

DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS, ONYX HILLS, PHASE I

After recordation return to:

Sundance Land and Development, L.C.
P.O. Box 216
Hurricane, UT 84737

WHEREAS, Sundance Land and Development, L.C. hereafter referred to as Declarant, is the owner of all that parcel of land in the City of Hurricane, State of Utah, described as follows:

Lots 1 through 15, inclusive, as shown on the plat of Onyx Hills, Phase I, recorded in the Office of the Washington County Recorder in ~~Book _____ of Maps, Map No. _____, recorded in Washington County.~~

WHEREAS, Declarant is about to sell and convey all or some of the lots located within said subdivision and before selling or conveying any of said lots, the following conditions and restrictions shall be imposed for the protection and benefit of the Declarant and any and all future owners of said lots.

WITNESSETH

Declarant hereby certifies and declares that it has been established and does hereby establish the following general plan for the protection and benefit of said real property, and has fixed and does hereby fix the following protective conditions and restrictions upon and subject to which each and all of the lots in said property shall be hereafter held, used, occupied, leased, sold, and or conveyed. Each and all of which said conditions and restrictions shall insure to the benefit of, be binding upon and pass with said real property, and each and every lot thereof, and shall insure to the benefit of, apply to and bind the respective successors in title, or interest of Declarant.

1. **RESIDENTIAL PURPOSES ONLY:** That said lots shall be used for residential purposes only and that no building or buildings shall be erected, constructed, altered or maintained in any of the said lots other than detached single family dwelling, together with customary outbuildings, as hereafter permitted, not to exceed one story in height, excepting Lots 1, 2, 3, 13, 14.

2. **ARCHITECTURAL CONTROL COMMITTEE:** The Architectural Control Committee is composed of: Neal Andrews and Kay Tippit, whose address is P.O. Box 216, Hurricane, Utah, 84737.

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A majority of the committee may designate a representative of the committee to act for it. In the event of the death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor. Neither the members of the committee, nor its designated representative, shall be entitled to any compensation for services performed pursuant to this covenant.

3. **PLANS AND SPECIFICATIONS, ETC.:** That no building or other structure or improvement shall be commenced upon any of said lots until the location and the complete plans and specifications including the color scheme of earth building, fence and/or wall to be erected upon the lot have been approved in writing by the Architectural Control Committee. Provided, however, that in the event the Committee fails to approve or disapprove such location, plans and specifications within sixty (60) days after submission thereof to it, then such approval will not be required, provided any building so to be erected conforms to all other conditions and restrictions herein contained and is in harmony with similar structures erected within said subdivision.

4. **NEW BUILDINGS ONLY:** That no building of any kind shall be moved from any other place onto any of said lots, or from one lot to another lot.

5. **FAILURE TO COMPLY WITH ORDER OF ARCHITECTURAL CONTROL COMMITTEE:** In the event of the failure of any individual lot owner to comply with a written directive or order from the Architectural Control Committee shall have the right and authority to preform the subject matter of such directive or order and the recovery of the cost of such performance shall be sought against the owner of the lot in question and may be recovered by the Architectural Control Committee in an action of law against such individual lot owner.

6. **GENERAL DESIGN RESTRICTIONS:** The following restrictions shall apply throughout the property:

A. **CERTAIN STRUCTURES:** No trailer, tent, shack, garage, barn, or other outbuilding shall be used as a residence, either temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

No television, radio or other electronic antenna or device of any type shall be erected, constructed, placed or permitted to remain on the ground surface of any of the lots unless the same be contained within a house or

building, unless approved by the Architectural Control Committee.

No heating, cooling, or air conditioning equipment, including fans or similar devices, shall be placed or permitted to remain upon the roofs or any house or building constructed on a lot.

It is the intention of the Declarant to encourage solar power. However, to the extent permitted by applicable law, the installation of solar panels shall be subject to prior written consent of Declarant if the same are visible from any street.

- B. SINGLE FAMILY DETACHED HOMES TO HAVE GARAGES:** The residential improvements constructed on any single family detached lot shall include an enclosed garage. Such garage may be detached or part of the residential structure.
- C. USE OF LOTS:** A lot shall not be used, nor shall any portion thereof be used for any purpose other than a residence. However, buildings on lots owned by Declarant or its nominees may be used as models and sales offices and construction offices for the purpose of selling or construction of dwellings in the property until all of the dwellings thereon are sold.

No single family detached residence shall be constructed having a total finished floor space, exclusively of storage porches and overhangs, less than 1,016 square feet for a one-story building.

- D. NEW CONSTRUCTION AND MATERIALS:** No building or structure constructed elsewhere shall be moved or placed on any lot. All buildings erected on any lot shall be of new construction. However, this subparagraph shall neither prevent the use of used brick or any other materials that may be attractive and preservative of property values. When the construction of a building is begun on a lot, work shall be pursued diligently and continuously to completion, subject to weather, strikes, acts of God and other matters beyond the control of the Owner.
- E. RIGHT OF INSPECTION:** During reasonable hours and after reasonable notice, Declarant shall have the right to enter upon and inspect the property or any portion thereof and the improvements thereon for the purpose of ascertaining whether or not the provisions of this Declaration are being complied with and shall not be deemed guilty of trespass by reasons thereof.

- F. OWNER'S MAINTENANCE OBLIGATIONS:** Except as may be provided in any supplemental declarations, each Owner shall be responsible for maintenance and repair of any structure which may be constructed or installed upon his lot, and of his yard areas. Such maintenance and repair shall be of high quality. Without limiting the generality of the foregoing, and except as may be provided on supplemental declarations referred to above, each Owner's repair and maintenance obligations shall extend to and include painting, repairing, replacing, and caring for roofs, fences, exterior building surfaces, exterior glass surfaces, exterior doors and to maintenance of all yard areas.
- G. ROOFS:** All buildings shall have roofs of composition shingles with Duro Ridge or Tile subject to the authority of Declarant, and subject to the authority of the Declarant to approve different roof materials. If the pitch of a roof is less than 4" in 12" then the roof design and materials shall be subject to approval by Declarant. Such approval shall in no way imply any roof guarantee by Declarant.
- H. ANIMALS:** No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other conventional household pets may be kept on lots provided they are not kept, bred or maintained for any commercial purpose, or in unreasonable numbers. Notwithstanding the foregoing, no animals or fowl may be kept on the property which results in an annoyance or are dangerous to residents in the vicinity.
- I. OFFENSIVE ACTIVITIES:** No noxious or offensive activity or trade shall be carried on upon any lot, nor shall anything be done or replaced thereon which may be or become a nuisance or cause unreasonable embarrassment, disturbance, or annoyance to other owners, in the enjoyment of their lots. Without limiting any of the foregoing, no owner shall permit noise including but not limited to the barking of dogs, and the excessive playing of loud music systems, to emanate from the owner's lot, which would unreasonably disturb another owner's quiet enjoyment of his lot.
- J. UNSIGHTLY ITEMS:** All weeds, rubbish, debris, objects or materials of any kind shall be regularly removed from the lots and shall not be allowed to accumulate thereon. All clotheslines or other outside clothes drying or airing facilities, refuse containers, woodpiles, storage areas, machinery and equipment shall be prohibited upon any lot unless obscured from view of adjoining streets or lots by

a fence of appropriate screen. No lot shall be used as a storage or dumping grounds for inoperative vehicles.

K. COMPOST: No quantities of manure, composting materials or decaying vegetable matter shall be stored in such quantities as to attract household pests or constitute an injury to the person or property of any person. Such materials shall be stored in a manner so as to prevent the creation of obnoxious odors.

L. WINDOW COVERS: Curtains, drapes, shutters or blinds may be installed as window coverings. No window shall be covered with aluminum foil or similar materials.

7. HEIGHT LIMIT OF DWELLINGS: That no dwelling shall be more than one story in height, excepting those lots designated.

8. DILIGENCE IN CONSTRUCTION REQUIRED: That the work of constructing and erecting any building or other structure shall be prosecuted diligently from commencement thereof.

9. SLOPE MAINTENANCE: Each individual lot owner will keep, maintain, water and replant all slope banks located on such owner's lot so as to prevent erosion and to present an attractive appearance.

10. NO TENTS, SHACKS, ETC.: That no tent, shack, basement, garage, or outbuilding shall at any time be used on any lot as a residence, either temporarily or permanently; nor shall any residence of a temporary character be constructed, placed or erected on any lot.

11. ANNOYING OR OFFENSE ACTIVITIES: No noxious or offense activities shall be carried on upon any lot, nor shall anything be done thereon which may be or become a nuisance or annoyance to the neighborhood. No industry or manufacturing of any kind shall be engaged in or carried on, and no hospital, sanitarium or institution or a similar kind of like character shall be conducted or maintained on any said lot, nor shall any trucks, wagons, trailers, recreational vehicles, boats, equipment or goods, be parked, stored, or kept on the front portion of any lot in this subdivision, except during such time as the same are actually being used in connection with the construction of any residential building or pertinent garage or outbuilding on any lot in said subdivision.

12. **MINERAL DEVELOPMENT:** No oil, water or gas drilling, oil, water or gas development operations, oil, water or gas refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil, water or gas well, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derricks or other structures designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

13. **SIGNS:** No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, or one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

14. **BUILDING LOCATION:** No building shall be located on any lot nearer than twenty-five (25) feet to the front lot line, or nearer than twelve and one-half (12½) feet to any side street line. All building locations and interior yard set back requirements are subject to the set back requirements of the City of Hurricane.

15. **FENCES:** Owners who have a fence dividing their usable property and such a fence dividing the lots upon which their homes are constructed, shall equally have the right to use such fence except that each shall have the exclusive right to the use of the interior surface of the fence on his side. Neither the owner shall use any portion of the fence so as to interfere with the use and enjoyment of the other owner. In the event that any portion of such fence, except the interior surface of one side, is damaged or injured from any cause, other than the act of negligence of either party, it shall be repaired or rebuilt at their joint expense.

16. **CREATION OF EASEMENTS:** Each of the easements contained in the final map of said subdivision recorded, and the easements provided for in this Declaration which shall be devised to be established upon the recordation of this Declaration, shall henceforth be decreed to be covenant running with the land for the use and benefit of the lots superior to all other encumbrances applied against or in favor or any portion of the properties which is the subject of this Declaration. In furtherance of the easements provided for in this Declaration the individual grant deeds to lots may, but shall not be required to set forth said easements.

17. **ENCROACHMENTS:** There is reserved for the benefit of each lot, an easement for any and all encroachments resulting from any cause attributable to the design and construction of improvements on each lot and any and all encroachments resulting from construction

errors, lateral shifting or settlement or any other cause and any and all encroachments resulting from the construction of sewer, water and electrical lines and other utilities.

18. FENCE, HEDGE, AND SHRUB RESTRICTIONS: No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two feet and six feet (2' & 6') above the roadways shall be permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty (20) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property line, extended. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

19. GARBAGE, TRASH, ETC.: No lot shall be used or maintained as a dumping ground for rubbish. Trash or garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

20. SLOPE AND DRAINAGE EASEMENTS: That each grantee of a lot in said tract agrees for himself, his heirs, assigns or successors in interest that he will permit free access by owners of adjacent or adjoining lots to slopes or drainageways located on his property which affect said adjacent or adjoining lots, when such access is essential for the maintenance or permanent stabilization on said slopes, or maintenance of the drainage facilities for the protection and use of property other than the lot on which the slope or drainageway is located.

That each grantee of a lot in said tract agrees for himself and his assigns that he will not in any way interfere with the established drainage pattern over his lot from adjoining or other lots in said tract or that he will make adequate provisions for proper drainage in the event it is necessary to change the established drainage over his lot. For the purposes hereof, "ESTABLISHED" drainage is defined as the drainage which occurred at the time the overall grading of said tract including the final grading of each lot in said tract was completed by the Declarant grantor.

21. CLAIM OF BREACH: The Declarant and any lot owner at any time that they deem a breach of these conditions and restrictions has occurred, notify the Architectural Committee of the same. The appropriate action, which action may include filing an action in a court of law for appropriate relief.

PROVIDED that a breach of any of the foregoing conditions and restrictions shall not affect, impair, defeat, or render invalid the lien, charge or encumbrance of any mortgage or deed of trust made for value which may thence exist upon said land, which said mortgage or trust deed shall be and is hereby declared to be prior and superior to the right in favor of any person or persons under by virtue of these conditions and restrictions, provided, however, that in the event of a foreclosure of any such trust deed or mortgage, or if the owner of the note secured by such trustee deed or mortgage acquired title to said land in any manner whatsoever in satisfaction of this indebtedness; then any purchase of the foreclosure or trustee's sale or any said note owner acquiring title as aforesaid agrees that said property so acquired by this immediately upon acquisition become subject to each and all of the conditions and restrictions and rights herein contained, but free from the effects of any breach occurring prior thereto.

22. INVALIDITY OF ANY PROVISION: That in the event of any conditions or restrictions herein contained be invalid, or held invalid or void by any court of competent jurisdiction, such invalidity or nullity shall in no way affect any other conditions or restrictions herein contained.

23. NO WAIVER: That a waiver or breach of any of the foregoing conditions and restrictions shall not be construed as waiver of any succeeding breach or violation or of any other conditions or restrictions.

24. LEGAL ACTION IN THE EVENT OF A BREACH: As to the Declarant and the owners of any of said lot or lots, including any bona fide purchaser under contract, the foregoing conditions and restrictions shall operate as covenants running with the land and a breach of any of them or a continuance of any such breach may be enjoined, abated, or remedied by appropriate proceedings by Declarant or the owner or owners of any lot or lots in the subdivision, their successors or by the Architectural Committee. Enforcement shall be by proceeding at law or in equity against any person or persons in violation or to recover damages.

25. AMENDMENTS: Those restrictions may be amended at any time and from time to time by an instrument in writing signed by the owners of fifty-one percent (51%) or more of said lots which said written instrument shall be recorded in the office of the County Recorder of the County of Washington, Utah.

26. CONVEYANCE OF TITLE: In the event Declarant shall convey all of its right, title and interest to any partnership, individual or

individuals, corporation or corporations, in and to the real property described herein, then and in such event, Declarant shall be relieved of the performance of any further duty or obligations thereunder and such other partnership, individual or individuals, corporation or corporations shall succeed to all of the rights, powers, reservations, obligations and duties as though such other partnership, individual or individuals, corporation or corporations, had originally been named herein as Declarant instead of Declarant.

27. DURATION OF RESTRICTION, ETC.: All of the covenants and restrictions set forth in this Declaration of Tract Restrictions are imposed upon said property to the extent herein contained for the direct benefit thereof as a part of the general plan for development and improvement thereof, hereby adopted by Declarant.

Said covenants and restrictions shall run with the land and continue to be in full force and effect and shall be binding upon Declarant and all persons claiming under them for a period of thirty-five (35) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the majority of the then owners of the lots has been recorded agreeing to change said covenants in whole or in part.

IN WITNESS WHEREOF, the Declarant has caused its name to be affixed hereto and executed this instrument this 4 day of April 1995.

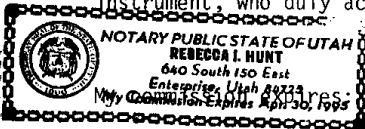
Sundance Land and Development, L.C.

By: Neal Andrews
Neal Andrews
Member

BY: _____
Kay Tippit
Member

STATE OF UTAH ss
County of Washington

On the 4th day of April, 1995 personally appeared before me Neal Andrews, Member of Sundance Land and Development, L.C. the signer of the within instrument, who duly acknowledged to me that he executed the same.



Rebecca I. Hunt
REBECCA I. HUNT, Notary Public
Page 9 of 9 Residing in: Enterprise, Utah