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Leann H. Kilts, WEBER COUNTY RECORDER  
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REC FOR: SMITH KNOWLES PC  
ELECTRONICALLY RECORDED

**SECOND AMENDED & RESTATED  
DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS**  
For  
Millstream Condominiums  
In Weber County, Utah

THIS SECOND AMENDED & RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MILLSTREAM CONDOMINIUMS (this "Declaration") is hereby adopted by Millstream Condominium Owners Association, Inc. ("Association"), for and on behalf of its Members, and made effective as of the date recorded in the Weber Recorder's Office.

**RECITALS:**

(A) This Declaration affects and concerns the real property located in Weber County, Utah and more particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference.

(B) On or about December 10, 1969, a Declaration Establishing the Millstream Condominiums ("Enabling Declaration") was recorded in the Weber County Recorder's Office, in Book 931 at Page 314.

(C) On or about February 4, 1971, an Amendment to the Declaration ("First Amendment") was recorded in the Weber County Recorder's Office in Book 959 at Page 494.

(D) On or about June 25, 1971, an Amendment to the Declaration ("Second Amendment") was recorded in the Weber County Recorder's Office in Book 969 at Page 327.

(E) On or about January 11, 1973, an Amendment to the Declaration ("Third Amendment") was recorded in the Weber County Recorder's Office in Book 1014 at Page 6.

(F) On or about November 21, 1973, an Amendment to the Declaration ("Fourth Amendment") was recorded in the Weber County Recorder's Office in Book 1040 at Page 239.

(G) On or about May 21, 1974, an Amendment to the Declaration ("Fifth Amendment") was recorded in the Weber County Recorder's Office in Book 1054 at Page 239.

(H) On or about April 21, 1976, an Amendment to the Declaration ("Sixth Amendment") was recorded in the Weber County Recorder's Office in Book 1123 at Page 596.

(I) On or about March 30, 1977, an Amendment to the Declaration ("Seventh Amendment") was recorded in the Weber County Recorder's Office in Book 1169 at Page 762.

(J) On or about June 9, 1988, the Amended and Restated Declaration of Covenants, Conditions & Restrictions Millstream Condominiums ("Amended & Restated Declaration") was recorded in the Weber County Recorder's Office as Entry No. 1048712, effectively replacing the Enabling Declaration and amendments 1-7.

(K) On or about December 7, 2012, an Amendment to the Covenants, Conditions & Restrictions for Millstream Condominium ("First Amendment to the Amended & Restated Declaration") was recorded in the Weber County Recorder's Office as Entry No. 2609527.

(L) The Association and its Members, consistent with the Amended & Restated Declaration and any subsequent amendments (including any not referenced herein), hereby adopt this Declaration. This Declaration hereby amends, replaces and supersedes all prior declarations and amendments, rendering the prior declarations and amendments of no further force and effect. This Declaration, along with any future amendment(s), shall be the sole Declaration for the Property.

(M) The Property is subject to certain protective covenants, conditions, restrictions and easements, as set forth in this Declaration, as amended from time to time, which are deemed to be covenants running with the land mutually burdening and benefitting each of the Units within the Property. Common Areas and Limited Common Areas are those areas that are depicted as Common Areas and Limited Common Areas in the recorded Plat(s), as well as any future recorded Plat(s), or as described in this Declaration.

(N) The Association and its Members desire that the Board amend the existing Articles of Incorporation with the Utah Department of Commerce contemporaneously with the recording of this Declaration. The Association and its Members hereby authorize and approve filing the Amended & Restated Articles of Incorporation for Millstream Condominium Owners Association, Inc. ("Articles") with the State of Utah, a copy of which has been previously provided to and approved by the Owners.

(O) The Association and its Members desire that the Board amend the bylaws for the Association, which have been previously embedded within Article VI *et. al.* of the Amended & Restated Declaration, and hereby authorize and approve the recording of the Bylaws of the Millstream Condominiums Owners Association, Inc., a copy of which is attached hereto as **Exhibit "B"** ("Bylaws"), which shall be recorded in the Weber County Recorder's Office contemporaneously with the recording of this Declaration. The Association and its Members, consistent with any the Amended & Restated Declaration and any subsequent amendments thereto (including any not referenced herein), hereby adopt the Bylaws attached hereto as **Exhibit "B."** These Bylaws hereby amend, replace and supersedes all prior bylaws and amendments, rendering the prior bylaws and amendments of no further force and effect. These Bylaws, along with any future amendment(s), shall be the sole Bylaws for the Property.

(P) Pursuant to Article XVII, 13.3(b) and the Utah Condominium Ownership Act, Owners of record, holding not less than sixty-seven percent (67%) of the total voting interest of the Association, provided their written consent approving and consenting to the recording of this Declaration, the attached Bylaws, and filing of the Articles.

### CERTIFICATION

By signing below, the Board hereby certifies that the above described approval was obtained, approving and consenting to the recording of this Declaration, Bylaws and filing of the Articles.

(Q) The Association and its Members desire to subject the Property to the terms and conditions of this Declaration, the Utah Condominium Act, Utah Code Ann. § 57-8-101 *et. seq.*, and the Utah Revised Nonprofit Corporation Act, Utah Code Ann. § 16-6a-101 *et. seq.* The Property does not constitute a cooperative.

(R) The Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved, subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan for the protection, maintenance, improvement and sale of the Property or any portion thereof. The covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with each Unit located on the Property, including any additions thereto, and shall be binding upon all persons having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of every portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon the Association and its members, and its successors in interest; and may be enforced by the Association, any Member, and their successors in interest.

(S) These Recitals are made a part of this Declaration.

### COVENANTS, CONDITIONS AND RESTRICTIONS

#### ARTICLE I DEFINITIONS

1.0 Unless the context clearly requires the application of a more general meaning, the following terms, when used in the Declaration, shall have the following meanings:

(A) “Act” means the Utah Condominium Act, Utah Code Ann. Sections 57-8-101 *et. seq.*

(B) “Allocated Interest” shall mean the undivided interest of an Owner (expressed as

a percentage in **Exhibit "C"** to this Declaration) in the Common Areas, which is also utilized for purposes of calculating Assessments and voting rights in the Association.

(C) "Architectural Control Committee" or "ACC" shall mean the Architectural Control Committee created by Board in accordance with the Governing Documents. If no ACC is created, the Board shall assume all duties and authority of the ACC.

(D) "Assessment" shall mean any monetary charge, fine or fee imposed or levied against an Owner by the Association, as provided in the Governing Documents, regardless of whether said assessment is identified as a regular assessment, special assessment, individual assessment, reserve assessment, capital improvement assessment, fine, late fee or other charge.

(E) "Articles" shall mean the Articles of the Association, as amended from time to time.

(F) "Association" shall mean Millstream Condominiums Owners Association, Inc., and as the context requires, the officers or directors of that Association.

(G) "Board" or "Board of Directors" shall mean the duly elected and acting Board of Directors of Millstream Condominiums Owners Association, Inc. (which shall also be synonymous with "Management Committee" as utilized in the Act.)

(H) "Bylaws" shall mean the Bylaws of the Association, as amended from time to time, a copy of which is attached hereto as **Exhibit "B"**. No amendment to the Bylaws shall be effective until it is duly approved and recorded.

(I) "City" shall mean Ogden, Utah and its appropriate departments, officials and committees.

(J) "County" shall mean Weber County, Utah and its appropriate departments, officials and committees.

(K) "Common Areas" shall mean and refer to all property in the Project owned in common by the Owners including, but not limited to, the following items:

- i) All Common Areas and facilities designated as such in the Plat or in this Declaration;
- ii) All property included within the Project that is not part of a Unit or Limited Common Area;
- iii) All foundations, columns, girders, beams, supports, main walls, exterior walls, roofs, subfloors, halls, corridors, lobbies, stairs, and fire escapes;
- iv) 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;

- v) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to two or more Units;
- vi) The Project's outdoor facilities, grounds, courtyards, benches, private roads, lanes, parking amenities, sidewalks, driveways, entry and monuments;
- vii) 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 the Owners; and
- viii) Provided, however, that certain utility installations such as telephone, electricity, gas, water, and sewer may be dedicated to the City or County and, if so, this definition shall not be construed to exclude the City/County from the ownership, maintenance, and control of such utilities.

(L) "Common Expenses" means any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Areas; (B) managing, operating, insuring, improving, repairing, replacing and maintaining the any Limited Common Area, that is the responsible of the Association; (C) providing facilities, services and other benefits to Owners as set forth in this Declaration; (D) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (E) levying, collecting and enforcing the assessments, charges, fines, penalties and liens imposed pursuant hereto; (F) operating the Association; and (G) creating reserves for any such costs, expenses and liability as required by this Declaration or the Act.

(M) "Declaration" shall mean this Second Amended & Restated Declaration of Covenants, Conditions and Restrictions for The Millstream Condominiums together with any subsequent amendments or additions through subsequent recording amendments or supplements.

(N) "Governing Documents" shall mean this Declaration, Bylaws, Articles, Plat, Rules, and any other documents or agreements binding upon an Owner.

(O) "Improvement" shall mean all structures and appurtenances of every type and kind, including but not limited to buildings, Units, garages, walkways, retaining walls, driveways, fences, landscaping, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building.

(P) "Limited Common Areas" shall mean all property designated on the recorded Plat or as described in this Declaration as Limited Common Area, being intended ultimately to be owned by the Association but for the exclusive use and enjoyment of one or more appurtenant Units but fewer than all of the Units, such as private courtyards, fence that encloses private courtyard, garages, utility rooms and barbeques.

(Q) "Manager" shall mean any entity or person engaged by the Board of Directors to

manage the Project.

(R) "Member" shall mean and refer to every person who holds membership in the Association, including an Owner and the Declarant, as set forth herein.

(S) "Owner" shall mean the person or persons having title to any Unit. Owner shall mean the person holding fee simple title and buyers under any contract for deed, but shall exclude any person or entity holding title for purposes of securing performance of any obligations, including the trustee and/or beneficiary under a deed of trust or mortgagee under a mortgage.

(T) "Person" shall mean a natural person or any legal entity with a right to hold title to real property in its own name in the State of Utah.

(U) "Plat(s)" shall mean an official and recorded plat of Millstream Condominiums, including all subsequent phases when recorded, as approved by the City and recorded in the office of the Weber County Recorder, as it may be amended from time to time.

(V) "Property" shall have the meaning set forth in the recitals.

(W) "Rules" mean any instrument adopted by the Board for the regulation and management of the Association as provided in the Governing Documents.

(X) "Subdivision" or "Project" shall mean all phases of Millstream Condominiums and all Units, Common Areas, Limited Common Area, and other property within the Subdivision, as shown on the Plat(s) and any future Plat(s) covering the Property.

(Y) "Subdivision Improvements" shall mean all improvements to be installed outside the boundaries of Units or within easements as identified on the Plats that are necessary to provide public road access and/or private road access and utility service to the Units, and including other construction work required to comply with any conditions of City or County or other governmental agencies to the approval of the Subdivision or any Plat(s) thereof.

(Z) "Unit" shall mean any numbered Unit shown on any official and recorded Plat(s) whether or not it contains an Improvement and shall include all mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, electrical panels, air conditioning apparatus, furnaces, stoves, fixtures and the like, shall be considered part of the Unit, as shall all floors, ceilings, windows, window frames, window wells, skylights, exterior glass, doors, garages, garage doors, and similar components. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the Unit and serving only the Unit, and any other property of any kind, including fixtures and appliances within any Unit, which are within the Unit but are removable without jeopardizing the soundness, safety or usefulness of the remainder of the building within which the Unit is situated shall be considered

part of the Unit. In addition, all decorated interiors, all surfaces of interior structural walls, floors and ceilings, trim, wallpaper, paint, flooring, carpeting and tile, outlets, and any other material constituting any part of the finished surfaces. The Unit shall extend to the center of the walls shared with or abutting another Unit, which center shall form the boundary of the Units sharing that wall.

## ARTICLE II EASEMENTS

2.1 Easement Concerning Common Area. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area. Such right and easement shall be appurtenant to and shall pass with title to each Unit and in no event shall be separated therefrom, or encumbered, pledged, assigned or otherwise alienated by an Owner. Any Owner may temporarily delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Owner's Unit. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Area except for the necessary parking, access, and utility easements for use in common with others.

2.2 Easement Concerning Limited Common Area. The Association shall have a non-exclusive drainage and public utility easement and an easement for maintenance in and to the Limited Common Area. With the exception of the rights and easements granted to the Association, the Owner(s) of a Unit shall have the exclusive use of all Limited Common Area appurtenant to their Unit.

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

(a) The right of the Association to govern by Rules the use of the Common Area for the Owners so as to provide for the enjoyment of said Common Areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Units by every Owner, including the right of the Association to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Area.

(b) The right of the Association to suspend an Owner's right to the use of the Common Areas, or any amenities included therein, for any period during which an Owner is in violation of the terms and conditions of the Governing Documents or delinquent in the payment of a levied assessment or fee.

(c) The right of the City, County, and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire

protection, utility access/installation, and providing any other governmental or municipal service.

2.4 Reservation of Access and Utility Easements. The Association hereby reserves an easement for access and utilities (including but not limited to: electrical, gas, communication, phone, internet, cable, sewer, drainage and water facilities) over, under, along, across and through the Property, together with the right to grant to a City and County, or any other appropriate governmental agency, public utility or other utility corporation or association, easements for such purposes over, under, across, along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof. Each Owner in accepting the deed to a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way.

2.5 Easements for Encroachments. If any part of the Common Area or Limited Common Area now existing upon any Unit or hereinafter constructed by Association encroaches upon a Unit, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any Common Area or Limited Common Area improvement on any Unit shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon a Unit or upon any portion of the Common Area or Limited Common Area due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

2.6 Easement in Favor of Association. The Units, Common Area and Limited Common Area are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

- (a) For inspection during reasonable hours of the Units, Common Area and Limited Common Area in order to verify the performance by Owners or other persons of all items of maintenance and repair for which they are responsible;
- (b) For inspection, maintenance, repair and replacement of portions of the Common Area and Limited Common Area;
- (c) For correction of emergency conditions on one or more Units or on portions of the Common Area and Limited Common Area;



(d) For the purpose of enabling the Association, the Architectural Control Committee or any other committees appointed by the Association to exercise and discharge during reasonable hours their respective rights, powers and duties;

(e) For inspection during reasonable hours of the Units, Common Area and Limited Common Area in order to verify that the Owners and occupants, and their guests, tenants and invitees, are complying with the provisions of the Governing Documents.

**ARTICLE III**  
**UNITS & COMMON AREAS**

3.1 Units.

(a) The Project consists of 44 total Units.

(b) All Units shall be capable of being independently owned, encumbered and conveyed. The Owner or Owners of each Unit shall be entitled to the exclusive possession and control of such Unit, subject to the rights of the Association set forth in the Governing Documents.

3.2 Use of Units. The use of Units shall be for single-family, residential purposes only.

3.3 Description of Units. The Units are described in Plat(s).

3.4 Separate Taxation of Units. Each Unit constitutes a separate parcel of real estate and will be separately assessed and taxed.

3.5 Modification to Units. Without prior, written approval from the ACC, an Owner may not make any repairs, modifications or alterations to any part of the exterior of a Unit or building. Similarly, without prior, written approval from the ACC, an Owner may not conduct any interior remodels of the Unit that impact existing walls, structures or other items that may impact the integrity of the Unit, such as: walls, shared walls, shared roofing and similar structures. This provision is not intended to prevent an owner from decorating, painting, or conducting similar activities without the prior written permission of the Board. The Board may require that such modification or repairs be made in a particular manner and with qualified persons to maintain conformity within the Project.

(a) Without prior approval of the ACC none of the following shall occur at any time: (1) any use of the Common Aea for staging, storage, assembly, or construction, (2) any nuisance as established by law or by the Governing Documents, (3) any blocking of the Common Area by vehicles, materials, or persons, or (4) any use of the Association's garbage and disposal facilities for the disposal of debris, materials, or other items related to remodeling.

(b) The ACC shall have no authority to approve of any remodeling: (1) inconsistent with the Governing Documents (2) that modifies the exterior dimensions of any Unit from the original construction (unless any such modification is approved of as otherwise provided herein), or (3) that would cause unsafe conditions.

(c) All remodeling and other repairs and modifications to Units must be completed in compliance with all applicable building codes, laws, and the manufacturer's specifications for any materials, equipment, and fixtures.

(d) The Association may require indemnification agreements from an Owner with respect to any approved modification that impacts the roof of other shared components.

3.6 Ownership of Common Areas. The Common Areas shall be owned by the Owners of all of the Units as tenants in common. A percentage of undivided interest in the Common Areas shall attach to each Unit, as set forth in **Exhibit "C"**. Upon any conveyance or transfer of a Unit, the undivided interest in Common Areas attributable to such Unit shall automatically be conveyed or transferred with the Unit. No undivided interest in Common Areas may be transferred or conveyed separate or apart from the Unit to which the undivided interest is attributable. Each Owner shall have a license to use all of the Common Areas, subject to the terms and conditions of the Governing Documents.

3.7 Shares of Common Expenses. Except as otherwise set forth in this Declaration, all Common Expenses shall be allocated among all Units as set forth in **Exhibit "C"**.

3.8 Limited Common Areas. The Limited Common Areas are depicted on the recorded Plats, as well as described in attachments to this Declaration. Limited Common Area shall be used exclusively by the Owner of the Unit to which such Limited Common is appurtenant. The right to the exclusive use of the Limited Common Area shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit. The Owners shall be responsible to maintain, repair and replace the Limited Common Area.

3.9 RV Storage Area. Spaces within the RV Storage Area shall be allocated according to the following priority: (1) Owners and Owners' spouses or legal partners that are residing in the Project; (2) Owners that do not reside in the Project; (3) previous Owners; and (4) tenants and others seeking a space within the RV Storage Area. Any vehicle to be stored within the RV Area must receive prior written approval from the Board. Further, all vehicles must be currently registered and licensed with the state and be in operable condition. The RV Area is a storage area, not a parking lot. No wrecked, unlicensed, unregistered or inoperable vehicles will be allowed in the RV Area at any time. Any vehicle not registered with the Board may be towed at Owner's expense. The Board may adopt the fee schedule for parking in the RV Storage Area, which fee schedule shall correspond with the priority allocation of spaces as set forth herein.

**ARTICLE IV**  
**MAINTENANCE OF COMMON AREAS, LIMITED COMMON AREAS AND UNITS**

4.1 Maintenance of Common Areas. Except as otherwise provided in this Declaration, the Association, or its duly designated agent, shall maintain all Common Areas, including, without limitation, the Improvements and landscaping located thereon in good order and repair and shall otherwise manage and operate all Common Areas as it deems necessary and appropriate, including the following:

- (a) Private roadways;
- (b) Roofs, rain gutters, and down spouts;
- (c) Outside exterior surfaces of Units;
- (c) Chimneys and chimney caps;
- (d) Foundations (excluding any concrete pad within a Unit, garage, or the concrete patio/deck area and any dividing wall or Improvement within the patio/deck area);
- (e) Structural components, including, but not limited to: exterior or bearing walls or walls that are common to two or more Units;
- (f) Infrastructure, pipes, water, and utility lines that are contained within the roadways in the Project and not the responsibility of the City or County;
- (g) General landscape and sprinkler maintenance, including the repair, maintenance and replacement of existing sprinkler systems and landscaping within the Project that have not been modified by an Owner;
- (h) Light poles;
- (i) Community mailboxes, if any;
- (j) Walkways and sidewalks;
- (k) Driveways;
- (l) Private utility lines/infrastructure that serves more than one Unit; and
- (m) **Existing air conditioning units that were manufactured in, or prior to, the year 1998 shall be maintained, repaired and replaced by the Association, as those air conditioning units fail and/or need repairs. Attached hereto as Exhibit "D" are those Units with air conditioning units older than 1998.**

4.2 Snow Removal. The Association shall make reasonable and prudent efforts to contract with a third party for the removal of snow from sidewalks, driveways and other relevant Common Areas within the Project. Owners shall be responsible for removing snow from patio areas, and other applicable areas on their Unit. Owners shall be responsible and take reasonable precautions with respect to ice and ice accumulation. The work of removing snow will be delegated to a third party, who will utilize its discretion in the frequency of the snow removal and the amount of accumulation meriting removal. The Association shall not be responsible or liable for said third party's discretion and removal of snow.

4.3 Landscaping. The Association shall perform general landscaping maintenance in the Project, including the front, side and back yards of the Units, if any, which shall generally

include mowing, edging, blowing of grass, raking and disposal of leaves. The Association shall maintain the original sprinkler system, as originally installed. Owner is responsible for any approved changes in sprinkler system, or other modifications to the landscaping from the original installation. The Association may adopt Rules to add further detail with regard specific landscape maintenance provided by the Association and those responsibilities of Owners concerning such items including, but not limited to: gardens, flowerbeds, bushes, trees, and other landscaping elements. Flower beds, bushes, or any other plants or structures adjacent to the Unit are the responsibility of the Owner. Any flower beds in the Common Areas that were created by an Owner are the responsibility of that Owner. Landscaping for any Unit shall be maintained in good condition by the Owner. Prior written permission must be obtained by the ACC to materially modify exterior landscaping on any Unit.

4.4 Maintenance of Limited Common Areas. The Owners are responsible for maintenance, repair and replacement of the Limited Common Areas.

4.5 Owner's Responsibility for Maintenance of Units. Each Owner, at such Owner's sole cost and expense, shall maintain and/or replace such Owner's Unit and the Improvements constituting a part thereof, in good order and repair, including:

- (a) Entryways, porches, and decks;
- (c) All interior and exterior doors, including frames, locks, hinges, door jams and garage doors;
- (d) Finished interior of the Unit, including: flooring, tiles, wallpaper, paint, carpet, wood, fireplaces, other material comprising finished interior floors, walls or ceilings;
- (e) Drywall, wallboard and similar materials within a Unit;
- (f) Skylights, windows, window sills, window frames, glass, screens, and patio doors;
- (g) Sewer and drainage pipes, wiring, power, water and other utility lines within their Unit;
- (h) Concrete pads within Unit(s), garage(s) or Limited Common Area(s);
- (i) Plumbing fixtures, fans, stoves, refrigerators, appliances, heaters, furnaces, fireplaces, vents, chimneys, HVAC systems, compressors, condensers, ducting, air conditioning, water spigots, lighting fixtures, pipes, and similar appliances, fixtures and pipes that exclusively serve an Owner's Unit(s);
- (j) Patio and deck flooring and structures (including the fence) within the Limited Common Area and Units;
- (k) Subject to Article 4.1 (m), any of the following located wherever they might be located (inside or outside of the Unit) that serve an Owner's Unit exclusively: lighting fixtures (including lighting attached to exterior walls, but not including Association security lights), fans, plumbing fixtures (other than pipes located outside of a Unit and that do not exclusively serve that Unit), stoves, refrigerators, hot water heaters, air conditioning units (including compressors, condensers,

ducting, and forced air units). Intercoms, security systems, water spigots and bibs, vents, chimneys and fireplaces, and such other appliances, fixtures, and decorations as an Owner may install as permitted in this Declaration;

- (l) The Owner shall be responsible for keeping the Unit and Improvements thereon in a clean and sanitary condition, free of pests and rodents, and uncluttered. Each Owner shall keep the interior of his Unit, including without limitation all interior walls, doors, windows, ceilings, floors, and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in a good state of repair. The Board of Directors may set forth in the Rules any limits, restrictions, or guidelines on what may or may not be left, stored, or installed in any Unit, which may include a prohibition on leaving, installing or storing any items in such places.

#### ARTICLE V MEMBERSHIP

5.1 Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Unit and such membership shall automatically terminate when the Owner cease to have an ownership interest in the Unit. Upon the transfer of an ownership interest in a Unit the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Person in the same proportional interest and by the same type of tenancy in which title to the Unit is held.

#### ARTICLE VI VOTING

6.1 Voting. The Association shall have one class of voting. Owners shall be entitled to vote in accordance with their Allocated Interest. In order to be eligible to vote, an Owner must be current on all Assessments and charges at least 30 days in advance of the meeting, ballot or vote. Since an Owner may be more than one Person, if only one of such Person(s) is present at the meeting of the Association, that Person shall be entitled to cast the vote appertaining to that Unit. But if more than one of such Person(s) is present, the vote appertaining to that Unit shall be cast only in accordance with the agreement of a majority of them, and such consent shall be conclusively presumed if any one of them purports to cast the vote appertaining to that Unit without protest being made forthwith by any of the others to the person presiding over the meeting. The vote appurtenant to any one Unit may not be divided between Owners of such Unit. If the vote of a majority of the Owners of a Unit cannot be determined, no vote shall be cast in relation to such Unit.

The Association shall honor the vote of a trustee or successor trustee of any trust that is an Owner and shall honor the vote of an individual that is a holder of a Limited or General Durable Power of Attorney with respect to an Owner who is disabled or unavailable as though such vote were the vote of the Owner.

**ARTICLE VII**  
**HOMEOWNER ASSOCIATION**

7.1 Organization. The Association has been created to effectively enforce the Governing Documents and shall operate as a non-profit corporation. The Association shall be comprised of the Owners within the Project, and is established for the benefit of the Owners and the enforcement of the Governing Documents. Membership in the Association is deemed an appurtenance to the Unit, and is transferable only in conjunction with the transfer of the title to the Unit. The Association shall serve as the organizational body for all Owners.

7.2 Enforcement Powers. The Association shall have all powers granted to it by the Governing Documents and the Act to enforce these covenants and restrictions by actions in law or equity brought in the name of the Association, and the power to retain professional services needed to the enforcement of the Governing Documents and to incur expenses for that purpose, including but not limited to: (1) record, lien, foreclose and other enforcement and collection actions against an Owner and their Unit; (2) initiate legal or similar proceedings; (3) impose fines; (4) collect any rents directly from tenant for past due assessments; (5) terminate an Owners' right to receive utility service paid as a common expense (with the exception of water, sewer, power and natural gas); (6) terminate an Owner's right to utilize Common Area and/or amenities; and (7) any other action or remedy allowed by the Governing Documents or Utah law.

(a) The Association shall have the exclusive right to initiate enforcement actions in the name of the Association. The Association may appear and represent the interest of the Project at all public meetings concerning zoning, variances, or other matters of general application and interest to the Owners.

(b) The Association shall have the authority to initiate and compromise claims and litigation on behalf of the Association resulting from the enforcement of the Governing Documents. In the event that the Association initiates legal action against a specific Owner or Owners to enforce these Governing Document, whether or not such action results in the commencement of a formal legal proceeding, the Association shall have the right to assess the costs of such litigation, dispute, or enforcement action, including reasonable attorney fees, against the Owner(s) or Unit(s) in question and collect those assessment in any manner authorized in the Governing Documents or Utah law.

(c) The Board shall be afforded discretion to utilize its reasonable judgment to determine whether and how to: impose fines, record liens, pursue legal action; otherwise enforce the Governing Documents; or when and how to settle or compromise claims.

7.3 Assessments. Assessments will be made to meet the anticipated and recurring costs, expenses and Common Expenses of the Association. The Association has the power to levy assessments against each Unit as necessary to carry out its functions. Assessments shall be levied against all Units in the Property, whether vacant or improved. Each Owner shall by

acquiring or in any way becoming vested with his/her interest in a Unit, be deemed to covenant and agree to pay to the Association the assessments described in these covenants, together with late payment fees, interest and costs of collection (including reasonable attorney fees), if and when applicable.

(a) All such amounts shall be, constitute and remain: (a) a charge and continuing lien upon the Unit with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligations of the Owner or Owners of such Unit at the time the assessment fails due. No Owner may exempt himself or his Unit from liability for payment of assessments by waiver of his rights in the Common Areas or by abandonment of his Unit. In a voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments, late payment fees, interest and costs of collection (including reasonable attorney fees) which shall be a charge on the Unit at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

(b) Special Assessment. The Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas.

(c) Individual Assessment. The Association may levy individual assessments on every Unit, Owner or occupant that shall cause any damage to the Project or otherwise causes the Association to incur any individual expense for maintenance, repairs, or enforcement action taken under the provisions of the Governing Documents. The amount of any such individual assessments shall be determined by the cost of such repairs, maintenance or enforcement action, including all overhead and administrative costs (including reasonable attorney fees), and shall be allocated among the affected Owner(s) or Unit(s) according to the cause of damage, maintenance, repair work or enforcement action, as the case may be, which individual assessment may be levied in advance of the performance of work.

(d) The Association may levy a reserve fund assessment, as set forth in this article.

(e) The Association may levy other assessments or fees, as authorized by the Governing Documents.

7.4 Budget. The Board is authorized and required to adopt a budget annually, which shall be presented to the Owners at a meeting of members.

(a) The Board may revise the approved budget from time to time as necessary to accurately reflect actual and/or anticipated expenses that are materially greater than

previously budgeted.

(b) The budget shall estimate and include the total amount for the Common Expenses, shall contain an appropriate amount for reserves, and may include an amount for other contingencies. The budget shall also be broken down into reasonably detailed expense and income categories.

(c) Unless otherwise established by the Board, regular Assessments shall be paid in equal monthly installments.

(d) The Association shall not borrow money without the approval of at least sixty-seven percent (67%) of the Owners.

7.5 Reserve Fund Analysis. The Board shall cause a reserve analysis to be conducted no less frequently than every six (6) years to analyze the cost of repairing, replacing or restoring Common Area and Limited Common Areas that have a useful life of three years or more and a remaining useful life of less than 30 years. This reserve analysis should be reviewed no less frequently than every three (3) years and updated if necessary. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.

- (a) The Board may not use money in a reserve fund:
- (i) For daily maintenance expenses, unless a majority of the Owners vote to approve the use of reserve fund money for that purpose;
  - (ii) For any purpose other than the purpose for which the reserve fund was established, unless a majority of the Owners vote to approve the alternate purpose; or
  - (iii) In the event that the Association experiences a surplus in any fiscal year, the Board may elect to place said surplus in the reserve fund account.

7.6 Reserve Fund Account Creation. The Board shall create a reserve fund account that is separate and distinct from the Association's general account, which account shall be funded from the reserve fund assessments. The amount of the reserve fund assessment shall be a separate line item in the approved budget. The Board shall cause an assessment to be made against all Owners in an amount sufficient, within the Board's discretion, to fund the reserve account.

7.7 Reinvestment Fee. The Board shall have power to levy a one-time reinvestment fee when a change in ownership of a Unit occurs in the amount of a two monthly regular assessment, unless a lesser amount is determined by the Board.



7.8 Date of Commencement of Assessments. The assessments provided for herein shall commence as to each Unit on the first day of the first month following the effective date of the first budget. Assessments shall be due and payable in a manner and on a schedule, as the Board may provide.

7.9 Fines. Following notice as required by the Act, the Association shall have the power to assess a fine against an Owner and/or their Unit for a violation of the terms and conditions of the Governing Documents in an amount set by the Board.

7.10 Hearing Process. The Board shall have authority to create a reasonable hearing process applicable when the Association takes an adverse action related to any particular Owner(s) in accordance with the Act.

7.11 Association Rules. The Board from time to time and subject to the provisions of the Governing Documents, may adopt, amend, repeal and enforce Rules governing: (a) the use of the Common Areas and Limited Common Areas; (b) the use of any facilities owned by the Association; (c) the collection and disposal of refuse; (d) the maintenance of animals in the Project; (e) collection policies and procedures; and (f) other matters concerning the use and enjoyment of the Property and the conduct of residents, as deemed necessary by the Board. The Rules may supplement, clarify and add detail to issues addressed in Governing Documents. However, the Rules may not contradict the Governing Documents.

7.12 Statement of Account & Payoff Information. Upon a written request from an Owner that the Association provide the Owner with a statement of his/her account, the Association may charge a fee, not to exceed \$10.00, for providing such statements. In addition, when a request is made to the Association to provide payoff information needed in connection with the financing, refinancing, or closing of a Unit Owner's sale of his/her Unit, the Association may charge a fee not to exceed \$50.

7.13 Availability of Documents. The Association shall make appropriate documents available to Owners (and their lenders, insurers and/or authorized agents) consistent with the Act and the Utah Revised Non-Profit Act. The Board may adopt a record retention policy to govern its record retention procedures.

7.14 Indemnity of Association Board and Officers. The Association will indemnify the officers, agents and Board of the Association against any and all claims arising against them personally which are a result of the good faith exercise of the powers, duties and responsibilities of their office under the Governing Documents.

7.15 Election, Notice of Election, Notice of Meeting and Special Meetings. Election procedures and notice of any meeting shall be conducted as set forth in the Articles of Incorporation and Bylaws of the Association.

7.16 Number of Board, Term of Office. The appointment, election and term of the Members of the Board are set forth in the Bylaws and Articles. Members of the Board of Directors may serve consecutive terms, and may also serve as officers of the Association.

7.17 Independent Accountant/Bookkeeper. The Association may retain the services of an independent accountant, bookkeeper, or other third party to assist the Board of Directors and officers to maintain accurate financial records of the Association.

### ARTICLE VIII

#### NONPAYMENT OF ASSESSMENTS & THE APPOINTMENT OF TRUSTEE

8.1 Delinquent Assessment. Any assessment not timely paid shall be delinquent, and the Association may invoke any and all remedies to recover said delinquent assessments including by: suit, judgment, lien, foreclosure, or other remedy authorized by the Governing Documents or the Act.

8.2 Due Date, Charges & Interest. Unless otherwise established by the Board, monthly assessments shall be due and payable on the first of each month and late if not received by the 15<sup>th</sup> of each month. The Board may charge a late fee in an amount set by the Board (not to exceed \$50) for each unpaid or late assessment. In addition to late fees, interest shall accrue on all unpaid balances, including prior, unpaid interest and attorney fees (resulting in compounding interest), late fees, and assessments at 18% per annum or 1.5% per month. The Board may also impose other reasonable charges imposed by third parties related to collections.

8.3 Lien. Upon recording of a notice of lien on any Unit, there shall exist a perfected lien for unpaid assessments prior to all other liens, except: (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto; and (2) the lien or charge of any first or second mortgage of record made in good faith and for value recorded prior to a recorded notice of lien by the Association.

8.4 Foreclosure. The Association shall have the power to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be charged or levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged had such Unit not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid assessments and attorney fees shall be maintainable without foreclosing or waiving the lien securing the same.

8.5 Other Remedies. All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy. The "One Action Rule" shall not be a defense to the enforcement of all rights and remedies of the Association. The Association may elect to bring an action to recover for a delinquent Assessment against the Owner or other obligee personally. Any attorney fees or costs

incurred in these efforts shall also be assessed against the Owner(s), their Unit(s), and/or other obligees jointly and severally.

8.6 Payment by Tenant. The Association shall be entitled to demand and collect from a tenant of any Unit, the amount of any assessment that is more than sixty (60) days past due.

8.7 Attorney Fees. In addition to the recovery of costs and attorney fees as provided herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner breach of the Governing Documents, including meetings, research, memoranda, monitoring and other legal work incurred in response to an Owner breach or violation of the Governing Documents. These fees may be collected by special or individual assessment against the subject Owner(s) or Unit(s).

8.8 Appointment of Trustee. The Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-402 to Burt R. Willie, Esq., a licensed member of the Utah State Bar, with power of sale, the Unit and all Improvements to the Unit for the purpose of securing payment of assessments under the terms of this Declaration.

**ARTICLE IX**  
**SUBORDINATION OF LIEN TO INSTITUTIONAL**  
**FIRST AND SECOND MORTGAGES**

9.1 The lien of assessments, including interest, late charges (subject to the limitations of Utah law), and costs (including attorney fees) provided for herein, shall be subordinate to the lien of any institutional first or second mortgage of record made in good faith and for value, recorded prior to a recorded notice of lien by the Association. No foreclosure, sale or transfer shall relieve any Owner who was the Owner prior to such foreclosure, sale or transfer from personal liability for any assessments due and owing prior to such foreclosure, sale or transfer.

**ARTICLE X**  
**USE LIMITATIONS & RESTRICTIONS**

10.1 Single Family. All Units shall be used only for single-family residential purposes. "Single Family" shall mean and refer to a group of natural persons residing in the same residential structure and maintaining a common household related to each other by blood, adoption or marriage, or a group of unrelated individuals of not more than two persons per bedroom.

10.2 Licensed Contractor. Unless the Architectural Control Committee gives a written waiver of approval to an Owner, no Improvement may be constructed, remodeled on any Unit except by a licensed contractor, duly qualified and licensed by the appropriate governmental authorities.

10.3 No Business or Commercial Uses. No portion of the Project may be used for any commercial business use, provided, however, that nothing in this provision is intended to prevent

the use by any Owner of his Unit for a home occupation pursuant to City or County ordinance. Businesses, professions or trades may not require heavy equipment or create a nuisance within the Project, and may not noticeably increase the traffic flow to the Project.

10.4 Restriction on Signs. Owner must receive prior written approval prior to the installation of any signage within the Project.

10.5 No Re-Subdivision. No Unit may be re-subdivided.

10.6 Combination of Units. No Unit may be combined with another Unit without the consent of the Board.

10.7 Construction. No Improvement shall be permitted to remain incomplete for a period in excess of one (1) year from the date of commencement of construction, re-construction or remodeling unless any delays are approved in writing by the ACC.

10.8 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried out on any Unit or the Project, including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of nearby Units. No Owner or occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body.

10.9 No Hazardous Activity. No activity may be conducted on any Unit that is, or would be considered by a reasonable person to be unreasonably dangerous or hazardous, which would cause the cancellation of conventional homeowners' insurance policy. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous materials in excess of those reasonable and customary for household uses, the discharge of firearms or fireworks, and setting open fires (other than property supervised and contained).

10.10 No Unsightliness. No unsightliness is permitted on any Unit. This shall include, without limitation, the open storage of any building materials (except during construction of an Improvement); open storage or parking of construction equipment; open storage or parking of vehicles, trailers or other pieces of equipment that are unusable, in poor condition or unsightly; accumulations of lawn or tree clippings or trimmings; accumulations of construction debris or waste; and the storage or accumulation of any other material that is unsightly.

10.11 Garbage. All garbage, rubbish, and trash shall be kept in covered containers which are located within the driveways of the Units. The storage, collection and disposal of garbage, rubbish and trash shall be in strict compliance with applicable laws and the Rules of the Board.

10.12 No Annoying Lights. No outdoor lighting shall be permitted except for lighting that is designed to aim downward and reasonably limit the field of light to the confines of the Unit on which it is installed. Holiday lighting is permitted from Thanksgiving through January

7. Thereafter holiday lighting shall be removed as soon as practical, weather permitting.

10.13 No Annoying Sounds. No speakers, windbells, windchimes, or other noise making devices may be used or maintained on any Unit which creates noise that might reasonably be expected to be unreasonably or annoyingly loud to adjoining Units, except for security or fire alarms.

10.14 Livestock, Poultry and Pets. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Unit, except that dogs, cats or other household pets (maximum of two) may be kept provided that they are not kept, bred or maintained for any commercial purpose and are restricted to the owner's control. "Control" for the above purposes shall only mean on a leash or lead, within a vehicle, within the Unit of the Owner, or within confines on the premises of the Owner. Pet owners shall promptly remove and dispose of all excrement emitted by their pets. Fierce, dangerous or vicious animals or animals that cause a nuisance by barking or other offensive activity shall not be permitted. Failure to abide by these conditions shall result in fines as authorized by the Board.

10.15 Fencing. Only the Association may approve fencing within the Project.

10.16 Vehicles & Parking. No vehicles are to be parked or stored on the front or side through streets within the Project. Vehicles parked in driveways of the Units must be in running condition, properly licensed, regularly used and in compliance with City and/or County ordinances. No recreational vehicles, campers, motorcycles, atvs, trailers, boats, or similar vehicles may be parked or stored in the driveways, through streets. No resident shall repair or restore any vehicles of any kind in, on or about any Unit or the Limited Common Areas or Common Areas, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. The Association reserves the right to adopt Rules relating to the parking of vehicles within the Project including, without limitation: (1) the right to immediately remove or cause to be removed any vehicles that are improperly parked, (2) restrictions on the time period and duration that any guest or visitor parking may be utilized; (3) restrictions or bans on vehicles without Department of Transportation compliant mufflers and exhaust systems, and (4) the assessment of fines to Owners and occupants who violate such Rules.

10.17 Exterior Antennas and Satellite Dishes. An Owner is first required to utilize existing cables, satellite dishes, antennas and related structures before installing any new hardware to the exterior of the Unit. Prior, written approval from the ACC as to the location of any new satellite dishes, antennas, cables and related hardware is required. Dishes and antennas should be screened from view whenever possible.

10.18 Firearms, Incendiary Devices and Graffiti. The use of firearms and incendiary devices or the painting or graffiti, within the Project is prohibited. The terms firearms, including but is not limited to all guns, pistols, handguns, rifles, automatic weapons, semi-automatic

weapons, BB guns, air-soft, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size.

10.19 Temporary Structures. No Owner or resident shall place upon any part of the Project any temporary structures including, but not limited to tents, trailers, or sheds, without the prior written consent of the Board of Directors.

10.20 Energy Conservation Equipment. No solar energy device, solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed within the Project without the prior written consent of the Board of Directors.

10.21 Exterior Decorations. No exterior of any Unit shall be decorated by any Owner/resident in any manner without prior consent of the Board.

10.22 Window Treatments. Shades, awnings, window guards, ventilators, fans or air conditioning devices shall not be used or attached on the exterior of the buildings unless approved by the Board.

10.23 Exterior Colors. No Owner/resident shall paint the exterior of the Units, garages, or storage areas without the written permission of Board. The decks may be painted with approved colors. No Owner/resident shall be allowed to put their name on any entry of the unit except in the proper places provided by the Board for such purpose and in a style approved by the Board.

10.24 Awnings. Upon written approval of the Board, awnings and canopies are allowed at the option and expense of each Owner. Awnings shall be retractable and of a material color and quality as approved by the Board.

10.25 Smoking Prohibited. In harmony with the Utah Indoor Clean Air Act, any smoking that creates a nuisance to another Owner within the Project may be deemed a violation by the Board. The Board may adopt further rules and policies with regard to reporting and responding to nuisance claims related to smoking.

## ARTICLE XI RENTAL/LEASE RESTRICTIONS

11.1 Restrictions and Rules Governing Non-Owner Occupied Units. Notwithstanding anything to the contrary in the Governing Documents, any leasing and non-owner occupancy of a Units shall be governed by this section, Rules consistent with this section, and procedures adopted as allowed in this section.

- (a) Daily, nightly, weekly or monthly occupation by non-owner occupants is prohibited (whether pay or not), and Units shall not be advertised or listed for short term rental on such sites as Airbnb, VRBO, HomeAway, Flipkey, Wimdu, House Trip and similar international, national or local providers.

- (b) An Owner may not rent less than the entire Unit.
- (c) Any lease or agreement for non-owner occupancy must be in writing, must be for an initial term of at least six months. The Owner and tenant may negotiate the terms of any continuous month to month tenancy following the required initial term for that tenant. The agreement shall provide as a term of the agreement that the resident shall comply with the Governing Documents, and that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for non-owner occupancy (whether in writing or not) does not include these provisions, these provisions shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the resident.
- (d) A copy of any lease or other agreement for non-owner occupancy shall be delivered to the Association at least ten (10) days prior to occupation of the Unit by the non-owner occupant.
- (e) The Owner(s) of a Unit shall be responsible for the occupant's or any guest's compliance with the Governing Documents. In addition to any other remedy for noncompliance with this Declaration, the Association, following notice to the Owner, shall have the right to initiate a forcible entry and unlawful detainer action, or similar such action, with the purpose of removing the offending non-owner occupant. The Association, the Board, and the Manager shall not have any liability for any action taken pursuant to this subparagraph and the Owner shall indemnify and pay the defense costs of the Association, the Board, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this subparagraph. For purposes of this subparagraph, each Owner in accepting the deed to a Unit expressly consents to such authority and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments and pursue any and all remedies available to remove the offending non-owner occupant.
- (f) Violations of the provisions of this Article shall result in the imposition of the maximum fine allowable by law, which, as of the date of this recording, is \$500 per month.

11.2 Maximum Number of Rental Units. As of the date of this recording, there are not any non-Owner occupied Units. Up to Four (4) Units in the Project may be rented or non-Owner occupied at any one time for a maximum total of 10% non-exempt, non-Owner occupied Units in the community. The ability to lease an existing non-Owner occupied Unit expires upon the sale or transfer of ownership of said Unit, or if an Owner re-occupies the Unit. The Association may develop and maintain an application and waiting list for those Owners that desire to lease their Unit.

- (a) Exempt Non-Owner Occupied Units. In addition to the allowed maximum cap of 10%, the following Units may be non-Owner occupied Units:
  - (i) An Owner in the military for the period of the Owner's deployment.
  - (ii) A Unit occupied by an Owner's parent, child, or sibling.

(iii) An Owner whose employer has relocated the Owner for less than two years.

(iv) A Unit owned by a trust or other entity created for the estate planning purposes if the trust or other estate planning entity was created for:

- a. The estate of a current resident of the Unit; or
- b. The parent, child, or sibling of the current resident of the Unit.

(v) A Unit whose Owner (i) moves due to temporary (three years or less) humanitarian, religious, or charitable activity or service, and (ii) has the intent to return to occupy the Unit when the service has concluded.

(b) Permitted Rules. The Board of Directors may adopt Rules requiring:

(i) Reporting and procedural requirement related to non-Owner occupied Units and the occupants of those Units, including requiring informational forms to be filled out by Owners and/or residents identifying non-owner occupants, vehicles, phone numbers, etc.; and

(ii) Other reasonable administrative provisions consistent with, and as it deems appropriate to enforce, the requirements of this Declaration.

## ARTICLE XII OWNERS' MAINTENANCE OBLIGATIONS

12.1 Duty to Maintain. It is the obligation of each Owner to maintain his Unit (which includes the Unit) and Improvements located thereon in a clean and sanitary condition, free of pests and rodents, and uncluttered at all times in order to preserve and enhance the enjoyment of the Project, and as further set forth in this Declaration.

12.2 Repairs by Association. In the event that an Owner permits his Unit or Improvements to fall into a state of disrepair that is dangerous, unsafe, unsanitary or unsightly condition or fails to comply with any other covenant or restriction in violation of this Declaration, the Association may give written notice to the Owner describing the condition complained of and demand that the Owner correct the condition within 30 days. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Owner's Unit and take corrective action to abate the condition. All costs of abatement shall be charged to the Owner, who agrees to promptly pay the reasonable costs of any work performed under this provision, plus 15%. In addition, each Owner hereby grants to the Association a lien on the Unit and any Improvements to secure repayment of any sums advanced pursuant to this section, which lien may be foreclosed at any time by the Association in the manner prescribed in Utah for the foreclosure of mortgages. Alternatively, without requiring foreclosure, the Association may seek collection of sums advanced directly from the Owner of



the Unit in question. Unpaid amounts will bear interest from the date advanced at the lawful judgment rate under applicable state law.

12.3 Alterations of Exterior Appearance. The Owners will maintain their Units and Improvements in substantially the same condition and appearance as that approved by the Board. No subsequent exterior alterations, improvements or remodeling, whether structural or changes in landscaping, paint color or materials will be made without the advance consent of the Board.

12.4 Repair Following Damage. In the event of casualty loss or damage to the improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review by the Board, provided however that alterations or deviations from the original approved plans will require review. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent injury or dangerous conditions following loss or damage, before re-construction begins. Such temporary measures may be taken without the consent or approval of the Board, provided that any such measure must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances will permit. Unless delayed by City/County approval or insurance carrier approval, no damaged structure will be permitted to remain on any Unit for more than 90 days without repairs commencing and any damaged structure which does remain unrepaired after 90 days following the occurrence of damage is deemed a nuisance which may be abated by the Association.

### ARTICLE XIII INSURANCE

13.1 Insurance Requirement. The Association shall obtain insurance as required in this Declaration and as required by the Act. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.

As used in this Article:

- (1) "Covered Loss" means a loss, resulting from a single event or occurrence that is covered by the Association's property insurance policy.
- (2) "Unit Damage" means damage to a Unit.
- (3) "Unit Damage Percentage" means the percentage of total damage resulting in covered loss that is attributable to Unit Damage.

In the event of a covered loss, Owner(s) shall pay their portion of any Association deductible in accordance with that Unit's Unit Damage Percentage.

13.2 Property Insurance.

(a) Hazard Insurance.

(i) Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering all Common Areas, Limited Common Areas Units, buildings and other facilities.

(1) At a minimum, any required blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, theft, and storm water run-off, if reasonably available; and (2) all perils normally covered by “special form” property coverage.

(2) Any blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

(b) Flood Insurance. If the property insured by the Association is not situated in a Special Flood Hazard Area, the Association may nonetheless, if approved by a majority of Owners, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.

(c) Earthquake Insurance. The Association may nonetheless, if approved by a majority of Owners, purchase earthquake insurance to cover earthquakes not otherwise covered by blanket property insurance.

(d) Associations Obligation to Segregate Property Insurance Deductible. The Association shall keep an amount equal to the Association’s property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.

(e) Association’s Right to Not Tender Claims that are Under the Deductible. If, in the exercise of its business judgment, the Board of Directors determines that a claim is likely not to exceed the Association’s property insurance policy deductible the Association need not tender the claim to the Association’s insurer.

13.3 Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL Insurance insuring the Association, the agents and employees of the Association, and the Owner, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000) covering all claims for death of or injury to any one person or property damage in any single occurrence.

13.4 Director’s and Officer’s Insurance. The Association shall obtain Directors’ and Officers’ liability insurance protecting the Board of Directors, the officers, and the Association

against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). The policy shall:

- (a) Include coverage for volunteers and employees;
- (b) Include coverage for monetary and non-monetary claims;
- (c) Provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims; and
- (d) Provide coverage for defamation. In the discretion of the Board of Directors, the policy may also include coverage for any manager and any employees of the manager and may provide that such coverage is secondary to any other policy that covers the manager or any employees of the manager.

13.5 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association may obtain insurance covering the theft or embezzlement of funds that shall:

- (a) Provide coverage for an amount of not less than the sum of three months regular assessment in addition to the prior calendar year's highest monthly balance on all operating and reserve funds; and
- (b) Provide coverage for theft or embezzlement of funds by:
  - (i) Officers and Board of Directors member of the Association;
  - (ii) Employees and volunteers of the Association;
  - (iii) Any manager of the Association; and
  - (iv) Officers, directors and employees of any manager of the Association.

13.6 Association's Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to the Association; and shall not be payable to a holder of a security interest. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. Each Owner hereby appoints the Association, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and the execution of releases of liability, and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representative, successors or assigns of an Owner.

13.7 Owner Act Cannot Void Coverage under Any Policy. An Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

13.8 Waiver of Subrogation against Owners and Association. All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.

13.9 Owners' Individual Coverage. **EACH OWNER SHOULD PURCHASE INDIVIDUAL INSURANCE COVERAGE IN THE AMOUNT RECOMMENDED BY THE OWNER'S INSURANCE AGENT.**

#### ARTICLE XIV DAMAGE & DESTRUCTION

14.1 Immediately after damage or destruction by fire or other casualty to all or any part of the Common Areas and/or Limited Common Areas covered by insurance written in the name of the Association, the Board, or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Areas and/or Limited Common Areas. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Areas and/or Limited Common Areas to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

14.2 Any damage or destruction to the Common Areas and/or Limited Common Areas shall be repaired or reconstructed unless Owners representing at least seventy-five (75%) percent of the total vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the costs of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Areas and/or Limited Common Areas shall be repaired or reconstructed; provided, however, this provision shall not apply to construction mortgagees providing construction financing for such damaged property.

14.3 In the event, that it should be determined in the manner described above that the damage or destruction to the Common Areas and/or Limited Common Areas shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Common Areas and/or Limited Common Areas shall be restored to their natural state and maintained by the Association, in a neat and attractive condition.

**ARTICLE XV**  
**DISBURSEMENT OF PROCEEDS**

15.1 If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Areas and/or Limited Common Areas shall be retained by and for the benefit of the Association and placed in a capital improvements and/or reserve account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner(s) shall be retained by and for the benefit of the Association and placed in a capital improvements and/or reserve account.

**ARTICLE XVI**  
**REPAIR AND RECONSTRUCTION**

16.1 If the damage or destruction to the Common Areas and/or Limited Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the members, levy a special assessment against all Owners as provided in the Governing Documents.

**ARTICLE XVII**  
**CONDEMNATION**

17.1 Whenever all or any part of the Common Areas and/or Limited Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of members representing at least sixty-seven percent (67%) of the total Association vote by any authority having the power of condemnation or eminent domain), each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows: if the taking involves a portion of the Common Areas and/or Limited Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking the Owners representing at least sixty-seven percent (67%) of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Areas and/or Limited Common Areas to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If the taking does not involve any improvements of the Common Areas and/or Limited Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

**ARTICLE XVIII**  
**MISCELLANEOUS PROVISIONS**

18.1 Violation Deemed a Nuisance. Any violation of these covenants that is permitted to remain on the Property is deemed a nuisance, and is subject to abatement by the Association or by any other Owner.

(a) Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought by an Owner or by the Association. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including reasonable attorney fees and court costs.

(b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. This Declaration is to be construed as being in addition to those remedies available at law.

(c) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

(d) The failure to take enforcement action shall not be construed as a waiver of the contents contained in this Declaration in the future or against other similar violations.

18.2 Severability. Each of the covenants contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining covenants shall remain in full force and effect.

18.3 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in Unit, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriated documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

18.4 No Representations and Warranties. Each Owner and occupant understands,

agrees, and acknowledges through taking title or residing in the Project that the Declarant, Association and the Board have not made any representations or warranties of any kind related to the Project and that each Owner or occupant has not relied upon any reorientations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose relative to the Project.

18.5 Conflicting Provisions. In the case of any conflict between the Governing Documents, the order of priority from the highest to the lowest shall be the Declaration, the Plat, the Articles, Bylaws, and then the Rules.

18.6 Amendment. At any time while this Declaration is in effect, the covenants herein contained can only be modified by the affirmative vote of the Owners representing not less than sixty-seven (67%) percent of the eligible Allocated Interest. No meeting or voting shall be required for an amendment, if the required, written consent is obtained from the requisite number of Owners.

18.7 Constructive Notice. Every person who owns, occupies or acquires any right, title or interest in any Unit in the Project is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the provision of this Declaration against his/her Unit, whether or not there is any reference to this Declaration in the instrument by which he/she acquires interest in any Unit.

18.8 Notices. All notices under this Declaration are provided as set forth in the Bylaws.

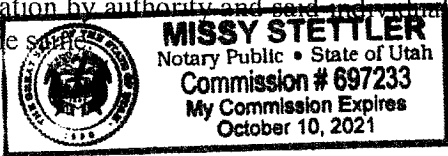
18.9 Liberal Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Project. Headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

MILLSTREAM CONDOMINIUMS OWNERS ASSOCIATION, INC.

Jim Hulst  
By: Jim Hulst  
Its: Management Committee Member/Board Member

STATE OF UTAH )  
 : ss  
COUNTY OF WEBER )

On this 17<sup>th</sup> day of July, 2018, personally appeared before me Missy Stettler, who being by me duly sworn, did say that he is a Management Committee Member/Board Member of Millstream Condominium Owners Association, Inc. a Utah non-profit corporation and that the within and foregoing instrument was signed on behalf of said corporation by authority and said individual duly acknowledged to me that said corporation approved the same.



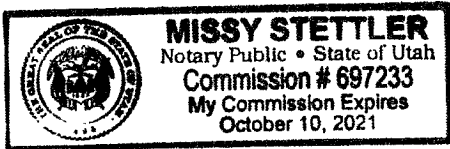
Missy Stettler  
Notary Public

MILLSTREAM CONDOMINIUMS OWNERS ASSOCIATION, INC.

Gray Wheelwright  
By: Gray Wheelwright  
Its: Management Committee Member/Board Member

STATE OF UTAH )  
 : ss  
COUNTY OF WEBER )

On this 17<sup>th</sup> day of July, 2018, personally appeared before me Missy Stettler, who being by me duly sworn, did say that he is a Management Committee Member/Board Member of Millstream Condominium Owners Association, Inc. a Utah non-profit corporation and that the within and foregoing instrument was signed on behalf of said corporation by authority and said individual duly acknowledged to me that said corporation approved the same.



Missy Stettler  
Notary Public



MILLSTREAM CONDOMINIUMS OWNERS ASSOCIATION, INC.

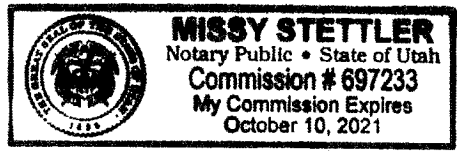
Joyce Wright

By: Joyce Wright  
Its: Management Committee Member/Board Member

STATE OF UTAH                    )  
  : ss  
COUNTY OF WEBER            )

On this 17<sup>th</sup> day of July, 2018, personally appeared before me Missy Stettler, who being by me duly sworn, did say that he is a Management Committee Member/Board Member of Millstream Condominium Owners Association, Inc. a Utah non-profit corporation and that the within and foregoing instrument was signed on behalf of said corporation by authority and said individual duly acknowledged to me that said corporation approved the same.

Missy Stettler  
Notary Public



**EXHIBIT "A"**  
**MILLSTREAM CONDOMINIUMS**  
**LEGAL DESCRIPTION**

Apartment Units 1-4, Building A, MILLSTREAM CONDO PHASE #01, Ogden City, Weber County, Utah  
[13-134-0001 through 0004]

Apartment Units 5-8, Building B, MILLSTREAM CONDO PHASE #02, Ogden City, Weber County, Utah  
[13-136-0001 through 0004]

Apartment Units 9-12, Building C, MILLSTREAM CONDO PHASE #02, Ogden City, Weber County, Utah  
[13-136-0005 through 0008]

Apartment Units 13-16, Building D, MILLSTREAM CONDO PHASE #03, Ogden City, Weber County, Utah  
[13-138-0001 through 0004]

Apartment Units 17-20, Building E, MILLSTREAM CONDO PHASE #04, Ogden City, Weber County, Utah  
[13-138-0005 through 0008]

Apartment Units 21-24, Building F, MILLSTREAM CONDO PHASE #04, Ogden City, Weber County, Utah  
[13-141-0001 through 0004]

Apartment Units 25-28, Building G, MILLSTREAM CONDO PHASE #04, Ogden City, Weber County, Utah  
[13-141-0005 through 0008]

Apartment Units 29-32, Building H, MILLSTREAM CONDO PHASE #04, Ogden City, Weber County, Utah  
[13-141-0009 through 0012]

Apartment Units 33-36, Building I, MILLSTREAM CONDO PHASE #04, Ogden City, Weber County, Utah  
[13-141-0013 through 0016]

Apartment Units 37-40, Building J, MILLSTREAM CONDO PHASE #04, Ogden City, Weber County, Utah  
[13-141-0017 through 0020]

Apartment Units 41-44, Building K, MILLSTREAM CONDO PHASE #04, Ogden City, Weber County, Utah  
[13-141-0021 through 0024]

**EXHIBIT "B"**

**BYLAWS**

**BYLAWS OF  
MILLSTREAM CONDOMINIUM OWNERS ASSOCIATION, INC.**

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The following are the Bylaws of Millstream Condominium Owners Association, Inc. ("Bylaws"), a Utah nonprofit corporation (the "Association"). These Bylaws shall replace any prior bylaws, whether or not recorded, including the bylaw provisions contained within Article VI of the Amended & Restated Declaration, and any amendments thereto, through the date these Bylaws are recorded. Upon recordation of these Bylaws, they are binding upon the Association and all present and future Owners and/or occupants.

**ARTICLE I - DEFINITIONS**

**Section 1.1 Definitions.** All terms used but not defined herein shall have the meanings given them under that certain Second Amended & Restated Declaration of Covenants, Conditions & Restrictions for Millstream Condominiums of even date and recorded in the Official Records of the Weber County Recorder's Office (hereinafter referred to as the "Declaration").

**ARTICLE II - MEETINGS OF OWNERS**

**Section 2.1 Annual Meetings.** An annual meeting of the Owners shall be held no less than once each calendar year at a location and time designated by the Board of Directors ("Board")<sup>1</sup>. The Board may set the date, time and location of the annual meeting in accordance with Section 2.3 below.

**Section 2.2 Special Meetings.** Special meetings of the Owners may be called at the request of the Board, or upon written request of the Owners holding at least fifty-one percent (51%) of the total Allocated Interest. Notwithstanding, the Board remains the only authorized body to act for and in behalf of the Association.

**Section 2.3 Notice of Meetings.** Unless an Owner requests in writing that all notices be provided to said Owner by U.S. mail, all notices shall be given by, or at the direction of, the Board via email or other electronic communication. Notice shall be provided at least ten (10) days before a meeting, but no more than sixty (60) days, to each Owner at the email or electronic address provided by the Owner. Said notice is effective upon sending the email or electronic communication. Notices provided by U.S. mail shall be sent via U.S. First Class Mail and effective upon deposit in the mail. Such notice shall specify the location, day and time of the meeting, and, in the case of a special meeting, the purpose of the meeting.

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<sup>1</sup> The term "Board of Directors" or "Board" shall be synonymous with the term Management Committee, as the same is utilized in the Utah Condominium Ownership Act.

Upon becoming an Owner of the Association, or upon the written request by the Association, Owners shall provide a valid email address or other requested electronic information for purpose of notification related to the Association unless the Owner has opted out by providing a written request for notice by U.S. Mail.

**Section 2.4 Quorum.** Unless otherwise specifically set forth in the Declaration, at any meeting of Owners, a quorum shall be established by those Owners present, in person or by proxy, at a properly noticed meeting. Notwithstanding, the Board remains the only authorized body to act for and in behalf of the Association. Further, a majority of those Owners present in person or proxy at such meeting may vote to reschedule the meeting based upon low attendance. Otherwise, the meeting shall proceed as scheduled.

**Section 2.5 Proxies.** At all meetings of Owners, each Owner may vote in person or by proxy. All proxies shall be in writing, signed by the Owner, and filed with the Board at or before said meeting. Notwithstanding, any proxy delivered to the Board at the meeting must be provided no later than any point in the meeting announced as the final time to deliver proxies. The proxy form provided with any notice of meeting may also provide an additional requirements and a deadline to return proxies. Every proxy shall be revocable and shall automatically terminate upon conveyance by the Owner of his Unit. If conflicting proxy votes for an Owner or Unit exist, said proxy votes will not be counted.

**Section 2.6 Conduct of Meetings.** The Board, or its authorized representatives, shall preside over all meetings. The Secretary or other authorized person shall keep and maintain minutes of all meetings. The Board may adopt further policies and procedures with regard to conduct at an Association meeting.

- (a) **Recording.** No person, whether an Owner, occupant, owner representative, or other third party is permitted to record (whether audio, video, transcription or combination) any Association or Board meeting, work session, event, get-together, or similar event regardless of the location of such event.

**Section 2.7 Action Taken Without a Meeting.** Any action that may be taken at any annual or special meeting of Owners may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the action taken, are signed by the Owners having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Owners eligible to vote on the action were present and voted, unless a different approval percentage for the action is specifically set forth in the Declaration. The Board may obtain such approvals and conduct business through mail or email/electronic ballots.

Ballots shall set forth each proposed action and provide the option of voting for or against each proposed action. The ballot must specify the period of time, up to 90 days, during which the Association shall accept written ballots. Following this period, the Association shall provide notice if such action was approved.

**Section 2.8 Voting.** Only an Owner that is current on all assessments and charges due and owing at least thirty (30) days prior to a duly noticed meeting shall be deemed in good standing and eligible to vote. The number of votes for each Unit shall be in accordance with an Owner's Allocated Interest, as set forth in the Declaration.

### ARTICLE III BOARD, SELECTION AND TERM OF OFFICE

**Section 3.1 Number & Tenure.** The affairs of the Association shall be managed by a Board of Directors composed of five (5) individuals ("Board"). Members of the Board of Directors shall serve for a term of two years; provided, however, that initially, the Board shall identify two of the five members of the Board to serve for a one-year term. The other three members shall serve for a two-year term. Thereafter, all members elected each year shall serve for a two-year term. The members of the Board of Directors shall serve until their respective successors are elected, or until their death, resignation or removal. Any change in the number of Directors may be made only by amendment of these Bylaws.

**Section 3.2 Eligibility.** All members of the Board shall be Owners or an Owners' spouse or legal partner that resides with Owner in the Dwelling. Notwithstanding, only one member of a single household can be a member of the Board at any one time.

**Section 3.3 Resignation & Removal.** A Director may resign at any time by delivering a written resignation to either the President or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Director may be removed from the Board, with or without cause, by a vote of at least (51%) of the Owners of the Association. In the event of death, resignation or removal of a Director, his successor shall be selected by the remaining Directors and shall serve for the unexpired term of his predecessor.

**Section 3.4 Compensation.** No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for actual and approved expenses incurred in the performance of his duties.

**Section 3.5 Action Taken Without a Meeting.** The Directors may take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of a majority of the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board.

**Section 3.6 No Estoppel or Reliance.** No one may rely upon any authorization (from the Board or otherwise) contrary to the terms and conditions of the Governing Documents regardless of circumstances. No claim of estoppel, waiver or similar equitable claims or defense may be raised by anyone related to any alleged reliance.

**Section 3.7 Records Retention.** The Board shall take appropriate action to develop, implement and update procedures for record retention. The Board should maintain

documents in a manner to be easily accessible and copied. The Board may budget specifically for this expense and may seek the advice of consultants in developing retention procedures.

#### ARTICLE IV NOMINATION AND ELECTION OF DIRECTORS

**Section 4.1 Nomination.** Nomination for election to the Board may be made by the Board or by Owners from the floor at the annual meeting.

**Section 4.2 Election.** The election of Directors may be by written ballot, which need not, but may be, secret, as determined at the discretion of the Board. The persons receiving the largest number of votes shall be elected. Cumulative voting is not authorized.

#### ARTICLE V MEETINGS OF THE BOARD

**Section 5.1 Regular Meetings.** Regular meetings of the Board shall be held at least annually, or more frequently as determined by the Board. All notices shall be provided by email or other electronic means. Directors are required to provide an email or electronic address for purposes of notice of Board meetings. Notice shall be provided at least five (5) days before a meeting, but no more than thirty (30) days.

Owners, and Owner representatives (if designated in writing in advance) may attend Board meetings and may be present for all discussions, deliberations, and decisions except when the Board is in executive session. Owners shall comply with all reasonable rules established by the presiding officer for their attendance. The Board may limit Owners' comments and/or questions to a specific period of time within the meeting. The Board shall provide email notice in accordance with the Act to Owners that have requested, in writing, to be notified of Board Meetings and have provided a valid email address.

**Section 5.2 Special Meetings.** When, in the discretion of the President or two members of the Board, circumstances require that a meeting be held sooner than the required five (5) days' notice for a regular meeting, a special meeting may be called by the President or by any two (2) Directors, after not less than twenty-four (24) hours' notice to each Director.

**Section 5.3 Quorum.** A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

**Section 5.4 Conduct of Meetings.** The Board, or its authorized representatives, shall preside over all meetings. The Secretary or other authorized person shall keep and

maintain minutes of all meetings. The Board may adopt further policies and procedures with regard to conduct at a Board meeting.

- (a) **Recording.** No person, whether an Owner, occupant, owner representative, or other third party is permitted to record (whether audio, video, transcription or combination) any Association or Board meeting, work session, event, get-together, or similar event regardless of the location of such event.

**Section 5.5 Action Taken Without a Meeting.** The Directors may take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of a majority of the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board.

#### **ARTICLE VI - POWERS AND DUTIES OF THE BOARD**

**Section 6.1 Powers and Duties.** The Board shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Governing Documents and Utah law. The Board may delegate its authority to manager(s), subject to any limitations or provisions contained in the Governing Documents.

#### **ARTICLE VII - OFFICERS AND THEIR DUTIES**

**Section 7.1 Enumeration of Officers.** The officers of this Association shall be a president, secretary, and treasurer. The two remaining members of the Board will not hold an official title.

**Section 7.2 Election of Officers.** The election/appointment of officers shall take place at the first Board meeting following the annual meeting of the Owners. Officers shall serve in their office for a period of one (1) year. Notwithstanding, nothing in these Bylaws prevent an officer or directors from being re-elected to their respective positions.

**Section 7.3 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. Appointed Officers may be removed by the Board with or without cause.

**Section 7.4 Resignation and Removal.** Any officer may resign at any time by delivering a written resignation to any Director or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced by a majority of the Board of Directors at any time, with or without cause. In the event of death, resignation or removal of an officer, his successor shall be selected by the Board and shall serve for the unexpired term of his predecessor.

**Section 7.5 Duties.** The Board may adopt policies and resolutions to define the respective duties of Directors and Officers.



## ARTICLE VIII - CONTRACTS, LOANS & INVESTMENT

**Section 8.1. Contracts.** The Board may authorize any officer(s), agent(s), to enter into any contract or execute and deliver any instrument in the name of or on behalf of the Association, and such authority may be general or confined to specific instances.

**Section 8.2 Loans.** Any loan entered into by the Association must be in accordance with the Declaration.

**Section 8.3 Deposits & Investments.** Association funds may only be deposited into institutions that are federally insured. The Board may deposit Association funds into savings accounts, money market accounts, or purchase certificates of deposits. Other investment options that may pose additional risks must be approved by at least 51% of the total eligible membership Allocated Interest prior to the investment.

## ARTICLE IX - COMMITTEES

**Section 9.1 Committees.** The Board may appoint such committees as deemed appropriate in carrying out its purposes. A committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board. The Board may terminate any committee at any time.

## ARTICLE X – MISCELLANEOUS

**Section 10.1 Waiver of Procedural Irregularities.** All inaccuracies and irregularities in calls or notices of meetings, in the manner of voting, in the form of proxies, in the method of asserting persons present, in the method of making decisions, or in the method of accepting or counting votes shall be deemed waived under the following circumstances:

- (a) If the objecting person was in attendance at the meeting and the issue upon which the objection was based was perceptible and no objection to the particular procedural issue was made at the meeting.
- (b) If the objecting person was not in attendance at the meeting but had proper notice of the meeting.
- (c) If the objecting person was not in attendance at a meeting and had actual notice of the meeting before it occurred.
- (d) If the objecting person who was not in attendance at the meeting and did not have proper or actual notice fails to assert the objection within 30 days of receiving notice of the circumstances giving rise to their objection.

**Section 10.2 Requirements for Objections.** All objections except those made at a meeting shall be in writing. Whenever made, objections must specifically describe the circumstances giving rise to the objection and reference the specific provision of the Governing Documents or law that is alleged to have been violated, with a brief statement of the facts supporting the claimed violation.

**Section 10.3 Irregularities that Cannot Be Waived.** Any irregularity that is the result of fraud or that was done knowingly and intentionally in violation of the Governing Documents or Utah law.

**Section 10.4 Fiscal Year.** The fiscal year of the Association shall begin on the first day of January and end on the 31<sup>st</sup> day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

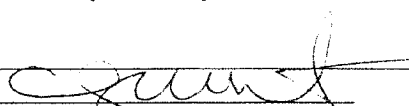
**Section 10.5 Amendment.** Any amendment to these Bylaws shall require the unanimous consent of the Board or the consent of at least fifty-one percent (51%) of the eligible Allocated Interest. An amendment to these Bylaws shall be effective immediately upon recordation in the Weber Recorder, State of Utah.

The foregoing Bylaws are adopted by the undersigned and made effective upon recordation in the Office of the Weber Recorder, State of Utah.

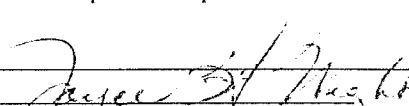
MILLSTREAM CONDOMINIUM OWNERS ASSOCIATION, INC.  
a Utah non-profit corporation

By:   
Its: Management Committee Member/Board of Directors

MILLSTREAM CONDOMINIUM OWNERS ASSOCIATION, INC.  
a Utah non-profit corporation

By:   
Its: Management Committee Member/Board of Directors

MILLSTREAM CONDOMINIUM OWNERS ASSOCIATION, INC.  
a Utah non-profit corporation

By:   
Its: Management Committee Member/Board of Directors

**EXHIBIT "C"****ALLOCATED INTEREST**

<b>Unit No.</b>	<b>Building No.</b>	<b>% of Ownership in Common Areas &amp; Facilities</b>
1	A	2.383064
2	A	2.383064
3	A	2.383064
4	A	2.383064
5	B	2.383064
6	B	2.383064
7	B	2.383064
8	B	2.383064
9	C	2.383064
10	C	2.383064
11	C	2.383064
12	C	2.383064
13	D	2.028375
14	D	2.028375
15	D	1.945245
16	D	1.945245
17	E	2.216802
18	E	2.128130
19	E	2.216802
20	E	2.128130
21	F	2.383064
22	F	2.383064
23	F	2.383064
24	F	2.383064
25	G	2.383064
26	G	2.383064
27	G	2.383064
28	G	2.383064
29	H	2.383064
30	H	2.383064
31	H	2.383064
32	H	2.383064
33	I	2.383064

34	I	2.383064
35	I	2.383064
36	I	2.383064
37	J	2.028375
38	J	2.028375
39	J	1.945245
40	J	1.945245
41	K	2.128130
42	K	2.128130
43	K	2.216802
44	K	2.216802

**Exhibit "D"**

Air conditioning Units eligible for replacement

Address	Year	Eligibility
1476 A Brinker	2001	Not Eligible
1476 B Brinker	2001	Not Eligible
1482 A Brinker	2001	Not Eligible
1482 B Brinker	2001	Not Eligible
1488 A Brinker	2000	Not Eligible
1488 B Brinker	2000	Not Eligible
1496 A Brinker	2001	Not Eligible
1496 B Brinker	2001	Not Eligible
1474 S 1165 E	2001	Not Eligible
1473 S 1185 E	2001	Not Eligible
1484 S 1165 E	1997	Eligible
1481 S 1185 E	1997	Eligible
1482 S 1165 E	1993	Eligible
1487 S 1185 E	1993	Eligible
1496 S 1165 E	1998	Eligible
1494 S 1185 E	1998	Eligible
1504 S 1165 E	< 1998	Eligible
1501 S 1185 E	< 1998	Eligible
1512 S 1165 E	< 1998	Eligible
1509 S 1185 E	2017	Not Eligible
1520 S 1165 E	< 1998	Eligible
1517 S 1185 E	2018	Not Eligible
1538 S 1165 E	< 1998	Eligible
1525 S 1185 E	2009	Not Eligible
1184 B 16 <sup>th</sup> St	1999	Not Eligible
1196 B 16 <sup>th</sup> St	2001	Not Eligible
1184 A 16 <sup>th</sup> St	2017	Not Eligible
1196 A 16 <sup>th</sup> St	2001	Not Eligible
1475 S 1185 E	1998	Eligible
1478 S 1200 E	1999	Not Eligible
1483 S 1185 E	1998	Eligible
1486 S 1200 E	2017	Not Eligible
1490 S 1185 E	2005	Not Eligible
1491 S 1200 E	2007	Not Eligible
1498 S 1185 E	2005	Not Eligible
1499 S 1200 E	2016	Not Eligible
1506 S 1185 E	2017	Not Eligible
1507 S 1200 E	2017	Not Eligible
1514 S 1185 E	< 1998	Eligible
1515 S 1200 E	< 1998	Eligible
1522 S 1185 E	2002	Not Eligible
1523 S 1200 E	2006	Not Eligible
1530 S 1185 E	< 1998	Eligible
1531 S 1200 E	< 1998	Eligible

**MAINTENANCE RESPONSIBILITIES**

The following chart shows the division of responsibility for maintenance and repair of Common Areas and Units between the Association and the Unit Owners

	<b>EXTERIOR</b>	<b>HOA</b>	<b>OWNER</b>
1	Maintenance, repair or roofs, rain gutters and down spouts	X	
2	Maintenance and repair of exterior chimneys and chimney caps	X	
3	Outside exterior surfaces of Units	X	
4	Maintenance and repair of concrete foundations (excluding any concrete pad within a Unit, garage or the concrete patio/deck area	X	
5	Structural components, including, but not limited to: exterior or bearing walls or walls that are common to two or more Units	X	
6	Infrastructure, pipes, water and utility lines that are contained within the roadways in the Project and not the responsibility of the City and/or County	X	
7	General landscape and sprinkler maintenance, including the repair, maintenance and replacement of existing sprinkler systems and landscaping within the Project that have not been modified by an Owner	X	
8	Light Poles	X	
9	Community mailboxes, if any	X	
10	Walkways and sidewalks	X	
11	Driveways	X	
12	Private utility lines/infrastructure that serves more than one Unit	X	
13	Units, including without limitation all interior walls, doors, windows, ceilings, floors, and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in a good state of repair, tiles, wallpaper, paint, carpet, wood, fireplaces, other material comprising finished interior floors, walls or ceilings		X
14	Any of the following located wherever they might be located (inside or outside of the Unit) that serve an Owner's Unit exclusively: lighting fixtures (including lighting attached to exterior walls, but not including Association security lights), fans, plumbing fixtures (other than pipes located outside of a Unit and that do not exclusively serve that Unit), stoves, refrigerators, hot water heaters, security systems, water spigots and bibs, vents, chimneys and fireplaces, and such other appliances, fixtures and decorations as an Owner may install as permitted in this Declaration		X
15	Entryways, porches and decks		X

16	All interior and exterior doors, including frames, locks, hinges, door jams and garage doors		X
17	Skylights, windows, window sills, window frames, glass, screens, and patio doors		X
18	Sewer and drainage pipes, wiring, power, water and other utility lines within their Unit		X
19	Concrete pads within Unit(s), garage(s) or Limited Common Area(s)		X
20	Plumbing fixtures, fans, stoves, refrigerators, appliances, heaters, furnaces, fireplaces, vents, chimneys, HVAC systems, compressors, condensers, ducting air condition, water spigots, lighting fixtures, pipes, and similar appliances, fixtures and pipes that exclusively serve an Owner's Unit(s)		X
21	Patio and deck flooring and structures (including the fence) within the Limited Common Area and Units		X
22	Air conditioning units 20 years or older as of the date this Declaration is recorded	X	
23	Air conditioning units 20 years or newer as of the date this Declaration is recorded		X