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Recorder, Salt Lake County, UT
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WHEN RECORDED, PLEASE MAIL TO:

Millcreek Land Company, LLC
4014 South Highland Drive
Millcreek, UT 84124

PTC 21-1391
16-28-430-016, 017, 018

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR MILLCREEK VILLAGE TOWNHOMES A PLANNED RESIDENTIAL UNIT DEVELOPMENT

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR MILLCREEK VILLAGE TOWNHOMES (PLAT MATCH THIS?), a planned residential unit development (this "Declaration") is made and executed this 15 day of November 2021, by Millcreek Land Company, LLC, a Utah limited liability company ("Declarant").

RECITALS

A. Declarant is the owner of certain real property in the City of Millcreek, Salt Lake County, Utah, more particularly described on Exhibit A attached hereto (the "Property"). Declarant desires to develop the Property as a planned residential unit development to be known as "Millcreek Village Townhomes" (the "Project"). The Project shall consist of thirteen (13) Townhome Units.

B. By this Declaration, Declarant desires and intends to develop a common scheme and planned community on the Project, as shown on the Plat, for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Project.

C. In order to efficiently manage and to preserve the value and appearance of the Project, it is necessary and desirable to create a nonprofit corporation to maintain the Common Area in the Project; to collect assessments and disburse funds as hereinafter set forth; and to perform such other acts as shall generally benefit the Project and the Homeowners. The Millcreek Village Townhomes Homeowners Association, Inc., a homeowners association and nonprofit corporation, has or will be incorporated for the purpose of exercising the aforementioned powers and functions.

DECLARATION

NOW, THEREFORE, it is hereby declared that the Project shall be held, sold, conveyed, leased, rented, encumbered, and used subject to the following easements, rights, assessments, liens, charges, covenants, servitudes, restrictions, limitations, conditions, and uses, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title or interest in the described Property or any part

thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. Declarant, and each Owner by acceptance of a deed to a Unit, hereby agree, acknowledge and understand that the Project is not, by execution and recording of this Declaration, being submitted to the provisions of the Utah Condominium Ownership Act, §§ 57-8-1, *et seq.*, Utah Code Ann. (the "Condominium Act"). This Declaration does not constitute a declaration as provided for in the Condominium Act and the provisions of the Condominium Act shall not be applicable to Property or any portion thereof. In addition, the Project is not a cooperative under Title 57, Chapter 23 of the Utah Code.

ARTICLE I

DEFINITIONS

The following words, phrases, or terms used in this Declaration shall have the following meanings:

(a) "Annual Assessment" shall mean the charge levied and assessed each year against each Unit pursuant to Section 4.2 hereof.

(b) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Association which have been filed with the Utah State Department of Commerce, Division of Corporations and Commercial Code, or which shall be filed at or about the time that this Declaration is filed for record.

(c) "Association" shall mean the Millcreek Village Townhomes Homeowners Association, Inc., a Utah nonprofit corporation or limited liability company, organized or to be organized to administer and enforce the covenants and to exercise the rights, powers and duties set forth in this Declaration.

(d) "Board" shall mean the Board of Trustees of the Association.

(e) "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time. A copy of the Bylaws is attached hereto and incorporated herein as Exhibit B.

(f) "Common Area" shall mean all land within the Project that is now or in the future designated as Common Area by this Declaration, any amendments hereto, areas shown or otherwise designated as Common Area or Open Space on the Plat, and amendments and supplements thereto, or for which the Association has been granted an easement or which the Association has been permitted to use. Common Area shall include, but not be limited to, areas shown on the Plat as: (i) all land in the Project which is outside a Unit; (ii) private roads; (iii) landscaped areas; and (iv) visitor parking areas, if any.

(g) "Common Elements" shall have the meaning set forth in Section 11.1 below.

(h) "Common Expenses" shall mean all expenses for maintenance, repairs, landscaping, snow removal, utilities and taxes incurred on or in connection with Common Areas or Common Elements within the Project, all insurance premiums, all expenses incurred in connection with enforcement of this Declaration, all expenses expressly declared to be Common Expenses by this Declaration or the Bylaws of the Association, and all other expenses which the Association is entitled to incur pursuant to the provisions of this Declaration or its Bylaws.

(i) "Declarant" shall mean and refer to Millcreek Land Company, LLC, a Utah limited liability company and/or any successor to said company which, either by operation of law or through a voluntary conveyance, transfer, comes to stand in the same relationship to the Project as did its predecessor.

(j) "Governing Documents" means this Declaration, Articles of Incorporation and Bylaws for the Association, the Plat, and rules and regulations issued from time to time by the Association.

(k) "Limited Common Areas" shall mean any portion of the Common Areas reserved for the exclusive use of the Owner of a Unit, including the driveway, sidewalk, patio and porches adjacent to each dwelling. The use and occupancy of the Limited Common Areas shall be reserved to its associated Unit and each Unit Owner is granted an irrevocable and exclusive license to use an occupy the same so long as such Owner owns the Unit associated with such Limited Common Area.

(l) "Maintenance Charges" shall mean any and all costs assessed against an Owner's Unit and to be reimbursed to the Association for work done pursuant to Section 5.1 and fines, penalties and collection costs incurred in connection with delinquent Annual or Special Assessments pursuant to Section 4.6. Amounts collected by the Association as Maintenance Charges are sometimes referred to herein as "Maintenance Funds."

(m) "Member" shall mean any person that is a member of the Association pursuant to the provisions of Section 2.1.

(n) "Owner" shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any Unit. If there is more than one record holder of legal title to a Unit, each record holder shall be an "Owner."

(o) "Party Wall" means a wall that forms part of a Unit and is located on or adjacent to a boundary line between two or more adjoining Units owned by more than one Owner and is used or is intended to be used by the Owners of the benefited Units, which wall may be separated by a sound board between two or more Units.

(p) "Plat" shall mean the collective reference to the following duly approved and recorded plats filed herewith in the office of the Salt Lake County Recorder entitled:

(i) Millcreek Village Townhomes Plat; and

(ii) All future plats for future phases of the Millcreek Village Townhomes, a Planned Residential Unit Development, which may be added to the Project at Declarant's discretion as provided in Section 10.4 below.

(q) "Project" shall mean the collective reference to: (i) Millcreek Village Townhomes, a Planned Residential Unit Development; and (ii) all future plats for future phases of the Millcreek Village Townhomes, a Planned Residential Unit Development, which may be added to the Project at Declarant's discretion as provided in Section 10.4 below, as shown on any subsequent or future plats and governed by this Declaration, as reflected in an amendment to this Declaration and/or an amendment to Exhibit A hereto.

(r) "Property" shall mean and refer to that certain real property located in the City of Millcreek, Salt Lake County, State of Utah, and more particularly described on Exhibit A hereof, as amended from time to time as provided herein.

(s) "Reinvestment Fee" shall mean the charge which may be levied and assessed pursuant to Section 4.8. The Reinvestment Fee assessed, if any, shall be in compliance with Utah Code Ann. §57-1-46, as may be amended or replaced.

(t) "Special Assessment" shall mean any assessment levied and assessed pursuant to Section 4.3.

(u) "Unit" shall mean initially any of the thirteen (13) townhome units, separately numbered and individually described on the Plat and intended for independent and private use and ownership, and any such additional townhome units platted in future phases of the Project, if any.

ARTICLE II

MEMBERSHIPS AND VOTING

2.1 Membership. Every Owner shall be a Member of the Association. No evidence of membership in the Association shall be necessary other than evidence of ownership of a Unit. Membership in the Association shall be mandatory and shall be appurtenant to the Unit in which the Owner has the necessary interest. The rights and obligations of a Member shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Unit, and any such transfer shall automatically transfer the membership appurtenant to such Unit to the new Owner thereof.

2.2 Voting Rights. The Association shall have the following-described two (2) classes of voting membership:

(a) Class A. Class A Members shall be all Owners, except Declarant. Class A Members shall be entitled to one (1) vote for each Unit in which the interest required for membership in the Association is held. Although each of the multiple Owners of a single Unit shall be a Class A Member, in no event shall more than one (1) Class A vote

exist or be cast on the basis of a single Unit. Which of the multiple Owners of a single Unit shall cast the vote on the basis of that Unit is determined under Section 2.3 of this Article II.

(b) Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to twenty (20) votes for each Unit in which the interest required for membership in the Association is held. The Class B membership shall cease and the Declarant shall become a Class A Member upon the first to occur of the following: (i) the sale and conveyance by Declarant to purchasers of all of the Units contained in the Project; or (ii) the expiration of fifteen (15) years after the date on which Declarant first conveys to a purchaser fee title to a Unit.

2.3 Multiple Ownership Interests. In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves. 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 vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

2.4 Lists of Owners. The Association shall maintain up-to-date records showing the name of each person who is an Owner, the address of such person, and the Unit which is owned by such person. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Association 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 Association may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it, or at its option, the Association may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder of Salt Lake County, Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Association is otherwise advised.

ARTICLE III

ASSOCIATION

3.1 Formation of Association. The Association shall be a nonprofit Utah corporation or limited liability company charged with the duties and invested with the powers prescribed by law and set forth in its Articles and Bylaws and this Declaration. Neither the Articles nor Bylaws of the Association shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

3.2 Board of Trustees and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws of the Association as the same may be amended from time to time. The initial Board shall be composed of three (3) natural persons, designated by Declarant, who need not be Members of the Association. After the termination of the Class B membership as provided in

Section 2.2(b) above, the Board may, at the Association's option, be expanded to a total of five (5) natural persons, and the additional two persons shall be Members. The Board may also appoint various committees and may appoint and hire at the Association's expense a Manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the Manager or any other employee of the Association. At Declarant's option, so long as Declarant owns at least one (1) Unit in the Project, Declarant may appoint one member of the Board.

3.3 Personal Liability. Neither the Declarant, any manager or member of Declarant, nor any member of the Board, officer, manager or other employee or committee member of the Association shall be personally liable to any Member, or to any other person, including the Association, for any damage, loss, claim or prejudice suffered or claimed on account of any act, omission to act, negligence, or other matter, of any kind or nature except for acts performed intentionally and with malice.

3.4 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than it otherwise might be. NEITHER THE ASSOCIATION, THE BOARD, OR THE DECLARANT, (COLLECTIVELY, THE "PROJECT GOVERNING BODIES") SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROJECT, HOWEVER, AND THE PROJECT GOVERNING BODIES SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, OCCUPANTS, TENANTS, GUESTS AND INVITEES OF ANY OWNER OR OCCUPANT, AS APPLICABLE, ACKNOWLEDGE THAT THE PROJECT GOVERNING BODIES DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM OR BURGLAR ALARM SYSTEM DESIGNATED BY OR INSTALLED MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE NOR THAT FIRE PROTECTION OR BURGLARY ALARM SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER, OCCUPANT, TENANT, GUEST OR INVITEE OF AN OWNER OR OCCUPANT, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE PROJECT GOVERNING BODIES ARE NOT INSURERS AND THAT EACH OWNER, OCCUPANT, TENANT, GUEST AND INVITEE ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO UNITS, TO PERSONS, TO IMPROVEMENTS AND TO THE CONTENTS OF UNITS AND IMPROVEMENTS AND FURTHER ACKNOWLEDGES THAT THE PROJECT GOVERNING BODIES HAVE NOT MADE REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROJECT.

ARTICLE IV

ASSESSMENTS

4.1 Purpose of Assessments; Assessment Lien. All Members of the Association hereby covenant and agree, and each Owner, except Declarant, by acceptance of a deed to a Unit is deemed to covenant and agree, to pay to the Association the following assessments and charges: (a) Annual Assessments, (b) Special Assessments, (c) Maintenance Charges, and (d) Reinvestment Fees, all such assessments and charges to be established and collected as hereinafter provided. The Annual and Special Assessments shall include provision for a reasonable reserve fund, as determined by the Board. The Annual Assessments, Special Assessments, Maintenance Charges and Reinvestment Fees, together with interest, costs and reasonable attorneys' fees, shall be secured by a lien (the "Assessment Lien") on the Unit to which they relate, in favor of the Association, which shall be a continuing servitude and lien upon the Unit against which each such assessment or charge is made. The Assessment Lien shall be a charge on the Unit, shall attach from the date when the unpaid assessment or charge shall become due, and shall be a continuing lien upon the Unit against which each assessment is made. Each assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the assessment became due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them. The Assessment Lien may be foreclosed by the Association in substantially the same manner as provided for non-judicial foreclosure of deeds of trust on real property upon the recording of a Notice of Delinquent Assessment or charge as set forth in Section 4.6 hereof and/or the foreclosure rights and methods described in the Community Association Act, Utah Code Ann. ("U.C.A.") 57-8a. In order to facilitate the foreclosure of any such Assessment Lien in the manner provided at law for the foreclosure of deeds of trust, the Board may designate a trustee with full power of sale, to foreclose any such Assessment Liens as directed by the Board. Such trustee, and any successors, shall not have any other right, title or interest in the Project beyond those rights and interests necessary and appropriate to foreclose any Assessment Liens against Units arising pursuant hereto. In any such foreclosure, the Owner of the Unit being foreclosed shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the Assessment Lien being foreclosed. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale. Pursuant to U.C.A. 57-8a-212 (2019), the Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-302 to Pioneer Title, 1108 West South Jordan Parkway, Suite C, South Jordan, Utah 84095, with power of sale, the Units and all improvements to the Units for the purpose of securing payment of all assessments, together with interest, cost and reasonable attorneys' fees, under the terms of this Declaration. If an Owner fails or refuses to pay any Assessment when due, the Board shall have the right, after giving notice and an opportunity to be heard in accordance with the Community Association Act, U.C.A. 57-8a, to terminate an Owner's right (a) to receive utility services paid as a Common Expense and (b) of access and use of any recreational facilities constituting a portion of the Common Areas. Notwithstanding anything in this Declaration to the contrary, Declarant shall not be charged, and is exempt from paying, any assessments, whether Annual, Special, Maintenance or otherwise, with respect to Units owned by Declarant.

4.2 Annual Assessments. Commencing on the date on which Declarant first conveys to a purchaser fee title to a Unit, an Annual Assessment shall be made against each Unit, except any Unit owned by Declarant, for the purpose of paying (or creating a reserve for) Common Expenses. Upon the occurrence of any sale, transfer, or conveyance (as applicable, a "Transfer") of any Unit, the party receiving title to the Unit shall pay to the Association, in advance, his or her pro rata share of the Annual Assessment due in that calendar year on or before the date the purchaser receives fee title to a Unit (the "Closing Date").

4.3 Special Assessments. In addition to the Annual Assessment authorized above, the Association may levy, except with respect to Units owned by Declarant, in any assessment period, a Special Assessment applicable to that period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any Common Area, or for the purpose of defraying other extraordinary expenses; provided that any such assessment shall have the assent of a majority of the total number of votes held by the Members who are voting in person or by proxy at a meeting duly called for such purpose.

4.4 Uniform Rate of Assessment. Annual Assessments shall be fixed at a uniform rate for all Units, except Units owned by Declarant, and may be collected on a yearly basis or more frequently if the Board shall so determine.

4.5 Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the twelve month period beginning January 1 of each year. The Board, in its sole discretion from time to time, may change the Assessment Period by recording with the County an instrument specifying the new Assessment Period. The Board shall fix the amount of the Annual Assessment against each Unit at least thirty (30) days in advance of the end of each Assessment Period. Written notice of the Annual Assessment shall be sent to each Member. Failure of the Association to send a bill to any Member shall not relieve the Member of liability for payment of any assessment or charge. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Unit have been paid.

4.6 Effect of Nonpayment. Any assessment or charge or installment thereof not paid when due shall be deemed delinquent and in the discretion of the Board may bear interest from thirty (30) days after the due date until paid at the rate of interest of twelve percent (12%) per annum, and the Member shall be liable for all costs, including attorneys' fees, which may be incurred by the Association in collecting the same. The Board may also record a Notice of Delinquent Assessment or Charge against any Unit as to which an assessment or charge is delinquent. The Notice shall be executed by an officer of the Association or a member of the Board, set forth the amount of the unpaid assessment, the name of the delinquent Owner, and a description of the Unit. The Board may establish a fixed fee to reimburse the Association for the Association's cost in recording such Notice, processing the delinquency, and recording a release of such lien, which fixed fee shall be treated as part of the Maintenance Charge of the Association secured by the Assessment Lien. The Association may bring an action at law against the Owner personally obligated to pay the delinquent assessment and/or foreclose the lien against such Owner's Unit. No Owner may waive or otherwise avoid liability for the

assessments provided for herein by non-use of the benefits derived from assessments or abandonment of his or her Unit. Notwithstanding anything in this Declaration to the contrary, Declarant shall not be charged and is exempt from paying any assessments, whether Annual, Special, Maintenance, or otherwise, with respect to Units owned by Declarant.

4.7 Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or first deed of trust of which the beneficiary is, a lender who has loaned funds with a Unit as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to liens for taxes and other public charges. Except as provided above, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Unit. Sale or transfer of any Unit shall not affect the Assessment Lien.

4.8 Reinvestment Fees. Subject to the terms and conditions of Section 4.8(b) below, the Board shall have the right to establish from time to time (but shall not be required to establish) a Reinvestment Fee assessment in accordance with this Section 4.8. If established by the Board, the following terms and conditions shall govern Reinvestment Fees.

(a) Upon the Transfer of any Unit, but excluding the initial sale or Transfer by or to Declarant or an affiliate or successor of Declarant, the party receiving title to the Unit (the "Transferee") shall pay to the Association a Reinvestment Fee in an amount to be established by the Board from time to time, provided that in no event shall the Reinvestment Fee exceed the lesser of (a) $1,000 total (as adjusted from time to time in the Board's reasonable discretion for inflation), (b) 0.5% of the value of the applicable Unit, or (c) the maximum rate permitted by applicable law.

(b) Notwithstanding anything to the contrary contained in this Section 4.8, the Association shall not levy or collect a Reinvestment Fee for any of the Transfers described below:

(i) Any Transfer to (a) the United States or any agency or instrumentality thereof, or (b) the State of Utah or any county, city, municipality, district or other political subdivision of the State of Utah.

(ii) Any Transfer to the Association or its successors.

(iii) Any Transfer, whether outright or in trust, that is for the benefit of the transferor or the transferor's relatives, but only if the consideration for the Transfer is no greater than 10 percent of the value of the Unit transferred.

(iv) Any Transfer or change of interest by reason of death, whether provided for in a will, trust or decree of distribution, except for a sale of a site by the estate of an Owner.

(v) Any Transfer made solely for the purpose of confirming, correcting, modifying or supplementing a Transfer previously recorded, removing clouds on titles, and any exchange of Units between Declarant

and any original purchaser from Declarant of one or more Units being Transferred to Declarant in such exchange.

(vi) Any lease of any Unit or portion thereof for a period of less than thirty years.

(vii) Any Transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation.

(viii) Any Transfer in connection with (a) the foreclosure of a deed of trust or mortgage, or (b) a deed given in lieu of foreclosure.

(c) The Reinvestment Fee shall be due and payable by the Transferee to the Association at the time of the Transfer giving rise to the payment of such Reinvestment Fee.

ARTICLE V

MAINTENANCE

5.1 Common Area; Common Elements. The Association shall have the duty of maintaining and repairing all of the Common Area and Common Elements on Townhomes within the Project and the cost of said maintenance and repair shall be a Common Expense of all of the Owners. The Association shall not need the prior approval of its Members to cause such maintenance or repairs to be accomplished, notwithstanding the cost thereof. In addition, the Association, or its duly delegated representative, shall maintain and otherwise manage all of the Common Area in the Project. The Association shall have the power to grant easements for utilities or other purposes on or under the Common Area to the extent that the Board deems it necessary or advisable. This maintenance will include the installation of landscaping, mowing, watering and appropriate upkeep and repair of any designated Common Area, and the sweeping, snow removal, repair, and maintenance. The Board shall be the sole judge as to the appropriate maintenance of all Common Area, Common Elements and other properties and elements maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of such properties shall be taken by the Board or by its duly delegated representative.

5.2 Assessment of Certain Costs. In the event that the need for maintenance or repair of Common Areas or Common Elements and other areas maintained by the Association is caused through the willful or negligent act of any Owner (except Declarant), his or her family, guests or invitees, the cost of such maintenance or repairs shall be added to and become part of the Maintenance Charge to which such Owner's Unit is subject and shall be secured by the Assessment Lien.

5.3 Improper Maintenance. In the event any portion of any Unit, except Units owned by Declarant, is so maintained or used by an Owner as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Units or other areas of the Project which are substantially affected thereby or related thereto; or in the event any

portion of a Unit, except Units owned by Declarant, is being used in a manner which violates this Declaration; or in the event any Member, except Declarant, is failing to perform any of its obligation under this Declaration or standards of the Committee, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Member that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at such Owner's cost. If at the expiration of such fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become part of the Maintenance Charge and shall be secured by the Assessment Lien.

5.4 Common Utility Lines. Notwithstanding anything to the contrary contained herein, the Association shall own and maintain all water, sewer, storm drain and other utility lines, pipes, or systems (collectively the "Common Utility Lines") within the Project from the point of entry of the Common Utility Lines into the Project to the point of entry of the Common Utility Lines into a particular Unit through a concrete floor slab or an exterior wall of such Unit. The cost to maintain the Common Utility Lines shall be considered a Common Expense and will be included in the Annual Assessment levied by the Association.

ARTICLE VI

RIGHTS AND POWERS OF ASSOCIATION

6.1 Association's Rights. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws. In the event of any conflict between the Articles and Bylaws and this Declaration, the terms of this Declaration shall control. In the event of any conflict between the Articles and Bylaws, the terms of the Articles shall control.

6.2 Rights of Enforcement. The Association, as the agent and representative of the Members, shall have the right to enforce the covenants set forth in this Declaration. The Association or Declarant shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. If the Association prevails in any proceeding at law or in equity to enforce the provisions of this Declaration, the Association is entitled to an award of its costs and reasonable attorneys' fees associated with the action. Failure by the Association or Declarant to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE VII

INSURANCE

7.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Unit to a purchaser, other than Declarant, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

7.1.1 Unless otherwise determined by the Declarant, property insurance on the Common Area and Units, insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area and Units, as determined by the Board; provided however, that the total amount of insurance shall not be less than one hundred percent (100%) of the current replacement cost of the insured property (less reasonable deductibles), exclusive of the land, excavations, foundations and other items normally excluded from a property policy;

7.1.2 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than $1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area, Units, exterior elements of the Units and other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

7.1.3 Worker's compensation insurance to the extent necessary to meet the requirements of applicable law;

7.1.4 Fidelity bonding of the Board and employees of the Association having control of, or access to, the funds of the Association with loss coverage ordinarily not less than the maximum amount of funds of the Association over which the principal(s) under the bond may reasonably be expected to have control or access at any time;

7.1.5 Errors and omissions insurance coverage for the Board; and

7.1.6 Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association or the Owners.

7.1.7 Each insurance policy purchased by the Association shall, to the extent reasonably available, contain the following provisions:

7.1.7.1 The insurer issuing such policy shall have no rights of subrogation with respect to claims against the Association or its agents, servants or employees, or with respect to claims against Owners or occupants;

7.1.7.2 No act or omission by any Owner will void the policy or adversely affect recovery on the policy;

7.1.7.3 The coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners, occupants or mortgagees;

7.1.7.4 A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or occupant because of the negligent acts of the Association or other Owners or occupants;

7.1.7.5 Statement naming the Association as the insured; and

7.1.6.6 For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify any mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

7.2 Hazard Insurance. Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Utah which has a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports-international edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBBQ" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service. Insurance issued by a carrier that does not meet the foregoing rating requirements will be acceptable if the carrier is covered by reinsurance with a company that meets either one of the A.M. Best general policyholder's ratings or one of the Standard and Poor's claims-paying ability ratings mentioned above.

7.3 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to this Declaration shall be included in the budget of the Association and shall be paid by the Association as a Common Expense.

7.4 Payment of Insurance Proceeds. With respect to any loss to the Common Area or Units covered by property insurance obtained by the Association, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee. Subject to the provisions of Section 7.4, the proceeds shall be disbursed for the repair or restoration of the damage to the Common Area or Units.

7.5 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area or Units which is damaged or destroyed shall be repaired or replaced promptly by the Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Common Area or Units is destroyed and is not repaired or replaced, insurance proceeds attributable to the damaged Common Area or Units shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either: (i) be retained by the Association as an additional capital reserve; (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association; or (iii) shall be distributed in equal shares per Membership to the Owners of Units as their interests appear.

ARTICLE VIII

MORTGAGEE REQUIREMENTS

8.1 Notice of Action. The Board shall maintain a roster containing the name and address of each Eligible Mortgagee as such term is defined herein. To be considered an Eligible Mortgagee, a First Mortgagee shall provide the Board with a certified copy of its Recorded First Mortgage and the name and address of the First Mortgagee and a statement that the Mortgage is a First Mortgage together with a written request that it receive notice of the matters and actions described below. The Board shall strike an Eligible Mortgagee from the roster upon request by such Eligible Mortgagee or upon the Board's receipt of a certified copy of a Recorded full release or satisfaction of the Eligible Mortgage. The Board shall give notice of such removal to the Eligible Mortgagee unless the removal is requested by the Eligible Mortgagee. Upon the Board's receipt of such written request, an Eligible Mortgagee shall be entitled to timely written notice of:

8.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a Mortgage held, insured or guaranteed by such Eligible Mortgagee, insurer or governmental guarantor;

8.1.2 Any delinquency in the payment of assessments or charges owed by an Owner whose Unit is subject to a Mortgage held, insured or guaranteed by such Eligible Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days; and

8.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond or insurance maintained by the Association.

8.2 Availability of Project Documents and Financial Statements. The Association shall maintain and have current copies of the Project documents, membership register, books, records, and financial statements available for inspection by Members or by Eligible Mortgagees. Generally, these documents shall be available during the Association's normal business hours, and may be maintained and kept at the office of the manager for the Association. The Association may, as a condition to permitting a Member to inspect the membership register or to its furnishing information from the register, require that the Member agree in writing not to use, or allow the use of, information from the membership register for commercial or other purposes not reasonably related to the regular business of the Association and the Member's interest in the Association.

8.3 Subordination of Lien. The assessment or claim against a Unit for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Unit, and the First Mortgagee thereunder which comes into possession of or which obtains title to such Unit shall take the same free of such lien or claim for unpaid assessments or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge,

Assessment Lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage, or as not to burden a First Mortgagee which comes into possession or which obtains title to a Unit, shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Unit affected or previously affected by the First Mortgage concerned.

8.4 Notice to Eligible Mortgagee. The Association shall give timely written notice of the events listed in Section 8.1 above to any Eligible Mortgagee who requests such notice in writing.

8.5 Payment of Taxes. In the event any taxes or other charges which may or have become a lien on the Common Area are not timely paid, or in the event the required hazard insurance described in Section 7.2 lapses, is not maintained, or the premiums therefore are not paid when due, any First Mortgagee or any combination of First Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Prior to paying any taxes or premiums, such First Mortgagee or First Mortgagees shall provide thirty (30) days advance written notice to the Board, which notice shall specify the nature of the taxes or premiums and suggest a reasonable cure period for such payments.

8.6 Priority. No provision of this Declaration or the Articles gives or may give a Member or any other party priority over any rights of mortgagees pursuant to their respective mortgages in the case of a distribution to Members of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Units or the Common Area. All proceeds or awards shall be paid directly to any Mortgagees of Record, as their interests may appear.

ARTICLE IX

COVENANTS, CONDITIONS AND RESTRICTIONS

9.1 Landscaping. Any trees, lawns, shrubs, or other planting provided by Declarant, including without limitation, those provided in the Common Area, shall be properly nurtured and maintained by the Association. Each Unit Owner, except the Declarant, shall be assessed the Annual Assessment set forth in Section 4.2 to maintain these areas. No Owner may plant any shrub, tree or other vegetation within, or otherwise modify, alter or add to the landscaping without the Board's prior written consent. The planting of trees that will have a high profile and obstruct the view from neighboring Units is prohibited. Such trees may be pruned or removed at the discretion of the Board. Landscaping shall be installed and maintained by the Association and may include a combination of lawns, shrubs, or ground cover.

9.2 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage, or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any property shall be removed immediately after the completion of construction.

9.3 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Unit, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Unit so as to be offensive or detrimental to any other property in the vicinity thereof or its occupants. The Board, in its sole discretion, shall have the right to determine the existence of any nuisance.

9.4 Signs. An Owner may place no more than two signs outside of his or her Unit. No sign may be greater than five square feet. The placement of signs, graphics, or advertisements which are permanent in nature or represent advertisement for small business conducted in the Unit is prohibited.

9.5 Animals. No animal, bird, fowl, poultry, or livestock of any kind shall be raised, bred, or kept on or within any Unit except pursuant to applicable Millcreek City ordinance and rules and regulations adopted from time to time by the Board; provided, however, that under no circumstances shall any animal kept by an Owner create a nuisance, safety or health threat to other Owners or to area wildlife. All such household pets shall be kept within the Unit and controlled so as to not leave the Owner's property. Dogs and cats belonging to Owners, occupants or their licensees or invitees within the Project must be kept within an enclosure (or on a leash being held by a person capable of controlling the animal). Upon written request of any Owner, the Board shall conclusively determine (in its sole discretion) whether a particular animal, bird, or fowl, is a nuisance. Any decision rendered by the Board shall be enforceable in the same manner as any other restriction contained herein.

9.6 Restriction on Further Subdivision, Property Restrictions, and Rezoning. No Unit shall be further subdivided or separated into smaller Units by any Owner, and no portion less than all of any such Unit, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Board, which approval must be evidenced on the Plat or other instrument creating the subdivisions, easement, or other interest. No further covenants, conditions, restrictions, or easements shall be recorded by any Owner or other person against any Unit without the provisions thereof having been first approved in writing by the Board, and any covenants, conditions, restrictions, or easements recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Unit and no applications for variances or use permits shall be filed with any governmental authority unless the proposed uses of the Unit has been approved by the Board and the proposed use otherwise complies with this Declaration.

9.7 Non-Residential Use. No gainful occupation, profession, or other non-residential use shall be conducted within any Unit, and no persons shall enter within any Unit for engaging in such uses or for the purpose of receiving products or services arising out of such usage; provided, however, gainful occupations or professions may be operated or maintained in a Unit provided that: (i) any such business, profession or trade may not require heavy equipment or create a nuisance within the Project, (ii) may not noticeably increase the traffic flow to the Project, (iii) may not be observable from outside the Unit, and (iv) may only be carried on following approval from the city with jurisdiction over the matter, pursuant to all applicable state

and city laws, rules and ordinances in effect at the time any such use is requested. Specifically, it is contemplated that certain "home office" businesses, professions or trade which rely heavily on the Internet and other similar type of technological advances may be operated or maintained within a Unit, subject to the foregoing limitations and all other limitations of this Declaration.

9.8 Easements. Easements for installation of and maintenance of utilities, drainage facilities, water tank access and lines are reserved as shown on the recorded Plat. Within these easements, no structure, planting, or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or water tank lines or which may change the direction of flow or drainage channels in the areas or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each of the Units and all improvements in it shall be maintained continuously by the Association, except for those improvements for which a public authority or utility company is responsible. The Association has the authority to grant additional easements as it deems necessary or convenient within the Common Areas. Each Owner, for each Unit that he, she or it owns, hereby acknowledges and agrees that a Party Wall may presently encroach upon or overlap the Owner's Unit. To the extent the Party Wall does encroach upon or overlap a Unit, the Owner of said Unit hereby grants to the adjoining Owner of the other Unit that shares a Party Wall an easement over and upon its Unit for the purpose of maintaining the Party Wall and carrying out the other obligations set forth in this Declaration. By accepting a deed to a Unit, each Owner hereby covenants and agrees not to do anything or to erect any barrier that will hinder, delay or limit the maintenance of the Party Wall and the performance of the Association's obligations and each Owner's respective obligations under this Declaration.

9.9 Fences and Walls. Fencing and walls are prohibited within the Project, except for (i) the entry to the Project, and in other Common Areas, all as installed by Declarant; and (ii) privacy fences approved by the Committee. Any such privacy fence shall be constructed of materials approved by the Committee, and shall be color coordinated with the approved Unit colors.

9.10 Parking and Storage. No major mechanical work or repairs are to be conducted in streets or front yards. No inoperative automobile or vehicle shall be placed or remain on any Unit adjacent street for more than forty-eight (48) hours. No commercial-type vehicles and no trucks shall be parked or stored on the front yard setback of any Unit or within the side yard buildings setback on the street side of a corner Unit, or on the residential street except while engaged in transportation. Trailers, mobile homes, trucks over three quarter ton capacity, boats, campers not on a truck bed, motor homes, buses, tractors, and maintenance or commercial equipment of any kind shall be parked or stored in an enclosed area screened from street view as approved by the Committee. The storage or accumulation of junk, trash, manure, or other offensive or commercial materials is prohibited.

9.11 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing, or sale of property within the Project.

ARTICLE X

AMENDMENTS.

10.1 Term: Method of Termination. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of thirty (30) years from the date of recordation. From and after such date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting sixty-seven percent (67%) of the total votes cast at an election held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten-year extension. The Declaration may be terminated at any time if at least ninety-percent (90%) of the votes cast by all Owners shall be cast in favor of termination at an election held for such purpose. If the necessary votes are obtained, the Board shall cause to be recorded in the office of the Salt Lake County Recorder a "Certificate of Termination," duly signed by the President and Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon, the covenants herein contained shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

10.2 Amendments. This Declaration may be amended by recording in the office of the Salt Lake County Recorder a "Certificate of Amendment," duly signed and acknowledged as required for a Certificate of Termination. The Certificate of Amendment shall set forth in full the amendment adopted and shall certify that at an election duly called and held pursuant to the provisions of the Articles and Bylaws of the Association, the Owners casting sixty-seven percent (67%) of the votes at the election voted affirmatively for the adoption of the amendment. So long as Declarant is the Owner of any Unit in the Project, this Declaration may be amended or terminated only with the written approval of Declarant.

10.3 Unilateral Amendment. Declarant alone may amend or terminate this Declaration prior to the closing of a sale of the first Unit. Notwithstanding anything contained in this Declaration to the contrary, this Declaration may be amended unilaterally at any time and from time to time by Declarant: (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's property unless any such Owner shall consent thereto in writing; or (c) to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments (including, without Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA), or any similar agency). Further, so long as Declarant is the Owner of any Unit in the Project, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect title to any Unit without the consent of the affected Owner. Such amendments

may include, but are not limited to, changing the nature or extent of the uses to which such property may be devoted or readjustment of Unit line boundaries in connection with the location and development of the Project.

10.4 Expansion of Project. Declarant shall have the right in its sole discretion, without the consent of Owners, Members or the Board, upon recording a Certificate of Amendment signed by Declarant to expand the Project to include additional parcels, phases and Units located within 1,000 feet of any portion of the Project, as expanded, and/or to add the development known as Millcreek Village Townhomes, all of which additional property shall, upon recording such Certificate of Amendment, be subject to the same covenants, conditions and restrictions as set forth in this Declaration. Each Owner by the acceptance of a deed to a Unit in the Project shall be deemed to have consented to all the provisions of this section.

ARTICLE XI

PROVISIONS RELATING TO TOWNHOMES

11.1 Common Elements of Townhomes. The following components of the Units are considered "Common Elements" with respect to each Townhome: (i) all structural parts of the Townhome, including, without limitation, foundations, columns, girders, joists, beams, supports, main walls, supporting walls, floors and ceilings (except the interior surfaces thereof), and roofs; and (ii) all tanks, pumps, motors, fans, compressors, ducts, mechanical areas, garbage area, wires, conduits, ducts, and in general all apparatus and equipment existing for common use. The Common Elements shall be owned by the Owners in a Townhome as tenants in common. The Common Elements shall remain undivided. No Owner or combination thereof or any other person shall bring any action for partition or division of any part thereof.

11.2 Townhome Unit. A Unit is comprised of each separate physical part of the Townhome, as shown on the Plat, which is intended for independent use. Each Unit shall include the enclosed rooms occupying such Unit's share of the building in which it is located and bounded by the interior surfaces of the walls, floors, ceilings, windows, doors and built-in fireplaces, if any, along the perimeter boundaries of the air space as said boundaries are shown on the Plat, together with all fixtures and improvements therein contained. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a Unit in so far as they are necessary for the support or full use and enjoyment of another Unit: bearing walls, floors, and roofs (except the interior surfaces thereof), foundations, space heating equipment and central water heating equipment, if any, tanks, pumps, pipes, vents, ducts, shafts, flues, shoots, conduits, wires and other utility installations, except the outlets thereof when located within the Unit. The interior surfaces of a window or door means the points at which such surfaces are located when such windows or doors are closed.

11.3 Division Between Units. Each Unit, as described on the Plat, shall include that part of the Townhome containing the Unit which lies within the boundaries of the Unit. Such boundary shall be determined in the following manner: the upper boundary shall be the plane of the lower surface of the ceiling; the lower boundary shall be the plane of the upper surface of the

floor; and the vertical boundaries of the Unit shall be: (i) the interior surface of the outside walls of the building bounding a Unit; (ii) the center line of any non-bearing interior walls bounding a Unit; and (iii) the interior surface of any interior bearing walls bounding a Unit. Each Unit includes the portions of the building so described and those things which are defined as Common Elements. Each Unit's undivided interest in the Common Elements, including Limited Common Elements (e.g., Common Elements used exclusively by or benefiting a particular Unit), shall be separated from the Unit to which they appertain and shall be deemed to be conveyed or encumbered or released from liens with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

11.4 Restrictions on Use of Units.

(i) Deck furniture, hot tubs, and other items may be placed on the roof terrace area (a "Roof Terrace") of each Unit provided that such items do not violate any Millcreek City ordinances, or, in the opinion of the Board, cause any undue nuisance to other Unit Owners. Canopies, awnings, and sun shades (collectively "Shades") may also be placed over a Roof Terrace provided that such Shades are not tarps or made from tin foil, blankets, cardboards, newspaper, or any other material that the Board, in its sole discretion, chooses to prohibit. No permanent structure may be installed on a Roof Terrace unless an Owner receives prior written permission from the Board to install such structure and the structure otherwise complies with Millcreek City ordinances.

(ii) No Unit windows may be covered with tin foil, blankets, cardboard, newspapers, posters, or any other material that is not considered a standard blind material.

(iii) Nothing shall be done in any Unit of a Townhome or in, on or to the Common Elements which will impair the structural integrity or structurally change the same or any part thereof except as is otherwise provided herein.

(iv) The Common Elements shall be kept free and clear of all rubbish, debris and other unsightly materials.

(v) Each Owner of a Unit shall be liable to the Association for all damages to the Common Elements caused by such Unit Owner or any occupant of his Unit or invitee, except for that portion of said damage, if any, that is covered by insurance maintained in effect by the Association. The failure of the Association to continue any insurance in effect shall not be a defense to any such liability.

(vi) There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written consent of the Association, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from, the Common Elements except upon the prior written consent of the Association.

11.5 Maintenance Responsibility Of Unit Owner. For purposes of maintenance, repair, alteration and remodeling, an Owner shall be deemed to own the interior non-supporting walls, the materials (such as, but not limited to, plaster, gypsum drywall, paneling, wallpaper, paint, wall and floor tile and flooring) making up the finished surfaces of the perimeter walls, ceilings, and floors within the Unit, including any non-exterior Unit doors and non-exterior windows. The Owner shall not be deemed to own lines, pipes, wires, conduits, or systems (which for brevity are hereinafter referred to as utilities) which serve one or more other Units except as tenant in common with the other Owners. Such utilities shall not be disturbed or relocated by an Owner without the written consent and approval of the Board. Such right to repair, alter, and remodel is coupled with the obligation to replace any finished or other materials removed with similar or other types or kinds of materials. An Owner shall maintain and keep in repair the interior of his or her Unit, including the fixtures thereof. All fixtures and equipment installed within the Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair the structural soundness or integrity of the Building, impair any easement or hereditament, nor violate any laws, ordinances, regulations and codes of the United States of America, the State of Utah, the County of Salt Lake, the City of Millcreek, or any other agency or entity which may then have jurisdiction over said Unit; without the written consent of the Board after first proving to the satisfaction of the Board that compliance with this section's requirements will be maintained during and after any such act or work shall be done or performed. Any expense to the Board for investigation under this Article shall be borne by the relevant Owner. However, nothing herein contained shall be construed to permit structural modification and any decision relating thereto shall be in the absolute discretion of the Board, including, but not limited to the engaging of a structural engineer at the Owner's expense for the purpose of obtaining an opinion. An Owner shall also keep the Limited Common Elements appurtenant to his or her Unit in a well-repaired, maintained, clean and sanitary condition, at his or her own expense. An Owner shall be obligated to reimburse the Association promptly upon receipt of its statement of any expenditures incurred by it in repairing or replacing any Unit elements or Limited Common Element in a Townhome for which the Owner is responsible, or for the repairs of another's Unit or any Common Element of a Unit damaged by any act or failure to act of the Unit Owner, his tenants, guests, invitees or agents.

11.6 Failure to Maintain Party Wall. If any Owner shall fail to comply with the provisions of this Declaration as to maintenance, repair, or use of any common or interior bearing walls, or the obtaining of insurance as set forth in Section 11.7 below, or other obligations contained herein ("Defaulting Owner"), then in any such event the adjoining Owner shall have the right, upon thirty (30) days written notice to the Defaulting Owner (unless within such 30-day period the Defaulting Owner shall cure such default, or in the case of a nonmonetary default which by its nature cannot be cured within such 30-day period, the Defaulting Owner shall take such action as is reasonably calculated to commence the curing thereof, and thereafter shall diligently prosecute the curing thereof to completion) to proceed to take such action as shall be necessary to cure such default, all in the name of and for the account of the Defaulting Owner. The Defaulting Owner shall on demand reimburse the other adjoining Owner taking such action for the monies actually expended by such adjoining Owner and the adjoining Owner's reasonable out-of-pocket expenses in so doing, together with interest thereon as set forth below from the date of demand to the date of payment. Notwithstanding the foregoing, if the non-defaulting adjoining Owner shall in good faith deem that an emergency is occurring or has occurred, so that the default requires immediate curing, then no notice shall be required and the

non-defaulting adjoining Owner may act promptly without giving notice and take such action as is necessary to cure the alleged failure. Any adjoining Owner performing any action pursuant to the preceding sentence shall interfere to the minimum extent possible with the Defaulting Owner's use and occupancy of such Defaulting Owner's Unit, and, with reasonable promptness, shall give verbal or written notice to the Defaulting Owner of such action and the claimed failure.

11.6.1 Any unresolved dispute, disagreement or controversy between a Defaulting Owner and an adjoining Owner shall be resolved pursuant to Article 13 hereof.

11.6.2 All sums required to be reimbursed or otherwise paid hereunder by one Defaulting Owner to the other adjoining Owner shall bear interest per annum at the floating rate of one percent (1%) over the then current "prime rate" of interest announced in the Wall Street Journal. Such interest rate shall be determined monthly on the first day of each calendar month. In addition, any Defaulting Owner who fails to pay its obligations under this Declaration agrees to pay the other adjoining Owner's reasonable collection costs, including reasonable attorneys' fees.

11.6.3 All remedies hereby specifically set forth in this Section 10.6 are cumulative and shall be deemed to be in addition to any remedies available at law or in equity which shall include the right to restrain by injunction any violation or threat of violation by any Owner of any of the terms, covenants, or conditions of this Declaration governing Party Walls and by decree to compel specific performance of any such terms, covenants, or conditions governing Party Walls, it being agreed that the remedy at law for any breach of any such term, covenant, or condition governing Party Walls is not adequate. Notwithstanding the foregoing, no default by any Owner under this Agreement shall entitle any other adjoining Owner to terminate, cancel, or otherwise rescind this Declaration or any terms, covenants or conditions governing Party Walls.

11.6.4 The Board, without obligation and in its sole and exclusive discretion, may also notify the Defaulting Owner of the work required to the Party Wall and demand that it be done within a reasonable and specified period and individually charge the enforcement costs thereof to such Defaulting Owner, which enforcement costs shall be secured by the Assessment Lien. Moreover, in the event a medical emergency, a property damage emergency or similar type of emergency which requires immediate curing shall arise in connection with an Owner's Unit, the Board shall have the right, but not the obligation, to immediately enter into the Unit to abate the emergency upon reasonable advance notice to such Owner considering the nature, scope and extent of the emergency (e.g. advance telephone calls or doorbell ringing or knocking). The Board shall have the right to individually charge the cost to cure the emergency condition to such Owner if such emergency was the personal responsibility of the Owner or if it was caused by the Owner's negligent or willful acts.

11.7 Insurance of Party Walls; Waiver. By acceptance of a deed to a Unit, each Owner hereby acknowledges his, her or its independent insurance obligations for the respective Party Wall which constitutes a portion of the Owner's Unit, and agrees to maintain in full force and effect "all-risk" property insurance with respect to the Unit owned by such Owner. Such

insurance shall be in an amount equal to at least 100% of the replacement cost of such Owner's Unit, exclusive of the cost of excavation, foundations and footings, and shall protect against loss or damage by fire, water, utility service line ruptures and all other hazards that are normally covered by the standard extended coverage endorsement. Each policy shall be carried with a company rated X or better in "Best's Insurance Guide", and each Owner shall provide a copy of the policy obtained by such Owner to the Board and the other adjoining Owner and such policy shall require thirty (30) days' notice to the Board and the other adjoining Owner before the policy can be cancelled. All policy proceeds payable with respect to damage or destruction of the Party Wall shall be used by the Owners, to the extent necessary, to repair and restore the damage or destruction for which the proceeds are payable. Each Owner agrees to make such repair and restoration whether or not the policy proceeds are adequate for such purposes or whether or not the occurrence resulting in such damage or destruction is covered by insurance. Each Owner hereby waives any rights it may have against the other adjoining Owner on account of any loss or damage to its Unit which arises from any risk covered by fire and extended coverage insurance carried hereunder, whether or not such other adjoining Owner may have been negligent or at fault in causing such loss or damage. Each Owner shall obtain a clause or endorsement in the policies of such insurance which each Owner obtains to the effect that the insurer waives, or shall otherwise be denied, the right of subrogation against the other adjoining Owner for loss covered by such insurance. It is understood that such subrogation waivers may be operative only as long as such waivers are available in the State of Utah and do not invalidate any such policies. If such subrogation waivers are allegedly not operative in the State of Utah, notice of such fact shall be promptly given by the Owner obtaining insurance to the Board and the other Adjoining Owner.

ARTICLE XII

MISCELLANEOUS

12.1 Interpretation of the Covenants. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all persons and property benefited or bound by the covenants and provisions hereof.

12.2 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

12.3 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities, and duties, provided such rules and regulations are not inconsistent with the provisions of this Declaration.

12.4 General Reservations. Declarant reserves the right to grant, convey, sell, establish, amend, release, and otherwise deal with easements, reservations, exceptions, and

exclusions with respect to the Property which do not materially interfere with the best interests of Owners and/or the Association including, but not limited to, access and utility easements, road easements, pedestrian and equestrian easements, pedestrian and hiking trails, and easements and drainage easements. Declarant further reserves the right to make minor amendments and corrections to the Plat, to alter the boundary of Units or building pads, to combine Units or building pads, to change the size and product type of Units constructed in the Project, the density and number of Units in the Project, and to change the interior design and interior arrangement of a Unit, so long as Declarant owns the affected Unit(s). Such changes shall not materially alter the boundaries of the Common Areas.

12.5 Run with the Land. Declarant for itself, its successors, and assigns, hereby declares that all of the Property shall be held, used, and occupied subject to the provisions of this Declaration, and to the covenants and restrictions contained herein, and that the provisions hereof shall run with the land and be binding upon all persons who hereafter become the Owner of any interest in the Property.

ARTICLE XIII

DISPUTE RESOLUTION

13.1 Agreement to Encourage Resolution of Disputes Without Litigation.

(A) Declarant, the Association and its officers, trustees, and committee members, all persons subject to this Declaration, including Owners, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Project without the emotional and financial costs of litigation. Accordingly, the Bound Parties agree to resolve disputes according to the procedures set forth in this Article.

(B) As used in this Article, the term "Claim" shall refer to any claim, grievance or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) The design or construction of improvements within the Project.

Except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 13.2:

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration relating to creation and maintenance of community standards;

(iii) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(iv) any suit in which any indispensable party is not a Bound Party; and

(v) any suit as to which any applicable statute of limitations would require within 180 days of giving the notice required by Section 13.2(A), unless the party or parties against whom the claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

13.2 Dispute Resolution Procedures.

(A) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(B) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(C) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 13.2(A) (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the claim to mediation. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim. Unless the parties mutually agree otherwise, the mediation shall be administered by the American Arbitration Association in accordance with

its Construction Industry Mediation Procedures in effect on the date of this Declaration. A request for mediation shall be made in writing, delivered to the Respondent, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The claimant shall thereafter be entitled to initiate an arbitration proceeding as pursuant to Section 12.2(E), below. Each party shall bear its own costs of the mediation, including attorneys' fees, and each party shall share equally all fees charged by the mediator.

(D) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may initiate arbitration proceedings pursuant to Section 13.2(E) below to enforce such agreement without the need to again comply with the procedures set forth in this Article. In such event, the party taking action to enforce the Declaration or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees.

(E) Arbitration. In the event that a Claim is not resolved through negotiation or mediation pursuant to Sections 13.2(B) and 13.2(C), above, the claimant may bring the Claim for resolution by binding arbitration in accordance with the American Arbitration Association's Construction Industry Arbitration Rules, current at the time of initiating arbitration and the Utah Uniform Arbitration Act. Such arbitration shall be the exclusive and final means of resolving Claims and, to the extent permitted by applicable law, the Bound Parties waive any rights to a jury trial as well as other rights that such Bound Parties may have in court that are not available or are more limited in arbitration. The prevailing party in such arbitration shall be entitled to recover from the non-prevailing party its reasonable costs incurred in the arbitration, including, without limitation, attorney's fees.

13.3 Claims Against Declarant. In addition to compliance with the foregoing dispute resolution procedures, neither the Association, nor any person acting on behalf of the Association shall initiate any proceeding against Declarant or any of its affiliates, agents, contractors, builders, employees, members, or officers (together, the "Declarant Parties"), unless first approved by a vote of the Owners entitled to cast no less than 85% of the total votes of the Owners. Before an Owner, the Association, or any person acting on their behalf may bring any action or assert any Claims against any Declarant Party related to a claimed defect discovered in the design or construction of the Project, any of the Units, or any common elements, the Board shall notify Declarant in writing of such defect and provide Declarant no less than 45 days to

commence actions to investigate and, if appropriate, cure such defect. If any such defect is discovered by an Owner, such Owner shall notify the Board and such Owner may not bring any action relating to the defect until notice has been provided to Declarant and the 45-day cure period has passed. Prior to bringing any Claims relating to any such defect against a Declarant Party, the Association or the Owner seeking to bring such Claim must first obtain a "Certificate of Merit" from a design professional or contractor licensed in Utah to do work of the kind which is the subject of the claimed defect and qualified to perform such evaluation, containing the following:

(A) a statement that, based on the facts of the case and the materials reviewed, in the professional opinion of such professional, the claimed defect is more likely than not a result of negligence on the part of the Declarant Party against whom the Claim is being brought;

(B) an identification of all documents, reports and inspections relied upon by the professional in forming such opinion;

(C) an explanation of the applicable professional standard of care which the Declarant Party allegedly violated;

(D) an opinion that the Declarant Party's negligence was the cause of the claiming party's damages;

(E) an explanation of the reasoning behind the professional's opinions;

(F) evidence of the professional's qualifications to make such opinions.

[*Signature Page Follows*]

IN WITNESS WHEREOF, Declarant has executed this Declaration this 15th day of November, 2021.

MILLCREEK LAND COMPANY, LLC, a Utah limited liability company

By: _____
Name: Fred Healey
Its: Managing Member

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

The foregoing instrument was acknowledged before me this 15 day of November, 2021, by Fred Healey, the Managing Member of MILLCREEK LAND COMPANY, LLC, a Utah limited liability company, on behalf of such company.

Notary Public - State of Utah
STEVEN L. KNOTT
Comm. #714933
My Commission Expires
November 2, 2024

_____
Notary Public
Residing at Salt Lake, Utah

My Commission Expires:
11.2.2024

EXHIBIT A

Legal Description of the Property

The Property is located in the City of Millcreek, Salt Lake County, State of Utah, and is more particularly described as follows:

BEGINNING AT A POINT ON THE NORTH RIGHT OF WAY LINE OF 3300 SOUTH STREET, SAID POINT BEING 1490.11 FEET SOUTH 00°04'00" EAST AND 300.47 FEET SOUTH 89°56'00" WEST FROM THE EAST QUARTER CORNER OF SECTION 28, TOWNSHIP 1 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SAID POINT ALSO BEING 302.95 FEET NORTH 89°21'59" WEST ALONG THE CENTER LINE OF 3300 SOUTH STREET AND 33.00 FEET NORTH 00°38'01" EAST FROM THE MONUMENT AT THE INTERSECTION OF 3300 SOUTH STREET AND 2000 EAST STREET AND RUNNING THENCE NORTH 89°21'59" WEST 175.81 FEET ALONG SAID RIGHT OF WAY LINE OF 3300 SOUTH STREET, MORE OR LESS, TO THE EASTERLY RIGHT OF WAY LINE OF 1940 EAST STREET; THENCE ALONG SAID RIGHT OF WAY LINE NORTH 00°04'00" EAST 166.25 FEET, MORE OR LESS, TO THE SOUTH LINE OF LOT 7, WASATCH GARDENS SUBDIVISION; THENCE ALONG SAID SOUTH LINE SOUTH 89°56'00" EAST 175.80 FEET; THENCE SOUTH 00°04'00" WEST167.99 FEET, MORE OR LESS TO THE NORTH RIGHT OF WAY LINE OF SAID 3300 SOUTH STREET AND THE POINT OF BEGINNING.

CONTAINING 29,380 SQUARE FEET OR 0.674 ACRES, MORE OR LESS

Being now described as:

Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, MILLCREEK VILLAGE TOWNHOMES, according to the official plat thereof, recorded in the office of the County Recorder, November 10, 2021, as Entry No.13820654 in Plat Book 2021at page 284, Together with any and all undivided ownership interest in the "Common Areas and Facilities", as set forth and described in the Declaration of Covenants, Conditions and Restrictions, and as identified on the Recorded Plat, In the Office of the County Recorder, County of Salt Lake, State of Utah.
(Being all of said Millcreek Village Townhomes).

EXHIBIT B

Bylaws of the Association

(See attached)