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AND RESTRICTIONS OF  
MILLCREEK COTTAGES**

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**DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF  
MILLCREEK COTTAGES**

THIS DECLARATION of Covenants, Conditions and Restrictions is made on the date hereinafter set forth to establish a planned unit development known as Milkcreek Cottages - Phase One.

**RECITALS**

WHEREAS, Declarant is the owner of certain real property in the City of St. George, County of Washington, State of Utah, which is more particularly described below, and

WHEREAS, Declarant will convey the properties subject to certain protective covenants, conditions, restrictions, reservations, assessments, charges and liens as hereinafter set forth, and

WHEREAS, it is the desire and intention of Declarant to construct detached single family dwellings on the properties and sell and convey the same to various purchasers.

**DECLARATION**

NOW, THEREFORE, Declarant hereby declares that all of the properties described below shall be held, sold and conveyed and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and the map recorded herewith entitled "Milkcreek Cottages-Phase One" consisting of one sheet, prepared and certified by Boyd R. Urie, a Utah Registered Land Surveyor, which are all for the purpose of protecting the value and desirability of, and which shall be construed as covenants of equitable servitude and shall run with the properties and be binding on all parties having any right, title or interest in the properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof:

BEGINNING AT A POINT N 89°28'15" E 837.92 FT. ALONG THE SECTION LINE AND NORTH 305.81 FT. ALONG THE EAST LINE OF 1300 WEST STREET FROM THE S 1/4 COR. SEC. 14, T42S, R16W, S1&M, AND RUNNING THENCE NORTH 397.64 FT., THENCE N 89°31'58" E 292.01 FT., THENCE SOUTH 327.18 FT., THENCE S 89°32'40" W 17.01 FT., THENCE SOUTH 70 23 FT., THENCE S 89°29'06" W 275.00 FT. TO THE POINT OF BEGINNING, CONTAINING 2.647 ACRES.

**ARTICLE I -- DEFINITIONS**

Section 1. **Declaration** shall mean and refer to this instrument, and any amendments.

Section 2. **Plat or Map** shall mean and refer to the subdivision plat recorded herewith captioned "Milkcreek Cottages-Phase One," or any replacements thereof, or additions thereto.

Section 3. **Properties** shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be subjected to this Declaration.

Section 4. **Common Area** shall mean and refer to that portion of property owned by the Association and shown on the plat as dedicated to the common use and enjoyment of the owners.

Section 5. **Limited Common Area** shall mean and refer to that portion of property owned by the Association and shown on the plat as dedicated to the exclusive use and enjoyment of the owner of the lot to which such limited common area is adjacent and/or appurtenant, subject to rights of the Association, as herein set forth.

**Section 6. Lot** shall mean and refer to any separately numbered and individually described plot of land shown on the plat, designated for private ownership, and shall exclude the common and limited common areas.

**Section 7. Townhome** shall mean and refer to a single family dwelling with or without walls or roofs in common with other single family dwelling lots, and shall include fee title to the real property lying directly beneath said single family dwelling.

**Section 8. Owner** shall mean and refer to the entity, person or group of persons owning fee simple title to any lot which is within the properties. Regardless of the number of parties participating in ownership of each lot, those parties shall be treated, as a group, as one "owner."

**Section 9. Association** shall mean and refer to Millcreek Cottages Association, its successors and assigns.

**Section 10. Member** shall mean and refer to every person or entity who holds membership in the Association.

**Section 11. Trustees** shall mean and refer to the governing body of the Association.

**Section 12. Declarant** shall mean and refer to Jay Ence and his heirs, successors and assigns.

**Section 13. Mortgage** includes "deed of trust" and mortgagee includes "trust deed beneficiary."

## ARTICLE II -- PROPERTY RIGHTS

**Section 1. Title in the Common Area** The Declarant, its successors and assigns, will convey fee simple title to the common area and limited common area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot, subject to covenants, restrictions, easements, encumbrances and liens created by or pursuant to this Declaration, easements and rights-of-way of record, and a covenant by the Association to maintain the common area in good repair and condition at all times and to operate the same at its own expense in accordance with high standards, which covenants shall be deemed to run with the land and shall be binding upon the Association, its successors and assigns.

**Section 2. Owners' Easements of Enjoyment** Every owner shall have a right and easement of use and enjoyment in and to the common area which easement shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common area.

(b) The right of the Association to limit the number of guests of members using the common area.

(c) The right of the Association to suspend the voting rights of a member for any period during which any assessment against his lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.

(d) With the approval of all first mortgagees on lots and sixty-seven percent (67%) of the owners, the right of the Association to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the common area to any private individual, corporate entity, public agency, authority, or utility. The granting of easements for public utilities or other public purposes consistent with the intended use of such common area by the Association shall not be deemed a transfer within the meaning of the next preceding clause, and such grants may be made by the Association.

(e) The right of the Association to take such steps as are reasonably necessary or desirable to protect the common area against foreclosure.

(f) The right of each individual lot owner to the exclusive use of the limited common area adjacent and appurtenant to his respective lot, and the right of each owner to exclusive use of the parking area, if any, designated with his lot number on the plat.

(g) The terms and conditions of this Declaration.

Section 3. **Limited Common Area** Ownership of each lot shall entitle the owner thereof to the exclusive use of the limited common area adjacent and appurtenant thereto

Section 4. **Delegation of Use** Any owner shall be deemed to delegate his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property. No one who is non-resident shall have any such right of enjoyment.

Section 5. **Driveways** The driveway appurtenant to each townhome shall be subject to the exclusive use of the owner, notwithstanding it may be platted as common area. It shall, however, in all other respects, be treated as common area.

Section 6. **Lot Area outside Townhome Boundaries** In the event any townhome does not occupy the entire area of the lot on which it is placed, the lot area outside the townhome exterior walls shall be treated as limited common area for the exclusive use and enjoyment of the owner of the lot, subject to the rights of the Association in such limited common area as herein set forth.

### ARTICLE III -- MEMBERSHIP AND VOTING RIGHTS

Section 1. **Membership** Every person or entity who is owner of any lot shall be a member of the Association. The term "owner" shall include contract purchasers but shall not include persons or entities who hold an interest merely as security for the performance of an obligation unless and until said holder has acquired title pursuant to foreclosure or proceedings in lieu of foreclosure. Membership shall be appurtenant to and may not be separated from ownership of any lot. Membership in the Association shall automatically transfer upon transfer of title by the record owner to another person or entity.

Section 2. **Voting Rights** The Association shall have two classes of voting membership:

**CLASS A.** Class A members shall be all members with the exception of the Declarant and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, the group of such persons shall be a member. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot. A vote cast at any association meeting by any of such co-owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the lot concerned unless written objection is made prior to said meeting, or verbal objection at said meeting, by another co-owner of the same lot. In the event objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

**CLASS B.** The Class B member shall be the Declarant (as defined in the Declaration,) and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) the expiration of four (4) months after conveyance of seventy-five percent (75%) of lots to purchasers; or
- (b) the expiration of three (3) years from the first lot conveyance to a purchaser.

#### ARTICLE IV – FINANCES AND OPERATIONS

**Section 1. Creation of the Lien and Personal Obligation of Assessments** The Declarant for each lot owned by him within the properties hereby covenants and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association (1) annual assessments or charges, and, (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with interest, costs of collection and a reasonable attorney's fee, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs of collection and a reasonable attorney's fee, as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for defendant assessments shall not pass to his successors-in-title unless expressly assumed by them.

**Section 2. Purpose of Assessments** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the properties and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the common areas and of the townhomes situated upon the properties. The assessments must provide for but are not limited to, the payment of taxes and insurance, the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the common and limited common areas, the payment of the cost of repairing, replacing, and maintaining the exteriors of each lot, the payment of administrative expenses of the Association, insurance deductible amounts, and the establishment of a reserve account for repair, maintenance and replacement of those common and limited common areas which must be replaced on a periodic basis, and the assessments may provide, at the discretion of the Trustees, for the payment of other charges, including, without limitation, trash collection, sewer and water costs required by this Declaration or that the Trustees shall determine to be necessary to meet the primary purposes of the Association.

**Section 3. Basis and Maximum Annual Assessments** Until January 1 following recording of this Declaration, the maximum annual assessment shall be Five Hundred Dollars (\$500.00) per lot. This amount shall be the basis of calculation for future maximum annual assessments.

(a) From and after the date referred to above the maximum annual assessment may be increased once a year by the Trustees without a vote of the members by an amount equivalent to the decrease in the real value of the amount stated above, as determined by reference to the change in U.S. City Average Consumer Price Index for all Urban Consumers published by the U.S. Department of Labor, Bureau of Labor Statistics, as it changed from one year prior to the date referred to above, to the date of fixing the maximum assessment by the Trustees

(b) From and after the above-referenced date the maximum annual assessment may be increased above the Annual Cost of Living percentage increase by a vote of sixty-seven percent (67%) of each class of members voting, in person or by proxy, at a meeting duly called for this purpose

(c) The maximum annual assessment shall be increased automatically, without vote, by an amount equal to actual increases in the amounts payable for taxes, special assessments and other governmental assessments or charges.

(d) The Trustees may, after consideration of current and future needs of the Association, fix the annual assessment at an amount not to exceed the maximum.

**Section 4. Special Assessments for Capital Improvements** In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of common or limited common area structures, fixtures and personal property related thereto, provided that any such assessment shall have the assent of sixty-seven percent (67%) of the votes of all of the members authorized to vote, in person or by proxy, at a meeting duly called for this purpose.

**Section 5. Change in Basis and Maximum of Annual Assessments** The Association may change the basis and maximum of the assessments fixed by Section 3 hereof prospectively for any annual period provided that any such change shall have the assent of sixty-seven percent (67%) of the votes of each class of members, voting in person or by proxy, at a meeting duly called for this purpose.

**Section 6. Additional Assessments** In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to streets or other common or limited common areas from the activities of the City of St. George in maintaining, repairing or replacing utility lines and facilities thereon, it being acknowledged that the ownership of utility lines, underground or otherwise is in the City up to and including the meters for individual units, and that they are installed and shall be maintained to City specifications.

**Section 7. Notice and Quorum for Any Action Authorized Under Sections 3, 4 and 5** Written notice of any meeting of members called for the purpose of taking any action authorized under Sections 3, 4 or 5 shall be sent to all members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of members, or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at such a meeting, another meeting may be called, subject to the notice requirement set forth, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 8. Uniform Rate of Assessment; Periodic Assessment** Both annual and special assessments must be fixed at a uniform rate for all lots. This method of determining the assessments, dues and charges may not be changed without the prior written approval of sixty-seven percent (67%) of first mortgagees.

Both annual and special assessments may be collected on a monthly, quarterly or semi-annual basis.

**Section 9. Date of Commencement of Annual Assessments; Duties of Trustees; Due Dates; Adjustment of Assessments in Certain Cases** The annual assessment provided for herein shall commence to accrue on the date fixed by the Trustees of the Association to be the date of commencement.

The first annual assessments shall be adjusted according to the number of months remaining in the calendar year and may commence immediately upon determination by the Trustees. At least thirty (30) days prior to the commencement of each new assessment period, the Trustees shall send or cause to be sent a written notice of the annual assessment to each owner subject thereto. Receipt of notice shall not be a pre-requisite to validity of the assessment.

The due dates shall be established by the Trustees, upon which dates the assessments for any year shall become due and payable; provided, that the Trustees may provide for the payment of annual and special assessments in equal installments throughout the assessment year. The due date of any special assessments authorized herein shall be fixed by the Trustees, subject to the same notice and payment requirements pertaining to annual assessments.

The Trustees shall prepare a roster of the properties and the assessments applicable thereto at the same time that it shall fix the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any member at reasonable times.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified lot has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

A first mortgagee who has made a written request including the mortgagee's name and address, and the lot number of the unit it has the mortgage on is entitled to a written certificate from the Association advising of any default in the performance by an owner of any obligation due under the Declaration which is not cured within sixty (60) days.

**Section 10. Effect of Non-Payment of Assessment - Remedies of the Association**

Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such different rate as the Trustees shall determine appropriate) until paid.

The Association may bring an action at law against the owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment, or may foreclose the lien against the property in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law, or may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent member, and there shall be added to the amount of such delinquent assessment the costs and expenses of said action, sale or foreclosure, and a reasonable attorney's fee, together with an account for the reasonable rental for the lot from time to time of commencement of the foreclosure and the Association shall be entitled to the appointment of a receiver to collect the rental without regard to the value of the other security.

A power of sale is hereby conferred upon the Association which it may exercise and under which the lot of an owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as Trustee for purposes of power of sale foreclosure.

No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or by abandonment of his lot.

**Section 11. Subordination of the Lien to Mortgages** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such lot or owner from liability for assessments thereafter becoming due or from the lien thereof.

**Section 12 Exempt Properties** The following property subject to this declaration shall be exempted from the assessment, charge and lien created herein:

- (a) Any properties dedicated and accepted by the local public authority and devoted to public use;
  - (b) All common and limited common area;
- However, no land or improvement devoted to dwelling use shall be exempt from said assessment, charge and lien.

**Section 13. Insurance** The Trustees of the Association, or their duly authorized agents, shall obtain and continue in effect:

- (a) Property damage insurance, in one of the following alternate forms:



- (i) a policy of property insurance equal to full replacement cost (exclusive of land, foundation, excavation and other like items) of the common area, limited common area, and improvements thereon.

The Association shall also require each owner to obtain a similar policy of insurance covering full replacement value (exclusive of land, foundation, excavation and other like items) of his lot and improvements thereon with an endorsement listing the Association, "for the use and benefit of the lot owners" as an additional named insured with a provision that the policy may not be cancelled upon less than thirty days written notice to the Association; or in the alternative to the obtaining of insurance specified previously in subparagraph (i) the Association may obtain a "master" or "blanket" policy of insurance equal to full replacement cost (exclusive of land, foundation, excavation and other like items) of the lots, common area, limited common areas and improvements thereon, with an endorsement listing the Association, "for the use and benefit of the lot owners" as an additional named insured with a provision that the policy may not be cancelled upon less than thirty days written notice to the Association.

Insurance procured under this subparagraph (a) shall (1) include an agreed amount endorsement or its equivalent, if available, or an inflation guard endorsement, (2) include construction code endorsement, providing that coverage shall be extended to the cost of construction, if any, required by reason of code provisions requiring changes to undamaged portions of partially demolished premises be made in accordance with current building codes and (3) afford protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage and such other risks as are customarily covered in similar projects. The maximum deductible shall be \$10,000.00 or 1% of the policy amount whichever is lesser, except in case of coverage related to individual units in which case the deductible shall be the \$1,000.00 or 1% of the policy amount, whichever is lesser.

(b) a comprehensive policy of public liability insurance covering all of the common and limited common property for at least \$1,000,000.00 per occurrence for personal and legal liability that results from employment contracts to which the Association is a party. Such liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an owner because of negligent acts of the Association or other owners.

(c) fidelity coverage against dishonest acts on the part of managers, trustees, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the owners or members. Said fidelity insurance shall (1) name the Association as obligee or beneficiary, and (2) be written in an amount not less than the sum of (i) three months' operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

**Section 14. Insurance Policy Provisions** Any insurance obtained by the Association shall provide that:

(a) the named insured under any such policies shall be the Association, "for the use and benefit of the lot owners" and shall have standard mortgagee clauses;

(b) insurance coverage may not be brought into contribution with insurance purchased by the lot owners or their mortgagees;

(c) coverage must not be prejudiced by (i) any act or neglect of the lot owners when such act or neglect is not within the control of the Association or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no control;

(d) coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to the Association;

(e) the insurer shall waive subrogation as to any and all claims against the Association, the owner of any lots and/or their respective agents, employees or tenants, or invalidity arising from the acts of the insured.

(f) the insurer shall waive any defenses based on co-insurance (i.e., the insurance shall be primary, even if a lot owner has other insurance that covers the same loss); and

(g) any provisions that the carrier may elect to restore damage in lieu of a cash settlement shall not be exercisable without the prior written approval of the Association or when in conflict with any requirement of law.

**Section 15. Insurance Related Provisions** Premiums for insurance obtained by the Trustees pursuant to these sections shall be a common expense of the Association and shall be collectable from members of the Association as part of the annual assessments.

Each owner shall insure his own personal property and may insure his real property for his own benefit.

Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirement for planned unit development projects established by Federal National Mortgage Association and Government National Mortgage Association, so long as either is a mortgagee or owner of a lot within the project, except to the extent such coverage is not available or has been waived in writing by Federal National Mortgage Association or Government National Mortgage Association.

A first mortgagee who has made written request including the mortgagee's name and address, and the lot number of the unit it has the mortgage on shall be entitled to receive written notice of lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

**Section 16. Damage or Destruction** In the event of damage or destruction by fire or other casualty to any portion of the development covered by insurance written in the name of the Association, the Trustees are empowered to and shall represent the members in any proceedings, negotiations, settlements or agreements the Association being appointed attorney-in-fact of each owner for this purpose. The Association shall, with concurrence of the mortgagees, if any, upon receipt of the insurance proceeds, contract to rebuild, restore, or repair such damaged or destroyed portions of the development to its former condition. Unless at least sixty-seven percent (67%) of the owners and sixty-seven percent (67%) of first mortgagees have given their prior written approval the Association shall not be entitled to use insurance proceeds for other than the repair, replacement or reconstruction of the damaged or destroyed property.

A first mortgagee who has made written request including the mortgagee's name and address, and the lot number of the unit it has the mortgage on shall be entitled to receive written notice of destruction that affects a material portion of the properties, or a material portion of the unit securing its mortgage.

In the event the insurance proceeds are insufficient to pay all the costs of repairing, restoring or rebuilding the Trustees shall be empowered to levy a special assessment against all owners of damaged townhomes or owners with damaged adjacent common area in such proportion as the Trustees deem equitable to make up any deficiency for repair of townhomes or limited common area, and the Trustees shall further be empowered to levy a special assessment against all owners to make up any deficiency for repair or rebuilding of the common area or limited common area.

**Section 17. Payments by First Mortgagees** First mortgagees of lots may jointly or singly pay taxes or other charges which are in default and which have or may become a charge against any common property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such common property. First mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

**Section 18. Condemnation** A first mortgagee who has made written request including the mortgagee's name and address, and the lot number of the unit it has the mortgage on shall be entitled to receive a written notice of condemnation action that affects a material portion of the properties, or a material portion of the unit securing its mortgage. In any proceedings, negotiations, or settlements for condemnation of all or part of the properties, the Association shall be the agent of the owners and is hereby appointed their attorney-in-fact for

such purpose. Any proceeds shall be payable to the Association for the benefit of the owners and their mortgagees, as their interests may appear. In the event the Association is required to interplead such funds, it shall be entitled to reasonable attorney's fees and costs incurred in such action.

**Section 19. Management** Any agreement for professional management of the property by the developer, sponsor or builder may not exceed three years' duration and must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

#### ARTICLE V -- PARTY WALLS

**Section 1. General Rules of Law to Apply** Any wall which is built as a part of the original construction upon the properties and placed on the dividing line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**Section 2. Sharing of Repair and Maintenance** The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

**Section 3. Destruction by Fire or Other Casualty** If a party wall is destroyed or damaged by fire or other casualty, then, to the extent said destruction or damage is not covered by insurance and repaired out of the proceeds of the same, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

**Section 4. Weatherproofing** Notwithstanding any other provision of this article, an owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance and paid for out of the proceeds of the same.

**Section 5. Right to Contribution Runs with Land** The right of any owner to contribution from any other owner under this article shall be appurtenant to the land and shall pass to such owner's successors in title.

**Section 6. Arbitration** In the event of any dispute arising concerning a party wall, or under the provisions of this article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator within ten (10) days of their selection, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request to do so, the Trustees of the Association shall select an arbitrator for the refusing party.

#### ARTICLE VI -- ARCHITECTURAL CONTROL COMMITTEE

No building, fence, wall or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Trustees or, if such a committee is in existence, by an Architectural Control Committee composed of three (3) or more representatives appointed by the Trustees. In the event said Trustees, or their

designated committee fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and compliance with article will be deemed to have been made.

Notwithstanding the foregoing, without the prior written approval of at least sixty-seven percent (67%) of the owners and sixty-seven percent (67%) of first mortgagees, neither the Association nor the Architectural Control Committee shall, by act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance or maintenance of lots, the maintenance of the common and limited common areas, including walls, fences, driveways, lawns and plantings.

#### ARTICLE VII -- EXTERIOR MAINTENANCE

**Section 1. Exterior Maintenance.** Each unit owner shall be primarily responsible for maintenance to the exterior of the townhome owned and any limited common area appurtenant thereto. The Association shall, however, in addition to maintenance upon the common area, have the right upon default of the Owners, after ten days written notice, to provide exterior maintenance upon each lot and limited common area, including, but not limited to the following: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, fences, street signs, lights, mailboxes, trees, shrubs, grass, walks, driveways, glass, doors and screens on the lot, and maintenance to other exterior improvements.

**Section 2. Assessment of Cost.** The cost of such exterior maintenance performed by the Association shall be assessed against the lot upon which such maintenance is done and shall be added to and become part of the annual maintenance assessment or charge to which such lot is subject under Article IV hereof and, as part of such annual assessment or charge, it shall be a lien and obligation of the owner and shall become due and payable in all respects as provided in Article IV hereof.

#### ARTICLE VIII -- USE RESTRICTIONS

**Section 1. General Use Restrictions.** All of the properties which are subject to this declaration of covenants, conditions and restrictions are hereby restricted to residential dwellings, buildings in connection therewith, including but not limited to community buildings. All buildings or structures erected in the properties shall be of new construction and no buildings or structures shall be removed from other locations to the properties and no subsequent buildings or structures dissimilar to those initially constructed shall be built on any lot. No building or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any lot at any time.

**Section 2. Construction, Business and Sales.** Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Declarant to maintain such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of lots during the period of construction and sale of said lots and upon such portion of the premises as Declarant deems necessary including but not limited to a business office, storage areas, construction yard, signs, model units and sales offices.

**Section 3. Signs, Commercial Activity.** Except for one "For Rent" or "For Sale" sign of not more than five (5) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any lot or any portion of the properties. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the properties. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set

forth hereinafter and in its Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time.

**Section 4. Quiet Enjoyment** No noxious or offensive activity shall be carried on upon any part of the properties nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the owners or which shall in any way increase the rate of insurance.

**Section 5. Animals** No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said lots, except that dogs, cats or other household pets, two or less in total number, may be kept provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on the property which result in an annoyance or are obnoxious, by noise, smell or otherwise, to lot owners. All pets must be kept in the lots or on a leash when in the common areas.

**Section 6. Use of Common Area** Except for the rights of ingress and egress, owners are hereby prohibited and restricted from using any of said common area, other than as permitted in this declaration of covenants or as may be allowed by the Trustees of the Association. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all owners of lots in the properties and is necessary for the protection of the interests of all said owners in and to the common area.

As part of the overall program of development of the properties into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the common area and facilities thereon, including any community buildings, without charge during the sales and construction period to aid in its marketing activities.

**Section 7. Parking** Parking spaces within the properties shall be used for parking of motor vehicles actually used by the owner or his immediate family for personal use and not for commercial use. No motor vehicle which is inoperable shall be placed in parking areas, and any motor vehicle which remains parked over 72 hours shall be subject to removal by the Association, at the owner's expense. Such expense of removal shall be secured by the lien for assessment obligations previously provided. If parking spaces are designated on the plat with numbers corresponding to Lot numbers, each such space is for the exclusive use of the lot owner. All lot owners shall have co-equal right to use of common parking spaces, and no owner may use more than his proportionate share of such common parking area. Recreational vehicles, boats, travel trailers and similar property may not be parked in common parking areas, and unless permitted by rule of the Association, may not be parked in parking areas designated on the plat for exclusive use. Garage doors shall remain closed except for entering or exiting the garage.

**Section 8. Planting and Gardening** No planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon any property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Trustees.

**Section 9. External Apparatus** No lot owner shall cause or permit anything (including, without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Trustees.

**Section 10. Exterior Television or Other Antennas** No exterior radio or other antennas, except one television antenna which shall not exceed four feet in height, per lot, shall be placed, allowed or maintained upon any lot or upon any structure or portion of the improvements situated and located upon the properties without prior written approval and the authorization of the Trustees.

**Section 11. Garbage Removal** All rubbish, trash and garbage shall be regularly removed from the lots and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers.

**Section 12. Oil and Mining Operations.** No oil drilling, oil development operations, or refining, quarrying or mining operations of any kind shall be permitted upon or in the properties of any lot. No derrick, lift, shaft or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the properties or any lot.

**Section 13. Interior Utilities.** All utilities, fixtures and equipment installed within a lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a lot, shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair any easement or hereditament nor do any act nor allow any condition to exist which will adversely affect the other lots or owners.

**Section 14. Leases.** Any lease or rental agreement shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association and that any failure by lessee to comply with the terms of such documents shall be a default under the lease.

#### ARTICLE IX -- EASEMENTS

**Section 1. Encroachments.** Each lot and the property included in the common and limited common areas shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the structure containing lots is partially or totally destroyed, and then rebuilt, the owners of the lots so affected agree that minor encroachments of parts of the adjacent lots or common or limited common areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

**Section 2. Utilities.** There is hereby created a blanket easement upon, across, over and under all of the properties for ingress, egress, limited to water, sewers, gas, telephone and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for all public utilities serving the properties to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the properties, provided that all such services shall be placed underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the properties except as initially programmed and approved by the Declarant or thereafter approved by Declarant or the Association. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on said property without conflicting with the terms hereof. All utilities that are installed in, upon, under or through the common areas of the properties shall be maintained by the Association.

**Section 3. Police, Fire and Ambulance Service.** An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and common and limited common area in the performance of their duties.

**Section 4. Maintenance by Association.** An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the common and limited common areas and any lot to perform the duties of maintenance and repair.

**Section 5. Other Easements** The easements provided for in this Article shall in no way affect any other recorded easement.

#### ARTICLE X – EXPANSION

Declarant reserves the right at its sole election to expand the properties to include additional property more particularly described below by unilateral action of Declarant without the consent of owners for a period of seven (7) years from the date of recording of this Declaration in the office of the Washington County Recorder, County of Washington, State of Utah.

The property, all or part of which may be included in one or more expansions, is located in Washington County, Utah, and is more particularly described as follows:

Beginning at a point N 89°28'15" E 1112.92 ft. along the Section line and NORTH 305.75 ft. from the S1/4 Cor. Sec. 14, T42S, R16W, SLB&M, and running thence NORTH 70°23 ft., thence N 89°32'40" E 17.01 ft., thence NORTH 327.21 ft., thence S 89°31'58" W 14.45 ft., thence N 00°22'26" W 96.14 ft., thence N 89°32'40" E 754.52 ft., thence S 00°36'20" E 502.40 ft., thence S 89°32'40" W 539.65 ft., thence N 00°24'31" W 9.06 ft., thence S 89°29'06" W 222.06 ft. to the point of beginning.

Expansion shall occur by the Declarant filing:

1. an additional subdivision plat or plats creating additional planned unit developments on the property described above, stating on each plat the intention to have the property described on said plat bound by the terms, covenants and conditions of this Declaration upon the filing of a Declaration of Annexation, and
2. a Declaration of Annexation (after satisfying conditions hereafter stated), which shall state the Declarant's intention to have the area described therein subject to this Declaration. Upon the recording of such a Declaration of Annexation, the property described therein shall be subject to this Declaration.

Any additional properties annexed hereto by the Declarant shall be exclusively for residential single family dwellings, architecturally compatible to the existing townhomes, substantially identical to the townhomes already constructed, constructed out of similar materials, with substantially similar lot size. The maximum number of units to be added shall be 73. The Declarant shall have the sole discretion as to development of the common area in any expansion area and may include any facilities or amenities thereon that Declarant deems necessary and such common areas shall be owned by the Association. Additional common and limited common area shall be added in any expansion area to maintain a ratio of common and limited common area to total lot area similar to the ratio which now exists.

The improvements in an expansion area shall be substantially completed prior to recordation of the Declaration of Annexation. The common area and limited common area in such area shall be deeded by the Declarant to the Association, free and clear of all encumbrances and liens, prior to recordation of the Declaration of Annexation and the Association shall accept the deed to said areas. Owners in the original and expansion areas shall have the same rights to the use and enjoyment of the property and facilities of the Association. Owners in the original and expansion areas shall all have equal membership status in the Association. The liability for assessments of each lot and lot owner in any expansion area shall be equal to the liability of each lot and lot owner in the original properties.

**ARTICLE XI -- GENERAL PROVISIONS**

**Section 1. Enforcement** The Association, the Declarant or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or of any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right of the Association or any owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof, the party against whom enforcement is sought shall pay to the Association or enforcing owner a reasonable attorney's fee.

**Section 2. Severability** All of said conditions, covenants and reservations contained in this Declaration shall be construed together, but if any one of said conditions, covenants, or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired, and the Declarant, Association and owners, their successors, heirs and assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.

**Section 3. Duration** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

**Section 4. Amendment** The covenants, conditions and restrictions of this Declaration may be amended by an instrument signed by not less than sixty-seven percent (67%) of the owners. Amendments affecting the rights of first mortgagees shall require their written approval. Prior to making any material amendment thirty (30) days written notice must be given to all holders of liens of first priority, setting forth the nature of the amendment and the date of the members' meeting to vote thereon.

Any amendment of the Declaration affecting the following shall not be effective without consent of at least fifty-one percent (51%) of the first mortgagees: voting rights; assessments; assessment liens; or subordination of assessment liens; reserves for maintenance, repair and replacement of common areas; responsibility for maintenance and repairs; reallocation of interests in the common or limited common areas, or rights to their use; boundaries of any lot; conversion of lots into common areas or vice versa; expansion or contraction of the properties, or the addition, annexation or withdrawal of property to or from the properties; insurance or fidelity bonds; leasing of townhomes; imposition of any restrictions on an owner's right to sell or transfer his or her unit; a decision by the Association to establish self management when professional management had been required previously by a mortgagee; restoration or repair of the properties (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration; any action to terminate the legal status of the properties after substantial destruction or condemnation occurs; or any provisions that expressly benefit mortgage holders, insurers or guarantors. When owners are considering termination of the legal status of the project for reasons other than substantial destruction or condemnation of the property, the consent of at least sixty-seven percent (67%) of first mortgagees must be obtained.

A first mortgagee who has made written request including the mortgagee's name and address, and the lot number of the unit it has the mortgage on shall be entitled to receive written notice of any proposed action that requires the consent of first mortgagees.

Any amendment must be properly recorded in the records of Washington County, Utah, to become effective.



**Section 5. Notices.** Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it.

**Section 6. Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

**Section 7. Waivers.** No provision contained in the Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

**Section 8. Topical Headings.** The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

**ARTICLE XII -- ASSIGNMENT OF POWERS**

Any and all rights and powers of Declarant herein contained may be delegated, transferred or assigned.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 28th day of DECEMBER, 19 87.

By Jay Ence  
JAY ENCE  
Declarant

STATE OF UTAH )  
COUNTY OF WASHINGTON ) ss.

On the 28th day of DECEMBER, 19 87 personally appeared before me Jay Ence, the signer of the above instrument, who duly acknowledged to me that he executed the same.

[Signature]  
NOTARY PUBLIC  
Residing at: ST. GEORGE, UT

My Commission Expires:  
12-28-89



**BYLAWS**      **325821**  
**OF**  
**MILLCREEK COTTAGES TOWNHOMES ASSOCIATION**

**ARTICLE I**

**NAME AND LOCATION**

The name of the corporation is Millcreek Cottages Townhomes Association, hereafter referred to as the Association.

The principal office of the Association shall be at 260 West St. George Boulevard, St. George, Utah, until changed by resolution of the Board of Directors but meetings of members and Trustees may be held at such places within the state of Utah as may be designated by the Board of Trustees.

**ARTICLE II**

**DEFINITIONS**

Section 1. **Association** shall mean and refer to Millcreek Cottages Townhomes Association, its successors and assigns.

Section 2. **Declaration** shall mean and refer to the Declaration of Covenants, Conditions and Restrictions of Millcreek Cottages Townhomes and any amendments.

Section 3. **Plat or Map** shall mean and refer to the subdivision plat recorded with the Declaration captioned "Millcreek Cottages-Phase One," or any replacements thereof, or additions thereto.

Section 4. **Properties** shall mean and refer to all real property subject to the Declaration.

Section 5. **Common Area** shall mean and refer to that portion of property owned by the Association and shown on the plat as dedicated to the common use and enjoyment of the owners.

Section 6. **Limited Common Area** shall mean and refer to that portion of property owned by the Association and shown on the plat as dedicated to the exclusive use and enjoyment of the owners of lots to which such limited common area is adjacent and/or appurtenant, subject to the rights of the Association, as set forth in the Declaration.

Section 7. **Lot** shall mean and refer to any separately numbered and individually described plot of land shown on the plat, designated for private ownership, and shall exclude the common and limited common areas.

Section 8. **Townhome** shall mean and refer to a single family dwelling, with or without walls or roofs in common with other single family dwelling units, and shall include fee title to the real property lying directly beneath said single family dwelling.

Section 9. **Owner** shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any lot which is within the properties. Regardless of the number of parties participating in ownership of each unit, those parties shall be treated as a group, as one "owner."

Section 10. Member shall mean and refer to every person or entity who holds membership in the Association.

Section 11. Trustees shall mean and refer to the governing body of the Association.

Section 12. Declarant shall mean and refer to Jay Ence and his heirs, successors and assigns.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership Every person or entity who is owner of any lot shall be a member of the Association. The term "owner" shall include contract purchasers but shall not include persons or entities who hold an interest merely as security for the performance of an obligation unless and until said holder has acquired title pursuant to foreclosure or proceedings in lieu of foreclosure. Membership shall be appurtenant to and may not be separated from ownership of any lot. Membership in the Association shall automatically transfer upon transfer of title by the record owner to another person or entity.

Section 2. Voting Rights The Association shall have two classes of voting membership:  
**CLASS A:** Class A members shall be all members with the exception of the Declarant and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, the group of such persons shall be a member. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot. A vote cast at any association meeting by any of such co-owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the lot concerned unless written objection is made prior to said meeting, or verbal objection at said meeting, by another co-owner of the same lot. In the event objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

**CLASS B:** The Class B member shall be the Declarant (as defined in the Declaration,) and shall be entitled to three (3) votes for each lot owned. the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) the expiration of four (4) months after conveyance of seventy-five percent (75%) of lots to purchasers; or
- (b) the expiration of three (3) years from the first lot conveyance to a purchaser.

Section 3. Qualification for Membership No person, persons, entity or entities shall exercise the rights of membership until satisfactory proof has been furnished to the secretary of the Association of qualification as a member, or nominee of a member, pursuant to the terms of the Articles of Incorporation and the Bylaws. Such proof may consist of a copy of a duly executed and acknowledged warranty deed or title insurance policy showing said person, persons, entity or entities) or the person nominating him (qualified in accordance therewith, in which event said deed or title insurance policy shall be deemed conclusive evidence in the absence of a conflicting claim based upon a later deed or title insurance policy.

Section 4. Suspension of Membership The rights of membership are subject to the payment of annual and special assessments levied by the Association. If a member fails to make payment of any annual or special assessment levied by the Association within thirty (30) days after the same shall become due and payable the voting rights of such member may be suspended by the Board of Trustees until such assessment has been paid. Rights of a member may also be suspended for violation of any of the use restrictions. Rights of a member also may be suspended after notice and hearing, for infraction of any published rules and regulations established by the Board of Trustees governing the use of the services, facilities or equipment of

The Association, for a period not to exceed sixty (60) days. Any first mortgagee shall be entitled to receive, upon request, notification of any default or suspension of a member.

#### ARTICLE IV

#### MEETINGS OF MEMBERS

**Section 1. Annual Meetings.** The first annual meeting of the members for the election of Trustees, the presentation of the annual financial report of the Association and for the transaction of such other business as the Board of Trustees may determine, shall be held at such time and place as may be designated by Declarant. Each subsequent annual meeting of the members shall be held on \_\_\_\_\_, at the hour of \_\_\_\_\_:\_\_\_\_\_.m. If the day of the annual meeting of the members is a legal holiday, the meeting will be held at the same hour of the first day following which is not a legal holiday.

**Section 2. Special Meetings.** Special meetings of the members may be called at any time by the President or by the Board of Trustees, or upon written request of the members who are entitled to vote one-fourth (1/4) of all of the votes.

**Section 3. Notice of Meetings.** Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least thirty (30) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association. Such notice shall specify the place, date and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

**Section 4. Waiver of Notice.** The notice provided for hereinabove is not indispensable and any meeting of the members shall be deemed validly called for all purposes if all members are represented thereat in person or by proxy, or if a quorum is present and waivers of notice of time, place and purpose of such meeting shall be duly executed in writing either before or after said meeting by those members not so represented or not given such notice. The attendance of any member at a meeting in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by him.

**Section 5. Quorum.** Except as hereafter provided, and as otherwise provided in the Articles of Incorporation, the presence at the meeting of members entitled to cast, or of proxies entitled to cast, twenty percent (20%) of all the votes of each class of membership shall constitute a quorum for any action. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

In case of a meeting to change the basis and maximum of assessments, to make assessments in excess of said maximum, or to levy a special assessment fixed prospectively for any annual period present at the meeting of members, or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at such a meeting, another meeting may be called, subject to the notice requirement set forth above and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

In case of a meeting to authorize special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of fixtures and personal property related thereunto, presence of members or of proxies of two-thirds (2/3) of all members authorized to vote shall constitute a quorum.

**Section 6. Proxies.** At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary prior to the meeting for which the

proxy is valid. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his lot.

**Section 7. Voting.** If a quorum is present, the affirmative vote of the majority of the members represented at the meeting shall be the act of all the members, unless the act of a greater number is expressly required by law, by the Declaration, or by the Articles of Incorporation of the Association or elsewhere in these Bylaws. Upon direction of the presiding officer, the vote upon any business before a meeting shall be by ballot, but otherwise any such vote need not be by ballot.

**Section 8. Procedure.** The order of business and all other matters of procedure at every meeting of members shall be determined by the presiding officer.

## ARTICLE V

### BOARD OF TRUSTEES: SELECTION: TERM OF OFFICE

**Section 1. Number.** The affairs of this Association shall be managed by a Board of three (3), five (5) or seven (7) Trustees, the number of persons constituting the whole Board of Trustees to be fixed from time to time by resolution of the Board of Trustees, who must be members of the Association or in the case of multiple co-owners or owners not natural persons, their designees.

**Section 2. Term of Office.** At each annual meeting, the members shall elect Trustees for terms of two (2) years, with an odd number of Trustees (at least two less than the entire Board) elected in odd-numbered years and an even number of Trustees elected in even-numbered years. In the initial election of Trustees, the method of election shall provide that the term of an odd number of trustees (at least two less than the entire Board) shall expire in the next odd numbered year, and the term of an even number of trustees shall expire in the next even numbered year.

**Section 3. Removal.** Any Trustee may be removed from the Board with or without cause, by a majority vote of the members of the Association and any Trustee who shall be absent from three (3) consecutive Board meetings shall be automatically removed from the Board unless determined otherwise by the Board. In the event of death, resignation or removal of a Trustee, a temporary successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor or until special election of a successor.

**Section 4. Compensation.** No Trustee shall receive compensation for any service he may render to the Association. However, any Trustee may be reimbursed for his actual expenses incurred in the performance of his duties.

## ARTICLE VI

### NOMINATION AND ELECTION OF TRUSTEES

**Section 1. Nomination.** Nomination for election to the Board of Trustees shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting of members. The Nominating Committee shall consist of a chairman, who shall be a member of the Board of Trustees, and two (2) or more members of the Association. The Nominating Committee shall be appointed by the Board of Trustees at least sixty (60) days prior to each annual meeting of the members, to serve through such annual meeting. The nominating committee shall make as many nominations for election to the Board of Trustees as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

**Section 2. Election** Election to the Board of Trustees shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles of Incorporation and these Bylaws. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## ARTICLE VII

### MEETINGS OF TRUSTEES

**Section 1: Regular Meetings** The first meeting of the Board of Trustees will follow the annual meeting of the members. Thereafter, regular meetings of the Board of Trustees shall be held at such date, time and place as may be determined from time to time by resolution of the Board of Trustees. Written notification of each regular Board meeting shall be delivered or mailed to all Trustees at least seven (7) days prior to any regular Board meeting.

**Section 2: Special Meetings** Special meetings of the Board of Trustees shall be held when called by the President of the Association or by any two (2) Trustees, after not less than two (2) days' notice to each Trustee.

**Section 3: Quorum** A majority of the number of Trustees shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Trustees present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board, unless a greater number is required by law, the Articles of Incorporation or these Bylaws.

**Section 4: Action Without a Meeting** Whenever the Trustees are required or permitted to take any action by vote, such action may be taken without a meeting on written consent, setting forth the action so taken, signed by all Trustees.

## ARTICLE VIII

### POWERS AND DUTIES OF THE BOARD OF TRUSTEES

**Section 1. Powers** The Board of Trustees shall have power to:

- (a) adopt and publish rules and regulations governing the use of the equipment and facilities of the Association and to establish reasonable admission and other fees for the use thereof;
- (b) suspend the voting rights and any other rights of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association or in violation of any of the use restrictions. Such rights may also be suspended for infraction of any published rules and regulations, after notice and hearing, for a period of not to exceed sixty (60) days;
- (c) employ a manager, an independent contractor or such other employees as they deem necessary, and to prescribe their duties;
- (d) borrow money for the purpose of improving the common area, and in aid thereof to mortgage said property, such mortgage to be subordinate to the rights of the owners;
- (e) with the approval of sixty-seven percent (67%) of first mortgagees on lots and sixty-seven percent (67%) of the owners, to sell, exchange, hypothecate, alienate, encumber, dedicate, release, or transfer all or part of the common area to any private individual, corporate entity, public agency, authority or utility;
- (f) grant easements for public utilities or other public purposes consistent with the intended use of the common are;
- (g) levy and collect assessments as more fully outlined in the Declaration;
- (h) purchase insurance as outlined in the Declaration;
- (i) appoint an Architectural Control Committee;

- (j) appoint arbitrators to resolve party wall disputes;
- (k) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws or the Articles of Incorporation;
- (l) enforce and administer the Declaration of Covenants, Conditions and Restrictions recorded as affecting the properties.

**Section 2. Duties** It shall be the duty of the Board of Trustees to:

- (a) act within the thirty (30) days upon any request for approval or disapproval submitted pursuant to the Declaration of Covenants, Conditions and Restrictions;
- (b) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-half (1/2) of the members who are entitled to vote;
- (c) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
- (d) prepare a roster of the properties and the assessments applicable thereto;
- (e) fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period;
- (f) send written notice of each assessment to every owner subject thereto at least thirty (30) days in advance of each annual assessment period;
- (g) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or bring an action at law against the owner personally obligated to pay the same;
- (h) furnish a certificate upon demand, and for a reasonable charge, signed by an officer of the Association setting forth whether the assessment on a specified lot has been paid;
- (i) maintain an adequate reserve fund for maintenance, repairs, and replacement of any elements of the common or limited common areas which must be replaced on a regular basis.

**ARTICLE IX**

**OFFICERS AND THEIR DUTIES**

**Section 1. Enumeration of Offices** The officers of this Association shall be a President and Vice-President, who shall at all times be members of the Board of Trustees, a secretary and a treasurer, who need not be members of the Board of Trustees nor of the Association, and such other officers as the Board may from time to time create by resolution.

**Section 2. Election of Officers** The election of officers shall take place at the first meeting of the Board of Trustees following each annual meeting of the members.

**Section 3. Term** The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or be removed, or otherwise be disqualified to serve.

**Section 4. Special Appointments** The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

**Section 5. Resignation and Removal** Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving notice to the Board, or any officer of the Board. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise necessary to make it effective.

**Section 6. Vacancies** A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

**Section 7. Multiple Offices** The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special office created pursuant to Section 4 of this Article

**Section 8. Duties** The duties of the officers are as follows:

(a) **PRESIDENT** The president shall preside at all meetings of the Board of Trustees; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes

(b) **VICE-PRESIDENT** The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

(c) **SECRETARY** The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and the Association together with their addresses, and shall perform such other duties as required by the Board.

(d) **TREASURER** The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and disburse such funds as directed by resolution of the Board of Trustees; sign all checks and promissory notes of the Association; maintain a roster of properties, assessments and payments; keep proper books of account; issue certificates of payment of assessments; cause an annual audit of the Association books to be made by an accountant at the completion of each fiscal year; notify the Trustees of members who are delinquent in paying assessments and prepare an annual budget and statement of income and expenditures to be represented to the membership at its regular annual meeting and deliver a copy of the budget and statement to the members at said meeting.

**Section 9. Compensation** No salary or other compensation for services shall be paid to any officer of the Association for services rendered by such officer, but this shall not preclude an officer of the Association from performing any other service for the Association as an employee and receiving compensation therefor.

## ARTICLE X

### FINANCIAL MATTERS

**Section 1. Depositories** The Board of Trustees shall select such depositories as it considers proper for the funds of the Association. All checks and drafts against such deposited funds shall be signed and countersigned by persons specified by the Board.

**Section 2. Contracts: Management Contract** The Board of Trustees may authorize any officer or officers, agent or agents, in addition to those specified in these Bylaws, 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. Unless so authorized by the Board of Trustees, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or render it liable for any purpose or for any amount.

**Section 3. Fiscal Year** The fiscal year of the Association shall be determined by the Board of Trustees of the Association

**Section 4. Annual Report** The Board of Trustees shall present at the annual meeting of the members the report of the treasurer, giving the annual budget and a statement of income and expenses, and a report of other affairs of the Association during the preceding year. The Board of



Trustees shall provide all members, at the expense of the Association, copies of said annual budget and statement of income and expense.

**Section 5. Books and Records** The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost

## ARTICLE XI

### INDEMNIFICATION OF TRUSTEES AND OFFICERS

Each Trustee and officer of the Association now or hereafter serving as such shall be indemnified by the Association against any and all claims and liabilities to which he has or shall become subject while or after serving by reason of serving as Trustee or officer, or by reason of any action alleged to have been taken, omitted, or neglected by him as such Trustee or officer, and the Association shall reimburse each such person for all legal expenses reasonably incurred by him in connection with any such claim or liability; provided, however, that no such person shall be indemnified against, or be reimbursed for any expense incurred in connection with, any claim or liability arising out of his own willful misconduct or gross negligence.

The right of indemnification hereinabove provided for shall not be exclusive of any rights to which any Trustee or officer of the Association may otherwise be entitled by law.

## ARTICLE XII

### COMMITTEES

**Section 1. Architectural Control Committee** An Architectural Control Committee composed of three or more representatives may be appointed by the Trustees.

**Section 2. Additional Committees** In addition, the Board of Trustees may appoint other committees as deemed appropriate in carrying out its purposes.

## ARTICLE XIII

### CORPORATE SEAL

The Association shall have a seal in a circular form having within its circumference the words "Milcreek Cottages Townhomes Association," the year of its incorporation, and a notation that the Association is Non-Profit.

## ARTICLE XIV

### RULES AND REGULATIONS

The Board of Trustees shall have the power to adopt and establish by resolution such rules and regulations as it may deem necessary for the maintenance, operation, management and control of the property, equipment, facilities and utility systems of the Association, and the Board of Trustees may alter from time to time such rules and regulations. The members shall at all times obey such regulations and use their best efforts to see that they are faithfully observed by the persons with whom they reside, their lessees, invitees and others over whom they may exercise control or supervision.

ARTICLE XV

AMENDMENTS

Section 1. Amendments These bylaws may be altered, amended, repealed or added to by the vote of the Board of Trustees of the Association at any regular meeting of said Board or at a special meeting called for that purpose. These Bylaws and any amendments thereto may be amended, altered or replaced by the members at any annual or special meeting of the members.

Section 2 Conflicts In case of any conflict between the Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation or these Bylaws, the Declaration shall be of primary authority, the Articles secondary and the Bylaws subject thereto.

STATE OF UTAH )  
 ) ss.  
COUNTY OF WASHINGTON )

Certification

I, the undersigned, do hereby certify:

1. I am the duly elected secretary of Milcreek Cottages Townhomes Association, a Utah Non-Profit Corporation,

2. The foregoing Bylaws constitute the Bylaws of said Corporation as duly adopted at a meeting of the Board of Trustees thereof, held on the 28 day of DECEMBER, 1987.

IN WITNESS WHEREOF, I have hereunto set my hand this 28<sup>th</sup> day of DECEMBER, 1987.

*[Handwritten Signature]*  
Secretary

STATE OF UTAH )  
 ) ss.  
COUNTY OF WASHINGTON )

On the 28<sup>th</sup> day of DECEMBER, 1987, personally appeared before me ROBERTA ELLE, the signer of the above instrument, who duly acknowledged to me that (s)he executed the same

*[Handwritten Signature]*  
NOTARY PUBLIC  
Residing at: ST. GEORGE, UT

My Commission Expires: 12 28 89

