

Tom Miller
3375 Harrison

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Security Title #2300
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BOOK 931 PAGE 314

Indexed Indexed
Recorded Abstracted
Compared Page

Joseph D. Wright

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

MILLSTREAM CONDOMINIUM

Phase Number One

This Declaration of Covenants, Conditions, Restrictions, hereinafter called "Declaration", is made and executed in Ogden, Weber County, Utah, this 31st day of July, 1969, by THOMAS J. MILLER and DA LANE R. MILLER, husband and wife, hereinafter designated and referred to as "Declarant", pursuant to the provisions of the Utah Condominium Ownership Act.

W I T N E S S E T H:

WHEREAS, Declarant is the owner of the following described real property situate in Ogden, Weber County, Utah, to-wit:

Part of the Southeast Quarter of Section 21, and the Southwest Quarter of Section 22, Township 6 North, Range 1 West, Salt Lake Base and Meridian. Beginning at a point on the North line of 16th Street, South 0° 31' West 978.44 feet from the Northeast corner of said Southeast Quarter of said Section 21, said point of beginning being North 86° 31' East 376.0 feet from the Northeast corner of the intersection of Brinker Avenue and 16th Street; and running thence South 86° 31' West 46.04 feet; thence North 0° 31' East 138.48 feet; thence South 89° 29' East 228.18 feet; thence South 1° 20' West 122.66 feet to the North line of 16th Street; thence South 86° 31' West 180.94 feet to the point of beginning.

and,

WHEREAS, Declarant is the owner of a certain garden apartment building and certain other improvements heretofore or hereafter to be constructed upon said premises; and

WHEREAS, the said garden apartment building and other improvements aforesaid have been or will be constructed in accordance with the plans and drawings set forth in the Record of Survey Map filed and recorded herewith; and

WHEREAS, Declarant desires by filing this Declaration and the aforesaid Record of Survey Map to submit the above described property and the garden apartment building and other improvements thereto to the provisions of the Utah Condominium Ownership Act as a condominium project; and

WHEREAS, Declarant desires and intends to sell the fee title

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to the apartment units contained in said condominium project, together with the undivided ownership interests in the common areas and facilities appurtenant to each of said apartment units, to various purchasers, subject to the covenants, restrictions and limitations reserved;

NOW, THEREFORE, Declarant declares that all the said property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to provisions of this Declaration which shall run with the land and be a burden and a benefit to all having an interest therein, their successors, assigns, heirs, executors, administrators, grantees and devisees.

1. Definitions. Some of the terms used herein are defined in this paragraph.

(a) Condominium: The entire estate in the real property owned by the owner.

(b) Condominium Act: The Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Annotated).

(c) Declarant: Thomas J. Miller and DaLane R. Miller.

(d) Declaration: This instrument.

(e) Management Committee: The governing body of the project.

(f) Manager: The person designated by the Management Committee to manage the affairs of the project.

(g) Map: Record of Survey Map recorded herewith.

(h) Mortgage: Deed of Trust as well as mortgage.

(i) Mortgagee: Beneficiary or holder under Deed of Trust as well as mortgagee.

(j) Owner: Any person with an ownership interest in a condominium in the project.

(k) Person: Legal entity as well as natural person.

(l) Project: The entire parcel of real property referred to in this Declaration.

2. Name. The project is submitted to the provisions of the Condominium Act to be known as MILLSTREAM CONDOMINIUM, Phase Number One.

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3. Description of Buildings. The project consists of one building, one story, containing four (4) apartment units. The said building is or shall be constructed of brick veneer, masonry and frame type construction.

4. Designation of Apartment Units. The apartment unit number of each unit, together with its location, approximate area and number of rooms, is as indicated as follows:

<u>Apartment Unit Number</u>	<u>Location</u>	<u>Approximate Size in Square Feet</u>	<u>Number of Rooms</u>
1	Northwest corner Building A	1128	6 including baths
2	Northeast corner Building A	1128	6 including baths
3	Southwest corner Building A	1128	6 including baths
4	Southeast corner Building A	1128	6 including baths

5. Common Areas and Facilities. The common areas and facilities of the project shall be and are all of the land and roofs, foundations, pipes, ducts, flues, chutes, conduits, wires and other utility installations to the outlets, bearing walls, perimeter walls, columns and girders to the interior surfaces thereof, greens, gardens, service streets, parking areas, fencing, recreational areas, all installations of power, lights, gas and water, gas lamps, common television antennas, main air conditioning chillers, and those common areas and facilities designated as such on the Map.

6. Limited Common Areas and Facilities. The limited common areas and facilities of the project shall be and are the private courtyards, garages, utility rooms and barbeques which are hereby set aside and reserved for the use of the respective apartment units to which they are attached and/or appurtenant and as designated on the Map, to the exclusion of the other apartments.

7. Apartment Units. The apartment units, sometimes called units, and sometimes called apartments, are as designated on the Map and are the elements of the condominium which are not owned in common with the owners of the other units. The boundary lines of each unit are the interior surfaces of its perimeter walls, bearing walls, basement floors, ceilings, windows and window frames

and door frames and trim, and includes the portions of the building so described and the air space so encompassed.

Included in the individual ownership and not owned in common are the individual heating units with blowers, water heaters, ranges, refrigerators, dishwashers, garbage disposals, washers and dryers attached to or used in connection with the apartment units.

8. Future Development. Within the next reasonable period of time, Declarant contemplates developing and constructing a future condominium project or projects, including housing apartment units and common areas and facilities. Said future development and construction phases shall be on contiguous land to this project and shall not cover in excess of six and one-half (6½) acres, including the land of phase one, and shall not exceed forty-eight (48) apartments including the apartments of phase one. The said future common areas and facilities shall be included in the common areas and facilities of this phase one, and facilities and common areas of phase one shall be included in the common areas and facilities of future phases. In this connection, Declarant reserves the irrevocable right, power and authority to amend this Declaration from time to time to provide for the same, and such right, power and authority is granted to Declarant by the apartment unit owners.

The proportionate share of the separate owners of the respective apartments in the common areas and facilities is based on the proportionate value that each of the apartments bears to the total value of all of the apartments.

9. Values. The value of each apartment is \$21,500.00 and the total value of all of the apartments is \$86,000.00. The value of the property, as defined by the Utah Condominium Ownership Act, is \$100,000.00.

10. Voting - Common Expenses. The percentage of ownership in the common areas and facilities shall be for all purposes, including voting; excluding, however, the common expenses. The common expenses shall be equally apportioned among the various units. Until the recordation of the Declaration and Record of Survey Map for the final phase, the percentage of ownership in

the common areas and facilities shall be in accordance with paragraph 8 and 9 above, and shall change from time to time as contemplated aforesaid. Upon such recordation the said percentage of ownership in the common areas and facilities shall be finally fixed.

11. Use. The Buildings and apartments therein are intended and restricted for the use of single family residences.

12. Service of Process. The person to receive service of process in the cases contemplated by the Act is:

Name: Thomas J. Miller
Residence Address: 3715 Brinker Ave., Ogden, Utah
Place of Business: 3375 Harrison Blvd., Ogden, Utah

13. Rebuild, Repair, Restore or Sell. Whether to rebuild, repair, restore or sell the property in the event of damage or destruction of all or part of the property shall be determined by the approval and consent of unit owners representing not less than 3/4ths of the votes in accordance with the percentages assigned herein at any regular meeting of the owners or at a special meeting called for such purpose.

14. Easements and Encroachments. In the event any portion of the common areas and facilities encroaches upon any of the units, a valid easement shall exist for such encroachment, and for the maintenance of the same, so long as such encroachment exists. In the event the condominium project is partially or totally destroyed, and then rebuilt, minor encroachments shall be permitted, as required, upon the apartments and easements for such encroachments and for the maintenance of same shall exist for such period of time as may be reasonably required for the reconstruction or repair of said premises.

15. Amendments. In addition to the amendment procedure provided for at paragraph 8 above, the apartment owners shall have the right to amend this declaration and/or the Record of Survey Map upon the approval and consent of unit owners as set forth in the Utah Condominium Act, which consent and approval shall be by duly executed and recorded instruments.

16. Voting at Meetings of Unit Owners. At any meeting of owners, each shall be entitled to the number of votes in accordance with his ownership interest in the common areas and facilities as provided hereinabove. Any owner may attend and vote at such meeting in person or by agent duly appointed in writing signed by the owner and filed with the management committee. Where there is more than one record owner, any or all such persons may attend any meeting of the owners, but they must act unanimously in order to cast the votes in which they are entitled.

17. Meetings of Unit Owners - Quorum. The presence at any meeting of owners having a majority of the total votes shall constitute a quorum.

18. Annual Meeting of Unit Owners. The annual meeting of unit owners shall be held the first Monday in June at the project, or at such other time not more than 30 days before or after such date, as may be designated by written notice of the management committee delivered to the owners not less than ten (10) days prior to the date fixed for said meeting. At the annual meeting elections shall be had to vacancies on the management committee, financial report shall be given and such other business conducted as may be properly presented.

19. Special Meetings of the Unit Owners. Special meetings of the unit owners may be called at any time by written notice signed by a majority of the management committee, or by the owners having 1/3 of the total votes, delivered not less than 15 days prior to the date fixed for said meeting. Such meeting shall be held on the project and the notice thereof shall state the date, time and matters to be considered.

20. Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered 24 hours after a copy of the same has been deposited

in the United States mail, postage prepaid, addressed to each such person at the address given by such person to the Management Committee or Manager for the purpose of service of such notice or to the unit of such person if no address has been given to the Manager. Such address may be changed from time to time by notice in writing to the Management Committee or Manager.

21. Management Committee - General. The business and property comprising Millstream Condominium (present and future) shall be managed by a Management Committee consisting initially of three (3) persons from June 1970 until June 1971, and consisting of five (5) persons commencing with June 1971. These persons shall have ownership in units in said project, and shall be elected by the owners at the annual meeting of the owners. Each member of the Management Committee shall serve a 2-year term and until successors are elected and qualified; provided, however, that at the first annual meeting of the owners to be held on the first Monday in June, 1970, one member shall be elected for a 1-year term, one for a 2-year term, and the other member for a term of 3 years. On the first Monday in June, 1971, two additional members shall be elected, one for a 2-year term, and the other for a 3-year term. Such Management Committee shall have all the powers, duties and responsibilities as are now or may hereafter be provided by law, this Declaration and/or any amendments subsequently filed thereto; provided, however, that the management committee may engage the services of a Manager and fix and pay a reasonable fee or compensation therefor. Declarant shall act as the Management Committee until the first Monday in June, 1970.

22. Operation and Maintenance. The committee shall be responsible for the control, operation and management of the project in accordance with the provisions of the Utah Condominium Ownership Act, this Declaration and such administrative, management and operational rules and regulations as the Committee may adopt from time to time as herein provided, and all agreements and determinations lawfully made and entered into by the committee.

The committee shall, in this connection, provide for the proper and reasonable control, operation and management of the project and of the maintenance and repair of the common areas and facilities appurtenant thereto.

23. Committee Vacancies. In a case of any vacancy in the Management Committee, the remaining members thereof may elect a successor to hold office until the next meeting of the unit owners.

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

25. Regular Meetings. A regular meeting of the committee shall be held after the adjournment of each annual unit owners' meeting, at a place which the committee shall determine. Regular meetings other than the annual meeting shall be held at regular intervals and at such places and at such times as the committee may from time to time by resolution provide. No special notice need be given of regular meetings of the committee.

26. Special Meetings. Special meetings shall be held whenever called by the chairman, vice-chairman or by a majority of the committee. Either written or oral notice of such special meeting shall be given not less than 24 hours in advance of said meeting; provided, however, that by unanimous consent of the committee,

special meetings may be held without call or notice of any time or place.

27. Quorum - Management Committee. A quorum for the transaction of business at any meeting of the committee shall consist of a majority of the committee then in office.

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

29. Additional Facilities. The management committee shall have the authority to provide such facilities, in addition to those for which provision has already been made, as it may deem to be in the interest of the members and to effect the necessary amendments of documents and maps in connection therewith.

30. Administrative Rules and Regulations. The committee shall have the power to adopt and establish by resolution such building management and operational rules as the committee may deem necessary for the maintenance, operation, management and control of the project, and the committee may, from time to time by resolution, alter, amend and repeal such rules. When a copy of any amendment or alteration or provision for repeal of any rule or rules has been furnished to the owners, such amendment, alteration and provision shall be taken to be a part of such rules. Unit owners shall at all times obey such rules and see that they are faithfully observed by those persons over whom they have or may exercise control and supervision, it being under-

stood that such rules shall apply and be binding upon all unit owners and/or occupants of the project.

31. Right of Entry. The committee and its duly authorized agents shall have the right to enter any and all of the said apartments in case of an emergency originating in or threatening such apartment or any other part of the project, whether the owner or occupant thereof is present at the time or not. The committee and its duly authorized agents shall also have the right to enter into any and all of said apartments at all reasonable times as required to make necessary repairs upon the common areas and facilities of the project, or for the purpose of performing emergency installations, alterations or repairs to the mechanical or electrical devices or installations located therein or thereon; provided, however, such emergency installations, alterations or repairs are necessary to prevent damage or threatened damage to other apartments in the project; and provided further that the apartment owner affected by such entry shall first be notified thereof if available and if time permits.

32. Limitation on Use of Units and Common Area. The units and common area shall be occupied and used as follows:

(a) No owner shall occupy or use his unit, or permit the same or any part thereof to be occupied or used for any purpose other than as a private resident for the owner and the owner's family or the owner's lessees or guests.

(b) There shall be no obstruction of the common area. Nothing shall be stored in the common area without the prior consent of the management committee.

(c) Nothing shall be done or kept in any unit or in the common area without the prior written consent of the management committee, which will increase the rate of insurance on the common area. No owner shall permit anything to be done or kept in his unit or in the common area which will result in the cancellation of insurance on any unit or any part of the common area or which would be in violation of law. No waste will be committed in the common area.

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(d) No sign of any kind shall be displayed to the public view on or from any unit or the common area, without the prior consent of the management committee;

(e) No animals, livestock or poultry of any kind shall be raised, bred, or kept in any unit or in the common area, except that dogs, cats or other household pets may be kept in units, subject to rules and regulations adopted by the management committee.

(f) No noxious or offensive activity shall be carried on in any unit or in the common area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other owners.

(g) Nothing shall be altered or constructed in or removed from the common area, except upon the written consent of the management committee.

(h) The management committee is authorized to adopt rules for the use of the common area, which rules shall be in writing and furnished to the owners.

(i) None of the rights and obligations of the owners created herein, or by the deed creating the condominiums, shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an owner or owners if said encroachment occurred due to the wilful conduct of said owner or owners.

33. Maintenance of Units. Each unit owner at his expense shall keep the interior of his unit and its equipment and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance of his unit. Except to the extent that the management committee is protected by insurance against such injury, the owner shall repair all injury or damages to the building or buildings

caused by the act, negligence or carelessness of the owner or that of the lessee or sub-lessee of any owner, or that of any member of the owner's family or of the family of any lessee or sub-lessee, or any agent, employee or guest of the owner or his lessee or sub-lessee, and all such repairs, redecorating, painting and varnishing shall be of a quality and kind equal to the original work. In addition to decorating and keeping the interior of the unit in good repair, the owner shall be responsible for the maintenance or replacement of any plumbing fixtures, refrigerators, heating equipment and blowers, dishwashers, disposals, ranges, washers, dryers, barbeques, etc., that may be in or connected with the unit. The owner shall have and be entitled to exclusive use and possession of the private courtyards, garages or utility rooms, attached to his unit, and shall be responsible for the maintenance and upkeep thereof, provided, however, that without written permission of the management committee first had and obtained, the owner shall not make or permit to be made any structural alteration, improvement or addition in or to the unit, private courtyards, garages or utility rooms, or on or to the exterior of the building, and shall not paint or decorate any portion of the exterior of the building in which his unit is located.

No radio or T. V. Antennae or aerial shall be installed on the outside of any building contained within the project without written consent of the committee.

34. Sale or Lease. In the event any owner of a condominium shall wish to sell or lease the same, and shall have received a bona fide offer therefor from a prospective purchaser or tenant, the remaining owners shall be given written notice thereof, together with an executed copy of the terms of such offer and a copy thereof. Such notice and copy shall be given to the management committee for all owners. Remaining owners through the Management Committee, or a person named by the Management Committee, shall then have the right to purchase or lease the

subject condominium upon the same terms and conditions as set forth in the offer therefor, provided written notice of such election to purchase or lease is given to the selling or leasing owner, and a matching down payment or deposit is provided to the selling or leasing owner during the twenty-one (21) day period immediately following the delivery of the notice of the bona fide offer and copy thereof to purchase or lease.

In the event any owner shall attempt to sell or lease his condominium without affording to the other owners the right of first refusal herein provided, such sale or lease shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser or lessee.

The subleasing or subrenting of said interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of the owner under these covenants shall continue, notwithstanding the fact that he may have leased or rented said interest as provided herein.

In no case shall the right of first refusal reserved herein affect the right of an owner to subject his condominium to a trust deed, mortgage or other security instrument.

The failure or refusal by the management committee to exercise the right to so purchase or lease shall not constitute or be deemed to be a waiver of such right to purchase or lease when an owner receives any subsequent bona fide offer from a prospective purchaser or tenant.

35. Mortgages not affected by Right of First Refusal. In the event of any default on the part of any owner under any first mortgage made in good faith and for value, which entitles the holder thereof to foreclose same, any sale under such foreclosure, including delivery of a deed to the first mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of this paragraph 34 above, and the purchaser (or grantee under such deed in lieu of foreclosure) of such condominium shall be

thereafter subject to the provisions of this Declaration. If the purchaser following such foreclosure sale (or grantee under deed given in lieu of such foreclosure) shall be the then holder of the first mortgage, or its nominee, the said holder or nominee may thereafter sell and convey the condominium free and clear of the provisions of paragraph 34, but its grantee shall thereupon and thereafter be subject to all of the provisions thereof.

The transfer of a deceased joint tenant's interest to the surviving joint tenant or the transfer of a deceased's interest to a devisee by will or his heirs at law under intestacy laws shall not be subject to the provisions of paragraph 34.

If an owner of a condominium can establish to the satisfaction of the management committee that a proposed transfer is not a sale or lease, then such transfer shall not be subject to the provisions of paragraph 34.

36. Certificate of Satisfaction of Right of First Refusal. Upon written request of any prospective transferor, purchaser, tenant or an existing or prospective mortgagee of any condominium, the management committee shall forthwith, or where time is specified, at the end of the time, issue a written and acknowledged certificate in recordable form, evidencing that:

(a) With respect to a proposed lease or sale under paragraph 34, that proper notice was given by the selling or leasing owner and that the remaining owners did not elect to exercise their option to purchase or lease;

(b) With respect to a deed to a first mortgagee or its nominee in lieu of foreclosure, and a deed from such first mortgagee or its nominee, pursuant to paragraph 35, that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of paragraph 35;

(c) With respect to any contemplated transfer which is not in fact a sale or lease, that the transfer is not or will not be subject to the provisions of paragraph 34.

Such a certificate shall be conclusive evidence of the facts contained therein.

37. Insurance. The management committee shall obtain and maintain at all times insurance of the type and kind as follows:

(a) Fire insurance, with extended coverage endorsement, for the full insurable replacement value of the units and common areas, which said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees of each unit, if any.

(b) A policy or policies insuring the management committee, the unit owners and the manager against any liability to the public or to the owners of units, common areas, and their invitees or tenants, incident to the ownership and/or use of the condominium project, and including the personal liability exposure of the owners. Limits of liability under such insurance shall not be less than One Hundred Thousand (\$100,000.00) Dollars for each person, and shall be not less than Ten Thousand (\$10,000.00) Dollars for property damage for each occurrence. Such limits and coverage shall be reviewed at least annually by the management committee and increased at its discretion. Said policy or policies shall be issued on a comprehensive liability basis and shall provide cross-liability endorsement wherein the rights of named insureds under the policy or policies shall not be prejudiced as in respect to his, her or their action against another named insured.

(c) Workmen's Compensation Insurance to the extent necessary to comply with any applicable laws.

(d) Insurance for such other risks of a similar or dissimilar nature as are or shall hereafter customarily be covered with respect to other condominium projects similar in construction, design and use.

The said insurance shall be governed by the following provisions:

(a) All policies shall be written with a company licensed to do business in the State of Utah and holding a rating

of "AAA" or better by Best's Insurance Reports.

b. Exclusive authority to adjust losses under policies hereafter in force in the project shall be vested in the Management Committee or its authorized representative.

c. In no event shall the insurance coverage obtained and maintained by the Management Committee hereunder, be brought into contribution with insurance purchased by individual owners or their mortgagees.

d. Each owner may obtain additional insurance at his own expense; provided, however, that no owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Management Committee, in behalf of all the owners, may realize under any insurance policy which the Management Committee may have in force on the project at any particular time.

e. Each owner shall be required to notify the Management Committee of all improvements made by the owner to his unit, the value of which is in excess of One Thousand and No/100 (\$1,000.00) Dollars.

f. Any owner who obtains individual insurance policies covering any portion of the project other than personal property belonging to such owner, shall be required to file a copy of the individual policy or policies with the Management Committee within thirty (30) days after purchase of such insurance.

g. The Management Committee shall be required to make every effort to secure insurance policies that will provide for the following:

1. A waiver of subrogation by the insurer as to any claims against the Management Committee, the Manager, the owners and their respective servants, agents and guests.

2. That the master policy on the project cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual owners.

3. That the master policy of the project cannot

be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Management Committee or Manager without prior demand in writing that the Management Committee or Manager cure the defect.

4. That any "no other insurance" clause in the master policy exclude individual owners' policies from consideration.

(h) The annual insurance review which the Management Committee is required to conduct as provided above shall include an appraisal of the improvements in the project by a representative of the insurance carrier writing the master policy.

38. Taxes. It is acknowledged that under the Condominium Ownership Act, each of said units' percentage of the undivided interest in the common areas and facilities of the project are subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, and that as a result thereof no taxes will be assessed or payable against the project as such. Each member will, therefore, pay and discharge any and all taxes which may be assessed against any of said units of which he is the owner, against the percentage of undivided interests in the common areas and facilities of any such unit, and/or against any items of personal property located in or upon any unit of which he is the owner.

39. Payment of Expenses: Each unit owner shall pay the Management Committee his pro rate portion of the cost requirement deemed necessary by the committee to manage and operate Millstream Condominium, and the recreational areas and facilities, if any, upon the terms, at the times, and in the manner herein provided without deduction on account of any set-offs or claims which the owner may have against management, and if the owner shall fail to pay any installment within one (1) month from the time when the same becomes due, the owner shall pay interest thereon at the rate of 3/4% per month from the date when such installment shall become due to the date of the payment thereof.

The cash requirements above referred to for each year or portion of year are hereby defined, and shall be deemed to be such aggregate sum as the Management Committee from time to time shall determine, in its judgment, is to be paid by all the owners of Millstream Condominium then in existence to enable the committee to pay all estimated expenses and outlays of the committee to the close of such year, growing out of or in connection with the maintenance and operation of such land and buildings and improvements and recreational area and facilities, if any, which sum may include among other things the cost of management, special assessments, fire, casualty and public liability insurance premiums, common lighting, landscaping and the care of grounds, repairs, and renovations to common areas and facilities, recreational areas and facilities, if any, garbage collections, snow removal, wages, water and charges, legal fees and accounting fees, sewer charges, cost of operating all gas fired equipment and the cost of electricity for air conditioning chillers, management fees, expenses and liabilities incurred by the management committee under or by reason of this Declaration, the payment of any deficit remaining from a previous period, the creation of a reasonable contingency or other reserve or surplus fund, as well as all other costs and expenses relating to Millstream Condominium. The Management Committee may, from time to time, up to the close of the year for which such cash requirements have been so filed or determined, increase or diminish the amount previously fixed or determined for such year. The committee may include in the cash requirements for any year any liabilities or items of expense which accrued or became payable in the previous year or which might have been included in the cash requirements for a previous year but were not included therein, and also any sums which the management committee may deem necessary or prudent to provide a reserve against liabilities or expenses then accrued or thereafter to accrue although not payable in that year.

The pro rata portion payable by the owner in and for each year or portion of year shall be a sum within limits and on conditions hereinabove provided, bearing to the aggregate amount of such cash requirements for such year or portion of year,

determined as aforesaid, the same ratio as the owner owns an undivided interest in the common areas and facilities, and such assessments, together with any additional sums accruing under this Declaration, shall be payable monthly in advance, or in such payments and installments as shall be required by the Management Committee, and at such times as shall be provided by the Management Committee.

The Management Committee shall have discretionary powers to prescribe the manner of maintaining the operation of Millstream Condominium and to determine the cash requirements of the Management Committee to be paid as aforesaid by the owners under this Declaration. Every such reasonable determination by the committee within the bounds of the Condominium Ownership Act, and this Declaration, shall be final and conclusive as to the owners, and any expenditures made by the committee within the bounds of the Condominium Ownership Act and this Declaration shall be, as against the owner, deemed necessary and properly made for such purpose.

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

Each monthly assessment and each special assessment shall be separate, distinct and personal debts and obligations of the owner against whom the same are assessed at the time the assessment is made, and shall be collectible as such. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. The amount of any assessment, whether regular or special, assessed to the owner of any condominium, plus interest at 3/4% per month and costs, including reasonable attorney's fees, shall become a lien upon such unit upon recordation of notice of assessment as provided in Section 57-8-20 of the Utah Condominium Ownership Act. Said lien

for nonpayment of common expenses shall have priority over all other liens and encumbrances, recorded or unrecorded, except only

(1) Tax and special assessment liens on the unit in favor of any assessment unit, and special district, and,

(2) Encumbrances on the owner's condominium (unit and common areas) recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

A certificate executed and acknowledged by a majority of the management committee stating the indebtedness secured by the lien upon any condominium created hereunder shall be conclusive upon the management committee and the owners as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any owner or any encumbrancer or prospective encumbrancer of a condominium upon request at a reasonable fee, not to exceed Ten (\$10.00) Dollars. Unless the request for a certificate of indebtedness shall be complied with within ten days, all unpaid common expenses which become due prior to the date of the making of such request shall be subordinate to the lien held by the person making the request. Any encumbrancer holding a lien on the condominium may pay any unpaid common expenses payable with respect to such condominium and upon such payment such encumbrancer shall have a lien on such condominium for the amounts paid of the same ranks as the lien of his encumbrance.

Upon payment of a delinquent assessment concerning which such a certificate has been so recorded, or other satisfaction thereof the management committee shall cause to be recorded in the same manner as the certificate of indebtedness a further certificate stating the satisfaction and the release of the lien thereof. Such lien for nonpayment of assessment may be enforced by sale by the management committee or by a bank or trust company or title insurance company authorized by the management committee, such sale to be conducted in accordance with the provisions of law applicable to the exercise of

powers of sale or foreclosure in deeds of trust or mortgages or in any manner permitted by law. In any foreclosure or sale, the owner shall be required to pay the costs and expenses of such proceedings and reasonable attorney's fees.

In case of foreclosure, the owner shall be required to pay a reasonable rental for the condominium and the plaintiff in the foreclosure action shall be entitled to the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The management committee or manager shall have the power to bid in the condominium at foreclosure or other sale and to hold, lease, mortgage and convey the condominium.

40. Mortgage Protection. Notwithstanding all other provisions hereof:

(a) The liens created hereunder upon any condominium shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage (meaning a mortgage with first priority over other mortgages) upon such interest made in good faith and for value, provided that after the foreclosure of any such mortgage there may be a lien created pursuant to Paragraph 39 hereof on the interest of the purchaser at such foreclosure sale to secure all assessments whether regular or special, assessed hereunder to such purchaser as an Owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein;

(b) No amendment to this paragraph shall affect the rights of the holder of any such mortgage recorded prior to recordation of such amendment who does not join in the execution thereof.

(c) By subordination agreement executed by a majority of the Management Committee, the benefits of (a) and (b) above may be extended to mortgages not otherwise entitled thereto.

41. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

41. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

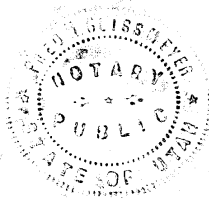
42. Effective Date. This Declaration shall take effect upon recording.

Thomas J. Miller

Dalane R. Miller

STATE OF UTAH)
 : ss.
County of Weber)

On this 31st day of July, 1969, personally appeared before me THOMAS J. MILLER and DALANE R. MILLER, signers of the foregoing instrument, and duly acknowledged to me that they executed the same.



[Signature]

Notary Public
Residing at Ogden, Utah

My Commission Expires: 11-28-70