsection (2)(a) is recorded with the county recorder of the county in which the association is located to continue renting until:

- a. the lot owner occupies the lot; or
- b. an officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the lot, occupies the lot.

The Association shall create, by rule or resolution, procedures to:

- a. determine and track the number of rentals and lots in the Association subject to the provisions described herein; and
- b. ensure consistent administration and enforcement of the rental restrictions.

Effective Date. The Management Committee hereby certifies that a meeting of Owners was held on January 21, 2014, at which a quorum was present and during which the amendment was approved by a vote of at least 67% of the Owners. This First Amendment to the Declaration was effective January 21, 2014, except as otherwise set forth herein to the contrary. Except as amended by the foregoing provision, all other terms, covenants, conditions and restrictions set forth in the Millcreek Springs Subdivision Phase I, shall remain in full force and effect.

EXECUTED the day and year set forth below.

SIGNATURES BEGIN ON NEXT PAGE

MILLCREEK SPRINGS SUBDIVISION
PHASE I, MANAGEMENT COMMITTEE

By: [Signature]
Robbie Barrus, Chairman & President
Management Committee

STATE OF UTAH)
 : ss.
COUNTY OF WASHINGTON)

On the 14th day of January, 2015, personally appeared before me Robbie Barrus, known to me to be the person subscribed to the foregoing First Amendment to Declaration of Millcreek Springs Subdivision Phase I who duly acknowledged to me that he executed the same.

[Signature]
NOTARY PUBLIC

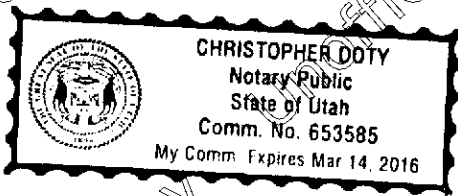


MILLCREEK SPRINGS SUBDIVISION
PHASE I, MANAGEMENT COMMITTEE

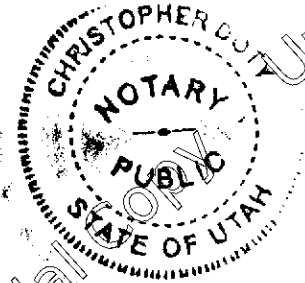
By: Susan Strang
Susan Strang, Vice President
Management Committee

STATE OF UTAH)
) : ss.
COUNTY OF WASHINGTON)

On the 21 day of January, 2015, personally appeared before me Susan Strang, known to me to be the person subscribed to the foregoing First Amendment to Declaration of Millcreek Springs Subdivision Phase I who duly acknowledged to me that he executed the same.



Christopher Doty
NOTARY PUBLIC



When Recorded mail to:
Nathan K. Fisher
444 East Tabernacle B-201
St. George Utah 84770

DOC # 20150004154

Amended Restrictive Covenants
Russell Shirts Washington County Recorder
02/06/2015 04:11:15 PM Fee \$ 20.00
By FISHER & HUNTER

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FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR MILLCREEK SPRINGS SUBDIVISION PHASE 2

This First Amendment to Declaration Of Covenants, Conditions, And Restrictions For Millcreek Springs Subdivision Phase 2 is made this 14th day of January, 2015, by the undersigned Management Committee of Millcreek Springs Subdivision Phase 2.

RECITALS

- A. On August 2, 2012, Declarant caused to be filed for record in the office of the County Recorder of Washington County, Utah, the Declaration Of Covenants, Conditions, And Restrictions For Millcreek Springs Subdivision Phase 2, (the "Declaration"), which was recorded as Doc # 20120025470, of the Official Records of Washington County.
- B. On January 21, 2014, a meeting of the Owners was held, in which, pursuant to the Agenda, the issue of rental restrictions was discussed and voted upon.
- C. The Owners have determined that to provide for the preservation and enhancement of the property value that said Declaration be amended as hereinafter set forth.

NOW, THEREFORE, for the foregoing purposes, the Owners hereby amend said Declaration as follows:

Section 2.18 of ARTICLE 2 USE RESTRICTIONS AND REQUIREMENTS shall be amended and replaced in its entirety with the following:

39. Rental Restrictions. No more than Forty Nine Percent (49%) of the Units or Lots in the Association may be leased or rented at any given time to a Third Party. Any Owner engaged in leasing activities as of the date of this Amendment shall be allowed to continue leasing activities until said Unit or Lot is sold or conveyed to a Third Party. Any Unit or Lot Owner engaged in leasing or renting activities must, upon the sale or conveyance of said Unit or Lot, notify any potential buyer or person taking title that no more than Forty Nine Percent (49%) of the Units or Lots in the Association may be leased or rented at any given time to a Third Party. For the purpose of this provision, "Third Party" shall be defined as any person or entity who is not an Owner as that term is defined in the Declaration.

Notwithstanding the foregoing, and pursuant to Utah Code Ann. Section 97-8a-209, the following lot owner and lot owner's lot shall be exempt from the rental restrictions:

- i. a lot owner in the military for the period of the lot owner's deployment;
- ii. a lot occupied by a lot owner's parent, child, or sibling;

- iii. a lot owner whose employer has relocated the lot owner for no less than two years; or
- iv. a lot owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for:
 - a. the estate of a current resident of the lot; or
 - b. the parent, child, or sibling of the current resident of the lot.

Notwithstanding the foregoing, and pursuant to Utah Code Ann. Section 57-8a-209, each Owner who has a rental in the association before the time the rental restriction described in Subsection (2)(a) is recorded with the county recorder of the county in which the association is located to continue renting until:

- a. the lot owner occupies the lot; or
- b. an officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the lot, occupies the lot.

The Association shall create, by rule or resolution, procedures to:

- a. determine and track the number of rentals and lots in the Association subject to the provisions described herein; and
- b. ensure consistent administration and enforcement of the rental restrictions.

Effective Date. A meeting of Owners was held on January 21, 2014, at which a quorum was present and during which the amendment was approved by a vote, in writing, of at least 75% of the Owners. This First Amendment to the Declaration is effective upon recording. Except as amended by the foregoing provision, all other terms, covenants, conditions and restrictions set forth in the Millcreek Springs Subdivision Phase 2, shall remain in full force and effect.

EXECUTED the day and year set forth below.

SIGNATURES BEGIN ON NEXT PAGE

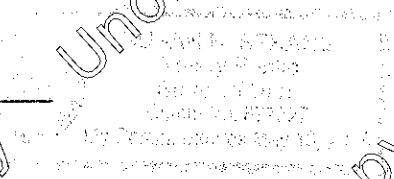
MILLCREEK SPRINGS SUBDIVISION
PHASE 2 MANAGEMENT COMMITTEE

By: [Signature]
Robbie Barrus, Chairman & President
Management Committee

STATE OF UTAH)
) : ss.
COUNTY OF WASHINGTON)

On the 14TH day of January, 2015, personally appeared before me Robbie Barrus, known to me to be the person subscribed to the foregoing First Amendment to Declaration Of Covenants, Conditions, And Restrictions For Millcreek Springs Subdivision Phase 2 who duly acknowledged to me that he executed the same.

[Signature]
NOTARY PUBLIC

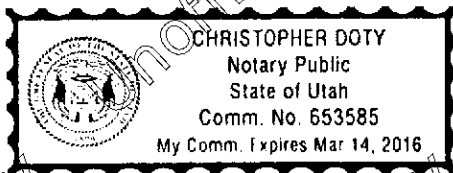


MILLCREEK SPRINGS SUBDIVISION
PHASE 2 MANAGEMENT COMMITTEE

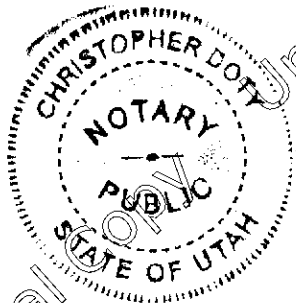
By: Susan Strang
Susan Strang, Vice President
Management Committee

STATE OF UTAH)
)
) :ss.
)
COUNTY OF WASHINGTON)

On the 21 day of January, 2015, personally appeared before me Susan Strang, known to me to be the person subscribed to the foregoing First Amendment to Declaration of Covenants, Conditions, And Restrictions for Millcreek Springs Subdivision Phase 2 who duly acknowledged to me that she executed the same.



Christopher Doty
NOTARY PUBLIC



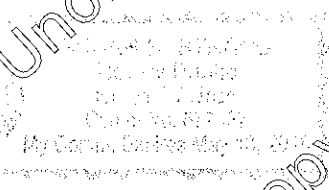
MILLCREEK SPRINGS SUBDIVISION
PHASE 2, MANAGEMENT COMMITTEE

By: Jamie Bahlmann
Jamie Bahlmann, Secretary
Management Committee

STATE OF UTAH)
) : ss.
COUNTY OF WASHINGTON)

On the 21st day of January, 2015, personally appeared before me Jamie Bahlmann,
known to me to be the person subscribed to the foregoing First Amendment to Declaration Of
Covenants, Conditions, And Restrictions For Millcreek Springs Subdivision Phase 2 who duly
acknowledged to me that she executed the same.

Susan H. Strong
NOTARY PUBLIC





FIRST AMENDMENT TO DECLARATION
OF MILLCREEK SPRINGS TOWNHOMES
AMENDED

This First Amendment to Declaration of Millcreek Springs Townhomes is made this 14th day of January, 2015, by the undersigned Management Committee of Millcreek Springs Townhomes.

RECITALS

- A. On March 21, 2007, Declarant caused to be filed for record in the office of the County Recorder of Washington County, Utah, the Declaration of Millcreek Springs Townhomes, (the "Declaration"), which was recorded as Doc # 20070014114, of the Official Records of Washington County.
- B. On January 21, 2014, a meeting of the Owners was held, in which, pursuant to the Agenda, the issue of rental restrictions was discussed and voted upon.
- C. The Owners have determined that to provide for the preservation and enhancement of the property value that said Declaration be amended as hereinafter set forth.

NOW, THEREFORE, for the foregoing purposes, the Owners hereby amend said Declaration as follows:

ARTICLE II COVENANTS, CONDITIONS, AND RESTRICTIONS shall be amended to insert the following provision as Section 39 of ARTICLE II:

39. Rental Restrictions. No more than Forty Nine Percent (49%) of the Units or Lots in the Association may be leased or rented at any given time to a Third Party. Any Owner engaged in leasing activities as of the date of this Amendment shall be allowed to continue leasing activities until said Unit or Lot is sold or conveyed to a Third Party. Any Unit or Lot Owner engaged in leasing or renting activities must, upon the sale or conveyance of said Unit or Lot, notify any potential buyer or person taking title that no more than Forty Nine Percent (49%) of the Units or Lots in the Association may be leased or rented at any given time to a Third Party. For the purpose of this provision, "Third Party" shall be defined as any person or entity who is not an Owner as that term is defined in the Declaration.

Notwithstanding the foregoing, and pursuant to Utah Code Ann. Section 57-8a-209, the following lot owner and lot owner's lot shall be exempt from the rental restrictions:

- i. a lot owner in the military for the period of the lot owner's deployment;

- ii. a lot occupied by a lot owner's parent, child, or sibling;
- iii. a lot owner whose employer has relocated the lot owner for no less than two years; or
- iv. a lot owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for:
 - a. the estate of a current resident of the lot; or
 - b. the parent, child, or sibling of the current resident of the lot.

Notwithstanding the foregoing, and pursuant to Utah Code Ann. Section 57-8a-209, each Owner who has a rental in the association before the time the rental restriction described in Subsection (2)(a) is recorded with the county recorder of the county in which the association is located to continue renting until:

- a. the lot owner occupies the lot; or
- b. an officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the lot, occupies the lot.

The Association shall create, by rule or resolution, procedures to:


- a. determine and track the number of rentals and lots in the Association subject to the provisions described herein; and
- b. ensure consistent administration and enforcement of the rental restrictions.

Effective Date. The Management Committee hereby certifies that a meeting of Owners was held on January 21, 2014, at which a quorum was present and during which the amendment was approved by a vote of at least 67% of the Owners. This First Amendment to the Declaration was effective January 21, 2014, except as otherwise set forth herein to the contrary. Except as amended by the foregoing provision, all other terms, covenants, conditions and restrictions set forth in the Millcreek Springs Townhomes, shall remain in full force and effect.

EXECUTED the day and year set forth below.

SIGNATURES BEGIN ON NEXT PAGE

MILLCREEK SPRINGS TOWNHOMES,
MANAGEMENT COMMITTEE

By: 
Robbie Barrus, Chairman & President
Management Committee

STATE OF UTAH
COUNTY OF WASHINGTON)
: ss.

On the 14th day of January, 2015, personally appeared before me Robbie Barrus, known to me to be the person subscribed to the foregoing First Amendment to Declaration of Millcreek Springs Townhomes who duly acknowledged to me that he executed the same.


NOTARY PUBLIC

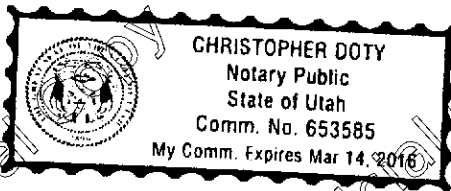


**MILLCREEK SPRINGS TOWNHOMES,
MANAGEMENT COMMITTEE**

By: *Susan Strang*
Susan Strang, Vice President
Management Committee

STATE OF UTAH)
 : ss.
COUNTY OF WASHINGTON)

On the 21 day of January, 2015, personally appeared before me Susan Strang, known to me to be the person subscribed to the foregoing First Amendment to Declaration of Millcreek Springs Townhomes who duly acknowledged to me that she executed the same.



Christopher Doty
NOTARY PUBLIC

229
WHEN RECORDED, MAIL TO:

Brad Jacobsen, Esq.
Holme Roberts & Owen LLP
299 South Main Street, Suite 1800
Salt Lake City, Utah 84111

DOC # 20070019995

Restrictive Page 1 of 29
Russell Shirts Washington County Recorder
09/18/2007 03:41:17 Phee \$ 66.00BY SOUTHERN UTAH TITLE CO

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**DECLARATION OF
MILLCREEK SPRINGS SUBDIVISION PHASE I**

This Declaration of MILLCREEK SPRINGS SUBDIVISION PHASE I (the "**Declaration**") is made and entered into this 18th day of April, 2007 by JTKR, L.L.C., a Utah limited liability company ("**Declarant**"), whose address is 2107 E 2620 S Circle, Saint George, Utah 84790.

RECITALS

This Declaration is made and executed upon the basis of the following facts, understandings and intentions of the Declarant;

A. Declarant is the fee owner of those certain parcels of real property with single family homes built (or being built) thereon located in Washington City, State of Utah, with the legal descriptions as set forth on Exhibit "A," attached hereto and made a part hereof (each single family home being referred to herein as a "**Unit**" and collectively as the "**Project**"), as shown on Exhibit "C," attached hereto and made a part hereof (the "**Record of Survey Map**").

B. To effectuate the common use and operation of the Project, Declarant intends that the Units shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which shall run with the Units and be binding upon all parties having any right, title or interest therein or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

NOW THEREFORE, Declarant makes the following grants, covenants, conditions, restrictions, submissions and declarations:

ARTICLE I

DEFINITIONS

When used in the Declaration and in the Bylaws, which are made a part of this Declaration and are attached hereto as Exhibit "B," the following terms shall have the meaning indicated. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine and the use of the singular shall be deemed to refer to the plural, and vice versa, whenever the context requires.

1. "**Association**" shall mean and refer to all of the Unit Owners acting as a group in accordance with the Declaration and Bylaws (Exhibit "B").

2. **“Common Areas and Facilities”** and **“Common Areas”** shall mean and refer to, and include:

- a. All common areas and facilities designated as such on the Record of Survey Map.
- b. All Limited Common Areas and Facilities.
- c. All access roads, pedestrian sidewalks, and other common facilities as designated in the Record of Survey Map.
- d. All apparatus, installations, and facilities included within the Project and existing for common use, including, without limitation, parking areas, storm water detention ponds, if any, common water lines, common sewage lines.
- e. All portions of the Project not specifically included within individual Units.

3. **“Common Expenses”** shall mean and refer to all sums which are expended on the behalf of all the Unit Owners and all sums which are required by the Management Committee to perform or exercise its functions, duties or rights under Utah law, this Declaration, any management agreement for the operation of the Project, and such Rules and Regulations as the Management Committee may, from time to time, make and adopt. By the way of illustration but not limitation, Common Expenses shall include:

- a. Expense of administration, maintenance, operation, repair, or replacement of those elements of the Common Areas that must be replaced on a periodic basis, and to other reserves as may, from time to time, be established pursuant to the Declaration;
- b. Expenses agreed upon by the Association and lawfully assessed against the Owners in accordance with the Declaration;
- c. Expenses declared Common Expenses by Utah law, this Declaration or the Bylaws; and
- d. Any valid charge against the Project as a whole.

4. **“Common Profits”** shall mean and refer to the balance of all income, rents, profits, and revenues from the Common Areas remaining after deduction of the Common Expenses.

5. **“Declarant”** shall mean and refer to JTKR, L.L.C., a Utah limited liability company, its successors, and assigns. The Declarant is authorized and permitted hereby to assign all of its rights, title, interests, obligations, duties as Declarant to any third party (whether such third party is an Owner or not).

6. **“Declaration”** shall mean and refer to this instrument, as the same may be amended from time to time.

7. **“Limited Common Area and Facilities”** and **“Limited Common Areas”** shall mean and refer to those Common Areas designated herein, or in the Record of Survey Map, as reserved for the use of a certain Unit or Units, to the exclusion of other Units.

8. "**Management Committee**" shall mean and refer to the Management Committee of MILLCREEK SPRINGS SUBDIVISION PHASE I Project as it exists at any given time.
9. "**Majority of Owners**" shall mean and refer to the Owners of the Units to which more than fifty percent (50%) of the votes in the Association appertain.
10. "**Mortgage**" shall mean any mortgage, deed of trust or other security instrument by which a Unit or any part thereof is encumbered. First Mortgage shall refer to a Mortgage which has a lien position prior to any other Mortgage.
11. "**Mortgagee**" shall mean and refer to any person named as a mortgagee or beneficiary under (or holder of) a Mortgage.
12. "**Percentage Interest**" means and refers to the percentage of undivided interest of each Unit in the Common Areas as set forth in Article II, Paragraph 4.
13. "**Project**" and "**Projects**" shall mean and refer to the MILLCREEK SPRINGS SUBDIVISION PHASE I Project.
14. "**Property**" shall mean and refer to the land in **Exhibit "A"**, the buildings, all improvements and the structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.
15. "**Record of Survey Map**" shall mean and refer to the MILLCREEK SPRINGS SUBDIVISION PHASE I Record of Survey Map attached hereto as **Exhibit "C."**
16. "**Rules and Regulations**" means those rules and regulations as initially established by the Declarant and as adopted and amended from time to time by the Management Committee that are deemed necessary for the enjoyment of the Project, provided they are not in conflict with Utah law or this Declaration.
17. "**Tract**" shall mean and refer to the real property hereby submitted to the Project. The Property which **Exhibit "A"** of this Declaration describes constitutes a Tract.
18. "**single family home**" means each single-family stand-alone house within the Project.
19. "**Unit**" or "**Units**" means and refers to a separate physical part of the Property intended for independent use, and an individual interest in the Common Areas and Facilities appertaining to that Unit. Units are identified in the Record of Survey Map by Unit Number.
20. "**Unit Number**" shall mean the number, letter, or combination of numbers or letters designating the Unit in the Declaration and in the Record of Survey Map.
21. "**Unit Owner**" or "**Owners**" shall mean the person(s) owning a Unit in fee simple and an undivided interest in the fee simple estate of the Common Areas and Facilities in the percentage specified or established in the Declaration, or, in the case of a leasehold project, the person(s) whose leasehold interest(s) in the Unit extend for the entire balance of the unexpired term(s). In the event a Unit is the subject of an executory contract of sale, the contract purchaser shall, upon notice to the Management Committee by the purchaser (unless the seller and purchaser have otherwise agreed and have informed the Management Committee in writing of such agreement), be considered the Unit Owner for purposes of voting and Management Committee membership.

ARTICLE II

COVENANTS, CONDITIONS, AND RESTRICTIONS

The submission of the Tract is made upon and under the following covenants, conditions, and restrictions.

1. **Descriptions of Improvements** The improvements included in the Project will be located on the Property described in **Exhibit "A"** annexed hereto in the manner set forth on the Record of Survey Map. The Project consists of twenty-one (21) Units.

2. **Description of Legal Status of Units** The Record of Survey Map shows each Unit's location and dimensions from which the area may be determined, those Limited Common Areas which are reserved for its use, if any, and the Common Areas to which it has immediate independently owned, encumbered, and conveyed.

3. **Common and Limited Common Areas**

- a. The Common Areas contained in the Project are described and identified on the Record of Survey Map. Neither the Percentage Interest nor the right of exclusive use of Limited Common Areas shall be separated from the Unit to which it appertains; and even though not specifically mentioned in the instrument of transfer, the Percentage Interest and such right of exclusive use shall automatically accompany transfer of the Unit to which they related. Each Unit Owner shall, at its own cost, keep the Limited Common Areas designed from exclusive use in connection with his Unit in a clean, sanitary, and attractive condition at all times.
- b. The use of the Common Areas shall be limited to Owners in residence and to their tenants in residence, and to Owners' guests, invitees, and licensees. The use of the Common Areas or Limited Common Areas shall be governed by the Declaration and the Rules and Regulations.

4. **Computation of Percentage Interests** Each Unit shall include an undivided twenty-first (21st) interest in the Common Area and Facilities which shall be appurtenant to each such Unit in the Project. The proportionate ownership in the Common Areas shall be for all purposes including, but not limited to, voting, participation in Common Profits, and assessments for Common Expenses.

5. **Maintenance and Obligations of Owners** Subject only to the duty of the Association to provide for maintenance as provided in Paragraph 6 of this Article, it shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration regarding Management Committee approval, to maintain, including but not limited to, the interiors and exteriors of the Unit and the appurtenant patio, fences, and utility laterals. In the event that any Owner shall permit any improvement which is the responsibility of such Owner to maintain, to fall into disrepair or not to be so maintained as to create a dangerous, unsafe, unsightly, or unattractive condition, or to otherwise violate this Declaration, the Management Committee shall have the right, but not the duty, upon fifteen (15) days prior written notice to the Owner of such Unit to correct such condition and to enter upon such Owner's Unit to make such repairs or to perform such maintenance and the cost thereof shall be charged to the Owner. Said cost shall be a special assessment and shall create a lien enforceable in the manner provided as other assessments as set forth in this Declaration. The Owner shall promptly pay all amounts due for such work and the costs

and expenses of collection may be added, at the option of the Management Committee to the amounts payable by each Owner as assessments.

6. Maintenance Obligation of Association. Subject to the provisions of Paragraph 5 of this Article, the Association shall maintain or provide for the maintenance of all Common Areas and all improvements thereon, including boundary fences, entrance gates, streets, sidewalks, Common Area, landscaping, landscaping equipment, lighting and utility mains, and any and all utility laterals to the Unit lines.

7. Association Membership. Association membership shall be mandatory, shall be appurtenant to the Unit in which the Owner has the necessary interest, and shall not be separated from the Unit to which it appertains. The property, business, and affairs of the Association shall be governed by the Management Committee as agent of the Association.

8. Easement on Encroachment. If any part of the Common Areas encroaches, or hereafter encroaches, upon a Unit or Units, an easement for such encroachment and for the maintenance for the same shall and does exist. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the building(s) on the Tract, by error in the Record of Survey Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

9. Access for Repair of Common Areas. Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of the other Units shall have the irrevocable right, to be exercised by the Management Committee as its agent, to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Area or to another Unit or Units. The Management Committee shall also have such rights to the Common Areas without the prior written consent of the Unit Owners, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Areas except on the prior written consent of the Management Committee.

10. Certain Common Area Restrictions. Nothing shall be done or kept in any Unit or in the Common Areas, or any part thereof, which may result in the cancellation of the insurance of the Project, or any part thereof, or increase the rate of insurance on the Project, or any part thereof, over what the Management Committee, but for such activity, would pay without the prior written consent of the Management Committee. Nothing shall be done or kept in any Unit or in the Common Areas, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any government body. No damage to, or waste of the Common Areas, or any part thereof, shall be committed by any Owner, or any invitee of any Owner, and each Owner shall identify and hold the Management Committee and the Owners harmless against a loss resulting from any such damage or waste caused by him or his invitees; provided, however, that any invitee of the Declarant shall not, under any circumstances, be deemed to be an invitee of any other Owner. No noxious, destructive, or offensive activity shall be carried on in any Unit or in the Common Areas or any part thereof, nor shall anything be done therein which may be, or may become, any annoyance or nuisance to any other Owner, or to any person at any time lawfully residing in the Project.

11. Compliance with Rules and Regulations. No Owner shall violate the Rules and Regulations for the use of the Units and of the Common Areas as adopted from time to time by the Management Committee.

12. Alterations and Repairs. No structural alterations to any Unit shall be made by the Owner without the prior written consent of the Management Committee. No maintenance, repairs, or replacement of exterior elements of any Unit shall be made by an Owner without the prior written consent of the Management Committee. The Management Committee may adopt architectural standards which each Owner agrees to abide by in order to maintain uniformity in style, quality, colors, and appearances throughout the Project.

13. Recreational Vehicles and Signage. No recreational vehicles (boats, campers, trailers, motor homes, or similar items) shall be parked on any portion of the Common Areas except for temporary parking. Additionally, no signs whatsoever shall be erected or maintained in the Common Areas without the prior written consent of the Management Committee, except for the following:

- a. such signs as may be required by legal proceedings, and
- b. such signs as Declarant or licensed general contractors may erect or maintain incident to the sale of Units.

14. Declarant Exclusions. Until the Declarant has completed and sold all the Units, neither the Unit Owners who have purchased Units from the Declarant, licensed contractors, nor the Management Committee shall interfere with the completion of improvements and sale of the remaining Units. Declarant may use any Unit(s) owned by management offices or sale offices until such time as all Units are completed and sold to Unit Owners. Declarant may relocate models, management offices, or sale offices from time to time within the Project. Declarant shall also have the right to maintain equipment on the Project which may be relocated or removed at its discretion.

15. Status and General Authority of Management Committee. Notwithstanding anything herein contained to the contrary, MILLCREEK SPRINGS SUBDIVISION PHASE I Project shall be managed, operated, and maintained by the Management Committee exclusively as agent of the Association. Any act performed by the Management Committee pursuant to this Declaration or the Bylaws, as the same may be amended from time to time, shall be deemed to be performed by the Association. The Management Committee shall have, and is hereby granted the following authority and powers:

- a. The authority, without the vote or consent of the Owners, to transfer or convey utility easements and other similar easements, over, under, across, and through the Common Areas and Facilities.
- b. The authority to execute and record, on the behalf of all Unit Owners, any amendment to the Declaration or Record of Survey Map which has been approved by the consent necessary to authorize such amendment.
- c. The power to sue and be sued.
- d. The authority to enter into contracts or agreements which in any way concern the Project, so long as any vote or consent of the Unit Owners necessitated by the subject matter of the contract or agreement has been obtained.
- e. The power and authority to convey or transfer any interest in tangible or intangible personal property and real property authorized by the Owners having an interest herein.

- f. The power and authority to purchase, otherwise acquire, and accept title to any interest in real property, so long as such action has been authorized by any vote or consent necessary under the circumstances.
- g. The authority to license persons not otherwise entitled to use any of the Common Areas and Facilities to use the same from time to time as the Management Committee deems appropriate upon the payment of fees prescribed by it to help defray the cost of maintenance thereof.
- h. The power and authority to borrow money, provided no indebtedness for borrowed funds shall exceed at any given time the sum of Five Thousand Dollars (\$5,000.00), without the prior approval of the Majority of Owners.
- i. The power and authority to perform any other acts and to enter into any other transactions and agreements which may be reasonably necessary for the Management Committee to perform its functions as agent for the Association.
- j. Any instrument executed by the Management Committee that recites facts which, if true, would establish the Management Committee's power and authority to accomplish its functions. Through such instrument, what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

16. Manager. The Management Committee may carry out any of its functions which are capable of delegation through a project manager (the "**Manager**"). Any Manager retained for such purpose must be an individual or entity experienced and qualified in the field of property management. The Manager shall be responsible for managing the Project for the benefit of the Unit Owners and shall, to the extent permitted by law and the terms of the agreement with the Management Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself.

17. Composition of Management Committee and Initial Selection. Until the election of the Management Committee takes place at the first annual meeting of the of the Association as provided in Article II Section 1 of the Bylaws, the Management Committee shall consist of such persons as shall have been designated by the Declarant. From and after the first annual meeting of the Association, the owners, designees of Owners, spouses of Owners, Mortgagees, or designees of Mortgagees of Units shall elect the Management Committee members in accordance with the Bylaws. The Declarant shall have the right in its sole discretion to terminate any member of the Management Committee. As a result of such vacancy, the remaining Management Committee members shall elect a replacement to sit on the Management Committee until the expiration date of the term for which the member being replaced was elected. Declarant may, by a written instrument duly recorded, waive its right to select the members of the Management Committee at any time prior to the termination of the right to select Management Committee members reserved hereunder.

18. Agreement to Pay Assessment. Each Owner of any Unit by the acceptance of a deed therefore, whether or not it be expressed in the deed, or by entering into a sale and/or purchase contract, shall be deemed to covenant and agree with each other and with the Management Committee to pay to the Management Committee annual assessments made by the Management Committee for the purposes provided in this Declaration, and special assessments for capital improvements and other matters as

provided for in this Declaration. Such assessments shall be fixed, established, and collected from time to time in the manner hereinafter provided.

- a. Amount of Total Annual Assessments. The total annual assessments against all Units shall be based upon advance estimates determined by the Management Committee to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, which estimates may include, among other things: expenses of management; grounds maintenance; taxes and special assessments (until the Units are separately assessed as provided herein); premiums for all insurance which the Management Committee is required or permitted to maintain pursuant hereto; common lighting and heating; water charges; trash collection; sewer charges; repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a periodic basis; wages for Management Committee employees; legal and accounting fees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus, and/or sinking fund; and any other expenses or liabilities which may be incurred by the Association for the benefit of the Owner under or by reason of this Declaration.
- b. Apportionment of Annual Assessment. Expenses attributed to the Common Areas and to the Project as a whole shall be apportioned among all the Owners in proportion to their respective Percentage Interests.
- c. Notice of Annual Assessment and Time for Payment Thereof. An annual assessment shall be made on a calendar year basis. The Management Committee shall give written notice to each Owner as to the amount of the annual assessment with respect to his Unit no less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year. Such assessments shall be for the balance of the calendar year remaining after the date filed by the Management Committee as the date of commencement of the Project. Such assessment shall be due and payable within thirty (30) days after written notice of the amount thereof shall have been given to the respective Owner of a Unit. Each monthly assessment shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date. Failure of the Management Committee to give timely notice of any assessment as provided herein and shall not affect the liability the Owner of a Unit for such assessment as provided herein shall not effect the liability of the Owner of a Unit for such assessment, but the date when payment shall become due in such case shall be deferred to a date thirty (30) days after such notice shall be given.
- d. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Management Committee may, in any assessment year, levy a special assessment, payable over such a period as the Management Committee may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expense incurred or to be incurred as

provided in this Declaration. This Section shall not be construed as an independent source of authority for the Management Committee to incur expenses, but shall be authorized by other Sections hereof. Any amounts assessed pursuant hereto shall be assessed to the Owners in proportion to their respective Percentage Interests. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners and no payment shall be due less than thirty (30) days after such notice shall have been given. A special assessment shall bear interest at the rate of twelve percent (12) per annum from the date it becomes due and payable. Additions or capital improvements to the Project which costs no more than One Thousand Dollars (\$1,000.00) may be authorized by the Management Committee alone. Additions or capital improvements, the cost of which will exceed such amount must, prior to being constructed, be authorized by the Majority of Owners. Any addition or capital improvement which would materially alter the nature of the Project must, regardless of its cost and prior of being constructed, be authorized by vote of Unit Owners in person or by proxy of not less than sixty-seven percent (67%) of the Percentage Interest at a meeting of the Association, special or annual, at which a quorum is present.

- e. Lien for Assessments. All sums to any Unit pursuant to this Declaration, together with interest thereon, shall be secured by a lien on such Unit in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Unit, except for valid tax and Mortgage liens duly recorded in the Official Records of Washington County, Utah, including all unpaid obligatory advances to be made pursuant to such Mortgage and all amounts advanced pursuant to such Mortgage and secured by a lien thereof in accordance with the terms of such instrument. All other lienors acquiring liens shall be deemed to consent that such liens shall be inferior to future liens for assessments as provided herein whether or not such consent be specifically set forth in the instruments creating such liens.

(f) To evidence a lien for sums assessed hereunder, the Management Committee may prepare a written notice of the lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit, and a description of the Unit. Such notice shall be signed by the Management Committee and may be recorded in the Office of the County Recorder of Washington County, Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Management Committee in the same manner in which Mortgages on real property may be foreclosed in Utah. In any such foreclosures the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of the filing of the notice of lien, and all reasonable attorney's fees. All such costs, expenses, and fees shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Management Committee any assessments against the Unit which shall become due during the period of foreclosure.

(ii) In event of foreclosure, after the institution of the action, the Unit Owner shall pay a reasonable rental for his use of the Unit and the Management Committee shall, without regard to the value of the Unit, be entitled to the appointment of a receiver to collect any rentals due from the Owner or any other person. The Management Committee shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use, and otherwise deal with the same as the Owner hereof.

(iii) A release of notice of lien shall be executed by the Management Committee and recorded in the Office of the County Recorder of Washington County, Utah upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien. Any encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any amounts secured by the lien created hereunder, and upon such payment such encumbrancer shall be surrogated to all rights of the Management Committee with respect to such lien, including priority.

(iv) The Management Committee shall report to any encumbrancer of a Unit any unpaid assessments remaining unpaid for thirty (30) days after the same shall become due; provided, however, that such encumbrancer first shall have furnished the Management Committee written notice of such encumbrance.

- f. Law Suits. The Management Committee may initiate any required suit on behalf of the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Management Committee without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any personal obligation by waiver of the use and enjoyment of any Common Areas or by abandonment of his Unit.
- g. Statement of Account. Upon payment of a reasonable fee, and upon written request of any Owner or Mortgagee, prospective Mortgagee or prospective purchaser of a Unit, the Management Committee shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit; the amount of the current yearly assessment and the date that such assessment becomes or has become due; credit for advanced payments of prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums; and such statement shall be conclusive upon the Management Committee in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within twenty (20) days, all unpaid assessments which became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such a request, both the lien for such unpaid assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within the twenty

(20) day period provided therein, and thereafter, an additional written request is made by such purchaser and is not complied with within ten (10) days, and the purchaser subsequently acquires the Unit.

- h. Personal Liability of Purchaser for Assessment. Subject to the provision of subparagraph (g), a purchaser of a Unit shall be jointly and severally liable with the seller for all unpaid assessments against the Unit up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount unpaid by the purchaser for such assessment.
- i. Unimprovement Unit Exception. Notwithstanding any other provision herein, Unimproved Unit(s) shall not be assessed any annual assessments or special assessments without the prior written consent of the Owner(s) of such Unimproved Unit(s). For purposes of this Paragraph, the term "Unimproved Unit(s)" shall refer to Unit(s) upon which no dwelling has been approved for occupancy by Washington City.

19. Transition of Management. Notwithstanding anything to the contrary contained in Paragraph 17 above, Declarant may, at any time, relinquish its reserved right to select members of the Management Committee and to transfer the management of the Project to the Management Committee elected by Unit Owners (45) days prior thereto (the "Transfer Date"). Thereupon, Unit Owners shall call a meeting to elect the members of Management Committee to take office as of the Transfer Date. Declarant covenants to cooperate with Unit Owners in effecting orderly transition of management. Moreover, Declarant shall cause all Management Committee Common Expense obligations, prior to the Transfer Date, to be paid in full on or before such date. Accordingly, it is intended that the cash position of the Management Committee as of the Transfer Date be zero (0).

20. Insurance. The Management Committee shall secure, and at all times maintain, the following insurance coverage:

- a. Multi-peril policies of fire and casualty insurance, with extended coverage and all other coverage in the kinds and amounts commonly required by private institutional Mortgage investors for projects similar in construction, location, and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement costs). Each such policy shall contain the standard Mortgage clause which must be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of Mortgagees as their interests may appear. The insured shall be the Association.
- b. A comprehensive policy of public liability insurance insuring the Association, the Management Committee, the Manager, and the Unit Owners against any liability incident to ownership, use, or operation of the Common Areas and public ways of the Project, or any Unit which may arise among themselves, to the public, or to any invitees or tenants of the Project or of the Unit Owners. Limits of liability under such insurance shall be not less than Three Hundred Thousand Dollars (\$300,000.00) per occurrence, for personal property injury and/or property damage. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of any negligent act of the Association of

other Unit Owners. The scope of the coverage must include all other coverage in the kinds and amounts required by private institutional Mortgage investors for similar projects in location, construction and use.

c. The Association shall maintain fidelity coverage to protect against dishonest acts on the part of Management Committee members, Manager, employees, or volunteers responsible for handling funds belonging to or administered by the insured and shall be written in the amount sufficient to provide protection which in no event shall be less than one-half times the insured's estimated annual operating expenses and revenues. In connection with such coverage an appropriate endorsement to the policy to cover any person who the following additional provisions shall apply with respect to insurance:

- (i) In addition to the insurance and bond coverage described above, the Management Committee shall secure and at all times maintain insurance against such risks as are, or hereafter may be, customarily insured against in connection with all projects similar to the Project in construction nature of use.
- (ii) The Management Committee shall have the authority to adjust losses.
- (iii) Insurance secured and maintained by the Management Committee shall not be brought into contribution with insurance held by individual Unit Owners or their Mortgagee.
- (iv) Each policy of insurance obtained by the Management Committee shall provide:
 - (a) a standard mortgagee clause commonly accepted by private institutional Mortgage investors in the area in which the Project is located;
 - (b) a waiver (if available) of the insurer's subrogation rights with respect to the Management Committee, the Manager, the Unit Owners, and their respective servants, agents and guests;
 - (c) that cannot be cancelled, suspended, or invalidated due to the conduct of any particular Unit Owner or Owners;
 - (d) that cannot be cancelled, suspended, or invalidated due to the conduct of any member, officer, or employee of the Management Committee, or the Manager without a prior written demand that the defect be cured;
 - (e) that any "no other insurance clause" therein shall not apply with respect to insurance held individually by the Unit Owners; and
 - (f) that a Mortgage clause endorsement which must provide that the insurance carrier shall notify the first Mortgagee (or trustee) named at least ten (10) days in advance of the effective date of any reduction in, or cancellation of, the policy.

- d. Any Unit Owner may obtain additional insurance at his own expense, as long as such additional insurance does not have the effect of overriding or canceling insurance purchased by the Management Committee.
- e. The Project is not located in an area identified by the Secretary of Housing and Urban Development as an area having specialized flood hazards. In the event that at some future time the Project should be declared to be in such flood area, a blanket policy of flood insurance on the Project shall be maintained in the amount of the aggregate of the outstanding principle balance of the Mortgage loans on the Units comprising the Project, or of the maximum coverage limit available under the National Flood Insurance Act of 1968, as amended, whichever is less. The name of the insured under each required policy must be, at any given time, in the form and substance required by the Federal Home Loan Mortgage Corporation.

21. Damage to Project. In the event of damage of, or destruction of, part or all the improvements in the MILLCREEK SPRINGS SUBDIVISION PHASE I Project, the following procedures shall apply:

- a. If proceeds of the insurance maintained by the Management Committee are alone sufficient to repair or reconstruct the damaged or destroyed improvements, such repair or reconstruction shall be carried out.
- b. If less than seventy-five percent (75%) or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Management Committee are not alone sufficient to accomplish restoration, and if the Unit Owners do not, within one hundred (100) days after the destruction or damage and by a vote of at least seventy-five percent (75%), elect to repair or reconstruct the affected improvements, the Management Committee shall promptly record with the Washington County Recorder a notice setting forth such facts. Upon the recording of such notice, the provisions of Subsections one (1) through four (4) of Utah Code Annotated section 57-8-31, shall apply and shall govern the rights of all parties having an interest in the Project and any of the Units.
- c. Any reconstruction or repair which is required to be carried out by this Paragraph 21 regarding the extent of damage to or destruction of Project improvements shall be made by three MAI appraisers selected by the Management Committee. A decision by any two such appraisers shall be conclusive.

22. Certain Provisions Applicable to Declarant. Notwithstanding any other provision contained herein or the Bylaws, for so long as Declarant continues to own any of the Units, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations as a Unit Owner to pay assessments, except as herein otherwise provided, as to each Unit owned by Declarant in accordance with the Declaration:

- a. Declarant specifically disclaims any intent to have made any warranty or representation in connection with the Project or the Declaration, except as specifically set forth herein or in any agreement for sale of a Unit, and

no person shall rely upon any warranty or representation not so specifically made therein.

- b. No amendment may be made to the Declaration or the Bylaws without the written consent of Declarant so long as Declarant retains the ownership of one (1) or more Units; provided, however, that the obligation to acquire written consent of Declarant shall cease on the date two (2) years from the date of this Declaration.

23. Amendment. Except as provided below, the vote of at least sixty-seven percent (67%) of the Percentage Interest of the Unit Owners in person, or represented by proxy, at a meeting of the Association at which a quorum is present shall be required to amend the Declaration or the Record of Survey Map. Any amendments so authorized shall be accomplished through the recordation of an instrument executed by the Management Committee. In such instrument, the Management Committee shall certify that the vote required by this Paragraph for amendment has occurred. The foregoing right of amendment shall be subject to the following: Notwithstanding anything to the contrary contained in the Declaration, neither the insurance provisions of Paragraph 20, the Mortgage protection provisions of Paragraph 27, nor the maximum/minimum Percentage Interest provision of Paragraph 4, shall be amended without the written approval of all institutional first Mortgagees.

24. Consent Equivalent to Vote. In those cases in which Utah law or this Declaration requires the vote of a stated Percentage Interest for the authorization or approval of a transaction, such requirements may be fully satisfied by obtaining with or without a meeting, consents in writing to such transactions from Unit Owners who collectively hold at least the necessary Percentage Interest.

25. Eminent Domain. Whenever all or part of the Common Areas shall be taken, injured, or destroyed as a result of the exercise of eminent domain, each Unit Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto, but in any proceeding for the determination of damages, such damages shall be determined for such taking, injury, or destruction as a whole and not for each Unit Owner's interest therein. After such determination each Unit Owner shall be entitled to a share in the damages in the same portion as his Percentage Interest.

26. Services of Process. Dee A. Randall is the agent for service of process. The Management Committee shall, however have the right to appoint a successor substitute process agent. Such successors shall be appointed with a 67% vote of the owners.

27. Mortgage Protection. Notwithstanding anything to the contrary contained in the Declaration or the Bylaws:

- a. An adequate reserve fund for repair, maintenance, and replacement of those elements of the Common Areas that must be replaced on a periodic basis must be established and funded by regular monthly payments rather than by special assessments.
- b. There shall be established a working capital fund for the initial months of operation of the Project equal to a minimum amount of two months' estimated Common Areas charge for each Unit.
- c. Any Mortgage holder which comes in possession of a Unit pursuant to the remedies provided in the Mortgage of foreclosure of the Mortgage or deed (or assignment in lieu of foreclosure) shall be exempt from any "right of first refusal" or other provisions which may exist relating to sale

or lease of the Units in the Project, and no "right of first refusal" shall impair the rights of any first Mortgagee to:

- (f) foreclosure or take title to a Unit pursuant to the remedies provided in the Mortgage,
 - (ii) accept deed (or assignment) in lieu of foreclosure, in the event of default by a mortgagee, or
 - (iii) interfere with a subsequent sale or lease of the Mortgage.
- d. Any agreement for professional management of the Project, or any other contract provided for service by the Declarant, must provide for termination by either party without cause or payment of a termination fee on ninety (90) days or less written notice and a maximum contract term of no more than three (3) years.
- e. In the event of damage or destruction of any Unit, which loss exceeds One Thousand Dollars (\$1,000.00), or any part of the Common Areas, which loss exceeds Ten Thousand Dollars (\$10,000.00), the institutional holder of any first Mortgage on a Unit shall be entitled to timely written notice of any such damage or destruction. No Unit Owner or other party shall be entitled to priority over such institutional holder with respect to the distribution to such Unit Owner of any insurance proceeds, regardless of the amount of loss. Upon request of any first Mortgagee, the Association must provide a letter to said first Mortgagee wherein the Association agrees to notify the first Mortgagee or any organization it designates at the address indicated by the Mortgagee whenever:
- (i) damage to the Unit covered by the first Mortgagee's Mortgage exceeds One Thousand Dollars (\$1,000.00), or
 - (ii) damage to the Common Areas and Facilities exceeds Ten Thousand Dollars (\$10,000.00).
- f. If any Unit, or portion thereof, or the Common Areas, or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by a condemning authority, the institutional holder of any first Mortgage of a Unit shall be entitled to a timely written notice of any such proceeding or proposed acquisition. No Unit Owner or other party shall have priority over such institutional holder regardless of the amount of the condemnation award with respect to the distribution to such Unit Owner of the proceeds of any award or settlement.
- g. With the exception of a lender in possession of a Unit following default in a first Mortgage, a foreclosure proceeding of any deed, or other arrangement in lieu of foreclosure, no Unit Owner shall be permitted to lease his Unit for transient or hotel purposes. No Unit Owner may lease less than the entire Unit. Any lease agreement shall provide that the terms of the lease shall be subject in all respects to provisions of the Declaration and Bylaws and that any failure by the lessee to comply with the terms of such documents shall be at default under the lease. All leases shall be in writing. A lessee and a renter shall be treated the same.

- h. Each holder of a first Mortgage lien on a Unit who obtains title to a Unit by virtue of remedies provided in the Mortgage including, but not limited to, foreclosure of the Mortgage, or by deed of assignment in lieu of foreclosure, shall take the Unit free of unpaid charges and shall not be liable for any unpaid claims or assessments and charges against the Unit which accrue prior to the acquisition of title of such Unit by Mortgage.
- i. Any holder of a Mortgage is entitled to written notification from the Management Committee or any default by the mortgagor of such Unit in the performance of such mortgagor's obligation under the Declaration which is not cured within sixty (60) days.
- j. Unless at least seventy-five percent (75%) of the first Mortgagees (based on one vote for each Mortgage owner) of Units have given their prior written approval, neither the Management Committee, Declarant, nor Association shall:
 - (i) by act or omission, seek to abandon or terminate the Project;
 - (ii) change the pro-rata interest or obligations of any Unit for:
 - (a) purposes of levying assessments, changes, allocating distributions of hazard insurance proceeds, or condemnation awards, or for
 - (b) determining the pro-rata share of ownership of each Unit in the appurtenant Common Areas;
 - (iii) partition or sub-divide any Unit;
 - (iv) make any material amendment to the Declaration or to the Bylaws of the Association including, but not limited to, any amendment which would change the Percentage Interests of the Unit Owners in the Common Areas;
 - (v) by act or omission, seek to amend, partition, subdivide, encumber, sell, abandon, or transfer the Common Areas (the granting of easements for public utilities or for other public purposes consistent with the intended use for the Common Areas of the Project shall not be deemed a transfer within the meaning of this subparagraph);
 - (vi) use hazard insurance proceeds for losses to any property (whether to Units or to the Common Areas) for purposes other than repair, replacement, or reconstruction of such improvements, except as provided by statute in cases of substantial loss to the Units and/or the Common Areas of the Project.
- k. The holders of the first Mortgages shall have the right to examine the books and records of the Project.
- l. Whenever there is a change of ownership of a Unit, the Management Committee shall require that the new Unit Owner furnish the Management Committee with the name of the holder of the first

Mortgage affecting the Unit. The Management Committee or Manager shall maintain a current roster of the Unit Owners and of the holders of the first Mortgages affecting the Units in the Project.

28. Duty of Owner to Pay Taxes on the Unit. It is understood that each Unit (and its Percentage Interest) in the Project is subject to a separate assessment and taxation of each taxing authority and the special district(s) for all types of taxes and assessments authorized by law, and that as a result thereof, no taxes will be assessed or levied against the Project as such, except for certain personal properties thereof. Accordingly, each Unit Owner will pay and discharge any tax obligation incurred.

29. Covenant to Run with Land Compliance. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Declarant; all parties who hereafter acquire any interest in a Unit, in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner or occupant of a Unit shall comply with, and all interest in all Units shall be subject to Utah law, terms of this Declaration, the Bylaws, and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration, 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 on behalf of Unit Owners, or, in a proper case, by an aggrieved Unit Owner. By acquiring any interest in a Unit or in the Project, the party acquiring such interest consents to and agrees to be bound by, each and every provision of this Declaration.

30. Information Regarding Transferee of Unit. Any Unit Owner who sells, leases, or otherwise disposes of his Unit shall submit to the Management Committee pertinent information regarding the transferee or new occupant within one week of any transfer of title or possession on a form furnished by the Management Committee.

31. Indemnification of Management Committee. Each member of the Management Committee shall be indemnified and held harmless by the Unit Owners against all costs, expenses, and fees reasonably incurred by him in connection with any proceeding to which he may become involved by reason of his being or having been a member of said Management Committee.

32. Invalidity. The invalidity of any provisions of the Declaration, or any portion thereof, shall not be deemed to impair or affect in any manner the validity, enforceability, or effect the remainder of the Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

33. Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

34. No Merger. The easements, covenants, restrictions and other provisions contained in this Declaration shall remain in full force and effect despite the fact that all or a part of the Property may be owned by the same person from time to time, it being the intention of the undersigned to create a common scheme for the development, improvement and operation of the Project which will not be terminated by the doctrine of merger or otherwise.

35. Headings. The headings appearing at the beginning of the Paragraphs of this Declaration are only for convenience of reference and are not intended to describe, interpret, define, limit, extend, or otherwise affect the content, meaning, or intent of this Declaration.

EXHIBIT "A"

Beginning at a point located North 89°45'58" West along the Section line, 665.36 feet from the Northeast Corner of Section 15, Township 42 South, Range 15 West, Salt Lake Base and Meridian, running thence South 00°14'09" West, 1.91 feet to the point of a 280.00 foot radius curve to the left; thence along the arc of said curve, 173.40 feet through a central angle of 35°28'54" to the point of a non-tangent line; thence South 54°45'15" West, 47.45 feet; thence North 89°45'51" West, 131.34 feet; thence South 15°56'28" East, 42.28 feet; thence South 74°16'05" West, 112.00 feet; thence South 15°43'55" East, 9.97 feet to the point of a 134.00 foot radius curve to the right; thence along the arc of said curve 181.35 feet through a central angle of 77°32'27" to the point of a non tangent line; thence North 28°11'28" West, 85.00 feet; thence North 45°34'57" East, 45.79 feet; thence North 15°43'55" West, 57.84 feet; thence South 75°03'49" West, 187.66 feet; thence North 27°29'31" West, 249.49 feet; thence North 00°14'09" East, 93.40 feet to a point on the North Section line of said Section 15; thence South 89°45'58" East along said Section line, 597.18 feet to the point of beginning.

EXHIBIT B
to:
DECLARATION OF
MILLCREEK SPRINGS SUBDIVISION PHASE I

BYLAWS GOVERNING THE
MILLCREEK SPRINGS SUBDIVISION PHASE I

ARTICLE I
MANAGEMENT COMMITTEE

Section 1. **General Responsibility.** The business and property comprising of MILLCREEK SPRINGS SUBDIVISION PHASE I shall be managed by a management committee consisting of three (3) unit owners to be selected by the unit owners as hereinafter provided. Such management committee shall have all the powers, duties, and responsibilities as are now or may hereafter be provided by law, the Declaration filed contemporaneously herewith (the "**Declaration**"), and/or any amendments subsequently filed thereto, and these Bylaws as the same may from time to time be altered or amended; provided, however, the management committee may delegate its duties to a management firm and fix and pay reasonable fees or compensation therefore; provided further, that until the earlier to occur of (a) JTKR, L.L.C., a Utah limited liability company (the "**Declarant**") selling all of the units in the project owned by it or (b) two years from the filing of the Declaration, the management committee irrevocably consents that Declarant may act as the project manager and shall have all the rights, powers, duties and responsibilities conferred upon the management committee and/or the managers under Utah law, the Declaration and these Bylaws. The engagement of a property manager shall be a financial decision and subject to a vote of the unit owners.

Section 2. **Operation and Maintenance.** The committee shall be responsible for the control, operation and management of the project, in accordance with Utah law, the Declaration, these Bylaws, and such administrative, management and operational rules and regulations as the committee or owners association may adopt from time to time as herein provided, and all agreements and determinations lawfully made and entered into by the committee. The committee shall, in this connection, provide for the proper and reasonable control, operation and management of the project and of the maintenance and repair of the common areas and facilities appurtenant thereto. The operation of the project shall be conducted for the benefit of all the owners.

Section 3. **Committee Vacancies.** In case of any vacancy in the management committee, the remaining members thereof may elect a successor to hold office until the next meeting of the unit owners.

Section 4. **Officers.** The management committee shall appoint or elect from among its membership a chairman, a vice chairman, secretary, and a treasurer, who shall hold office at the pleasure of the committee. The chairman of the committee, or in his absence, the vice chairman, shall preside at all meetings of the committee and at all meetings of the unit owners. The secretary shall take and keep minutes of all meetings. He shall perform such other services as the committee may impose upon him, and shall receive such compensation as the committee may fix or approve. The treasurer shall have the custody and control of the funds of the committee, subject to the action of the committee, and shall, when requested by the chairman to do so, report the state of finances of the committee at each annual meeting of the unit owners and at any meeting of the committee. He shall perform such other services as the committee may require of him and shall receive compensation as the committee may fix or approve.

Section 5. **Regular Meetings.** A regular meeting of the committee shall be held immediately after the adjournment of each annual unit owners meeting at the place at which such unit owners meeting was

held. Regular meetings, other than the annual meeting, shall be held at regular intervals and at such places and at such times as the committee may from time to time by resolution designate. No notice need be given of regular meetings of the committee.

Section 6. **Special Meetings.** Special meetings shall be held whenever called by the Chairman, vice-chairman, or by a majority of the committee. Either written or oral notice of such special meeting shall be given not less than 24 hours in advance of said meeting; provided however, that by unanimous consent of the committee, special meetings may be held without call or notice of any time or place.

Section 7. **Quorum.** A quorum for the transaction of business at any meeting of the committee shall consist of the majority of the committee then in office.

Section 8. **Special Committees.** The management committee, by resolution, may designate one or more special committees, each committee to consist of two (2) or more of the unit owners, which exercise the power in said resolution set forth. Such special committee or committees shall have such name or names as may be determined from time to time by the management committee. Such special committees shall keep regular minutes of their proceedings and report the same to the management committee when required. The chairman of the management committee may appoint persons to fill vacancies on each of said special committees occasioned by death, resignation, removal or inability to act for any extended period of time.

ARTICLE II MEETING OF THE UNIT OWNERS

Section 1. **Annual Meeting.** The annual meeting of all unit owners shall be held at 7:00 o'clock P.M. on the third Tuesday of January each year, commencing in January of 2008, at such place as shall be stated in the notice of meeting or in a duly executed waiver of notice; provided, however, that whenever such date falls upon a legal holiday, the meeting shall be held on the next succeeding business day, and provided, further, that the management committee may, by resolution, fix the date of the annual meeting at such other date as it shall deem appropriate. At such meeting the unit owners shall elect committee members for two (2) year terms, which terms shall commence as of February 1; provided, however, that at the first election after the recording of these Bylaws two (2) of the three committee members shall be elected for terms of not more than one (1) year, which terms shall commence upon election and shall expire on the second February 1, after such election; provided, further, that the term of any duly elected appointed committee member shall not expire until his successor is elected and qualifies.

Section 2. **Voting.** At any meeting of the owners, each owner including Declarant, shall be entitled to cast one vote for each unit owned. 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 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 of the death or judicially declared incompetence of such owner or of the conveyance of such owner of this Unit. Where there is more than one record owner, any of 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 Unit 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 Unit against the owner of the Unit covered by the mortgage, then in such event and until the default is cured, the right of the owner of such Unit to vote shall be transferred to the mortgagee recording the notice of default. The mortgagee shall mean any creditor that holds a first note on the individual units.

Section 3. Meeting. 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 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 4 of an adjourned meeting, and at that meeting whatever owners are present shall constitute a quorum. Unless otherwise expressly provided in the 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.

Section 4. Special Meeting. Special meetings of the owners may be called at any time for the purpose of considering matters which, by the terms of the 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 (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.

Section 5. Calls and Notices of Meetings. The calls and notices of all meetings of the unit owners shall conform to the provisions of Article III of these Bylaws.

Section 6. Waiver of Irregularities. All inaccuracies and/or irregularities in calls notices of meeting and in the matter of voting, and method of ascertaining those present, shall be deemed waived if no obligation is made at the meeting.

ARTICLE III **CALLS AND NOTICES OF MEETINGS**

Section 1. Annual Meeting of Unit Owners. At least five (5) days, inclusive of the date of meeting before that date of any annual meeting of the unit owners, the secretary shall cause a written notice setting forth the time and place to be delivered personally or deposited in the mail, with postage prepaid, addressed to each unit owner as his last post office address as it then appears on the records of the management committee.

Section 2. Special Meetings of Unit Owners. Special meetings of the unit owners may be called by the management committee, or by one-third (1/3) in number of the unit owners, and notice of such meeting shall be given to each unit owner in writing personally, or mailed, postage prepaid, to each unit owner at his last post office address as it appears on the books of the management committee. Whenever all of the members shall meet in person, such meeting shall be valid for all purposes without call or notice, or waiver of call or notice. No call or notice of any meeting of members shall be necessary if a waiver of call and notice be signed by all of the members.

ARTICLE IV **ADMINISTRATIVE RULES AND REGULATIONS**

The committee shall have the power to adopt and establish by resolution such building management, and operational rules as the committee may deem necessary for the maintenance, operation, management and control of the project, and the committee may, from time to time by resolution alter, amend and repeal such rules. When a copy thereof has been furnished to the owners they shall be taken to be a part

hereof. Unit owners shall at all times obey such rules and see that they are faithfully observed by those persons over whom they have or may exercise control and supervision, it being understood that such rules shall apply and be binding upon all unit owners and/or occupants of the project. Rules and regulations may be altered or amended or abolished at a meeting of owners properly called and properly voted.

ARTICLE V
PAYMENT OF EXPENSES

Section 1. Assessments. Each unit owner shall pay the management committee his pro-rata portion of the cash requirements deemed necessary by the committee to manage and operate MILLCREEK SPRINGS SUBDIVISION PHASE I, upon the terms, at the time, and in the manner provided in the Declaration and herein, without any deduction on account of any setoff or claim which the owner may have against the management, and if the owner shall fail to pay any installment within one (1) month from the time when the same becomes due, the owner shall pay interest thereon at the rate of twelve percent (12%) per annum from the date when such installment shall become due to the date of the payment thereof in the manner set forth in the Declaration.

The management committee shall have discretionary powers to prescribe the manner of maintaining and operating MILLCREEK SPRINGS SUBDIVISION PHASE I and to determine the cash requirements of the management committee to be paid as aforesaid by the owners under the Declaration and these Bylaws. Every such reasonable determination by the committee, within the bounds of Utah law, the Declaration, and these Bylaws, shall, as against the owner, be deemed necessary and properly made for such purpose.

First mortgagees of all Units shall have the right to examine the books and records of the management committee and the association.

If the owner shall at any time let or sublet the unit, and shall default for a period of one (1) month in the payment of any management assessments, the management committee may, at its option and so long as such default shall continue, demand and receive from any tenant or subtenant to the owner occupying the unit the rent due or becoming due from such tenant or subtenant to the owner up to an amount sufficient to pay all sums due from the owner to the management committee, and any such payments of such rent to the committee shall be sufficient payment and discharge of such tenant or sub-tenant as between such tenant or sub-tenant and the owner to the extent of the amount of the default.

Section 2. No Waiver. The omission of the management committee, before the expiration of any year, to fix the management assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the covenants, conditions, or restrictions of the Declaration and these Bylaws, 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 shall be fixed.

ARTICLE VI
TAXES AND INSURANCE

Section 1. Taxes. It is acknowledged that each of the units and each of said unit's percentage of the undivided interest in the common areas and facilities of the project are subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, and that as a result thereof no taxes will be assessed or payable against the project as such. Each member will, therefore, in accordance with the Declaration, pay and discharge any and all taxes which may be assessed against any of said units of which he is the owner, against the percentage of undivided interests in the

common areas and facilities of any such unit, and/or against any items of personal property located in or upon any unit of which he is the owner.

Section 2. Insurance. The committee shall secure and maintain the insurance coverage on the project as required and set forth in the Declaration.

ARTICLE VII RIGHT OF ENTRY

Section 1. By the Committee. The committee and its duly authorized agents shall have the right to enter any and all of the units in case of an emergency originating in or threatening such unit or any other part of the project, whether the owner or occupant thereof is present at the time or not. The committee and its duly authorized agents shall also have the right to enter any and all of said units at all reasonable times as required for the purpose of making necessary repairs upon the common areas and facilities of the project.

Section 2. By the Owner. All unit owners and their duly authorized agents and representatives shall have the right to enter any of said units contained within the project for the purpose of performing emergency installations, alterations, or repairs to the mechanical installations, alterations, or repairs that are necessary to prevent damage or threatened damage to other units in the project; provided, however, that the unit owner affected by such entry shall first be notified thereof if available and if time permits.

ARTICLE VIII REIMBURSEMENT FOR DAMAGES

Each unit owner shall promptly perform or cause to be performed all maintenance and repair work within any of said units owned by him which, if omitted, will adversely affect the building in which said unit is located or any part of the project. Such unit owner shall be liable in damages for any failure on his part to do so. Each member shall also reimburse the committee for the full value of any repairs or replacements to the common areas and facilities made necessary through the negligence or fault of such unit owner.

ARTICLE IX NUISANCE

No unit owner shall cause, permit or suffer any nuisance to be created or carried on in any unit of which he is the owner or occupant.

ARTICLE X USE AND OCCUPANCY

Section 1. Obstruction of Common Areas and Facilities. No member shall cause or allow nor permit any person over whom he has or may exercise supervision or control to cause or allow any roadway, driveway, or sidewalk in or on the project to be obstructed or to be used for any purpose other than for ingress to or egress from said units or the project.

Section 2. Use of Unit. No owner or occupant of any of said units, shall, without the prior or written consent of the committee, occupy or use any of said units, nor permit any person over whom such owner or occupant has or may exercise supervision and control to occupy or use the same, for any purpose other than a private dwelling or to permit or suffer anything to be done or kept in or upon any of said units which would constitute a nuisance or a violation of any law, ordinance, or regulation, which

would increase the rate of fire insurance on the project or which might otherwise interfere with the rights of other owners or occupants of the project. No sign, signal, advertisement, or illumination shall be inscribed or exposed on or at any window or outside wall of the project, except upon specific approval of the management committee.

Section 3. Antennas. No radio, T.V. antenna or satellite dish shall be installed on the outside of any building captioned within the project without the prior written consent of the committee.

Section 4. Pets. No pet shall be kept or harbored in the project unless the same in each instance be expressly permitted by the management committee. In no event shall pets be permitted in any of the common areas and facilities of the project unless carried or upon a leash. The owner shall indemnify the committee and hold it harmless against any loss or liability of any kind of character whatsoever arising from or growing out of having any pet in the project. One pet under 20 pounds (such as a cat or dog) may be authorized without the consent of the committee. Legally kept aquariums of fish (containing less than 100 gallons of water) and caged small animals (such as birds, gerbils and reptiles) shall also not require the consent of the committee, so long as such animals do not become a nuisance.

Section 5. No Waiver of Strict Performance. The failure on the part of the rules, regulations, agreements, determinations and/or these Bylaws, or to exercise any right or option wherein contained, shall not constitute, nor be construed as, a waiver or relinquishment of any other right which the committee may have thereunder or which it may thereafter acquire.

ARTICLE XI **AMENDMENTS**

These Bylaws may be altered, amended, or repealed by the affirmative vote of sixty seven percent (67%) of the unit owners at any regular meeting of such unit owners, or at any special meeting if notice of the proposed alterations or repeal be contained in the notice of such special meeting.

[Signature Page Follows]

EXHIBIT C

[Insert Survey Map]

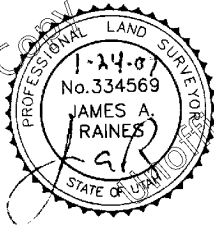
AND THAT SAID TRACT OF LAND HAS BEEN SURVEYED BY WASHINGTON AND LIMITED COMMON AREAS (INCLUDING PRIVATE ROADS) AND PUBLIC STREETS AND THAT SAME HAS BEEN CORRECTLY SURVEYED AND STAKED ON THE GROUND AS SHOWN ON THIS PLAT, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BOUNDARY DESCRIPTION

BEGINNING AT A POINT LOCATED N89°45'58"W ALONG THE SECTION LINE, 665.36 FEET FROM THE NORTHEAST CORNER OF SECTION 15, TOWNSHIP 42 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN, RUNNING THENCE S00°14'09"W, 1.91 FEET TO THE POINT OF A 280.00 FOOT RADIUS CURVE TO THE LEFT, THENCE ALONG THE ARC OF SAID CURVE, 173.40 FEET THROUGH A CENTRAL ANGLE OF 35°28'54" TO THE POINT OF A NON-TANGENT LINE; THENCE S54°45'15"W, 47.45 FEET; THENCE N89°45'51"W, 131.34 FEET; THENCE S15°56'28"E, 42.28 FEET; THENCE S74°16'05"W, 112.00 FEET; THENCE S15°43'55"E, 9.97 FEET TO THE POINT OF A 134.00 FOOT RADIUS CURVE TO THE RIGHT, THENCE ALONG THE ARC OF SAID CURVE 181.35 FEET THROUGH A CENTRAL ANGLE OF 77°32'27" TO THE POINT OF A NON TANGENT LINE; THENCE N28°11'28"W, 85.00 FEET; THENCE N45°34'57"E, 45.79 FEET; THENCE N15°43'55"E, 57.84 FEET; THENCE S75°03'49"W, 187.66 FEET; THENCE N27°29'31"W, 249.49 FEET; THENCE N00°14'09"E, 93.40 FEET TO A POINT ON THE NORTH SECTION LINE OF SAID SECTION 15; THENCE S89°45'58"E ALONG SAID SECTION LINE, 597.18 FEET TO THE POINT OF BEGINNING. CONTAINING 3.71 ACRES MORE OR LESS.

1-24-07

DATE:
BUSH AND GUDGELL INC.



JAMES A. RAINES
PROFESSIONAL LAND SURVEYOR
UTAH LICENSE NUMBER 334569

OWNER'S DEDICAITON

WE MEN BY THESE PRESENTS THAT THE UNDERSIGNED OWNERS OF THE ABOVE-DESCRIBED TRACT OF LAND HAVING CAUSED SAME TO BE SUBDIVIDED INTO LOTS AND PUBLIC STREETS TO BE HEREAFTER KNOWN AS:

MILLCREEK SPRINGS SUBDIVISION PHASE 1

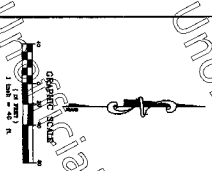
FOR GOOD AND VALUABLE CONSIDERATION RECEIVED, DO HEREBY DEDICATE AND CONVEY TO THE CITY OF WASHINGTON FOR PERPETUAL USE OF THE PUBLIC ALL PARCELS OF LAND SHOWN ON THIS PLAT AS PUBLIC STREETS AND EASEMENTS. ALL LOTS, STREETS AND EASEMENTS ARE AS NOTED OR SHOWN. THE OWNERS DO HEREBY WARRANT TO THE CITY OF WASHINGTON AND ITS SUCCESSORS AND ASSIGNS, TITLE TO ALL PROPERTY DEDICATED AND CONVEYED TO PUBLIC USE HEREIN AGAINST THE CLAIMS OF ALL PERSONS. LOTS SHOWN ON THIS PLAT ARE SUBJECT TO THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, OF THE _____ RECORDED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER ON THIS _____ DAY OF _____ 20____ AT BOOK _____ PAGE ____ SAID DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS IS HEREBY INCORPORATED AND MADE A PART OF THIS PLAT IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND THIS _____ DAY OF _____ 20____

JTKR, LLC

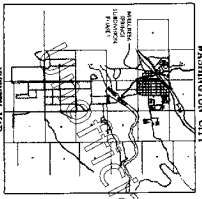
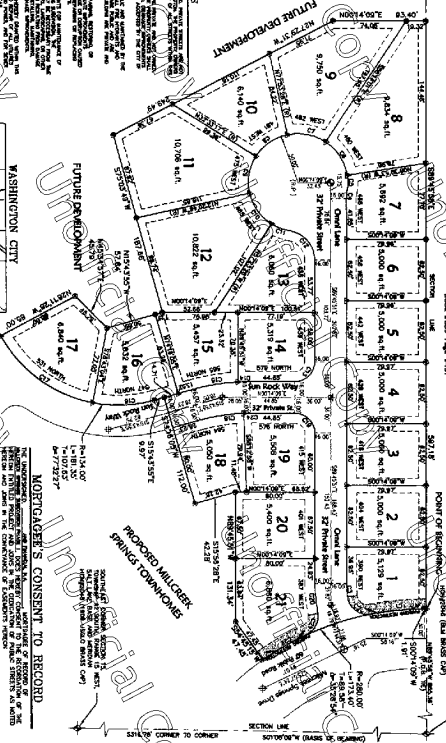
(A UTAH LIMITED LIABILITY COMPANY)

MANAGING MEMBER

ROBERT E. AND MARIOLA L. FRENCH
 Book 4005 Page 4411



GENERAL NOTES
 1. THIS PLAN IS A PRELIMINARY PLAN AND IS SUBJECT TO THE APPROVAL OF THE WASHINGTON COUNTY PLANNING COMMISSION AND THE WASHINGTON COUNTY BOARD OF SUPERVISORS.
 2. THE PLANNING COMMISSION AND BOARD OF SUPERVISORS HAVE REVIEWED THIS PLAN AND HAVE APPROVED IT FOR RECORDATION.
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CURVE TABLE

POINT	LENGTH	BEARING	ANGLE	TYPE	CHORD BEING CORRECTED
1	100.00	N 00° 00' 00" E	90° 00' 00"	RIGHT	100.00
2	100.00	N 90° 00' 00" E	90° 00' 00"	RIGHT	100.00
3	100.00	N 00° 00' 00" E	90° 00' 00"	RIGHT	100.00
4	100.00	N 90° 00' 00" E	90° 00' 00"	RIGHT	100.00
5	100.00	N 00° 00' 00" E	90° 00' 00"	RIGHT	100.00
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12	100.00	N 90° 00' 00" E	90° 00' 00"	RIGHT	100.00
13	100.00	N 00° 00' 00" E	90° 00' 00"	RIGHT	100.00
14	100.00	N 90° 00' 00" E	90° 00' 00"	RIGHT	100.00
15	100.00	N 00° 00' 00" E	90° 00' 00"	RIGHT	100.00
16	100.00	N 90° 00' 00" E	90° 00' 00"	RIGHT	100.00
17	100.00	N 00° 00' 00" E	90° 00' 00"	RIGHT	100.00
18	100.00	N 90° 00' 00" E	90° 00' 00"	RIGHT	100.00
19	100.00	N 00° 00' 00" E	90° 00' 00"	RIGHT	100.00
20	100.00	N 90° 00' 00" E	90° 00' 00"	RIGHT	100.00

LEGEND

1. ALL LOTS ARE TO BE PLANNED FOR SINGLE-FAMILY RESIDENTIAL USE.
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 20. ALL LOTS ARE TO BE PLANNED FOR SINGLE-FAMILY RESIDENTIAL USE.

MORTGAGEE'S CONSENT TO RECORD
 I, the undersigned, being the mortgagee of the above described premises, do hereby consent to the recording of this instrument.

MORTGAGOR'S CONSENT TO RECORD
 I, the undersigned, being the mortgagor of the above described premises, do hereby consent to the recording of this instrument.

MORTGAGEE'S ACKNOWLEDGMENT
 I, the undersigned, being the mortgagee of the above described premises, do hereby acknowledge the recording of this instrument.

MORTGAGOR'S ACKNOWLEDGMENT
 I, the undersigned, being the mortgagor of the above described premises, do hereby acknowledge the recording of this instrument.

SUBDIVISION CERTIFICATE
 I, the undersigned, being the owner of the above described premises, do hereby certify that the above described premises are a subdivision of the above described premises.

OWNER'S CERTIFICATE
 I, the undersigned, being the owner of the above described premises, do hereby certify that the above described premises are a subdivision of the above described premises.

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT
 I, the undersigned, being a member of the above described limited liability company, do hereby acknowledge the recording of this instrument.

Final Plat of
MILCREEK SPRINGS
SUBDIVISION PHASE I
 West SALT LAKE BASIN AND MERIDIAN
 Washington City, Utah

FINAL PLAT
 MILCREEK SPRINGS SUBDIVISION PHASE I
 SECTION 15, T-42-S R-15-W, SLS&M

BUSH & GUDCELL, INC.
 Surveyors & Planners
 1000 West 1000 South, Suite 100
 Salt Lake City, Utah 84119
 Phone (801) 477-8000 Fax (801) 477-8181
 Email: bush@gudcell.com



Washington County, Utah
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 Page 29 of 29

37

DOC # 20120025470

Restrictive Page 1 of 33
Russell Shirts Washington County Recorder
08/02/2012 10:33:22 AM Fee \$ 74.00
By SOUTHERN UTAH TITLE CO



**Declaration of Covenants, Conditions, and Restrictions for
Millcreek Springs Subdivision Phase 2**

Declarant owns certain real property in Washington County, Utah, which is more particularly described as:

See Exhibit "A" attached hereto and incorporated herein by this reference

Declarant desires and intends to protect the value and desirability of the Property as a harmonious and attractive residential subdivision. Therefore, Declarant hereby declares that all of the Property shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, and easements, and to the Plat recorded concurrently. The covenants, conditions, and restrictions in this Declaration and the Plat shall be construed as covenants of equitable servitude; shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns; and shall inure to the benefit of each Owner thereof.

**ARTICLE 1
DEFINITIONS**

The following definitions shall control in this Declaration. Any terms used in this Declaration that are not defined shall have their plain and ordinary meaning.

1.1. *"Articles"* means and refers to the Articles of Incorporation of Millcreek Springs Subdivision Owners Association. The purpose of the Articles is to establish the Association as a non-profit corporation under Utah law.

1.2. *"Association"* means Millcreek Springs Owners Association, a Utah non-profit corporation, its successors and assigns.

1.3. *"Bylaws"* means and refers to the Bylaws of Millcreek Springs Owners Association. The purpose of the Bylaws is to govern the Association's internal affairs, such as (for purposes of example but not limitation) voting, elections, and meetings.

1.4. *"Common Area"* means all real property, including the improvements thereto and facilities thereon, owned or hereafter acquired by the Association for the common use and enjoyment of the Owners.

1.5. "*Common Expenses*" shall mean and refer to all sums which are expended on the behalf of all the Unit Owners and all sums which are required by the Management Committee to perform or exercise its functions, duties or rights under Utah law, this Declaration, any management agreement for the operation of the Project, and such Rules and Regulations as the Management Committee may, from time to time, make and adopt. By the way of illustration but not limitation, Common Expenses shall include

- 1.5.1 Expense of administration, maintenance, operation, repair, or replacement of those elements of the Common Areas that must be replaced on a periodic basis, and to other reserves as may, from time to time, be established pursuant to the Declaration
- 1.5.2 Expenses agreed upon by the Association and lawfully assessed against the Owners in accordance with the Declaration
- 1.5.3 Expenses declared Common Expenses by Utah Law, this Declaration or the Bylaws; and
- 1.5.4 Any valid charge against the Project as a whole.

1.6. "*Declarant*" means the undersigned, and its heirs, successors, and assigns.

1.7. "*Declaration*" means this instrument and any amendments, restatements, supplements, or annexations thereto, which are recorded in the office of the Washington County Recorder.

1.8. "*Development Phase*" means the period of time in which the Declarant owns any Lot within the Property, or is otherwise actively marketing or selling Lots or marketing, selling, or constructing homes within the Property. Notwithstanding the foregoing, the Development Phase shall cease upon the express declaration of such cessation by Declarant in a written instrument that is recorded in the office of the Washington County Recorder, which instrument shall specify the date of cessation. If the instrument specifies no date, the surrender shall be the date of recording of the instrument.

1.9. "*Directors*", "*Board of Directors*", "*Management Committee*" or "*Board*" means the governing body of the Association.

1.10. "*Lot*" means a separately numbered and individually described plot of land shown on the Plat designated as a Lot for private ownership.

1.11. "*Lot Owner*" means and is synonymous with the term "Owner".

1.12. "*Owner*" means the entity, person, or group of persons owning fee simple title to any Lot which is within the Property.

1.13. "**Plat**" means the subdivision Plat recorded herewith prepared and certified by a Utah Registered Land Surveyor and any replacements thereof, or additions thereto.

1.14. "**Property**" means that certain real property hereinbefore described, and such annexations and additions thereto as may hereafter be subjected to this Declaration. The term "**Subdivision**" is synonymous with the term Property.

1.15. "**Single Family**" means an individual living alone, a group of two or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, who maintain a common household within a home.

1.16. "**Single Family home**" means a single family stand along house within the project.

1.17. "**Townhome**" means single-family house that is connected to three or more similar dwellings by common sidewalls.

1.18. "**Unit**" or "**Units**" means and refers to a separate physical part of the Property intended for independent use, and an individual interest in the Common Areas and Facilities appertaining to that Unit. Units are identified in the Record of Survey Map by Unit Number. Each Unit shall be attached to another Unit in the Project. Each Unit shall share a common wall with another Unit in the Project. Each Unit shall include all space up to the centerline of the common wall, mechanical equipment, and appurtenances.

ARTICLE 2 USE RESTRICTIONS AND REQUIREMENTS

2.1. **Land Use and Building Type.** All Lots, townhomes and the homes constructed thereon, shall be used only for Single Family residential purposes. No professional, business or commercial use shall be made of the same, or any portion thereof; provided, however, that the Lot restrictions contained in this section shall not be construed in such a manner as to prohibit an Owner or resident from (a) maintaining a personal professional library therein; (b) keeping personal business or professional records or accounts therein; or (c) handling personal, business or professional telephone calls or correspondence therefrom.

2.2. **Lot Size.** Lot sizes as described on the Plat are considered minimum Lot sizes and no person shall further subdivide any Lot other than as shown on the recorded plat of said subdivision. Lots may not be combined for construction of a single home.

2.3. **Care and Maintenance of Lots.** Each Owner shall be responsible for maintenance and upkeep of his Lot and shall keep the same free from rubbish, litter and noxious weeds. All structures, landscaping and improvements shall be maintained in good condition and repair at all times. In the event any Owner fails to perform this maintenance in a manner so as not to detract from the appearance of the property, or affect adversely the value or use of any other Lot, the Directors shall have the right to have maintenance performed on the Lot and the cost of said maintenance shall be added to and become part of the assessment to which such Lot is subject.

2.4. **Care and Maintenance of Common Area.** The Association shall be responsible for care and maintenance of the Common Area and improvements thereon. Any damage caused to the Common Areas and/or improvements by any Lot Owner and/or their agents, guests or invitees must be repaired by the Lot Owner as soon as possible after such damage is discovered, and in the event of failure of the Owner to make such repairs, the Association may make such repairs and the expense of such repair shall be borne by the Lot Owner.

2.5. **Hazardous Activities.** No activities shall be conducted on the Property and no improvements shall be constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue or fire pit unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

2.6. **Motorbikes.** All motorcycles, trail bikes, three-wheel powered devices, automobiles, and two or four-wheel drive recreational type vehicles are to be stored in garages, and are to be used on said streets only for ingress, egress, and access purposes and not for recreational purposes anywhere within the Property. No repairs to these vehicles may be made on the project.

2.7. **Signage.** No signs whatsoever shall be erected or maintained in the Common Areas without the prior written consent of the Management Committee, except for the following: such signs as may be required by legal proceedings, and such signs as Declarant or licensed general contractors may erect or maintain incident to the sale of Units.

2.8. **Weed Control.** Each Lot Owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and flammable materials on his Lot so as to minimize weeds, fire and other hazards to surrounding Lots, Homes, the Common Areas, and surrounding properties, and shall otherwise comply with any applicable ordinances, laws, rules, or regulations pertaining to the removal and/or control of noxious weeds. Noxious weeds shall mean and refer to those plants which are injurious to crops, animals, land, or the public health.

2.9. **Pest Control.** No Lot Owner shall permit any thing or condition to exist upon his Lot which would induce, breed, or harbor infectious plant diseases or noxious insects. Each Owner shall perform such pest control activities on his Lot as may be necessary to prevent insects, rodents, and other pests from being present on his Lot.

2.10. **Nuisances.** No noxious or offensive activity shall be carried on upon any Lot, part or portion of the Property, nor shall anything be done thereon which may be or may become an annoyance to the Subdivision.

2.11. **Safe Condition.** Without limiting any other provision of these covenants, each Owner shall maintain and keep such Owner's Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might endanger the health of or interfere with the safety or reasonable enjoyment of other Owners of their respective Lots.

2.12. **Oil and Mining Operations.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, part or portion of the Property, nor shall any oil well, gas well, tank, tunnel, mineral excavation or shaft be permitted upon or in any such Lot or portion of the Property.

2.13. **Animals, Livestock, Poultry, and Agriculture.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, part or portion of the Property, except that dogs, cats or other domesticated household pets, two (2) or less in total number may be kept in a home constructed on a Lot, provided that they are not kept, bred, or maintained for any commercial purpose. Such animals as are permitted shall be strictly controlled and kept pursuant to all applicable laws and ordinances and shall be on a leash or inside the Owner's home. Owner's shall control any barking or noise from their animals which may cause a nuisance to neighboring Owners.

2.14. **Garbage and Refuse Disposal.** No Lot or part or portion of the Property shall be used or maintained as a dumping ground for rubbish, rubble, trash, garbage or other waste. Such trash, rubbish, rubble, garbage or other waste as produced within the Property shall be kept in sanitary containers inside a structure or on a cement pad behind the required front Lot line set-back area, except when placed for collection. No rubbish, trash, papers, junk or debris shall be burned upon the Property except that trash may be burned in accordance with applicable laws and ordinances inside homes that are properly equipped with inside incinerator units.

2.15. **Sewage Disposal.** Each home shall be connected to and use the municipal sewage disposal system. No individual sewage disposal system shall be permitted on any Lot, part or portion of the Property.

2.16. **RVs, Boats, and Vehicles.** No boats, trailers, buses, motor homes, campers, recreational vehicles, or other such vehicles, shall be parked or stored upon any Lot except within an enclosed. No such vehicles shall be parked overnight on any street located within the subdivision. Trailers, motor homes, and trucks over 9,000 pounds GVW are not allowed to be stored upon any vacant Lot or street or road area adjacent to the Property. Motor vehicles that are inoperable shall not be permitted to remain upon any street or Lot or road areas adjacent thereto. In the event an inoperable motor vehicle remains upon any Lot or road area for a period exceeding thirty (30) days, the Declarant, the Association, or other Lot Owners residing within the Property may remove the inoperable motor vehicle after a ten (10) day written notice. The cost of such removal shall attach to the vehicle and the Lot as a valid lien in favor of the persons, entities, or parties causing such removal. For the purpose of this section, "inoperable motor vehicle" shall mean any motor vehicle that is unable to operate in a normal manner upon the streets under its own power, or is unlicensed or unregistered for a period of not less than six (6) weeks.

2.17. **Rules and Regulations.** The Board of Directors shall have the authority to promulgate rules and regulations for the governance of the Property and persons within the Property. These rules of the Association shall be compiled and copies shall be made available by the Directors for inspection and copying at a reasonable cost.

2.18. **Leases and Leasing.** Leasing is permitted within the Property. Any lease or rental agreement shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws and any rules and regulations of the Association and that any failure by lessee to comply with the terms of such documents shall be a default under the lease. The Board of Directors of the Association may adopt, by rule or resolution, provisions regarding the leasing or renting of homes within the Property, including, but not limited to requiring minimum lease periods or otherwise prohibiting any the leasing or renting within the Property if the same is necessary to keep the Property from deteriorating into a transient-like community of non-owner occupied homes.

2.19. **Declarant Business, Construction, Marketing, and Sales.** It shall be expressly permissible for Declarant, or its written designee, to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction of homes and sale of Lots during the Development Phase, and upon such portion of the Property including lots or Common Area, if any, as Declarant deems necessary, including but not limited to, a business office, storage areas, construction yard, signs,

model units and sales offices. As part of the overall program of development of the Property into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of any lots or any Common Area and facilities thereon, including any Common Area, community buildings, without charge during the sales and construction period to aid in its marketing activities.

ARTICLE 3
ARCHITECTURAL CONTROL

3.1. **Architectural Control Committee.** Prior to the commencement of any excavation, construction or remodeling of any structure or of any addition to any structure, or modification of the natural topography of any Lot, or installation of fences or landscaping elements, approval of the Architectural Control Committee ("ACC") is required.

3.1.1. **Appointment and Membership.** The ACC shall consist of a minimum of three (3) persons. During the Development Phase, the Declarant shall be entitled to appoint all members of the ACC. Thereafter, the ACC shall consist of the Board of the Association or of three (3) persons appointed by the Board.

3.1.2. **Procedural Rules and Regulations.** The ACC shall adopt reasonable rules and regulations for the conduct of its proceedings and to carry out its duties and may fix the time and place for its regular meetings and such extraordinary meetings as may be necessary, and shall keep written minutes of its meetings, which shall be open for review and inspection upon request. The ACC shall, by majority vote, elect one of its members as chairman and one of its members as secretary and the duties of each will be such as usually appertain to such offices. Notice of meetings shall be given to Owners who have made application to the ACC for approval of plans.

3.1.3. **Submission of Plans.** Two (2) complete sets of building plans and specifications shall be filed with the ACC, together with a site or plot plan showing grading, landscaping and all lighting, indicating the exact part of the building site which the improvements will cover, with such a fee as the ACC may determine from time to time, and an application and such supporting material, such as samples of building materials, as the ACC deems necessary. No work shall commence unless and until the ACC shall endorse on one set of such plans its written approval that such plans are in compliance with the covenants herein set forth and with the standards herein or hereafter established by said ACC pursuant hereto. The second set of such plans shall be filed as a permanent record with the ACC.

3.1.4. **Rights of Approval.** The ACC shall have the right to refuse or approve any plans and specifications and shall have the right, in so doing, to take into consideration the suitability of the proposed building, the materials of which it is to be built, the site upon which

it is proposed to be erected, the harmony thereof with the surroundings, and the effect of said building, or other structure so planned, on the outlook from adjacent or neighboring property.

3.1.5. Architectural Standards. In addition to the architectural standards and guidelines established in this Article, the ACC may promulgate and maintain a list of standards for guidance in approving or disapproving plans and specifications pursuant to this Article.

3.1.6. Time Frame for Action. In the event the ACC fails to approve or disapprove in writing any plans within sixty (60) days after such plans are properly submitted to it for consideration in accordance with Section 3.1.3, then approval shall be deemed to have been given.

3.1.7. Non-Liability. The ACC shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article, even where approval of any design may technically violate this Declaration. Any errors or omissions in the design of any building, other improvement or landscaping and any violation of any governmental ordinance are the sole responsibility of the Lot Owner and the Lot Owner's designer, architect, or contractor. The ACC's review of plans shall in no way be concerned with structural or mechanical integrity or soundness. The non-liability provided to the ACC in this Article shall extend to Declarant.

3.1.8. Waiver. The approval of the ACC of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the ACC to disapprove any similar plans and specifications subsequently submitted.

3.1.9. Compensation. Unless authorized by resolution of the Board, the members of the ACC shall not receive any compensation for services rendered. Members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Committee function or duty. Professional consultants retained by the ACC shall be paid such compensation as the ACC determines.

3.1.10. ACC Enforcement. The ACC may levy a fine or penalty of up to Five Hundred Dollars (\$500.00) per day against any Owner who fails to refrain from violating these covenants or any rule of the ACC. The ACC shall provide five (5) days written notice and opportunity for the Owner to cure the violation prior to levying such fine or penalty. All fines and penalties levied and attorney fees, expenses, and costs incurred in collecting such fines and/or penalties shall constitute a lien on the Owner's Lot, and shall also be a personal obligation of the Owner, enforceable at law, until such payment therefor is made. Enforcement under this provision shall be in addition to any mechanism of enforcement provided in this Declaration or by applicable law.

3.1.11. Declarant Exemption. Declarant shall be exempt from the provisions, restrictions, and requirements of this Article, as the same exists or as it may be amended, supplemented, or replaced in accordance with other provisions of the Declaration.

3.2. Governmental Permit Required. No home, accessory or addition to a home, other structure or building shall be constructed or maintained, and no grading or removal of natural vegetation or change in natural or approved drainage patterns or installation of fencing or landscaping elements shall occur on a Lot until any required permit or required approval therefor is obtained from the appropriate governmental entity following submission to the appropriate governmental entity of such information as it may require. The granting of a permit or approval by any governmental entity with respect to any matter shall not bind or otherwise affect the power of the ACC to refuse to approve any such matter.

3.3. Design Restrictions and Guidelines. In order to promote a harmonious community development and protect the character of the Property, the following guidelines, together with any guidelines hereafter established by the ACC, are applicable to the Property:

3.3.1. Purpose and Intent. The intent of these restrictions and guidelines, and any guidelines hereafter established by the ACC pursuant to this Declaration, is to encourage a blending of styles within the Property with the natural surroundings and prevailing architecture of the created environment of the Property. These standards allow design latitude and flexibility, while ensuring that the value of the Property will be enhanced through the control of site planning, architecture and landscape elements. The restrictions and guidelines serve as an evaluative aid to Owners, builders, project developers, design professionals, City staff, the Planning Commission, City Council and the ACC in the design review of individual, private and public developments within the Subdivision. The Washington City Zoning Regulations will apply for any area of design not addressed in these restrictions and guidelines or any guidelines hereafter established by the ACC pursuant to this Declaration.

3.3.2. Permitted Structures. The only building or structure permitted to be erected, placed or located on any Lot within the Subdivision shall be a detached single family home placed within the building envelope for each Lot and not to exceed the height requirements found in this section. Each home must include a minimum two car, private, enclosed and attached garage. All construction shall be of new materials. All structures shall be constructed in accordance with the zoning and building ordinances of Washington City, Utah, in effect from time to time.

3.3.3. Minimum Area. The minimum total square footage of living area on the ground floor located within the building envelope and foundation for any single-story residential home constructed on any Lot within the Property shall be not less than 1,800 square feet, exclusive of porches, balconies, patios and garages. Two-story homes shall have a

minimum of 1,400 square feet on the main level, with a total square footage of not less than 2,100 square feet, exclusive of porches, balconies, patios and garages.

3.3.4. Setbacks. Minimum setback standards shall be in accordance with the setback standards established by the applicable zoning and subdivision ordinances of Washington City, Utah.

3.3.5. Building Height. Maximum building height shall be in accordance with the standards established by the applicable zoning and subdivision ordinances of Washington City, Utah.

3.3.6. Facades. Facades shall be stucco, masonry, brick or stone, with accents of brick, stone, or such other material as approved by the ACC.

3.3.7. Roof Materials. Roof material shall be limited to slate, clay, or concrete tiles. Colors shall be subdued earth tones or such other colors as may be allowed by the ACC.

3.3.8. Reflective Exterior Surfaces or Materials. No reflective exterior surfaces or materials shall be used. Sheet metal, flashing, vents and pipes must be colored or painted to match the material to which they are attached or from which they project.

3.3.9. Colors. Base building colors shall be in earth tones. Pastels or high gloss finishes may not be used. Complementary accent colors can be used on facia, window trim, shutters and doors.

3.3.10. Prohibited Structures. Dome structures, log homes, pre-manufactured homes; re-located homes; and Earth or Berm homes of any type are not allowed.

3.3.11. Temporary or Other Structures. Except as otherwise provided herein, no structure of a temporary nature, and no trailer, bus, basement, outhouse, tent, shack, garage, shed, or other outbuilding shall be used at any time as a home either temporarily or permanently, nor shall any such structures be erected or placed on the Property at any time. No old or second-hand structures shall be moved onto any of said Lots. It is the Declarant's intention that all homes and other buildings to be erected within the subdivision be new construction, of good quality, workmanship, and materials.

3.3.12. Accessory Buildings. Storage or utility buildings are allowed, provided, however, that such buildings are of new construction, of a color that complies with the architectural guidelines set forth in this Declaration, and are approved by the ACC prior to construction or placement on any Lot. The ACC may establish reasonable rules, regulations and guidelines, including height and size limitations, to govern the placement and construction of such buildings.

3.3.13. Driveways and Parking. Each driveway on a Lot shall be constructed out of cement, brick, concrete, or interlocking pavers. Cinders, sand, gravel, asphalt or dirt shall not be permitted for driveway material in the front and side yard area of any Lot. The driveway in the front and side yard areas of each Lot shall be in a color which blends with the exterior of the structure located on such Lot.

3.3.14. Fencing and Walls. Fencing, walls and other barriers shall be approved by the ACC and constructed of an approved material and color. No fences shall be constructed in the front setback area. Retaining walls are restricted to a maximum height of five (5) feet, unless otherwise approved by the ACC. The ACC may condition approval of a retaining wall higher than five (5) feet on the wall being tiered and/or landscaping being installed to hide the retaining wall.

3.3.15. External Illumination. Light used to illuminate garages, patios, parking areas or for any other purposes, shall be so arranged as to reflect light away from adjacent homes and away from the vision of passing motorists. Low level outdoor illumination may be used for particular landscape features (trees, rock formations, etc.).

3.3.16. External Television or Other Antennas. Except for satellite dishes which do not exceed one meter in diameter, antennas for radio, television, or device for the reception or transmission of radio, microwaves or other similar signals are restricted to the attic or interior of the home. To the extent not prohibited by law, Owners must obtain prior approval from the ACC as to the location where a permitted satellite is to be installed and every attempt must be made to install the same in a location where it is not visible from neighboring properties. It is mandatory that all homes be pre-wired for cable reception.

3.3.17. Location of Air Conditioning, Heating, and Soft Water Equipment. Air conditioning, heating equipment, and soft water tanks must be screened from view so as not to be visible from neighboring property or from the streets of the development, and shall be insulated for sound attenuation. Air conditioning units are not permitted on roofs or through windows.

3.3.18. Utility Meters. Utility meters shall be placed in as inconspicuous a location as possible. Locations of meters are to be shown on the plans, and meters must be screened from view from neighboring property. Exposed piping should be painted to match exterior colors of the home. The area immediately around the meters should be cleared to allow for access. Electric meters, switches, or circuit breaker boxes are not to be located in the same enclosure with the gas meter and regulator. Enclosures for gas meters and regulators are to be vented in compliance with the Uniform Building Code.

3.3.19. Mailboxes. Declarant shall install cluster mailboxes. Said cluster mailboxes shall be the only allowed mail receptacles.

3.3.20. External Apparatus. No Lot Owner shall cause or permit anything (including, without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the ACC.

3.3.21. Landscaping. Landscaping shall be completed in accordance with the landscape plan submitted to and approved by the ACC prior to construction of the home, and may include but shall not be limited to the preparation for the planting of lawn, grass or other appropriate ground cover, and appropriate shrubbery. Each landscape plan shall include and provide for the planting of trees in the front yard which shall be maintained by the Lot Owner. The ACC shall established a master design plan to govern the types and species of trees that shall be allowed and the placement of such trees for the purpose of establishing a street-scape on individual streets within the Subdivision. Lots which are to be landscaped in a desert motif must be approved by the ACC. Limited use of cinders may be made in the landscaping on a Lot, only as approved by the ACC. The ACC may establish reasonable rules, regulations and guidelines to govern landscaping design. The approval of any landscape plan or design by the ACC is solely an approval of the plan or design for aesthetic purposes and is in no way an approval of the design for drainage or other issues, which are the sole responsibility of a Lot Owner to address and ensure in accordance with applicable law.

3.3.22. Planting and Gardening. Planting and gardening is allowed provided that gardens and planting areas are continuously maintained and do not become vacant areas that allow for the growth of noxious weeds.

3.3.23. Slope and Drainage Control. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels. The slope control areas of each Lot and all improvements in them shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Lot Owners are solely responsible to see that no nuisance or damage is created by drainage location or flow to any adjacent property.

3.3.24. Lateral and Subjacent Support and Drainage. An Owner's activities which affect the lateral or subjacent support, or both, of adjacent landowners shall be responsible for damages proximately caused by such activities. Owners shall be responsible for all damage proximately caused by drainage from their Lot(s) to adjacent landowners.

3.3.25. Signs: Commercial Activity. Except for one "For Rent" or "For Sale" sign of not more than two (2) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any Lot or any portion of the Property. The Association shall have the right to remove any sign that is outside

of a Lot Owner's home and which is in violation of this section. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the properties. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles, Bylaws and rules and regulations, as the same may be amended from time to time.

3.4. Construction and Contractor Provisions. In order to promote a harmonious community development and protect the character of the Subdivision, the following guidelines which are applicable to the Property:

3.4.1. Completion of Construction. The construction of any building on any portion of the Property shall be continuously and diligently pursued from and after the commencement of such construction, and in any event shall be substantially completed within six months after such commencement. Notwithstanding the foregoing, and unless good cause is shown to the ACC, every Lot Owner shall complete construction of their home within eighteen months after they have been conveyed their Lot. The ACC may establish a schedule of fines for Lot Owners who fail to complete construction within the time frames required herein.

3.4.2. Building Materials Storage. No Lot, part or portion of the Property shall be used or maintained as storage for building materials except during a construction phase. Once a home is occupied or made available for sale all building materials shall be removed or stored inside such home, out of public sight.

3.4.3. Landscaping. Front yard landscaping shall be complete prior to occupancy.

3.4.4. Soils Test. Lot Owners are encouraged to and Declarant strongly recommends that they obtain a soils test and recommendation on foundation from a Utah registered engineer prior to construction. The ACC may require that the Lot Owner obtain a soils test and recommendation on foundation prior to the final approval. Furthermore, the ACC may condition final approval following the recommendations set forth in the soils test document. By approving the commencement of construction after review of any soils test and recommendation, the ACC is not warranting and shall not be deemed to have warranted the results of such test or recommendation. Lot Owners assume all responsibility for any damage or issues caused by soil or water conditions on their Lot. Declarant discourages the building and construction of basements.

3.4.5. Damages. Any damage inflicted on existing improvements such as curbs, gutters, streets, concrete sidewalks and such, by the Owner and/or their agents of any particular Lot in the subdivision must be repaired within thirty (30) days after such damage is discovered, and the expense of such repair shall be borne by the purchaser or Owner.

3.4.6. Maintenance of Lot During Construction. Contractors or subcontractors as owner/builders must provide on-site dumpsters during construction and are required to clean up the site daily to maintain a clean work site during construction. Dirt or mud from the construction site or elsewhere, dispersed, directly or indirectly, on the public streets within the Property must be cleaned up within twenty-four (24) hours by the contractor or subcontractor as owner/builder. The ACC may levy up to a Five Hundred Dollar (\$500) fine against a violator of this subsection and/or the Owner of the Lot for each day of a continuing violation. The fine shall be a charge on the land and shall be a continuing lien on the Lot.

3.5 **Declarant Liability; Release and Indemnification.** Declarant is not an insurer of the suitability of any Lot for construction and assumes no responsibility whatsoever for any construction undertaken on any Lot, including but not limited to any soils conditions existing on any Lot. Each Lot Owner covenants for himself and his successors and assigns that he shall and hereby does assume all risks associated with the soil conditions existing on the Lot, including, but not limited to, the risk of property damage, personal injury, or other loss arising therefrom and releases and shall indemnify and hold harmless the Association, the Declarant, and each of their respective officers, directors, partners, members, predecessors, successors, assigns, parents, affiliates, subsidiaries, and the agents and employees of any of them, from any liability, claims, or expenses, including attorneys' fees, arising from any such property damage, personal injury, or other loss.

ARTICLE 4

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

4.1. **Membership.** Each Lot Owner shall be a member of the Association. Membership in the Association automatically transfers upon conveyance of a Lot by the recorder Owner thereof to another person or entity.

4.2. **Voting Rights; Classes.** The Association shall have one class of voting membership. All members are entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, the group of such persons shall be a member. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

ARTICLE 5

FINANCES AND OPERATIONS

5.1. **Creation of Lien and Personal Obligation of Assessment.** The Declarant and each subsequent Owner of any Lot by acceptance of a deed or conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay

to the Association, assessments or charges and interest, costs of collection and reasonable attorney fees, as hereinafter provided. All such amounts shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of (a) the person who was the Owner of such Lot at the time when the assessment fell due and (b) successors-in-title who took title when assessments were delinquent.

5.2. **Purpose of Assessments.** The assessments levied by the Association shall be used by the Association for the improvement, maintenance, repair, and preservation of the Common Area. The assessments must provide for but are not limited to, the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing and maintaining the Common Area; the payment of administrative expenses of the Association; payment of insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of the Common Area which must be replaced on a periodic basis; the payment of any professional services deemed necessary and desirable by the Board; and other amounts required that the Board shall determine to be necessary to meet the primary purposes of the Association.

5.3. **Calculation of Annual Assessments.** The Board of Directors shall prepare a budget before the close of each fiscal year of the Association for the purpose of calculating and establishing the annual assessments for the subsequent fiscal year. Annual assessments for common expenses shall be based upon the estimated net cash flow requirements of the Association to cover items including, without limitation, the cost of routine maintenance and operation of the Common Area; expenses of management; premiums for insurance coverage as deemed desirable or required by Utah State Law; landscaping, care of grounds, common lighting within the Common Area; insurance, wages; common water and utility charges for the Common Area; legal and accounting fees; management fees; expenses and liabilities from a previous assessment period; and the supplementing of the reserve fund for general, routine maintenance, repairs, and replacement of the Common Area on a periodic basis.

5.3.1. Townhouse and single family homes may be assessed at different rates. However, the Board of Directors must provide reasoning for the difference such as the insurance requirements of the townhomes are different than the single family homes.

5.4. **Insurance.** The board shall secure, and at all times maintain, insurance according to Utah State Law or the following insurance coverage:

5.4.1. Multi-peril policies of fire and casualty insurance, with extended coverage and all other coverage in the kinds and amounts commonly required by private institutional Mortgage investors for projects similar in

construction, location, and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement costs). Each such policy shall contain the standard Mortgage clause which must be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of Mortgagees as their interests may appear. The insured shall be the Association.

5.4.2. A comprehensive policy of public liability insurance insuring the Association, the Management Committee, the Manager, and the Unit Owners against any liability incident to ownership, use, or operation of the Common Areas and public ways of the Project, or any Unit which may arise among themselves, to the public, or to any invitees or tenants of the Project or of the Unit Owners. Limits of liability under such insurance shall be not less than Three Hundred Thousand Dollars (\$300,000.00) per occurrence, for personal property injury and/or property damage. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of any negligent act of the Association or other Unit Owners. The scope of the coverage must include all other coverage in the kinds and amounts required by private institutional Mortgage investors for similar projects in location, construction and use. c. The Association shall maintain fidelity coverage to protect against dishonest acts on the part of Management Committee members, Manager, employees, or volunteers responsible for handling funds belonging to or administered by the insured and shall be written in the amount sufficient to provide protection which in no event shall be less than one-half times the insured's estimated annual operating expenses and revenues. In connection with such coverage an appropriate endorsement to the policy to cover any person who the following additional provisions shall apply with respect to insurance:

- i. In addition to the insurance and bond coverage described above, the Management Committee shall secure and at all times maintain insurance against such risks as are, or hereafter may be, customarily insured against in connection with all projects similar to the Project in construction nature or use.
- ii. The Management Committee shall have the authority to adjust losses.
- iii. Insurance secured and maintained by the Management Committee shall not be brought into contribution with insurance held by individual Unit Owners or their Mortgagee.

- iv. Each policy of insurance obtained by the Management Committee shall provide:
 - a) standard mortgagee clause commonly accepted by private institutional Mortgage investors in the area in which the Project is located;
 - b) a waiver (if available) of the insurer's subrogation rights with respect to the Management Committee, the Manager, the Unit Owners, and their respective servants, agents and guests;
 - c) that cannot be cancelled, suspended, or invalidated due to the conduct of any particular Unit Owner or Owners;
 - d) that cannot be cancelled, suspended, or invalidated due to the conduct of any member, officer, or employee of the Management Committee, or the Manager without a prior written demand that the defect be cured;
 - e) that any "no other insurance clause" therein shall not apply with respect to insurance held individually by the Unit Owners; and
 - f) that a Mortgage clause endorsement which must provide that the insurance carrier shall notify the first Mortgagee (or trustee) named at least ten (10) days in advance of the effective date of any reduction in, or cancellation of, the policy.
- v. Any Unit Owner may obtain additional insurance at his own expense, as long as such additional insurance does not have the effect of overriding or canceling insurance purchased by the Management Committee.
- vi. The Project is not located in an area identified by the Secretary of Housing and Urban Development as an area having specialized flood hazards. In the event that at some future time the Project should be declared to be in such flood area, a blanket policy of

flood insurance on the Project shall be maintained in the amount of the aggregate of the outstanding principle balance of the Mortgage loans on the Units comprising the Project, or of the maximum coverage limit available under the National Flood Insurance Act of 1968, as amended, whichever is less. The name of the insured under each required policy must be, at any given time, in the form and substance required by the Federal Home Loan Mortgage Corporation.

5.5. Special Assessments for Capital Improvements. In addition to the annual assessments, the Association may levy in any assessment year a special assessment, applicable to that year only. Special assessments may only be levied to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Area. Special assessments must have the assent of sixty percent (60%) of the votes of the Lot Owners voting in person or by proxy, at a meeting duly called for this purpose.

5.6. Uniform Rate of Assessment. Assessments must be fixed at a uniform rate for the townhouse and another fixed uniform rate for the single family home; provided, however, that assessments shall not accrue against the Declarant or Lots owned by the Declarant.

5.7. Date of Commencement of Annual Assessments; Due Dates.

5.7.1. The Board shall establish the assessment due dates under which assessment shall be paid on a monthly, quarterly, or annual basis.

5.7.2. The assessments provided for herein shall commence to accrue on the first day of the month following conveyance of a Lot to a bona fide purchaser. The first assessment shall be adjusted according to the number of months remaining in the calendar year.

5.7.3. At least thirty (30) days prior to the commencement of each new annual assessment period, the Directors shall send or cause to be sent a written notice of the annual assessment to each Owner subject thereto, and on which date(s) the assessment shall be due and payable. This notice shall not be a pre-requisite to validity of the assessment; however, no interest or late charges may accrue against any Lot in the absence of such a notice.

5.7.4. The Directors shall prepare a roster of Lot Owners in the Subdivision and the assessments applicable thereto at the same time that it shall fix the amount of the assessment. This roster shall be kept by the Secretary of the Association, who shall record payments of assessments and shall allow inspection of the roster by any Lot Owner at reasonable times.

5.7.5. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

5.8. Effect of Nonpayment of Assessment; Remedies of Association.

5.8.1. Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of twelve percent (12%) per annum (or such lesser rate as the Directors shall set by resolution) until paid. In addition, a late fee for each delinquent installment that shall not exceed twenty percent (20%) of the delinquent installment. There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and reasonable attorney fees incurred in enforcing and collecting said delinquent assessment.

5.8.2. To enforce payment of the assessment, interest, and late fees, the Directors may, in the name of the Association, (a) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment; (b) foreclose the lien against the property in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law; (c) restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent member; (d) suspend the voting rights of the Owner for any period during which any assessment or portion thereof against the Owner's Lot remains unpaid; and/or (e) accelerate all assessment installments that will become due within the subsequent twelve (12) months so that all such assessments for that period become due and payable at once. The acceleration provision in subsection (e) may only be invoked against an Owner who has been delinquent in paying any assessment or installment two (2) or more times within a twelve (12) month period.

5.8.3. A power of sale is hereby conferred upon the Association that it may exercise. Under the power of sale the Lot of an Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as Trustee for purposes of power of sale foreclosure.

5.8.4. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of the Lot.

5.9. **Subordination of Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve an Owner from personal liability for assessments coming due after he takes title or from the lien of such later assessments.

5.10. **Books, Records, and Audit.** The Association shall maintain current copies of the Declaration, Articles, Bylaws, any rules and regulations, and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection by Lot Owners and insurers as well as by holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. A Lot Owner or holder, insurer or guarantor of a first mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

ARTICLE 6 ENFORCEMENT

6.1. **Violation Constitutes Nuisance.** Every act or omission whereby any restriction, covenant or condition set forth in this Declaration is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by appropriate legal action by the Declarant, the Association, or a Lot Owner or Owners. The remedies provided for hereunder shall be deemed cumulative and not exclusive.

6.2. **Enforcement.**

6.2.1. Each and all of the restrictions, covenants and conditions contained in this Declaration is and are for the benefit of the Declarant, the Association, and each Owner of any Lot, part or portion of the Property. Each such restrictive covenant and condition shall inure to the benefit of and pass with each and every Lot, part or portion of the Property and shall apply to and be binding upon each and every successor in interest. Said restrictions, covenants and conditions are and shall be deemed covenants of equitable servitude, and the actual or threatened breach thereof, or the continuance of any such breach, or compliance therewith, may be enforced, enjoined, abated, or remedied by appropriate proceedings at law or in equity by the Declarant, the Association, or any Lot Owner; *provided, however,* that no such breach shall affect or impair the lien of any bona fide mortgage or trust deed which shall have been given in good faith and for value, except that any subsequent Owner of said Lot, part or

portion of the Property shall be bound and obligated by the said restrictions, covenants and conditions, whether such ownership is obtained by foreclosure, at a trustee's sale, or otherwise.

6.2.2. The Board may levy a fine or penalty not to exceed fifty percent (50%) of the amount of the maximum annual assessment against any Owner who fails to refrain from violation of these covenants or a rule of the Association. A fine may be levied for each day of a continuing violation. All attorney fees and costs incurred in any such action, and all expenses incurred and any fines levied, shall constitute a lien on such Owner's Lot, and shall also be a personal obligation of said Lot Owner, enforceable at law, until such payment therefor is made. The Board shall provide five (5) days written notice and opportunity for the Owner to cure the violation prior to levying such fine or penalty. For purposes of this section, any violation that continues for more than thirty (30) days after written notice of the violation is provided constitutes a separate and continuing violation. No further notice is required to be given to an Owner for a continuing violation.

ARTICLE 7 EASEMENTS

7.1. **Easements.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation, maintenance or replacement of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Lot Owner, except for those improvements for which a public authority or utility company is responsible. The Lot Owner shall from time to time as may be reasonably required grant rights over, across, on, under and upon these easements for such additional uses and services as may be provided from time to time by a public authority or private utility company.

7.2. **Repair Easements.** Each Lot shall be subject to an easement for access to make repairs upon adjoining Lots and structures; provided however, that: (a) any damage caused by such entry shall be repaired at the expense of the Owner whose property was the subject of the repair work which caused the same; (b) any such entry shall be made only at reasonable times and with as little inconvenience as possible to the Owner of the entered Lot; and (c) in no event shall said easement be deemed to permit entry into the interior portion of any home.

7.3. **Easements of Record.** The easements provided for in this Article and elsewhere in this Declaration shall in no way affect any other recorded easement.

ARTICLE 8
AMENDMENT AND EXPANSION

8.1. **Amendment.** This Declaration may be amended, modified, extended, or revoked, in whole or in part, upon the written consent of Lot Owners holding at least seventy-five percent (75%) of the votes of the Association. Any proposed amendment shall be sent to every Lot Owner at least thirty (30) days in advance of seeking such consents and consents must be obtained within a 180-day period thereafter. Any amendment, modification, termination, or revocation shall be immediately effective upon recording in the office of the Washington County Recorder a copy of such amendment, modification, termination, or revocation accompanied by a verified certificate of the Secretary of the Association stating that the required number of consents were obtained and that such consents will be placed on file in the Association's office. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. Notwithstanding the above, the Declarant may unilaterally amend, modify, extend, or revoke this Declaration, in whole or in part, during the Development Phase.

8.2. **Amendment by Owners During Development Phase.** No amendment made by the Lot Owners during the Development Phase shall be effective unless the Declarant provides its prior express written consent to such amendment, which consent is within Declarant's sole and absolute discretion.

8.3. **Annexation/Expansion.** The Declarant may unilaterally subject additional property to this Declaration. The Declarant shall indicate its intent to have such property bound by this Declaration on the plat of such additional property and shall record a declaration of annexation including and subjecting such property to this Declaration. Thereafter, such additional property shall be considered as part of the Property in all respects, and lots therein shall constitute Lots under this Declaration. This right of the Declarant shall be assignable to one or more assignees.

8.4. **Mingle.** The previous phases of the Millcreek Master Plan development are not subject to this declaration. If allowed by the other declaration, the previous phases of the Millcreek Master Plan Development may be annex into this Declaration. Thereafter, such previous phases shall be considered as part of the Property in all respects, and lots therein shall constitute Lots under this Declaration.

ARTICLE 9
GENERAL PROVISIONS

9.1. **Duration of Covenants.** The covenants, conditions, and restrictions contained herein shall run with and bind the land for a period of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, subject to amendment as herein set forth.

9.2. **Notices.** Any notice required under the provisions of this Declaration to be sent to any Lot Owner shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Owner. Lot Owners shall be responsible for providing their addresses to the Board, and, unless otherwise indicated by a Lot Owner, the address for notice to Lot Owners shall be the mailing address designated for the Owner's Lot.

9.3. **Construction and Severability.** All of the covenants, conditions, and restrictions contained in this Declaration shall be construed together. Invalidation of any one of said restrictions, covenants or conditions, or any part thereof, shall not affect the enforceability or applicability any of the remaining restrictions, covenants or conditions, or parts thereof.

9.4. **Assignment of Powers.** Any and all rights and power of the Declarant herein contained may be delegated, transferred or assigned.

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


9.6. **Waivers.** No provision contained herein shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations that may occur.


9.7. **Topical Headings.** The topical headings contained herein are for convenience only and do not define, limit, or construe the contents of these covenants.

IN WITNESS WHEREOF, the undersigned has hereunto executed this Declaration this
30th day of JULY, 2012.

DECLARANT:

MILL GATE HOLDINGS, L.L.C.,
a Utah limited liability company

By: 

Its: 

[Notary acknowledgement on following page]

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On this 30th day of JULY, 2012, before me personally appeared PAUL J. REAM, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is a Member [the Manager] of Mill Gate Holdings, L.L.C., a Utah limited liability company and that the foregoing document was signed by him on behalf of that Company by proper authority and he acknowledged before me that the Company executed the document and the document was the act of the Company for its stated purpose.

Marissa B. Carter
NOTARY PUBLIC
Address: ST. GEORGE, UT
My Commission Expires: 11-21-15



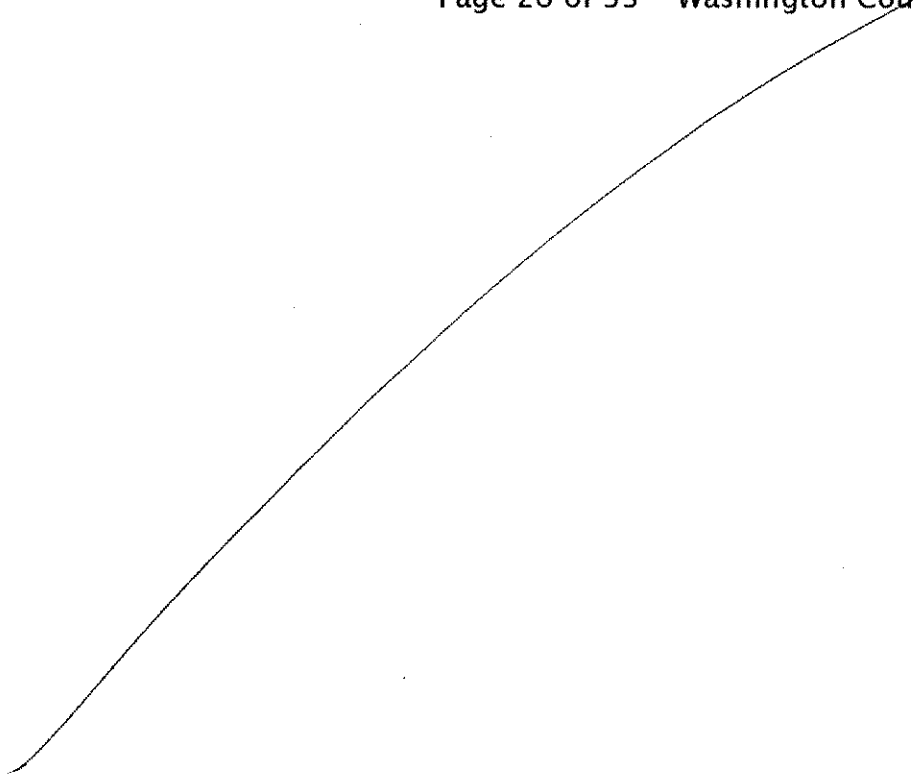
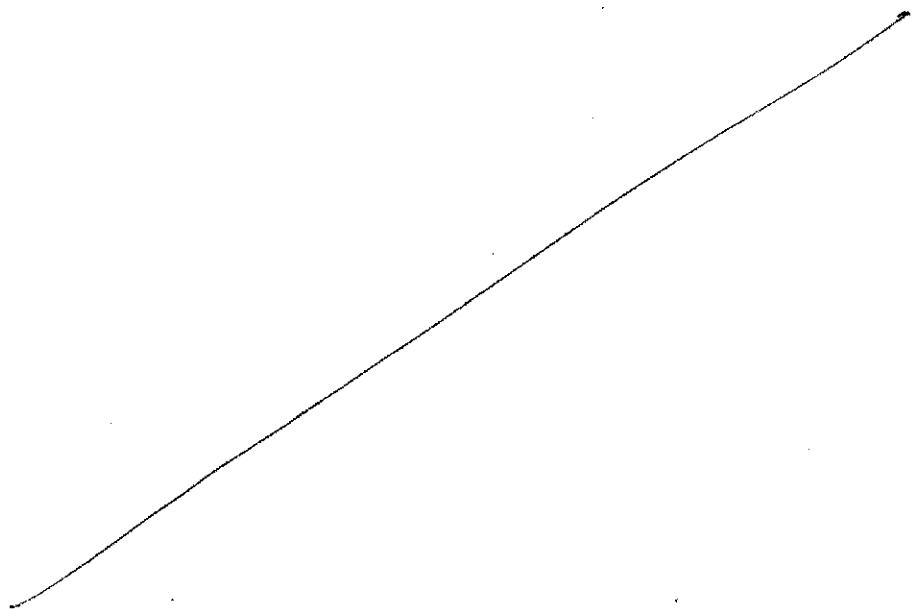


EXHIBIT "A"
[Legal Description]



[Legal Description]

BEGINNING AT A POINT N 89°45'58" W 1147.75 FEET ALONG THE NORTH SECTION LINE OF SECTION 15, TOWNSHIP 42 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 314.25 FEET TO A SOUTHWEST CORNER OF MILLCREEK SPRINGS SUBDIVISION PHASE 1, RECORDED AND ON FILE AT WASHINGTON COUNTY RECORDERS OFFICE, STATE OF UTAH, FROM THE NORTHEAST CORNER OF SAID SECTION; AND RUNNING THENCE ALONG SAID SUBDIVISION THE FOLLOWING FOUR (4) COURSES, 1) THENCE N 75°03'49" E 187.66 FEET; 2) THENCE S 15°43'55" E 57.84 FEET; 3) THENCE S 45°34'57" W 45.79 FEET; 4) S 28°11'28" E 85.00 FEET TO A POINT ON A 350.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, WITH A RADIUS WHICH BEARS S 28°11'28" E WHICH POINT IS ALSO ON THE BOUNDARY OF MILLCREEK SPRINGS TOWNHOMES-AMENDED, RECORDED AND ON FILE AT WASHINGTON COUNTY RECORDERS OFFICE, STATE OF UTAH; THENCE ALONG SAID BOUNDARY THE FOLLOWING THIRTEEN (13) COURSES, 1) ALONG THE ARC OF SAID CURVE 34.25 FEET THROUGH A CENTRAL ANGLE OF 5°36'23"; 2) THENCE S 56°12'09" W 177.88 FEET TO A POINT ON A 316.00 FOOT RADIUS CURVE TO THE LEFT; 3) THENCE 49.35 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 8°56'51"; 4) THENCE S 42°44'42" E 32.00 FEET TO A POINT ON A 284.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, WITH A RADIUS WHICH BEARS S 42°44'42" E; 5) THENCE ALONG THE ARC OF SAID CURVE 13.61 FEET THROUGH A CENTRAL ANGLE OF 2°44'46", TO A POINT ON A 316.00 FOOT RADIUS CURVE TO THE RIGHT; 6) THENCE ALONG THE ARC OF SAID CURVE 30.27 FEET THROUGH A CENTRAL ANGLE OF 5°29'22"; 7) THENCE S 28°20'07" E 282.17 FEET; 8) THENCE S 24°12'55" E 32.80 FEET; 9) THENCE S 43°27'55" E 93.61 FEET; 10) THENCE S 74°22'40" E 68.05 FEET; 11) THENCE N 59°15'07" E 92.65 FEET; 12) THENCE S 30°48'42" E 112.58 FEET TO A POINT ON A 134.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, WITH A RADIUS WHICH BEARS S 22°54'44" E; 13) THENCE ALONG THE ARC OF SAID CURVE 63.32 FEET THROUGH A CENTRAL ANGLE OF 27°04'22"; THENCE S 18°46'52" E 66.32 FEET; THENCE S 52°18'27" W 36.93 FEET; THENCE S 52°18'27" W 64.92 FEET; THENCE S 57°15'27" W 117.84 FEET; THENCE N 79°27'11" W 140.09 FEET; THENCE N 72°29'41" W 64.37 FEET; THENCE S 34°51'55" W 26.78 FEET; THENCE S 68°53'29" W 32.34 FEET; THENCE N 66°59'31" W 36.07 FEET; THENCE N 42°43'21" W 122.68 FEET; THENCE N 33°10'34" W 4.80 FEET; THENCE N 61°28'28" W 5.63 FEET; THENCE N 21°42'27" W 143.93 FEET; THENCE N 28°20'07" W 31.93 FEET; THENCE N 78°10'17" W 10.37 FEET; THENCE N 71°52'19" W 19.18 FEET; THENCE N 27°46'08" W 51.28 FEET; THENCE N 33°09'21" W 49.73 FEET; THENCE N 47°38'52" W 23.68 FEET; THENCE N 74°12'07" W 37.44 FEET; THENCE N 24°22'17" W 79.40 FEET; THENCE N 31°19'42" W 148.63 FEET; THENCE N 12°47'46" W 62.17 FEET; THENCE N 14°13'49" E 57.52 FEET; THENCE N 2°58'51" W 81.56 FEET; THENCE N 9°14'27" E 124.74 FEET; THENCE N 26°39'39" E 109.50 FEET; THENCE N 69°02'14" E 20.85 FEET; THENCE S 74°33'27" E 11.03 FEET; THENCE S 50°57'20" E 34.82

FEET; THENCE S 76°36'24" E 19.26 FEET; THENCE N 62°12'57" E 90.35 FEET; THENCE S 72°29'31" E 114.81 FEET TO A POINT ON THE WESTERLY BOUNDARY OF MILLCREEK SPRINGS SUBDIVISION PHASE I; THENCE S 27°29'31" E 114.81 FEET TO THE POINT OF BEGINNING.
CONTAINS 9.64 ACRES

**FIRST AMENDMENT
TO
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

a residential subdivision located in
Washington City, Utah

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR MILLCREEK SPRINGS SUBDIVISION ("First Amendment") is being made on the date set forth herein below, with reference to the following facts:

NOW, THEREFORE, pursuant to Article 8, Section 8.1. of the Declaration, Article 3, Section(s) 3.3.3 and 3.3.6, and 3.3.21. of the Declaration are hereby amended so that they read as follows:

Section 3.3.6. Facades. Facades shall be stucco, masonry, brick or stone, with accents of brick, stone, or such other material as approved by the ACC. Twenty Five percent (25%) of the front facade shall be stone, rock, or brick.

Section 3.3.21. Landscaping. Landscaping shall be completed in accordance with the landscape plan submitted to and approved by the ACC prior to construction of the home, and may include but shall not be limited to the preparation for the planting of lawn, grass or other appropriate ground cover, and appropriate shrubbery. Each landscape plan shall include and provide for the planting of trees in the front yard which shall be maintained by the Lot Owner. Limited use of cinders may be made in the landscaping on a Lot, only as approved by the ACC. The ACC may establish reasonable rules, regulations and guidelines to govern landscaping design. The approval of any landscape plan or design by the ACC is solely an approval of the plan or design for aesthetic purposes and is in no way an approval of the design for drainage or other issues, which are the sole responsibility of a Lot Owner to address and ensure in accordance with applicable law.

In all other respects, the Declaration shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the undersigned have caused this First Amendment to be executed
this 30th day of JULY, 2012

DECLARANT:

Mill Gate Holdings, L.L.C.,
A Utah Limited Liability Company

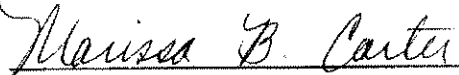
By: 

Its: manager

STATE OF UTAH

COUNTY OF WASHINGTON

On this 30th day of JULY, 2012, before me personally appeared
PAUL J. REAM, whose identity is personally known to me or proved
to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did
say that he is a Member [the Manager] of Mill ^{GATE} Creek Holdings, L.L.C., a Utah limited liability
company and that the foregoing document was signed by him on behalf of that Company by
proper authority and he acknowledged before me that the Company executed the document and
the document was the act of the Company for its stated purpose.


NOTARY PUBLIC
Address: ST. GEORGE, UT
My Commission Expires: 11-21-15

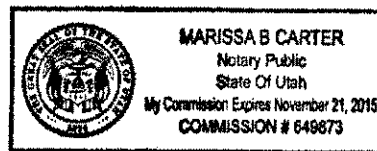
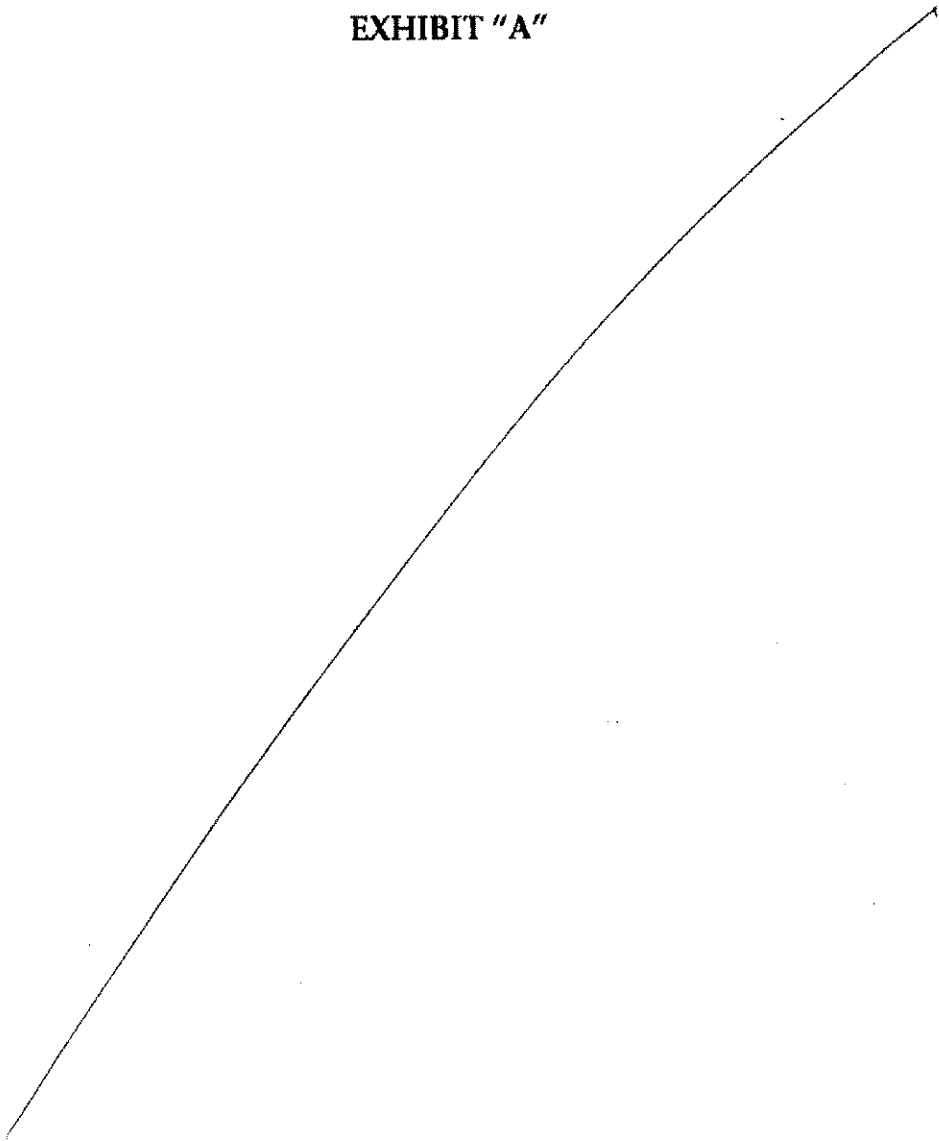


EXHIBIT "A"



[Legal Description]

BEGINNING AT A POINT N 89°45'58" W 1147.75 FEET ALONG THE NORTH SECTION LINE OF SECTION 15, TOWNSHIP 42 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 314.25 FEET TO A SOUTHWEST CORNER OF MILLCREEK SPRINGS SUBDIVISION PHASE 1, RECORDED AND ON FILE AT WASHINGTON COUNTY RECORDERS OFFICE, STATE OF UTAH, FROM THE NORTHEAST CORNER OF SAID SECTION; AND RUNNING THENCE ALONG SAID SUBDIVISION THE FOLLOWING FOUR (4) COURSES, 1) THENCE N 75°03'49" E 187.66 FEET; 2) THENCE S 15°43'55" E 57.84 FEET; 3) THENCE S 45°34'57" W 45.79 FEET; 4) S 28°11'28" E 85.00 FEET TO A POINT ON A 350.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, WITH A RADIUS WHICH BEARS S 28°11'28" E WHICH POINT IS ALSO ON THE BOUNDARY OF MILLCREEK SPRINGS TOWNHOMES-AMENDED, RECORDED AND ON FILE AT WASHINGTON COUNTY RECORDERS OFFICE, STATE OF UTAH; THENCE ALONG SAID BOUNDARY THE FOLLOWING THIRTEEN (13) COURSES, 1) ALONG THE ARC OF SAID CURVE 34.25 FEET THROUGH A CENTRAL ANGLE OF 5°36'23"; 2) THENCE S 56°12'09" W 177.88 FEET TO A POINT ON A 316.00 FOOT RADIUS CURVE TO THE LEFT; 3) THENCE 49.35 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 8°56'51"; 4) THENCE S 42°44'42" E 32.00 FEET TO A POINT ON A 284.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, WITH A RADIUS WHICH BEARS S 42°44'42" E; 5) THENCE ALONG THE ARC OF SAID CURVE 13.61 FEET THROUGH A CENTRAL ANGLE OF 2°44'46", TO A POINT ON A 316.00 FOOT RADIUS CURVE TO THE RIGHT; 6) THENCE ALONG THE ARC OF SAID CURVE 30.27 FEET THROUGH A CENTRAL ANGLE OF 5°29'22"; 7) THENCE S 28°20'07" E 282.17 FEET; 8) THENCE S 24°12'55" E 32.80 FEET; 9) THENCE S 43°27'55" E 93.61 FEET; 10) THENCE S 74°22'40" E 68.05 FEET; 11) THENCE N 59°15'07" E 92.65 FEET; 12) THENCE S 30°48'42" E 112.58 FEET TO A POINT ON A 134.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, WITH A RADIUS WHICH BEARS S 22°54'44" E; 13) THENCE ALONG THE ARC OF SAID CURVE 63.32 FEET THROUGH A CENTRAL ANGLE OF 27°04'22"; THENCE S 18°46'52" E 66.32 FEET; THENCE S 52°18'27" W 36.93 FEET; THENCE S 52°18'27" W 64.92 FEET; THENCE S 57°15'27" W 117.84 FEET; THENCE N 79°27'11" W 140.09 FEET; THENCE N 72°29'41" W 64.37 FEET; THENCE S 34°51'55" W 26.78 FEET; THENCE S 68°53'29" W 32.34 FEET; THENCE N 66°59'31" W 36.07 FEET; THENCE N 42°43'21" W 122.68 FEET; THENCE N 33°10'34" W 4.80 FEET; THENCE N 61°28'28" W 5.63 FEET; THENCE N 21°42'27" W 143.93 FEET; THENCE N 28°20'07" W 31.93 FEET; THENCE N 78°10'17" W 10.37 FEET; THENCE N 71°52'19" W 19.18 FEET; THENCE N 27°46'08" W 51.28 FEET; THENCE N 33°09'21" W 49.73 FEET; THENCE N 47°38'52" W 23.68 FEET; THENCE N 74°12'07" W 37.44 FEET; THENCE N 24°22'17" W 79.40 FEET; THENCE N 31°19'42" W 148.63 FEET; THENCE N 12°47'46" W 62.17 FEET; THENCE N 14°13'49" E 57.52 FEET; THENCE N 2°58'51" W 81.56 FEET; THENCE N 9°14'27" E 124.74 FEET; THENCE N 26°39'39" E 109.50 FEET; THENCE N 69°02'14" E 20.85 FEET; THENCE S 74°33'27" E 11.03 FEET; THENCE S 50°57'20" E 34.82

FEET; THENCE S 76°36'24" E 19.26 FEET; THENCE N 62°12'57" E 90.35 FEET; THENCE S 72°29'31" E 114.81 FEET TO A POINT ON THE WESTERLY BOUNDARY OF MILLCREEK SPRINGS SUBDIVISION PHASE 1; THENCE S 27°29'31" E 114.81 FEET TO THE POINT OF BEGINNING.
CONTAINS 9.64 ACRES

When Recorded mail to:
Nathan K. Fisher
444 East Tabernacle B-201
St. George Utah 84770

SECOND AMENDMENT TO DECLARATION
OF MILLCREEK SPRINGS TOWNHOMES AMENDED

This Second Amendment to Declaration of Millcreek Springs Townhomes Amended is made this 17th day of August, 2016, by the undersigned Management Committee of Millcreek Springs Townhomes.

RECITALS

- A. On March 21, 2007, Declarant caused to be filed for record in the office of the County Recorder of Washington County, Utah, the Declaration of Millcreek Springs Townhomes Amended, (the "Declaration"), which was recorded as Doc # 20070014114, of the Official Records of Washington County.
- B. On February 9, 2015, the Management Committee caused to be filed for record in the office of the County Recorder of Washington County, Utah, the First Amendment to Declaration of Millcreek Springs Townhomes Amended, (the "First Amendment"), which was recorded as Doc # 20150004329, of the Official Records of Washington County, which created certain restrictions on an Owner's ability to rent a unit within the subdivision.
- C. On February 10, 2016, a meeting of the Owners was held, in which, pursuant to the Agenda, the issue of the rental restrictions created by the First Amendment was discussed and voted upon.
- D. The Owners have determined that to provide for the preservation and enhancement of the property value it is advantageous to retract the changes created by the First Amendment and remove the restrictions created therein.

NOW, THEREFORE, for the foregoing purposes, the Owners hereby amend said Declaration as follows:

ARTICLE II COVENANTS, CONDITIONS, AND RESTRICTIONS shall be amended to remove Section 39 of Article II, which was inserted by the First Amendment. Accordingly, the entirety of Section 39 of Article II as set forth in the First Amendment is hereby removed in its entirety from the Declaration.

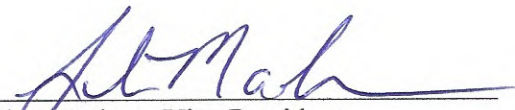
Effective Date. The Management Committee hereby certifies that a meeting of Owners was held on February 10, 2016, at which a quorum was present and during which the amendment was approved by a vote of at least 67% of the Owners. This Second Amendment to the Declaration

was effective February 10, 2016, except as otherwise set forth herein to the contrary. Except as amended by the foregoing provision, all other terms, covenants, conditions and restrictions set forth in the Declaration, shall remain in full force and effect.

EXECUTED the day and year set forth below.

SIGNATURES BEGIN ON NEXT PAGE

MILLCREEK SPRINGS TOWNHOMES AMENDED,
MANAGEMENT COMMITTEE

By: 
Glen Madsen, Vice President
Management Committee

STATE OF UTAH)
 : ss.
COUNTY OF WASHINGTON)

On the 22 day of August, 2016, personally appeared before me Glen Madsen, known to me to be the person subscribed to the foregoing Second Amendment to Declaration of Millcreek Springs Townhomes Amended who duly acknowledged to me that he executed the same.

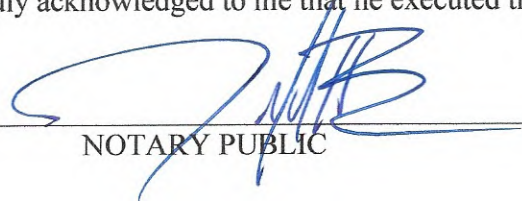

NOTARY PUBLIC



EXHIBIT "A"

Beginning at the Northeast Corner of Section 15, Township 42 South, Range 15 West, Salt Lake Base and Meridian running thence South $01^{\circ}06'09''$ West, along the East line of said Section 15, 255.83 feet to a point on an 840.00 foot radius non-tangent curve to the left on the Northwesterly right of way line of Buena Vista Boulevard, the radius point of which bears South $48^{\circ}04'26''$ East; thence along said right of way and the arc of said curve 59.74 feet through a central angle of $4^{\circ}04'30''$ to the point of tangency; thence South $37^{\circ}51'04''$ West along said right of way 973.07 feet to the point of a 20.00 foot radius non tangent curve to the left, the radius point of which bears North $52^{\circ}08'56''$ West; thence leaving said right of way along the arc of said curve 36.22 feet through a central angle of $103^{\circ}45'02''$ to the point of a 134.00 foot radius compound curve to the left; thence along the arc of said curve 109.95 feet through a central angle of $47^{\circ}00'46''$; thence North $30^{\circ}48'42''$ 112.58 feet; thence South $59^{\circ}15'07''$ West, 92.65 feet; thence North $74^{\circ}22'40''$ West, 68.05 feet; thence North $43^{\circ}27'55''$ West, 93.61 feet; thence North $24^{\circ}12'55''$ West, 32.80 feet; thence North $28^{\circ}20'07''$ West, 282.18 feet to the point of a 316.00 foot radius non-tangent curve to the left, the radius point of which bears North $40^{\circ}00'06''$ West, thence along the arc of said curve 30.27 feet through a central angle of $5^{\circ}29'22''$ to the point of a 284.00 foot radius reverse curve to the right; thence along the arc of said curve 13.61 feet through a central angle of $2^{\circ}44'46''$; thence North $42^{\circ}44'42''$ West, 32.00 feet to the point of a 316.00 foot radius non-tangent curve to the right; the radius point of which bears South $42^{\circ}44'42''$ East; thence along the arc of said curve 49.35 feet through a central angle of $8^{\circ}56'51''$ to the point of tangency; thence North $56^{\circ}12'09''$ East, 177.88 feet to the point of a 350.00 foot radius curve to the right; thence along the arc of said curve 34.25 feet through a central angle of $5^{\circ}36'23''$ to the point of a 134.00 foot radius reverse curve to the left; thence along the arc of said curve 181.35 feet through a central angle of $77^{\circ}32'27''$ to the point of tangency; thence North $15^{\circ}43'55''$ West, 9.97 feet; thence North $74^{\circ}16'05''$ East, 112.00 feet; thence North $15^{\circ}56'28''$ West, 42.28 feet; thence South $89^{\circ}45'51''$ East, 131.34 feet; thence North $54^{\circ}45'15''$ East, 47.75 feet to the point of a 280.00 foot non-tangent curve to the right, the radius point of which bears North $54^{\circ}45'15''$ East; thence along the arc of said curve 173.40 feet through a central angle of $35^{\circ}28'54''$ to the point of tangency; thence North $00^{\circ}14'09''$ East, 1.91 feet to a point on the North line of said Section 15; thence South $89^{\circ}45'58''$ East along said North line 665.36 feet to the point of beginning.

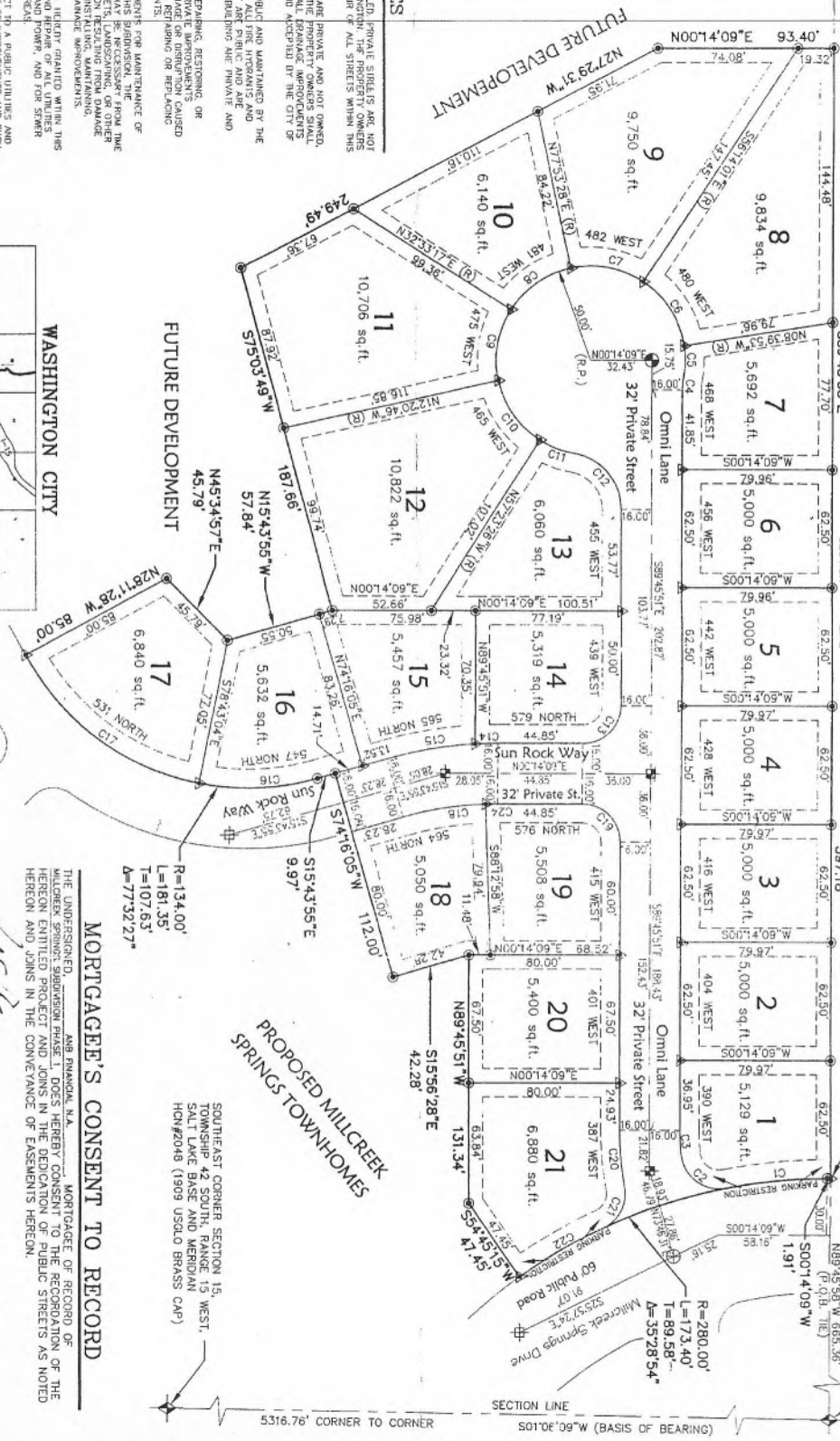
ROBERT E. AND MATILDA L. STEVENS

Book: #605 Page #431

SECTION LINE

POINT OF BEGINNING

NORTHEAST CORNER SECTION 15,
TOWNSHIP: 42 SOUTH RANGE 11 WEST,
SALT LAKE BASE AND MERIDIAN
HON#2046 (BLM BRASS CAP)



PROPOSED MILLCREEK
SPRINGS TOWN-HOMES

SOUTHEAST CORNER SECTION 15,
TOWNSHIP: 42 SOUTH RANGE 11 WEST,
SALT LAKE BASE AND MERIDIAN
HON#2046 (1999 USGLO BRASS CAP)

R=134.00'
L=181.35'
T=107.63'
Δ=77°52'27"

MORTGAGEE'S CONSENT TO RECORD

THE UNDERSIGNED, ANB FINANCIAL, N.A., MORTGAGEE OF RECORD OF THE MILLCREEK SPRINGS SUBDIVISION PHASE 1, DOES HEREBY CONSENT TO THE HEREIN ENTITLED PROJECT AND JOINS IN THE DEDICATION OF PUBLIC STREETS AS NOTED HEREON AND JOINS IN THE CONVEYANCE OF EASMENTS HEREON.

ALL UTILITIES SHOWN ARE TO BE MAINTAINED AND REPAIRED BY THE CITY AND COUNTY OF SALT LAKE COUNTY AND THE STATE OF UTAH. THE CITY AND COUNTY OF SALT LAKE COUNTY AND THE STATE OF UTAH SHALL BE RESPONSIBLE FOR THE MAINTENANCE AND REPAIR OF ALL UTILITIES SHOWN ON THIS PLAT. THE CITY AND COUNTY OF SALT LAKE COUNTY AND THE STATE OF UTAH SHALL BE RESPONSIBLE FOR THE MAINTENANCE AND REPAIR OF ALL UTILITIES SHOWN ON THIS PLAT.

WASHINGTON CITY

RESIDENTS FOR MAINTENANCE OF THE PLAT. THE CITY AND COUNTY OF SALT LAKE COUNTY AND THE STATE OF UTAH SHALL BE RESPONSIBLE FOR THE MAINTENANCE AND REPAIR OF ALL UTILITIES SHOWN ON THIS PLAT.

5316.76' CORNER TO CORNER

S01°06'06"W (BASIS OF BEARING)

W-5-2-15-111
BURP ST GEORGE, LLC

NORTH TOWNSHIP
SALT LAKE
HCN #20

MILLCREEK SPRINGS SUBDIVISION PHASE I



MILLCREEK SPRINGS TOWNHOMES AMENDED

UNLESS OTHERWISE SPECIFIED
(SHOWN ON THE PLAT)
CLASS (S)
(I, REBAR & ALUM. CAP)
SET RIVET IN BACK OF

COMMON AREA

PROPOSED MASTER PLANNED TRAIL

W-5-2-15-111
BURP ST GEORGE, LLC

130

2

WHEN RECORDED, MAIL TO:

Brad Jacobsen, Esq.
Holme Roberts & Owen LLP
299 South Main Street, Suite 1800
Salt Lake City, Utah 84111

DOC # 20070014114

RestrictivePage 1 of 30
Russell Shirts Washington County Recorder
03/21/2007 10:36:54 AM Fee \$ 68.00 by SOUTHERN UTAH TITLE CO

Space Above This Line for Recorder's Use

**DECLARATION OF
MILLCREEK SPRINGS TOWNHOMES**

This Declaration of MILLCREEK SPRINGS TOWNHOMES (the "**Declaration**") is made and entered into this 6th day of March, 2007, by JTKR, L.L.C., a Utah limited liability company ("**Declarant**"), whose address is 2107 E 2620 S Circle, Saint George, Utah 84790.

RECITALS

This Declaration is made and executed upon the basis of the following facts, understandings and intentions of the Declarant;

A. Declarant is the fee owner of those certain parcels of real property with townhomes built (or being built) thereon located in Washington City, State of Utah, with the legal descriptions as set forth on **Exhibit "A,"** attached hereto and made a part hereof (each townhome being referred to herein as a "**Unit**" and collectively as the "**Project**"), as shown on **Exhibit "C,"** attached hereto and made a part hereof (the "**Record of Survey Map**").

B. To effectuate the common use and operation of the Project, Declarant intends that the Units shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which shall run with the Units and be binding upon all parties having any right, title or interest therein or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

NOW THEREFORE, Declarant makes the following grants, covenants, conditions, restrictions, submissions and declarations:

ARTICLE I

DEFINITIONS

When used in the Declaration and in the Bylaws, which are made a part of this Declaration and are attached hereto as **Exhibit "B,"** the following terms shall have the meaning indicated. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine and the use of the singular shall be deemed to refer to the plural, and vice versa, whenever the context requires.

1. "**Association**" shall mean and refer to all of the Unit Owners acting as a group in accordance with the Declaration and Bylaws (**Exhibit "B"**).

2. "Common Areas and Facilities" and "Common Areas" shall mean and refer to, and include:

- a. All common areas and facilities designated as such on the Record of Survey Map.
- b. All Limited Common Areas and Facilities.
- c. All access roads, pedestrian sidewalks, and other common facilities as designated in the Record of Survey Map.
- d. All apparatus, installations, and facilities included within the Project and existing for common use, including, without limitation, parking areas, storm water detention ponds, if any, common water lines, common sewage lines.
- e. All portions of the Project not specifically included within individual Units.

3. "Common Expenses" shall mean and refer to all sums which are expended on the behalf of all the Unit Owners and all sums which are required by the Management Committee to perform or exercise its functions, duties or rights under Utah law, this Declaration, any management agreement for the operation of the Project, and such Rules and Regulations as the Management Committee may, from time to time, make and adopt. By the way of illustration but not limitation, Common Expenses shall include:

- a. Expense of administration, maintenance, operation, repair, or replacement of those elements of the Common Areas that must be replaced on a periodic basis, and to other reserves as may, from time to time, be established pursuant to the Declaration;
- b. Expenses agreed upon by the Association and lawfully assessed against the Owners in accordance with the Declaration;
- c. Expenses declared Common Expenses by Utah law, this Declaration or the Bylaws; and
- d. Any valid charge against the Project as a whole.

4. "Common Profits" shall mean and refer to the balance of all income, rents, profits, and revenues from the Common Areas remaining after deduction of the Common Expenses.

5. "Declarant" shall mean and refer to JTKR, L.L.C., a Utah limited liability company, its successors, and assigns. The Declarant is authorized and permitted hereby to assign all of its rights, title, interests, obligations, duties as Declarant to any third party (whether such third party is an Owner or not).

6. "Declaration" shall mean and refer to this instrument, as the same may be amended from time to time.

7. "Limited Common Area and Facilities" and "Limited Common Areas" shall mean and refer to those Common Areas designated herein, or in the Record of Survey Map, as reserved for the use of a certain Unit or Units, to the exclusion of other Units.

8. **"Management Committee"** shall mean and refer to the Management Committee of MILLCREEK SPRINGS TOWNHOME Project as it exists at any given time.
9. **"Majority of Owners"** shall mean and refer to the Owners of the Units to which more than fifty percent (50%) of the votes in the Association appertain.
10. **"Mortgage"** shall mean any mortgage, deed of trust or other security instrument by which a Unit or any part thereof is encumbered. First Mortgage shall refer to a Mortgage which has a lien position prior to any other Mortgage.
11. **"Mortgagee"** shall mean and refer to any person named as a mortgagee or beneficiary under (or holder of) a Mortgage.
12. **"Percentage Interest"** means and refers to the percentage of undivided interest of each Unit in the Common Areas as set forth in Article II, Paragraph 4.
13. **"Project"** and **"Projects"** shall mean and refer to the MILLCREEK SPRINGS TOWNHOME Project.
14. **"Property"** shall mean and refer to the land in **Exhibit "A"**, the buildings, all improvements and the structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.
15. **"Record of Survey Map"** shall mean and refer to the MILLCREEK SPRINGS TOWNHOME Record of Survey Map attached hereto as **Exhibit "C."**
16. **"Rules and Regulations"** means those rules and regulations as initially established by the Declarant and as adopted and amended from time to time by the Management Committee that are deemed necessary for the enjoyment of the Project, provided they are not in conflict with Utah law or this Declaration.
17. **"townhome"** means single-family house that is connected to three or more similar dwellings by common sidewalls.
18. **"Tract"** shall mean and refer to the real property hereby submitted to the Project. The Property which **Exhibit "A"** of this Declaration describes constitutes a Tract.
19. **"Unit"** or **"Units"** means and refers to a separate physical part of the Property intended for independent use, and an individual interest in the Common Areas and Facilities appertaining to that Unit. Units are identified in the Record of Survey Map by Unit Number. Each Unit shall be attached to another Unit in the Project. Each Unit shall share a common wall with another Unit in the Project. Each Unit shall include all space up to the centerline of the common wall, mechanical equipment, and appurtenances.
20. **"Unit Number"** shall mean the number, letter, or combination of numbers or letters designating the Unit in the Declaration and in the Record of Survey Map.
21. **"Unit Owner"** or **"Owners"** shall mean the person(s) owning a Unit in fee simple and an undivided interest in the fee simple estate of the Common Areas and Facilities in the percentage specified or established in the Declaration, or, in the case of a leasehold project, the person(s) whose leasehold interest(s) in the Unit extend for the entire balance of the unexpired term(s). In the event a Unit is the

subject of an executory contract of sale, the contract purchaser shall, upon notice to the Management Committee by the purchaser (unless the seller and purchaser have otherwise agreed and have informed the Management Committee in writing of such agreement), be considered the Unit Owner for purposes of voting and Management Committee membership.

ARTICLE II

COVENANTS, CONDITIONS, AND RESTRICTIONS

The submission of the Tract is made upon and under the following covenants, conditions, and restrictions.

1. **Descriptions of Improvements.** The improvements included in the Project will be located on the Property described in **Exhibit "A"** annexed hereto in the manner set forth on the Record of Survey Map. The Project consists of one-hundred ninety seven (197) Units.

2. **Description of Legal Status of Units.** The Record of Survey Map shows each Unit, its location and dimensions from which the area may be determined, those Limited Common Areas which are reserved for its use, if any, and the Common Areas to which it has immediate independently owned, encumbered, and conveyed.

3. **Common and Limited Common Areas**

- a. The Common Areas contained in the Project are described and identified on the Record of Survey Map. Neither the Percentage Interest nor the right of exclusive use of Limited Common Areas shall be separated from the Unit to which it appertains; and even though not specifically mentioned in the instrument of transfer, the Percentage Interest and such right of exclusive use shall automatically accompany transfer of the Unit to which they related. Each Unit Owner shall, at its own cost, keep the Limited Common Areas designed from exclusive use in connection with his Unit in a clean, sanitary, and attractive condition at all times.
- b. The use of the Common Areas shall be limited to Owners in residence and to their tenants in residence, and to Owners' guests, invitees, and licensees. The use of the Common Areas or Limited Common Areas shall be governed by the Declaration and the Rules and Regulations.

4. **Computation of Percentage Interests.** Each Unit shall include an undivided one-hundred ninety seventh (197th) interest in the Common Area and Facilities which shall be appurtenant to each such Unit in the Project. The proportionate ownership in the Common Areas shall be for all purposes including, but not limited to, voting, participation in Common Profits, and assessments for Common Expenses.

5. **Maintenance and Obligations of Owners.** Subject only to the duty of the Association to provide for maintenance as provided in Paragraph 6 of this Article, it shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration regarding Management Committee approval, to maintain, including but not limited to, the interiors and exteriors of the Unit and the appurtenant patio, fences, and utility laterals. In the event that any Owner shall permit any improvement which is the responsibility of such Owner to maintain, to fall into disrepair or not to be so maintained as to create a dangerous, unsafe, unsightly, or unattractive condition, or to otherwise violate this Declaration, the

Management Committee shall have the right, but not the duty, upon fifteen (15) days prior written notice to the Owner of such Unit to correct such condition and to enter upon such Owner's Unit to make such repairs or to perform such maintenance and the cost thereof shall be charged to the Owner. Said cost shall be a special assessment and shall create a lien enforceable in the manner provided as other assessments as set forth in this Declaration. The Owner shall promptly pay all amounts due for such work and the costs and expenses of collection may be added, at the option of the Management Committee to the amounts payable by each Owner as assessments.

6. Maintenance Obligation of Association. Subject to the provisions of Paragraph 5 of this Article, the Association shall maintain or provide for the maintenance of all Common Areas and all improvements thereon, including boundary fences, entrance gates, streets, sidewalks, Common Area, landscaping, landscaping equipment, lighting and utility mains, and any and all utility laterals to the Unit lines.

7. Association Membership. Association membership shall be mandatory, shall be appurtenant to the Unit in which the Owner has the necessary interest, and shall not be separated from the Unit to which it appertains. The property, business, and affairs of the Association shall be governed by the Management Committee as agent of the Association.

8. Easement on Encroachment. If any part of the Common Areas encroaches, or hereafter encroaches, upon a Unit or Units, an easement for such encroachment and for the maintenance for the same shall and does exist. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the building(s) on the Tract, by error in the Record of Survey Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

9. Access for Repair of Common Areas. Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of the other Units shall have the irrevocable right, to be exercised by the Management Committee as its agent, to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Area or to another Unit or Units. The Management Committee shall also have such rights to the Common Areas without the prior written consent of the Unit Owners, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Areas except on the prior written consent of the Management Committee.

10. Certain Common Area Restrictions. Nothing shall be done or kept in any Unit or in the Common Areas, or any part thereof, which may result in the cancellation of the insurance of the Project, or any part thereof, or increase the rate of insurance on the Project, or any part thereof, over what the Management Committee, but for such activity, would pay without the prior written consent of the Management Committee. Nothing shall be done or kept in any Unit or in the Common Areas, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any government body. No damage to, or waste of the Common Areas, or any part thereof, shall be committed by any Owner, or any invitee of any Owner, and each Owner shall identify and hold the Management Committee and the Owners harmless against a loss resulting from any such damage or waste caused by him or his invitees; provided, however, that any invitee of the Declarant shall not, under any circumstances, be deemed to be an invitee of any other Owner. No noxious, destructive, or offensive activity shall be carried on in any Unit or in the Common Areas or any part thereof, nor shall anything be done therein which may be, or may become, any annoyance or nuisance to any other Owner, or to any person at any time lawfully residing in the Project.

11. Compliance with Rules and Regulations. No Owner shall violate the Rules and Regulations for the use of the Units and of the Common Areas as adopted from time to time by the Management Committee.

12. Alterations and Repairs. No structural alterations to any Unit shall be made by the Owner without the prior written consent of the Management Committee. No maintenance, repairs, or replacement of exterior elements of any Unit shall be made by an Owner without the prior written consent of the Management Committee. The Management Committee may adopt architectural standards which each Owner agrees to abide by in order to maintain uniformity in style, quality, colors, and appearances throughout the Project.

13. Recreational Vehicles and Signage. No recreational vehicles (boats, campers, trailers, motor homes, or similar items) shall be parked on any portion of the Common Areas except for temporary parking. Additionally, no signs whatsoever shall be erected or maintained in the Common Areas without the prior written consent of the Management Committee, except for the following:

- a. such signs as may be required by legal proceedings, and
- b. such signs as Declarant or licensed general contractors may erect or maintain incident to the sale of Units.

14. Declarant Exclusions. Until the Declarant has completed and sold all the Units, neither the Unit Owners who have purchased Units from the Declarant, licensed contractors, nor the Management Committee shall interfere with the completion of improvements and sale of the remaining Units. Declarant may use any Unit(s) owned by management offices or sale offices until such time as all Units are completed and sold to Unit Owners. Declarant may relocate models, management offices, or sale offices from time to time within the Project. Declarant shall also have the right to maintain equipment on the Project which may be relocated or removed at its discretion.

15. Status and General Authority of Management Committee. Notwithstanding anything herein contained to the contrary, MILLCREEK SPRINGS TOWNHOME Project shall be managed, operated, and maintained by the Management Committee exclusively as agent of the Association. Any act performed by the Management Committee pursuant to this Declaration or the Bylaws, as the same may be amended from time to time, shall be deemed to be performed by the Association. The Management Committee shall have, and is hereby granted the following authority and powers:

- a. The authority, without the vote or consent of the Owners, to transfer or convey utility easements and other similar easements, over, under, across, and through the Common Areas and Facilities.
- b. The authority to execute and record, on the behalf of all Unit Owners, any amendment to the Declaration or Record of Survey Map which has been approved by the consent necessary to authorize such amendment.
- c. The power to sue and be sued.
- d. The authority to enter into contracts or agreements which in any way concern the Project, so long as any vote or consent of the Unit Owners necessitated by the subject matter of the contract or agreement has been obtained.

- e. The power and authority to convey or transfer any interest in tangible or intangible personal property and real property authorized by the Owners having an interest herein.
- f. The power and authority to purchase, otherwise acquire, and accept title to any interest in real property, so long as such action has been authorized by any vote or consent necessary under the circumstances.
- g. The authority to license persons not otherwise entitled to use any of the Common Areas and Facilities to use the same from time to time as the Management Committee deems appropriate upon the payment of fees prescribed by it to help defray the cost of maintenance thereof.
- h. The power and authority to borrow money, provided no indebtedness for borrowed funds shall exceed at any given time the sum of Five Thousand Dollars (\$5,000.00), without the prior approval of the Majority of Owners.
- i. The power and authority to perform any other acts and to enter into any other transactions and agreements which may be reasonably necessary for the Management Committee to perform its functions as agent for the Association.
- j. Any instrument executed by the Management Committee that recites facts which, if true, would establish the Management Committee's power and authority to accomplish its functions. Through such instrument, what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

16. Manager. The Management Committee may carry out any of its functions which are capable of delegation through a project manager (the "Manager"). Any Manager retained for such purpose must be an individual or entity experienced and qualified in the field of property management. The Manager shall be responsible for managing the Project for the benefit of the Unit Owners and shall, to the extent permitted by law and the terms of the agreement with the Management Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself.

17. Composition of Management Committee and Initial Selection. Until the election of the Management Committee takes place at the first annual meeting of the of the Association as provided in Article II Section 1 of the Bylaws, the Management Committee shall consist of such persons as shall have been designated by the Declarant. From and after the first annual meeting of the Association, the owners, designees of Owners, spouses of Owners, Mortgagees, or designees of Mortgagees of Units shall elect the Management Committee members in accordance with the Bylaws. The Declarant shall have the right in its sole discretion to terminate any member of the Management Committee. As a result of such vacancy, the remaining Management Committee members shall elect a replacement to sit on the Management Committee until the expiration date of the term for which the member being replaced was elected. Declarant may, by a written instrument duly recorded, waive its right to select the members of the Management Committee at any time prior to the termination of the right to select Management Committee members reserved hereunder.

18. Agreement to Pay Assessment. Each Owner of any Unit by the acceptance of a deed therefore, whether or not it be expressed in the deed, or by entering into a sale and/or purchase contract, shall be deemed to covenant and agree with each other and with the Management Committee to pay to the

Management Committee annual assessments made by the Management Committee for the purposes provided in this Declaration, and special assessments for capital improvements and other matters as provided for in this Declaration. Such assessments shall be fixed, established, and collected from time to time in the manner hereinafter provided.

- a. Amount of Total Annual Assessments. The total annual assessments against all Units shall be based upon advance estimates determined by the Management Committee to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, which estimates may include, among other things: expenses of management; grounds maintenance; taxes and special assessments (until the Units are separately assessed as provided herein); premiums for all insurance which the Management Committee is required or permitted to maintain pursuant hereto; common lighting and heating; water charges; trash collection; sewer charges; repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a periodic basis; wages for Management Committee employees; legal and accounting fees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus, and/or sinking fund; and any other expenses or liabilities which may be incurred by the Association for the benefit of the Owner under or by reason of this Declaration.
- b. Apportionment of Annual Assessment. Expenses attributed to the Common Areas and to the Project as a whole shall be apportioned among all the Owners in proportion to their respective Percentage Interests.
- c. Notice of Annual Assessment and Time for Payment Thereof. An annual assessment shall be made on a calendar year basis. The Management Committee shall give written notice to each Owner as to the amount of the annual assessment with respect to his Unit no less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year. Such assessments shall be for the balance of the calendar year remaining after the date filed by the Management Committee as the date of commencement of the Project. Such assessment shall be due and payable within thirty (30) days after written notice of the amount thereof shall have been given to the respective Owner of a Unit. Each monthly assessment shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date. Failure of the Management Committee to give timely notice of any assessment as provided herein and shall not affect the liability the Owner of a Unit for such assessment as provided herein shall not effect the liability of the Owner of a Unit for such assessment, but the date when payment shall become due in such case shall be deferred to a date thirty (30) days after such notice shall be given.
- d. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Management Committee may, in any assessment year, levy a special assessment, payable over such a period as the Management Committee may determine, for the purpose of defraying, in whole or in part, the cost of any construction or

reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Management Committee to incur expenses, but shall be authorized by other Sections hereof. Any amounts assessed pursuant hereto shall be assessed to the Owners in proportion to their respective Percentage Interests. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners and no payment shall be due less than thirty (30) days after such notice shall have been given. A special assessment shall bear interest at the rate of twelve percent (12) per annum from the date it becomes due and payable. Additions or capital improvements to the Project which costs no more than One Thousand Dollars (\$1,000.00) may be authorized by the Management Committee alone. Additions or capital improvements, the cost of which will exceed such amount must, prior to being constructed, be authorized by the Majority of Owners. Any addition or capital improvement which would materially alter the nature of the Project must, regardless of its cost and prior of being constructed, be authorized by vote of Unit Owners in person or by proxy of not less than sixty-seven percent (67%) of the Percentage Interest at a meeting of the Association, special or annual, at which a quorum is present.

- e. Lien for Assessments. All sums to any Unit pursuant to this Declaration, together with interest thereon, shall be secured by a lien on such Unit in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Unit, except for valid tax and Mortgage liens duly recorded in the Official Records of Washington County, Utah, including all unpaid obligatory advances to be made pursuant to such Mortgage and all amounts advanced pursuant to such Mortgage and secured by a lien thereof in accordance with the terms of such instrument. All other lienors acquiring liens shall be deemed to consent that such liens shall be inferior to future liens for assessments as provided herein whether or not such consent be specifically set forth in the instruments creating such liens.
- (i) To evidence a lien for sums assessed hereunder, the Management Committee may prepare a written notice of the lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit, and a description of the Unit. Such notice shall be signed by the Management Committee and may be recorded in the Office of the County Recorder of Washington County, Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Management Committee in the same manner in which Mortgages on real property may be foreclosed in Utah. In any such foreclosures the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of the filing of the notice of lien, and all reasonable attorney's fees. All such costs, expenses, and fees shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the