

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS,  
AND RESERVATION OF EASEMENTS  
FOR  
EAST TOWN VILLAGE RECREATION AMENITIES**

**DECLARANT  
EAST TOWN VILLAGE RECREATION AMENITIES, L.C.  
A Utah limited liability company**

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GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
EAST TOWN BLGE REC AMENITIES  
758 S 400 E  
OREM UT 84097  
BY: EAP, DEPUTY - WI 41 P.

**WHEN RECORDED RETURN TO:  
EAST TOWN VILLAGE RECREATION AMENITIES, L.C.  
758 South 400 East  
Orem, Utah 84097  
(801) 227-0550**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS,  
AND RESERVATION OF EASEMENTS  
FOR  
EAST TOWN VILLAGE RECREATION AMENITIES**

This Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for East Town Village Recreation Amenities, (the "Declaration"), is made and executed by EAST TOWN VILLAGE RECREATION AMENITIES, L.C., a Utah limited liability company, of 758 South 400 East, Orem, Utah 84097 (the "Declarant").

**RECITALS:**

A. The Declaration of Condominium for East Town Village Condominium was recorded on March 5, 2007 as Entry No. 10023015 in Book 9430 at Pages 7885-7979 of the official records of Salt Lake County, Utah (the "Condominium Declaration").

B. The Final Plats for Phases 1-17 were submitted concurrently with the Original Declaration.

C. The First Supplement to Declaration of Condominium for East Town Village Condominium was recorded on July 10, 2007 as Entry No. 10158040 in Book 9488 at Pages 9625-9661 of the official records of Salt Lake County, Utah (the "First Supplement").

D. The Final Plats for Phases 18-30 and one commercial lot were submitted concurrently with the First Supplement.

E. The First Amendment to Declaration of Condominium for East Town Village Condominium was recorded on September 27, 2007 as Entry No. 10234005 in Book 9519 at Pages 8413-8442 of the official records of Salt Lake County, Utah (the "First Amendment").

F. The Declarant intends to record a Declaration of Removal to withdraw certain real property from the Utah Condominium Ownership Act (the "Act") and the Condominium Declaration, as amended and supplemented (the "Vacated Property").

G. The real property submitted to the Act and the Condominium Declaration, as amended and supplemented, less the Vacated Property will be referred to as the "Remaining Condominium Property".

H. The Declarant intends to re-submit the Remaining Condominium Property to the Act and an Amended and Restated Condominium Declaration .

I. This Declaration affects that certain real property located in Salt Lake County, Utah and described with particularity on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"), which is a portion of the Vacated Property.

J. Declarant is the holder of the development rights to the Property.

K. Financing options have changed for condominiums and townhomes.

L. Declarant desires to take advantage of the changes in financing options for the benefit of the Owners and their successors in interest.

M. The Declarant intends to record a Final Plat on the Property concurrently.

N. The Declarant intends to submit the remainder of the Vacated Property to a Declaration of Covenants, Conditions and Restrictions for East Town Village Townhomes recorded or to be recorded in the office of the County Recorder of Salt Lake County, Utah (the "Townhouse Declaration").

O. The Declarant intends to record a Final Plat for East Town Village Townhomes in the office of the Salt Lake County Recorder.

P. The Property is an area of unique natural beauty, featuring distinctive terrain;

Q. By subjecting the Property to this Declaration, it is the desire, intent, and purpose of Declarant to create a community in which beauty shall be substantially preserved, which will enhance the desirability of living on that real estate subject to this Declaration, and which will increase and preserve the attractiveness, quality, and value of the lands and improvements therein.

R. All of the requirements to amend the Condominium Declaration set forth in Article III, Section 32 (c), (d) and (e) of the Condominium Declaration have been satisfied.

S. Declarant has constructed, is in the process of constructing, or will construct upon the Property certain physical improvements, including a swimming pool, clubhouse, play areas, roads, parking facilities, and other recreational amenities of a less significant nature (collectively, "Recreation Amenities"). All of such construction has been, or is to be, performed in accordance with the plans contained in the Final Plat recorded or to be recorded concurrently herewith.

T. East Town Village Condominium, East Town Village Townhomes and the Recreation Amenities may be referred to collectively as the East Town Village Properties or the Combined Properties.

U. Declarant intends to sell to various purchasers the fee title to the individual Units and Lots contained or to be contained within the Combined Properties coupled with the nonexclusive right to use the Recreation Amenities.

V. Since the completion of the Project may be in phases, the completed Project will consist of the original phase and all subsequent phases.

W. Declarant desires by filing this Recreation Declaration and the Final Plat to submit the Recreation Amenities and all improvements now or hereafter constructed on the Property to the provisions and protective covenants set forth herein.

X. This portion of the Project is to be known as "East Town Village Recreation Amenities."

## **AGREEMENT**

NOW, THEREFORE, Declarant hereby declares that the Property is and shall henceforth be owned, held, conveyed, encumbered, leased, improved, used, occupied, and enjoyed subject to the following uniform covenants, conditions, restrictions, and equitable servitudes. The said covenants, conditions, restrictions, and equitable servitudes are in furtherance of, and the same shall constitute a general plan for the ownership, improvement, sale, use, and occupancy of the Property and in furtherance of and designed to accomplish the desires, intentions, and purposes set forth above in the Recitals.

### **I. DEFINITIONS**

When used in this Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated.

1. Articles of Incorporation shall mean and refer to the Articles of Incorporation for the Recreation Association.
2. Board of Delegates shall mean and refer to the governing board of the Recreation Association.
3. Building shall mean and refer to any of the structures constructed in the Project.
4. Bylaws shall mean and refer to the code of rules governing the administration of the Recreation Association, a copy of which is attached to and incorporated in this Declaration by reference as Exhibit "B".
5. Capital Improvement shall mean and refer to all new improvements intended to add to, enhance, or upgrade the nature, scope, utility, value, or beauty of the Project, as opposed to ordinary repair and maintenance.

6. City shall mean and refer to the City of Sandy, Utah or if the context requires the City of Midvale, Utah. A portion of the Property is located in each city.

7. Common Area shall mean and refer to all of the real Property owned or controlled by the Recreation Association.

8. County Recorder shall mean and refer to the Salt Lake County Recorder in the State of Utah.

9. Declarant shall mean and refer to East Town Village Recreation Amenities, LC, a Utah limited liability company, and any Person or Persons who might acquire title from it through purchase, assignment, or other transfer including foreclosure or deed in lieu of foreclosure. The person acquiring any of such property from the Declarant shall be considered a Declarant with respect to that portion of the property so acquired and shall have the right to develop the property and/or sell such property in accordance with the terms and provisions of this Declaration and any Supplemental Declaration applicable to the property; provided, however, a notice of succession shall be recorded in the Office of the County Recorder signed by both the current Declarant, or its successor in interest, and the Declarant, or its successor in interest, with respect to such property.

10. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for East Town Village Recreation Amenities.

11. Final Plat shall mean and refer to the "Final Plat of the East Town Village Recreation Amenities" on file in the office of the County Recorder of Salt Lake County, as amended or supplemented from time to time.

12. Land shall mean and refer to all of the real property subject to this Declaration.

13. Member shall mean and refer a member of the Recreation Association unless the context clearly requires otherwise.

14. Neighborhood shall mean and refer to the East Town Village Condominium Neighborhood or the East Town Village Townhomes Neighborhood.

15. Parcel shall mean and refer to East Town Village Condominium Parcel or East Town Village Townhomes Parcel.

16. Project shall mean and refer to this the East Town Village Recreation Amenities Project.

17. Project Documents shall mean and refer to the Declaration, Bylaws, Rules and Regulations, and Articles of Incorporation.

18. Property shall mean and refer to all of the land or real estate, improvements, and appurtenances submitted to this Declaration.

19. Recreation Amenity shall mean and refer to each of the recreation amenities, including by way of illustration but not limitation, the swimming pool, clubhouse, play areas, roads, parking facilities, and other recreational amenities.

20. Recreation Assessment shall mean and refer to any amount imposed upon, assessed, or charged a Member.

21. Recreation Association shall mean and refer to all of the Owners at East Town Village Recreation Amenities taken as or acting as a group in accordance with the Declaration.

22. Recreation Expense shall mean and refer to: (a) The expense of all irrigation water; (b) All sums lawfully assessed against the Members; (c) Expenses of administration, maintenance, repair, or replacement of the Property and the Recreation Association; (d) Expenses allocated by the Recreation Association among the Members; (e) Expenses agreed upon as Recreation Expenses by the Recreation Association; (f) Recreation Assessments for the Recreation Association; and (g) Expenses declared Recreation Expenses by the Declaration.

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

24. Total Votes of the Recreation Association shall mean the total number of Eligible Votes appertaining to all Members.

25. Use Restrictions shall mean and refer to the rules, regulations, and use restrictions described with particularity below, as they may be modified, amended, repealed, canceled, limited, withdrawn, or expanded from time to time.

26. Voting Group shall mean and refer to a group of Owners designated by the Declarant as a "voting group."

## II. SUBMISSION

The Land described with particularity on Exhibit "A" attached hereto and incorporated herein by this reference is hereby submitted to the Declaration.

The Land is hereby made subject to, and shall be governed by the Declaration and the covenants, conditions and restrictions set forth herein. The Land is also subject to the right of the City to access the roads within the Project for emergency vehicles, service vehicles, and to all of the utility installations up to the residential meters.

The Land is SUBJECT TO the described easements and rights-of-way. Easements and rights-of-way in favor of the City include any dedicated roadways and public utility easements and are depicted on the Final Plat.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property, including by way of illustration and not limitation, all easements and rights-of-way in and to the detention basin, entry way, monument, and park.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, Recreation Assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Final Plat or otherwise existing; an easement for each and every common area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Tract; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such common area improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

### III. COVENANTS, CONDITIONS, AND RESTRICTIONS

The foregoing submission is made upon, under and subject to the following covenants, conditions, and restrictions:

1. Membership. The Members of the Recreation Association are the East Town Village Condominium Association and the East Town Village Townhome Association.

(a) Appointment of Delegate. The Owners of Units at the East Town Village Condominium and the Owners of Lots at the East Town Village Townhomes, or the Board of Directors of their respective owners' associations, shall elect, appoint, or otherwise designate three Delegates to act as a Board of Delegates to manage the affairs of the Recreation Association, one of whom must be an Owner from East Town Village Condominium Association and one of whom must be an Owner from East Town Village Townhome Association. The third Delegate may be an at large Owner. The majority vote of the Unit Owners and the Lot Owners present in person or by proxy at a meeting called for this purpose (or by ballot if the election is held without a meeting) shall be necessary and sufficient to elect the at large Delegate.

(b) Assignment or Transfer. Membership in the Recreation Association may not be assigned, transferred, pledged, or alienated in any way from its Neighborhood and any attempt to do so shall be voidable by the Recreation Association.

2. Voting.

(a) Representative System. The Recreation Association shall be operated under a representative Delegate voting system.

(b) Delegate Voting. Each Delegate shall be entitled to cast one (1) vote on each issue or matter. At each meeting of the Recreation Association, each Delegate shall cast his or her vote in such manner as such Delegate may, in his/her sole discretion, deem appropriate, acting in the best interest of his/her Member; provided, however, that a Member shall have the authority to call special meetings of the Owners in the Neighborhood for the purpose of obtaining instructions as to the manner in which its delegate is to vote on any particular issue or matter. In the absence of such a governing provision in the Declaration or Bylaws governing the Neighborhood, a meeting may be called by the Delegate for the purpose of deciding how the Delegate shall vote, and the votes of a majority of the Owners represented at that meeting shall control the Delegate's vote on that issue or matter. It shall be conclusively presumed for all purposes of the Recreation Association business that any Delegate casting votes on behalf of his or her Member will have acted with the authority and consent of all of the Owners in the Neighborhood. All agreements and determinations lawfully made by the Recreation Association in accordance with the voting procedures established herein shall be deemed to be binding upon all Members and their successors and assigns.

3. Easements. Easements are hereby reserved throughout the Property as may be required for utility and other services.

(a) Temporary Construction Easement. The Declarant hereby reserves for itself and its affiliates and assignees a temporary construction easement over the Property for the purpose of doing all things that are reasonably necessary as a part of constructing any new improvements for the Project. The Members do hereby acknowledge and agree that there will be construction activities, traffic, noises, odors, and vibrations which may temporarily disrupt their quiet enjoyment of their property until all improvements are complete. The Members do hereby waive any right to object to such construction activity. Declarant's construction activities pursuant to the easement granted hereunder shall not be deemed to be a violation of the Use Restrictions.

(b) Telecommunications Facilities Easement. Declarant hereby reserves for itself and its affiliates and assignees a non-exclusive easement for itself and its affiliates and assignees to construct, operate, maintain, repair, and replace all types of telecommunication facilities, including but not limited to, roof antennas within suitable locations for such facilities (the "Locations of Facilities") within the Project. Declarant further reserves a right of access to the Locations of Facilities over, across, and through all other Common Area and Facilities of the Project in order to access the Locations of Facilities to exercise the rights



established herein. Declarant reserves the perpetual right to transfer by easement, license agreement, or other conveyance the rights reserved hereunder to one or more telecommunication facilities providers. Declarant may exercise all of such rights unilaterally and without the consent of any Member, Owner, Mortgagee, or the Association. The Association, on behalf of all Members, agrees to execute such further and additional instruments as may be requested by Declarant documenting the rights hereunder, in form satisfactory to the Declarant, and any assignee of its rights hereunder.

(c) Entry Easement. Declarant hereby reserves for itself and its affiliates and assignees easements for the entry and any entry monument, and corresponding easements for the utility, drainage, and irrigation systems and facilities. No Member, Owner, or Resident may do any landscaping, grading, or work, or install any structure, building, improvement, planting, or other object, natural or artificial, or materials which may damage or interfere with the installation and maintenance of such improvements, or which may change the direction of flow of drainage channels in, on or about the easements and rights-of-way, or which may obstruct or retard the flow of water through the drainage channels in the easements and rights-of-way. If a drainage channel is altered by a Member, Owner, or Resident, then the Declarant and/or the Association expressly reserve the right to enter onto the property to restore the area at the cost of the Owner, and without being guilty of a trespass.

(d) Constructive Provisions. All conveyances shall be construed to grant and reserve such reciprocal easements as shall give effect to this Declaration, even though no specific reference to such easements appears in any such conveyance.

(e) Grant of Easements. Until such time as Declarant conveys the Property by deed to the Recreation Association, Declarant hereby grants to the Recreation Association a non-exclusive, perpetual, right-of-way and easement over, across, under, and through the Property coupled with the right to use operate, maintain, repair, and replace such Recreation Amenities located thereon.

(f) Common Use. The easements and rights-of-way created are intended to be used in common by each Member and the Owners of Units or Lots in each Neighborhood, subject to the covenants, conditions, and restrictions set forth herein.

(g) Private Easement. The easements and rights-of-way created are intended to be used as private easements and rights-of-way for the exclusive use and benefit of each Member and the Owners of Units or Lots in each Neighborhood. The easements and rights-of-way created are not intended to be public.

(h) Encroachments. If any portion of Property or any improvement thereon encroaches or comes to encroach upon other real property as a result of construction, reconstruction, repair, shifting, settling, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.

4. Insurance. The Recreation Association will obtain the following insurance:

- (a) Public Liability;
- (b) Fire and Extended Coverage;
- (c) Directors and Officers;
- (d) Fidelity Bond; and
- (e) Other as recommended by its insurance agent.

5. Maintenance. The Property shall be maintained in a usable, clean, functional, safe, sanitary, attractive, and good condition.

(a) Landscaping. All landscaping shall be maintained in a safe, sanitary, aesthetic, and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover, or shrubbery shall be removed and replaced. All lawn areas shall be regularly mowed and edged. Trees, shrubs, and bushes shall be pruned. The landscaping shall not affect adversely the value or use of any other property or so as to detract from the uniform design and appearance of the Project.

(b) Snow. The Recreation Association shall be responsible to remove all snow and ice accumulations.

(c) Alterations to the Common Area. No Member or Owner may make any structural alterations to the Common Area without the express prior written consent of the Board of Delegates.

(d) Certain Work Prohibited. No Member or Owner shall do any work or make any alterations or changes or fail to do any required work which would jeopardize the soundness or safety of the Property, reduce its value or impair any easement or hereditament, without in every such case the unanimous written consent of all the Board of Delegates being first had and obtained.

6. Recreation Expenses.

(a) Grant. Declarant reserves to itself and hereby grants to the Recreation Association the power and authority to:

- (1) Incur Recreation Expenses;
- (2) Charge Recreation Assessments to each Member;
- (3) Enter into contracts relating to the management, operation, maintenance, repair, and replacement of the Recreation Amenities;
- (4) Collect and deposit Assessments;
- (5) Disburse common funds;
- (6) File liens against Neighborhood property to secure payment;
- (7) Pay Recreation Expenses;
- (8) Charge late fees;
- (9) Charge default interest;
- (10) Charge fines; and

- (11) Take such further action as may be necessary or appropriate to perform its duties and obligations.

(b) Purpose of Common Area Expenses. The Recreation Assessments provided for herein shall be used for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and residents, including the maintenance of any real and personal property owned by the Recreation Association, and regulating the Recreation Amenities, all as may be more specifically authorized from time to time by the Board of Delegates.

(c) Budget. At least thirty (30) days prior to the Annual Meeting of the Recreation Association, the Board of Delegates shall prepare and deliver to the Members a proposed Budget which:

(1) Itemization. Shall set forth an itemization of the anticipated Recreation Expenses for the twelve (12) month calendar year, commencing with the following January 1.

(2) Basis. Shall be based upon advance estimates of cash requirements by the Board of Delegates to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Area and regulation of the Recreation Association, which estimate shall include but is not limited to expenses of management, irrigation water, grounds maintenance, taxes, and special Recreation Assessments, premiums for all insurance which the Board of Delegates is required or permitted to maintain, common lighting and heating, water charges, trash collection, sewer service charges, carpeting, painting, repairs, and maintenance of the Common Area and replacement of those elements of the Common Area that must be replaced on a periodic basis, wages for Board of Delegates employees, legal and accounting fees, any deficit remaining from a previous period, the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by the Recreation Association for the benefit of the Owners under and by reason of this Declaration. Until the Project is completed, and all Phases are added, this estimate may need to be adjusted periodically as each new Phase is completed.

(d) Apportionment. The Recreation Expenses shall be allocated among the Members on a proportionate basis according to the number of Units or Lots in each Neighborhood.

(e) Equitable Changes. If the aggregate of all monthly payments on all of the Lots is too large or too small as a result of unanticipated income or expenses, the Board of Delegates may from time to time effect an equitable change in the amount of said payments. Owners shall be given at least thirty (30) days written notice of any changes.

(f) Reserve Account. The Board of Delegates shall establish and maintain a reserve account or accounts to pay for unexpected operating expenses, major Repairs, and Capital Improvements.

(g) Analysis Report. The Board of Delegates shall prepare and update at least annually a written Capital Asset Replacement and Reserve Account Analysis, and make the report available to the Owners at the annual meeting of the Recreation Association.

(h) Suspension of Right to Vote for Non-Payment. At the discretion of the Board of Delegates, the right of an Owner to vote on issues concerning the Recreation Association may be suspended if the Member is delinquent in the payment of his or her

Recreation Assessments, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least thirty (30) days.

(i) Special Assessments. The Recreation Association may assess special Recreation Assessments in any year.

(j) Reinvestment Fee.

(1) The Association may charge a reasonable reinvestment fee or community enhancement fee which shall be paid by a future buyer or seller of Unit to the Association upon and as a result of a transfer of a Unit dedicated to benefitting the Unit, including a payment for (collectively "Authorized Purposes"):

- (a) Common planning, facilities, and infrastructure;
- (b) Obligations arising from an environmental covenant;
- (c) Community programming;
- (d) Resort facilities;
- (e) Open space;
- (f) Recreation amenities;
- (g) Charitable purposes; or
- (h) Association expenses, as that term is defined by Utah Code Ann., Section 57-1-46(1)(a) (2010) as amended or supplemented.

(2) For use herein, the term "common planning, facilities, and infrastructure" shall be liberally and broadly construed to include any and all property and improvements included in the maintenance, repair and/or replacement responsibility of the Association.

(3) Anything to the contrary notwithstanding, the Reinvestment Fee Covenant is not to be considered a Transfer Fee Covenant as that term is defined by Utah Code Ann., Section 57-1-46(1)(j) (2010) as amended or supplemented.

(4) The Reinvestment Fee Covenant may not be enforced upon:

- (a) An involuntary transfer;
- (b) A transfer that results from a court order;
- (c) A bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity;
- (d) A transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution;
- (e) The transfer of the Unit by a financial institution except to the extent that the Reinvestment Fee Covenant requires the payment of the Association's costs directly related to the

transfer of the Unit not to exceed \$250.00, as that amount may be amended by statute from time to time; or

(f) The Declarant or first buyer of the property from the Declarant.

(5) The amount of the Reinvestment Fee may not exceed 0.5% of the value of the Unit at the time of closing and shall comply with the requirements of Utah Code Ann., Section 57-1-46(5) (2010) as amended or supplemented.

(6) A separate written Notice of Reinvestment Fee shall be recorded in the office of the Salt Lake County Recorder.

7. Collection of Recreation Assessments. Payments are due in advance on the first of the month. Payments are late if received after the tenth day of the month in which they were due.

(a) Delinquent Recreation Assessments. Any Recreation Assessment not paid when due shall be considered delinquent.

(b) Late Fees. The Board of Delegates may charge a reasonable late fee. A payment received by the Board of Delegates ten (10) days or more after its due date shall be considered late for purposes of this subsection.

(c) Default Interest. The Board of Delegates may charge interest on all delinquent accounts. A delinquent account is an account that is thirty (30) days or more in arrears.

(d) Lien. If any Member fails or refuses to make any payment of any Recreation Assessment or its portion of the Recreation Expenses when due, that amount shall constitute a lien on the interest of the Neighborhood Owners in the property, and upon the recording of notice of lien by the Board of Delegates or its designee and it is a lien upon the Owner's interest in the property prior to all other liens and encumbrances, recorded or unrecorded, except: (1) tax and special assessment liens on the property in favor of any assessing unit or special improvement district; and (2) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

(e) Foreclosure of Lien and/or Collection Action. If the Recreation Assessments remain unpaid, the Recreation Association may, as determined by the Board of Delegates, institute suit to collect the amounts due and/or to foreclose the lien.

(f) Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Recreation Association or its agents the right and power to bring all actions against him or her personally for the collection of his or her share of

the Recreation Assessments as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds, or encumbrances may be foreclosed.

(g) No Waiver. No Owner may waive or otherwise exempt himself or herself from liability for the Recreation Assessments provided for herein, including but not limited to the non-use of the Recreation Amenities.

(h) Duty to Pay Independent. No reduction or abatement of Recreation Assessments shall be claimed or allowed by reason of any alleged failure of the Recreation Association or Board of Delegates to take some action or perform some function required to be taken or performed by the Recreation Association or Board of Delegates under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Recreation Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay his or her share of the Recreation Expenses being a separate and independent covenant on the part of each Owner.

(i) Application of Payments. All payments shall be applied as follows: Additional Charges, Delinquent Recreation Assessments, and Current Recreation Assessments unless otherwise determined by the Board of Delegates.

(j) Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Recreation Assessments may be enforced by sale or foreclosure of the Owner's interest in the property by the Board of Delegates. The sale or foreclosure, which may be judicial or nonjudicial, shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to, the cost of a foreclosure report, reasonable attorney's fees, and a reasonable rental for the Lot during the pendency of the foreclosure action. The Recreation Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Board of Delegates may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same.

(k) Appointment of Trustee. If the Board of Delegates elects to foreclose the lien nonjudicially in the same manner as nonjudicial foreclosures in deeds of trust, then the Owner by accepting a deed to a Unit or Lot hereby irrevocably appoints the attorney of the Recreation Association, provided s/he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. The Recreation Association shall record a written "Notice of Appointment of Trustee". In addition, Owner hereby transfers in trust to said Trustee all of his or her right, title, and interest in and to the real property for the purpose of securing his or her performance of the obligations set forth herein.

(l) Attorney in Fact. Each Owner by accepting a deed to a Unit or Lot hereby irrevocably appoints the Recreation Association as his or her attorney in fact to collect rent from

any person renting his or her property, if the property is rented and Owner is delinquent in his or her Recreation Assessments. Rent due shall be paid directly to the Recreation Association, upon written demand, until such time as the Owner's Recreation Assessments are current; and the Owner shall credit the Renter, against rent due, for the amount of money paid to the Recreation Association.

(m) Lenders, Foreclosures and Unpaid Recreation Assessments. Anything to the contrary notwithstanding, any first mortgagee who obtains title to a Unit or Lot pursuant to the remedies in the mortgage or trust deed or through foreclosure will not be liable for more than six (6) months of the unpaid regularly budgeted Recreation Assessments, dues, or charges accrued before acquisition of the title to the property by the mortgage, although the first mortgagee will also be liable for any reasonable attorneys fees or costs related to the collection of the unpaid dues. All other grantees who obtain title to a Lot in a voluntary conveyance or pursuant to the remedies in a mortgage or trust deed or through foreclosure shall be jointly and severally liable with the trustor or mortgagor for all unpaid Recreation Assessments, late fees, default interest, and collection costs, including a reasonable attorneys fee, against the property for its share of the Recreation Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the trustor or mortgagor the amounts paid by the grantee.

(n) Termination of Right to Use Amenities for Non-Payment of Recreation Assessments. If a Member or an Owner fails or refuses to pay its/his/her share of the Recreation Expenses when due, the Board of Delegates may terminate the Neighborhood's right and/or the Owner's right of access and use of the Recreation Amenities, after giving notice and an opportunity to be heard. Before terminating utility services or right of access and use of recreational facilities, the manager or Board of Delegates shall give written notice to the Owner. Upon payment of the Recreation Assessment due, including any interest or late payment fee, the Board of Delegates shall immediately take action to reinstate the right to use of recreational facilities.

(o) Assignment of Rents. If an Owner who is leasing his or her property fails to pay his/her share of any Recreation Assessment for a period of more than thirty (30) days after it is due and payable, the Board of Delegates may demand the tenant to pay to the Recreation Association all future lease payments due the Owner, commencing with the next monthly or other periodic payment, until his/her share of the amount due to the Recreation Association is paid; provided, however, the Board of Delegates must give the Owner written notice. When the account is current the Recreation Association shall notify the tenant in writing that future lease payments are no longer due to the Recreation Association. A copy of this notice must be mailed to the Owner. The terms "lease" or "leasing" shall mean and refer to regular, exclusive occupancy of the property by any person or persons, other than the Owner, for which the Owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

8. Liability of Owners and Residents For Damages and Waste. Each Owner or Resident shall be liable to the Recreation Association for damages to person or property and waste caused by his or her negligence.



9. Use Restrictions. The use of the Property is subject to the following restrictions:

(a) The right of the Recreation Association to limit the number of Guests, and to adopt administrative rules and regulations from time to time governing the use and enjoyment of the Recreation Amenities.

(b) The right of the Recreation Association to charge a reasonable admission or other user fee for the use of any Recreation Amenity.

(c) Rules and regulations adopted by the Board of Delegates.

(d) Nothing shall be done or omitted which creates or maintains a nuisance.

(e) Nothing shall be done or kept in, on, or about the Property which may result in the cancellation of the insurance on the Property or an increase in the rate of the insurance on the Property, over what the Board of Delegates, but for such activity, would pay.

(f) Nothing shall be done or kept in, on, or about the Property, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental body.

(g) No damage to, or waste of, the Property shall be committed by any Owner or Resident.

10. Liability For Damages and Waste. Each Owner or Resident shall be liable to the Recreation Association for damages to Person or Property and waste within the Property caused by his or her negligence.

11. Corporate Status of the Recreation Association. It is intended that the Recreation Association be a nonprofit corporation. If for any reason at any time the corporate status of the Recreation Association is suspended or dissolved, the Board of Delegates is hereby granted the authority to reinstate or reincorporate the Recreation Association.

12. Delegation of Management Responsibilities. The Board of Delegates may delegate some of its management responsibilities to either a professional management company, an experienced on-site manager, an independent contractor, through service contracts, or any combination thereof. The Manager may be an employee or an independent contractor. The termination provision of any such contract must not require a termination penalty or any advance notice of any more than sixty (60) days, and no such contract or agreement shall be for a term greater than one (1) year. Anything to the contrary notwithstanding, any management contract may be terminated for cause on thirty (30) days notice in accordance with Title 38, Code of Federal Regulations, Section 36.4360a (f), as it may be amended from time to time

13. General Labor. The Board of Delegates may employ general laborers, grounds crew, maintenance, bookkeeping, administrative, and clerical personnel as necessary to perform its management responsibilities.

14. Liability of Board of Delegates. The Recreation Association shall indemnify every officer and member of the Board of Delegates against any and all expenses, including but not limited to, attorney's fees reasonably incurred by or imposed upon any officer or member of the Board of Delegates in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Delegates) to which he or she may be a party by reason of being or having been an officer or member of the Board of Delegates. The officers and members of the Board of Delegates shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and members of the Board of Delegates shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Recreation Association (except to the extent that such officers or members of the Board of Delegates may also be Members of the Recreation Association), and the Recreation Association shall indemnify and forever hold each such officer and member of the Board of Delegates free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Board of Delegates, or former officer or member of the Board of Delegates, may be entitled. The Recreation Association shall, as a Recreation Expense, maintain adequate general liability and officer's and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

15. Casualty Damage or Destruction

(a) Appointment of Agent. All of the Owners irrevocably constitute and appoint the Board of Delegates their true and lawful agent in their name, place, and stead for the purpose of dealing with the Property upon its damage or destruction. Acceptance of a deed from the Developer or from any Owner shall constitute appointment of the Board of Delegates as attorney in fact for the limited purposes as herein provided.

(b) Authority of Agent. As attorney in fact, the Board of Delegates shall have full and complete authority, right, and power to make, execute, and deliver any contract, deed or other instrument with respect to the interest of a Owner which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the Property to substantially the same condition in which it existed prior to damage, with each Lot and the Common Areas having substantially the same vertical and horizontal boundaries as before.

(c) Mortgagee's Rights. In the event any Mortgagee should not agree to rebuild, the Board of Delegates shall have the option to purchase such mortgage on behalf of the Recreation Association by payment in full of the amount secured thereby. The Board of Delegates may obtain the funds for such purpose by Special Recreation Assessments under Paragraph 7 of this Declaration.

(d) Completion of Project. As soon as practicable after receiving estimates, the Board of Delegates shall diligently pursue completion of the repair or reconstruction of the part of the Property damaged or destroyed, but only if the Property is damaged or destroyed to the extent of 75% or less than the value thereof. In the event the Property is destroyed or damaged to the extent of more than 75% of the value thereof, the Owners shall, at a meeting within one hundred (100) days after such damage or destruction duly called by the Board of Delegates for the purpose, determine whether or not said premises should be rebuilt, repaired, or disposed of. Unless Owners representing at least 80% of the undivided interest in the Common Areas agree to the withdrawal of the Property from the provisions of the Act and this Declaration and to its subsequent disposal, the Property shall be repaired, rebuilt, or restored to substantially the same condition it was in immediately prior to destruction or damage. The Board of Delegates may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be substantially in accordance with the original plans and specifications of the Property or may be in accordance with any other plans and specifications the Owners may approve, provided that in such latter event the number of cubic feet and the number of square feet of any Lot may not vary by more than 5% from the number of cubic feet and the number of square feet for such Lot as originally constructed pursuant to the original plans and specifications, and the location of any building shall be substantially the same as prior to damage or destruction. The same easements for encroachments as declared in Section 4 shall apply under the provisions of this Section.

(e) Proceeds of Insurance. The proceeds of any insurance collected shall be available to the Board of Delegates for the purpose of repair or reconstruction. If the proceeds of insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Board of Delegates may levy in advance a Special Recreation Assessment sufficient to provide funds to pay the estimated or actual costs of repair or reconstruction. Such Recreation Assessment shall be allocated and collected as provided in this Declaration. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

(f) Fund. The insurance proceeds held by the Board of Delegates and the amounts received from Recreation Assessments provided for in Section 7 constitute a fund for the payment of cost of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost or repair of reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made pursuant to the Recreation Assessments the Board of Delegates made under Section 7 of this Declaration.

16. Mortgagee Protection. Nothing herein contained, and no violation of these covenants, conditions and restrictions, shall invalidate or impair the lien of any mortgage or deed of trust, given in good faith and for value. Mortgagees are excluded from any leasing or rental restrictions when obtaining or after obtaining a Lot in foreclosure. The lien or claim against a

Lot for unpaid Recreation Assessments levied by the Board of Delegates or by the Recreation Association pursuant to this Declaration shall be subordinate to any Mortgage recorded on or before the date such Recreation Assessments become due. In addition:

(a) Effects of Voluntary and Involuntary Sale. The lien or claim against a Lot for such unpaid Recreation Assessments shall not be affected by any sale or transfer of such Lot, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Lot or the exercise of a power of sale available there under shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Recreation Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Lot from liability for, nor such Lot the lien of any Recreation Assessments becoming due thereafter.

(b) Books and Records Available for Inspection. The Board of Delegates or the Recreation Association shall make available to the Owners, to Mortgagees, lenders, and to holders, insurers, or guarantors of any Mortgage current copies of the Declaration, Bylaws, and administrative rules and regulations concerning the Project, as well as the books, records, and financial statements of the Board of Delegates and the Recreation Association. The term "Available," as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Recreation Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.

(c) Right to Financial Statement. The holder, insurer, or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

(d) Management Contracts. Any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Board of Delegates shall provide, or be deemed to provide hereby, that:

(1) Either party may terminate the contract with cause upon at least thirty (30) days prior written notice to the other party; and

(2) No contract may be for an initial term greater than one (1) year.

(e) Eligible Mortgagee Designation. Upon written request to the Board of Delegates or the Recreation Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer, or guarantor and the Lot Number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder, insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer" or "Eligible Guarantor," as the case may be, shall be included on the appropriate lists maintained by the Recreation Association, and shall be entitled to timely written notice of any of the following:

(1) Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a Mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor.

(2) Delinquency. Any delinquency in the payment of Recreation Assessments owed by an Owner of a Lot subject to a Mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of sixty days.

(3) Lapse of Insurance. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Board of Delegates or the Recreation Association.

(4) Consent Required. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

(f) Approval of Proposed Action or Transaction. Any Mortgagee who receives, by certified or registered mail, a written request, with a return receipt requested, to approve any act, transaction, or amendment to the Declaration, and who does not return a negative response within thirty (30) days shall be deemed to have approved such request; provided, however and anything to the contrary notwithstanding, so long as Declarant is in control of the Owner's Recreation Association, such action or transaction must be approved in writing by the Department of Veterans Affairs (VA) pursuant to CFR, Title 38, Section 36.4357(b)(4) and, if any financing or the guaranty of any financing of a Lot is provided by the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Recreation Association (FNMA), Government National Mortgage Recreation Association (GNMA), by such agencies.

17. Amendment. This Declaration may be amended as follows:

(a) General. Except as provided elsewhere in this Declaration, including by way of illustration but not limitation, to sections pertaining to the addition or annexation of any land, any amendment to this Declaration shall require the affirmative written vote or consent of at least two of the three Members of the Recreation Association cast either in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting.

(b) Initial Declarant Right to Amend. The Declarant alone may amend or terminate this Declaration prior to the closing of a sale of the first Lot.

(c) Unilateral Right to Amend Under Certain Conditions. Notwithstanding anything contained to the contrary in this Declaration, this Declaration may be amended unilaterally at any time and from time to time by Declarant if such Amendment is (1) necessary

to correct typographical errors or inadvertent omissions; (2) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation, or judicial determination which shall be in conflict therewith; or (3) reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; provided, however, any such amendment shall not materially adversely affect the title to any Lot unless the Owner of said Lot shall consent thereto in writing.

(d) Declarant's Right to Amend Unilaterally Prior to Termination of Declarant's Right to Control. Prior to the expiration of the Period of Declarant's Control, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any property without the express written consent of said Owner.

(e) To Satisfy Requirements of Lenders. Anything to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC, or FNMA and to further amend to the extent requested by any other federal, state, or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration or approval of the sale of Lots, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot, or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of an Amendment duly signed by the Declarant, specifying the federal, state, or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when recorded, shall be binding upon all Lots and all persons having an interest therein. It is the desire of Declarant that Declarant retain control of the Recreation Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of hereof deletes, diminishes, or alters such control in any manner whatsoever in the opinion of Declarant, then Declarant shall have the unilateral right to amend this Declaration to restore such control.

(f) Rights of Declarant and Declarant. No provision of this Declaration reserving or granting to Declarant and/or Declarant any unexpired rights, including by way of illustration but not limitation, any and all developmental rights may be amended, including by way of illustration but not limitation, a modification which would terminate or decrease any such rights, without the prior express written consent of Declarant, which consent may be withheld, conditioned, or delayed for any reason or for no reason at Declarant's sole and exclusive discretion.

(g) Execution of Amendments.

(1) An amendment or revocation which only requires the execution of an instrument by Declarant as hereinabove provided shall be effective when executed by Declarant and when recorded in the office of the County Recorder.

(2) An amendment which requires the affirmative written assent or vote of the Members as hereinabove provided shall be effective when executed by the President and Secretary of the Recreation Association, who shall certify that all of the voting requirements have been satisfied, and the Declarant, if the Declarant's consent is also required, and recorded in the office of the County Recorder.

18. Declarant's Sales Program. Anything to the contrary notwithstanding, until Declarant has sold all Units and Lots owned by it, or the expiration of five (5) years following the date on which the Declaration is filed for record in the Office of the County Recorder, whichever first occurs, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay his or her portion of the Recreation Expenses or other Recreation Assessments, except as herein otherwise provided. Neither the Owners, the Recreation Association, nor the Board of Delegates shall interfere with the completion of improvements and sale of Declarant's Lots, and Declarant shall have the following rights in furtherance of any sales, promotions, or other activities designed to accomplish or facilitate the sale of all Lots owned by Declarant:

(a) Sales Office and Model Lots. Declarant shall have the right to maintain one (1) or more sales offices. Such office may be located in one (1) or more separate structures or facilities placed on the Property, including the clubhouse. This grant is for the purpose of aiding Declarant's sales effort.

(b) Promotional. Declarant shall have the right to maintain a reasonable number of promotional, advertising, and/or directional signs, banners, or similar devices at any place or places on the Property in accordance with city ordinances.

(c) Use of Recreation Amenities. Declarant shall have the right to use the Property in any way necessary to facilitate sales.

(d) Relocation and Removal. Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners, or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Within a reasonable period of time after the happening of the Event, Declarant shall have the right to remove from the Project any signs, banners, or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.

(e) Restrictions in Favor of the Declarant. The recreational amenities or facilities at the Project may not be subject to any restriction or reservation in favor of the Declarant or any of its affiliates.

19. Limitation on Improvements by Recreation Association. Neither the Board of Delegates nor the Recreation Association shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Area and Facilities created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Area as originally created or constructed by Declarant.

20. Rights Assignable. All of the rights of Declarant and/or Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer, or assignment. Any Mortgage covering all Lots or Buildings in the Project title to which is vested in the name of Declarant and/or Declarant shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protections, and controls which are accorded to Declarant (in its capacity as Declarant) or Declarant (in its capacity as Declarant) herein.

21. Interpretation. To the extent Utah law is consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

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

23. Enforcement and Right to Recover Attorneys Fees. Should the Recreation Association or Board of Delegates be required to take action to enforce the Declaration, Bylaws or any administrative rules and regulations adopted from time to time, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including reasonable attorneys fees, which may arise or accrue.



24. Agent for Service of Process. The President of the Recreation Association is the person to receive service of process in the cases authorized by the Act and the office. The initial Registered Agent is Gary Petersen and the initial office of the Registered Agent is 758 South 400 East, Orem, Utah 84097.

25. Expansion of the Project. The Declarant hereby reserves to itself the unilateral right to annex additional real property.

26. Security. Neither the Declarant, Recreation Association, or the Board of Delegates shall in any way be considered insurers or guarantors of security within the Project. Neither the Declarant, Recreation Association, or the Board of Delegates shall be held liable for any loss or damage, including malfunction, by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners acknowledge by acceptance of a deed or other document of conveyance to the Property that neither the Declarant, Recreation Association, or Board of Delegates represent or warrant that any fire protection system or burglar alarm system designated by or installed in the Project may not be compromised or circumvented, that any fire protection or burglar alarm systems will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise; nor that the gate, fire protection, or burglary alarm systems will in all cases provide the detection or protection for which the system is designed or intended. Each Owner for acknowledges and understands that the Declarant, Recreation Association, and Board of Delegates are not insurers and that each Owner expressly, by accepting a deed or other document of conveyance or taking possession of a Lot or entering the Project, assumes all risks for loss or damage to persons or property within the Project and further acknowledges that Declarant, Recreation Association, and Board of Delegates have made no representations or warranties nor has any Owner relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire and/or burglar alarm systems recommended or installed or any security measures undertaken within the Project.

27. Duration. This Declaration shall continue for a period of forty (40) years. Then, it shall automatically be renewed for ten (10) year periods, unless sooner terminated by the affirmative vote of sixty-seven percent (67%) of all Owners.

28. Termination. In the event of the dissolution of the Recreation Association, or any of the Members, the operation, control, and maintenance of the Recreation Amenities shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and each Owner of a Unit or Lot within a Neighborhood shall continue to be obligated to pay his or her proportionate share of the cost of maintaining, preserving, and protecting the Property and Recreation Amenities. To the extent this is not reasonably possible, the Recreation Amenities shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to the Owners as tenants in common, subject to the rights of mortgagees.

29. Effective Date. This Declaration, any amendment, or supplement hereto, and any amendment or supplement to the Final Plat shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

Dated this 17 day of June, 2010.

EAST TOWN VILLAGE RECREATION AMENITIES, L.C.,  
a Utah limited liability company

By: Gary A. Petersen  
Name: Gary A. Petersen  
Title: Manager

STATE OF UTAH                    )  
                                          Salt Lake ss:  
COUNTY OF ~~UTAH~~            )

On the 17 day of June, 2010, personally appeared before me Gary A. Petersen, who by me being duly sworn, did say that he is the Manager of East Town Village Recreation Amenities, L.C., a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said Company by authority of its Articles of Organization or a resolution of its Members, and said Gary A. Petersen duly acknowledged to me that said Company executed the same.

Shelby N. Pintus  
NOTARY PUBLIC



**EXHIBIT "A"**  
**Legal Description**

The Land and Lot or Units referred to in the foregoing notice is located in Salt Lake County, Utah and is described more particularly as follows:

**Phase 1 BOUNDARY DESCRIPTION**

BEGINNING AT A POINT S.89°15'05" E. 121.06 FEET AND S.0°21'25"W. 138.24 FEET AND S.89°38'30"E. 115.77 FEET FROM THE WEST QUARTER CORNER OF SECTION 31, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SAID POINT BEING ON THE SOUTH LINE OF DIEHL CONCEPT PROPERTIES, L.C. PROPERTY, THE BASIS OF BEARINGS BEING BETWEEN THE SALT LAKE COUNTY MONUMENT IN THE CENTERLINE OF STATE STREET, WHICH LIES S.89°15'05"E. 121.06 FEET FROM SAID WEST QUARTER CORNER AND THE SALT LAKE COUNTY MONUMENT IN THE CENTERLINE OF STATE STREET WHICH LIES N.89°57'08"E. 99.22 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 31, (SAID BEARING BEING S.0°21'25"W.);

THENCE EAST 440.08 FEET; THENCE NORTH 135.44 FEET; THENCE EAST 162.50 FEET; THENCE SOUTH 57.34 FEET; THENCE S.14°19'57"E. 194.52 FEET; THENCE SOUTH 51.99 FEET TO A POINT ALONG A NON TANGENT CURVE, SAID POINT BEING A POINT OF CURVE, CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 105.00 FEET A CENTRAL ANGLE OF 53°30'29" AND A CHORD OF 94.56 FEET BEARING S.46°49'41"E. THENCE SOUTHEASTERLY ALONG SAID CURVE A DISTANCE OF 98.06 FEET; THENCE S.20°04'26"E. 266.08 FEET TO A POINT ALONG THE NORTH LINE OF THE SPRATLING PROPERTY; THENCE ALONG SAID NORTH LINE THE FOLLOWING COURSE: N.89°54'00"W. 595.38 FEET; THENCE NORTH 255.34 FEET TO A POINT OF CURVATURE, CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 4.50 FEET A CENTRAL ANGLE OF 90°00'00" AND A CHORD OF 6.36 FEET BEARING N.45°00'00"W. THENCE NORTHWESTERLY ALONG SAID CURVE A DISTANCE OF 7.07 FEET TO A POINT OF TANGENCY; THENCE WEST 117.95 FEET TO A POINT OF CURVATURE, CONCAVE TO THE NORTH HAVING A RADIUS OF 124.00 FEET A CENTRAL ANGLE OF 29°31'21" AND A CHORD OF 63.19 FEET BEARING N.75°14'20"W. THENCE WESTERLY ALONG SAID CURVE A DISTANCE OF 63.89 FEET; THENCE WEST 99.60 FEET TO THE EAST RIGHT OF WAY LINE OF STATE STREET (SAID RIGHT OF WAY BEING 99.00 FEET WIDE); THENCE N.0°21'25"E. 44.44 FEET, ALONG SAID RIGHT OF WAY; THENCE N.30°00'00"E. 72.29 FEET ; THENCE N.18°30'00"E. 97.99 FEET TO THE POINT OF BEGINNING.

CONTAINS: 7.193 ACRES

**Phase 2 BOUNDARY DESCRIPTION**

BEGINNING AT A POINT S.89°15'05" E. 121.06 FEET AND S.0°21'25"W. 3.52 FEET AND EAST 717.51 FEET FROM THE WEST QUARTER CORNER OF SECTION 31, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, THE BASIS OF BEARINGS BEING BETWEEN THE SALT LAKE COUNTY MONUMENT IN THE CENTERLINE OF STATE STREET, WHICH LIES S.89°15'05"E. 121.06 FEET FROM SAID WEST QUARTER CORNER AND THE SALT LAKE COUNTY MONUMENT IN THE CENTERLINE OF STATE STREET WHICH LIES N.89°57'08"E. 99.22 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 31, (SAID BEARING BEING S.0°21'25"W.);

THENCE SOUTH 57.34 FEET; THENCE S.14°19'57"E. 194.52 FEET; THENCE SOUTH 56.85 FEET TO A POINT ALONG A NON TANGENT CURVE, SAID POINT BEING A POINT OF CURVE, CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 101.00 FEET A CENTRAL ANGLE OF 52°50'18" AND A CHORD OF 89.88 FEET BEARING S.46°29'35"E. THENCE SOUTHEASTERLY ALONG SAID CURVE A DISTANCE OF 93.14 FEET; THENCE S.20°04'26"E. 266.17 FEET; THENCE S.89°54'00"E 317.87 FEET; THENCE N.04°48'50".W 97.57 FEET TO A POINT OF CURVE, CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 4262.03 FEET A CENTRAL ANGLE OF 05°17'49" AND A CHORD OF 393.88 FEET BEARING N.07°47'14"W. THENCE NORTHWESTERLY ALONG SAID CURVE A DISTANCE OF 394.02 FEET; THENCE N.74°00'00"W. 147.13 FEET; THENCE NORTH 85.00 FEET; THENCE WEST 323.34 FEET TO THE POINT OF BEGINNING.

CONTAINS: 5.363 ACRES

**EXHIBIT "A"-1  
Legal Description**

The Land and Lot or Units referred to in the foregoing notice is located in Salt Lake County, Utah and is described more particularly as follows:

East Town Village Condominium			East Town Village Townhomes		
Bldg No.	Unit No.	Parcel No.	Bldg No.	Unit No.	Parcel No.

**Phase 3 BOUNDARY DESCRIPTION**

BEGINNING AT A POINT S.89°15'05" E. 121.06 FEET AND S.0°21'25"W 338.93 FEET AND EAST 49.50 FEET FROM THE WEST QUARTER CORNER OF SECTION 31, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, THE BASIS OF BEARINGS BEING BETWEEN THE SALT LAKE COUNTY MONUMENT IN THE CENTERLINE OF STATE STREET, WHICH LIES S.89°15'05"E. 121.06 FEET FROM SAID WEST QUARTER CORNER AND THE SALT LAKE COUNTY MONUMENT IN THE CENTERLINE OF STATE STREET WHICH LIES N.89°57'08"E. 99.22 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 31, (SAID BEARING BEING S.0°21'25"W.);

RUNNING THENCE S.00°21'25"W. 275.53 FEET; S.89°54'59"E. 284.87 FEET; THENCE NORTH 255.34 FEET TO A POINT OF CURVATURE, CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 4.50 FEET A CENTRAL ANGLE OF 90°00'00" AND A CHORD OF 6.36 FEET BEARING N.45°00'00"W. THENCE NORTHWESTERLY ALONG SAID CURVE A DISTANCE OF 7.07 FEET TO A POINT OF TANGENCY; THENCE WEST 117.95 FEET TO A POINT OF CURVATURE, CONCAVE TO THE NORTH HAVING A RADIUS OF 124.00 FEET A CENTRAL ANGLE OF 29°31'21" AND A CHORD OF 63.19 FEET BEARING N.75°14'20"W. THENCE WESTERLY ALONG SAID CURVE A DISTANCE OF 63.89 FEET; THENCE WEST 99.60 FEET TO THE POINT OF BEGINNING.

CONTAINS: 1.737 ACRES

**EXHIBIT "A"-2  
Legal Description**

The Land and Lot or Units referred to in the foregoing notice is located in Salt Lake County, Utah and is described more particularly as follows:

***East Town Village  
Sandy***

**BOUNDARY DESCRIPTION:**

BEGINNING AT A POINT S89°15'05"E 121.06 FEET AND S00°21'25"W 614.07 FEET AND S89°38'35"E 49.50 FEET FROM THE WEST QUARTER CORNER OF SECTION 31, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN SAID POINT BEING THE POINT OF BEGINNING. THENCE S89°54'00"E 1198.14 FEET; THENCE S04°48'50"E 1277.14 FEET; THENCE N20°00'00"W 506.37 FEET; THENCE N88°50'19"W 155.59 FEET; THENCE N00°21'25"E 5.56 FEET; THENCE N89°38'35"W 228.03 FEET; THENCE N01°35'36"E 106.48 FEET; THENCE N88°50'19"W 755.84 FEET; THENCE N00°21'25"E 667.01 FEET TO THE POINT OF BEGINNING. CONTAINING 21.12 ACRES.

**EXHIBIT "B"**  
**BYLAWS**  
**EAST TOWN VILLAGE TOWNHOME OWNERS RECREATION ASSOCIATION**

**ARTICLE I**  
**REGISTERED AGENT AND OFFICE**

1. Office and Registered Agent. The initial Registered Agent shall be Gary Petersen of 758 South 400 East, Orem, Utah 84097. However, after transfer of management and control of the Recreation Association is made by the Declarant to the members of the Recreation Association, the Registered Agent shall be the President of the Recreation Association and the Registered Office shall be the home of the President or such other place as shall be designated by him or her.

**ARTICLE II**  
**RECREATION ASSOCIATION**

1. Composition. The Recreation Association is a mandatory Recreation Association consisting of all Owners.

2. Meetings. The Recreation Association shall meet as often as is necessary but at least once annually.

3. Place of Meeting. Meetings of the Recreation Association shall be held at the principal office of the Recreation Association or at such other suitable place as may be designated by the Board of Delegates from time to time and stated in the notice of meeting.

4. Notice of Meeting. It shall be the duty of the Secretary to hand deliver or mail to each owner at his/her last known address, by regular U.S. mail postage prepaid, a notice of (a) each annual meeting of the Recreation Association not less than ten (10) and not more than thirty (30) days in advance of such meeting. The notice shall state the purpose, day, date, time, and place of the meetings. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

5. Qualified Voters. An Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Recreation Association if s/he is in full compliance with all of the terms, covenants, and conditions of the Project Documents, and shall have fully paid his or her share of the Recreation Expenses and all Recreation Assessments and/or Additional Charges due.

6. Proxies. The votes appertaining to any Lot may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Lot Owner, or in cases where the Owner is more than one person, by or on behalf of all such persons. Any proxy shall be void if it is not dated, if it purports to be revocable without notice, or if it is not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Unless it expressly states otherwise, a proxy shall terminate automatically (a) if the Owner attends the meeting in person, (b) it is revoked in writing and written notice of the revocation is given to the Secretary of the Recreation Association prior to the meeting, and (c) upon the adjournment of the first meeting held on or after the date of that proxy. Each proxy must be filed with the Secretary of the Recreation Association prior to the meeting. Only individual Owners or the legal representative of an institutional Owner may be proxies.

7. Quorum Voting. Those Owners present in person or by proxy at a meeting of the Recreation Association shall constitute a quorum for all purposes. When a quorum is present at any meeting, the vote of the Owners representing a majority of the members of the Recreation Association in person or by proxy, shall decide any question brought before the meeting. If the Declaration requires a fixed percentage of Owners to approve any action, however, that percentage shall be required anything to the contrary notwithstanding.

8. Order of Business. The order of business at all meetings of the Recreation Association shall be as follows:

- a. roll call;
- b. proof of notice of meeting;
- c. reading of minutes of preceding meeting;
- d. reports of officers;
- e. report of special Board of Delegates, if any;
- f. election of inspectors, if applicable;
- g. election of Board of Delegates Members, if applicable;
- h. unfinished business; and
- i. new business.

8. Conduct of Meeting. The President shall, or in his or her absence the Vice-President, preside over all meetings of the Recreation Association; and the Secretary shall keep the minutes of the meeting as well as record of all transactions occurring thereat.

9. Action May Be Taken Without A Meeting. Any action to be taken at the meeting of the Board of Delegates may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the members of the Board of Delegates. An explanation of the action taken shall be posted at a prominent place or places within the Common Area within three (3) days after the written consents of all of the members of the Board of Delegates have been obtained.

**ARTICLE III  
BOARD OF DELEGATES**

1. Powers and Duties. The affairs and business of the Recreation Association shall be managed by the Board of Delegates consisting of three (3) Lot Owners. The Board of Delegates shall have all of the powers and duties necessary for the administration of the affairs of the Recreation Association in accordance with the provisions of the Declaration and may do all such acts and things necessary to operate and maintain the Project. The Board of Delegates may delegate its authority to a manager or managers. Subject to any limitations or provisions contained in the Declaration, the Board of Delegates shall be responsible for at least the following:

- a) Preparing of an annual budget;
- b) Allocating the Recreation Expenses;
- c) Providing for the operation, care, upkeep, replacement, maintenance, and regulation of all the Common Area and Facilities.
- d) Collecting and depositing the Recreation Assessments.
- e) Making, amending, and enforcing the Rules and Regulations.
- f) Opening and closing of bank accounts for and in behalf of the Recreation Association, and designating the signatories required therefor.
- g) Enforcing by legal means the Project Documents.
- h) Purchasing and maintaining insurance.
- i) Paying the cost of all services rendered to the Project and not billed directly to Owners or individual Lots.
- j) Keeping books and records.
- k) Providing common utilities.
- l) Making emergency repairs;
- m) Immobilizing, towing, impounding, or otherwise removing any motor vehicle parked, stored, or standing in violation of the parking rules and regulations or in an unauthorized area;



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- n) Assigning parking spaces and/or establishing disability parking;
  - o) Charging fines;
  - p) Incorporating or reincorporating the Association should the corporate status lapse, be suspended or expire; and
  - q) Doing such other things and acts necessary to accomplish the foregoing and not inconsistent with the Declaration or Bylaws, or to do anything required by a proper resolution of the Board of Delegates or Recreation Association.

2. Composition of Board of Delegates. The Board of Delegates shall be composed of three (3) but not more than nine (9) members.

3. Election and Term of Office of the Board of Delegates. The term of office of membership on the Board of Delegates shall be two (2) years. At the expiration of the member's term, a successor shall be elected. At the first annual meeting after the end of the Period of Declarant's Control, the even number of Members shall be elected for a 2 year term and the odd number of members for a 1-year term. Thereafter all terms shall be 2 years (e.g. at the initial meeting, if there are 3 members, 2 shall be elected for a 2-year term and 1 shall be elected for a one year term).

4. First Meeting. The first meeting of the members of the Board of Delegates shall be immediately following the annual meeting of the Recreation Association or at such other time and place designated by the Board of Delegates.

5. Regular Meetings. Regular meetings of the Board of Delegates shall be held from time to time and at such time and place as shall be determined by a majority of the members of the Board of Delegates, but no less often than monthly.

6. Special Meetings. Special meetings of the Board of Delegates may be called by the President, Vice President, or a majority of the members on at least forty-eight (48) hours prior notice to each member. Such notice shall be given personally, by regular U.S. Mail postage prepaid, or by telephone, and such notice shall state the time, place, and purpose of the meeting. Any meeting attended by all members of the Board of Delegates shall be valid for any and all purposes.

7. Waiver of Notice. Before or at any meeting of the Board of Delegates, any member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any meeting of the Board of Delegates shall constitute a waiver of notice. If all the members are present at any meeting of the Board of Delegates, no notice shall be required and any business may be transacted at such meeting.

8. Board of Delegates's Quorum. At all meetings of the Board of Delegates, a majority of the members then in office shall constitute a quorum for the transaction of business, and the

acts of the majority of all the Board of Delegates members present at a meeting at which a quorum is present shall be deemed to be the acts of the Board of Delegates. If, at any meeting of the Board of Delegates, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time but for no longer than two days. At any such rescheduled meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

9. Vacancies. Vacancies in the Board of Delegates caused by any reason other than removal of a member by a vote of the Recreation Association shall be filled by vote of the majority of the remaining members of the Board of Delegates at a special meeting of the Board of Delegates held for that purpose promptly after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the Board of Delegates; and each person so elected shall be a member for the remainder of the term of the member so replaced. A vacancy created by the removal of a member by a vote of the Recreation Association shall be filled by the election and vote of the Recreation Association.

10. Removal of Board of Delegates Member. A member of the Board of Delegates may be removed with or without cause, and his or her successor elected, at any duly called regular or special meeting of the Recreation Association at which a quorum of the Recreation Association is present, by an affirmative vote of a majority of the members of the Recreation Association. Any member whose removal has been proposed by the Owners shall be given at least thirty days notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Any Board of Delegates Member who misses twenty-five percent (25%) or more of the Board of Delegates Meetings or who misses three (3) consecutive meetings, in any calendar year, shall be automatically removed from the Board of Delegates.

11. Presiding Authority. The President shall preside over all meetings of the Board of Delegates.

12. Minutes. The Secretary shall keep a Minute Book of the Board of Delegates recording therein all resolutions adopted by the Board of Delegates and a record of all transactions and proceedings occurring at such meetings.

13. Report of Board of Delegates. The Board of Delegates shall present at each annual meeting, and when called for by vote of the Recreation Association at any special meeting of the Recreation Association, a full and clear statement of the business and condition of the Recreation Association.

#### **ARTICLE IV OFFICERS**

1. Designation. The principal officers of the Recreation Association shall be a President, a Vice-President, a Secretary, and a Treasurer, all of whom shall be elected by the Board of Delegates. The Board of Delegates may appoint assistant secretaries and such other officers as

in its judgment may be necessary. The President, Secretary, and Treasurer must be members of the Board of Delegates. Two or more offices may be held by the same person, except that the President shall not hold any other office.

2. Election of Officers. The officers of the Recreation Association shall be elected annually by the Board of Delegates at the first meeting of each Board of Delegates immediately following the annual meeting of the Recreation Association and shall hold office at the pleasure of the Board of Delegates. Any vacancy in an office shall be filled by the Board of Delegates at a regular meeting or special meeting called for such purpose.

3. Removal of Officers. The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Delegates may be removed at any time by the affirmative vote of a majority of the Board of Delegates, and his or her successor may be elected at any regular meeting of the Board of Delegates, or at any special meeting of the Board of Delegates called for such purposes.

4. President. The President shall be the chief executive officer; s/he shall preside at meetings of the Recreation Association and the Board of Delegates shall be an ex officio member of all Board of Delegates; s/he shall have general and active management of the business of the Board of Delegates and shall see that all orders and resolutions of the Board of Delegates are carried into effect. S/he shall have all of the general powers and duties which are usually vested in or incident to the use of president of a corporation organized under the laws of the State of Utah.

5. Vice-President. The Vice-President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board of Delegates or the President shall prescribe. If neither the President nor the Vice President is able to act, the Board of Delegates shall appoint a member of the Board of Delegates to do so on an interim basis.

6. Secretary. The secretary shall attend all meetings of the Board of Delegates and all meetings of the Recreation Association and record all votes and the minutes of all proceedings in a book to be kept by him/her for that purpose and shall perform like duties for Board of Delegates when required. S/he shall give, or cause to be given, notices for all meetings of the Recreation Association and the Board of Delegates and shall perform such other duties as may be prescribed by the Board of Delegates. The Secretary shall compile and keep current at the principal office of the Recreation Association, a complete list of the Owners and their last known post office addresses. This list shall be open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days. The Secretary shall also keep current and retain custody of the Minute Book of the Recreation Association containing the minutes of all annual and special meetings of the Recreation Association and all sessions of the Board of Delegates including resolutions.

7. Treasurer. The Treasurer shall have custody of all funds and securities that are not under the control of the Managing Agent, and with the assistance of the Managing Agent, shall

keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all monies and other valuable effects in such depositories as may be designated by the Board of Delegates. S/he shall disburse funds as ordered by the Board of Delegates, taking proper vouchers for such disbursements, and shall render to the President and members, at the regular meetings of the Board of Delegates, or whenever they may require it, an account of all his or her transactions as Treasurer and of the financial condition of the Project.

## **ARTICLE V FISCAL YEAR**

The fiscal year of the Recreation Association shall be the calendar year consisting of the twelve (12) month period commencing on January 1 of each year terminating on December 31 of the same year. The fiscal year herein established shall be subject to change by the Board of Delegates should it be deemed advisable or in the best interests of the Recreation Association.

## **ARTICLE VI INVESTMENT OF COMMON FUNDS**

Common funds may only be deposited into institutions and accounts which are federally insured.

## **ARTICLE VII AMENDMENT TO BYLAWS**

1. Amendment. These Bylaws may be amended as follows:

a) General. Except as provided elsewhere in these bylaws, including by way of illustration but not limitation, to sections pertaining to the addition or annexation of any land, any amendment to these bylaws shall require the affirmative written vote or consent of at least a majority of the total undivided ownership interest in the Common Area and Facilities cast either in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting.

b) Initial Declarant Right to Amend. The Declarant alone may amend or terminate these bylaws prior to the closing of a sale of the first Lot.

c) Unilateral Right to Amend Under Certain Conditions. Notwithstanding anything contained to the contrary in these bylaws, these bylaws may be amended unilaterally at any time and from time to time by Declarant if such Amendment is (1) necessary to correct typographical errors or inadvertent omissions; (2) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation, or judicial determination which shall be in conflict therewith; or (3) reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to these bylaws; provided, however, any such amendment shall not materially adversely affect the title to any Lot unless the Owner of said Lot shall consent thereto in writing.

d) Declarant's Right to Amend Unilaterally Prior to Termination of Declarant's Right to Control. Prior to the expiration of the Period of Declarant's Control, Declarant may unilaterally amend these bylaws for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any property without the express written consent of said Lot Owner.

e) To Satisfy Requirements of Lenders. Anything to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of these bylaws to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC, or FNMA and to further amend to the extent requested by any other federal, state, or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of these bylaws or approval of the sale of Lots, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot, or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of an Amendment duly signed by the Declarant, specifying the federal, state, or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when recorded, shall be binding upon all Lots and all persons having an interest therein. It is the desire of Declarant to retain control of the Recreation Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of hereof deletes, diminishes, or alters such control in any manner whatsoever in the opinion of Declarant, then Declarant shall have the unilateral right to amend these bylaws to restore such control.

f) Declarant's Rights. No provision of these bylaws reserving or granting to Declarant any unexpired developmental rights may be amended, including by way of illustration but not limitation, a modification which would terminate or decrease any developmental right, without the prior express written consent of Declarant, which consent may be withheld, conditioned, or delayed for any reason or for no reason at Declarant's sole and exclusive discretion.

g) Execution of Amendments.

1) An amendment or revocation which only requires the execution of an instrument by Declarant as hereinabove provided shall be effective when executed by Declarant and when recorded in the office of the County Recorder.

2) An amendment which requires the affirmative written assent or vote of the Owners as hereinabove provided shall be effective when executed by the President and Secretary of the Recreation Association, who shall certify that all of the voting

requirements have been satisfied, and the Declarant, if the Declarant's consent is also required, and recorded in the office of the County Recorder.

2. Effective Upon Recording. An amendment to these bylaws shall become effective immediately upon recordation in the Office of the County Recorder.

### **ARTICLE VIII NOTICE**

1. Manner of Notice. All notices, demands, bills, statements, or other communications provided for or required under these bylaws (except as to notices of Recreation Association meetings which were previously addressed in Article II of these bylaws) shall be in writing and shall be deemed to have been duly given if delivered personally or sent by regular U.S. Mail postage pre-paid, a) if to an Owner, at the address of his or her Lot and at such other address as the Owner may have designated by notice in writing to the Secretary; or b) if to the Board of Delegates or the Manager, at the principal office of the Manager or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section.

2. Waiver of Notice. Whenever any notice is required to be given under the provisions of the statutes, the Declaration, or of these bylaws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto, unless such waiver is ineffective under the provisions of the Declaration

### **ARTICLE IX BOOKS AND RECORDS**

1. Books and Records. All books and records shall be kept in accordance with generally accepted accounting practices.

2. Financial Statements: Upon the written request of any Lot Owner, the Board of Delegates shall mail to such member its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operation, unless the member has already received the same.

3. Limitation of Liability. Neither the Recreation Association nor any director, officer, employee, or agent of the Recreation Association shall be liable to the member or anyone to whom the member discloses the financial statement or any information contained therein for any error or omission therein, whether caused without fault, by negligence or by gross negligence, unless (1) the error or omission is material, (2) the director, officer, employee, or agent in question knew of the error or omission and intended for the member or other person to rely thereon to his or her detriment, (3) the member or other persons did reasonably rely thereon, and, in addition, (4) s/he is otherwise liable under applicable law.

4. Independent Compilation, Review, or Audit. Within 120 days of the end of the Recreation Association's fiscal year, the Board of Delegates may, but are not required to, provide either a Compilation Report, Reviewed Financial Statement, or an Audited Financial Statement<sup>1</sup>, prepared by an independent CPA.<sup>2</sup> Whenever requested in writing by a majority of members of the Board of Delegates or Lot Owners, the Board of Delegates shall provide an Audited Financial Statement. The cost of the Compilation Report, Reviewed Financial Statement, or an Audited Financial Statement shall be a Recreation Expense.

## **ARTICLE X COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS**

1. Conflict. These bylaws are subordinate and subject to all provisions of the Declaration. All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Declaration. In the event of any conflict between these bylaws and the Declaration, the provision of the Declaration shall control.

2. Waiver. No restriction, condition, obligation, or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

3. Captions. The captions contained in these Bylaws are for convenience only and are not part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.

4. Interpretation. Whenever in these Bylaws the context so requires, the singular number shall refer to the plural and the converse; and the use of any gender shall be deemed to include

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<sup>1</sup> The Board of Delegates should be sensitive to the legal requirements for and the costs involved in preparing financial reports. The Board of Delegates may require preparation of anything from merely compiled financial statements to a full audit. With compiled financial statements, the accountant simply takes information supplied by the Board of Delegates of the association and puts it in proper financial statement form, without attempting to verify the information supplied. The accountant expresses no assurances regarding the financial statements. Reviewed financial statements involve certain inquiries and analytical procedures by the accountant concerning the association's accounting methods. A review should provide the accountant with a reasonable basis for expressing limited assurances to home owners that no material modification need be made to the financial statements. Audited financial statements require detailed examination, tests of accounting records and methods, and direct verification of assets and liabilities with banks, attorneys, creditors, and others. Generally, the accountant will give the association an unqualified opinion that the financial statements fairly represent the financial position of the association. Although audited financial statements may be the most thorough, they are also the most expensive financial report and may be unnecessary for the average association. A compilation is generally the least expensive type of report, but it gives the homeowners no assurances that the Board of Delegates is accounting for association monies in accordance with generally accepted accounting principles. For this reason, the Board of Delegates may wish to require only a review, which should be adequate to fulfill the Board of Delegates' fiduciary duty to account to the home owners.

<sup>2</sup> The CPA may not own or reside in a Unit, serve on the Board of Delegates, be an officer, agent, representative or employee of the Association, or otherwise have a conflict of interest, real or apparent.

both masculine and feminine; and the term "shall" is mandatory while the term "may" is permissive.

5. Severability. The invalidity of any one or more phrases, sentences, subparagraphs, subsections, or sections hereof shall not affect the remaining portions of this instrument or any part thereof, and in the event that any portion or portions of this document should be invalid or should operate to render this document invalid, this document shall be construed as if such invalid phrase or phrases, sentence or sentences, subparagraph or subparagraphs, paragraph or paragraphs, subsection or subsections, or section or sections had not been inserted.

Dated the 17 day of June, 2010.

EAST TOWN VILLAGE RECREATION AMENITIES, L.C.,  
a Utah limited liability company

By: Gary A. Petersen  
Name: Gary A. Petersen  
Title: Manager

STATE OF UTAH )  
                  Salt Lake ss:  
COUNTY OF ~~UTAH~~ )

On the 17 day of June, 2010, personally appeared before me Gary A. Petersen who by me being duly sworn, did say that he is the Manager of EAST TOWN VILLAGE RECREATION AMENITIES, L.C., a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said Company by authority of its Articles of Organization or a resolution of its Members, and said Gary A. Petersen duly acknowledged to me that said Company executed the same.

Shelby N. Pintus  
NOTARY PUBLIC





**EXHIBIT "C"**  
**PERCENTAGES OF OWNERSHIP INTEREST IN ASSOCIATION**

<u>Name</u>	<u>Number of Lots or Units</u>	<u>Percentage</u>
East Town Village Condominium Association		50%
East Town Village Townhome Association		50%
TOTAL		100%