

## AMENDMENT TO DECLARATION SUNDOWNER CONDOMINIUM

This Amendment to Declaration of Sundowner Condominium (hereinafter "Amended Declaration") is made and executed on the date shown below by the Sundowner Condominium Management Committee after having been voted upon and approved by the unit owners at Sundowner Condominium.

### RECITALS

WHEREAS, Sundowner Condominium was created by the "Declaration of Covenants, Conditions, and Restrictions [for] the Sundowner Condominiums, Phase I" (hereinafter "Enabling Declaration"), recorded in the records of Davis County, Utah, on January 22, 1974, in Book 532, beginning on page 190, as Entry #390625; and

WHEREAS, the property that is the subject of this Amended Declaration is situated in and upon that certain real property located in Davis County, State of Utah, as specifically described in Exhibit "A", attached hereto and incorporated herein by this reference, and including the Common Area that is appurtenant to each unit as shown on the plat maps for Sundowner Condominium, as recorded in the office of the County Recorder for Davis County, State of Utah. There are 142 Units constructed at Sundowner Condominium.

WHEREAS, The unit owners in Sundowner are desirous to create the Sundowner Condominium Homeowners Association, Inc., a Utah non-profit corporation ("Association"), which will be created by filing Articles of Incorporation with the Utah Division of Corporations and Commercial Code, which Association shall operate for the purpose of managing the Common Area and enforcing the provisions of the Enabling Declaration and any amendments thereto. The Association will be the governing body of Sundowner Condominium and will operate in accordance with the Enabling Declaration, any amendments to the Enabling Declaration, this Amended Declaration, the Articles of Incorporation (Exhibit "B" attached hereto and incorporated herein by this reference) and the Association Bylaws as they are set forth in the "By-laws Governing the Sundowner Condominium," recorded in the records of Davis County, Utah, on August 31, 1994, in Book 1729, beginning on page 442, as Entry # 1309656.

NOW THEREFORE, To accomplish the unit owners' objectives, the following amendment is adopted creating the Sundowner Condominium Homeowners Association, Inc., a Utah non-profit corporation. If there is any conflict between this Amended Declaration and the Enabling Declaration and Bylaws, this document shall control.

This Amended Declaration shall become effective upon recording. The Sundowner Enabling Declaration and any amendments to Enabling Declaration and Bylaws are hereby amended to include the following:

# AMENDMENT

## Creation of Non-profit Corporation

- 1.1 The unit owners hereby authorize and approve the creation of a Utah nonprofit corporation, to be known as the Sundowner Condominium Homeowners Association, Inc. ("Association"), by filing with the State of Utah the Articles of Incorporation for the Association in a form substantially similar to those contained in Exhibit "B", attached hereto. The Association shall be responsible for managing the common area within Sundowner and governing the affairs of Sundowner in accordance with the provisions of this Amended Declaration, the Enabling Declaration, any amendment to the Enabling Declaration, the Articles of Incorporation and the Bylaws.
- 1.2 By voting to approve this Amended Declaration, the unit owners hereby agree to adopt the following documents:
  - a. this Amended Declaration;
  - b. the Articles of Incorporation (Exhibit "B" attached hereto); and
  - c. the Bylaws of the Association recorded in the records of Davis County, Utah, on August 31, 1994, as Entry # 1309656

as the governing documents of Sundowner Condominium Homeowners Association, Inc., which documents shall constitute equitable servitudes that shall run with the real property described in Exhibit "A".

### CERTIFICATION

It is hereby certified that at least sixty-seven percent (67%) of the unit owners in attendance at a duly called and constituted meeting of the unit owners have voted to approve this amendment pursuant to the provisions of paragraph 15 of the Enabling Declaration .

IN WITNESS WHEREOF, this 3 day of December, 2009.

By Marcus Morrell  
President

STATE OF UTAH                    )  
  :SS.  
COUNTY OF Davis                )

On this 3 day of December, 2009, personally appeared before me Marcus Morrell, who, being by me duly sworn did say that he is President of the Sundowner Condominium Association and that the within and foregoing instrument was signed in behalf of said Association and he duly acknowledged to me he executed the same.

Kristina Earle  
Notary Public



## Exhibit A

All of Units A, B, C, D, Building 1, Sundowner Condo Phase 1, Clearfield City, Davis County, Utah. [09-029-0001 through 0004]

All of Units A, B, C, D, Building 2, Sundowner Condo Phase 1, Clearfield City, Davis County, Utah. [09-029-0005 through 0008]

All of Units A, B, C, D, Building 3, Sundowner Condo Phase 1, Clearfield City, Davis County, Utah. [09-029-0009 through 0012]

All of Units A, B, C, D, Building 4, Sundowner Condo Phase 1, Clearfield City, Davis County, Utah. [09-029-0013 through 0016]

All of Units A, B, C, D, Building 5, Sundowner Condo Phase 1, Clearfield City, Davis County, Utah. [09-029-0017 through 0020]

All of Units A, B, C, D, Building 6, Sundowner Condo Phase 1, Clearfield City, Davis County, Utah. [09-029-0021 through 0024]

All of Units A, B, C, D, Building 7, Sundowner Condo Phase 1, Clearfield City, Davis County, Utah. [09-029-0025 through 0028]

All of Units A, B, C, D, Building 8, Sundowner Condo Phase 1, Clearfield City, Davis County, Utah. [09-029-0029 through 0032]

All of Units A, B, C, D, Building 9, Sundowner Condo Phase 1, Clearfield City, Davis County, Utah. [09-029-0034 through 0037]

All of Units A, B, C, D, Building 10, Sundowner Condo Phase 1, Clearfield City, Davis County, Utah. [09-029-0038 through 0041]

All of Units A, B, C, D, Building 11, Sundowner Condo Phase 1, Clearfield City, Davis County, Utah. [09-029-0042 through 0045]

All of Units A, B, C, D, Building 12, Sundowner Condo Phase 2, Clearfield City, Davis County, Utah. [09-030-0046 through 0049]

All of Units A, B, C, D, Building 13, Sundowner Condo Phase 2, Clearfield City, Davis County, Utah. [09-030-0050 through 0053]

All of Units A, B, C, D, Building 14, Sundowner Condo Phase 3, Clearfield City, Davis County, Utah. [09-030-0054 through 0057]

All of Units A, B, C, D, Building 15, Sundowner Condo Phase 3, Sec 7, Clearfield City, Davis County, Utah. [09-030-0058 through 0061]

All of Units A, B, C, D, Building 16, Sundowner Condo Phase 3, Clearfield City, Davis County, Utah. [09-030-0062 through 0065]

All of Units A, B, C, D, Building 17, Sundowner Condo Phase 3, Clearfield City, Davis County, Utah. [09-030-0066 through 0069]

All of Units A, B, C, D, Building 18, Sundowner Condo Phase 3, Clearfield City, Davis County, Utah. [09-030-0070 through 0073]

All of Units A, B, C, D, Building 19, Sundowner Condo Phase 3, Clearfield City, Davis County, Utah. [09-030-0074 through 0077]

All of Units A, B, C, D, Building 20, Sundowner Condo Phase 3, Clearfield City, Davis County, Utah. [09-030-0078 through 0081]

All of Units A, B, C, D, Building 21, Sundowner Condo Phase 3, Clearfield City, Davis County, Utah. [09-030-0082 through 0085]

All of Units A, B, C, D, Building 22, Sundowner Condo Phase 3, Clearfield City, Davis County, Utah. [09-030-0086 through 0089]

All of Units A, B, C, D, Building 23, Sundowner Condo Phase 3, Sec 7, Clearfield City, Davis County, Utah. [09-030-0090 through 0093]

All of Units A, B, C, D, Building 24, Sundowner Condo Phase 4, Amended, Clearfield City, Davis County, Utah. [09-031-0094 through 0097]

All of Units A, B, C, D, Building 25, Sundowner Condo Phase 4, Amended, Clearfield City, Davis County, Utah. [09-031-0098 through 0101]

All of Units A, B, C, D, Building 26, Sundowner Condo Phase 4, Amended, Clearfield City, Davis County, Utah. [09-031-0102 through 0105]

All of Units A, B, C, D, E, F, Building 27, Sundowner Condo Phase 4, Amended, Clearfield City, Davis County, Utah. [09-031-0106 through 0111]

All of Units A, B, C, D, Building 28, Sundowner Condo Phase 4, Amended, Clearfield City, Davis County, Utah. [09-031-0112 through 0115]

All of Units A, B, C, D, E, F, G, H, Building 29, Sundowner Condo Phase 5, Amended, Clearfield City, Davis County, Utah. [09-183-0001 through 0008]

All of Units A, B, Building 30, Sundowner Condo Phase 5, Amended, Clearfield City, Davis County, Utah. [09-183-0009 through 0010]

All of Units A, B, C, Building 31, Sundowner Condo Phase 5, Amended, Clearfield City, Davis County, Utah. [09-183-0011 through 0013]

All of Units A, B, C, D, Building 32, Sundowner Condo Phase 5, Amended, Clearfield City, Davis County, Utah. [09-183-0014 through 0017]

All of Units A, B, C, D, Building 33, Sundowner Condo Phase 5, Amended, Clearfield City, Davis County, Utah. [09-183-0018 through 0021]

# Exhibit "B"

Articles of Incorporation

# Articles of Incorporation

For

## SUNDOWNER HOMEOWNERS ASSOCIATION, INC.

WE, THE UNDERSIGNED NATURAL PERSONS, all being of the age of eighteen years or more, acting as incorporators under the Utah Revised Non-Profit Corporation Act, adopt the following Articles of Incorporation:

**Name.** The name of the Corporation is Sundowner Homeowners Association, Inc. (herein referred to as the "Corporation").

**Duration.** The duration of the Corporation shall be perpetual, unless dissolved by the action of the Corporation or by operation of law.

**Purposes.** The purposes of the Corporation are to function in behalf of the members of the Sundowner Homeowners Association located in Davis County, Utah, to enforce the Covenants, Conditions and Restrictions as set forth in the Declaration of Covenants, Conditions and Restrictions, and to provide the other services and perform all of the other functions set forth in the Declarations of Covenants, Conditions and Restrictions as may become desirable or necessary for the benefit of the members. The Corporation shall have all powers, rights, and privileges available to corporations under the laws of the State of Utah.

**Membership/Stock.** The owners of stock in the Corporation shall only be owners of Units in Sundowner Condominium, located in Davis County, Utah. Stock ownership is appurtenant to the Unit and may not be separated from Unit ownership, and ownership of a share of stock in Sundowner shall pass automatically to the new owner of a Unit upon conveyance of title without the need to convey a physical stock certificate. There shall be one share of stock in the Corporation for each Unit in Sundowner and the Owner(s) of a Unit shall be the owners of one share of stock in the Corporation (which shares shall not be evidenced by a physical stock certificate). The Unit Owners shall have an interest in the Corporation as described below:

The Association shall have one (1) class of membership--Class A, described more particularly as follows:

1. **Class A.** Class A Members shall be all Owners. Class A Members shall be entitled to vote on all issues before the Association, subject to the following:
  - a. **Voting.** Each Unit Owner shall have right to vote based on percentages as provided in the Sundowner Condominium Homeowners Association Declaration and Bylaws.
  - b. **Subject to Assessment.** No vote shall be cast or counted for any Unit not subject to assessment;
  - c. **Multiple Owners.** When more than one (1) person or entity holds such interest in

a Unit, the vote for such Unit shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Unit shall be suspended in the event more than one (1) person or entity seeks to exercise it.

d. **Number of Shares.** The Corporation is authorized to issue up to 134 shares of Class A stock.

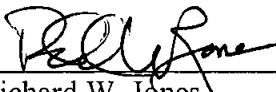
2. Class A shares shall have unlimited voting rights.
3. The owners of Class A shares shall be entitled to receive the net assets of the Corporation upon dissolution.

**Registered Agent.** The registered agent for the Corporation is:

Richard W. Jones, Esq.  
4605 Harrison Blvd., Third Blvd.  
Ogden, Utah 84403

**Acceptance of Appointment**

I, Richard W. Jones hereby accept the appointment as the registered agent for Sundowner Homeowners Association, Inc.

  
\_\_\_\_\_  
Richard W. Jones

**Bylaws.** Bylaws have been adopted in accordance with the Enabling Declaration for Sundowner. The Corporation hereby adopts the bylaws attached to the Enabling Declaration as Exhibit "B." Hereafter, bylaws may be adopted, amended, or replaced by the vote of Members.

**Address of Corporation's Registered Office.** The principal place of business of the Corporation, and its initial offices are located at Sundowner Condominium Office, 1616 E. 800 S., Clearfield, UT 84015. The Corporation may establish such other offices and locations as it deems appropriate for the operation of its business.

**Distributions.** No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its Directors, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes as set forth above.

**Dissolution.** Upon the dissolution of the Corporation, assets shall be distributed to the members of the Corporation on the same percentage as votes and assessments are allocated and as set forth in the Sundowner Homeowners Association Enabling Declaration and Bylaws.

**Board of Directors.** There will initially be five (5) Directors of the Corporation. The initial Board of Directors of the Corporation shall be the currently existing members of the Sundowner management committee, and they shall serve as Directors of the Corporation through their current terms in accordance with the bylaws and until the election of officers and Directors at the annual member's meeting. They are:

<u>Name</u>	<u>Address</u>
Marcus Morrell	845 S. 1650 E., #C, Clearfield, UT 84015
Orty Zwemke	825 S. 1650 E, # D, Clearfield, UT 84015
Pat Maurer	774 S. 1650 E. # B, Clearfield, UT 84015
Liz Baseman	825 S. 1650 E., # A, Clearfield, UT 84015
Lynn Gillespie	1580 E. 900 S. # E, Clearfield, UT 84015

The Directors will elect one of them to act as Chairman until the annual member's meeting.

**Officers.** The initial officers of the corporation are:

- President - Marcus Morrell
- Vice President - Pat Maurer
- Secretary - Lynn Gillespie
- Treasure - Liz Bosomean

notice of meeting or in a duly executed waiver of notice; provided however, and further provided that the Board of Directors may be resolution, fix the date of the annual meeting at such other date as the Board may deem appropriate.

**Annual Meeting.** The annual meeting of the members shall be held in December of each year, or at such time and at such place as shall be determined by the Board. At such meeting, the current members shall elect Directors according to the bylaws and the Enabling Declaration. Only current members (owners) of Units owned in the Association shall be elected Directors according to the percentage as required by law.

**Limitations on Liability.** The Officers, Directors, and Members of the Corporation shall not be held personally liable for the debts and obligations of the Corporation.

**Incorporators.** The incorporators of the Corporation are:

<u>Name</u>	<u>Address</u>
Marcus Morrell	845 S. 1650 E., #C, Clearfield, UT 84015



Orty Zwemke	825 S. 1650 E, # D, Clearfield, UT 84015
Pat Maurer	774 S. 1650 E. # B, Clearfield, UT 84015
Liz Baseman	825 S. 1650 E., # A, Clearfield, UT 84015
Lynn Gillespie	1580 E. 900 S. # E, Clearfield, UT 84015

**Amendment.** These Articles of Incorporation may be amended from time to time as authorized by the Enabling Declaration and as permitted by law.

In Witness Whereof, we, Marcus Morrell, Pat Maurer, Lynn Gillespie, Liz Baseman and Orty Zwemke, have executed these Articles of Incorporation in duplicate this 1 day of December, 2009, and say: That we are the incorporators herein; that we have read the above and foregoing Articles of Incorporation; that we know the contents thereof and that the same is true to the best of our knowledge and belief, excepting as to matters herein alleged upon information and belief and as to those matters we believe them to be true.

*Marcus Morrell*  
 Incorporator

*Orty Zwemke*  
 Incorporator

*Liz Baseman*  
 Incorporator

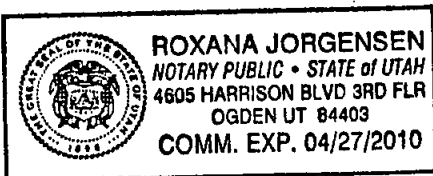
*Pat Maurer*  
 Incorporator

*Lynn Gillespie*  
 Incorporator

State of Utah            )  
   : ss  
 County of Davis        )

On the 1 day December, 2009, the foregoing instrument was acknowledged and verified before me Marcus Morrell, Pat Maurer, Lynn Gillespie, Liz Baseman and Orty Zwemke, by who personally appeared before me, and being by me duly sworn declare under penalty of perjury that they are the incorporators of Sundowner Homeowners Association, Inc., and that they signed the foregoing, and that the statements contained therein are true and correct.

In witness whereof, I have set my hand and seal this 1 day of December, 2009.



*Roxana Jorgensen*  
 Notary Public