

When Recorded, Return to:

Millcreek Gardens P.U.D.  
c/o Michelle Lund - HOA Secretary  
458 E. Windy Garden Lane  
Salt Lake City, UT 84111

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GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
MILLCREEK GARDENS P.U.D.  
458 E. WINDY GARDEN LN.  
SLC UT 84111  
BY: MMA, DEPUTY - WI 24 P.

Space Above for Recorder's Use

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**BYLAWS**  
**OF**  
**MILLCREEK GARDENS P.U.D.**

**BYLAWS  
OF  
MILLCREEK GARDENS HOA, INC.  
A Nonprofit Corporation of the State of Utah**

Pursuant to the provisions of the Utah Nonprofit Corporation Act, the Incorporator of Millcreek Gardens HOA, Inc. hereby adopts the following Bylaws of the Millcreek Gardens HOA, Inc.:

**ARTICLE 1  
NAME AND LOCATION**

The name of the corporation is **Millcreek Gardens HOA, Inc.** The initial office of the corporation is located 1042 E. Fort Union Blvd, # 226, Midvale, Utah 84047.

**ARTICLE 2  
DEFINITIONS**

Unless the context otherwise specifies or requires, the terms defined in this Article 2, for purposes of these Bylaws, shall have the meanings herein specified. Capitalized terms, which are not otherwise defined, have the meaning given such terms in the Declaration.

2.1 “Articles” means the Articles of Incorporation of the Association as they may from time to time be amended.

2.2 “Association” means Millcreek Gardens HOA, Inc., and includes the corporation’s successors and assigns.

2.3 “Assessment” shall mean and refer to the fees, dues and amounts assessed against a Unit Owner to pay for the expenses incurred in the operation, management, maintenance, repair, replacement, control and regulation of the PUD.

2.4 “Board” or “Board of Trustees” means the governing body of the Association, elected in accordance with the Bylaws and the Declaration.

2.5 “Bylaws” means these Bylaws as amended from time to time.

2.6 “Common Area” shall mean and refer to all real property in or adjacent to the Project in which the Association or its Members have a right of use or owns an interest for the common use and benefit of its Members, their successors, assigns, tenants, families, guests and invitees, including but not limited to the following items:

- (1) The real property and interests in real property submitted hereby, including the entirety of the Tract and all improvements constructed thereon, excluding the individual Units.

- (2) All Common Area and Facilities designated as such in the Plat Map or Maps, and amendments or supplements thereto;
- (3) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Unit Owners, such as telephone, electricity, gas, water and sewer.
- (4) The Project's outdoor grounds, landscaping, street lighting, perimeter and preservation fences, sidewalks, parking spaces and roadways;
- (5) All portions of the Project not specifically included within the individual Units; and
- (6) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of its Members.

The Common Area is more particularly identified on Exhibit "B" attached to the Declaration.

2.7 "Declarant" means Millcreek Garden Townhomes, LLC, a Utah Limited Liability Company, its successors and its assigns to the extent provided in any written assignment of rights by Declarant and assumption of obligations by the assignee.

2.8 "Declarant Control Period" means the period of time until four (4) months after Declarant has closed the sale of 80% or more of the Units in the PUD, or until the other Events set forth in paragraph 3.2(b) of these Bylaws have occurred.

2.9 "Declaration" means the Declaration of Covenants, Conditions and Restrictions Establishing a Planned Unit Development for Millcreek Gardens P.U.D., recorded with the Salt Lake County, Utah Recorder, as amended, changed or modified from time to time.

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

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

2.12 "Eligible Votes" shall mean and refer to those votes available to be cast on any issue before the Association or the Board. A vote which is for any reason suspended is not an "eligible vote."

2.13 "Fiscal Year" means the fiscal year of the Association.

2.14 "Governing Documents" means the Declaration, the Articles and the Bylaws, as they may be amended from time to time, and any exhibits thereto, guidelines and Rules and Regulations of the Association, each as established from time to time by the Board.

2.15 “Lot” shall mean and refer to any of the separately numbered and individually described parcels of land now or hereafter shown on the Plat. Except where the context specifically states otherwise, reference to a Lot shall include reference to the Unit constructed thereon.

2.16 “Member” shall mean and refer to an Owner, obligated by virtue of ownership, to membership in the Association. A “Member in Good Standing” means a Member whose voting rights have not been suspended in accordance with Section 14.

2.17 “Mortgage” shall mean and refer exclusively to either a first mortgage or first deed of trust on any Unit, but shall not mean or refer to an executory contract of sale.

2.18 “Mortgagee” means a beneficiary or holder of a deed of trust on a Lot as well as a mortgagee of a mortgage.

2.19 “Owner” or “Unit Owner” means and refers to the person or persons, including Declarant, who is the owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided fee interest in a Unit, including but not limited to both the seller and buyer under an executory sales contract (e.g., uniform real estate, land sales contract, or other similar instrument). The term Owner or Unit Owner does not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

2.20 “Property” means and refers to the MILLCREEK GARDENS PUD, located in Salt Lake County, Utah, as more particularly described in Exhibit “A” attached hereto, together with all Improvements, easements, rights and appurtenances which have been submitted to the provisions of the Act and the Declaration.

2.21 “PUD” means all of the Property of the MILLCREEK GARDENS Planned Unit Development, whose plat map is or will be recorded in the official records of the Salt Lake County Recorder.

2.22 “Rules and Regulations” means the rules and regulations adopted by the Board pursuant to the Declaration, as they may be amended from time to time.

2.23 “Unit” shall mean and refer to a portion of the Property, other than the Common Area, intended for any type of independent ownership and use as may be set out in this Declaration or as shall be shown on any Plat Map pertaining to this Declaration or any amendments thereto. Where the context indicates or requires, the term Unit includes any single-family residential structures and improvements constructed as part of the townhome comprising said Unit.

### ARTICLE 3 MEMBERS

#### 3.1 Qualifications.

(a) Each Owner of a Lot (including Declarant if, and so long as, it is the Owner of a Lot), by virtue of being such an Owner and for so long as he or she is such an

Owner, shall be a Member of the Association.

(b) No person shall exercise the rights or privileges of membership in the Association until satisfactory proof of ownership has been furnished to the Board. Proof of ownership of a Lot may consist of a copy of a valid deed or a title insurance policy showing that person to be the Owner of a Lot, or such documentary or other proof as the Board, in its discretion, deems satisfactory.

3.2 Classes of Membership. The Association shall have two (2) classes of membership — Class A and Class B, described more particularly as follows:

(a) Class A. Class A Members shall be all Owners with the exception of the Class B Member, if any. Class A Members shall be entitled to vote on all issues before the Association, subject to the following:

(1) One Vote. Each Unit shall have one (1) vote.

(2) Subject to Assessment. No vote shall be cast or counted for any Unit not subject to assessment.

(3) Multiple Owners. When more than one (1) person or entity holds an interest in a Unit, the vote for such Unit shall be exercised as those persons or entities themselves determine and advise the secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Unit shall be suspended in the event more than one (1) person or entity seeks to exercise it.

(4) Leased Unit. Any Owner of a Unit which has been leased may, in the lease or other written instrument, assign the voting right appurtenant to that Unit to the lessee, provided that a copy of such instrument is furnished to the Secretary at least three (3) days prior to any meeting.

(b) Class B. The Class B Member shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale of Units, and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall originally be entitled to three (3) votes per Unit owned. The Class B membership and the Class B Control Period shall terminate, and Class B membership shall convert to Class A membership upon the happening of the earlier of the following (which is hereinafter referred to as the “Event” or “Events”):

(1) Units Sold. Four (4) months after eighty percent (80%) of the total Units in the Project (now or hereafter constructed upon the Property or Additional Land) have been sold and closed; or

(2) Four Years. Four (4) years from date the Declaration was recorded with the Salt Lake County Recorder; or

(3) Election. When, in its sole discretion, Declarant so determines.

From and after the happening of these Events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member entitled to one (1) vote for each Unit owned.

At such time, the Declarant shall call a meeting, in the matter described in the Bylaws of the Association for special meetings, to advise the Members of the termination of Class B status and, if it has not already occurred, to schedule transition of the operation and management of the entire Project to the Association.

#### ARTICLE 4 MEETINGS OF MEMBERS

4.1 Annual Meetings. The first annual meeting of Members shall be held within nine (9) months after the close of escrow for the sale by Declarant of the first Lot, or within forty-five (45) days after close of escrow for the sale by Declarant of fifty-one percent (51%) of the Lots, whichever shall first occur. Subsequent annual meetings of Members shall be held at 12:00 o'clock noon on the second Saturday in September of each year or at such other suitable date or time as may be designated by the Board from time to time. Whenever such day is a legal holiday, the meeting shall occur at 7:00 p.m. on the first business day thereafter. The place of meeting shall be at such location as the Board may reasonably select and as specified in the notice of meeting.

4.2 Regular Meetings. At each annual meeting, the Members shall, if required by the Act, schedule a regular meeting of the Members to be held six months after the annual meeting.

4.3 Special Meetings. Special meetings of the Members may be called by the President, by any two (2) members of the Board, or by Members holding at least twenty-five percent (25%) of the undivided ownership interest in the Common Area. At least two (2) but not more than thirty (30) days before the date set for a special meeting, written notice thereof shall be given in the manner described in paragraph 4.4, hereafter.

4.4 Notices. Written notice of annual, regular and special meetings of the Association shall be given to the Members and, upon written request therefor, to all Eligible Mortgagees, either personally or by sending a copy of the notice through the mail or by telecopy to the address of such Member or Mortgagee appearing on the books of the Association or supplied in writing by the Member or Mortgagee to the Association for the purpose of notice. If no address is supplied, notice shall be deemed to have been given if mailed to the address of the Lot. Except as otherwise provided below, notices shall be given not less than ten (10) days and not more than thirty (30) days before each meeting, unless notice is given by mail and the notice is not mailed by first-class, registered or certified mail, in which case notice shall be given not less than twenty (20) days before the meeting. Such notices shall specify the place, the date, and the hour of the annual, regular or special meeting and any other matter required by law, and include an agenda for the meeting.

If an Assessment for a capital improvement is to be considered at a meeting or action is to be taken on an Assessment for a capital improvement or a lawsuit requiring approval of the Members, notices shall be given not less than twenty-one (21) days before the meeting.

Notice of meetings or ballot polls shall specify the place, date and hour. In the case of a ballot poll, the notice shall include the matter(s) to be voted on.

4.5 Quorum. The presence of a majority of the undivided ownership interest in the Project entitled to cast a vote shall constitute a quorum for the transaction of business at any Members' meeting.

(a) Quorum Not Present. If a quorum is not present at any Members' meeting, whether regular or special, the meeting may be adjourned and rescheduled for a time no earlier than forty-eight (48) hours and no later than thirty (30) days, after the time set for the original meeting.

(b) Quorum at Rescheduled Meeting. Those Members present at the rescheduled meeting and entitled to vote shall constitute a quorum at the rescheduled meeting.

(c) Percentage Approval Requirement. Notwithstanding the foregoing, however, in any case in which this Declaration requires the affirmative vote of a certain percentage of ownership interest for authorization or approval of a matter, their consent, in person, by proxy, or in writing is required for authorization or approval of the item, regardless of the quorum requirements.

4.6 Adjourned Meetings and Notice Thereof. Any membership meeting, annual, regular or special, whether or not a quorum is present may be adjourned from time to time by the vote of a majority of the voting power present, but in the absence of a quorum no other business may be transacted at any such meeting.

Unless a meeting is adjourned for more than thirty (30) days, it is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting other than by an announcement at the meeting at which such adjournment is taken of the time and place of the adjourned meeting. When a membership meeting, either annual, regular or special, is adjourned for more than thirty (30) days, notice of the adjourned meeting shall be given as in the case of an original meeting. If a time and place for the adjourned meeting is not announced at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed in Section 4.4 hereof.

4.7 Record Date for Notice. Only those Members and Eligible Mortgagees appearing, in the official records of the Association on the date forty-five (45) days prior to the scheduled date of a membership meeting, as record Owners or Mortgagees, respectively, shall be entitled to notice of that meeting.

4.8 Proxies. Every Member entitled to attend, vote at or exercise consents with respect to any meeting of the Members may do so either in person, or by a representative, known as a proxy, duly authorized by an instrument in writing, filed with the Secretary of the Association prior to the meeting to which it is applicable. A proxy may be revoked at any time by actual notice to the Board or by attendance in person by the Member giving the proxy at the meeting for which such proxy was given. A proxy is void if it is not dated or purports to be revocable without notice. In any event, no proxy shall be valid after the expiration of one (1) year from the date of the proxy, unless a shorter expiration is provided for in the proxy. Such powers of designation and revocation may be exercised by the guardian of a Member's estate or

by his or her conservator, or in the case of a minor having no guardian, by the parent entitled to his or her custody, or during the administration of a Member's estate, by his or her executor or administrator where the latter's interest in such property is subject to administration in his or her estate.

4.9 Members in Good Standing. Notwithstanding any other provision contained in the Governing Documents, only those Members in Good Standing shall be entitled to vote, whether in person, by proxy or ballot.

4.10 Place of Meetings. Members' meetings shall be held within the Property or at a meeting place reasonably convenient to the Owners.

4.11 Membership Approval. Except as otherwise provided, if there are any provisions in these Bylaws or the Declaration calling for membership approval of action to be taken by the Association then such approval shall be by the prescribed percentages of the voting power of the membership and, if none, then by a majority of the voting power of the Members.

4.12 Mortgagee and Insurer Representation. Eligible Mortgagees and Eligible Insurers have the right to attend all membership meetings through a representative designated in writing and delivered to the Board.

4.13 Waiver of Notice. The transactions of any meeting of Members, either annual, regular or special, however called and noticed, shall be as valid as though transacted at a meeting duly held after regular call and notice if a quorum be present either in person or by proxy and if, either before or after the meeting, each of the Members entitled to vote, not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof.

4.14 Method of Voting and Actions without Meeting. Elections or questions (including advisory questions) to be submitted to all or any part of the membership of the Association may be decided at a meeting (by voice or by ballot), by mail or at polling places designated by the Board. Unless otherwise approved by the Board, all elections for Trustees shall be by secret written ballot. The Board shall determine the method of voting by resolution and give notice thereof as provided in Section 4.4 of these Bylaws. Without limiting the foregoing, except as limited by Utah law (as now or hereafter in effect), any action that may be taken by the vote of Members at an annual, regular or special meeting, may be taken without a meeting. An action that may be taken at a regular or special meeting of Members (including the election of Trustees, amendment of the Articles, adoption of a proposed plan of merger, consolidation or dissolution) or other questions that come before the Association, may be taken or considered without a meeting if the Association mails or delivers a written ballot to every Member entitled to vote on the matter.

In the case of a vote by mail, the Secretary of the Association will give written notice to all Members, which notice must: (a) set forth each proposed action or, if applicable, candidate; and (b) provide an opportunity to vote for or against each proposed action. The notice shall also include the following: (i) a proposed written resolution setting forth a description of the proposed action; (ii) a statement of the number of responses needed to meet the requirement of a quorum and the percentage of approvals necessary to approve each matter other than election of trustees;



(iii) a statement of a date not less than 20 days after the date such notice will have been given by which all votes must be received; and (iv) the specified address of the office to which all votes must be sent. Votes received after that date will not be effective. Delivery of a vote in writing to the designated office will be equivalent to receipt of a vote by mail at such address for the purpose of this section. A written ballot may not be revoked.

Approval by written ballot under this section is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

4.15 Vote Appurtenant to Lot. The right to vote may not be severed or separated from the ownership of the Lot to which it is appurtenant, except that any Member may give a revocable proxy in the manner described above, or may assign his or her right to vote to a tenant actually occupying his or her Lot or the Member's Mortgagee for the term of the lease or Mortgage. Any sale, transfer or conveyance of a Lot to a new Owner or Owners shall operate automatically to transfer the appurtenant vote to the new Owner, subject to any assignment of the right to vote to a tenant or Mortgagee as provided herein.

#### ARTICLE 5 BOARD OF TRUSTEES: ELECTION AND TERM OF OFFICE

5.1 Board of Trustees. The Association shall be managed by a Board of Trustees which shall be comprised of three (3) members. Until the happening of the Events (described in paragraph 3.2(b) above), the Declarant shall have the exclusive and irrevocable right to appoint all of the members of the Board and their successors or replacements. At the first Annual Homeowners Meeting after the occurrence of the Events, the members of the Board shall be elected by the Owners. Two (2) of the members shall be elected for two-year terms and one (1) member shall be elected for a one-year term. Thereafter, all members shall be elected for two-year terms. This staggering feature will provide continuity in the management of the Association.

5.2 Qualifications. To qualify, a member of the Board must be an individual Owner, or the legal representative of an organizational Owner.

5.3 Vacancies. In the event of the resignation or disqualification of any Board member, his or her replacement shall be selected by the affirmative vote of a majority of the Members of the Association.

5.4 Dismissal. Any Board member who fails on three successive occasions to attend Board Meetings (whether regular or special) or who has failed to attend at least twenty-five percent (25%) of all Board meetings (whether regular or special) held during any twelve-month period, shall automatically forfeit his seat. In such cases, the remaining Board members shall elect a replacement to sit on the Board until the next meeting of the Association.

5.5 Removal of Board Member/Declarant's Rights. Except for Board members appointed by the Declarant before the occurrence of the Events, Board members may be removed at any time by the affirmative vote of a majority of the Members of the Association. A

replacement to serve the remainder of the removed member's unexpired term shall be elected at the same meeting.

5.6 Term. Unless he forfeits or otherwise loses his seat as herein provided, a member shall serve on the Board until his successor qualifies and is properly elected by the Association.

5.7 No Compensation. Board members shall not be compensated for their services but shall be reimbursed for all expenses reasonably incurred in connection with Board business and approved by the Board.

## ARTICLE 6 NOMINATION AND ELECTION OF TRUSTEES

6.1 Nomination. Except with respect to Trustees appointed by Declarant, nomination for election to the Board shall be made by the Board or by a nominating committee appointed by the Board. Nominations may also be made from the floor at the annual meeting of the Members. A nominating committee may be appointed by the Board prior to each annual meeting of the Members, to serve from the close of that meeting until the close of the next annual meeting, in which case the appointments shall be announced at each annual meeting. The Board or the nominating committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Nominations may be made from among Members or nonmembers.

6.2 Cumulative Voting. Members shall be entitled to cumulate their votes for one or more candidates for the Board, if the candidate's name has been placed in nomination prior to the voting, and if any Member has given notice at the meeting prior to the voting of his or her intention to cumulate votes at any election for Trustees. If cumulative voting is in effect, each Member in Good Standing may give one (1) candidate a number of votes equal to the number of Trustees to be elected multiplied by the number of votes to which the Member is entitled, or may distribute the Member's votes on the same principle among as many candidates as the Member thinks fit. The candidates receiving the highest number of votes up to the number of Trustees to be elected shall be elected.

## ARTICLE 7 BOARD MEETINGS

7.1 Annual Organizational Meeting. An annual meeting of the Board for the purpose of organization, election of officers and the transaction of other business shall be held immediately following the adjournment of the annual meeting of the Members. No notice of the annual Board meeting is required.

7.2 Regular Meetings and Notice Thereof. At each annual organizational meeting, the Board shall adopt a schedule setting forth the time, date and place of other regular meetings of the Board to be held at least quarterly during the forthcoming year. Notice of the time, date and place of a regular meeting shall be given to the Members if and as required by the Act and also communicated to the Trustees not less than five (5) days prior to such meeting; provided, however, that notice of a regular meeting need not be given to any Trustee who has signed a waiver of notice or a written consent to holding of the meeting.

7.3 Special Meetings and Notice Thereof. Special meetings of the Board may be called at any time by the President or, if he or she is unable or refuses to act, by the Vice-President or by any two (2) Trustees. Written notice of the time and place of special meetings and the nature of any special business to be considered shall be sent to all Trustees by first-class mail not less than four (4) days prior to the scheduled time of the meeting, or delivered personally or by telephone or telecopy not less than seventy-two (72) hours prior to the scheduled time of the meeting; provided, however, that notice of a special meeting need not be given to any Trustee who has signed a waiver of notice or a written consent to holding of the meeting. Notice of a special meeting shall also be given to the Members if required by the Act.

7.4 Quorum. A majority of the authorized number of Trustees shall be necessary to constitute a quorum for the transaction of business, except to adjourn as hereinafter provided. Every act or decision done or made by a majority of the Trustees present at a meeting duly held at which a quorum is present shall be the act of the Board; unless the law, the Articles, the Declaration or the Bylaws require a greater number.

7.5 Adjournment. A quorum of the Trustees may adjourn any Trustees' meeting to meet again at a stated time and hour; provided, however, that in the absence of a quorum, a majority of Trustees present at the Trustees' meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the Board.

7.6 Entry of Notice. Whenever any Trustee has been absent from any special meeting of the Board, an entry in the minutes to the effect that notice has been duly given shall constitute a rebuttable presumption that due notice of such special meeting was given to such Trustee as required by law and these Bylaws.

7.7 Notice of Adjournment. Notice of any adjournment of any Trustees' meeting, either regular or special, to another time or place shall be given prior to the time of the adjourned meeting to the Trustees who were present at the time of the adjournment.

7.8 Meeting Place. All regular and special meetings of the Board shall be held within Salt Lake County, Utah in a location reasonably convenient to all Members.

7.9 Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though transacted at a meeting to be held after regular call and notice if a quorum be present and if, either before or after the meeting, each of the Trustees not present signs a written waiver of notice or a consent to holding such meeting or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

7.10 Open Meetings. Regular and special meetings of the Board shall be open to all Members; provided, however, that Members who are not on the Board may not participate in any deliberations or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board or required by the Act, and, in any case, shall be subject to such reasonable limitations as the Board may impose.

7.11 Executive Sessions. The Board may, with the approval of a majority of a quorum of the Trustees adjourn a meeting and reconvene in executive session to discuss and act upon matters described in Section 8.4, personnel matters, litigation in which the Association is or may

become involved, orders of business of a similar nature and matters otherwise permitted by the Act to be discussed in executive session. The nature of any and all business to be considered in executive session shall first be announced in open session. Only Trustees shall be entitled to attend Executive Sessions.

7.12 Action Without Meeting. The Board may take action without a meeting if all of its members consent in writing to the actions to be taken. If the Board resolves by unanimous written consent to take an action, an explanation of the action to be taken shall be given by the Board to the Members of the Association within three (3) days after all written consents have been obtained in the manner provided in Section 7.2 hereof for the giving of notice of regular meetings of the Board.

7.13 Telephonic Meetings. Unless otherwise restricted by the Articles or Bylaws, Trustees or Members of any committee designated by the Board, may participate in a meeting of the Board or committee by means of a conference telephone network or a similar communications method by which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section 7.13 constitutes presence in person at such meeting. Each person participating in the meeting shall sign the minutes thereof. The minutes may be signed in counterparts.

#### ARTICLE 8 POWERS AND DUTIES OF THE BOARD OF TRUSTEES

8.1 General Powers. The Board shall be responsible for the enforcement of the Declaration and for such other matters reasonably necessary to give effect to the purpose of the Declaration. The Board shall have authority to promulgate and enforce reasonable rules and procedures as necessary or desirable to aid the Board in carrying out any of its functions provided that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in the Declaration. The Board's responsibilities shall include, but not be limited to, the following:

- (a) Annual Report. The Board shall prepare an Annual Report for the Members;
- (b) Assessments. The Board shall establish, collect and enforce Assessments as called for herein and in the Declaration;
- (c) Operation and Maintenance. The Board shall oversee the maintenance the Common Area as called for in the Declaration;
- (d) Hire and discharge Managers;
- (e) Hire and discharge employees, independent contractors and agents;
- (f) Institute, defend or intervene in litigation or administrative proceedings in the Association's name, on behalf of the Association or two or more Owners on matters affecting the Property;

(g) Designation of Chairman, President and Secretary. The Board shall appoint the Officers of the Association and Chairman of the Board by majority affirmative vote;

(h) Regulate the use, maintenance, repair, replacement and modification of Common Area;

(i) Cause additional improvements to be made as a part of the Common Area;

(j) Impose and receive a payment, fee or charge for services provided to Owners and for the use, rental or operation of the Common Area;

(k) Impose a reasonable charge for late payment of Assessments and, after Notice and Hearing, levy a reasonable fine for a violation of the Declaration, Bylaws, Rules and Regulations of the Association;

(l) Provide for the indemnification of the Association's officers and Board and maintain Trustees' and officers' liability insurance;

(m) Exercise any other powers conferred by law, Declaration or Bylaws;

(n) Exercise any other power that may be exercised in the state by a legal entity of the same type as the Association;

(o) Exercise any other power necessary and proper for the governance and operation of the Association;

(p) Enforce the provisions of the Declaration; and

(q) By resolution, establish committees of Trustees, permanent and standing, to perform any of the above functions under specifically delegated administrative standards as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Owners and the Board. However, actions taken by a committee may be appealed to the Board by any Owner within 45 days of publication of notice of that action, and the committee's action must be ratified, modified or rejected by the Board at its next regular meeting.

8.2 Duties. It shall be the duty of the Board to:

(a) cause to be kept a complete record of all its acts and corporate affairs, the records to include but not be limited to a membership register, books of account and minutes of meetings of the Members, and of the Board, and to present a statement thereof to the Members at the annual meeting of the Members, or at any regular or special meeting when such statement is requested in writing by one-fourth (1/4) of the Members in Good Standing who are entitled to vote;

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

- (1) fix the amount of the annual Assessment against each Lot;
  - (2) send written notice of each Assessment to every Owner subject thereto; and
  - (3) foreclose the lien against any Lot for which Assessments are not paid or bring an action at law against the Owner personally obligated to pay the same;
- (d) furnish or cause an appropriate officer or officers to furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance;
- (e) procure and maintain the liability and other insurance required by the Declaration with respect to property owned by the Association or otherwise subject to the Declaration;
- (f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- (g) cause the Common Area to be maintained as provided in the Declaration;
- (h) Lists of Unit Owners, Eligible Mortgagees, and Eligible Insurers or Guarantors. The Board shall maintain up-to-date records showing: a) the name of each Owner, the address of such person, and the Unit which is owned by him or her; b) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity, and the Unit which is encumbered by the Mortgage held by such person or entity; and c) the name of each person or entity who is an Eligible Insurer or guarantor, the address of such person or entity, and the Unit which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Board with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Salt Lake County, Utah. The Board may for all purposes act and rely on the information concerning Unit ownership in its records or, at its option, the records of the County Recorder. The address of any Owner shall be deemed to be the address of the Unit owned by such person unless the Board is otherwise advised in writing.
- (i) Capital Improvements. The Board of Trustees shall prepare a table of Capital Improvements, which shall contain a list of foreseeable expenditures for capital improvements within the Area of Common Responsibility. The Table shall be included in every annual budget, and it shall be reviewed and updated at least annually, and reasonable reserve accounts shall be established by the Board for the replacement of capital assets as they age. Expenditures by the Association for capital improvements to the Project shall be subject to and governed by the following:

(1) Board Discretion/Expenditure Limit. Capital Improvements to the Project which cost ten percent (10%) or less of the total annual operations budget and do not materially alter the nature of the Project, may be authorized by the Board of Trustees alone.

(2) Homeowner Approval/Expenditure Limit. Any Capital Improvement, the cost of which will exceed such amount, must, prior to the commencement of construction, be authorized by at least a majority of the Owners.

(3) Homeowner Approval/Changing the Nature of the Project. Any Capital Improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven (67%) of the undivided ownership interest in the Project.

(h) At least thirty (30) days and not more than sixty (60) days prior to the commencement of the second and each succeeding Fiscal Year of the Association, prepare and distribute to Members a budget and prior to the commencement of the Fiscal Year, the Board shall adopt a budget for the Association consisting of at least the following information:

(1) Estimated revenue and expenses on an accrual basis.

(2) The amount of the total cash reserves of the Association currently available for replacement or major repair of common facilities and for contingencies.

(3) A general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Area and facilities for which the Association is responsible.

(i) cause annual financial statements (including a balance sheet and income and expense statement) of the affairs of the Association to be made and published to the Members. In lieu of the distribution of the financial statement, the Board may elect to distribute a summary of the statement to all Members with a written notice that the statement is available at the business office of the Association or at another suitable location within the boundaries of the Property and that copies will be provided upon request and at the expense of the Association. If any Member requests a copy of the financial statement to be mailed to the Member, the Association shall mail the copy to the Member by first-class United States mail at the expense of the Association within five (5) days. The written notice that is distributed to each of the Members shall be in at least 10-point type on the front page of the summary of the statement.

(j) Make available to any prospective purchaser of a Lot, any Owner of a Lot, any first Mortgagee, and the Eligible Insurer, current copies of the Declaration, the Articles, these Bylaws, the Rules and all other books, records and financial statements of the Association. "Available" as used in the paragraph shall at least mean available for

inspection upon request during normal business hours or under other reasonable circumstances.

8.3 Restrictions on Powers of Board.

(a) In addition to any restrictions contained in the Declaration, the Association shall be prohibited from taking any of the following actions without the vote or written assent of Members representing fifty-one percent (51%) or more of the voting power of the Members:

(1) Paying compensation to Trustees or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Trustee or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

(2) Filling a vacancy on the Board created by the removal of a Trustee.

(3) Incurring aggregate expenditures payable by the Association for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

(4) Selling any property of the Association.

(b) The Association shall be prohibited from taking any of the following actions without the vote or written assent of two-thirds (2/3) of the Members of the Association:

(1) selling, conveying, or hypothecating any or all of the real or personal property owned by the Association as security for money borrowed or debts incurred.

Notwithstanding the foregoing, for so long as there is any Lot for which this Association is obligated to provide management, maintenance, preservation or control, then, without the approval of one hundred percent (100%) of the Members, this Association or any person acting on its behalf shall not transfer all or substantially all of its assets or file a certificate of dissolution.

8.4 Hearing Procedure. The Board shall not impose a fine, suspend voting, or infringe upon any other rights of a Member or other occupant for violations of the Declaration or the Rules and Regulations unless and until the following procedure is followed:

(a) Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying:

(1) the alleged violation;

(2) the action required to abate the violation; and



(3) the time period, not less than ten (10) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further violation of the same rule may result in the imposition of a sanction after notice and hearing if the violation is not continuing.

(b) Notice. If the violation continues past the period allowed in the demand for abatement without penalty or if the same rule is subsequently violated, the Board or its authorized representative shall serve the violator with written notice of a hearing to be held by the Board or an authorized committee thereof in executive session. The notice shall contain:

- (1) the nature of the alleged violation;
- (2) the time and place of the hearing, which time shall not be less than ten (10) days from the giving of the notice;
- (3) an invitation to attend the hearing and produce any statement, evidence, and witness on his or her behalf; and
- (4) the proposed sanction to be imposed.

(c) Hearing. The hearing shall be held in executive session pursuant to this notice affording the Member a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard has been complied with shall be placed in the minutes of the meeting. Proof of notice shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Trustee, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(d) Appeal. If the hearing is before a committee of the Board, the violator shall have the right to appeal the decision to the Board of Trustees. To perfect this right, a written notice of appeal must be received by the President or Secretary of the Association or the professional manager thereof within ten (10) days after receipt of notification of the decision.

8.5 Committees. Committees to perform such tasks and to serve for such periods as may be designated by the Board are hereby authorized. Such committees shall perform such duties and have such powers as may be provided in the resolution. Each committee shall be composed as required by law and shall operate in accordance with the terms of the resolution of the Board of Trustees designating the committee or with rules adopted by the Board of Trustees.

8.6 Reserves. As a part of the adoption of the regular budget pursuant to Sections 18.5 and 18.6 of the Declaration, the Executive Board shall include an amount which, in its reasonable business judgment, will establish and maintain an adequate reserve fund for the replacement of improvements to the Common Area and those Limited Common Area that it is obligated to maintain, based upon the project's age,

remaining life and the quantity and replacement cost of major Common Element improvements.

ARTICLE 9  
OFFICERS AND THEIR DUTIES

9.1 Enumeration of Offices. The officers of the Association shall be a President and a Vice President who shall at all times be Trustees, a Secretary, and a Treasurer and such other officers as the Board may from time to time by resolution create.

9.2 Election of Officers. The election of officers shall take place at the first organizational meeting of the Board and thereafter at the regular meeting of the Board which follows each annual meeting of the Members.

9.3 Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

9.4 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

9.5 Removal and Resignation. Any officer may be removed either with or without cause, by a majority of the Trustees at the time in office, at any regular or special meeting of the Board, or except in case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

9.6 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

9.7 Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 9.4 hereof.

9.8 Duties. The duties of the officers are as follows:

(a) President. The President shall be the chief executive officer of the Association, and, subject to the control of the Board, have general supervision, direction and control of the business and officers of the Association. He shall preside at all meetings of all of the Members and at all meetings of the Board. He shall have the general powers and duties of management usually vested in the office of president of a corporation, and shall have such other powers and duties as may be prescribed by the Board or by these Bylaws. The President shall sign all leases, mortgages, deeds and other

written instruments and shall co-sign all checks and promissory notes of the Association (subject to Section 13.2 hereof). The President shall see that orders and resolutions of the Board are carried out.

(b) Vice-President. The Vice-President shall act in the place of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) Secretary. The Secretary shall be responsible for recording the votes and keeping the minutes of all meetings and proceedings of the Board and of the Members; keeping the corporate seal of the Association and affixing it on all papers requiring the seal; serving notice of meetings of the Board and of the Members; keeping appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as may be required by the Board.

(d) Treasurer. The Treasurer shall be the chief financial officer of the Association and shall be responsible for the following duties: receiving and depositing in appropriate bank accounts all monies of the Association and disbursing such funds as directed by resolution of the Board; signing all checks and promissory notes of the Association (subject to Section 13.2 hereof); keeping proper books of account; causing an annual financial review of the Association books to be made by a certified public accountant at the completion of each fiscal year; and preparing the annual budget and a statement of income and expenditures required by these Bylaws.

#### ARTICLE 10 BOOKS AND RECORDS

10.1 Inspection. The original or a copy of these Bylaws as amended or otherwise altered to date, certified by the Secretary, the membership register, books of account and minutes of meetings of the Members, the Board and of committees of the Board shall be kept at the office of the Association or at such other place within the Property as the Board shall prescribe and shall be made available for inspection and copying by any Member of the Association, or by his duly-appointed representative and by all first Mortgagees, at any reasonable time and for a purpose reasonably related to his interest as a Member or as a first Mortgagee, whatever the case may be. The Board shall establish reasonable rules with respect to:

- (a) notice to be given to the custodian of the records by the Member desiring to make the inspection;
- (b) hours and days of the week when such an inspection may be made; and
- (c) payment of the cost of reproducing copies of documents requested by a Member.

10.2 Inspection by Trustees. Every Trustee shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Trustee shall include the right, at his expense, to make extracts and copies of documents.

ARTICLE 11  
CORPORATE SEAL

The Association may have a corporate seal, which shall be circular in form, and shall have inscribed thereon the name of the Association, the date of its incorporation and the word "Utah".

ARTICLE 12  
AMENDMENTS

12.1 Except as otherwise provided herein, new Bylaws may be adopted or these Bylaws may be amended or repealed by the vote of sixty-seven (67%) of the Members or by the written consent of such Members. Notwithstanding the foregoing, no material amendment to these Bylaws shall be made without (i) the approval of at least fifty-one percent (51%) of the Eligible Mortgagees and (ii) the consent (by vote or written consent) of Members representing sixty-seven percent (67%) or more of the voting power of the Members of the Association. The term "material amendment" as used herein shall be defined to mean additions or amendments to provisions of these Bylaws which establish, provide for, govern or regulate any of the following: (a) voting; (b) Assessments, Assessment liens, or subordination of such liens; (c) reserves for maintenance, repair and replacement of Common Area; (d) insurance or fidelity bonds; (e) rights to use of the Common Area; (f) responsibility for maintenance and repair of the several portions of the Property; (g) expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the Property; (h) boundaries of any Lot; (i) the interests in the Common Area; (j) convertability of Lots into Common Area or of Common Area into Lots; (k) leasing of Lots; (l) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Lot; or (m) any provisions which are for the express benefit of Eligible Mortgagees or Eligible Insurers or Guarantors on any Lot. Any Eligible Mortgagee who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

12.2 Notwithstanding the above or any other article of these Bylaws, the percentage of the voting power of the Association or of Members other than the Declarant necessary to amend a specific clause or provision of these Bylaws shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause or provision.

ARTICLE 13  
MISCELLANEOUS

13.1 Fiscal Year. The Fiscal Year of the Association shall be as determined by the Board from time to time, and unless otherwise specified shall be the calendar year. The first Fiscal Year shall begin on the date of incorporation.

13.2 Checks, Draft, etc. All checks, drafts or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to the Association, shall require two signatures, one of which shall be that of the President or Vice President and the other shall be that of the Treasurer, Secretary, or professional manager of the Association.

13.3 Contracts, Etc., How Executed. The Board, except as in the Bylaws otherwise provided, may authorize any officer or officers or agent or agents to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances; provided, however, that unless so authorized by the Board, no officer, agent or employee shall have engagement or to pledge the Association's credit or to render the Association liable for any purpose or to any amount.

13.4 Construction. Unless the context otherwise requires, the masculine gender includes the feminine and neuter, the singular number includes the plural and the plural includes the singular. The captions herein are for purposes of reference only.

#### ARTICLE 14 MEMBERSHIP RIGHTS AND PRIVILEGES

14.1 Exclusive Board Rights. Except for certain rights of Declarant described in the Declaration, no Member shall have the right without the prior approval of the Board to exercise any of the powers or to perform any of the acts by these Bylaws delegated to the Board, as in Article 8 of these Bylaws more fully provided. Unless otherwise provided in the Declaration and subject to the rules and regulations adopted by the Board, each Member, his immediate family, guests and tenants shall have the right to use and enjoy the Common Area.

14.2 Suspension of Member Rights. The membership rights and privileges, together with the voting rights of any Member may be suspended by the Board, in accordance with the Declaration and procedures described in Section 8.4 hereof:

(a) Infractions. For a period not to exceed thirty (30) days for any infraction of the provisions of the Declaration or the Rules and Regulations.

(b) Failure to Pay Assessments. For any period of time during which the Assessment on that Member's Lot remains unpaid, provided that neither the membership rights and privileges nor the voting rights of the Declarant may be suspended during the period in which the Declarant is not paying Assessments, but is exercising its rights under the Declaration to control the Association or to improve, maintain, operate and repair the Common Area.

(c) Limitation. Notwithstanding the foregoing, no such suspension shall affect the rights of that Member to access to his or her Lot.

14.3 Penalties. Reasonable monetary penalties may be adopted by the Association provided the adoption of such penalties is approved by the Board.

#### ARTICLE 15 REGISTERED AGENT

The Association shall have a Registered Agent, who shall be chosen by the Board to hold office until his or her successor is chosen and qualifies. The resident agent may be either an individual or a corporation, located in the State of Utah. The resident agent shall, within ten (10) days after acceptance of an appointment as such file a certificate thereof in the office of the Secretary of State of Utah.

Greg A. Larsen, having an office address of 1042 E. Fort Union Blvd, # 226, Midvale, Utah 84047, is hereby appointed the initial Registered Agent for the Association.

ARTICLE 16  
PRINCIPAL OFFICE

The principal office for the transaction of the business of the Association shall be located in Salt Lake County, Utah.

ARTICLE 17  
INDEMNIFICATION OF TRUSTEES AND OFFICERS

The Association shall indemnify every officer and member of the Board against any and all expenses, including but not limited to attorney's fees reasonably incurred by or imposed upon any officer or member of the Board in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer or member of the Board. The officers and members of the Board shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, gross negligence or bad faith. The officers and members of the Board shall have no personal liability with respect to any contract or commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Board may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and member of the Board free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Board, or former officer or member of the Board, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officer's and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

[SIGNATURE PAGE FOLLOWS]

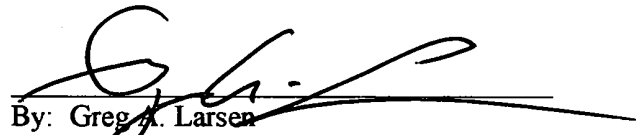
CERTIFICATION

We, the undersigned, do hereby certify:

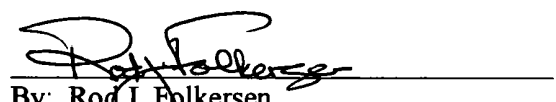
THAT the foregoing Bylaws, constitute the original Bylaws of the Association, as duly adopted by the Incorporator.

IN WITNESS WHEREOF, we have hereunto subscribed our names on this 10th day of October, 2013.

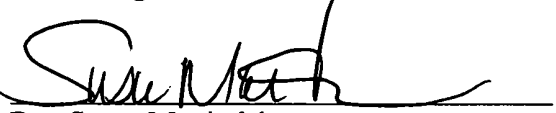
MILLCREEK GARDEN TOWNHOMES, LLC  
a Utah limited liability company



By: Greg A. Larsen  
Its: Manager



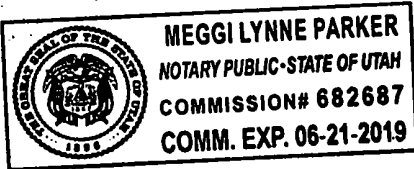
By: Rod J. Folkersen  
Its: Manager



By: Susan Martindale  
Its: Manager

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

On the 14<sup>th</sup> day of November, 2016, personally appeared before me Greg A. Larsen, Rod J. Folkersen, and Susan Martindale, who by me being duly sworn, did say that they are the Managing Members of MILLCREEK GARDEN TOWNHOMES, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said company pursuant to its Operating Agreement, and by authority of a resolution of its Managers, and duly acknowledged to me that MILLCREEK GARDEN TOWNHOMES, LLC, executed the same.



  
NOTARY PUBLIC

**NOTE:** These Bylaws were originally executed on or about October 10, 2013, but the original has been lost. Hence, the Bylaws were re-executed, without amendment, on the date listed in the notary block.

**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF MILLCREEK GARDENS P.U.D.**

All of Lots 1 through 32, inclusive, MILLCREEK GARDENS PUD, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.

Together with the use and enjoyment of the private roads within MILLCREEK GARDENS PUD, as set forth on the recorded plat thereof.

The following is show for information purposes only:      Tax ID No. \_\_\_\_

22-06-253-071-0000, 22-06-253-063-0000, 22-06-253-090-0000, 22-06-253-089-0000,  
22-06-253-088-0000, 22-06-253-087-0000, 22-06-253-086-0000, 22-06-253-085-0000  
22-06-253-084-0000, 22-06-253-083-0000, 22-06-253-082-0000, 22-06-253-081-0000  
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22-06-253-074-0000, 22-06-253-075-0000, 22-06-253-062-0000