

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
and
RESERVATION OF EASEMENTS and BYLAWS
for
THE DISTRICT RECREATION AMENITY**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for The District Recreation Amenity (the "Recreation Declaration") is executed by Summerlane Development, Inc. (the "Declarant").

RECITALS:

1. Summerlane At The District is a Utah planned unit development located in South Jordan, Utah developed by the Declarant ("Summerlane").

The Declaration of Covenants, Conditions and Restrictions for Summerlane was recorded in the office of the County Recorder of Salt Lake County, Utah (the "Summerlane Declaration"). A Plat Map of Summerlane was recorded concurrently therewith.

The legal description for Summerlane located in Salt Lake County, Utah is described on Exhibit "A" attached hereto and incorporated herein by this reference.

2. Promenade At The District is an expandable Utah condominium project located in South Jordan, Utah developed by the Declarant ("Promenade").

The Declaration of Covenants, Conditions and Restrictions for Promenade was recorded in the office of the County Recorder of Salt Lake County, Utah (the "Promenade Declaration"). A Plat Map of Promenade was recorded concurrently therewith.

The legal description for Promenade located in Salt Lake County, Utah is described on Exhibit "B" attached hereto and incorporated herein by this reference.

3. Promenade Townhomes At The District is an expandable Utah townhome project located in South Jordan, Utah developed by the Declarant ("Promenade Townhomes").

The Declaration of Covenants, Conditions and Restrictions for Promenade Townhomes At The District was recorded in the office of the County Recorder of Salt Lake County, Utah (the "Promenade Townhomes Declaration"). A Plat Map of Promenade was recorded concurrently therewith.

The legal description for Promenade located in Salt Lake County, Utah is described on Exhibit "C" attached hereto and incorporated herein by this reference.

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Gary W. Ott
Recorder, Salt Lake County, UT
MERIDIAN TITLE
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4. Summerlane, Promenade, and Promenade Townhomes are adjoining developments (collectively "Combined Properties").

5. The Combined Properties will share the use of and the cost of maintaining and operating the Recreation Amenity.

6. The Recreation Amenity comprises an area of unique and distinctive terrain.

7. By subjecting the Recreation Amenity to this Recreation Declaration, it is the desire, intent and purpose of Declarant to create a recreational amenity and common space in which beauty shall be substantially preserved, which will both enhance the desirability of living at the Combined Properties and increase and preserve the utility, attractiveness, quality and value of the lands and improvements therein.

8. Declarant has constructed or is in the process of constructing certain improvements upon the Land described with particularity on Exhibit "D" attached hereto and incorporated herein by this reference, including a clubhouse with such amenities as a pool, hot tub, workout facilities, play areas and other appurtenant facilities.

9. Declarant intends to sell, or is in the process of selling, to various purchasers the fee title to the individual Units and Lots at the Combined Properties.

10. Declarant desires, by filing this Recreation Declaration to submit the Recreation Amenity and all improvements now or hereafter constructed thereon to the provisions and protective covenants set forth herein.

COVENANTS, CONDITIONS AND RESTRICTIONS

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions and restrictions set forth below, Declarant hereby makes the following Declaration:

I. DEFINITIONS

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

1.1 Additional Charges shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorney's fees, late charges, accruing interest, service fees, filing and recordation fees, and other expenditures incurred or charged by the Recreation Association.

1.2 Articles of Incorporation shall mean and refer to the Articles of Incorporation of the District Recreation Association on file or to be filed with the Utah Department of Commerce.

1.3 Assessment shall mean and refer to any amount imposed upon, assessed or charged a Member of the Recreation Association.

1.4 Eligible Insurer shall mean and refer to an insurer or governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Recreation Association in accordance with this Recreation Declaration.

1.5 Eligible Mortgagee shall mean and refer to a mortgagee, beneficiary under a trust deed or lender who has requested notice in writing of certain matters from the Recreation Association in accordance with this Recreation Declaration.

1.6 Member shall mean and refer to the three (3) members of the Recreation Association, to wit: the Summerlane Homeowners Association, the Promenade Homeowners Association, and the Promenade Townhomes Owners Association .

1.7 Mortgagee shall mean and refer to any creditor or lender in a mortgage agreement, including a deed of trust.

1.8 Neighborhood shall mean and refer to either the Summerlane development or the Promenade development or the Promenade Townhome development, each acting or taken as a group in accordance with its declaration and plat(s).

1.9 Recreation Amenity shall mean and refer to the clubhouse, swimming pool and related recreational amenities located on the Land.

1.10 Recreation Assessment shall mean and refer to the assessment charged by the Recreation Association to its Members.

1.11 Recreation Association shall mean and refer to the District Recreation Association, a Utah nonprofit corporation with its sole members consisting of Summerlane Homeowners Association and Promenade Homeowners Association, each acting as a group.

1.12 Recreation Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the District Recreation Amenity.

1.13 Recreation Expense shall mean and refer to the common expenses of maintaining, repairing and replacing the Recreation Amenity, and administering the Recreation Association.

1.14 Summerlane At The District or Summerlane shall collectively and severally refer to the following items as the context requires:

1.14.1 Summerlane Association, which shall mean and refer to the Summerlane Homeowners Association, a Utah nonprofit corporation consisting of all of the Lot Owners in the Summerlane Neighborhood acting as a group.

1.14.2 Summerlane Declaration, which shall mean and refer to that certain Declaration of Covenants, Conditions and Restrictions for Summerlane At The District, a Utah planned unit development, recorded in the Office of the County Recorder of Salt Lake County, Utah.

1.14.3 Summerlane Neighborhood, which shall mean and refer to all of the Lots and the Common Area comprising Summerlane, as are particularly described on Exhibit "A".

1.14.4 Summerlane Owners, which shall mean and refer to the Owner(s) of Lot(s) at Summerlane, as further described in the Summerlane Declaration.

1.14.5 Summerlane Permittees, which shall mean and refer to all of the tenants, visitors, guests, invitees, family members, contractors, licenses, successors, and assigns of each Owner of a Lot at Summerlane.

1.14.6 Summerlane Plats, which shall mean and refer to those certain subdivision plats of Summerlane which have been or will be recorded in the Office of the County Recorder of Salt Lake County, Utah.

1.15 Promenade At The District or Promenade shall collectively and severally refer to the following items as the context requires:

1.15.1 Promenade Association, which shall mean and refer to the Promenade Homeowners Association, a Utah nonprofit corporation consisting of all of the Unit Owners in the Promenade Neighborhood acting as a group.

1.15.2 Promenade Declaration, which shall mean and refer to that certain Declaration of Covenants, Conditions and Restrictions and Reservations of Easements for Promenade at The District, an expandable Utah condominium project, recorded in the Office of the County Recorder of Salt Lake County, Utah.

1.15.3 Promenade Neighborhood, which shall mean and refer to all of the Units and the Common Area comprising Promenade, as are particularly described on Exhibit "B".

1.15.4 Promenade Owners, which shall mean and refer to the Owner(s) of Unit(s) at Promenade, as further described in the Promenade Declaration.

1.15.5 Promenade Permittees, which shall mean and refer to all of the tenants, visitors, guests, invitees, family members, contractors, licenses, successors, and assigns of each Owner of a Unit at Promenade.

1.15.6 Promenade Plats, which shall mean and refer to those certain condominium plats of Promenade which have been or will be recorded in the Office of the County Recorder of Salt Lake County, Utah.

1.16 Promenade Townhomes At The District or Promenade Townhomes shall collectively and severally refer to the following items as the context requires:

1.16.1 Promenade Townhomes Owners Association, which shall mean and refer to the Promenade Townhomes Owners Association, a Utah nonprofit corporation consisting of all of the Unit Owners in the Promenade Neighborhood acting as a group.

1.16.2 Promenade Townhomes Declaration, which shall mean and refer to that certain Declaration of Covenants, Conditions and Restrictions and Reservations of Easements for Promenade at The District, an expandable Utah condominium project, recorded in the Office of the County Recorder of Salt Lake County, Utah.

1.16.3 Promenade Townhomes Neighborhood, which shall mean and refer to all of the Units and the Common Area comprising Promenade, as are particularly described on Exhibit "B".

1.16.4 Promenade Townhome Owners, which shall mean and refer to the Owner(s) of Unit(s) at Promenade, as further described in the Promenade Declaration.

1.16.5 Promenade Townhome Permittees, which shall mean and refer to all of the tenants, visitors, guests, invitees, family members, contractors, licenses, successors, and assigns of each Owner of a Unit at Promenade.

1.16.6 Promenade Townhomes Plats, which shall mean and refer to those certain condominium plats of Promenade which have been or will be recorded in the Office of the County Recorder of Salt Lake County, Utah.

II. MEMBERSHIP

2.1 **Membership.** The three (3) Members of the Recreation Association are the Summerlane Homeowners Association and the Promenade Homeowners Association and the Promenade Townhome Owners Association. Anything to the contrary notwithstanding, the status and character of the membership in the Recreation Association shall be permanent and no Member of the Recreation Association may withdraw or be removed from the Recreation Association without (a) its express prior written consent and (b) the express prior written consent of the other two (2) Members.

2.2 **Appointment of Delegate.** The Owners of Lots at Summerlane and the Owners of Units at Promenade, or their respective Board of Directors, shall elect, appoint, or designate three (3) Delegates to act as a Board of Delegates to manage the affairs of the Recreation Association, one of whom must be an Owner from Summerlane, one of whom must be an Owner from Promenade, and one of whom must be an Owner from Promenade Townhomes.

2.3 **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.

III. VOTING

3.1 **Delegate Voting System.** The Recreation Association shall be operated under a representative Delegate voting system.

3.2 **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 or her sole reasonable discretion, deem appropriate, acting in the best interest of his respective Member; provided, however, that a Member shall have the authority to call special meetings of the Owners in its Neighborhood for the purpose of obtaining instructions as to the manner in which its Delegate is to vote on any particular issue. 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 vote of a majority of the Owners represented at that meeting shall control the Delegate's vote on that issue. It shall be conclusively presumed for all purposes of the Recreation Association business that any Delegate casting votes on behalf of his 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 on all Members and their successors and assigns.

IV. EASEMENTS

4.1 **Grant of Easements.** Until such time as Declarant conveys the Land by special warranty deed to the Recreation Association, Declarant hereby grants to the Recreation Association a nonexclusive, perpetual, right-of-way and easement over, across and through the Recreation Amenity, together with the right to use, operate, maintain, repair and replace such Recreation Amenity.

4.2 **Common Use of Easement.** The easement created is to be used in common by each Neighborhood and its Owners, subject to all of the terms, covenants, conditions and restrictions set forth herein.

4.3 **Private Easement.** The easement created is intended to be used as a private easement for the exclusive use and benefit of each Neighborhood and its Owners.

V. INSURANCE

5.1 **Liability Insurance.** The Recreation Association shall at all times maintain or cause to be maintained continuously in force public liability and property damage insurance providing coverage against personal injury, death, and property damage occurring on or about, or by reason of activities in, on or about the Recreation Amenity.

5.2 **Insurance Company.** The insurance shall be carried with a responsible company or companies licensed in the State of Utah.

5.3 **Amount of Insurance Coverage.** The limits of such liability policy shall be a combined single limit of not less than \$2,000,000.00 per occurrence and \$1,000,000.00 per person for bodily injury, death and property damage.

5.4 **Name Association as Insured.** Such liability insurance policy shall name the Recreation Association as the insured.

5.5 **Notice of Material Change or Cancellation.** Such policy of liability insurance shall give the Recreation Association not less than thirty (30) days prior written notice of any material change or cancellation of such insurance policies.

VI. MAINTENANCE

6.1 **Operation and Maintenance.** The Recreation Association shall have the power, authority, right, and duty to operate, maintain and keep in a state of good condition and repair, and replace the Recreation Amenity, and in so doing, the Recreation Association shall repair any damage it may cause to the property of any Neighborhood, and restore the property to its original condition, reasonable wear and tear excepted.

6.2 **Grant of Authority.** Declarant and the Members hereby authorize the Recreation Association to:

- a. Incur Recreation Expenses;
- b. Charge Assessments to the Members;
- c. Enter into contracts relating to the management, operation, maintenance, repair and replacement of the Recreation Amenity;
- d. Collect and deposit Assessments from the Members, and disburse common funds;
- e. Pay Recreation Expenses; and
- f. Take such further actions as may be reasonably necessary to perform its duties hereunder.

6.3 **Payment for Goods and Services.** All goods and services procured.

6.4 **City.** South Jordan City shall have the right, but not the obligation, to require, and if necessary, perform, at the Association's expense, landscaping, maintenance, and snow removal within the Common Area if the Association fails after reasonable notice and an opportunity to cure, adequately to perform such. If South Jordan City, after using its best efforts to persuade the Association to provide minimum services voluntarily, exercises this right, then the City shall be entitled to recover its reasonable costs and attorney fees incurred thereby. In addition, the owners within this project, by virtue of purchasing a dwelling unit within this project, hereby grant to South Jordan City the right, but not the duty to form, under state statutes, a Special Service District (SSD) for the purpose of ongoing maintenance or a Special Improvement District (SID) for the purpose of making needed improvements within the project. The City may take this action when either asked to take over improvements or maintenance tasks by the Association or by the affirmative written request of at least sixty-seven percent (67%) of the Total Vote obtained at a meeting called for this purpose. After written notice to all of the Owners and a reasonable opportunity to be heard, the City Council may also take one or both of these actions when it determines a real need based on a historical pattern of a lack of care and maintenance. The Governing Body of any such district formed, as stated in this paragraph, shall consist of the South Jordan City Mayor, City Council and the Association President. This section shall not be amended or deleted without the approval of South Jordan City, whose consent shall not be unreasonably withheld, conditioned or delayed.

VII. ASSESSMENTS

7.1 **Assessments.** Each Member shall pay to the Recreation Association its share of the Recreation Expenses.

7.2 **Personal Obligation.** Each Member hereby covenants and agrees to pay its share of all Recreation Expenses, and all Assessments against its Neighborhood property. In addition, each individual Lot Owner and Unit Owner, by virtue of his or her acceptance of a deed to his or her Lot or Unit or other document of conveyance, covenants and agrees to pay his or her share of the Recreation Expenses and all Assessments.

7.3 **Computation of Assessments.** The Recreation Association shall base the annual Assessments upon budgeted estimates of the Recreation Expenses, and amounts required to establish an adequate reserve.

7.4 **Apportionment of Expenses.** Each Member shall pay to the Recreation Association its share of the Recreation Expenses. The Recreation Expenses shall be apportioned among the Members, and the Lot or Unit Owners, on a proportionate basis according to the number of Units and/or Lots constructed within each Member's respective Neighborhood.

7.5 **Budget.** The Recreation Association shall prepare and furnish to each Member an operating budget for the coming calendar year at least thirty (30) days prior to the beginning of each year. The Members are responsible to furnish a copy of the operating budget to the individual Lot and Unit Owners.

7.6 **Books and Records.** The Recreation Association shall (a) keep books and records in accordance with generally accepted accounting practices, and (b) prepare monthly billing statements and/or ledgers for each Member detailing its share of the Recreation Expenses, and any other charges.

7.7 **Payment.** All Assessments and each Member's share of the Recreation Expenses shall be payable in twelve (12) equal monthly installments. Monthly invoices for each Member will be prepared by the Recreation Association or its designee. Payment of the Assessments must be made within thirty (30) days from the date the invoice is delivered to the Member. A late fee in an amount to be determined by the Board of Delegates may be assessed on all late payments. Default interest at the rate to be determined by the Board of Delegates may be charged on the outstanding balance on all delinquent accounts.

7.8 **Reserves.** The Recreation Association shall establish and fund a reasonable reserve account or accounts for unforeseen operating expenses, major repairs, and capital improvements. In the event the reserve account falls below an amount considered acceptable by the Delegates, then, in its sole discretion and without any additional approval required, the Recreation Association may restore or replenish the account by an equitable increase in the monthly Assessment, a special Assessment, or any combination.

7.9 **Capital Asset Table.** The Board of Delegates shall establish and update at least annually a Capital Asset Table which shall list each major asset and physical improvement in the Recreation Amenity, as well as its expected useful life, the present cost of replacement, the estimated cost to replace the item at the end of its useful life, the percentage and amount of each Assessment designated for the reserve account to replace the item at the end of its useful life, and the amount of money currently set aside in the reserve account for the replacement of the item.

7.10 **Analysis Report.** The Board of Delegates shall prepare and update at least annually a written Reserve Account Analysis, and make the report(s) available to the Members at the annual meeting of the Association.

7.11 **Lien.** If a Member fails to make payment of any Assessment or its share of the Recreation Expenses or if an individual Lot Owner or Unit fails or refuses to make payment of his or her share of the Recreation Expenses, when due, that amount shall constitute a lien on the interest of the Member or Owner in the Property, the respective Neighborhood and/or Lot or Unit, and upon the recording of notice of lien by the Recreation Association, Board of Delegates or their designee it is a lien upon the Member's or Owner's interest in the said 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 Member or Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

7.12 **Remedies.** If any Assessment remains unpaid, the Recreation Association or its designee may institute suit to (a) collect the amounts due, (b) foreclose the lien, or (c) pursue any other remedy allowed by law or equity.

7.13 **No Waiver.** No Member or Lot or Unit Owner may waive or otherwise exempt himself or herself from liability for the Assessments provided for herein, including but not limited to the non-use of the Recreation Amenity or the abandonment of his or her Lot or Unit.

7.14 **Duty to Pay Independent.** No reduction or abatement of 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 Assessments being a separate and independent covenant on the part of each Member and Owner.

7.15 **Foreclosure of Lien as Mortgage or Trust Deed.** The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Member's and/or Owner's interest therein by the Recreation Association or its designee. A judicial or non-judicial foreclosure is permitted. The sale or foreclosure shall be conducted in the same manner as judicial or non-judicial 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 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 may bid for the property at foreclosure or other sale and hold, lease, mortgage, or convey the same.

7.16 **Trust Deed for Assessments.** By acceptance of a deed or other document of conveyance for a Lot or Unit, each Owner, as Trustor, hereby conveys and warrants to the appointed Trustee in trust for the Association, as Beneficiary, with power of sale, the Owner's Lot or Unit (and all improvements thereon), and the appurtenant membership in his or her Neighborhood Association as well as the non-exclusive right to access and use the Recreation Amenity, for the purpose of securing payment of all Assessments (including a reasonable attorneys fee and the costs of collection) provided for in this Declaration. For purposes of this Section and Utah Code Ann. §§57-1-19, *et seq.*, as amended from time to time, the Trustee shall mean the attorney for the Association, and the Association may provide notice

and disclosure of the Trustee by recording a written "Appointment of Trustee" on the records of the County Recorder of Salt Lake County, Utah. In addition, each Owner hereby grants to the Recreation Association or its designee and Trustee all powers and rights of non-judicial foreclosure provided for in Utah Code Ann. §§57-1-19, *et seq.*

7.17 Discontinuance of Common Utility Service and/or Suspension of Right to Access or Use Recreation Amenity. If a Member and/or Owner fails or refuses to pay an Assessment when due, the Recreation Association or its designee may, after giving notice and an opportunity to be heard as provided for below, terminate the Member's and/or Owner's right;

7.17.1 to receive utility services paid as a Common Expense; and

7.17.2 of access to and use of the Recreation Amenity.

Before terminating utility services or the right of access to and use of the Recreation Amenity, the Manager or Board of Delegates shall give written notice to the Member and/or Owner. The notice shall inform the Member and/or Owner: (i) that utility service or right of access to and use of the Recreation Amenity will be terminated if payment of the Assessment is not received within thirty (30) days; (ii) of the amount of the Assessment due, including any interest or late payment fee; and (iii) of the right to request a hearing. A Member and/or Owner who is given notice may request an informal hearing to dispute the Assessment by submitting a written request to the Manager or Board of Delegates within fourteen (14) days after the date on which the Member and/or Owner receives the notice. The hearing shall be conducted by the Board of Delegates. If a hearing is requested, utility services or the right of access to and use of the Recreation Amenity may not be terminated until after the hearing has been conducted and a final decision has been entered. Upon payment of the Assessment due, including any interest or late payment fee, the Manager or Board of Delegates shall immediately take action to reinstate the terminated utility services and right of access to and use of the Recreational Amenity.

7.18 Rents. If an Owner who is renting his or her Lot or Unit fails to pay any assessment for a period of more than sixty (60) days after it is due and payable, the Board of Delegates or its designee may demand the renter to pay to the Recreation Association all future rent payments due the Owner, commencing with the next monthly or other periodic payment, until the amount due to the Recreation Association is paid. The Manager or Board of Delegates must give the Owner written notice of its intent to demand full payment from the renter.

VIII. MISCELLANEOUS

8.1 Covenants to Run with Land. This Declaration and all of the covenants, provisions, and requirements hereof are intended to be and shall constitute covenants running with the land or equitable servitudes, and shall be binding upon and shall inure to the benefit of the parties to this Declaration and the Members, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. This Declaration and all of the covenants, provisions, and requirements hereof shall be binding upon each Member. Each Member hereby consents and agrees to be subject to and bound by this Recreation Declaration and all of the covenants, provisions and requirements hereof.

8.2 Amendment. Until the expiration of seven (7) years from the date of recordation of this Declaration in the office of the Salt Lake County Recorder ("Declarant's Period of Control"), this document may be modified unilaterally by the Declarant by filing for record in the office of the Salt Lake County Recorder a written instrument amending the Declaration signed by Declarant, and acknowledged.

Thereafter, this document may only be amended with the unanimous consent of each Member expressed in a written instrument duly recorded.

8.3 Partial Invalidity. The invalidity or unenforceability of any portion of the Declaration shall not affect the validity or enforceability of the remainder hereof, and if any provision of this Declaration or the application thereof to any party to this Declaration, or circumstance should to any extent be invalid, the remainder of this Declaration or the application of such provision to any party to this Declaration, or circumstances other than those as to which a holding of invalidity is reached shall not be effected thereby (unless necessarily conditioned or dependent upon the provisions or circumstances as to which a holding of invalidity is reached), and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

8.4 Effective Dates and Duration. This Declaration and all of the provisions hereof (except any provisions which by their terms may cease to be effective at an earlier time) shall remain effective until this Declaration is terminated and extinguished by a written Termination of Declaration filed with the Salt Lake County Recorder, and executed by all of the parties hereto.

8.5 Dispute Resolution. Any controversy or claim between or among the parties to this Declaration, including but not limited to those arising out of or relating to this Declaration or any agreements or instruments relating hereto or delivered in connection herewith, and including but not limited to a claim based on or arising from an alleged tort, shall at the request of the Recreation Association or any Member be formally mediated and if such mediation fails to resolve the dispute, then with the unanimous consent of all of the parties hereto this dispute may be submitted to binding arbitration or the matter may be resolved judicially. If the parties decide to arbitrate or mediate and are unable to agree upon a Mediator or Arbiter, then one shall be designated by a representative of the Utah State Bar Association.

8.6 Captions. The captions or headings which precede the paragraphs of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed.

8.7 Construction. Whenever the context or circumstance 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.

8.8 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Utah.

8.9 Enforcement and Attorneys Fees. In the event of a material violation of this Declaration, the Manager, Board of Delegates or an aggrieved Member may bring an action for injunctive relief and/or damages. If this Declaration is referred to an attorney for interpretation or enforcement, the prevailing party shall be entitled to recover his reasonable attorneys' fees and costs, regardless of whether arbitration is commenced or a lawsuit is filed.

8.10 Registered Agent. The initial registered agent of the Recreation Association is Bryson D. Garbett. The initial registered office of the Recreation Association is at 273 North East Capitol Street, Salt Lake City, Utah 84103.

8.11 Professional Manager. The Recreation Association must be managed by a professional management company selected by the Board of Delegates (the "Manager").

8.12 Mortgage Protection. Nothing herein contained, and no violation of these covenants, conditions and restrictions, shall (a) invalidate or impair the lien of any mortgage or deed of trust, given in good faith and for value; or (b) partition or separate the mortgage or deed of trust from the Lot or Unit and its appurtenant membership in its Neighborhood Association and the non-exclusive right to access and use the Recreation Amenity.

8.12.1 The consent of at least sixty-seven percent (67%) of the Eligible Mortgagees shall be required to any amendment which would terminate the legal status of the Project or to amend any material provision of this Recreation Declaration or the Final Plat.

8.12.2 If an Owner of a Lot located within Summerlane at The District or a Unit located within Promenade at The District or a Townhome located within Promenade Townhomes at The District secured by a mortgage or a deed of trust, and the Owner defaults on his or her mortgage or deed of trust, and the Mortgagee obtains title to the Lot, Unit and/or Townhome by foreclosure or a deed in lieu of foreclosure or other similar document of conveyance, then, the Mortgagee shall be assigned hereby all of the right, title and interest of the Owner, Lot or Unit (collectively "Borrower") in and to the Recreation Amenity, unless the Mortgagee records in the Office of the Salt Lake County Recorder a written "Notice of Rejection of Assignment of Rights of Borrower".

IX. TERMINATION

9. **Transfer of Control and Maintenance of the Recreation Amenity upon Dissolution of the Recreation Association.** In the event of the dissolution of the Recreation Association, or any of the Members, the operation, control and maintenance of the Recreation Amenity 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 make assessment payments for the maintenance and upkeep of the Recreation Amenity and improvements on a pro rata basis which conforms substantially with the assessment procedure, terms and conditions set forth herein. To the extent the foregoing is not possible, the Recreation Amenity shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to the Owners as tenants in common.

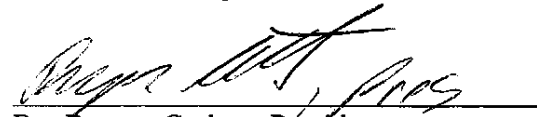
X. DURATION

10. **Term.** This Declaration shall continue for a term of fifty (50) years from its date of recordation in the office of the Salt Lake County Recorder. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years until a vote of greater than fifty percent (50%) of the Members determines that this Declaration shall terminate.

IN WITNESS WHEREOF, Declarant has executed this instrument the 14 day of March, 2011.

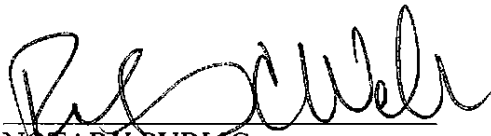
DECLARANT:

**SUMMERLANE DEVELOPMENT,
INC.**, a Utah corporation

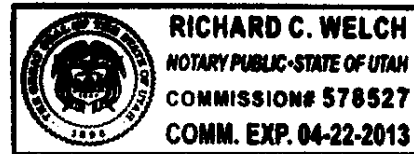

By: Bryson Garbett, President

STATE OF UTAH)
)ss:
COUNTY OF SALT LAKE)

On the 14 day of March, 2011 personally appeared before me Bryson Garbett, who by me being duly sworn, did say that he is the President of SUMMERLANE DEVELOPMENT INC., a Utah corporation, and that the within and foregoing instrument was signed in behalf of said Company by authority of a resolution of its board of directors or its Articles of Incorporation, and said Bryson Garbett, duly acknowledged to me that said Company executed the same.

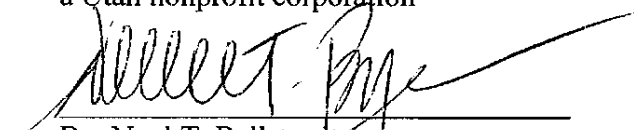


NOTARY PUBLIC



AGREED AND ACKNOWLEDGED BY THE MEMBERS:

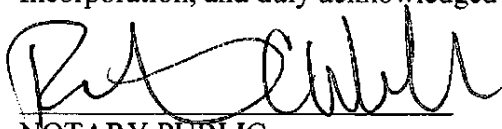
SUMMERLANE HOMEOWNERS ASSOCIATION,
a Utah nonprofit corporation



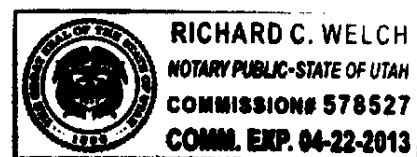
By: Noel T. Ballstaedt
Its: President

STATE OF UTAH)
)ss:
COUNTY OF SALT LAKE)

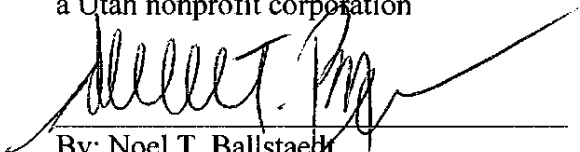
On the 14 day of March, 2011 personally appeared before me Noel T. Ballstaedt, who by me being duly sworn, did say that he is the President of SUMMERLANE HOMEOWNERS ASSOCIATION, and that the within and foregoing instrument was signed in behalf of said Company by authority of a resolution of its board of directors or its Articles of Incorporation, and duly acknowledged to me that said Company executed the same.



NOTARY PUBLIC

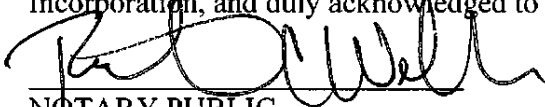


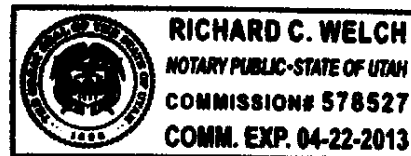
PROMENADE HOMEOWNERS ASSOCIATION,
a Utah nonprofit corporation


By: Noel T. Ballstaedt
Its: President

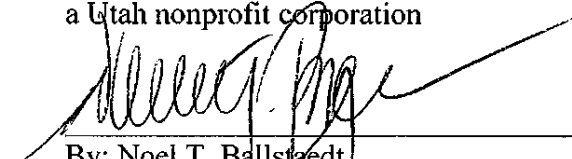
STATE OF UTAH)
)ss:
COUNTY OF SALT LAKE)

On the 14 day of March, 2011 personally appeared before me Noel T. Ballstaedt, who by me being duly sworn, did say that he is the President of PROMENADE HOMEOWNERS ASSOCIATION, and that the within and foregoing instrument was signed in behalf of said Company by authority of a resolution of its board of directors or its Articles of Incorporation, and duly acknowledged to me that said Company executed the same.


NOTARY PUBLIC



PROMENADE TOWNHOMES OWNERS ASSOCIATION,
a Utah nonprofit corporation


By: Noel T. Ballstaedt
Its: President

STATE OF UTAH)
)ss:
COUNTY OF SALT LAKE)

On the 4 day of March, 2011 personally appeared before me Noel T. Ballstaedt, who by me being duly sworn, did say that he is the President of PROMENADE TOWNHOMES OWNERS ASSOCIATION, and that the within and foregoing instrument was signed in behalf of said Company by authority of a resolution of its board of directors or its Articles of Incorporation, and duly acknowledged to me that said Company executed the same.



NOTARY PUBLIC



EXHIBIT "A"
LEGAL DESCRIPTION FOR
SUMMERLANE

The land referred to in the foregoing document as Summerlane is located in Salt Lake County, Utah and is described more particularly as follows:

SUMMERLANE AT THE DISTRICT, PHASE 1, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.

Tax 10#27-20-178-059 through -105

SUMMERLANE AT THE DISTRICT, PHASE 2, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.

27-20-179-002 through -058

SUMMERLANE AT THE DISTRICT, PHASE 3, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.

27-20-179-003 through -076

SUMMERLANE AT THE DISTRICT, PHASE 4, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.

27-20-178-007 through -155

SUMMERLANE AT THE DISTRICT, PHASE 5, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.

27-20-179-089 through -111

SUMMERLANE AT THE DISTRICT, PHASE 6, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.

27-20-182-001 through -023

Lot 1, **SUMMERLANE SUBDIVISION NUMBER 2**, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.

27-20-180-001

EXHIBIT "B"
LEGAL DESCRIPTION FOR
PROMENADE

The land referred to in the foregoing document as Promenade is located in Salt Lake County, Utah and is described more particularly as follows:

PROMENADE AT THE DISTRICT, NUMBER 1, AMENDED according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.

Tax ID[#] 27-20-181-018 through -029

EXHIBIT "C"
LEGAL DESCRIPTION FOR
PROMENADE TOWNHOMES

The land referred to in the foregoing document as Promenade Townhomes is located in Salt Lake County, Utah and is described more particularly as follows:

PROMENADE WEST AT THE DISTRICT, PHASE 1, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.

TAX ID #
27-20-176-008 & 27-20-181-030

PROMENADE WEST AT THE DISTRICT, PHASE 2, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.

PROMENADE WEST AT THE DISTRICT, PHASE 3, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.

Lot 2, SUMMERLANE SUBDIVISION NUMBER 2, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.

EXHIBIT "D"
LEGAL DESCRIPTION FOR THE
RECREATION AMENITY

Lot 4, SUMMERLANE SUBDIVISION, according to the official plat thereof on file and of record in the office of the Salt Lake County Recorder.

TAX ID # 27-20-178-002