

WHEN RECORDED RETURN TO:  
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10/12/2005 11:50 AM \$51.00  
Book - 9201 Pg - 8318-8332  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
JAMES R. BLAKESLEY  
2595 E 3300 S 3RD FLOOR  
SLC UT 84109  
BY: ZJM, DEPUTY - WI 15 P.

AMENDMENT TO DECLARATION  
OF  
CONDOMINIUM OF THE MILLPOINTE OFFICE CONDOMINIUMS PHASE 1

This Amendment to Declaration of Condominium of the Millpointe Office Condominiums Phase 1 is made and executed by the Millpointe Office Condominium (the "Association").

RECITALS

A. The Declaration of Condominium of the Millpointe Office Condominiums Phase 1 was recorded in the office of the County Recorder of Salt Lake County, State of Utah on November 19, 1999 as Entry No. 7516419 in Book 8324 at Page 1321 5 of the official records (the "Declaration").

B. The original Declarant was Mill Pointe Associates, L.L.C. (the "Original Declarant").

C. Management and control of the Project has since been transferred by the Original Declarant to the Association.

D. This document affects the real property located in Salt Lake County, Utah, described with particularity on Exhibit "A," attached hereto and incorporated herein by this reference.

E. The Association desires to update the Declaration and eliminate provisions relating to the Original Declarant now irrelevant since the transfer of control and conversion of all of the Convertible Space.

F. All of the voting requirements of Section 22 of the Declaration have been satisfied.

NOW, THEREFORE, for the reasons recited above, and for the benefit of the Project and the Unit Owners thereof, the Association hereby executes this Amendment to Declaration of Condominium of the Millpointe Office Condominiums Phase 1 for and on behalf of all of the Unit Owners.

## AMENDMENTS

1. The following provisions are hereby deleted in their entirety: Section 5.1 (DESCRIPTION OF CONVERTIBLE SPACE) and Section 29 (DECLARANT AND DECLARANT USE).

2. Section 2 of the Declaration, entitled "DEFINITIONS," is amended to modify subsection 2.3 and to add the following new subsections:

2.3 Association shall mean and refer to the Millpointe Office Condominiums Phase1 Association of Unit Owners, a Utah Nonprofit Corporation. The name of the Association is "Millpointe Office Condominium."

2.21 Capital Improvement shall mean and refer to each significant fixed physical asset within the Project, included in its original design or construction, or subsequently added to the Project, intended to extend its useful life and/or enhance, upgrade and improve the utility, value or beauty of the Common Areas or Facilities.

2.22 Project Documents shall mean and refer to the Utah Condominium Ownership Act, Declaration, Bylaws, and Rules and Regulations, as they may be amended or supplemented from time to time.

2.23 Repair shall mean and refer to merely correcting the damage done sometimes by accident or fire or other cause, but more often due to the ravages of time and the deterioration resulting from ordinary wear and tear, by substituting for the damage, decayed or worn-out parts, new material, usually similar to that replaced, and so restoring the structure to its original sound condition.

3. Section 5 of the Declaration is amended to read as follows:

### 5. DESCRIPTION OF UNITS.

5.1 The boundary lines of each Unit are the undecorated and/or unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floor, uppermost ceiling, and the interior surfaces of windows and doors. Each Unit shall include both the portions of the Buildings that are not Common Areas and Facilities within such boundary lines and the space so encompassed within such boundary lines. Without limitation, a Unit shall include any finishing material applied or affixed to the interior surfaces of the perimeter walls, floors and ceilings; and all utility pipes, lines,

meters, systems, fixtures or appliances in the Project and serving only that Unit or its appurtenant Limited Common Areas.

4. Section 12.2 of the Declaration is hereby amended to read as follows:

12.2 The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by a Management Committee consisting of three (3) natural persons, all of whom shall be Unit Owners. The Management Committee shall be elected as provided in the Bylaws. The Management Committee may delegate some of its management responsibilities to a property manager, property management company, employees or staff.

5. Section 13.2 of Article 13, entitled "MAINTENANCE, ALTERATION AND IMPROVEMENT," shall be modified to read as follows:

13.2 A Unit Owner shall be responsible to maintain, repair, replace and keep in a clean and sanitary condition, at the Unit Owner's expense, all portions of his or her Unit and all portions of any Limited Common Areas and Facilities appertaining thereto, including by way of illustration but not limitation all glass, window units and doors. The Management Committee is authorized to adopt rules and regulations with respect to maintenance to preserve the overall aesthetic appearance of the Project.

6. The introductory paragraph of Section 14.2 of the Declaration is hereby amended to remove the condition "if obtainable." The provision as amended shall read as set forth below. The Section 14.2 subsections shall remain the same:

14.2 The Management Committee, for the benefit of the Project and the Unit Owners, shall maintain a policy or policies of casualty and multi-risk "all peril" insurance for the full insurable replacement value of the Buildings, Units, Common Areas and Facilities, and common personal property, fixtures and equipment, payable to the Management Committee as insurance trustee to be disbursed in accordance with the terms of this Declaration, with the following provisions or endorsements:

7. Section 22 of the Declaration is hereby amended to read as follows:

## 22. AMENDMENT.

Except as otherwise provided in this Declaration and except as prohibited by the Act, the provisions of this Declaration may be

amended by the affirmative vote or approval and consent of Unit Owners who own two-thirds (2/3) or more of the undivided interests in the Common Areas and Facilities, including the percentage of ownership interest of the Unit Owners in and to the Common Areas and Facilities. Any amendment so authorized shall be accomplished by recordation of an instrument executed the Management Committee in the Office of the County Recorder of Salt Lake County, Utah. In such instrument, the Management Committee shall certify that the vote or consent required by this Section has occurred.

8. Section 23 of the Declaration, entitled, "ASSESSMENTS," is amended to modify subsection 23.3 and to add the following new subsections:

23.3 In assessing the Unit Owners for capital improvements to the Common Areas and Facilities, there shall be no single improvement exceeding the sum of Ten thousand Dollars (\$10,000.00) or 15% of the annual operating budget, whichever is greater made by the Management Committee without the same having been first voted on and approved by a majority vote of the fractional ownership interest of those present in person or by proxy at a meeting of the Association duly called for that purpose. The foregoing shall not apply in connection with damage or destruction referred to in Section 15 hereof or to such structural alterations of capital additions or capital improvements to the Common Areas and Facilities as are necessary in the Management Committee's reasonable judgment to preserve or maintain the integrity of the Common Areas and Facilities.

~~\$50.00~~ \$25.00

23.1.5 A late fee of Twenty-five and No/100ths Dollars (~~\$50.00~~) or five percent (5%) of the payment, whichever is greater, may be assessed on payments received more than ten (10) days after their due date.

9. Section 23 of the Declaration, entitled, "ASSESSMENTS," is amended to add the following new Sections, first to allow for "Benefit Assessments"; secondly to cover "Special Assessments"; and finally to cover reserve accounts and capital asset reports:

23.6 If an Owner has the choice to accept or reject the benefit, then the Management Committee shall have the power and authority to assess an Owner in a particular area as follows:

23.6.1 If the expense benefits less than all of the Units, then those Units benefited may be specifically assessed, and the specific assessment shall be equitably apportioned among those Units according to the benefit received.

23.6.2 If the expense benefits all Units, but does not provide an equal benefit to all Units, then all Units shall be specifically assessed, but the specific assessment shall be equitably apportioned among all Units according to the benefit received.  
COMMENT: THIS SUBSECTION SHOULD NOT BE DELETED. CALL ME TO DISCUSS.

Failure of the Management Committee to exercise its authority under this Section shall not be grounds for any action against the Association or the Management Committee and shall not constitute a waiver of the Management Committee's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Management Committee has not previously exercised its authority under this Section.

24. The Management Committee may charge a special assessment to cover unanticipated expenses or major repairs.

10. Article 24, entitled "VOTING," is hereby amended to add the following sentence: To vote, a Unit Owner must be in good standing, to wit: current on the payment of his or her Assessments and not in material violation of the Project Documents.

11. Section 28 of the Declaration entitled, ENFORCEMENT, is deleted in its entirety and the following language is substituted in lieu thereof in order to give an aggrieved Unit Owner a remedy and to authorize the prevailing party to recover a reasonable attorneys fee:

28. ENFORCEMENT AND RIGHT TO RECOVER ATTORNEYS

FEES.

Should the Association, Management Committee or an aggrieved Unit Owner be required to take action to interpret or enforce the Project Documents or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, the prevailing party may recover all Additional Charges, including a reasonable attorneys fee, which may arise or accrue.

12. The Declaration is hereby amended to add the following new Sections:

34. FINES.

Each Owner and his occupants, tenants and guests are responsible for adhering to the Project Documents governing the Project. Pursuant to U.C.A., Section 57-8-37 (2001), a breach of these restrictive covenants and rules is subject to enforcement pursuant to the declaration and may include

the imposition of a fine. Each Owner is also accountable and responsible for the behavior of his occupants, tenants and/or guests. Fines levied against occupants, tenants, and guests are the responsibility of the Owner. The Management Committee shall react to each material violation in the following manner:

34.1 Fines imposed are final unless appealed in writing to the Management Committee within thirty (30) days of written notification of the violation. If a request for a hearing is not submitted to the Management Committee within thirty (30) days, the right to a hearing is waived, and the fine imposed will stand. A request for a hearing to appeal should be sent in writing to the Manager or Secretary of the Association.

34.2 Before assessing a fine hereunder, the Management Committee shall give notice to the Unit Owner of the violation and inform the Owner that the fine will be imposed if the violation is not cured within the time provided in the declaration, bylaws, or rules, which shall be at least forty-eight (48) hours.

34.3 A fine assessed hereunder shall:

34.3.1 be made only for a violation of a restrictive covenant, rule or regulation;

34.3.2 be in the amount specifically provided for in the declaration, bylaws, or association rules for that specific type of violation, not to exceed \$500.00; and

34.3.3 accrue interest and late fees as provided in the declaration, bylaws, or association rules.

34.4 Cumulative fines for a continuing violation may not exceed \$500.00 per month.

34.5 An Owner who is assessed a fine hereunder may request an informal hearing to protest or dispute the fine within thirty (30) days from the date the fine is assessed. The hearing shall be conducted in accordance with standards of due process adopted by the Management Committee. No finance charge, default interest, or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

34.6 An Owner may appeal a fine issued hereunder by initiating a civil action within one hundred and eighty (180) days after: (1) A hearing has been held and a final decision has been rendered by the Management Committee hereunder; or (2). The time to request an

informal hearing hereunder has expired without Owner making such a request.

34.7 A fine assessed hereunder which remains unpaid after the time for appeal has expired becomes a lien against the Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of common expenses under Section 23 above.

35. ASSIGNMENT OF RENTS.

35.1 If the Owner of a Unit who is leasing the Unit fails to pay any assessment for a period of more than 60 days after it is due and payable, the Management Committee may demand the tenant to pay to the association all future lease payments due the Owner, commencing with the next monthly or other periodic payment, until the amount due to the association is paid; provided, however, the manager or Management Committee must give the Owner written notice, in accordance with the declaration, bylaws, or association rules, of its intent to demand full payment from the tenant. This notice shall:

35.1.1 provide notice to the tenant that full payment of remaining lease payments will commence with the next monthly or other periodic payment unless the assessment is received within the time period provided in the declaration, bylaws, or association rules;

35.1.2 state the amount of the assessment due, including any interest or late payment fee;

35.1.3 state that any costs of collection, not to exceed \$150, and other assessments that become due may be added to the total amount due; and

35.1.4 provide the requirements and rights described herein.

35.2 If the Owner fails to pay the amount of the assessment due by the date specified in the notice, the manager or Management Committee may deliver written notice to the tenant, in accordance with the declaration, bylaws, or association rules, that demands future payments due to the Owner be paid to the association pursuant hereto. A copy of the notice must be mailed to the Owner at his last known address as shown on the books and records of the Association. The notice provided to the tenant must state:

35.2.1 that due to the Owner's failure to pay the assessment within the time period allowed, the Owner has been notified of the

Management Committee's intent to collect all lease payments due to the association pursuant hereto.

35.2.2 that until notification by the association that the assessment due, including any interest or late payment fee, has been paid, all future lease payments due to the Owner are to be paid to the association; and

35.2.3 payment by the tenant to the association in compliance herewith will not constitute a default under the terms of the lease agreement. If payment is in compliance with this Subsection (6) suit or other action may not be initiated by the Owner against the tenant for failure to pay.

35.3 All funds paid to the association pursuant hereto shall be deposited in a separate account and disbursed to the association until the assessment due, together with any cost of administration which may not exceed \$25, is paid in full. Any remaining balance must be paid to the Owner within five business days of payment in full to the association.

35.4 Within five business days of payment in full of the assessment, including any interest or late payment fee, the manager or Management Committee must notify the tenant in writing that future lease payments are no longer due to the association. A copy of this notification must be mailed to the Owner.

35.5 As used in this section, the terms "lease" or "leasing" shall mean and refer to regular, exclusive occupancy of a Unit by any person or persons, other than the Owner, for which the Owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

#### 36. COVENANTS TO RUN WITH LAND.

This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Association, all other signatories hereto, all parties who hereafter acquire any interest in a Unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Units shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Unit in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.



37. ACTION WITHOUT A MEETING.

In any case in which this Declaration requires the vote of an Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners who collectively hold the required percentages, subject to the following conditions:

37.1 All necessary consents must be obtained prior to the expiration of sixty (60) days from the time the first written consent is obtained; and

37.2 Any change in ownership of a Unit which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose; and

37.3 If approved, written notice of the approval must be given to all Unit Owners at least ten (10) days before any action is required by them.

38. COMBINATION OF UNITS.

An owner of two or more adjoining units shall have the right upon *approval of the Management Committee and the mortgagees of said units*, to combine one or more adjoining units or portions thereof and to alter or amend the declaration and map to reflect such combination.

38.1 Such amendments may be accomplished by the unit owner recording an amendment or amendments to this declaration, together with an amended map or maps containing the same information with respect to the altered units as required in the initial declaration and map with respect to the initial units. All costs and expenses required in such amendments shall be borne by the unit owner desiring such combination.

38.2 All such amendments to the declaration and map must be approved by attorneys employed by the Management Committee to insure the continuing legality of the declaration and the map. The cost of such review by the attorneys shall be borne by the person wishing to combine the units.

38.3 Any amendments of the declaration or map pursuant to this paragraph 20 shall reflect the changes occasioned by the alteration. Such changes shall include a change in the

percentage of undivided interest in the common areas and facilities which are appurtenant to the units involved in the alterations. The remaining combined unit, if two or more units are totally combined, will acquire the total of the percentage of undivided interest in the common areas and facilities appurtenant to the units that are combined as set forth in Exhibit B. If a portion of one unit is combined with another, the resulting units shall acquire a proportionate percentage of the total undivided interest in the common areas and facilities of the units involved in the combination on the basis of area remaining in the respective, combined units. The percentage of undivided interest in the common areas and facilities appurtenant to all other units shall not be changed. All such amendments must, in all instances, be consented to by the Management Committee and also all other persons holding interest in the units affected. The consent of other unit owners need not be obtained to make such amendments or alterations valid, providing the percentages of undivided interest in the common areas and facilities of the other unit owners remain unchanged.

13. Section 7.01 of Article VII, entitled "MEMBERS MEETINGS," is deleted in its entirety and the following language is substituted in lieu thereof in order to provide some scheduling flexibility:

7.01 Annual Meetings. The annual meeting of the Association shall be held on the first Monday in December of each year at 9:00 a.m. or at such other time and place determined by the Management Committee; provided, however, that whenever such date falls on a legal holiday, the meeting shall be held on the next succeeding business day, and further provided that the Management Committee may by resolution fix the date of the annual meeting on such date or at such other place as the Management Committee may deem appropriate.

14. Section 7.08, entitled "Informal Action By Members" of Article VII of the Bylaws, entitled MEMBERS MEETINGS, is deleted in its entirety and the following language is substituted in lieu thereof:

7.08 Action Without Meeting.

Except for the election of the members of the Management Committee, any action which may be taken at a meeting of the Association may be taken without a meeting provided notice of the proposed action is given to all Unit Owners and if thereafter authorized by a writing signed by all of the persons who would be

required to approve such action at a meeting, and filed with the Secretary.

15. Section 8.02, entitled "Election, Number, Tenure And Qualifications, of the Bylaws is hereby amended to add the following sentence: The lawful agents of institutional Unit Owners (e.g., corporations, limited liability companies, trusts, and so forth) may also serve on and as members of the Management Committee.

16. Section 8.09, entitled "Information [sic] Action by Management Committee" of Article VIII, entitled "MANAGEMENT COMMITTEE" of the Bylaws is deleted in its entirety and the following language is substituted in lieu thereof:

8.09 Action Without Meeting.

Any action which may be taken at a meeting of the Management Committee may be taken without a meeting provided notice of the proposed action is given to all members of the Management Committee beforehand and if thereafter authorized by a writing signed by all of members of the Management Committee, and an explanation of the action so taken is posted at a prominent place or places within the Common Area within three (3) days after the written consent of all of the members of the Management Committee has been obtained.

17. The effective date of this Amendment is the date it is recorded in the office of the County Recorder of Salt Lake County, Utah.

IN WITNESS WHEREOF, Association has executed this instrument the 5 day of ~~September~~, 2005.

October  
mm m  
[Signature]

MILLPOINTE OFFICE CONDOMINIUM

By: [Signature]  
Name: ROBERT J. WEIR  
Title: Secretary



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

The land referred to in the foregoing document is located in Salt Lake County, Utah and is described more particularly on the attached pages.

RXLP MILLPOINTE OFFICE PH 1 CONDO AMD

B FLG	BLK/BLDG	IND FLG	LOT/QUAR	BLK, LOT-QUAR PARCEL NUMBER	OBSOLETE?
		S	1	22-23-252-001-0000	YES
		S	2	22-23-252-002-0000	YES
		S	3	22-23-252-003-0000	YES
		S	4	22-23-252-004-0000	YES
		S	5	22-23-252-005-0000	YES
		S	6	22-23-252-006-0000	YES
		S	7	22-23-252-007-0000	YES
		S	8	22-23-252-008-0000	YES
		S	9	22-23-252-009-0000	YES
		S	10	22-23-252-010-0000	YES
		S	11	22-23-252-011-0000	YES
		S	12	22-23-252-012-0000	YES
		S	13	22-23-252-013-0000	YES
		S	14	22-23-252-014-0000	YES
		U	100	22-23-252-018-0000	NO
		U	110	22-23-252-019-0000	NO
		U	120	22-23-252-017-0000	NO
		U	130	22-23-252-016-0000	NO
		U	140	22-23-252-020-0000	NO

PF1=VTDI PF5=RKKP PF7=RXAB LIST PF12=PREV ENTER=NEXT CURSOR DOWN AND ENTER=RXPN  
 PF4=RETURN TO RXEN PF10=LAST RECORDS

RXLP MILLPOINTE OFFICE PH 1 CONDO AMD				BLK, LOT-QUAR		
B FLG	BLK/BLDG	IND FLG	LOT/QUAR	PARCEL	NUMBER	OBSOLETE?
		U	140	22-23-252-020-0000		NO
		U	150	22-23-252-021-0000		NO
		U	160	22-23-252-022-0000		NO
		U	200	22-23-252-025-0000		NO
		U	220	22-23-252-024-0000		NO
		U	230	22-23-252-023-0000		NO
		U	250	22-23-252-026-0000		NO
		U	300	22-23-252-028-0000		NO
		U	310	22-23-252-027-0000		NO
		U	AREA	22-23-252-015-0000		NO

PF1=VTDI PF5=RKKP PF7=RXAB LIST PF12=PREV ENTER=NEXT CURSOR DOWN AND ENTER=RXPN  
 PF4=RETURN TO RXEN PF10=LAST RECORDS