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**THE AMENDED RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
MILLRACE PARK  
A PLANNED UNIT DEVELOPMENT**

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**THE AMENDED RESTATED DECLARATION OF THE  
COVENANTS, CONDITIONS AND RESTRICTIONS OF MILLRACE PARK  
A PLANNED UNIT DEVELOPMENT**

THIS AMENDED AND RESTATED DECLARATION OF THE COVENANTS, CONDITIONS AND RESTRICTIONS OF MILLRACE PARK (the "Declaration") is made and executed this 2nd day of March 2015, by MILLRACE PARK HOMEOWNERS ASSOCIATION, INC., (the "Declarant").

**RECITALS**

A. The initial Declaration of Millrace Park a Planned Unit Development was created by Millrace Park L.C. and recorded with the Salt Lake County Recorder's Office on August 10, 1998, as entry no. 7052201 at page 2124 in book 8060, which is the effective recording date of the Declaration for any and all purposes.

B. The Declaration was subsequently amended by a majority vote of the owners of Millrace Park. Those amendments, collectively known as the Amendment to Declaration of the Revised Covenants, Conditions and Restrictions of Millrace Park were recorded with the Salt Lake County Recorder on December 26, 2007, as entry no. 10308167 at page 9683 in book 9551.

Declarant has deemed it desirable, for the efficient preservation of the values and amenities of the real property and improvements thereon described in Exhibit A (the "Property"), to amend and restate this Declaration to incorporate the previous amendments and the revisions which were duly approved by a majority of the owners of Millrace Park on February 28, 2015.

NOW, THEREFORE, for the foregoing purposes, the Declarant declares that the Property shall be subject to this Declaration and that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

**ARTICLE I - DEFINITIONS**

When used in this Declaration (including in that portion hereof headed "Recitals") the following terms shall have the meaning indicated below:

1.01 Articles of Incorporation establish the Association as a nonprofit corporation. The Articles of Incorporation are filed with the Utah Division of Corporations.

1.02 Association or sometimes the Declarant shall mean the Millrace Park Homeowners Association, a Utah nonprofit corporation in good standing duly organized and incorporated for the purpose of managing the affairs of the Millrace Park owners as provided herein.

1.03 Board shall mean the Board of Directors of the Association.

1.04 **Board Resolutions** establish rules, policies, and procedures for internal governance and Association activities. Resolutions regulate operation and use of the Common Area. The Board adopts Resolutions and they are not recorded with the county recorder.

1.05 **Bylaws** set forth procedures for internal government and operation of the Association. Bylaws are recorded with the county recorder.

1.06 **Common Areas** shall mean all property that the Association owns, maintains, repairs, or administers, including streets, roadways, rights-of-way and utilities, owned or designated on the recorded plat as being intended ultimately to be owned by the Association for the common use and enjoyment of the Owners, together with all improvements thereon and all easements appurtenant thereto. The Common Areas which do not include the Semi-Common Areas are described in Exhibit B which is attached hereto.

1.07 **Common Expense** shall mean costs incurred by the Association to exercise any of the powers provided by the Association's Governing Documents.

1.08 **Declaration** shall mean this Restated Declaration of Covenants, Conditions and Restrictions of Millrace Park, a Planned Unit Development including any amendment hereto duly adopted and recorded. The Declaration creates rights and obligations which are binding upon the Association and Owners and contains the fundamental provisions dealing with ownership and property rights.

1.09 **Design Committee** shall mean the Design Committee established by and referred to in Article VIII of this Declaration. The Design Committee may sometimes be referred to as the Architectural Committee or the Landscaping Committee.

1.10 **Governing Documents** shall mean those written instruments by which the Association may exercise powers or manage, maintain, or otherwise affect the property under the jurisdiction of the Association. The Governing Documents include the following in order of hierarchy:

- (1) Title 57, Chapter 8a, Utah Revised Community Association Act (UCA);
- (2) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act (UNCA);
- (3) Plat Map;
- (4) Declaration;
- (5) Articles of Incorporation;
- (6) Bylaws;
- (7) Rules and Regulations (equal in hierarchy to Resolutions); and
- (8) Resolutions (equal in hierarchy to the Rules and Regulations).

If a conflict exists between Governing Documents, the higher shall prevail. Example: If the Declaration conflicts with the Bylaws, the Declaration shall prevail.

1.11 **Judicial Foreclosure** shall mean a foreclosure of a Residential Lot for the nonpayment of an assessment or charges and in a manner provided by law for the foreclosure of a mortgage on real property.

1.12 **Limited Common Area** shall mean the same as Semi-Common Area. See Section 1.27 below.

1.13 Living Unit shall mean a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the same Residential Lot and used in conjunction with such residence.

1.14 Lot shall mean any one of the twenty-two (22) lots of land within the boundary of the Association Property as shown upon the Plat and designated for separate, private ownership or occupancy. Each Residential Lot includes Semi-Common Areas and Private Ownership Areas and is individually numbered and intended to be used and occupied by a single family.

1.15 Managing Agent or Manager shall mean any person or entity appointed or employed as Managing Agent pursuant to Section 4-01(H) of Article IV of this Declaration.

1.16 Member shall mean and refer to every person who holds membership in the Association.

1.17 Mortgage shall mean any mortgage, deed of trust, or trust deed or the act of encumbering any property by a mortgage, deed of trust or trust deed; and mortgagee shall mean any mortgagee of a mortgage and any trustee or beneficiary of a deed of trust or trust deed.

1.18 Nonjudicial Foreclosure shall mean the sale of a Residential Lot for nonpayment of an assessment or charge and in the same manner as the sale of trust property under U.C.A. Sections 57-1-19 through 57-1-34.

1.19 Owner shall mean any person who is the Owner of record (as reflected by the records in the office of the County Recorder of Salt Lake County, Utah) of a fee or undivided fee interest in any Residential Lot, including contract sellers, but not including purchasers under contract until such contract is fully performed and legal title is conveyed of record. Notwithstanding any applicable theory relating to mortgages, no mortgagee shall be an Owner unless such party acquires fee title pursuant to foreclosure or sale or conveyance in lieu thereof. Declarant shall be an Owner with respect to each Residential Lot owned by it.

1.20 Plat or Plot Map shall mean and refer to the Plat of Millrace Park, a Planned Unit Development, prepared and certified by Fredrick C. Duberow, a licensed professional engineer, executed and acknowledged by the Declarant and recorded in the official records of Salt Lake County Recorder. The Plot is a visual representation of the property descriptions contained in the Declaration. It defines physical boundaries and distinguishes between units or lots and Common and Semi-Common elements. The Plat Map cannot be changed by the Association.

1.21 Private Ownership Areas shall mean the areas within Residential Lots maintained by the Owner and include the Living Units, Living Unit foundations, and patios, court yards, and yard areas to the rear of the front of each Living Unit and fenced areas as permitted by this Declaration.

1.22 Property or Project shall mean the property described in Exhibit "A" attached hereto, which includes all land covered by this Declaration, including Common Areas and Residential Lots.

1.23 Residential Lot shall mean a Lot, the use of which is limited by law, covenant, or otherwise to primarily residential purposes.



1.24 Roadways shall mean that portion of the Common Areas consisting of the streets and roads within the Property for the use and benefit of the Members/Owners as such are identified and depicted on the Plat.

1.25 Rules and Regulations govern the use of property, activities, and conduct. They are intended to fill holes and to clarify ambiguities in the Declaration and Bylaws and often change over time as the Association changes. The Board adopts and amends Rules and Regulations and they are not recorded with the county recorder.

1.26 Semi-Common Areas shall mean those Common Areas within the Residential Lots that is maintained by the Association and is designated in the Declaration or in the Plat as limited or reserved for the use of a certain Owner to the exclusion of the other Owners, including by way of illustration any open space, yard area or other improvements intended to serve only a single Residential Lot or some but not all Residential Lots located within the designated Semi-Common Area.

Semi-Common Areas shall also include the exterior materials of Living Units, such as roofing, stucco, rock or other siding, soffits, rain gutters and downspouts, and Association installed irrigation systems in Private Areas. Anything to the contrary notwithstanding, Semi-Common Areas shall NOT include patios or courtyards constructed to the immediate rear of the front of each Living Unit, or interiors of Living Units, its foundations or crawl spaces, or fenced areas within a Residential Lot as permitted in this Declaration.

1.27 Trustee. The Board of Directors may designate and appoint a member in good standing of the Utah State Bar who meets the qualifications set forth in UCA 57-1-21(I)(a)(i) to serve as Trustee for the purpose of effectuating non-judicial foreclosure, if the need arises, against Residential lots for the purpose of collecting unpaid assessments and related fees.

## **ARTICLE II - SUBMISSION AND DIVISION OF PROJECT**

2.01 Submission. The Property which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the real property situated in Salt Lake county, state of Utah, described in Exhibit "A" attached hereto and by this reference made a part hereof. The Property is subdivided into Residential Lots 1 through 22, Millrace Park, a Planned Unit Development, as identified in the Plat.

2.02 Division into Residential Lots and Common Areas. The Property is divided into twenty-two (22) Residential Lots, each consisting of a fee simple interest in a portion of the Property as set forth in the Plat. All portions of the Property not designated as Residential Lots shall constitute the Common Area described in Exhibit "B" which shall be owned by the Association for the benefit of all Owners in accordance with the provisions of this Declaration.

## **ARTICLE III - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

3.01 Membership. Every Owner upon acquiring title to a Residential Lot shall automatically become a Member of the Association and shall remain a member thereof until such time as the Ownership of such Residential Lot ceases for any reason, at which time membership in the Association with respect to such Residential Lot shall automatically cease and the successor Owner shall become a Member. Membership in the

Association shall be mandatory and shall be appurtenant to and may not be separated from the Ownership of a Residential Lot.

3.02 Voting Rights. Members shall be all Owners who shall be entitled to one vote for the Residential Lot in which the interest required for membership in the Association is held. Members owning more than one Residential Lot are entitled to one vote for each Residential Lot owned.

3.03 Multiple Ownership Interests. In the event there is more than one Owner of a particular Residential Lot, the vote relating to such Residential Lot shall be exercised as such Owners may determine among themselves, but in no event shall more than one vote be cast with respect to any Residential Lot. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Residential Lot concerned unless an objection is made at the meeting by another Owner of the same Residential Lot, in which event a majority in interest of the co-Owners as shown on the record of Ownership maintained by the Association shall be entitled to cast the vote.

3.04 Record of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document to his/her of his/her Residential Lot and shall file a copy of such conveyance document with the secretary of the Association, who shall maintain a record of Ownership of the Residential Lots. Any Owner who mortgages his Residential Lot or any interest therein by a Mortgage which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the mortgagee and also of the release of such Mortgage; and the secretary of the Association shall maintain all such information in the record of Ownership.

#### **ARTICLE IV - DUTIES AND POWERS OF THE ASSOCIATION**

4.01 Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Governing Documents, the Board acts in all instances on behalf of Association and shall have the obligations and duties to do and perform at least, but not limited to, the following for the benefit of the Owners and the maintenance and improvement of the Property:

(A) The Association shall accept all Owners as Members of the Association.

(B) The Association shall accept title to all Common Areas conveyed to it by Douglas Knight Construction, Inc.

(C) The Association shall maintain, repair, and replace the Common Areas (including the maintenance and resurfacing of and snow removal from all Roadways and maintenance of drainage facilities), and, at the discretion of the Board, any Property dedicated to any governmental authority and situated immediately adjacent to the Property if the Board determines that such dedicated Property is not being maintained or landscaped in a condition comparable to the Common Areas.

**(D) The Association shall:**

**(1) maintain, repair and replace all landscaping, including by way of illustration but not limited to, the irrigation, fertilization, and general care of shrubbery and flowers within Common and Semi-Common Areas;**

**(2) mow, trim, edge, fertilize and irrigate the lawns in Common, Semi-Common, and Private Areas provided they are reasonably accessible;**

**(3) blow-off leaves and salt from the front patio and other areas as specified in the Association's landscape maintenance contract;**

**(4) maintain, repair, and replace all exterior building materials of the Living Units, including by way of illustration but not limited to roofing, stucco, aluminum soffits, rock and wood materials, rain gutters and downspouts (includes cleaning debris from rain gutters and downspouts twice per year), and front courtyard walls;**

**(5) maintain, repair and replace concrete materials in driveways and walkways within designated Semi-Common Areas and the sidewalks leading to, but not including, the front court yards;**

**(6) replace exterior wall light fixtures adjacent to the front doors of the Living Units as needed; and**

**(7) apply pest control measures by spraying the foundations of each Living Unit and setting rodent traps as needed.**

**(E) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments, levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.**

**(F) The Association shall obtain and maintain in force the policies of insurance required by Article IX of this Declaration.**

**(G) The Association shall maintain, repair and replace, including the resurfacing of and removal of snow from, the lane located between Residential Lots 14 and 13, to the west, and Residential Lot 10, to the east. The Association's maintenance responsibility begins at the end of the Roadway and ends at the Residential Lot line of Residential Lot 11.**

**(H) The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Common Areas, Semi-Common Areas and Private Areas as provided in Section 4.01(D) of Article IV, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be such as shall be specified by the Board. Any agreement appointing a Managing Agent shall be terminable by the Board for cause upon thirty (30) days written notice thereof and at any time without cause or payment of a termination fee upon ninety (90) days written notice thereof, and the term of any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive one-year periods. Any Managing Agent shall be an independent contractor and not an agent or employee of the Association.**

(I) The Association shall maintain, repair and replace all perimeter fencing running along the boundaries of the development, including the fencing along the rear Residential Lot lines.

**4.02 Powers and Authority of the Association.** The Association shall have all the powers set forth in Governing Documents, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(A) The Association shall have the power and authority from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Residential Lot for the purpose of maintaining and repairing such Residential Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Residential Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Residential Lot in violation of this Declaration. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Board, or to enforce by a mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

(B) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas, Semi-Common Areas, and Residential Lots (to the extent necessitated by the failure of the Owners of such Residential Lots) or in exercising any of its rights to construct improvements or other work upon any of the Common and Semi-Common Areas, and provided that any contract for goods or services having a term of more than one (1) year shall state that it may be terminated by either party at the end of the first year or at any time thereafter upon not less than ninety (90) days' written notice, the Association shall have the power and authority to:

(1) pay and discharge any and all liens placed upon any Common Areas and Semi-Common Areas on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration; and

(2) obtain, contract and pay for, or otherwise provide for the:

(a) maintenance, repair and replacement of all Roadways and appurtenant improvements, including the removal of snow thereon, on such terms and conditions as the Board shall deem appropriate;

(b) construction, maintenance, repair and landscaping of the Common Areas, including all surface run-off, drainage and detention facilities, on such terms and conditions as the Board shall deem appropriate;

(c) construction, maintenance, repair and replacement of landscaping

and improvements upon the Semi-common Areas, including snow removal from driveways and sidewalks within the Semi-Common Areas, on such terms and conditions as the Board shall deem appropriate;

(d) such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of Declarant, the Association, the members of the Board, the members of the Design Committee and the Owners;

(e) such utility services, including (without limitation) culinary water, secondary water, sewer, trash removal, electrical, telephone and gas services, as the Board may from time to time deem desirable;

(f) the services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;

(g) fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any of the Property.

(h) such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary; and

(i) maintenance, repair and replacement of the gate on Millrace Lane.

(C) The Board may delegate to a Managing Agent any of its powers under this Declaration provided, however, that the Board cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of \$5,000 nor the power to sell, convey, mortgage or encumber any Common Areas.

(D) Upon thirty (30) days prior written notice to the Owner, the Association shall have the power and authority to hire a responsible corporation, partnership, firm, person or other entity to maintain the exterior Private Ownership Areas of an Owner's Residential Lots should the Owner thereof fail to properly maintain the same in manner consistent with the Association's Governing Documents and the Association's Design Committee standards. The cost to maintain a Private Ownership Area for an Owner shall be charged to the Owner and may be included in the next scheduled monthly assessment to the Owner.

**4.03 Registration.** The Board, by and on behalf of the Association shall register the Association with the Utah Department of Commerce within ninety days of the recording of the Declaration or any amendment thereto. The Board shall, in the form required by the Department of Commerce, provide the following:

(A) The name and address of the Association.

(B) The name, address, telephone number, and if applicable, e-mail address of the President of the Association Board.

(C) Contact information for a manager.

(D) The name, address, telephone number, and, if the contact person wishes to use e-mail or facsimile transmission of communicating payoff information, the e-mail

address or facsimile number, as applicable, a primary contact person who has such information which is needed by a closing agent in connection with the closing of a lot owner's financing, refinancing, or sale of a residential lot.

(E) The Board shall supplement the registration, in the manner established by the Department, within ninety days after a change in any of the registration information previously provided.

**4.04 Association Rules and Regulations.** The Board may from time to time and subject to the provisions of this Declaration, as amended, adopt, amend, repeal, and enforce rules and regulations governing, among other things, (1) the use of the Common Areas; (2) the use of the Semi-Common Areas; (3) the use of any Roadways or utility facilities owned by the Association; (4) the collection and disposal of refuse; (5) the maintenance of animals on the Property; and (6) other matters concerning the use and enjoyment of the Property and the conduct of residents.

**4.05 Limitation of Liability.** No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board, the Design Committee or the Managing Agent.

**4.06. Board of Directors.** The Association shall be managed by a Board, who acts in all instances on behalf of the Association.

(A) The Owners shall elect and/or appoint members of the Board to act as agents of the Association. The Board shall elect or appoint, at a minimum, a President, Secretary, and Treasurer. The Board shall meet monthly. The meeting may be conducted formally in person or informally by email or telephone.

(B) Any instrument executed by the Board that recites facts which, if true, would establish the Board's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

(C) The Board shall, in connection with its exercise of any of the powers delineated in subparagraphs (1) through (7) below, constitute a legal entity capable of dealing in the Association's name. The Board shall have, and is hereby granted, the following authority and powers.

(1) The right, power and authority to have access to each Residential Lot: (1) from time to time during reasonable hours and after a reasonable effort is made to provide notice to the occupant of the Residential Lot being entered, as may be necessary for the maintenance, repair or replacement of any of the Common, Semi-Common, and/or Private Areas; or (2) for making emergency repairs necessary to prevent damage to the Common Areas, Semi-Common Areas, or to another Residential Lot or Lots, provided that a reasonable effort is made to provide notice to the occupant of the Residential Lot prior to entry.

(2) The right, power and authority, without the vote or consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over,

under, across, and through the Common Areas or Semi-Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Project.

(3) The right, power and authority to execute and record, on behalf of all Owners, any amendment to the Declaration or Plat Map which has been approved by the vote or consent necessary to authorize such amendment.

(4) The power to sue and be sued.

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

(6) The right, power and authority to carry out such reasonable administrative functions and procedures as may be necessary or desirable to aid the Board in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with this Declaration.

(7) The right, power and authority to perform any acts, and to enter into any other transactions which may be reasonably necessary for the Board to perform its functions on behalf of the Owners.

(D) The Board shall maintain up-to-date lists of the name, mailing address, e-mail address, and phone number of all Owners. The Owners have a duty to provide this information to the Board.

(E) The Board may delegate some of its management responsibilities to a professional management company, an experienced on-site Manager, an independent contractor, through service contracts, or any combination thereof. The Manager may be an employee or an independent contractor. The termination provision of any such contract must not require a termination penalty or any advance notice of any more than sixty (60) days, and no such contract or agreement shall be for a term greater than one (1) year; provided, however, any management contract may be terminated for cause on thirty (30) days' notice.

(F) The Board may also employ general laborers, grounds crew, maintenance, bookkeeping, administrative and clerical personnel as necessary to perform its management responsibilities.

(G) Unless contrary to this Declaration, the Association shall be administered in accordance with the Bylaws attached hereto as Exhibit "C" and incorporated herein by this reference.

## **ARTICLE V - ASSESSMENTS AND BUDGETS**

5.01 Personal Obligation and Lien. Each Owner shall by acquiring or in any way becoming vested with his/her interest in a Residential Lot, be deemed to covenant and agree to pay to the Association the monthly and special assessments, fines, and title transfer fees described in this Article, together with late payment fees, interest and costs of collection, if and when applicable. All such amounts shall be, constitute and remain: (1) a charge and continuing lien upon the Residential Lot with respect to which such assessment is made until fully paid; and (2) the personal, joint and several obligations of the Owner or Owners of such Residential Lot at the time the assessment falls due. No Owner may exempt himself or his Residential Lot from liability for

payment of assessments or fines by waiver of his rights in the Common or Semi-Common Areas or by abandonment of his Residential Lot. In a voluntary conveyance of a Residential lot, the grantee shall be a jointly and severally liable with the grantor for all unpaid monthly and special assessments, late payment fees, interest and costs of collection which shall be a charge on the Residential Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

**5.02 Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Property. The use made by the Association of funds obtained from assessments may include the cost of (1) paying taxes and insurance on the Common Areas; (2) managing and supervising the Common and Semi-common Areas; (3) establishing and funding adequate reserves to cover the cost of repairing, replacing, or restoring Common and Semi-Common Areas; and (4) any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under the Governing Documents.

**5.03 Monthly Assessments.** The Board shall from time to time and in its discretion set the amount of the monthly assessment in an amount reasonably estimated by the Board to be sufficient to meet the obligations imposed by the Governing Documents and on the basis specified in Section 5.07 below.

**5.04 Special Assessments.** The Association may levy special assessments for the purpose of defraying, in whole or in part: (1) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessment; or (2) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common and Semi-Common Areas. Any such special assessment must be assented to by a majority of the votes of the membership which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for that purpose. Written notice, setting forth the purpose of such meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date.

**5.05 Quorum Requirements.** The quorum at any meeting required for any action authorized by Section 5.04 above shall be a majority of the Owners. If a quorum is not present at the first meeting, the meeting may be adjourned and rescheduled at a time not sooner than 24 hours and not later than 30 days. Those present at the reconvened meeting regardless of number shall constitute a quorum. No notice other than an oral notice at the first meeting shall be required for the rescheduled meeting.

**5.06 Uniform Rate of Assessment.** All monthly and special assessments authorized by Section 5.03 or Section 5.04 above shall be fixed at a uniform rate for all Residential Lots. No amendment of this Declaration changing the allocation ratio of such assessments shall be valid without the consent of the Owners of all Residential Lots adversely affected.

**5.07 Special Assessment on Specific Residential Lots.** In addition to the monthly assessment and any special assessment authorized pursuant to Section 5.04 above, the Board may levy at any time special assessments (1) on every Residential Lot especially



benefited by any improvement to adjacent roadways, sidewalks, planting areas or other portions of the Common Areas and/or Semi-common Areas made on the written request of the Owner of the Residential Lot to be charged; (2) on every Residential Lot the Owner or occupant of which shall cause any damage to the Common Areas and/or Semi-Common Areas necessitating repairs; and (3) on every Residential Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to Section 4.02(D) of Article IV or other provisions of this Declaration.

The aggregate amount of any such special assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and shall be allocated among the affected Residential Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a special assessment against the Residential Lots benefited.

**5.08 Monthly Assessment Due Dates and Late Fee.** The monthly assessments provided for herein shall commence as to all Residential Lots as of the second month following conveyance to the Association of the Common Areas shown on the Plat. At least fifteen (15) days prior to such commencement date and at least fifteen (15) days prior to the effective date of any change in the amount of monthly assessments, the Association shall give each Owner written notice of the amount and first due date of the assessment concerned. Monthly assessments are due the first of each calendar month. Dues not paid by the 10th of the month will be assessed a \$25.00 late charge.

**5.09 Fines.** The Board may assess a fine against a Residential Lot Owner for a violation of the Association's Governing Documents. Before assessing such a fine, the Board shall notify the Owner of the violation and that a fine will be imposed if the violation is not remedied within a time certain, which shall be at least 48 hours. A fine shall: (1) be assessed only for a violation of a rule, covenant, condition, or restriction that is specifically listed in the Association's Governing Documents; (2) be in the amount \$25 per violation for each day the violation is not remedied; and (3) accrue interest and late fees as provided in Section 5.11 below. Unpaid fines may be collected as an unpaid assessment as set forth in this Declaration.

(A) An Owner who is assessed a fine may request an informal hearing to protest or dispute the fine within 30 days after the day on which the fine is assessed.

(B) Such a hearing shall be conducted by the Board at a date, time, and place they shall determine.

(C) No interest or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

(D) An Owner may appeal a fine issued under this Section 5.09 by initiating a civil action: (1) if the Owner has timely requested an informal hearing, within 180 days after the day on which a final decision from the informal hearing is issued; or (2) if the Owner has not timely

requested an informal hearing, within 180 days after the day on which the time to request an informal hearing expires.

**5.10 Owner's Request for Written Statement of Unpaid Assessment.** The Manager or Board shall issue a written statement indicating any unpaid assessment with respect to a Residential Lot covered by the request, upon the written request of any unit Owner and payment of a reasonable fee, not to exceed \$10, to the Association to cover administrative costs. Such written statement is binding in favor of any person who relies in good faith on the written statement, upon the remaining Owners, Manager, and the Board. Unless the Manager or Board complies with a written request for a written statement from a unit Owner within 10 days, any unpaid assessment that became due prior to the date the request was made is subordinate to a lien held by the person requesting the statement.

**5.11 Effect of Nonpayment and Remedies.** Any assessment not paid when due shall, together with late fees, interest and costs of collection, be, constitute, and remain a continuing lien on the affected Residential Lot. If any assessment is not paid within thirty (30) days after the date on which it becomes due, the amount thereof shall bear interest from the due date at the rate of one and one-half percent (1½ %) per month, and the Association may bring an action against the Owner who is personally liable or may foreclose its lien against the Residential Lot, or both. Any judgment obtained by the Association in connection with the collection of delinquent assessments and related charges shall include reasonable attorney's fees, court costs and every other expense incurred by the Association in enforcing its rights.

(A) To enforce a lien, the Association may cause a Residential Lot to be sold through nonjudicial foreclosure as though the lien were a deed of trust or foreclose the lien through a judicial foreclosure in the manner provided by law for the foreclosure of a mortgage.

(1) For purposes of a nonjudicial or judicial foreclosure the Association is considered to be the beneficiary under a trust deed, and the Owner is considered to be the trustor under a trust deed.

(2) An Owner's acceptance of the Owner's interest in a Residential Lot constitutes a simultaneous conveyance of the Residential Lot in trust, with power of sale, to the trustee designated as provided in this Section for the purpose of securing payment of all amounts due under the declaration.

(3) Declarant hereby conveys and warrants pursuant to UCA §57-1-20 and 57-8a-302 to Kendall S. Peterson, Esq., with power of sale, the Residential Lots and all improvements to said lots for the purpose of securing payment of assessments under the terms of this Declaration. The Board is hereby authorized, to appoint, at its discretion, a successor trustee pursuant to the procedure set forth in UCA §57-1-22 by recording a substitution of trustee with the Salt Lake County Recorder. The appointment of a successor trustee, shall not require an amendment of this Declaration; but, is authority vested in the Board.

(4) A trustee is subject to all duties imposed on a trustee under U.C.A. Sections 57-1-19 through 57-1-34.

(B) This does not prohibit the Association from bringing an action against an Owner to recover an amount for which a lien is created or from taking a deed in lieu of foreclosure, if the action is brought or deed taken before the sale or foreclosure of the Owner's Residential Lot.

**5.12 Notice of Nonjudicial Foreclosure - Nonjudicial Foreclosure Prohibited if Owner Demands Judicial Foreclosure.** At least 30 calendar days before initiating a nonjudicial foreclosure, the Association shall provide notice to the Owner of the Residential Lot that is the intended subject of the nonjudicial foreclosure.

(A) The notice shall: (1) notify the Owner that the Association intends to pursue nonjudicial foreclosure with respect to the Owner's Residential Lot to enforce the Association's lien for an unpaid assessment; (2) notify the Owner of the Owner's right to demand judicial foreclosure in the place of nonjudicial foreclosure; (3) be sent to the Residential Lot Owner by certified mail, return receipt requested; and (4) may be included with other association correspondence to the Owner.

(B) The Association may not use a nonjudicial foreclosure to enforce a lien if the Owner mails the association a written demand for judicial foreclosure: (1) by U.S. mail, certified with a return receipt requested; (2) to the address stated in the association's notice; and (3) within 15 days after the date of the postmark on the envelope of the Association's notice.

(C) The Association may abandon a judicial foreclosure, nonjudicial foreclosure, or sheriff's sale and initiate a separate action or another judicial foreclosure, nonjudicial foreclosure, or sheriff's sale if the initial judicial foreclosure, nonjudicial foreclosure, or sheriff's sale is not complete.

(D) A court entering a judgment or decree in a judicial action brought under U.C.A 57-8a shall award the prevailing party its costs and reasonable attorney fees incurred before the judgment or decree and, if the Association is the prevailing party, any costs and reasonable attorney fees that the association incurs collecting the judgment. In a nonjudicial foreclosure, an Association may include in the amount due, and may collect, all costs and reasonable attorney fees incurred in collecting the amount due, including the costs of preparing, recording, and foreclosing a lien.

(E) The Association need not pursue a judicial foreclosure or nonjudicial foreclosure to collect an unpaid assessment but may file an action to recover a money judgment for the unpaid assessment without waiving the lien under U.C.A. 57-8a-301.

(F) In an action by the Association to collect an assessment or to foreclose a lien for an unpaid assessment, a court may: (1) appoint a receiver to collect and hold money alleged to be due and owing to a Residential Lot Owner before commencement of the action or during the pendency of the action; and (2) order the receiver to pay the Association, to the extent of the Association's common expense assessment, money the receiver holds.

**5.13. Provisions Applicable to Nonjudicial Foreclosure.** The Association's nonjudicial foreclosure of a Residential Lot is governed by U.C.A. Sections 57-1-19 through 57-1-34, to the same extent as though the Association's lien were a trust deed, and U.C.A 57-8a. If there is a conflict between a provision of U.C.A 57-8a-304 and a provision of U.C.A. Sections 57-1-19 through 57-1-34 with respect to the association's nonjudicial foreclosure of a Residential Lot, the provision of U.C.A 57-8a controls.

**5.14 Subordination of Lien to Mortgages.** The lien for unpaid assessments, late fees, fines, interest, collection cost and attorney's fees, provided herein shall be subordinate to any lien or encumbrance recorded before the date this Declaration was recorded and to any first or second

mortgage lien recorded prior to the Association's Notice of Lien being recorded. A purchaser who comes into possession of a Residential Lot by virtue of the foreclosure of such Mortgage or the exercise of a power of sale under such mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment which accrues or becomes due prior to the time such holder or purchaser takes possession of such Residential Lot; provided, that to the extent there are any proceeds of the sale on foreclosure of such Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such Mortgage, the lien shall apply to such excess. No sale or transfer shall relieve any Resident Lot from the lien of any assessment thereafter becoming due.

**5.15 Fee for Providing Payoff Information Needed at Closing.** The Association may charge a fee in an amount set by the Board for providing Association payoff information needed in connection with the financing, refinancing, or closing of an Owner's sale of the Owner's Residential Lot. The Association may not require such fees to be paid before closing or charge the fee if it exceeds \$50.

If the Association fails to provide information described in this Section 5.15 within five business days after the closing agent requests the information may not enforce a lien against that unit for money due to the Association at closing. A request under this Section is not effective unless the request is conveyed in writing to the primary contact person as registered with the Department of Commerce and contains the name, telephone number, and address of the person making the request; the facsimile number or email address for delivery of the payoff information; is accompanied by a written consent for the release of the payoff information identifying the person requesting the information as a person to whom the payoff information may be released; and signed and dated by an Owner of the Residential Lot for which the payoff information is requested.

**5.16 Transfer Fee.** A Transfer Fee of \$500 will be made payable to Millrace Park Homeowners Association at the closing of said sale. The amount of \$500 will be payable by the buyer at the time of closing.

**5.17 Budget.** At least 30 days prior to the Annual Meeting of the Owners, the Board will prepare an operating budget for the ensuing year, and a statement showing actual expenditures for the current year (with projections for the final month). The budget will detail the income and expenses of the Association showing expenses for building maintenance, operations, repairs, insurance, utilities, snow removal, landscaping management fees, professional fees, and where applicable, reserve funds for repairing, replacing, or restoring Common and Semi-Common (Limited Common) areas, and any other Association expenses. The budget will also show income derived from all sources and the amounts of any receivables. The budget will be mailed to each Owner at his or her last known address (as shown by the most recent County property tax assessment rolls, if no other address is available) or emailed to the Owners last known email address at least 30 days prior to the annual Owners meeting. The budget will also indicate the resulting Assessment to be levied on each Owner. The budget will be sent with the notice of the annual Meeting.

**5.18 Reserve Fund Account.** The Board shall establish and maintain a reserve account or accounts to accumulate money to cover the cost of repairing, replacing, or restoring Common and Semi-Common Areas and facilities that have a useful life of three years or more and a remaining

useful life of less than 30 years, if the cost cannot reasonably be funded from the operating budget or other funds of the Association.

**5.19 Reserve Account Analysis.** The Board shall: (1) cause a reserve analysis to be conducted no less frequently than every six (6) years; and (2) review, and if necessary, update a previously conducted reserve analysis no less frequently than every three (3) years. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.

**(A) The Reserve Account Analysis shall include:**

**(1) a list of the components identified in the reserve analysis that will reasonably require reserve funds;**

**(2) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis;**

**(3) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis;**

**(4) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and**

**(5) a reserve funding plan that recommends how the Association will fund the annual contribution to the reserve fund.**

**(B) The Board shall prepare a written summary of the most recent reserve analysis or update and make the report available to the Owners at the annual meeting of the Association, which is usually held during the first quarter of the calendar year.**

**(C) In formulating its budget each year, the Board shall include a reserve line item in an amount the Board determines, based on the reserve analysis, to be prudent.**

**(D) Within forty-five (45) days after the day on which the Board adopts its annual budget, the Owners may veto the reserve line item by a fifty-one percent (51%) vote of the allocated voting interests in the Association at a special meeting called by the Owners for the purpose of voting whether to veto a reserve fund line item. If the owners veto a reserve fund line item and a reserve fund line item exists in a previously approved annual budget that was not vetoed, the Association shall fund the reserve account in accordance with that prior reserve fund line item.**

**(E) Subject to paragraph (F) of this Section, if the Association does not comply with the requirements of the paragraphs B), (C), or (D) of this Section and fails to remedy the noncompliance within the time specified in paragraph (F), an Owner may file an action in state court for: (1) injunctive relief requiring the Association to comply with the requirements of paragraph (B), (C) and (D) of this Section; (2) \$500 or actual damages, whichever is greater; (3) any other remedy provided by law; and (4) reasonable costs and attorney fees.**

**(F) No fewer than 90 days before the day on which an Owner files a complaint in state court, the Owner shall deliver written notice that shall state: (1) the requirement with which the Association has failed to comply; (2) a demand that the Association come into compliance with the requirements; and (3) a date, no fewer than 90 days after the day on which the Owner delivers the notice, by which the Association shall remedy its noncompliance.**

(G) The Association may not use money in a Reserve Fund for daily maintenance expenses, unless the majority of Owners vote to approve the use of reserve fund money for that purpose; or for any purpose other than the purpose for which the reserve fund was established.

(H) The Association shall maintain a reserve fund separate from other funds of the Association. This does not limit the Board from prudently investing the money in a reserve fund.

## **ARTICLE VI – PROPERTY RIGHTS AND CONVEYANCES**

6.01 Easement Concerning Common Areas. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Residential Lot and in no event shall be separated there from. Any Owner may delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Owner's Residential Lot, notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Areas except for the necessary parking, access, communication, utility, drainage and sewer purposes for which such easements are intended for use in common with others.

6.02 Easement Concerning Semi-Common Areas. The Association shall have a non-exclusive drainage and public utility easement and an easement for maintenance in and to the Semi-Common Areas. With the exception of the rights and easements granted to the Association, Owners of Residential Lots shall have the exclusive use of all Semi-Common Areas within their Residential Lots.

6.03 Form of Conveyancing: Leases. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Residential Lot shall describe the interest or estate involved substantially as follows: Residential Lot No. \_\_\_ of Millrace Park, a Planned Unit Development, according to the Plat thereof recorded in Book, Page, of the Official Records of Salt Lake County, which Residential Lot is contained within Millrace Park, a Planned Unit Development identified in the "Declaration of Covenants, Conditions, and Restrictions of Millrace Park, a Planned Unit Development" recorded in Book at Page SUBJECT TO the covenants, conditions, restrictions, easements, charges and liens provided for in said Declaration of Covenants, Conditions and Restrictions.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Residential Lot. Any lease of a Residential Lot shall be in writing and shall provide that the terms of the Lease shall be subject in all respects to the provisions of Governing Documents of the Association and that any failure by the lessee to comply with the terms of such documents shall be a default under the Lease.

6.04 Transfer of Title to Common Areas. Declarant shall convey to the Association title to the various Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any non-delinquent assessments, charges, or taxes, imposed by governmental or quasi-governmental authorities), as each such Common Area is substantially completed.

6.05 Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

(A) The right of the Association to govern by rules and regulations the use of the Common Areas for the Owners so as to provide for the enjoyment of the Common Areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Residential Lots by every Owner, including the right of the Association to impose reasonable limitations on the number of pets per Owner who at any given time are permitted to use the Common Areas;

(B) The right of the Association to suspend an Owner's right to the use of any amenities included in the Common Areas for any period during which an assessment on such Owner's Residential Lot remains unpaid and for a period not exceeding ninety (90) days for any infraction by such Owner of the provisions of this Declaration or of any rule or regulation promulgated by the Board;

(C) The right of the County of Salt Lake and any other governmental or quasigovernmental body having jurisdiction over the Property to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and

(D) The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association, provided that such dedication or transfer must first be assented to in writing by (1) all holders of first mortgages secured by Residential Lots and (2) the Owners of at least seventy-five percent (75%) of the Residential Lots. No such dedication or transfer, however, may take place without the Association first receiving approval from the County of Salt Lake pursuant to all applicable state and county laws, rules and ordinances in effect at the time of such proposed dedication or transfer.

**6.06 Reservation of Access and Utility Easements.** Declarant reserves easements for access, electrical, gas, communications, cable television and other utility purposes and for sewer, drainage and water facilities, (whether servicing the Property or other premises or both) over, under, along, across and through the Property, together with the right to grant to the County of Salt Lake, or any other appropriate governmental agency or to any public utility or other corporation or association, easements for such purposes over, under, across, along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof.

**6.07 Easements and Encroachments.** If any part of the Common Area as improved by Declarant now or hereafter encroaches upon my Residential Lot or if any structure constructed by Declarant on any Residential Lot now or hereafter encroaches upon any other Residential Lot or upon any portion of the Common Areas, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Residential Lot shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Residential Lot or upon any portion of the Common Areas due to such reconstruction shall be permitted; and valid easements for such encroachments and

the maintenance thereof, so long as they continue, shall exist.

**6.08 Easement & Maintenance of Common Driveway.** The Owner of Residential Lot 12 shall have a non-exclusive easement and right-of-way to travel over and across the southern 10 feet of Residential Lot 11 for ingress and egress to Residential Lot 12. Such easement and right-of-way shall be appurtenant to and shall pass with the title conveyed to each Owner of Residential Lot 12, in perpetuity. The Owner of Residential Lot 12 shall maintain the right-of-way and easement area across Residential Lot 11 for the benefit of the Owners of Residential Lot 12. The Owner of Residential Lot 20 shall have a non-exclusive easement and right-of-way to travel over and across the northern 80.65 feet of Residential Lot 19 (which constitutes the entrance to both Residential Lots 19 and 20, as depicted on the Plat) for ingress and egress to Residential Lot 20. Such easement and right-of-way shall be appurtenant to and shall pass title with the title conveyed to each Owner of Residential Lot 20, in perpetuity. The Owners of Residential Lots 19 and 20 shall share equally the cost to maintain the right-of-way and easement area situated on Residential Lot 19 for the benefit of the Owners of Residential Lots 19 and 20.

## **ARTICLE VII - LAND USE RESTRICTIONS AND MEMBER OBLIGATIONS**

### **7.01 General Restrictions and Requirements**

(A) No improvement, excavation, fill or other work (including the installation of any wall or fence) which in any way alters any Residential Lot from its natural or improved state existing on the date such Residential Lot was conveyed to a purchaser shall be made or done except upon strict compliance with the provisions of this Article VII and the provisions of Article VIII.

(B) Residential Lots shall be used only for single-family residential purposes, and no more than one house shall be constructed on any Residential Lot. No Residential Lot shall be resubdivided.

(C) The facilities and improvements constituting part of the Common Areas shall be used only for the purposes and uses for which they are designed. Common Areas shall be used only for natural recreational uses which do not injure or scar the Common Areas or the vegetation thereof, increase the cost of maintenance thereof or cause unreasonable embarrassment, disturbance or annoyance to Owners in their enjoyment of their Residential Lots and Living Units or the Common Areas.

(D) All Private Ownership Areas within each Residential Lot, and all improvements located thereon, shall be maintained by the Owner thereof in good condition and repair consistent with the Association's Governing Documents and the Association's Design Committee standards, and in such manner as not to create a fire or other hazard, all at the Owner's expense.

(E) No structure or improvement having a height of more than two (2) stories shall be constructed on any Residential Lot; provided, however, that the height of a structure or improvement may exceed two (2) stories if permitted by law and if the Design



Committee determines that the proposed height is compatible with the physical site involved and adjoining properties.

(F) No dwelling shall be permitted on Residential Lots with the ground floor area of the main structure, exclusive of open porches and garages, of less than 1300 square feet.

(G) Living Units on all Residential Lots shall have a minimum of a two (2) car attached garage.

(H) The exterior covering of all Living Units, including front courtyard walls, shall be of brick or native stone and stucco, as determined by the Design Committee.

(I) Owner-Occupancy Requirement. For the reasons set forth below the Residential Lots must be Owner-occupied. For use herein the term "Owner-occupied" shall mean a Residential Lot or Unit occupied by one of the following: (1) the vested Owner (as shown on the records of the Salt Lake County Recorder); (2) the vested Owner and/or his spouse, parent, children or siblings; or (3) the shareholder, partner, member, trustor, beneficiary or other legal representative of an institutional Owner (provided, such person holds a beneficial interest in such legal entity of at least fifty percent (50%) and/or his spouse, children or parents.

(1) Protect the equity of the individual property; and

(2) Carry out the purpose for which Millrace Park was formed by preserving the unique character of the development as a residential community of Owner-occupied Residential Lots and by preventing the development from assuming the character of an apartment, renter-occupied complex; and

(3) Comply with the eligibility, requirements for financing in the primary and secondary mortgage market insofar as such criteria provide that the development be substantially Owner-occupied.

(J) Enforcement of Land Use Restrictions. The following persons shall have the right to exercise or seek any remedy at law or in equity to enforce strict compliance with this Declaration: (1) Any Owner; or (2) The Association. The prevailing party in an action for the enforcement of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.

(K) Conditional Notes on Plat. Neither the Association nor any Owner of a Residential Lot shall have the authority to waive or alter the conditions or requirements set out as notes on the Plat.

## **ARTICLE VIII - ARCHITECTURAL CONTROL**

8.01 Organization of the Design Committee. There shall be a Design Committee consisting of not fewer than three (3) members. The members of the Design Committee need not be Owners. The Board may appoint, remove and increase the number of members of the Design Committee. Whenever the Design Committee consists of more than three (3) members, it may designate subcommittees, each consisting of at least three (3) members. The members of the Design Committee shall not receive compensation, but all members

shall be entitled to reimbursement from the Association for reasonable expenses incurred in the performance of Design Committee functions.

**8.02 Standard of Design Review.** The following must have prior written approval of the Design Committee: (1) construction, additions, improvements, alterations, or repairs to the exterior of any residence, fence, or privacy wall; (2) construction, additions, improvements, alterations, or repairs to or within Common or Semi-Common Areas, such as planting and pruning of trees and shrubs or installing or changing sprinklers; and (3) construction, additions, improvements, alterations, or repairs to Private Areas that may be readily viewed from the Association's roadway or an adjacent Residential Lot.

Before granting any approval of plans and specifications, the Design Committee shall determine to its reasonable satisfaction that such plans and specifications: (1) conform to all architectural and design standards contained in this Declaration and all further architectural and design standards promulgated from time to time by the Board; and (2) provide for a structure, alteration, landscaping or other improvements in harmony as to external design and location with surrounding structures and topography.

**8.03 Design Committee Rules and Design Standards.** The Board may, upon recommendation from the Design Committee, adopt and file as a matter of public record reasonable rules related to the efficient review of plans and specifications including requirements as to the number of sets of plans and specifications to be submitted, the fixing of a review or variance request fee not exceeding fifty dollars (\$50.00) per review or variance request, the details to be shown on plans and specifications, and design guidelines consistent with this Declaration and covering such matters as setbacks, height limitations, restrictions on minimum or maximum size and quality of structures.

**8.04 Approval Procedure.** The Design Committee and any subcommittees thereof shall meet from time to time as necessary to perform the duties of the Design Committee. The vote or written consent of a majority of the Design Committee or any authorized subcommittee shall constitute the act of the Design Committee. Any plans and specifications submitted to the Design Committee shall be approved or disapproved within thirty (30) days after receipt by the Design Committee. If the Design Committee fails to take action within such period, the plans and specifications shall be deemed to be approved as submitted.

**8.05 Variance Procedure.** If plans and specifications submitted to the Design Committee are disapproved because such plans and specifications are not in conformity with applicable architectural and design standards, the party or parties making such submission may submit a request for variance to the Design Committee, which shall make a written recommendation of approval or disapproval of the requested variance to the Board. The Board shall approve or disapprove the request for variance in writing. If the Board fails to approve or disapprove a request for variance within sixty (60) days after such request is submitted to the Design Committee, such request shall be deemed to be approved.

**8.06 Nonwaiver.** The approval by the Design Committee of any plans and

specifications for any work done or proposed shall not constitute a waiver of any right of the Design Committee to disapprove any similar plans and specifications.

**8.07 Estoppel Certificate.** Within thirty (30) days after written demand therefore is delivered to the Design Committee by any Owner and upon payment therewith to the Association of a reasonable fee from time to time to be fixed by the Board, the Design Committee shall issue an estoppel certificate in recordable form executed by any two of its members, certifying with respect to any Residential Lot of such Owner that as of the date thereof either: (1) all improvements and other work made or done upon or within such Residential Lot by the Owner, or otherwise, comply with this Declaration; or (2) such improvements or work do not so comply, in which event the certificate shall also: (a) identify the nonconforming improvements or work; and (b) set forth the nature of such noncompliance. Any mortgagee or purchaser from Owner shall be entitled to rely on such certificate with respect to the matters therein set forth.

**8.08 Disclaimer of Liability.** Neither the Design Committee, nor any member thereof acting in good faith shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of: (1) the approval or rejection of, or the failure to approve or reject, any plans, drawings and specifications; (2) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (3) the development or manner of development of any of the Property; or (4) any engineering or other defect in approved plans and specifications.

#### **ARTICLE IX - INSURANCE**

**9.01 Blanket Property Insurance.** The Board shall procure and maintain from a company holding a rating of "AA" or better from Best's Insurance Reports a policy or policies (herein called 'the property insurance policy') a Blanket Property Insurance or Guaranteed Replacement Cost Insurance policy to cover one hundred percent (100%) of the full replacement cost of any fixture, improvement, or betterment installed at any time to an attached Living Unit or to a Semi-Common Area appurtenant to a Living Unit on a Residential Lot, whether installed in the original construction or in any remodel or later alteration, including floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to an attached Living Unit or to a Semi-Common Area structure. Such coverage excludes items normally excluded from property insurance policies.

(A) At a minimum, the property insurance policy will have with provisions for automatic increases in the cost of replacement. Coverage shall include losses by fire and such other hazards covered by an extended coverage endorsement, debris removal, demolition, damage by vandals, malicious mischief, windstorm, hail, water damage (excluding flood insurance), and such other risks customarily covered by P.U.D. projects in this location, of this construction, and use.

(1) The named insured will be Millrace Home Owners Association, or its authorized representative, for the use and benefit of the individual Owners as their interests might appear.

(2) Each such policy will include a standard mortgagee clause, without contribution, which shall be endorsed to provide that any proceeds are payable to the Association for the use and benefit of the Mortgagees, as their interest may appear, or shall be otherwise endorsed to fully protect the interest of the Mortgagees. Further, the policy shall require thirty (30)

days written notice to Mortgagees in the event of a cancellation, reduction, or non-renewal of coverage.

(3) Each policy shall contain a provision that, notwithstanding anything in the policy that gives the carrier the right to restore the project rather than make cash settlement, such right will not be exercised without the prior written approval of the Association. The Association will maintain Workers Compensation Insurance on any employees, and if available at a reasonable cost, may require or purchase fidelity bonds on persons handling Association funds or property.

(B) Each Residential Lot Owner is an insured person under the property insurance policy.

(C) If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of the Residential Lot Owner, the Association's policy provides primary insurance coverage; the Residential Lot Owner is responsible for the Association's policy deductible; and the building property coverage, often referred to as coverage A, of the Residential Lot Owner's policy applies to that portion of the loss attributable to the Association's policy deductible.

(D) A "covered loss" means a loss resulting in a single event or occurrence that is covered by the Association's property insurance policy.

(E) "Lot damage" means damage to any combination of a lot, a dwelling on a lot, or a Semi-Common Area appurtenant to a dwelling on a lot.

(F) "Lot damage percentage" means the percentage of total damage resulting in a covered loss that is attributable to lot damage.

(G) An Owner who has suffered lot damage as part of a covered loss is responsible for an amount calculated by applying the lot damage percentage for that lot to the amount of the deductible under the Association's property insurance policy. If an owner does not pay the amount required within thirty (30) days after substantial completion of the repairs to, as applicable, the lot, a dwelling on the lot, or the Semi-Common Area appurtenant to the lot, the Association may levy an assessment against the owner for that amount.

(H) The Association shall set aside an amount equal to the amount of the Association's property insurance policy deductible or, if the policy deductible exceeds \$10,000, an amount not less than \$10,000.

(I) The Association shall provide notice to each Owner of the Owner's obligation for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide such notice, the Association is responsible for the portion of the deductible that the Association could have assessed to the Owner, but only to the extent that the Owner does not have insurance coverage that would otherwise apply under this Section. If the Association provides notice of the Association's policy deductible but fails to provide notice of a later increase in the amount of the deductible, The Association is responsible only for the amount of the increase for which the notice was not provided.

(J) If, in the exercise of the business judgment rule, the Board determines that a covered loss is likely not to exceed the Association's property insurance deductible, and until it becomes apparent the covered loss exceeds the Association's property insurance deductible and a claim is submitted to the Association's property insurance insurer: (1) for a lot to which a loss occurs, the Owner's policy is considered the policy for primary coverage for the damage to that lot; (2) the Association is responsible for any covered loss to any Common Area; (3) the Owner who does not have a policy to cover the damage to that Owner's lot is responsible for that lot damage, and the Association may recover any payments the Association makes to remediate that lot; and (4) the Association need not tender the claim to the Association's insurer.

(K) The insurer of the Association's property insurance policy shall adjust with the Association a loss covered under the Association's policy. The proceeds under the Association's property insurance policy are payable to the Association and may not be payable to a holder of security interest. The Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. If damaged property is to be repaired or restored, insurance proceeds shall be disbursed first for repair or restoration of the damaged property. After such disbursements are made and the damaged property has been completely repaired or restored or the project terminated, any surplus proceeds are payable to the Association, Owners, and lien holders, as provided in this Declaration.

(L) An insurer that issues a property insurance policy, or the insurer's authorized agent, shall issue a certificate or memorandum of insurance to: (1) the Association; (2) an Owner, upon the Owner's written request; and (3) a holder of security interest, upon the holder's written request.

(M) If the Board acquires from an insurer the property insurance required under this Section, the Board is not liable to Owners if the insurance proceeds are not sufficient to cover one hundred percent (100%) of full replacement cost of the insured property at the time of the loss.

(N) This Section does not prevent a person suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for a loss against a person at fault for the loss.

9.02 Liability Insurance. The Board shall procure and maintain from a company or companies holding a rating of "AA" or better from Best's Insurance Reports a policy or policies (herein called "the liability insurance policy") of Comprehensive General Liability Insurance to cover all occurrences commonly insured against death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Area.

Such insurance shall be for such limits as the Board may decide, but not less than those limits customarily carried by properties of comparable character and usage in the County of Salt Lake nor less than \$1,000,000 for personal injury and property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use.

The Policy shall contain a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced. The Policy shall provide that the Policy may not be canceled by the insurer unless it gives at least thirty (30) days' prior written notice thereof to the Board and every other person in interest who shall have requested in writing such notice of the insurer. Any such coverage procured by the Board shall be without prejudice to the right of the Owners to insure their personal liability for their own benefit at their own expense.

**9.03 Additional Insurance.** The Board may also procure insurance which shall insure the Common Areas and the Association, the Board, the Managing Agent or the Owners and others against such additional risks as the Board may deem advisable. Insurance procured and maintained by the Board shall not require contribution from insurance held by any of the Owners or their mortgagees.

Each policy of insurance obtained by the Board shall, if reasonably possible, provide: (1) a waiver of the insurer's rights of subrogation against the Association, the Owners and their respective Directors, officers, agents, employees, invitees and tenants; (2) that it cannot be cancelled, suspended or invalidated, due to the conduct of any particular Owner or Owners; (3) that it cannot be cancelled, suspended, or invalidated due to the conduct of the Association or any Directors officer agent or employee of the Association without a prior written demand that the defect can be cured; and (4) that any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the Owners.

**9.04 Review of Insurance.** The Board shall periodically, and whenever requested by twenty percent (20%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Residential Lot and to the holder of any mortgage on any Residential Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner.

**9.05 Individual Owners Insurance.** Subject to Section 9.01 above, the Owners are solely responsible for property, casualty and liability insurance on the contents of their Living Units, and any improvements or betterments to their Living Units or Residential Lots, even if improvements are affixed to the property. Each Owner is also solely responsible for liability insurance against claims of personal injury or property damage occurring within the Owner's Living Unit or Residential Lot, including any deck areas, hot tubs, or spas.

**9.06 Damage or Destruction to a Portion of the Project.** If a portion of the Project for which insurance is required is damaged or destroyed, the Association shall repair or replace the portion within a reasonable amount of time unless: (1) the Project is terminated; (2) repair or replacement would be illegal under state statute or local ordinance governing health and safety; or (3) at least seventy-five percent (75%) of the allocated voting interests of the Owners in the Association vote not to rebuild and each Owner of a dwelling on a lot and Semi-Common Area appurtenant to that lot will not be rebuilt votes not to rebuild.

If the damage to the Project is such that the costs of the repair exceeds more than

seventy-five percent (75%) of its market value, or the damage has caused material and substantial damage at more than fifty percent (50%) of the Living units, the association shall convene a special meeting of the Owners as soon as possible for the purpose determining the future of the Project. At the special meeting, the Board will present the Owners with the best estimates available of the extent of the damage, the cost of reconstruction, and the market values. Such information may be preliminary in nature. After consultation with the Owners, a vote will then be taken to determine whether the Board shall: (1) proceed with the settlement of insurance claims and repair and reconstruction of the Project; (2) to demolish the damaged Living units and pay the insurance proceeds over to the Owners of the affected Residential Lots; or (3) terminate the Project. If a portion of the Project is not repaired or replaced because the Project is terminated, the termination provisions of applicable law and the Governing Documents apply.

(A) The cost of repair or replacement of any Residential Lot or Living Unit in excess of insurance proceeds and Reserves is a Common Expense to the extent the Association is required to provide insurance coverage.

(B) The cost of repair or replacement of any Common Area or Semi-Common Area in excess of insurance proceeds and Reserves is a Common Expense.

(C) If the entire Project is damaged or destroyed and not repaired or replaced: (1) the Association shall use the insurance proceeds attributable to the damaged Common Areas to restore the damaged area to a condition compatible with the remainder of the Project; (2) The Association shall distribute the insurance proceeds attributable to Residential Lots and Common Areas that are not rebuilt to the Owners of the Residential Lots that are not rebuilt, the Owners of the Residential Lots to which those Common and Semi-Common Areas are not rebuilt were allocated, or the lien holders; and (3) The Association shall distribute the remainder of the proceeds to all the Residential Lot Owners or lien holders in proportion to the common expense liabilities of all the Residential Lots.

(D) If the Owners vote not to rebuild a Residential Lot, (1) the Residential Lot's allocated interests are automatically reallocated upon the Owner's vote as if the Lot had been condemned; and (2) the Association shall prepare, execute, and submit for recording an amendment to this Declaration reflecting the reallocations.

9.07 Additional Services. With the approval of a majority of the Owners, the association may undertake additional services not specially mandated by this Declaration for the benefit of the Owners, including such things as bulk purchase of cable television, or other utility type services or such services that might be advantageous to the Owners. Such services may be added or discontinued from time to time as the association sees fit, all without requiring an amendment of this Declaration.

## **ARTICLE X - CONDEMNATION**

10.01 If at any time or times the Common Areas or any part thereof shall be taken

or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Board and shall be used promptly by the Board to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. Upon completion of such work and payment in full therefore, any proceeds of condemnation then or thereafter in the hands of the Board which are proceeds for the taking of any portion of the Common Areas shall be disposed of in such manner as the Board shall reasonably determine; provided, however, that in the event of a taking in which any Residential Lot is eliminated, the Board shall disburse the portion of the proceeds of the condemnation award allocable to the interest of the Owner of such Residential Lot in the Association and the Common Areas to such Owner and any first mortgagee of such Residential Lot, as their interests shall appear, after deducting the share of said Residential Lot in the cost of debris removal.

#### **ARTICLE XI - RIGHTS OF FIRST MORTGAGEES**

Notwithstanding any other provisions of this Declaration, the following provisions concerning the rights of first mortgagees shall be in effect:

**11.01 Preservation of Regulatory Structure and Insurance.** Unless the Owners of at least seventy-five percent (75%) of the Residential Lots and such Owners' first mortgagees, if any, shall have given their prior written approval, the Association shall not be entitled:

(A) by act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Living Units, the exterior maintenance of Living Units, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and plantings on the Property; and

(B) to fail to maintain insurance as required by Article IX. This Section 11.01 may be amended as provided in Section 13.02 of Article XIII hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this Section prior to such amendment.

**11.02 Preservation of Common Area: Change in Method of Assessment.** Unless the Association shall receive the prior written approval of all first mortgagees of Residential Lots and the Owners of at least seventy-five percent (75%) of the Residential Lots, the Association shall not be entitled: (1) by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, except to grant easements for utilities and similar or related purposes, as reserved in Section 6.05 of Article XI hereof; or (2) to change the ratio or method of determining the obligations, assessments, dues or other charges which may be levied against a Residential Lot or the Owner thereof. This Section 11.02 may be amended as provided in Section 13.02 of Article XIII hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this Section 11.02 prior to such amendment.

**11.03 Notice of Matters Affecting Security.** The Board shall give written notice to any first mortgagee of a Residential Lot requesting such notice whenever:



(A) there is any default by the Owner of the Residential Lot subject to the first mortgage in performance of any obligation under this Declaration or the Articles or Bylaws of the Association which is not cured within sixty (60) days after default occurs; or

(B) damage to the Common Areas from any one occurrence exceeds \$10,000.00; or

(C) there is any condemnation or taking by eminent domain of the Residential Lot subject to the first mortgage or of the Common Areas; or

(D) any of the following matters come up for consideration or effectuation by the Association: (1) abandonment or termination of the Planned Development established by this Declaration; (2) material amendment of the Declaration or the Articles or Bylaws of the Association; or (3) any decision to terminate professional management of the Common Areas and assume self-management by the Owners.

11.04 Notice of Meetings. The Board shall give to any first mortgagee of a Residential Lot requesting the same, notice of all meetings of the Association; and such first mortgagees shall have the right to designate in writing a representative to attend all such meetings.

11.05 Right to Examine Association Records. Any first mortgagee shall have the same right to inspect the books and records of the Association and receive financial statements as the Owner of the Residential Lot securing the mortgage; provided that the foregoing shall not be deemed to impose upon the Association any obligation to cause its financial statements to be audited.

11.06 Right to Pay Taxes and Charges. First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas; and first mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. The Association, as Owner of the Common Area, hereby covenants and the Association by acceptance of the conveyance of the Common Areas, whether or not it shall be so expressed in such conveyance, is deemed to covenant and agree to make such reimbursement.

11.07 Exemption from Any First Right of Refusal. Any first mortgagee who obtains title to the Residential Lot subject to the first mortgage pursuant to the remedies provided in the first mortgage, or by foreclosure of the first mortgage, or by deed or assignment in lieu of foreclosure, or by sale pursuant to any power of sale shall be exempt from any "right of first refusal" which would otherwise affect the Residential Lot.

## **ARTICLE XII - PARTY WALLS**

12.01 General Rules of Law to Apply. Each wall which is built as a part of the

original construction of the Living Units upon the Property and placed on the dividing line between two Residential Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**12.02 Sharing of Repair and Maintenance.** Each Residential Unit shall share a party wall, a common exterior back wall, and a common exterior front wall, with the adjacent and attached Residential Unit. The Owners acknowledge that certain repairs or maintenance to the exterior walls of the Residential Units may become necessary, which repairs or maintenance cannot be performed on one side only, but will necessarily involve both sides. If any repair or maintenance of the exterior walls is limited to one side only and the repair or maintenance can be performed without affecting the other side, then the Owner of the affected side shall bear the whole cost of such repair. In the event that a repair or maintenance item affects both Residential Units, the Owners of the affected Units agree to share equally the cost of such repair, replacement or maintenance.

**12.03 Destruction of Party Wall.** If a party wall or common improvement is damaged or destroyed by the fault or negligence of one of the Owners, such damage shall be repaired to a condition equal to or better than immediately prior to the damage and the negligent Owner or Owner at fault shall compensate the other Owner for any and all damages to the non-negligent Owners' Residential Unit. Should a party wall or common improvement be damaged or destroyed by any cause other than by default or by an act of negligence of an Owner of the adjacent Residential Unit, the damage shall be rebuilt or repaired to a condition equal to or better than immediately prior to the damage, at the joint expense of the Owners of the two affected Residential Units, provided that any amount received from insurance companies for such damage shall first be applied to the restoration of the affected Units.

### **ARTICLE XIII - MISCELLANEOUS**

**13.01 Notices.** Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if hand delivered, mailed postage prepaid to the person named as the Owner at the latest address for such person as reflected in the records of the Association at the time of mailing, or emailed to the Owner at the latest email address for such person as reflected in the records of the Association. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the managing Agent or the Vice-President/Secretary of the Association. Any notice required or permitted to be given to the Design Committee may be given by delivering, mailing, or emailing the same to any member of the Design Committee.

**13.02 Amendment.** Unless stated otherwise in this Declaration and except as provided in this Section 13.02 or in Section 13.03 below, this Declaration may be amended by: (a) the affirmative vote of a majority of the Owners, and (b) the filing of an instrument for record in the office of the County Recorder of Salt Lake County, Utah, executed by any

officer of the Association certifying that such amendment has been duly adopted by the affirmative vote of a majority of the Owners.

**13.03 Consent in Lieu of Vote.** In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the Owners, whether present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast votes. Consents received by email qualify as consents in writing. The following additional provisions shall govern any application of this Section 13.03:

(A) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner.

(B) The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed.

(C) Any change in Ownership of a Residential Lot which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. Except that the new Owner is entitled to give or withhold his consent.

**13.04 Interpretation.** The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision herein construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof; which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

**13.05 Covenants to Run With Land.** 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 all inure to the benefit of Declarant, the Owners, all parties who hereafter acquire any interest in a Residential Lot, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Residential Lot or Living Unit shall comply with, and all interests in all Residential Lots or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Residential Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

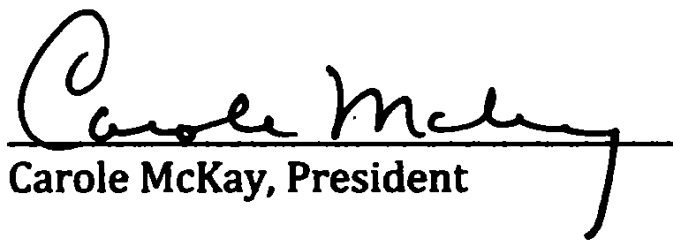
**13.06 Duration.** The covenants and restrictions of this Declaration shall remain in effect until twenty (20) years from the date this Declaration was first filed in the Office of the County Recorder of Salt Lake County, Utah, after which time they shall be automatically extended for successive periods of ten (10) years each unless terminated by an instrument

filed in the office of the County Recorder, executed by any two (2) Officers of the Association, certifying that the Owners of at least seventy-five percent (75%) of the Residential Lots and their first mortgagees, if any, voted in favor of such termination. If any of the privileges, covenants, or rights created by this Declaration would otherwise be unlawful or void for violation of (1) the rule against perpetuities or some analogous statutory provision, (2) the rule restricting restraints on alienation, or (3) any other statutory or common law rules imposing time limits, then the provision herein creating such privilege, covenant or right shall, in any event, terminate upon the expiration of twenty-one (21) years after the death of the last survivor of the now living lawful descendants of George Bush, former President of the United States at the time this Declaration was recorded.

13.07 Enforcement. Should the Association, its Board or an aggrieved Owner be required to take action to enforce the Declaration, as amended, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all costs and charges, including a reasonable attorneys fee, which may arise or accrue. The Board may levy fines for violations of the governing documents.

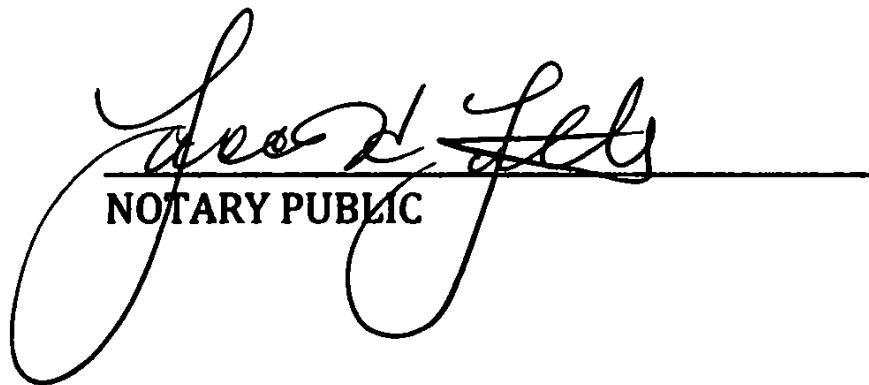
13.08 Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

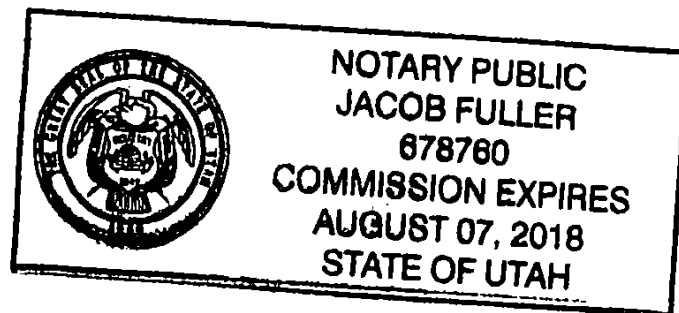
MILLRACE PARK HOMEOWNERS ASSOCIATION, INC. by:

  
Carole McKay, President

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

On the day March 02, 2015, personally appeared before me CAROLE MCKAY, who being by me duly sworn did say that he is the President of Millrace Park Homeowners Association, Inc., and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors and said Carole McKay acknowledged to me that said corporation executed the same.

  
NOTARY PUBLIC



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**MILLRACE PARK, A PLANNED UNIT DEVELOPMENT**

The land described in the foregoing document is located in Salt Lake County, Utah and is described more particularly as follows:

**BEGINNING** at a point on the East line of HOLLYHOCKS, P.U.D., of record and on file in the office of the Salt Lake County Recorder, Entry No. 6281395, Book 9602P, Page 58, said point also being West 241.51 feet and South 2495.44 feet and South 00°02'28" West 128.33 feet from the East Quarter Comer of Section 6, Township 2 South, Range 1 East, Salt Lake Base and Meridian, said point also being on a block wall fence and running thence North 89°01'10" East 79.90 feet along said block wall to a fence corner; thence South 00°09'06" East 139.43 feet to a fence corner, said point also being on the South line extended of MOUNT VERNON COVE Condominiums, of record and on file in the office of the Salt Lake County Recorder, Entry No. 323 1216, Book 79-1, Page 36, thence North 89°59'54" East 260.51 feet along said fence line and South line to a fence corner, said point being on the West line of said Condominiums; thence South 326.02 feet along a fence line and said west line extended to the North line of MILLRACE subdivision, of record and on file in the office of the Salt Lake County Recorder, Entry No. 2198059, Book EE, Page 74, thence South 75°00'00" West 160.95 feet along said North line and North line extended, thence North 60°15'00" West 46.56 feet along the North line of SHANDOWNS subdivision, of record and on file in the office of the Salt Lake County Recorder, Entry No. 2639061, Book 74-7, Page 121 and the following 4 calls being on said North line:

- 1) South 61°00'00" West 66.16 feet; thence
  - 2) South 79°00'00" West 70.72 feet; thence
  - 3) North 37°00'00" West 78.84 feet; thence
  - 4) North 86°00'00" West 30.01 feet, to the southeast corner of Lot 1A, CARRIAGE CREEK subdivision, of record and on file in the office of the Salt Lake County Recorder and the following 3 calls being on said lot line and subdivision line; thence
    - 1) North 18°42'34" West 34.56 feet; thence
    - 2) South 86°00'00" East 31.97 feet; thence
    - 3) North 22°17'53" West 34.95 feet to the south line of HOLLYHOCKS P.U.D. of record and on file in the office of the Salt Lake Recorder; North 67°40'38" East 56.23 feet along said South line to the Southeast corner of said subdivision; thence North 00°02'29" East 378.95 feet along said East line to the point of **BEGINNING**.
- Area: 138,358 square feet or 3.176 acres-22 lots.

Also be known-as, to-wit:

All of Lots I through 22, Millrace Park, a Planned Unit Development, according to the Plat thereof recorded in Book EE, Page 74, of the Official Records of Salt Lake County, which Lot is contained within Millrace Park, a Planned Unit Development, identified in the "Declaration of Covenants, Conditions, and Restrictions of Millrace Park, a Planned Unit Development" recorded in Book EE at Page 74 subject to the covenants, conditions, restrictions, easements, charges and liens provided for in said Declaration of Covenants, Conditions and Restrictions.

**EXHIBIT "B"**  
**COMMON AREAS**

The Common Areas within Millrace Park P.U.D. shall include all of Lot A, which contains 6,173 square feet and all Roadway, as shown and described on the Plat.

**EXHIBIT "C"**  
**BYLAWS FOR**  
**MILLRACE PARK HOMEOWNERS ASSOCIATION**

**ARTICLE I - REGISTERED AGENT**

- 1.1 Registered Agent. The Registered Agent shall be the President of the Association.

**ARTICLE II - MEMBERS OF THE ASSOCIATION**

2.1 Association Members. Every Owner upon acquiring title to a Residential Lot shall automatically become a Member of the Association and shall remain a Member thereof until such time as his Ownership of such Residential Lot ceases for any reason, at which time his membership in the Association with respect to such Residential Lot shall automatically cease and the successor Owner shall become a Member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the Ownership of a Residential Lot.

2.2 Voting Rights. All Owners in "good standing" shall be entitled to one vote for the Residential Lot in which the interest required for membership in the Association is held. Members owning more than one Residential Lot are entitled to one vote for each Residential Lot owned. An Owner shall be considered in "good standing" if the Owner is in full compliance with all of the terms, covenants, and conditions of the Declaration, and shall have fully paid his share of the Common Expenses and all Assessments.

2.3 Multiple Ownership Interests. In the event there is more than one Owner of a particular Residential Lot, the vote relating to such Residential Lot shall be exercised as such Owners may determine among themselves, but in no event shall more than one vote be cast with respect to any Residential Lot. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Residential Lot concerned unless an objection is made at the meeting by another Owner of the same Residential Lot, in which event a majority in interest of the co-Owners as shown on the record of Ownership maintained by the Association shall be entitled to cast the vote.

2.4 Member Meetings. At all Member meetings, the Board shall provide a full and clear statement of the business and condition of the Association and transact any other business.

a) Annual Member Meetings are typically held during the first quarter of each calendar year as designated by the Board. At this meeting, Board members may be elected and any other business may be transacted.

b) Special Meetings.

(1) Special Meetings Called by the President. The President may call a special meeting at any time. The Association's semi-annual meeting, typically held during the third quarter of each calendar year, is an example of a Special Meeting called by the President.

(2) Special Meetings Called by the Members. Special meetings of the Members may also be called by the Board after receiving written requests by at least ten percent (10%) or more

Owners stating the issues proposed to be considered at the special meeting and/or the purpose that the special meeting is to be held. Such requests must be dated and delivered to the Board's Vice-President/Secretary. If a notice for a special meeting requested by Owners is not given by the Board pursuant to paragraph 2.6 below within 30 days after the date the written request is delivered to the Vice-President/Secretary, a person signing the request may set the time and place of the meeting and give notice pursuant to paragraph 2.6 below.

**2.5 Place of Meeting.** All Member meetings shall be held at a suitable place designated by the Board.

**2.6 Notice of Meetings.** It shall be the duty of the Vice-President/Secretary to hand deliver, mail to each Owner at such person's last known mailing address by first class U.S. mail postage prepaid, or e-mail to each Owner at such person's last known e-mail address a notice of each Member meeting not less than ten (10) and not more than thirty (30) days in advance of such meeting. The notice shall state the purpose, day, date, time and place of the meetings. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

**2.7 Proxies.** The votes appertaining to any Lot may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Owner, or in cases where the Owner is more than one person, by or on behalf of all such persons. Any proxy shall be void if it is not dated, if it purports to be revocable without notice, or if it is not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Unless it expressly states otherwise, a proxy shall terminate automatically: (a) if the Owner attends the meeting in person; (b) it is revoked in writing and written notice of the revocation is given to the Secretary of the Association prior to the meeting; or (c) upon the adjournment of the first meeting held on or after the date of that proxy. Each proxy must be filed with the Secretary of the Association prior to the meeting. Only individual Owners or the legal representative of an institutional Owner may be proxies.

**2.8 Quorum Requirements.** The presence in person or by proxy at any Member meeting of at least fifty-one percent (51%) of the Members shall constitute a quorum. Ballots received by mail or email shall be considered for purposes of establishing the presence of a quorum. In the event that at least 51% of all Members are not present, the meeting shall be adjourned for 24 hours, at which time it shall reconvene and any number of Members present at such subsequent meeting will constitute a quorum.

**2.9 Order of Business.** The order of business at all Member meetings shall be as follows:

- a) roll call sign in on ledger;
- b) proof of notice of meeting;
- c) reading of minutes of preceding meeting;
- d) reports of officers;
- e) report of special committees, if any;
- f) election of inspectors of election, if applicable;
- g) election of Board members (directors), if applicable;
- h) unfinished business; and
- i) new business.

**2.10 Conduct of Member Meetings.** The President, or in the President's absence the Vice-President/Secretary, shall preside over all Member meetings, and the



Vice-President/Secretary shall keep the minutes of the meeting as well as record of all transactions occurring thereat.

**2.11 Action May Be Taken without a Meeting.** Any action which may be taken at any Member meeting may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the actions so taken, shall be signed by the number of Members that will be necessary to authorize or take the action in a Member meeting. An explanation of the action taken shall be posted by email and/or at a prominent place or places within the common areas within ten (10) days after the written consents by the number of Members that will be necessary have been obtained.

**2.12 Action by Written Ballot.** Unless otherwise provided by the bylaws, any action that may be taken at any Annual or Special Meeting of Members may be taken without a meeting if the Association delivers a written ballot to every Member entitled to vote on the matter. A written ballots may be hand-delivered, mailed to the Member's last known address, or emailed to the member's last known email address.

a) A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action.

b) Approval by written ballot pursuant to this section shall be valid only when the time, as determined under paragraph e) below, by which all ballots must be received by the Association has passed so that a quorum can be determined and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting.

c) All solicitations for votes by written ballot shall: (1) indicate the number of responses needed to meet the quorum requirements; (2) state the percentage of approvals necessary to approve each matter; (3) specify the time by which a ballot must be received by the Association in order to be counted; and (4) be accompanied by written information sufficient to permit each person casting the ballot to reach an informed decision on the matter.

d) Unless otherwise provided by the bylaws, a written ballot may not be revoked, and action taken has the same effect as action taken at a meeting of Members and may be described as such in any document.

e) Members shall be provided a fair and reasonable amount of time before the day on which the Association must receive ballots. An amount of time is considered to be fair and reasonable if: (1) Members are given at least 15 days from the day on which the notice is sent; or (2) considering all the circumstances, the amount of time is otherwise reasonable.

### **ARTICLE III - BOARD OF DIRECTORS**

**3.1 Powers and Duties.** The affairs and business of the Association shall be managed by the Board consisting of three (3) or more Owners. The Board shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration and may do all such acts and things necessary to operate and maintain the Project. The Board shall have the power from time to time to adopt any Rules and Regulations deemed proper for the exercise of its management powers. The Board may delegate its authority to a Manager or Managers. Subject to any limitations or provisions contained in the Declaration, the Board shall be responsible for at least the following:

- a) preparing of an annual budget;
- b) allocating the Common Expenses;

- c) providing for the operation, care, upkeep, replacement, maintenance, and regulation of all the Common Areas and Semi-Common Areas;
- d) collecting and depositing the Assessments;
- e) adopting, amending, repealing and enforcing Rules and Regulations;
- f) enforcing by legal means the Association's Governing Documents;
- g) obtaining insurance;
- h) keeping books and records; and
- i) doing such other things and acts necessary to accomplish the foregoing.

**3.2 Composition of the Board.** The Board shall be composed of three (3) Owners in good standing.

**3.3 Election and Term of Office of the Board.** Association Members shall elect Board members and serve a term of three (3) years except as provided in paragraph 3.9 below. At the expiration of the Board member's term, a successor shall be elected. Board members may be elected for successive terms.

**3.4 First Board Meeting.** The first Board meeting shall be immediately following the annual meeting of the Association or at such other time and place designated by the Board.

**3.5 Regular Board Meetings.** Regular Board meetings shall be held monthly and at such time and place as shall be determined by a majority of the members of the Board, but no less often than monthly. Board meetings may be held in person, by telephone, or by email as determined by the Board based on the business to be conducted.

**3.6 Special Board Meetings.** Special Board meetings may be called by the President or Vice-President/Secretary on at least 48 hours prior notice to each Board member. Such notice shall be given either personally, by first class U.S. Mail postage prepaid, or by telephone or e-mail, and such notice shall state the time, place and purpose of the special Board meeting. Any special Board meeting attended by all Board members shall be valid for any and all purposes.

**3.7 Waiver of Notice.** Before or at any Board meeting, any Board member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Board member at any Board meeting shall constitute a waiver of notice. If all the Board members are present at any Board meeting, no notice shall be required and any business may be transacted at such meeting.

**3.8 Board Meeting Quorum.** At all Board meetings, a majority of the Board members then in office shall constitute a quorum for the transaction of business, and the acts of the majority of all the Board members present at a meeting at which a quorum is present shall be deemed to be the acts of the Board. If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time but for no longer than two days. At any such rescheduled meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

**3.9 Vacancies.** Vacancies in the Board caused by any reason other than removal of a Board member by a vote of the Association shall be filled by vote of the majority of the remaining Board members at a special Board meeting held for that purpose promptly after the occurrence of any

such vacancy, even though the total Board members remaining may constitute less than a quorum of the Board. Each person so elected shall be a Board member for the remainder of the term of the Board member so replaced. A vacancy created by the removal of a Board member by a vote of the Association shall be filled by the election and vote of the Association members.

3.10 Removal of a Board Member. A Board member may be removed with or without cause, and his successor elected, at any duly called Member meeting at which a quorum of the Association is present, by an affirmative vote of a majority of the Members of the Association. Any Board member whose removal has been proposed by the Members shall be given at least thirty days' notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Any Board member who misses 25% or more of the Board meetings or who misses three (3) consecutive meetings, in any calendar year, shall be automatically removed from the Board.

3.11 Presiding Authority. The President shall preside over all Board meetings.

3.12 Minutes. The Vice-President/Secretary shall keep a Minute Book of the Board, recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings.

3.13 Report of the Board. The Board shall present at Annual and Special Meetings called by the President a full and clear statement of the business and condition of the Association.

#### **ARTICLE IV – OFFICERS**

4.1 Designation. The principal officers of the Association shall be a President, a Vice-President/Secretary and a Treasurer, all of whom shall be elected by the Board. The Board may appoint assistant secretaries and such other officers as in its judgment may be necessary. The President, Vice-President/Secretary and Treasurer must be members of the Board. Two or more offices may be held by the same person, except that the President shall not hold any other office; provided, however, if an individual is serving as Vice-President/Secretary and the Vice-President/Secretary is called upon to conduct the meeting, then the Vice-President shall appoint another Board member to serve as Secretary Pro Tem to keep the minutes and record the transactions.

4.2 President. The President shall be the chief executive officer, shall preside at meetings of the Association and the Board, and shall be an ex officio member of all committees. The President shall have general and active management of the business of the Board and shall see that all orders and resolutions of the Board are carried into effect. The President shall have all of the general powers and duties which are usually vested in or incident to the use of president of a corporation organized under the laws of the State of Utah.

4.3 Vice-President/Secretary. The Vice-President/Secretary shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board or the President shall prescribe. If neither the President nor the Vice-President/Secretary is able to act, the Board shall appoint a Board member to do so on an interim basis. The Vice-President/Secretary shall attend all Board meetings and all Member

meetings and record all votes and the minutes of all proceedings in a book to be kept by him/her for that purpose and shall perform like duties for committees when required. The Vice-President/Secretary shall give, or cause to be given, notices for all Member and Board meetings and shall perform such other duties as may be prescribed by the Board. The Vice-President/Secretary shall compile and keep current at the principal office of the Association, a complete list of the Owners and their last known mailing and email addresses. This list shall be open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days. The Vice-President/Secretary shall also keep current and retain custody of the Minute Book of the Association, containing the minutes of all annual, semi-annual, and special meetings of the Association and all sessions of the Board including resolutions.

4.4 Treasurer. The Treasurer shall have custody of all funds and securities that are not under the control of any Managing Agent, and with the assistance of the Managing Agent if any, shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all monies and other valuable effects in such depositories as may be designated by the Board. The Treasurer shall disburse funds as ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and Board members, at the regular Board meetings, or whenever they may require it, an account of all transactions as Treasurer and of the financial condition of the Association.

#### **ARTICLE V -- FISCAL YEAR**

5.1 The fiscal year of the Association shall be the calendar year consisting of the twelve (12) month period commencing on January 1 of each year terminating on December 31 of the same year. The fiscal year herein established shall be subject to change by the Board should it be deemed advisable or in the best interests of the Association.

#### **ARTICLE VI - AMENDMENT TO BYLAWS**

6.1 Amendment. These Bylaws may be amended as follows:

a) General. Except as provided elsewhere in this Bylaws, including by way of illustration but not limitation to sections pertaining to the addition or annexation of any land, any amendment to this Bylaws shall require the affirmative written vote or consent of at least a majority of the Owners cast either in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting.

b) To Satisfy Requirements of Lenders. Anything to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Bylaws to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Bylaws or approval of the sale of Lots, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot, or any portions thereof. Any such amendment shall be effected by the recordation by the Association of an Amendment duly signed by the President specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the

amendatory language requested by such agency or institution. Recordation of such an amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such amendment, when recorded, shall be binding upon all Lots and all persons having an interest therein.

c) Execution of Amendments.

(1) An amendment or revocation which only requires the execution of an instrument by Declarant as hereinabove provided shall be effective when executed by Declarant and when recorded in the office of the Salt Lake County Recorder.

(2) An amendment which requires the affirmative written assent or vote of the Owners as hereinabove provided shall be effective when executed by the President or Vice-President/Secretary of the Association, who shall certify that all of the voting requirements have been satisfied, and recorded in the office of the Salt Lake County Recorder.

6.2 Effective upon Recording. An amendment to these Bylaws shall become effective immediately upon recordation in the Office of the Salt Lake County Recorder.

## ARTICLE VII - NOTICE

7.1 Manner of Notice. All notices, demands, bills, statements, ballots, or other communications provided for or required under these Bylaws (except as to notices of Association meetings which were previously addressed in Article II of these Bylaws) shall be in writing and shall be deemed to have been duly given to an Owner if (a) delivered personally, (b) sent by first class U.S. Mail, postage pre-paid, to the address of Owner's last known residence, or (c) sent by email to the Owner's last known email address.

All communications provided for or required under these Bylaws to the Board or the Manager, shall be in writing and shall be deemed to have been duly delivered if (a) delivered personally, (b) sent by first class U.S. Mail, postage pre-paid, to the principal office of the Board or Manager or to such other address as shall be designated by notice in writing to the Owners, or (c) to such e-mail address as shall be designated by notice in writing to the Owners pursuant to this Article.

7.2 Waiver of Notice. Whenever any notice is required to be given under the provisions of the statutes, the Declaration, or of these Bylaws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto, unless such waiver is ineffective under the provisions of the Declaration.

## ARTICLE VIII - BOOKS AND RECORDS

8.1 Books and Records. All books and records shall be kept in accordance with generally accepted accounting practices.

8.2 Financial Statements. Upon the written request of any Owner, the Board shall mail to such Member its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operation, unless the Member has already received the same.

**8.3 Limitation of Liability.** Neither the Association nor any director, officer, employee or agent of the Association shall be liable to the Member or anyone to whom the Member discloses the financial statement or any information contained therein for any error or omission therein, whether caused without fault, by negligence or by gross negligence, unless: (a) the error or omission is material; (b) the director, officer, employee or agent in question knew of the error or omission and intended for the Member or other person to rely thereon to their detriment; (c) the Member or other persons did reasonably rely thereon; and (d) the director, offer, employee or agent of the Association is otherwise liable under applicable law.

**8.4 Independent Compilation, Review, or Audit.** The Board may, but is not obligated to, provide a Compilation Report, a copy of Reviewed Financial Statements, or a copy of Audited Financial Statements, prepared by an independent Certified Public Accountant. The independent Certified Public Accountant preparing such documents may not own or reside in a Living Unit, serve on the Board, be an officer, agent, representative or employee of the Association, or otherwise have a conflict of interest, real or apparent. The costs involved with providing such documents shall be a Common Expense.

#### **ARTICLE IX - COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS**

**9.1 Conflict.** These Bylaws are subordinate and subject to all provisions of the Declaration. All of the terms hereof, except where clearly unacceptable to the context, shall have the same meaning as they are defined to have in the Declaration. In the event of any conflict between these Bylaws and the Declaration, the provision of the Declaration shall control.

**9.2 Waiver.** No restriction, condition, obligation, or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

**9.3 Captions.** The captions contained in these Bylaws are for convenience only and are not part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.

**9.4 Interpretation.** Whenever in these Bylaws the context so requires, the singular number shall refer to the plural and the converse; the terms "Members", "Owners", and "Lot Owners" may be used interchangeably; the use of any gender shall be deemed to include both masculine and feminine; and the term "shall" is mandatory while the term "may" is permissive.

**9.5 Severability.** The invalidity of any one or more phrases, sentences, subparagraphs, subsections, or sections hereof shall not affect the remaining portions of this instrument or any part thereof, and in the event that any portion or portions of this document should be invalid or should operate to render this document invalid, this document shall be construed as if such invalid phrase or phrases, sentence or sentences, subparagraph or subparagraphs, paragraph or paragraphs, subsection or subsections, or section or sections had not been inserted.

IN WITNESS WHEREOF, the undersigned has executed this instrument the 2<sup>nd</sup> day of March, 2015.

MILLRACE PARK HOMEOWNERS ASSOCIATION, INC.

By: Carole McKay  
Name: Carole McKay  
Title: President

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

On the 2<sup>nd</sup> day of March, 2015, personally appeared before me Jacob Fuller who by me being duly sworn, did say that s/he is the President of the Millrace Park Homeowners Association, and that the within and foregoing instrument was signed in behalf of said Association by authority of a resolution of its Board of Directors, and said Carole McKay duly acknowledged to me that said Association executed the same.

Jacob Fuller  
NOTARY PUBLIC  
Residing At: Murray, UT  
Commission Expires: August 07, 2018

