

Entry No. 135943 Book M 89  
 RECORDED 1-18-77 at 2:51 PM Page 400  
 REQUEST of Victor R. Ayers 427  
 FEE WANDA Y. SPRIGGS, SUMMIT CO. RECORDER  
 \$ 29.00 By Wanda Y. Spriggs  
 INDEXED \_\_\_\_\_ ABSTRACT \_\_\_\_\_

INDEXED: \_\_\_\_\_  
 GRANTOR: \_\_\_\_\_  
 GRANTEE: \_\_\_\_\_  
 RELEASED: \_\_\_\_\_  
 ABSTRACTED: \_\_\_\_\_  
 STAMPED: \_\_\_\_\_

DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS OF  
RACQUET CLUB VILLAGE NO. 1 SUBDIVISION  
A PLANNED RESIDENTIAL DEVELOPMENT

THIS DECLARATION is made and executed this 18<sup>th</sup> day of JANUARY, 1977, by SMITH & AYERS COMPANY, a partnership, (hereinafter referred to as "Developer").

RECITALS:

A. Developer is the record owner of that certain tract of Property more particularly described in Article II of this Declaration. Developer desires to create on said Property a residential development with permanent recreational areas, open spaces, and other Common Areas.

B. Developer desires to provide for preservation of the values and amenities in said development and for the maintenance of the Common Areas. To this end and for the benefit of the Property and of the Owners thereof, Developer desires to subject the Property described in Article II of this Declaration to the covenants, restrictions, easements, charges and liens hereinafter set forth.

C. Developer deems it desirable, for the efficient preservation of the values and amenities in the development, to create an entity which possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose, Developer has, in conjunction with recordation of this Declaration, caused to be incorporated under the laws of the State of Utah, as a nonprofit corporation, THE RACQUET CLUB VILLAGE NO. 1 HOMEOWNERS ASSOCIATION.

NOW, THEREFORE, for the foregoing purposes, Developer declares that the Property described in Article II of this Declaration is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth.

I. DEFINITIONS

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

1. Declaration shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions.
2. Plat shall mean and refer to the subdivision plat of the Racquet Club Village No. 1 Subdivision, a Planned Residential Development, executed and acknowledged by Developer on the 15<sup>th</sup> day of DECEMBER, 1976, prepared and certified to by James G. West (a duly registered Utah Land Surveyor holding Certificate No. 3082) and filed for record in the office of the County Recorder of Summit County, Utah concurrently with the filing of this Declaration.
3. Property shall mean and refer to the entire tract of real property covered by the Plat, a description of which is set forth in Article II of this Declaration.
4. Lot shall mean and refer to any of the separately numbered and individually described parcels of land shown on the Plat.
5. Common Areas shall mean and refer to that part of the

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Property which is not included within the Lots, including all improvements other than utility lines now or hereafter constructed or located thereon.

6. Limited Common Areas shall mean and refer to that part of the Common Areas identified and described on the Plat as Limited Common Areas.

7. Living Unit shall mean and refer to a structure or portion of a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the Lot concerned which are used in conjunction with such residence.

8. Owner shall mean and refer to the person who or entity which is the owner of record (in the office of the County Recorder of Summit County, Utah) of a fee or an undivided fee interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term, "Owner", shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

9. Association shall mean and refer to THE RACQUET CLUB VILLAGE NO. 1 HOMEOWNERS ASSOCIATION, a Utah nonprofit corporation.

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

## II. PROPERTY DESCRIPTION

The Property which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the following described real property situated in Summit County, State of Utah:

Beginning at a point North 1303.91 feet and East 1592.99 feet from the Southwest corner of Section 4, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point being on the Northerly right-of-way line of Little Kate Road, and running thence North 264.00 feet; thence North 57°00' East 438.34 feet; thence East 348.92 feet; thence South 161.29 feet; thence South 51°00' West 100.00 feet; thence South 22°30' West 365.00 feet; thence South 125.00 feet to a point on the Northerly right-of-way line of Little Kate Road, said point being on a curve to the right, the radius point of which bears North 8°30' East 475.00 feet; thence Northwesterly along the arc of said curve and said right-of-way line 178.24 feet to the point of tangency; thence North 60°00' West along said right-of-way line 111.25 feet to the point of a 525.00 foot radius curve to the left; thence Northwesterly along the arc of said curve and said right-of-way line 247.89 feet to the point of beginning. Contains 7.322 acres.

RESERVING UNTO THE OWNER for the granting to adjacent properties, a non-exclusive easement for ingress and egress and for vehicular and pedestrian traffic over Racquet Club Drive and those portions of the property graded and surfaced as roadways as shown on the recorded Plat of the Racquet Club Village No. 1 Subdivision.

EXCLUDING all presently existing or to be constructed or installed sewer lines, water mains, gas lines, electrical conduits, telephone lines, and related facilities to the extent they are located outside the Lots included within the above-described tract.

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RESERVING UNTO DEVELOPER, however, such easements and rights of ingress and egress over, across, through, and under the above-described tract and any improvements now or hereafter constructed thereon as may be reasonably necessary (in a manner not inconsistent with the provisions of this Declaration) to construct a Living Unit on each and every Lot and to improve the Common Areas with such structures and facilities designed for the use and enjoyment of the Members as Developer may reasonably determine to be appropriate (including, but not limited to, walkways, landscaping, and general parking facilities); and to further improve the Common Areas by constructing covered parking facilities constituting the Limited Common Areas, the use of which shall be limited as provided herein. If, pursuant to this reservation, the above-described tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservation hereby effected shall, unless sooner terminated in accordance with its terms, expire 20 years after the date on which this Declaration is filed for record in the office of the County Recorder of Summit County, Utah.

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; 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 easements and rights-of-way; and all easements and rights-of-way of record.

### III. MEMBERSHIP AND VOTING RIGHTS

1. Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains.

2. Voting Rights. The Association shall have the following described two classes of voting membership:

Class A. Class A Members shall be all Owners, but excluding the Developer until the Class B membership ceases. Class A Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.

Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to six (6) votes for each Lot in which it holds the interest required for membership in the Association. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:

(a) When the total number of votes held by all Class A Members equals or exceeds the total number of votes held by the Class B Member.

(b) The expiration of twenty (20) years after the date on which this Declaration is filed for record in the office of the County Recorder of Summit County, Utah.

3. Multiple Ownership Interests. In the event there is

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more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

#### IV. PROPERTY RIGHTS IN COMMON AREAS

1. Easement of Enjoyment. Except with respect to the Limited Common Areas, each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Member's Lot.

2. Limited Common Areas. Each Member shall have an exclusive right and easement of use and enjoyment in and to that portion of the Limited Common Areas that is identified on the Plat by the same number by which that Member's Lot is identified; such right of use shall be limited, however, to the parking and storage of motor vehicles, trailers, campers and the like, and activities reasonably incident thereto. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Member's Lot.

3. Form for Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. \_\_\_\_\_ contained within The Racquet Club Village No. 1 Subdivision, a Planned Residential Development, as the same is identified in the Plat recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ and in the "Declaration of Covenants, Conditions, and Restrictions of The Racquet Club Village No. 1 Subdivision, a Planned Residential Development", recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_. TOGETHER WITH an exclusive right and easement of use in the Limited Common parking structure identified with the same number as the Lot above referred and together with a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Covenants, Conditions, and Restrictions.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

4. Transfer of Title. Developer agrees that it shall, at or prior to the time the Class B membership is converted to Class A membership, convey to the Association title to the Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities).

5. Limitation on Easement. A Member's right and easement of use and enjoyment concerning the Common Areas shall be subject to

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the following:

(a) The right of the Association to suspend a Member's right to the use of any recreational facilities included in the Common Areas for any period during which an assessment on such Member's Lot remains unpaid and for a period not exceeding ninety (90) days for any infraction by such Member of the provisions of this Declaration or of any rule of regulation promulgated by the Association;

(b) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

(c) The right of Summit County and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and

(d) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the vote of each class of membership which Members present in person or by proxy are entitled to cast at a meeting duly called for the purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

(e) No Member shall have the right to use any of the Limited Common Areas except that portion thereof that is identified on the Plat by the same number by which that Member's Lot is identified. No Member shall be allowed the use at any one time of more than one of the Common Area uncovered parking spaces.

## V. ASSESSMENTS

1. Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association the monthly and the special assessments described in this Article, together with the hereinafter provided for interest and costs of collection. All such amounts shall be, constitute, and remain: (i) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (ii) the personal obligation of the person who is the Owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot.

2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas; maintenance, repair, and improvement of the Common Areas; management and supervision of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles of Incorporation.

3. Monthly Assessment. As of the date set under Section 7 of this Article, each Lot shall be subject to a monthly assessment. Written notice setting forth the purpose of any meeting of the Association to set the amount of monthly assessments shall be sent to all Members at least ten (10) but not more than thirty (30) days prior

to the meeting date. Members of the Association may from time to time set the maximum amount of monthly assessment and give the Board of Directors of the Association the right to set the monthly assessment at any sum not in excess of the then applicable maximum amount.

4. Special Assessments. From and after the date set under Section 7 of this Article, the Association may levy special assessments for the purpose of defraying, in whole or in part: (i) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (ii) the cost of any construction, reconstruction, or unexpectedly required repair or replacement of an improvement or of personal property upon the Common Areas. Any such special assessment must be assented to by sixty percent (60%) of the votes of each class of membership which Members present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

5. Quorum Requirements. The quorum required for any action authorized by Section 3 or 4 above shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Sections 3 and 4) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

6. Uniform Rate of Assessment. Both monthly and special assessments shall be fixed at a uniform rate for all Lots.

7. Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence as to all Lots on the first day of the second month following conveyance of the Common Areas to the Association. At least fifteen (15) days prior to such commencement date and at least fifteen (15) days prior to the effective date of any change in amount of the monthly assessment, the Association shall give each Owner written notice of the amount and first due date of the assessment concerned. Monthly assessment on individual lots for insurance expense, taxes and other specifically attributable expenses shall commence as such expenses are incurred by the Association.

8. Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot, the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

9. Effect of Nonpayment -- Remedies. Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection, be, constitute, and remain a continuing lien on the Lot. The person who is the Owner of the Lot at the time the assessment falls due shall be and remain personally liable for payment. Such personal liability shall not pass to the Owner's successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum and the Association may bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot. Any judgment obtained by the Association shall include reasonable attorneys' fees, court costs, and each

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and every other expense incurred by the Association in enforcing its rights.

## VI. OPERATION AND MAINTENANCE

1. Operation and Maintenance by Association. The Association shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Lots and to keep them clean, functional, attractive, and generally in good condition and repair. The Association shall also provide for maintenance and upkeep of any portion of a Lot which lies between the extremities of the Living Unit situated thereon and the boundaries of the Lot. In addition, the Association shall provide for such maintenance and repair of the exteriors of Living Units (including resurfacing of roofs and repainting, but not including replacement of glass) as may be necessary or desirable to keep them attractive and generally in good condition and repair. In performing its obligations concerning maintenance of Living Unit exteriors, the Association shall employ materials of the same kind and quality, and colors the same, as those which were used in connection with original construction of the item concerned. The provisions of Section 2 of Article VIII ("Architectural Control") shall not apply to any maintenance or repair of Living Unit exteriors which is accomplished by the Association.

2. Utilities. The Association shall pay for all utility services furnished to each Lot except telephone and any other services which are separately billed or metered to individual Lots by the utility or other party furnishing such service.

3. Insurance. The Association shall secure and at all times maintain the following insurance coverages:

(i) A policy or policies of fire and casualty insurance with extended coverage endorsement, for the full insurable replacement value of all improvements existing on all lots in the subdivision and all improvements comprising a part of the Common Areas. The name of the insured under each such policy shall be in form and substance similar to: "The Racquet Club Village No. 1 Homeowners Association for the use and benefit of the individual Lot Owners and mortgagees, as their interests may appear."

(ii) A policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use, or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall be not less than \$300,000.00 for any one person injured, \$300,000.00 for all persons injured in any one accident, and \$100,000.00 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced.

The following additional provisions shall apply with respect to insurance:

(a) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature and use.

(b) All policies shall be written by a company holding a rating of "AA" or better from Best's Insurance Reports.

(c) The Association shall have the authority to adjust

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losses.

(d) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgagees.

(e) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: A waiver of the insurer's subrogation rights with respect to the Association, the Owners, and their respective directors, officers, agents, employees, invitees, and tenants; that it cannot be cancelled, suspended, or invalidated due to the conduct of any particular Owner or Owners; that it cannot be cancelled, suspended, or invalidated due to the conduct of the Association or of any director, officer, agent, or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

4. Manager. The Association may carry out through a Property Manager any of its functions which are properly the subject of delegation. Any Manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Property for the benefit of the Association and the Owners, and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

## VII. USE RESTRICTIONS

1. Use of Common Areas. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to lots and Living Units. No admission fees, charges for use, leases, or other income-generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas. Each Member shall be liable to the Association for any damage to or destruction of any part of the Common Areas caused, directly or indirectly, by the negligent, willful, or malicious act or omission of such Member or of any of Member's family guests, lessees, servants or others who use the Common Areas with such Member's permission, whether express or implied.

2. Use of Lots and Living Units. All Lots are intended to be improved with Living Units and are restricted to such use. Each Living Unit shall be used only as a single-family residence. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Living Unit, so as to create a nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of any insurance covering the Common Areas.

3. Recreational Vehicles. No boats, trailers, recreational vehicles, trucks or commercial vehicles belonging to Owners or other residents of the Property shall be parked or stored in or upon any of the Common Areas other than Limited Common Areas, except in such portions of the Common Areas as the Association may specify, and subject to such rules and regulations as the Association may from time to time promulgate.

4. Pets. No animals other than small household pets shall be kept or allowed on any Lot, in any Living Unit, or within any part of the Common Areas. Whenever a pet is allowed to leave a Living Unit, it shall be either on a leash or in a cage.

5. Exception for Developer. Notwithstanding the restrictions contained in this Article VII, for the twenty (20) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Summit County, Utah,

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Developer shall have the right to use any Lot or Living Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and/or sale of all Lots owned by Developer.

#### VIII. ARCHITECTURAL CONTROL

1. Architectural Control Committee. The Board of Directors of the Association shall appoint a three-member Committee, the function of which shall be to ensure that all improvements and landscaping within the property harmonize with existing surroundings and structures. The Committee need not be composed of Owners. If such a Committee is not appointed, the Board itself shall perform the duties required of the Committee.

2. Submission to Committee. No Living Unit, accessory or addition to a Living Unit which is visible from the Common Areas, or other improvement of a Lot which is visible from the Common Areas shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Living Unit shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Architectural Control Committee.

3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to ensure that all improvements, construction, landscaping, and alterations on Lots within the Property conform to and harmonize with existing surroundings and structures.

4. Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the Committee fails to take any action within such period, it shall be deemed to have approved the material submitted.

5. Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy unimproved portions of the Common Areas and of the Lots in the vicinity of the activity.

6. No Liability for Damages. The Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article VIII.

7. Exception for Developer. The foregoing provisions of this Article VIII shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Developer on any Lot or on any part of the Common Areas and which occurs at any time during the twenty (20) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Summit County, Utah.

8. Developer's Obligation. Developer hereby covenants in favor of each Owner: (i) that all Living Units erected by it and all improvement of the Common Areas accomplished by it shall be architecturally compatible with respect to one another; and (ii) that on or before two (2) years from the date on which this Declaration is filed for record in the office of the County Recorder of Summit County, Utah, the Common Areas, including walkways, landscaping and parking facilities, shall be completed and usable.

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## IX. PARTY WALLS

1. General Principles. Each wall constructed as part of the original construction of the Living Units which is located on a boundary line common to two Lots shall constitute a party wall. Except as herein modified and expanded, all legal and equitable principles relating to party walls shall govern and apply to such walls.

2. Maintenance. The cost of reasonable maintenance and repair of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. Costs associated with maintenance or repairs benefitting only one Owner (such as interior painting or redecorating) shall be borne solely by the Owner benefitted.

3. Destruction. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it. Any Owner thereafter making use of the wall shall contribute to the cost of restoration in proportion to such use; provided, however that the foregoing portion of this sentence shall not prejudice or limit any Owner's right to obtain a larger contribution under any legal or equitable principle regarding liability for negligent or willful acts or omissions.

4. Encroachments. If any portion of a Living Unit constructed by Developer, or if any portion of a Living Unit reconstructed so as to substantially duplicate the Living Unit originally constructed by Developer, encroaches upon an adjoining Lot or upon the Common Areas, there shall exist an easement for such encroachment.

## X. MISCELLANEOUS

1. Notices. Any notice required or permitted to be given to any Owner or Member under the provisions of this Declaration shall be deemed to have been properly furnished if mailed postage prepaid to the person who appears as a Member or Owner, at the latest address for such person appearing in the records of the Association at the time of mailing.

2. Rules and Regulations. The Association shall have authority to promulgate and enforce such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to ensure that the Property is maintained and used in a manner consistent with the interests of the Owners.

3. Amendment. Any amendment to this Declaration shall require: (i) the affirmative vote of at least two-thirds (2/3) of all Class A membership votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose; and, so long as the Class B membership exists, (ii) the written consent of Developer. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be as follows: At the first meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the Class A membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirement set forth in the foregoing portion of this Section 3) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the Association and, if the Class B

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membership then exists, executed by the Developer. In such instrument an officer or director of the Association shall certify that the vote required by this Section for amendment has occurred.

4. Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the Class of membership concerned. The following additional provisions shall govern any application of this Section 4:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.

(b) The total number of votes required for authorization or approval under this Section 4 shall be determined as of the date on which the last consent is signed.

(c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

(d) Unless the consent of all Members whose memberships are appurtenant to the same Lot are secured, the consent of none of such Members shall be effective.

5. Mortgage Protection. As used in this Section 5, the term "Mortgage" shall mean and include both a first mortgage on any Lot and a first deed of trust on any Lot and the term "Mortgagee" shall mean and include both a mortgagee under a first mortgage on any Lot and a beneficiary under a first deed of trust on any Lot.

From and after the time a Mortgagee makes written request to the Association therefor, the Association shall notify such Mortgagee in writing in the event that the Owner of the Lot encumbered by the Mortgage held by such Mortgagee neglects for a period of thirty (30) or more days to cure any failure on his part to perform any of his obligations under this Declaration.

The lien on a Lot for unpaid assessments provided for under Article V shall be subordinate to the Mortgage affecting such Lot, and the Mortgagee thereunder which comes into possession of the Lot shall take the same free of such lien for unpaid assessments, but only to the extent of assessments which accrue prior to foreclosure of the Mortgage, exercise of a power of sale available thereunder or deed or assignment in lieu of foreclosure (except for claims for a pro rata share of such prior assessments resulting from a pro rata reallocation thereof to all Lots including the Lot in which the Mortgagee is interested).

Unless at least ninety percent (90%) of the Mortgagees (based upon one vote for each Mortgage) of the individual Lots have given their prior written approval, neither the Association nor any other party shall be entitled, by act, omission or otherwise:

(a) To alter the provisions of Section 6 of Article V hereof (pertaining to uniform rate of assessments);

(b) To abandon, partition, subdivide, encumber, sell, dedicate, or transfer all or any part of the Common Areas (except

for the transfer of title from Developer to the Association contemplated by Section 3 of Article IV hereof and except for the granting of easements for utilities and similar purposes consistent with the intended use of the Common Areas);

(c) To seek to abandon or materially alter the arrangement which is established by this Declaration;

(d) To change, waive, abandon, or cease enforcement of the arrangement created under this Declaration concerning architectural control, party walls, or maintenance of the exteriors of Living Units and of the Common Areas;

(e) To fail to maintain the fire, casualty, and extended coverage insurance provided for in Section 4(i) of Article VI hereof;

(f) To use proceeds of such insurance for purposes other than the repair, replacement or reconstruction of improvements comprising a part of the Common Areas; or

(g) To amend the provisions of this Section 5.

Any Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Association.

In the event any taxes on the Common Areas are not timely paid, or in the event required fire, casualty, and extended coverage insurance on the Lots and Common Areas is not maintained or the premiums therefor are not paid when due, any Mortgagee or any combination of Mortgagees may, jointly or singly, pay such taxes or premiums or secure such insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Association, together with interest thereon from the date of expenditure at the rate of ten percent (10%) per annum.

6. Developer's Rights Assignable. The rights of Developer under this Declaration or in any way relating to the Property may be assigned.

7. Interpretation. 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 other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof. This Declaration shall be liberally construed to effect all of its purposes.

8. 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 Developer, all parties who hereafter acquire any interest in a Lot or in the Common Areas, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Living Unit shall comply with, and all interests in all Lots or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

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Exhibit A

Filed  
Secretary of State  
11 January 1977

JAN 4 7 77 PM



ARTICLES OF INCORPORATION

of

RACQUET CLUB VILLAGE NO. 1 HOMEOWNERS ASSOCIATION  
(A Utah Nonprofit Corporation)

UT. GOV. SEC. OF STATE

I, Richard Smith, the undersigned natural person over the age of 21 years, whose address is 1443 Beck Street, Salt Lake City, Utah, acting as incorporator of a non-profit corporation under the Utah Nonprofit Corporation and Cooperative Association Act [§§16-6-18 through 16-6-111, Utah Code Annotated (1953)], hereby adopt these Articles of Incorporation for such corporation.

The name of the corporation is RACQUET CLUB VILLAGE NO. 1 HOMEOWNERS ASSOCIATION. The corporation shall continue in existence perpetually unless dissolved or otherwise terminated according to law.

I. DEFINITIONS

When used in these Articles the following terms shall have the meaning indicated:

1. Articles shall mean and refer to these Articles of Incorporation of Racquet Club Village No. 1 Homeowners Association.

2. Association shall mean and refer to Racquet Club Village No. 1 Homeowners Association, the Utah nonprofit corporation which is created by the filing of these Articles.

3. Member shall mean and refer to every person who holds membership in the Association.

4. Developer shall mean and refer to Smith & Ayers Company, a partnership.

5. Property shall mean and refer to the entirety of the tract of real property situated in Summit County, State of Utah, and more particularly described in Exhibit "A" attached hereto and by reference incorporated herein.

6. Plat shall mean and refer to the subdivision plat covering the Property, entitled "Racquet Club Village No. 1 Subdivision, a Planned Residential Development," executed and acknowledged by Developer on the 15th day of December, 1976, prepared and certified to by James G. West (a duly registered Utah Land Surveyor holding Certificate No. 3082), and filed for record in the office of the County Recorder of Summit County, Utah on or about the date that these Articles are filed with the office of the Secretary of State of Utah.

7. Declaration shall mean and refer to the instrument entitled "Declaration of Covenants, Conditions, and Restrictions of the Racquet Club Village No. 1 Subdivision, a Planned Residential Development," executed and acknowledged by Developer on the 15th day of December, 1976, and filed for record in the office of the County Recorder of Summit County, Utah concurrently with the filing of the Plat.

8. Lot shall mean and refer to any of the 58 separately numbered and individually described parcels of land shown on the Plat.

9. Common Areas shall mean and refer to that part of the Property which is not included within the Lots, including all improvements other than utility lines now or hereafter constructed or located thereon, and including all Limited Common Areas as the same are defined in the Declaration and identified on the Plat.

10. Living Unit shall mean and refer to a structure or portion of a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the Lot concerned which are used in conjunction with such residence.

11. Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Summit County, Utah) of a fee or an undivided fee interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

## II. POWERS AND PURPOSES

1. Purposes. The Association is organized and shall be operated as a nonprofit corporation for the purpose of maintaining and administering the Common Areas, collecting and disbursing the assessments and charges provided for in the Declaration, otherwise administering, enforcing, and carrying out the terms of the Declaration, and generally providing for and promoting the recreation, health, safety, and welfare of residents of the Property.

2. Powers. The Association shall have all of the powers conferred upon it by the Declaration and all powers allowed by law necessary or convenient for accomplishment of any of its purposes, including all powers referred to or described in Section 16-6-22, Utah Code Annotated (1953).

3. Limitation. The Association is not organized for pecuniary profit. Notwithstanding the breadth of the foregoing portion of this Article II: (i) no dividend shall be paid to, no part of the Association's funds shall be distributed to, and no part of any net income of the Association shall inure to the benefit of, any of its Members, Directors, or officers or any other person; and (ii) the powers of the Association shall be subject to all limitations or restrictions contained herein or in the Declaration.

## III. MEMBERSHIP AND VOTING RIGHTS

1. Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains. Neither the issuance nor the holding of shares of stock shall be necessary to evidence membership in the Association.

2. Voting Rights. The Association shall have the following described two classes of voting membership:

Class A. Class A Members shall be all Owners, but excluding the Developer: until the Class B membership ceases. Class

A Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.

Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to six (6) votes for each Lot in which it holds the interest required for membership in the Association. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:

(a) When the total number of votes held by all Class A Members equals or exceeds the total number of votes held by the Class B Member.

(b) The expiration of twenty (20) years after the date on which the Declaration is filed for record in the office of the County Recorder of Summit County, Utah.

3. Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

4. Membership List. The Association shall maintain up-to-date records showing the name of each person who is a Member, the address of such person, and the Lot to which the membership of such person is appurtenant. In the event of any transfer of a fee or undivided fee interest in a Lot either the transferor or transferee shall furnish the Association with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Summit County, Utah. The Association may for all purposes act and rely on the information concerning Members and Lot ownership which is thus acquired by it or, at its option, the Association may act and rely on current ownership information respecting any Lot or Lots which is obtained from the office of the County Recorder of Summit County, Utah. The address of a Member shall be deemed to be the address of the Living Unit situated on such Member's Lot unless the Association is otherwise advised in writing.

#### IV. MEMBERS MEETINGS

1. Annual Meeting. The first annual meeting of the Members shall be held on the fourth Wednesday in January of 1978. Thereafter an annual meeting of the Members shall be held on the fourth Wednesday in January of each succeeding year. The time of the meeting shall be 7:00 p.m. If the day fixed for the annual meeting falls on a legal holiday in the State of Utah, such meeting shall be held on the next succeeding business day. The purpose of the annual meeting shall be the election of Directors and the



transaction of such other business as may come before the Members. If election of Directors is not held on the day designated herein for an annual meeting, the Board of Directors shall cause such election to be held at a special meeting of the Members as soon thereafter as is convenient.

2. Special Meetings. A special meeting of the Members for any purpose or purposes may be called by the President, by the Board of Directors, by the Class B Member, or by Class A Members who, absent any objection, would collectively be entitled to cast not less than fifteen (15) votes.

3. Place of Meeting. The Board of Directors may designate any place within the State of Utah as the place for any annual meeting or for any special meeting called by the Board. If no designation is made, the place of meeting shall be the principal office of the Association in Summit County, Utah.

4. Notice. Written or printed notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. Such notice shall be deemed to have been properly furnished if mailed postage prepaid within the required time period to the person who appears as a Member, at the latest address for such person appearing in the records of the Association at the time of mailing.

5. Quorum. Except as otherwise provided in these Articles, in the Declaration, or by law, those Members present in person or by proxy shall constitute a quorum at any meeting of the Members.

6. Proxies. At any meeting of the Members a Member may vote by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. All proxies shall be filed with the Secretary of the Association before or at the time of the meeting. Unless otherwise provided therein no proxy shall be valid after eleven (11) months from the date of its execution.

7. Cumulative Voting. At each election for Directors the vote (in the case of Class A membership) or votes (in the case of Class B membership) attributable to a Lot may be accumulated by the Member or Members entitled to cast the same by giving one candidate as many votes as the number of Directors to be elected multiplied by the number of votes concerned shall equal, or by distributing the total votes so determined among any number of candidates. A plurality shall be sufficient for the election of a candidate.

8. Necessary Vote. Except as concerns the election of Directors and except with respect to those proposals which under these Articles, under the Declaration, or by law require a greater proportion for adoption, the affirmative vote of a majority of all votes which Members present in person or represented by proxy are entitled to cast at a meeting shall be sufficient for the adoption of any matter voted on by the Members.

## V. BOARD OF DIRECTORS

1. Number, Tenure, and Qualifications. The affairs of the Association shall be managed by a Board of Directors composed of three (3) individuals. Any change in the number of Directors may be made only by amendment of these Articles. Directors need not be Members of the Association. Each Director shall hold office until the next annual meeting of the Members and until his successor has been duly elected and qualifies.

2. Initial Board. The persons who are to serve as Directors until the first annual meeting of Members are as follows:

<u>Name</u>	<u>Address</u>
Victor R. Ayers	1515 Park Avenue Park City, Utah 84060
Enoch Smith	1443 Beck Street Salt Lake City, Utah 84116
Richard Smith	1443 Beck Street Salt Lake City, Utah 84116

3. Regular Meetings. A regular meeting of the Board of Directors shall be held without notice other than this Section immediately after, and at the same place as, the annual meeting of the Members. The Board of Directors may provide by resolution the time and any place within the State of Utah for the holding of additional regular meetings without notice other than such resolution.

4. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President or any two (2) Directors. The person or persons calling a special meeting of the Board may fix any place within the State of Utah as the place for holding such meeting.

5. Notice. Written or printed notice stating the place, day, and hour of any special meeting of the Board shall be given to all Directors at least three (3) days prior to the meeting date. Such notice shall be deemed to have been properly furnished if mailed postage prepaid at least three (3) business days before the meeting date to each Director at his business address. Attendance of a Director at any meeting shall constitute a waiver of notice of such meeting unless the Director attends for the express purpose of objecting to the transaction of any business because the meeting is not properly called or convened. Neither the business to be transacted at nor the purpose of any meeting need be specified in the notice thereof.

6. Quorum. A majority of the Directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Directors at a meeting at which a quorum is present shall constitute the act of the Board of Directors unless the act of a greater number is required by law.

7. Vacancies. Any vacancy on the Board may be filled by the affirmative vote of a majority of the remaining Directors, even though such remaining Directors constitute less than a quorum. A Director thus selected to fill a vacancy shall serve for the unexpired term of his predecessor in office.

8. Compensation. The Board may provide by resolution that the Directors shall be paid their expenses, if any, of attendance at each meeting of the Board, shall be paid a reasonable fixed sum for attendance at each meeting, shall be paid specified and reasonable salaries for their services as Directors, or shall be paid any combination of all of the foregoing.

## VI. ARCHITECTURAL CONTROL COMMITTEE

1. Number, Composition, and Function. The Board of Directors shall appoint a three-member Committee the function of which shall be to enforce and administer the provisions of Article VIII of the Declaration (relating to control of improvements and landscaping within the Property). The Committee need not be composed of Members. Members of the Committee shall hold office

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at the pleasure of the Board. If such a Committee is not appointed, the Board itself shall perform the duties required of the Committee.

2. Manner of Acting. The act, concurrence, or determination of any two or more Committee members, whether such act, concurrence, or determination occurs at a meeting, without a meeting, at the same time, or at different times, shall constitute the act or determination of the Committee.

3. Compensation. The Board of Directors may provide by resolution that members of the Committee shall be paid specified and reasonable compensation for their services as Committee members.

4. No Liability for Damages. The Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to Article VIII of the Declaration.

## VII. OFFICERS

1. Number and Qualifications. The Officers of the Association shall be a President, a Vice-President, a Secretary, and a Treasurer. Any two (2) or more offices, other than the office of President and Secretary, may be held by the same person. Officers need not be Members of the Association.

2. Tenure. The Officers of the Association shall be elected by the Board of Directors annually at the first meeting of the Board held after the annual meeting of the Members. If election of Officers does not occur at such meeting, it shall be held as soon thereafter as is convenient. Each Officer shall hold office until his successor has been duly elected and qualifies or until he is removed. Any Officer may be removed by the Board whenever in its judgment the best interests of the Association would be served thereby.

3. Vacancies. A vacancy in office resulting from death, resignation, removal, or any other cause shall be filled by the Board of Directors for the unexpired portion of the term of the person previously in office.

4. President. The President shall be the principal executive Officer of the Association and, subject to the control of the Board of Directors, shall exercise general supervision and control over all of the property and affairs of the Association. The President shall, when present, preside at all meetings of the Members and of the Board of Directors. If the President is not present then the Vice-President shall preside. Except in cases where the signing and execution thereof is expressly delegated by the Board of Directors or by these Articles to some other Officer or agent of the Association or where required by law to be otherwise signed or executed, the President, together with the Secretary or any other Officer of the Association authorized by the Board of Directors, may sign any deeds, mortgages, contracts, or other instruments which the Board of Directors has properly authorized to be executed. The President shall, in general, perform all duties incident to the office of President and such other duties as may from time to time be prescribed by the Board of Directors.

5. Vice-President. In the absence of the President or in the event of his death, inability, or refusal to act, the Vice-President shall perform all of the duties of the President. When so acting he shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice-President shall perform such duties as may from time to time be assigned to him by the President or by the Board of Directors.

6. Secretary. The Secretary shall keep minutes of meetings of the Members and of the Board of Directors in one or more books provided for that purpose, shall see that all notices are given in accordance with the provisions of these Articles, the Declaration, and law, shall maintain the membership list required by these Articles, and, in general, shall perform all duties incident to the office of Secretary and such other duties as may from time to time be assigned to him by the President or by the Board of Directors.

7. Treasurer. If required by the Board of Directors the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board shall determine. The Treasurer shall have the custody of and shall be responsible for all funds of the Association, shall receive and give receipts for money due and payable to the Association, shall deposit all such money in the name of the Association in such banks, trust companies, or other depositories as are selected by the Board, shall perform all accounting, financial record-keeping, and similar services which may be necessary or desirable in connection with the Association's affairs, and, in general, perform all duties incident to the office of Treasurer and such other duties as may from time to time be assigned to him by the President or by the Board of Directors.

8. Compensation. The Board of Directors may provide by resolution that Officers shall be paid specified and reasonable compensation for their services as such.

#### VIII. MISCELLANEOUS

1. Transfer of Common Areas. The Board of Directors may, in connection with dissolution of the Association or otherwise, dedicate or transfer all or any part of the Common Areas, other than the Limited Common Areas, to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Board. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the votes of each class of membership which Members present in person or by proxy are entitled to cast at a meeting duly called for the purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

2. Manager. The Association may carry out through a Property Manager any of its functions which are properly the subject of delegation. Any Manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Property for the benefit of the Association and the Members, and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

3. Principal Office. The principal office of the Association shall be located in Summit County, Utah. The address of the initial principal office of the Association is as follows:

Silver King State Bank Building, 1650 Park Avenue,  
Park City, Utah 84060

Initial Registered Agent - Victor R. Ayers

4. Amendment. Any amendment to these Articles shall require: (i) the affirmative vote of at least two-thirds (2/3) of all Class A membership votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called

for such purpose; and, so long as the Class B membership exists, (ii) the written consent of Developer. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the Class A membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirement set forth in the foregoing portion of this Section 4) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Any amendment authorized pursuant to this Section shall be accomplished through the filing with the office of the Secretary of State of Utah of appropriate articles of amendment executed by the President or Vice-President of the Association and, if the Class B membership then exists, executed by the Developer.

5. Consent in Lieu of Vote. In any case in which these Articles require for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the Class of membership concerned. The following additional provisions shall govern any application of this Section 5:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.

(b) The total number of votes required for authorization or approval under this Section 5 shall be determined as of the date on which the last consent is signed.

(c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Member having an interest therein shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Member to give or withhold his consent.

(d) Unless the consent of all Members whose memberships are appurtenant to the same Lot are secured, the consent of none of such Members shall be effective.

6. Bylaws and Resolutions. The Board of Directors may adopt, amend, and repeal Bylaws or resolutions for regulation and management of the affairs of the Association not inconsistent with these Articles, the Declaration, or law.

7. Interpretation. The captions which precede the various portions of these Articles 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 is construed.

shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any provision contained in these Articles shall not affect the validity or enforceability of the remainder hereof. These Articles have been prepared in conjunction with the Declaration and should be read and construed in light of that fact and liberally so as to effect all of the purposes of both instruments. To the extent the provisions of the Utah Nonprofit Corporation and Co-operative Association Act [§§16-6-18 through 16-6-111, Utah Code Annotated (1953)] and any modifications, amendments, and additions thereto are consistent with these Articles and the Declaration, such legislation shall supplement the terms hereof.

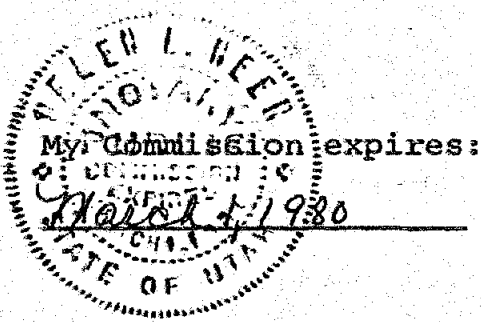
DATED this 4 day of Jan, 1977.

Richard Smith

STATE OF UTAH )  
 ) : ss  
COUNTY OF Subsake )

On this 4th day of January, 1977, personally appeared before me Richard Smith, who being by me duly sworn, declared that he is the person who as incorporator signed the foregoing Articles of Incorporation of Racquet Club Village No. 1 Homeowners Association, and that the statements contained therein are true and correct to the best of his knowledge.

Helen L. Neer  
Notary Public  
Residing at:



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BYLAWS

OF

RACQUET CLUB VILLAGE NO. 1 HOMEOWNERS ASSOCIATION

A NON-PROFIT CORPORATION

ARTICLE I

OFFICE

The principal office of the Association shall be in Park City, Summit County, State of Utah.

ARTICLE II

MEETINGS & MEMBERS

Section 2.1. Annual Meeting. The annual meeting of the members shall be held at 7:00 p.m. on the fourth Wednesday in January of each year at the principal office of this Association, or at such other place as shall be stated in the notice of meeting or in a duly executed waiver of notice; provided, however, that whenever such date falls upon a legal holiday, the meeting shall be held on the next succeeding business day, and further provided that the Board of Directors may by resolution fix the date of the annual meeting at such other date as the Board of Directors may deem appropriate. At such meeting, the members shall elect directors for one (1) year terms to serve until their successors shall be elected directors; provided, however, that officers and/or duly authorized agents of corporate members may also be elected directors of the Association.

Section 2.2. Special Meetings. A special meeting of the Members for any purpose or purposes may be called by the President, by the Board of Directors, by the Class B Member, or by Class A Members who, absent any objection, would collectively be entitled to cast not less than fifteen (15) votes.

Section 2.3. Notice of Meetings. Notice of all annual and special meetings of the members shall be given in accordance with the statutes of the State of Utah. Whenever all of the members shall meet in person or by proxy, such meetings shall be valid for all purposes without call or notice, or waiver of call and notice. No notice of any meeting of members shall be necessary if waiver of notice be signed by all of the members, whether before or after the time of the meeting.

Section 2.4. Presiding Officer. The President, and in his absence a Vice President, shall preside at all such meetings.

Section 2.5. Voting Requirements. When a quorum is present in person or represented by proxy at any meeting, the vote of a majority shall decide any question brought before such meeting, including the election of directors, unless the question is one which, by express provision of the statutes of the State of Utah or of the Declaration of Covenants, Conditions and Restrictions or of the Articles of Incorporation or of these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question. All votes may be cast by the members either in person or by proxy.

All proxies shall be in writing, and, in the case of proxies for the annual meeting, they shall be delivered to a credentials committee consisting of the President, a Vice President and Secretary of the Association at least ten (10) days prior to said annual meeting. Proxies for special members meetings must be of record with the credentials committee at least five (5) days prior to the holding of such special members meetings. If instructed, the Secretary shall enter a record of such proxies in the minutes of the meeting. Each membership shall have one (1) vote on all matters submitted to a vote of the members. All matters to be voted upon by the members shall be presented to and voted upon by the members holding membership. No matter shall be deemed to have been approved by the members unless it shall have been presented to and received the affirmative vote of the members.

Section 2.6. Registered Members. At annual meetings of the members only such persons shall be entitled to vote in person or by proxy as appear as members upon property records of Summit County, Utah on the 30th day before such annual members meeting. The Board of Directors may, by resolution, fix a date in advance of the date of special members meeting upon which a member must appear as a member of record on the property records of Summit County, Utah in order to be entitled to vote at such special members meetings; provided, however, that said date shall in no event be fixed at less than ten (10) nor more than thirty (30) days prior to the date set for such meeting.

Section 2.7. Quorum. At any meeting of the members, the holders of a majority of the memberships of the Association present in person or by proxy shall constitute a quorum of the members for all purposes. In the absence of a quorum, the chairman of the meeting may adjourn the meeting from time to time, without notice other than by announcement at the meeting, until holders of the amount of memberships requisite to constitute a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.

Section 2.8. Waiver of Irregularities. All inaccuracies and/or irregularities in calls, notices of meeting and in the manner of voting, form of proxies, credentials and method of ascertaining those present shall be deemed waived if no objection is made at the meeting.

### ARTICLE III

#### BOARD OF DIRECTORS

Section 3.1. Responsibilities. The business and property of the Association shall be managed by its Board of Directors (herein designated and referred to as the "Board of Directors"). The Board of Directors may, however, enter into such management agreement or agreements with third persons as it may deem advisable.

Section 3.2. Vacancies. In case of any vacancy in the Board of Directors, the remaining members of the Board of Directors may elect a successor director or directors to hold office until the next meeting of the members.

Section 3.3. Regular Meetings. A regular annual meeting of the Board of Directors shall be held immediately after the adjournment of each annual members meeting at the place at which such members was held. Regular meetings, other than the annual meeting, shall be held at regular intervals at such places and at such times as the Board of Directors may from time to time by resolution provide.



Section 3.4. Special Meetings. Special meetings of the Board of Directors shall be held whenever called by the President, the Vice President or by a majority of the Board of Directors. By unanimous consent of the directors, special meetings of the Board of Directors may be held without call or notice at any time or place. Notice of all calls and meetings of the Board of Directors shall be as provided in these Bylaws.

Section 3.5. Quorum. A quorum for the transaction of business at any meeting of the Board of Directors shall consist of a majority of the directors then in office.

Section 3.6. Committees. The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, designate one or more committees, each committee to consist of two (2) or more of the members of the Association, which, to the extent provided in said resolution, shall have and may exercise the powers in said resolution set forth. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. Such committees shall keep regular minutes of their proceedings and report the same to the Board of Directors when required. The President may appoint persons to fill vacancies on each of said committees occasioned by death, resignation, removal or inability to act for any period of time.

Section 3.7. Compensation. Directors shall not receive any salary for their services.

Section 3.8. Additional Facilities. The Board of Directors shall have the authority to provide such facilities, in addition to those for which provision has already been made, as it may deem to be in the interest of the members.

#### ARTICLE IV

##### OFFICERS

Section 4.1. Selection of Officers. The directors shall elect or appoint the officers of the Association. Such election or appointment shall regularly take place at the first meeting of the Board of Directors immediately following the annual meeting of the members; provided, however, that election of officers may be held at any other meeting of the Board of Directors.

Section 4.2. Additional Officers. The Board of Directors may appoint such other officers, in addition to the officers hereinbelow expressly named, as they shall deem necessary, who shall have such authority to perform such duties as may be prescribed from time to time by the Board of Directors or by the President.

Section 4.3. Removal. All officers and agents shall be subject to removal, with or without cause, at any time by the affirmative vote of the then members of the Board of Directors.

Section 4.4. President. The President shall be the chief executive officer of the Association and shall exercise general supervision over its property and affairs. He shall sign on behalf of the Association all membership certificates, conveyances, mortgages and contracts and shall do and perform all acts and things which the Board of Directors may require of him. He shall receive such compensation for his services as may be fixed or approved by the Board of Directors. The President shall be invited to attend meetings of each committee.

Section 4.5. Vice President. In the event of the President's absence or inability to act, the Vice President shall have the powers

of the President. He shall perform such other duties as the Board of Directors may impose upon him and shall receive such compensation as may be fixed or approved by the Board of Directors.

Section 4.6. Secretary. The Secretary shall keep the minutes of the Association, its membership books and such books and records as these Bylaws or any resolution of the directors may require him to keep. He shall be the custodian of the seal of the Association and shall affix the seal to all papers and instruments requiring it. He shall perform such other services as the Board of Directors may impose upon him and shall receive such compensation as the Board of Directors may fix or approve. One or more Assistant Secretaries may be elected, who shall, in the event of the Secretary's absence or inability to act, perform the duties and functions of the Secretary.

Section 4.7. Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board of Directors and shall, when requested by the President so to do, report the state of the finances of the Association at each annual meeting of the members and at any meeting of the directors. He shall perform such other services as the Board of Directors may require of him and shall receive compensation as the Board of Directors may fix or approve.

#### ARTICLE V

##### SEAL

The Board of Directors shall at its option have the authority to select a seal for the corporation. Such seal shall be impressed with the name of the corporation and shall indicate that the corporation is a corporation of the State of Utah.

#### ARTICLE VI

##### MEMBERSHIP CERTIFICATES

Section 6.1. Form of Certificates. The Association shall not be required to issue certificates evidencing membership. If the Board of Directors should determine to issue membership certificates, the holders of such certificates shall be determined by Articles I and III of the Articles of Incorporation and shall further be issued and controlled in accordance with the following:

Section 6.2. Issuance. All membership certificates shall be signed by the President or Vice President and by the Secretary or an Assistant Secretary, and the seal of the Association shall be impressed thereon. The name of the current owner of a lot in the Racquet Club Village No. 1 Subdivision (hereinafter designated a "Lot") shall be issued a membership certificate for each Lot owned by him. In the event a lot is owned by more than one person, the membership certificate and the voting right with relation to such lot shall be held in the name of all such persons owning an interest in the Lot. The conveyance or other disposition by a member of all of such member's entire ownership interest in a Lot shall be deemed to constitute, and may be treated by the Association as, a transfer and conveyance by such member to his successor in interest in ownership of said Lot of the membership in the Association which is appurtenant to the Lot sold or disposed of, and the Association shall be entitled to cancel any certificate evidencing such membership whether or not said certificate is surrendered and reissue the same to the new owner or owners of such Lot upon such terms and conditions as the Board of Directors may in each case direct.

Section 6.3. Transfer. Except as provided in Section 6.1, membership certificates shall be transferred on the books of the Association by assignment made by the owner, his attorney-in-fact or legal representative, and by delivery of the certificate to the Secretary of the Association for transfer, together with such further supporting documents as the Association may reasonably require. Each certificate surrendered for transfer shall be marked "Cancelled" by the Secretary and the cancelled certificate shall be affixed to its stub.

Section 6.4. Lost Certificates. Should the owner of any membership certificate make application to the Association for the issuance of a duplicate certificate by reason of the loss or destruction of his certificate, he shall accompany his application by an affidavit setting forth the time, place and circumstances of such loss or destruction, together with a bond in such amount and with such surety or sureties as are acceptable to the Secretary of the Association agreeing to indemnify the Association against such loss as the Association may suffer by reason of the issuance of a duplicate certificate or the refusal to recognize the certificate that was allegedly lost or destroyed. Upon satisfaction of the foregoing, a duplicate certificate may be issued. The duplicate certificate shall be marked "Duplicate" and the stub of the certificate lost or destroyed shall indicate the issuance of the duplicate. The Board of Directors may, in its discretion, waive the requirement of a surety or sureties on the bond.

## ARTICLE VII

### DIVIDENDS

There shall be no dividends paid or payable by the Association. It is hereby acknowledged that the Association is organized as a non-profit corporation under the Utah Non-Profit Corporation and Co-operative Association Act solely and strictly as an association of Lot owners. It is not intended that the Association realize any profit on any transactions.

## ARTICLE VIII

### ANNUAL STATEMENT

The Board of Directors shall present at each annual meeting, and when called for by a vote of the members at any special meeting of the members, a full and complete statement of the business and condition of the Association.

## ARTICLE IX

### FISCAL YEAR

The fiscal year of the Association shall be fixed by a resolution of the Board of Directors.

## ARTICLE X

These Bylaws may be altered or repealed by the affirmative vote of a majority of the members at any regular meeting of

the members or at any special meeting of the members if notice of the proposed alteration or repeal be contained in the notice of such special meeting.

[Signature]  
Director

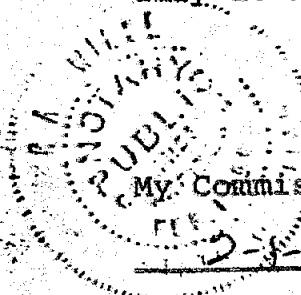
[Signature] R. Ayer  
Director

[Signature]  
Director

STATE OF UTAH )  
COUNTY OF Summit ) : ss

On the 18 day of January, 1977, personally appeared before me Ernest R. Smith & Victor R. Ayers and R. A. Wilder, who being by me duly sworn did say, each for himself, that he is a director of Racquet Club Village No. 1 Homeowners Association, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said Smith and Ayers each duly acknowledged to me that said corporation executed the same.

[Signature]  
Notary Public  
Residing at: Park City Utah



My Commission expires: 2-2-80