

**MILLBURN MANOR HOMEOWNERS ASSOCIATION, INC.**

**FIRST AMENDMENT TO THE  
DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS**

THIS FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS (the "First Amendment") is made and executed this 23 day of January, 2009, by Millburn Manor, LLC, a Utah limited liability company (the "Declarant") pursuant to the provisions of Title 57, Chapter 8, Utah Code Annotated, as amended.

**WITNESSETH:**

WHEREAS, Declarant made, executed and caused to be recorded that certain Declaration of Covenants, Conditions and Restrictions for Millburn Manor Homeowners Association, Inc. (the "Declaration") dated June 2, 2008 and recorded among the Salt Lake County Recorder's Office, Entry 10445067, Book 9614, Pages 277-322, pursuant to which the Declarant subjected all that property described in the Declaration (the "Property") and Declarant formed an association known as "Millburn Manor Homeowners Association, Inc."; and

WHEREAS, pursuant to Article 11.9 of the Declaration, Declarant wishes to amend the Declaration;

NOW, THEREFORE, THE Declarant hereby declares that the Declaration of Covenants, Conditions & Restrictions, Article 8.2, be amended as follows:

**8.2 Use of Assessments.** The assessments and charges levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Community, and in particular for (a) the improvement and maintenance, operation, care, services and facilities related to the use and enjoyment of the Common Areas as well as fees paid to a management agent, if any; (b) the payment of taxes on the Common Areas (except to the extent that proportionate shares of such public charges and assessments on the Common Areas may be levied against all Lots laid out on the Property by the tax collecting authority so that the same is payable directly by the Owners thereof, in the same manner as real property taxes are assessed or assessable against the Lots); (c) the payment of insurance premiums on the Common Areas; (d) the costs of repair, replacement and additions to the Common Areas and improvements thereon; (e) the cost of obtaining, planting and thereafter maintaining street trees throughout the Community if required by Salt Lake County, whether or not such street trees are located in the Common Areas; (f) the costs of utilities and other services which may be provided by the Association for the Community as may be approved from time to time by a majority of the members of the Association; (g) the cost of labor, equipment, insurance, materials, management and supervision incurred or expended in performing all of the foregoing; (h) the cost of irrigation, sewer and culinary water for the Lots; (i) the cost of maintenance and replacement of any common driveways, sidewalks or private streets; (j) the cost of maintenance, repair, or replacement of landscaping on the Common Areas as well as for the Lots; (k) the cost of funding all reserves established by the Association, including a general operating excess and a reserve for replacements; (l) any costs relating to the easements described in this Declaration which the Association is responsible for maintaining; (m) the cost of high-speed internet access service provided to the Lots or Structures (as more fully provided by separate written agreement between the provider and the Association); and (n) the cost of private trash collection.

NOW, THEREFORE, THE Declarant hereby declares that the Declaration of Covenants, Conditions & Restrictions, Article 11.11, be added as follows:

**11.11 Elsinore Contract.** The Association each Owner and occupant in the Project shall be subject to that certain Agreement between Elsinore Communications, LLC (“Elsinore”) and the Association, which refers to that certain MDU Services Agreement (“MDU Agreement”) by and between Elsinore Communications, LLC (“Elsinore”) a service provider for Internet services. Assessments levied by the Community Association shall include all amounts required under the Elsinore Agreement, which will provide high-speed internet service. The Association is obligated to insure that the budget of the Association each year includes the amounts to be paid under the Elsinore Agreement. The sums due under the Elsinore Agreement will be billed by Elsinore and the Association is required to pay the amounts due under the bills on a monthly basis, or other periodic installment as determined by Elsinore in its sole and absolute discretion from time to time. The Association and each Owner shall also indemnify Elsinore for any and all claims, losses, damages, legal fees and any other type of costs or expenses arising under the MDU Agreement due to any act or omission by any Owner and/or the Association. The Association and each Owner as well as any future Owners recognize the rights Elsinore has under the MDU Agreement and shall not take any action or fail to take any action which may impair Elsinore’s rights under the MDU Agreement or otherwise affect Elsinore in connection with the MDU Agreement or the services provided thereunder, and in the event the Association and/or any Owner takes any such action or fails to take any action, then the violating party or parties shall be liable to indemnify Elsinore for any and all damages, losses, costs, legal fees or other expense Elsinore may incur in connection therewith. Further, the Association and each Owner agree and acknowledge that in the event MDU fails to comply with any term of the MDU Agreement, then in no event may Elsinore be liable to the Association or any Owner or occupant of the Project for any claim, loss or any other type of expense. This Article 11.11. may not be amended by any party without the prior written consent of Declarant and Elsinore, which consent may be withheld in the sole and absolute discretion of Declarant and/or Elsinore.

Each Owner is obligated to inform the Association in writing no later than ten (10) business days following the Owner signing any contract of sale of the Unit and such notice shall contain the buyer’s or buyers’ name as well as the date of settlement. Further, each Owner shall include in any contract of sale the acknowledgement and attachments contained in Exhibit “B”, attached hereto, executed by all buyers under the contract of sale. The signed notice shall be forwarded to Elsinore Communications LLC at 308 East 4500 South, Suite 200, Murray, Utah 84107 or such other address as Elsinore may provide to the Association from time to time, within the ten (10) days provided herein. The Association shall be responsible for enforcing the Owner’s obligations under this Article 11.11. In the event any Owner fails to comply with this Article 11.11 and/or the Association fails to enforce the obligations of the Owner described herein, then the Owner and the Association shall be liable to Elsinore for any costs, damages, legal fees and the like which Elsinore may incur as a result thereof. No amendment to this Article 11.11 may be made without the prior written consent of Elsinore, which consent may be withheld in its sole discretion.

In all other respects, the Declaration, as amended, remains unchanged.

\* Signature Page Follows \*

WITNESS the hand and seal of Millburn Manor, LLC on the day herein above first written:

WITNESS/ATTEST:

DECLARANT:  
MILLBURN MANOR, LLC

\_\_\_\_\_

*John Aldous* (SEAL)

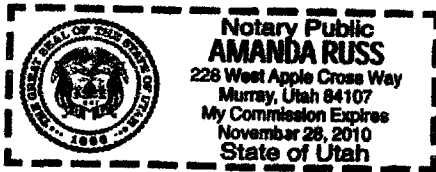
STATE OF UTAH, COUNTY OF SALT LAKE:

I HEREBY CERTIFY that on this 15<sup>th</sup> day of January, 2009, before, me, the subscriber, a Notary Public of the State of Utah, personally appeared, John Aldous, known to me or suitably proven, who acknowledged himself to be the President of Hamlet Homes Corporation, Member of Millburn Manor, LLC, the entity named in the foregoing instrument, and who, being authorized to do so, in my presence, signed and sealed the same and acknowledged the same to be the act and deed of the Declarant.

AS WITNESS my hand and seal.

*Amanda Russ*  
Notary Public

My Commission Expires: Nov. 28, 2010



CONSENT AND AGREEMENT OF TRUSTEE AND BENEFICIARY

Ron K. Nichols and Washington Trust Bank, are, respectively, the Trustee and the Beneficiary under that certain Deed of Trust dated August 7, 2007 and recorded as Entry No. 10193271 in Book 9530 at Pages 3967-3974 of the Official Records of Salt Lake County, Utah hereby join in the foregoing Declaration of Covenants, Conditions and Restrictions for the express purpose of subordinating all of their respective right, title and interest under such Deed of Trust in and to the real property described in Exhibit A such to the operation and effect of such Declaration.

Nothing in the foregoing provisions of this Consent and Agreement of Trustee and Beneficiary shall be deemed in any way to create between the person named in such Declaration as "the Declarant" and any of the undersigned any relationship of partnership or joint venture, or to impose upon any of the undersigned any liability, duty or obligation whatsoever.

IN WITNESS WHEREOF, the Trustee and Beneficiary have executed and sealed this Consent and Agreement of Trustee and Beneficiary or caused it to be executed and sealed on its behalf by its duly authorized representatives, this 23 day of January 2009.

WITNESS/ATTEST:

TRUSTEE:

 (SEAL)


By: Ron K. Nichols

Its: Trustee

WITNESS/ATTEST:

BENEFICIARY:



 (SEAL)

By: Stanley F. Jenkins

Its: Vice President

STATE OF UTAH: COUNTY OF Weber : TO WIT:

I HEREBY CERTIFY that on this 22 day of January, 2009, before me, a Notary Public for the state aforesaid, personally appeared Ron K. Nichols, Trustee, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged that he has executed it on behalf of the Trustee for the purposes therein set forth, and that it is his act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.



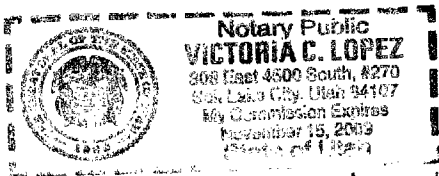
Katy  
Notary Public

My commission expires on March 13, 2010.

STATE OF UTAH, COUNTY OF Salt Lake: TO WIT:

I HEREBY CERTIFY that on this 21 day of January, 2009, before me, a Notary Public for the state aforesaid, personally appeared Stanley F. Jenkins, the Vice President of Washington Trust Bank, Beneficiary, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged that he/she has executed it as Beneficiary for the purposes therein set forth, and that it is his/her act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.



Vicki  
Notary Public

My commission expires on 11/15/09.

## **EXHIBIT "A"**

### **Description of the Property Subjected to the Declaration of Covenants, Conditions & Restrictions**

All of that real property situate and lying in the City of West Valley City, Salt Lake County, Utah and more fully described as follows:

Being a portion of the Northeast one-quarter of Section 34, Township 1 South, Range 1 West, Salt Lake Base and Meridian within West Valley City, County of Salt Lake, State of Utah, more particularly described as follows:

Beginning at a point on the Easterly Right of Way line of Redwood Road said point also being S00°01'15"E 1023.00 feet along the Section line and N89°58'45"E 53.00 feet from the North Quarter Corner of Section 34, Township 1 South, Range 1 West, Salt Lake Base and Meridian; and running thence N89°58'45"E 1268.87 feet along the southerly line of that certain parcel described by Entry No. 9843142 recorded September 13, 2006 in Book 9350, pages 1617-1619 to a point on the westerly boundary line of Kingspointe Phase 7 Subdivision Recorded on November 19, 1997 as Entry No.6795486 in Book 97-11P at Page 351; thence S00°04'07"E 422.85 feet along said subdivision lots 702 and 701, and the westerly boundary line of Kingspointe Phase 6 Subdivision Recorded on June 12, 1997 as Entry No.6666762 in Book 97-6P at Page 176, lots 609, 608, 602 and 601; thence S89°58'45"W 1064.22 feet along the northerly line of that certain parcel described by Entry No. 9265335 recorded January 3, 2005 in Book 9080, page 2868-2872 to the easterly line of that certain parcel described by Entry No. 9733791 recorded May 25, 2006 in Book 9298, page 8459; thence N00°01'15"W 3.35 feet along said easterly line to the northerly line of said parcel; thence S89°58'45"W 205.00 feet along said northerly line to said Easterly Right of Way line of Redwood Road; thence along said Easterly Right of Way line N00°01'15"W 419.50 feet to the point of beginning.

Contains 535930 square feet or 12.30 acres, and for the purpose of this subdivision, consists of 57 lots, streets, and open-space as shown hereon.

#### **Lots:**

Lots 1 through 56 as shown on the Millburn Manor P.U.D. Subdivision plat as recorded in the County of Salt Lake, State of Utah.

#### **Common Areas:**

As shown on the Millburn Manor P.U.D. Subdivision plat as recorded in the County of Salt Lake, State of Utah.

EXHIBIT "B"

Elsinore Communications, LLC  
Internet Service Agreement  
And Acceptable Use Policy

- attached hereto -

**ELSINORE COMMUNICATIONS, LLC**  
**Internet Service Agreement**  
**and Acceptable Use Policy**

**ACKNOWLEDGEMENT BY CUSTOMER/BUYER:**

1. This Internet Service Agreement and Acceptable Use Policy (AUP) provides terms specifically related to Customer's Internet Service. By signing up for Internet Service, Customer agrees to be bound by the terms of this Internet Service Agreement and Acceptable Use Policy, as evidenced by Customer's signature below. All obligations in this Internet Service Agreement that refer to "Customer" also jointly and severally apply to Users. Customer shall make all Users at each Service Location reasonably aware of the restrictions and limitations associated with the Internet Services, and Customer shall be responsible for any breach of any portion of this Internet Service Agreement and Acceptable Use Policy by any User.
  
2. **Description of Service.** Customer will be provided with access to the Internet via fiber optic cable under that separate contract by and between your Homeowners Association ("Association") and Elsinore Communications, LLC ("Elsinore"). The Internet Service is provided by XMission ("Service Provider") who will make every effort to ensure consistently high upload and download speeds, but makes no warranty regarding the Internet Service.

Each Unit will be provided with:

An Internet connection speed of up to 10 megabits/sec

Each Unit is given 100 gigabytes of total bandwidth (cumulative data transfer, upload and download) usage per month. The monthly bandwidth transfer is monitored and calculated by both UTOPIA and Service Provider. If a Unit uses bandwidth in excess of this amount, then Elsinore may invoice Customer at the then-current per gigabyte overage charges for all usage over 100 gigabytes, and Customer shall promptly pay such charges. Overage charges are \$1.00 per gigabyte. All additional bandwidth shall be sold in units of 1 gigabyte each. Any unused bandwidth shall be automatically forfeited at the end of each month, and no unused bandwidth amounts will roll-over into any subsequent month. No credits will be given for unused bandwidth. Units that consistently exceed the maximum bandwidth transfer rate will be encouraged to upgrade their service to and appropriate level with the Service Provider.

**3. Acceptable Use Policies**

a. **CUSTOMER AGREES TO USE THE SERVICE ONLY FOR LAWFUL PURPOSES.**

b. Unacceptable uses include, but are not limited to:

i. **Spam.** Customer may not utilize the Internet Service for the purpose of sending direct mailings, solicitations, bulk mail, spam, or any other high volume e-mailing function. Customer will not send e-mail to persons who are not personally known to Customer, or who did not personally request e-mail from Customer. Customers whose activities result in the Service Provider domain name being banned from an e-mail server due to spamming may be assessed fees associated with the cost of lifting the ban. Any violation of this policy may result in the immediate termination of Customer's account, at the sole discretion of Service Provider. If Customer violates this spamming policy, it will be assessed the following fines and fees, which Customer hereby agree to pay:

- (1) First offense: \$100
- (2) Second offense: \$500
- (3) Third offense: \$500 and automatic termination of Customer's account.

ii. **Newsgroup posting.** The posting of any advertisement or other commercial solicitation to any newsgroup is prohibited. Service Provider reserves the right to determine whether a post constitutes an advertisement or commercial solicitation. The posting of a single article or substantially similar articles to an excessive number of newsgroups or mailing lists, or continued posting of articles that are off-topic is strictly prohibited. A posting will be considered off-topic when it provokes complaints from the regular readers of the newsgroup or is deemed so by Service Provider. A violation of this policy will result in the immediate termination of Customer's account.

iii. **Obscenity.** Customers may not utilize the Internet Service to send or receive obscene materials.

iv. **Impersonation.** Customers may not utilize the Internet Service to impersonate another person.

v. **Defamation.** Customers may not utilize the Internet Service to defame, harm, harass, or libel another person.

vi. **Trade secrets.** Customers may not utilize the Internet Service to send or receive trade secrets in violation of applicable state or federal law.

vii. **Malicious software or code.** Customers may not utilize the Internet Service to send or intentionally receive any viruses, spyware, worms, Trojan horses or any other malicious computer software or code designed to damage or make use of any third party's property.

viii. **Intellectual property.** Customers may not utilize the Internet Service infringe on any party's intellectual property rights. Customers may not engage in the illegal or unauthorized transfer of intellectual property, including but not limited to music, written works, movies, software, videogames, instructions, data, and code.

ix. **Unauthorized access to computers.** Customers may not utilize the Internet Service for the purpose of hacking or other conduct related to unauthorized access of computers, servers or systems.

- c. **Bandwidth limits and fluctuations.** The Service Provider may, when necessary to control network congestion, impose reasonable bandwidth limits on Customer's use of the Service in order to ensure equitable access for other Customers. The Service Provider will use commercially reasonable efforts to provide the bandwidth speed described in this Attachment, but Customer acknowledges that bandwidth speeds may fluctuate from time to time throughout the day and that Customer may not receive the designated speeds at all times during the day. At the Service Provider's discretion, the Service Provider may restrict or limit upload speeds.
- d. **Minors.** Customer will be fully responsible for monitoring minors' access to the Service, and will take appropriate steps to ensure that minors do not have access to harmful content. Customer acknowledges that the Service Provider does not monitor minors' access to the Service and is not responsible for minors' access to inappropriate or harmful content.
- e. **Personal Accounts.** All Units covered in this agreement are considered to have a consumer grade Internet access account (as opposed to a business account). Units are not permitted to

use Service Provider's Internet connection to install a web server or other Internet appliance to sell or advertise goods or services. This is only permitted to those who have upgraded their account with the Service Provider to have a business account or a virtual server.

- f. **Resell or Transfer.** The Internet Service is for use only by the owners, residents and guests of the individual Unit and cannot be transferred or sold to a 3<sup>rd</sup> party or external location outside the registered address of the individual unit.
- g. **Enforcement.** Elsinore reserves the right to take whatever actions it deems appropriate to enforce these policies. Elsinore also reserves the right to change these policies without prior notice at any time. The actions Elsinore takes may include account suspension or termination. Elsinore does not issue any credits for accounts cancelled due to policy violations. Any Internet activity, which references back to Elsinore or the Service Provider or its services in a damaging manner, will result in suspension or termination of account(s). Illegal Internet activity using or referencing to Elsinore or the Service Provider or an account or services provided by Service Provider will result in immediate termination, possible prosecution, and assessment of legal fees accrued. In addition to any other fees and penalties that may be assessed by the Elsinore, as provided herein, Customer shall be held liable for any and all costs incurred by the Elsinore as a result of Customer's violation of any terms and conditions of this Agreement. This includes, but is not limited to, attorneys' fees and costs resulting from Elsinore or Service Provider responses to complaints from and the cleanup of unsolicited commercial mailings and/or unauthorized bulk mailings and/or news server violations. Further, Customer shall indemnify Elsinore for any and all claims, losses, damages, legal fees and any other type of costs or expenses due to any act or omission by the Customer hereunder.

#### 4. **Responsibility for Security and Filtering**

- a. **Security and viruses.** Customer acknowledges that by connecting to the Internet, Customer's and its User's computer system and/or other devices (routers, firewalls or similar Internet ready devices) and files are vulnerable to access by unauthorized third parties (including hackers). Customer is solely responsible for installing, implementing and using computer security precautions such as closing unnecessary ports and using firewall technology. CUSTOMER AND ITS USERS ARE STRONGLY ENCOURAGED TO INSTALL AND ROUTINELY UPDATE FIREWALL AND ANTIVIRUS SOFTWARE. In the event that the Customer is found to be spreading a virus, whether intentionally or unintentionally, Elsinore may suspend the Customer's account until such time as Elsinore believes that Customer has effectively remedied the situation.
- b. **Wireless connections.** Customer acknowledges that using wireless networking connectivity may present certain security risks. Customer is solely responsible for implementing and using wireless security measures, including but not limited to enabling encryption technology (e.g., Wired Equivalent Privacy (WEP) or Wi-Fi Protected Access (WPA)) on the relevant equipment, including the access point.
- c. **Disclaimer of liability.** Customer acknowledges and agrees that Service Provider has no liability for any unauthorized access of any Customer computer or system by any third party, and that Customer is solely liable for any damages arising from such unauthorized access. Service Provider is not providing any security advice or consulting services to Customer and is not responsible for installing or maintaining any security systems on behalf of Customer.

- 5. **IP Addressing.** The Service Provider uses static and dynamic IP Addresses for Customers. Assignment of an IP address to Customer creates no ownership rights in Customer of the IP address. The Service Provider retains all rights to any IP addresses it assigns to Customer. If the Customer

requires a static IP address, they are advised to contact the Service Provider and upgrade their account to an appropriate service plan.

6. **Ownership of Content.** Except for content on the Service Provider website, Service Provider does not own, license, or have any rights in content that Customer may upload or download, nor in e-mails that Customer may send or receive, nor in any content that Customer may upload to the server space provided by Service Provider under this Agreement. The content of all uploads, downloads, and e-mails associated with Customer's use of the Internet Service is solely the property and responsibility of Customer.

Agreed and Accepted as of the Date shown below.

**"CUSTOMER/BUYER(S)"**

Name: \_\_\_\_\_

\_\_\_\_\_

Lot#: \_\_\_\_\_

Community: \_\_\_\_\_

By: \_\_\_\_\_  
Customer/Buyer

\_\_\_\_\_

Customer/Buyer

Date: \_\_\_\_\_

**UPON COMPLETION RETURN TO:  
Elsinore Communication  
308 East 4500 South, Suite 200  
Murray, UT 84107**