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GARY W. OTTA
RECORDER, SALT LAKE COUNTY, UTAH
SOUTH JORDAN
11175 S REDWOOD RD
SOUTH JORDAN UT 84095-8265
BY: ELF, DEPUTY - WI 35P.

THE SAND DUNES

**DECLARATION OF CONDOMINIUM,
COVENANTS, CONDITIONS
AND RESTRICTIONS**

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**DECLARATION OF CONDOMINIUM, COVENANTS, CONDITIONS,
AND RESTRICTIONS of THE SAND DUNES**

(a Condominium Development Containing Convertible Land, located in
South Jordan City, Utah)

This Declaration of Condominium, Covenants, Conditions and Restrictions is made and executed this day ___ of _____, 2002, by J&R Development, LLC, a Utah limited liability company, for itself, its successors, grantees and assigns (hereinafter referred to as "Developer").

RECITALS

A. Developer is the record owner of the following described tract of land located in South Jordan City, Salt Lake County, Utah:

See **Exhibit "A"** attached hereto;

hereinafter, the "Tract." Developer desires to create on the Tract a condominium development containing convertible land.

B. Developer desires to provide for preservation of the values and amenities in said development and for the maintenance of the Common Areas to be located on the Tract. To this end and for benefit of the Property and of the Owners thereof, Developer desires to subject the Property to the covenants, conditions, 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 shall have 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 Sand Dunes Condominium Owners Association.

NOW, THEREFORE, for the foregoing purposes, Developer declares that the Property, as more particularly described in Recitals Paragraph A and Article II of this Declaration, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, 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.

1.1 Declaration shall mean this Declaration of Condominium, Covenants, Conditions, and Restrictions, as the same may be amended from time to time.

1.2 Plat shall mean the Record of Survey Map covering the Property, entitled "Sand Dunes Condominiums Phase 1," executed and acknowledged by Developer on the 25th day of April, 2002, prepared and certified by Sattar N. Tabriz (a duly registered Utah Land Surveyor, holding Certificate No. 155100), and filed for record in the office of the County Recorder of Salt Lake County, Utah, concurrently with the filing of this Declaration. Plat shall also mean and include any amended Record of Survey Map hereafter recorded to reflect the conversion of "Convertible Land" in accordance with the provisions hereof.

1.3 Property shall mean the entire tract of real property covered by the Plat, the legal description of which is set forth in **Exhibit "A"** to this Declaration, subject to the exclusions and reservations stated in Article II herein.

1.4 Convertible Land shall mean the real property described in **Exhibit "B"** hereto, which is a portion of the Tract and as to which the Developer retains the right to develop said Convertible Land into additional Units and Limited Common Area, in accordance with the provisions of this Declaration.

1.5 Unit shall mean any of the thirty-four (34) separately numbered and individually described parcels of land as shown on the Plat, specifically excluding the Common Areas. The square footage of each Unit is set forth in the Plat and incorporated herein by reference. In the event the Developer exercises its rights to develop the Convertible Land, the number of Units shall be amended accordingly to reflect the total number of Units identified in the amended Plat.

1.6 Common Areas shall mean that part of the Property that is not included within the Units, and including interior and incidental roadways, sidewalks, walkways, and curbs, within or adjacent to the Units, together with all improvements other than utility lines which are now or hereafter constructed or located thereon, as identified on the Plat.

1.7 Limited Common Areas shall mean and refer to certain portions of the Common Areas designated on a recorded Plat, which are reserved for use by the Owner of a certain Unit to the exclusion of other Owners, and, in particular, refer to the Limited Common Areas lying between the curb adjacent to the street and the portion of the Unit fronting the street, with each Unit being allocated such portion of the Limited Common Areas as would be delineated by an extension of the side boundaries of the Unit to the street.

1.8 Residential Unit shall mean a structure or portion of a structure which is designed and intended for residential use, together with all improvements located on such Unit that are used or intended to be used in conjunction with such Residential Unit. The principal materials of

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which the Residential Units are to be constructed are wood frame construction, with a stone or brick exterior complying with the provisions of Article IX.

1.9 Owner shall mean the person who is the owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided fee interest in any Unit. 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.

1.10 Association shall mean The Sand Dunes Condominium Owners Association, a Utah nonprofit corporation, which has been incorporated or will be incorporated substantially contemporaneously with the recording of this Declaration, and its successors or assigns, if applicable. References herein to Articles and/or Bylaws shall mean and refer to the Articles of Incorporation and Bylaws of the Association.

1.11 Member shall mean every person who holds membership in the Association.

1.12 Mortgage shall mean both a first mortgage on any Unit and a first deed of trust on any Unit, and Mortgagee shall mean both a mortgagee under a first mortgage on any Unit and a beneficiary under a first deed of trust on any Unit.

II. PROPERTY DESCRIPTION

The Property that is submitted to, and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration, consists of the real property described in Recitals Paragraph A of this Declaration (the "Tract"), subject to the following provisions:

2.1 Exclusion of Utilities Easements. There is excluded from the Property 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 Units included within the Tract.

2.2 Reservation to Developer for Construction. There is reserved unto Developer, its employees, agents, and successors, such easements and rights of ingress and egress over, across, through, and under the Property, and any improvements now or hereafter constructed thereon as may be reasonably necessary for the Developer, its employees, agents and successors (in a manner not inconsistent with the provisions of this Declaration) to engage in construction upon or to improve the Common Areas with such structures and facilities (including, but not limited to parking areas, sidewalks, parking area and sidewalk lighting, and various landscaped areas) designed for the use and enjoyment of all the Members as Developer may reasonably determine to be appropriate. 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

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terms, expire thirty (30) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

2.3 Right of Access for Maintenance. Each Unit is subject to a right of access reserved and/or granted in favor of the Association for maintenance and upkeep of any portion of any Unit which lies between the extremities of the Residential Unit situated thereon and the boundaries of the Unit. In addition, each Unit is subject to a right of access in favor of utility companies and South Jordan City for maintenance of utilities and storm drains and sewers, if any, located on or adjacent to the Units.

2.4 Other Easements. Developer hereby reserves for the benefit of all of the Property and the Owners, reciprocal easements of access, ingress and egress over all Units, and over the Common Area, for the use and enjoyment of the Units in accordance with this Declaration, including, without limitation for installation and repair of utility services, for drainage over, across and upon adjacent Units for water resulting from the normal use of adjoining Units, and for maintenance and repair of any Residence Unit or landscaping located on any Unit or Common Area. Such easements may be used by the Developer, its successors, and assigns, and all Owners, their guests, tenants, lessees and invitees, residing on or temporarily visiting the Property, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Unit and the Common Area. No Owner of a Unit shall interfere with the established drainage pattern over his Unit from adjoining or other Units. Each Owner of a Unit shall make adequate provision for drainage with the approval of South Jordan City or other governing authority in the event he changes the established drainage over his Unit. For purposes of this Declaration, "established drainage" on any Unit is defined as the drainage conveyed to a purchaser from the Developer.

2.5 Reservation for Convertible Land. Developer reserves the unilateral right and option to convert the Convertible Land in accordance with the provisions of Article XI, and to withdraw from the Common Area all portions of the Convertible Land that are converted to Units, and to designate Limited Commons Areas within such Common Area within the Convertible Land.

2.6 Subject to Taxes, Instruments of Record. The Property subjected to this Declaration 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 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. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

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

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

(a) Class A. Class A Members shall be all Owners other than the Developer until the Class B membership ceases, at which time the Developer shall become a Class A Member with respect to any Unit or Units that the Developer may own at that time or from time to time. Class A Members shall be entitled to one (1) vote for each Unit owned.

(b) Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to three (3) votes for each Unit owned. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:

- (1) When the total number of votes held by all Class A Members equals the total number of votes held by the Class B Member; or
- (2) On December 31, 2012; or
- (3) Upon voluntary cancellation of Class B Membership by the Developer.

3.3 Purposes and Powers.

(a) The Association's purposes are:

- (1) To manage, operate, insure, construct, improve, repair, replace, alter and maintain the Common Areas, subject to the terms and limitations set forth in this Declaration;
- (2) To administer and enforce the covenants, conditions, restrictions, reservations, and easements created hereby;
- (3) To levy, collect, and enforce the assessments, charges, and liens imposed pursuant hereto;
- (4) To take any action that it deems necessary or appropriate to protect the interests and general welfare of the Owners;
- (5) To regulate and manage the condominium project; and
- (6) To execute and record, on behalf of all Owners, any amendment to this Declaration, or the Plat, or any easement with respect to the Common Areas, that has been approved by the vote or consent necessary to authorize such amendment or easement.

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(b) Unless expressly prohibited by law or the Association's Articles or Bylaws, the Association may:

- (1) Take any and all actions that it deems necessary or advisable to fulfill its purposes;
- (2) Exercise any powers conferred on it by applicable law, by this Declaration, or by the Association's Articles or Bylaws; and
- (3) Exercise all powers that may be exercise in Utah by nonprofit corporations.

IV. PROPERTY RIGHTS IN COMMON AREAS

4.1 Interests in Common Areas. Each Unit shall have an equal undivided interest in the Common Areas, subject to the rights and restrictions set forth in this Declaration. In the event the Developer exercises its rights to develop the Convertible Land, the proportionate interest of each of Unit in the Common Areas shall be amended accordingly to reflect the total number of Units as identified in the amended Plat.

4.2 Use of Common Areas. Each Member shall have a right to use and enjoy the Common Areas, excluding the Limited Common Areas. Such right and the Unit's undivided interest in the Common Areas shall be appurtenant to and shall pass with title to each Unit and in no event shall be separated therefrom. Any Member may delegate the right to use the Common Areas described herein to any tenant, lessee, or contract purchaser that resides on such Member's Unit.

4.3 Limited Common Area Rights. Subject to the restrictions provided in this Declaration, each Owner of a Unit is hereby granted an irrevocable and exclusive license to use and occupy the Limited Common Area reserved exclusively for the use of such Owner's Unit, as indicated in the Plat and described in this Declaration. The exclusive right to use and occupy each Limited Common Area shall be appurtenant to and shall pass with the title to the Unit with which it is associated. Notwithstanding the exclusive license set forth herein, each Owner and the Association shall have a right of ingress and egress over, across, through or under the Limited Common Areas as may be reasonably necessary to perform any obligations hereunder, or to perform any necessary or desirable repairs, replacements, restoration or maintenance in connection with the Common Areas or in connection with utilities. As provided herein, each Owner shall landscape and, unless maintenance is provided by the Association, maintain the landscaping of the Limited Common Area appurtenant to the Owner's Unit. No Owner may construct a driveway or parking area that is larger than the driveway reasonably needed to access the Owner's garage located on the Unit.

4.4 Limitations. A Member's right to use and enjoy the Common Areas shall be subject to the following:

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(a) The right of Salt Lake County, South Jordan City, 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 parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, and providing any other governmental or municipal service; and

(b) The right of the Association (on behalf of all of the Unit Owners) 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 in which Members are present in person or by proxy and 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.

(c) The right of the Developer and the right of the Association to grant and reserve easements and right-of-way through, under, over and across the Common Areas, for the installation, maintenance and inspection of the lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone and other utilities.

(d) The right of the Association to suspend the voting rights and right to use of any the Common Areas, other than the Limited Common Area appurtenant to the subject Unit, by an Owner for any period during which any assessment against the Owner's Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

4.5 Utility Easement. The Developer, for itself and its successors and assigns, including but not limited to the Association, hereby grants easements over, under, in, on and through the Common Areas for the installation, construction, reconstruction, relocation, removal, maintenance, repair, operation and inspection of sewer, water, drainage, electric, gas and telephone facilities and wires, lines, cables, conduits, pipes and other necessary and proper attachments therewith, for the benefit of the Property or any part thereof, to the Developer, the Association, any federal, state or local authority, commission or agency having jurisdiction there over and any corporation, be it public, quasi-public or private, supplying or servicing such facilities.

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

Unit No. ___ contained within The Sand Dunes Condominiums, as the same is identified in the Record of Survey Map recorded in the office of the County Recorder of Salt Lake County, Utah, as Entry No. _____, in Book _____, at Page _____, and in the "The Sand Dunes Declaration of Condominium, Covenants, Conditions, and Restrictions," recorded in the office of the County Recorder of Salt Lake County, Utah, as Entry No. _____, in Book _____, at

Page _____ (as said Declaration and Record of Survey Map may have heretofore been amended or supplemented);

TOGETHER WITH the undivided ownership interest in the Common Areas that is appurtenant to said Unit as more particularly described in said Declaration.

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 Unit.

V. ASSESSMENTS

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

5.2 Purpose of Assessments. Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Property and for the improvement and maintenance of the Common Areas. The use made by the Association of funds obtained from Assessments may include payment of the cost of: advertising for the common benefit of the Owners, taxes and insurance on the Common Areas, water, sewer, maintenance, repair, and improvements 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.

5.3 Initial Maximum Monthly Assessment; Increases. Until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum monthly assessment shall be FIFTY DOLLARS (\$50.00) per Unit (which is \$600.00 per annum). Assessments shall be paid to the Association by Owners on a monthly basis; however, the Directors of the Association shall have the authority to collect the assessments on another periodic basis, such as quarterly, if it deems it advisable to do so.

(a) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum monthly assessment may be increased each year without a vote of the Members by an amount not more than 5% above the maximum monthly assessment for the previous year.

(b) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum monthly assessment may be increased more than 5% above the maximum monthly assessment for the previous year only if the increase is approved by sixty percent (60%) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this 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.

(c) The Directors of the Association may from time to time and in their discretion set the amount of the monthly assessment at any sum not in excess of the then applicable maximum amount. As provided in Article 5.6 below, if the Association elects to provide landscape maintenance to the Units and/or Limited Common Areas, the Directors shall establish a landscape maintenance component of the monthly assessment, which shall be based upon the square footage of each Unit.

5.4 Special Assessments. In addition to the annual assessments authorized above, 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 Members who are voting in person or by proxy at a meeting duly called for this 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.

5.5 Quorum Requirements. Written notice of any meeting called for the purpose of taking any action on which a vote of the Members is authorized or required under this Declaration shall be sent to all Members at least ten (10), but not more than thirty (30), days prior to the meeting date. At the first such 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 the required quorum is not present at the first meeting or any subsequent meeting, another meeting may be called, subject to the notice requirement set forth herein, at which a quorum shall be one-half (½) 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.

5.6 Uniform Rate of Assessment. Both monthly and special assessments shall be fixed at a uniform rate, as set forth herein. All costs, except landscape maintenance of the Units and/or Limited Common Areas (if such is provided), shall be allocated among the Units in accordance with their respective interests in the Common Areas, i.e., on a pro rata basis. Landscape maintenance of the Units shall be allocated based on the square footage of each Unit and/or Limited Common Areas. Any Owner may elect to exclude his fenced in back and side yards from the computation of the square footage of his Unit by signing a written agreement in a form approved by the Association under which the Owner assumes full responsibility for maintenance of his back and side yards.

5.7 Monthly Assessment Due Dates. The monthly and special assessments provided for herein shall commence as to each Unit upon the closing of the sale of such Unit to the first purchaser thereof; provided, however, that a home builder that acquires a Unit for the purpose of constructing a Residential Unit and selling the same to an owner/occupant shall be excused from paying such assessments until six months after the sale to the home builder, or the closing of the sale to the owner/occupant, whichever occurs first. The Directors of the Association shall fix the amount of the monthly assessment at least thirty (30) days in advance of the commencement date. 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 assessed concerned.

5.8 Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Unit, the Association shall, for a reasonable charge, issue a certificate stating whether or not all assessments respecting such Unit 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.

5.9 Lien; Effect of Non-payment; Remedies. The monthly and special assessments, and all other charges to an Owner provided in this Declaration (including interest and costs of collection), shall be a charge on the Owner's Unit and shall be a continuing lien upon the Unit against which each such assessment or charge is made. The person who is the Owner of the Unit 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. Any assessments which are not paid when due shall be delinquent. 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 eighteen percent (18%) per annum, a late payment charge equal to the greater of \$5.00 or five percent (5%) of the delinquent sum may be assessed, and the Association may bring an action against the Owner who is personally liable and/or to foreclose the lien against the Unit. A suit to recover a money judgment against the Owner may be maintained without foreclosing or waiving the lien provided herein. Upon delinquency, the Association may record a notice of lien against the Unit. The Association may avail itself of any nonjudicial remedy then available under Utah law to foreclose or otherwise realize upon the lien, including the exercise of a private power of sale in accordance with the law governing the sale or foreclosure of deeds of trust. The Association shall be entitled to recover from the Owner, and the lien shall secure, the Association's reasonable attorney's fees, court costs, and each and every other expense incurred by the Association in enforcing its rights.

VI. OPERATION AND MAINTENANCE

6.1 Responsibility to Rebuild or Repair. Because the physical condition of each Residential Unit affects the value of every other Residential Unit, the Owner of each Unit shall maintain its Residential Unit in such a manner that it shall have the continued capacity to be used as a Residential Unit, and thus benefit the other Residential Units. The Owner shall not cause or permit to occur any damage, loss or injury to the Owners of the benefitted Residential Units or

their tenants by or as a result of any act of negligence or any willful, wanton or reckless act on its part or on the part of its tenant with respect to the Owner's Residential Unit. Should any Residential Unit be damaged or destroyed by fire, flood, wind, snow or any other cause of whatever nature, the Owner shall cause the Residential Unit upon the Unit owned by him to be repaired or rebuilt. Such repair or rebuilding shall commence not later than ninety (90) days after the occurrence of the damage or destruction and shall be completed not later than one (1) year after such occurrence.

6.2 Liability for Physical Damage. Notwithstanding anything to the contrary contained in this Article VI, the Owner, in the course of building, rebuilding, repairing, maintaining or otherwise working or causing work to be done upon his Unit, shall be liable to the Owners of any adjacent Units and to the Association with respect to the Common Areas for any physical damage to any other Unit or Residential Unit and for any physical damage to any Common Area. The Owner shall cause any such damage to be repaired and the Unit, Residential Unit or Common Area affected to be placed in the same state or condition that it was in prior to said damage. All such repairs shall be subject to the approval of the Directors of the Association.

6.3 Maintenance of Units. Each Residential Unit shall be maintained by the Owner thereof at his own cost and expense so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Residential Units. The Association shall have no obligation regarding maintenance or care of Residential Units. Unless the Association elects to provide landscape maintenance to the Units, the Owner shall maintain the landscaping of the Unit in a good and aesthetically pleasing condition.

6.4 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 Units and to keep them clean, functional, attractive, and generally in good condition and repair. The Association shall have the authority to either provide for maintenance and upkeep of the Limited Common Areas, or to require that the Owners of the Units provide such maintenance and upkeep. In addition, the Association may elect to provide for maintenance and upkeep of the landscaped portions of the Units which lie between the extremities of the Residential Units situated thereon and the boundaries of the Units. In the event that the Association elects to provide landscape maintenance to the Limited Common Areas and/or the Units, the Association shall separately compute a landscape maintenance component of the monthly assessment, as described in Articles 5.3 and 5.6. A right of access to each Unit is reserved and/or granted to the Association for the purpose of providing such maintenance and upkeep.

6.5 Liability of Owner During Construction. The Owner, in the course of building, shall not be liable to the Owners of adjacent Units affected by such work for any inconvenience, annoyance, or disturbance to such Owners by the performance of such work, unless occasioned by the negligence of the Owner of the improvement with respect to which the work in question was being performed, or the negligence of the Owner's agents, contractors or employees; however, the Owner of the Unit or Residential Unit with respect to which such work

is being performed shall make all reasonable efforts to keep any such inconvenience, annoyance, disturbance, or loss of business to the minimum reasonably required by the work in question.

6.6 Maintenance of Limited Common Areas. Unless the Association has undertaken to provide landscape maintenance to the Limited Common Areas, the Owner shall maintain said landscaping. If the Association undertakes to provide landscape maintenance to the Limited Common Areas, the Owner shall nevertheless provide or permit the Association to use water for the irrigation and watering of such landscaping.

VII. INSURANCE

7.1 Casualty Insurance on Insurable Common Areas. The Association shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurable replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property, whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable. The insurance coverage with respect to the Common Areas shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses and shall be paid from the assessments made by the Association.

7.2 Liability Insurance. The Association shall also maintain an insurance 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, with such limits as may be determined by the Association. 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.

7.3 Other Insurance. The Association shall maintain a policy of fidelity insurance covering those employees hired by the Association to handle Association funds, in amounts as determined by the Directors of the Association. The Association shall have the authority to obtain and maintain other insurance, and shall maintain such insurance, such as worker's compensation insurance, if required by applicable law.

7.4 Miscellaneous Insurance Provisions. The Association shall have the authority to adjust losses. Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgagees. Each policy of insurance obtained by the Association shall, if reasonably possible, provide: (i) a waiver of the insurer's subrogation rights with respect to the Association, the Owners, and their respective directors, officers, agents, employee invitees, and tenants; (ii) that it cannot be canceled, suspended, or invalidated due to the conduct of any particular Owner or Owners; (iii) that it cannot be canceled, 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; and (iv) that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

7.5 Owners' Insurance. Each Unit shall be separately insurable by the individual Owner(s) of said Unit. In addition to coverage obtained by the Association, Owners of individual Units shall obtain and maintain policies of fire and casualty insurance and a policy or policies covering against liability incident to the ownership of their separate Units and improvements thereon. These policies shall contain all the provisions set forth above where possible and applicable.

VIII. USE RESTRICTIONS

8.1 Use of Common Areas. The Common Areas shall be used only in a manner consistent with the residential concepts expressed herein and the use restrictions applicable to Units and Residential Units.

8.2 Use of Units and Residential Units. All Units are intended to be improved with Residential Units and are restricted to such use. No part of the Property shall be used, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other non-residential purpose, other than a home office permitted under applicable zoning ordinances. No Unit or Residential Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Residential 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.

8.3 Non-harmonious Use. No use or operation will be made, conducted or permitted on any Unit, or any portion of a Unit, which is obnoxious to or out of harmony with the residential use of all property in The Sand Dunes. Prohibited activities include, but are not limited to, the following: any public or private nuisance; any noise or sound that is objectionable due to its intermittent character, beat, frequency, shrillness or loudness; any obnoxious odor; any noxious, toxic, caustic or corrosive fuel or gas; any dust, dirt or fly ash in excessive quantities; any unusual fire, explosion, or other damaging or dangerous hazards; any assembly, manufacture or distillation operation; and the raising of animals except as generally permitted in residential developments in South Jordan City and Salt Lake County, Utah. The Association shall have the authority to determine whether any particular activity is obnoxious or constitutes a nuisance. The following are also prohibited: Exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes; satellite dishes, radio or television antennas; noisy or smokey vehicles, large power equipment or large power tools; evaporative coolers; permanent flag poles; and items that may unreasonably interfere with television or radio reception of any Owner. The Architectural Control Committee may, in the exercise of its discretion, approve temporary or permanent variances from restrictions set forth in the foregoing sentence, if it determines that good cause exists and the interests of other Owners will not be materially affected.

8.4 Signs. No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Property or any Unit, without the prior

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written consent of the Architectural Control Committee, except signs used by Developer and its successors and assigns, to advertise the Property during the construction and sale period. All signs or billboards, and the regulations promulgated for the regulation thereof, shall conform to the requirements of South Jordan City ordinances.

8.5 Recreational Vehicles. No snowmobile, recreational equipment, trailer, camper, boat or truck larger than one (1) ton or any other similar equipment shall be permitted to remain upon any Unit, or any portion of a Unit, for more than a 24-hour period unless placed within a garage, unless the Association's prior written approval is obtained. The Association may levy a fine for any violation of this paragraph of up to Fifty Dollars (\$50.00) for each day the violation continues.

8.6 On Street Parking. On street parking is intended for temporary visitors only. No motor vehicle, boat, recreational equipment, or any similar item may be parked, stored or left on or next to the streets in and around the Property for more than a forty-eight (48) hour period unless written approval is granted by the Association. The Association may levy a fine for any violation of this paragraph of up to Fifty Dollars (\$50.00) for each day the violation continues.

8.7 Use of Garage. Any garage constructed on a Unit is intended for the parking of motor vehicles. Although incidental storage in a garage otherwise used for the parking of motor vehicles is permitted, no garage may be used for storage to such an extent or in such manner that the storage prohibits or otherwise interferes with its primary use in the parking of motor vehicles. The Association may from time to time prescribe detailed rules regarding the use of garage space for storage. The Association may levy a fine for any violation of this paragraph 8.7 or the rules issued by the Association of up to Fifty Dollars (\$50.00) for each day the violation continues.

8.8 Landscaping. Each Owner shall be responsible for providing fully landscaped yards (including landscaping the appurtenant Limited Common Area) within six (6) months of occupancy, weather permitting, of each Residential Unit, or within such shorter time as may be required by South Jordan City. Each Unit shall be planted with a minimum of one deciduous tree (min. 2" caliper) and one evergreen tree (min. 7' tall) prior to occupancy of the Residential Unit (provided, however, that compliance with this requirement may be delayed due to weather as may be permitted by South Jordan City). Landscaping shall also include the provision and maintenance of a sprinkling system for the Limited Common Area appurtenant to the Unit. Except to the extent the Association provides such services, each Owner shall maintain the landscaping in good condition.

8.9 Fencing. Except for the fencing that is the responsibility of the Developer or Association, each Owner shall install and maintain fencing on the perimeters of the rear and side yards of the Units. No fencing shall be permitted in the front of the Residential Unit or on any of the Limited Common Areas (except to the extent such may adjoin the perimeter of the Tract). Fencing material shall be solid white vinyl, 20-year no maintenance, and shall be six (6) feet in total height. The Developer shall provide and install the fencing for the perimeter of the Tract, as shown on the Plat, and it shall be the obligation of the Association to maintain such perimeter fencing.

8.10 Temporary Structures and Equipment. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other out building shall be used on any Unit at any time as a Residential Unit, either temporarily or permanently, unless approved in writing by the Association. No trailer, camper, boat, truck larger than one (1) ton, or similar equipment shall be permitted to remain upon any Unit, unless written approval is given by the Association; provided, however, that this sentence shall not apply to any Unit during the construction of a Residential Unit thereon, except as to any camper or boat.

8.11 Rubbish. No rubbish shall be stored or allowed to accumulate anywhere on the Property, except in sanitary containers and at such locations as the Board shall determine from time to time.

8.12 Front Window Treatments. No blinds, draperies, or other window coverings or treatments shall be permitted with respect to Residential Unit windows that face any road (public or private), except those which are conservative in style and neutral in color, or as otherwise approved by the Architectural Control Committee.

8.13 Procedures for Imposing Fines. Before assessing a fine against an Owner or Unit pursuant to the terms of this Declaration, the Association shall give notice to the Owner of the violation and inform the Owner that a fine will be imposed if the violation is not cured within the time provided in this Declaration, and/or in the Articles, Bylaws, or Association rules, which shall be at least forty-eight (48) hours. A fine may be assessed only for a violation of a rule or regulation that is specifically listed in the Declaration, Articles, Bylaws or Association rules as an offense for which a fine may be levied, and said fine shall be in the amount specifically provided for in said provisions, not to exceed \$500 per single violation. Cumulative fines for a continuing violation may not exceed \$500 per month. An Owner who is assessed a fine may request an informal hearing to protest or dispute the fine within thirty (30) days from the date the fine is assessed, said hearing to be held before and ruled upon by the Directors of the Association. No interest or late fees shall accrue on the fine until after the hearing has been conducted and a final decision has been rendered. Any unpaid fines, together with interest and late charges assessed thereon, shall become a lien against the Owner's interests in the Unit in accordance with the provisions of Utah Code Ann. §57-8-37.

8.14 Exception for Developer. Notwithstanding the restrictions contained in this Article, for the five (5) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, Developer shall have the right to use any Residential 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 improvements of the Common Areas or improvement and/or sale of all Units owned by Developer, including, without limitation, constructing and maintaining a model home site, and display and sales offices.

IX. ARCHITECTURAL CONTROL

9.1 Architectural Control Committee. The Directors of the Association shall serve as the Architectural Control Committee (sometimes referred to as the "Committee"), the function of which shall be to insure that all improvements and landscaping within the Property harmonize with the existing surroundings and structures, and comply with the provisions hereof.

9.2 Submission to Committee. No Residential Unit, accessory or addition to a Residential Unit, landscaping, sign or other improvement of a Unit shall be constructed or altered, and no alteration, repainting, or refurbishing of the exterior of any Residential Unit shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Committee, whose judgment shall be final in all cases.

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

9.4 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.

9.5 Building Materials; Roof Pitches. All Residential Units shall have brick or stone exteriors that equal or exceed in square footage two (2) times the perimeter of the foundation, and minimum 6:12 roof pitches.

9.6 Garages Required. Each Residential Unit shall have, at a minimum, a two-car garage, which shall be at least 22' x 22' in size.

9.7 Height Limitation. No dwelling shall exceed the height limitations specified by South Jordan City.

9.8 Dwelling Size. Each Residential Unit, exclusive of the garage, shall be a minimum of 1,200 sq. ft. on the main floor, and a minimum of 2,400 sq. ft. total for all levels, including the basement.

9.9 Elevation Plan. Residential Units shall be constructed according to elevation plans approved by South Jordan City, and shall be compatible with and compliment other homes in the development. Absent approval by the Committee, identical or similar elevation plans shall not be constructed next to or directly across the street from each other.

9.10 Swamp Coolers; Mechanical Equipment. No swamp coolers or other roof-top mechanical or similar equipment shall be permitted. All exterior mechanical equipment shall be

located as may be approved by the Committee, and in a fashion so as to minimize visibility and noise.

9.11 No Liability for Damages. Neither the Committee nor the members of the Committee shall 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 IX.

9.12 Exception for Developer. The foregoing provisions of this Article IX shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Developer on any Unit 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 Salt Lake County, Utah.

X. MORTGAGEE PROTECTION PROVISIONS

10.1 Notices. From and after the time that a Mortgagee makes written request to the Association therefor, the Association shall give written notice to such Mortgagee in the event an Owner neglects for a period of sixty (60) or more days to cure any failure on his part to perform any of his obligations under this Declaration. Upon written request, a Mortgagee shall be given notice of any damage to the Common Areas if the cost of reconstruction thereof exceeds Ten Thousand Dollars (\$10,000.00), and if the Association learns of any threatened condemnation proceedings or similar proposed acquisition of any portion of the Property.

10.2 Mortgagee Lien Priority. The lien for unpaid assessments provided for under Article V shall be subordinate to a Mortgage affecting a Unit that is recorded prior to any notice of lien relating thereto, but only to the extent of assessments which become due prior to foreclosure of the Mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure.

10.3 Mortgagee Consent to Amendment. Unless all holders of Mortgages on the individual Units have given their prior written approval, neither the Association nor any other party shall be entitled to:

(a) Alter the provisions of Section 5.6 (pertaining to uniform rate of assessment);

(b) Partition or subdivide any Unit or the Common Area or dedicate or transfer (pursuant to Section 4.3 (c)) all or any part of the Common Areas (provided that the granting of an easement for public utilities or other public purposes consistent with the intended use of the Common Area by the Association shall be permitted); or

(c) By act or omission seek to abandon or materially alter the arrangement that is established by this Declaration.

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10.4 Restrictions on Developer's Actions and Amendments. So long as there is a Class B membership, the following actions will require the approval of the Federal Housing Administration or the Veterans Administration:

- (a) Annexation of additional properties;
- (b) Dedication of Common Area; or
- (c) Amendment of this Declaration.

Notwithstanding the foregoing or any other provision in this Declaration to the contrary, no consent of the Mortgagees or Owners shall be required in order for the Developer to exercise its right to develop the Convertible Land, to convert the Convertible Land in accordance with the provisions of Article XI, to withdraw from the Common Area all portions of the Convertible Land that are converted to Units, and to designate Limited Commons Areas within such Common Area.

10.5 Reserve Fund for Common Area. Association dues or charges shall include an adequate reserve fund for the maintenance, repair and replacement of those elements of the Common Area that must be repaired or replaced on a periodic basis, and such reserve fund shall constitute part of the regular monthly assessments.

10.6 Management Agreements. Any agreement for professional management of the Association, and any other contract providing for services of the Developer, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause, and without payment of a termination fee, on ninety (90) days written notice.

10.7 Satisfaction of Lenders' Guidelines. In addition to the foregoing, the Association may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, FHA, FHLMC, FNMA or GNMA, or similar entities, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of the mortgages encumbering the Units. Each Owner hereby agrees that it will benefit the Association and the Members, as a class of potential mortgage borrowers and sellers of Units, of such agencies approve the Property as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time.

10.8 Amendment of this Article. This Article 10 shall not be amended without the approval of all Mortgagees.

XI. CONVERTIBLE LAND PROVISIONS

11.1 Developer's Right to Develop Convertible Land. Developer shall have the unilateral right, privilege, and option, from time to time to convert all or any portion of the Convertible Land (described in Exhibit "B") into one or more Units or Limited Common Areas.

(a) Developer's right to convert the Convertible Land shall terminate five (5) years from the recording of this Declaration, unless three-fourths of the Unit Owners vote in favor of converting the land after said time period has expired.

(b) Any such conversion shall be deemed to have occurred and shall be accomplished by filing in the public records of Salt Lake County, Utah, an amendment to this Declaration describing the conversion, and by recording an amended Plat, all as provided by the laws of the State of Utah and the appropriate municipal ordinances, which amended instruments shall assign an identifying number to each Unit formed out of the Convertible Land and describe or delineate the Limited Common Areas formed out of the Convertible Land. The amendments need be executed only by the Developer, and all Owners of Units shall be deemed to have consented thereto. Upon the recording of such instruments, title to the Units within the converted land shall automatically vest in the Developer.

(c) The exercise of Developer's conversion rights shall not require the consent of the Class "A" Members or of any Mortgagees, except as otherwise expressly provided herein. Developer shall have the unilateral right to transfer to any other person the said right, privilege, and option to convert the Convertible Land, which is herein reserved to Developer, provided that such transfer is memorialized in a written, recorded instrument executed by the Developer.

(d) The Developer shall have discretion as to which portions, and the order in which such portions, of the Convertible Land are converted. The exercise of the right to convert a portion of the Convertible Land shall not terminate the option as to the remaining portions thereof. Developer may convert portions of the Convertible Land at different times, and there are no limitations upon the order in which the portions of Convertible Land may be converted.

(e) The maximum number of Units that may be created on the Convertible Land is sixty (60) Units. In the event less than all of the Convertible Land is converted at any given time, the number of Units to be constructed on such parcel(s) shall not exceed eight (8) Units per acre. All portions of the Convertible Land that are converted shall be restricted to residential use, and, subject to the special rights, easements and privileges accorded the Developer herein, shall be subject to the same restrictions as are otherwise applicable to the Units.

(f) The construction, size, and appearance of the Residential Units to be constructed on the Convertible Land shall be similar in nature to the Residential Units to be constructed on the initial Units, and shall be subject to the restrictions and requirements set forth in this Declaration regarding the size, nature and appearance of said Residential Units. The limited common areas to be created from the Convertible Land shall likewise be similar in nature and size to the Limited Common Areas created by this original Declaration.

(g) Except as expressly set forth in this Article 11.1, there are no limitations as to type, quantity, quality or locations of any additional improvements that may be made on any portions of the Convertible Land, and no assurances, representations or warranties of any type are given as to compatibility with or similarity to the existing project, appearance, materials, components, quality, construction, architecture, style, size, location, appearance, description or

other improvements. Developer reserves the right to develop, implement, and modify all criteria associated with the Convertible Land in the Developer's sole discretion, including the creation of additional limited common areas within such parcels.

11.2 Amendment of this Article. This Article 11 shall not be amended without the prior written consent of Developer, so long as the Developer owns any property described in Exhibits "A" or "B" hereof.

XII. MISCELLANEOUS

12.1 Notices. Any notice required or permitted to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States Mail, postage prepaid, addressed to the person at the address given to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

12.2 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 insure that the Property is maintained and used in a manner consistent with the interests of the Owners. The Association may provide for the imposition of fines for violations of such rules.

12.3 Amendment. Except as otherwise expressly provided herein, any amendment to this Declaration shall require: (i) the affirmative vote of at least two-thirds (2/3) of the Class A membership votes of Class A Members who are voting in person or by proxy 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. Notwithstanding the foregoing, except as otherwise restricted herein, the Developer, its successors and assigns, shall have the right unilaterally to amend this Declaration at any time that the Class B membership exists. Any amendment authorized pursuant to this Declaration shall be accomplished through the recordation of an instrument executed by the Association or by the Developer if the Class B membership then exists.

12.4 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 action or transaction from Members entitled to vote at least the stated percentage of all membership votes outstanding in connection with the class of membership concerned.

12.5 Developer's Rights Assignable. The rights of the Developer under this Declaration or in any way relating to the Property may be assigned. Upon assignment, references to the "Developer" contained herein shall refer to such assignee.

12.6 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.

12.7 Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants running 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 Unit or in the Common Areas, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Unit or Residential Unit shall comply with, and all interests in all Units 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 Unit 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.

12.8 Use of Easements. All Owners shall use reasonable restraint when using any easements granted hereunder or exercising any rights granted herein, and due regard shall be given to the preservation of aesthetic values, beautification, upkeep and maintenance of all of the Property, and the use and enjoyment by all of the Owners of their respective Units.

12.9 No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Developer or its agents or employees in connection with the Property or any portion thereof, or any improvement thereon, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the condominium development, the sale, operation, maintenance, costs of maintenance, taxes or regulation thereof, except as specifically and expressly set forth in this Declaration.

12.10 Enforcement. This Declaration, the Articles and the Bylaws may be enforced by the Association as follows:

(a) Breach of any of the covenants contained in this Declaration, the Articles or the Bylaws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by an Owner, by the Association, or its successors in interest. In any action or proceeding pursuant hereto, the prevailing party shall be entitled to recover, in addition to all other monetary and equitable relief, its reasonable attorney's fees incurred, costs of collection, and court costs.

(b) The result of every act or omission whereby any of the covenants contained in this Declaration, the Articles or the Bylaws are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a

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nuisance, either public or private, shall be applicable against every such result, and may be exercised by any Owner, by the Association, or its successors in interest.

(c) The remedies provided herein, or in the Articles or Bylaws, shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) The failure of the Association to enforce any of the covenants contained herein, or in the Articles or Bylaws, shall not constitute a waiver of the right to enforce the same thereafter.

(e) A breach of the covenants, conditions or restrictions contained in this Declaration, or in the Articles or Bylaws, shall not affect or impair the lien or charge of any bona fide Mortgage made in good faith and for value on any Unit; provided, however, that any subsequent Owner of such Unit or Residence Unit shall be bound by said covenants, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

12.11 Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

12.12 South Jordan City Ordinances. Nothing contained in this Declaration shall supercede the ordinances or regulations of South Jordan City, to the extent applicable to the Property.

12.13. Agent for Service of Process. H. Rynn Jones, whose address is 4505 South 5400 West, West Valley City, Utah 84120, is the person to receive service of process in the cases involving this project. The Association shall, however, have the right to appoint a successor or substitute process agent. Such successor or substitute agent and his or her address shall be specified by an appropriate instrument filed in the office of the County Recorder of Salt Lake County, State of Utah.

EXECUTED the day and year first above written.

"DEVELOPER"

J&R DEVELOPMENT, LLC, a Utah limited liability company

By H. Rynn Jones

Its MANAGER

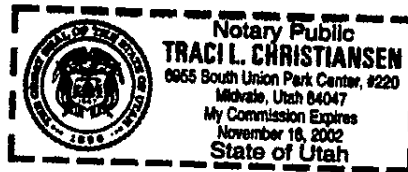
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STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 15th day of November, 2002, by H. Rynn Jones, as the Manager of J&R Development, LLC, a Utah limited liability company.

Traci L. Christiansen
NOTARY PUBLIC
Residing at: ~~###~~ SLC, UT

My Commission Expires:
11/16/02



BOOK 8681 PG 423 ON

EXHIBIT "A"

Overall Boundary Description

Beginning at a point which lies South 0°00'01" East 2639.67 feet along the East line of Section 18 and North 89°59'59" East 40.00 feet from the Northeast corner of Section 18; Township 3 South; Range 1 West, Salt Lake Base & Meridian, said point being a point on the east right-of-way line of 4000 West Street, and traversing thence

South 89°36'02" East 872.17 feet, thence

South 32°35'51" East 627.40 feet, thence

South 41°33'37" East 243.84 feet, to a point on a curve to the left, having a radius of 330.00 feet and a central angle of 24°12'36", thence along the arc of said curve a distance of 139.44 feet, said arc subtended by a chord bearing North 87°25'58" West, a distance of 138.40 feet, to a point on a curve to the right, having a radius of 570.00 feet and a central angle of 23°29'07", thence along the arc of said curve a distance of 233.84 feet, said arc subtended by a chord bearing North 87°47'43" West, a distance of 232.01 feet, thence North 76°03'39" West 281.94 feet, to a point on a curve to the left, having a radius of 330.00 feet and a central angle of 55°07'19", thence along the arc of said curve a distance of 317.48 feet, said arc subtended by a chord bearing South 76°21'47" West, a distance of 305.38 feet, thence

South 48°48'59" West 147.52 feet, to a point on a curve to the right, having a radius of 370.00 feet and a central angle of 41°11'00", thence along the arc of said curve a distance of 265.95 feet, said arc subtended by a chord bearing South 69°24'29" West, a distance of 260.26 feet, thence

South 89°59'59" West 51.79 feet, to a point on a curve to the right, having a radius of 25.00 feet and a central angle of 90°00'00", thence along the arc of said curve a distance of 39.27 feet, said arc subtended by a chord bearing North 45°00'01" West, a distance of 35.36 feet, thence

North 0°00'01" West 869.73 feet, to the point of beginning;

Containing 805,704 sf or 18.50 acres, more or less.

27-17-300-003

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CO. RECORDER

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EXHIBIT "B"

Convertible Land Area - Boundary Description

Beginning at a point which lies South 0°00'01" East 2839.67 feet along the East line of Section 18 and North 89°59'59" East 40.00 feet from the Northeast corner of Section 18; Township 3 South; Range 1 West, Salt Lake Base & Meridian, said point being a point on the east right-of-way line of 4000 West Street, and traversing thence

South 89°36'02" East 872.17 feet, thence
South 32°35'51" East 627.40 feet, thence
South 41°33'37" East 243.94 feet, to a point on a curve, to the left
having a radius of 330.00 feet and a central angle of 24°12'36" ,thence along the arc of
said curve a distance of 139.44 feet, said arc subtended by a chord bearing
North 87°25'59" West , a distance of 138.40 feet, to a point on a reverse curve, to the
right having a radius of 570.00 feet and a central angle of 23°29'07" , thence along the
arc of said curve a distance of 233.64 feet, said arc subtended by a chord bearing
North 87°47'57" West , a distance of 232.01 feet, thence
North 76°03'39" West 281.94 feet, to a point on a curve to the left having a radius
of 330.00 feet and a central angle of 14°54'58" , thence along the arc of said curve a
distance of 85.91 feet, said arc subtended by a chord bearing North 83°31'04" West , a
distance of 85.67 feet, thence
North 0°58'47" West 101.28 feet, to a point on a curve to the right,
having a radius of 436.50 feet and a central angle of 2°41'18" , thence along the arc of
said curve a distance of 20.48 feet, said arc subtended by a chord bearing
South 88°26'04" West , a distance of 20.48 feet, thence
North 2°49'54" West 31.00 feet, to a point on a curve to the right,
having a radius of 487.50 feet and a central angle of 7°03'07" , thence along the arc of
said curve a distance of 57.54 feet, said arc subtended by a chord bearing
South 89°23'27" East , a distance of 57.50 feet, thence
North 4°52'18" East 149.50 feet, thence
North 85°07'42" West 13.74 feet, thence
North 4°52'18" East 119.32 feet, thence
North 87°52'39" West 130.09 feet, thence
South 88°58'07" West 325.05 feet, thence
South 0°00'01" East 92.84 feet, thence
South 90°00'00" West 85.00 feet, to a point on a curve to the right,
having a radius of 15.00 feet and a central angle of 89°59'33" , thence along the arc of
said curve a distance of 23.56 feet, said arc subtended by a chord bearing
North 45°00'00" West , a distance of 21.21 feet, thence
South 89°59'59" West 130.98 feet, thence
North 0°00'01" West 303.29 feet, to the point of beginning;
Containing 10.52 acres or 458,008 of more or less.

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CO. RECORDER

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**ARTICLES OF INCORPORATION
OF
THE SAND DUNES CONDOMINIUM OWNERS ASSOCIATION
(A Utah Nonprofit Corporation)**

We, the undersigned natural persons, acting as incorporators of a corporation under the Utah Revised Nonprofit Corporation Act, adopt the following Articles of Incorporation for such corporation and certify:

ARTICLE FIRST

Name: The name of this corporation is **THE SAND DUNES CONDOMINIUM OWNERS ASSOCIATION**.

ARTICLE SECOND

Duration: This corporation shall exist perpetually unless sooner dissolved by law.

ARTICLE THIRD

Purposes: The purpose or purposes for which this corporation is organized are:

- A. To engage in the business of a homeowners association for The Sand Dunes Condominiums, located in South Jordan City, Utah (the "Development").
- B. To engage in any lawful act for which a nonprofit corporation may be organized under Title 16, Chapter 6a, of the Utah Code.
- C. The foregoing clauses shall be construed both as purposes and powers and shall not be held to limit or restrict in any manner the general powers of the corporation, and the enjoyment and exercise thereof, as conferred by the laws of the State of Utah with respect to nonprofit corporations; and it is the intention that the purposes and powers specified in each of the paragraphs of this Article Third shall be regarded as independent purposes and powers.

Limitation: This corporation shall be a nonprofit corporation under Title 16, Chapter 6a, of the Utah Code, and is not organized for pecuniary profit.

ARTICLE FOURTH

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Membership: Each person that is record owner (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided fee interest in any Unit located in the Development shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment by the Corporation. No shares representing membership shall be issued.

ARTICLE FIFTH

Voting Rights: The Association shall have two classes of voting membership:

(a) Class A. Class A Members shall be all Owners of Units in the Development, other than the Developer (as defined in the Declaration of Covenants, Conditions and Restrictions recorded with respect to the Development) until the Class B membership ceases, at which time the Developer shall become a Class A Member with respect to any Unit or Units that the Developer may own at that time or from time to time. Class A Members shall be entitled to one (1) vote for each Unit owned.

(b) Class B. The Class B Member shall be the Developer (as defined in the Declaration). The Class B Member shall be entitled to three (3) votes for each Unit owned. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:

- (1) When the total number of votes held by all Class A Members equals the total number of votes held by the Class B Member; or
- (2) On December 31, 2012; or
- (3) Upon voluntary cancellation of Class B Membership by the Developer.

ARTICLE SIXTH

Directors' Contracts: No contract of other transaction between this corporation and one or more of its Directors or any other person, partnership, corporation, firm, association or entity in which one or more of this corporation's Directors are directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest, or because such Director or Directors are present at the meeting of the Board of Directors, or a committee thereof which authorizes, approves or ratifies such contract or transaction, or because his or their votes are counted for such purpose and each such Director of this corporation is hereby released from liability which might otherwise exist from such contract if: (a) such relationship or interest is disclosed or known to the Board of Directors or committee which authorizes, approves or ratifies the contract or transaction and a majority of non-interested Directors, or all non-interested Directors in the case of the committee, vote to approve or ratify the contract or

transaction; (b) such relationship or interest is disclosed or known to the members entitled to vote and they authorize, approve or ratify such contract or transaction by vote or written consent; or (c) the contract or transaction is fair and reasonable to the corporation.

ARTICLE SEVENTH

Amendment: Subject to the following limitations, these articles of incorporation may be amended as provided in Utah Code Ann. Sections 16-6a-1001, *et seq.* With respect to amendments required to be approved by the members, such amendments shall require: (i) the affirmative vote of at least two-thirds (2/3) of the Class A membership votes of Class A Members who are voting in person or by proxy at a meeting duly called for such purpose; and, so long as the Class B membership exists, (ii) the written consent of Developer.

ARTICLE EIGHTH

Initial Registered Office and Agent: The street address of this corporation's initial registered office is 4505 South 5400 West, West Valley City, Utah 84120. The name of the initial registered agent at such address is H. Rynn Jones.

ARTICLE NINTH

Initial Principal Office: The address of this corporation's initial principal office is 4505 South 5400 West, West Valley City, Utah 84120.

ARTICLE TENTH

Directors: The number of Directors constituting the initial governing board of this corporation is three (3). The number of Directors may be changed by amendment of the Bylaws of the Corporation. The names and addresses of the persons who are to serve as Directors until the first annual meeting of the members, or until their successors are elected and qualify, are:

<u>Names</u>	<u>Street Addresses</u>
H. Rynn Jones	4505 South 5400 West West Valley City, Utah 84120
Craig D. Rushton	4471 South 5400 West West Valley City, Utah 84120
D. Robynn Glasmann	460 North 2070 East St. George, Utah 84790

ARTICLE ELEVENTH

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Incorporators: The name and address of each Incorporator is:

<u>Names</u>	<u>Street Addresses</u>
H. Rynn Jones	4505 South 5400 West West Valley City, Utah 84120
Craig D. Rushton	4471 South 5400 West West Valley City, Utah 84120
D. Robynn Glasmann	460 North 2070 East St. George, Utah 84790

ARTICLE TWELFTH

Indemnification: The corporation may indemnify any individual against liability incurred in a proceeding where the individual was made a party to a proceeding because the person is or was a Director and if: (1) the individual's conduct was in good faith; (2) the individual reasonably believed that the conduct was in, or not opposed to, the corporation's best interests; and (3) in the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.


The corporation will indemnify a Director who was successful, on the merits or otherwise, in defense of any proceeding, to which the individual was a party because the person is or was a Director of the corporation, against reasonable expenses incurred by the individual in connection with the proceeding or claim with respect to which the individual has been successful.

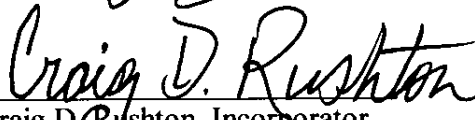
The corporation may not indemnify a Director in connection with: (1) a proceeding by or in the right of the corporation in which the individual was adjudged liable to the corporation; or (2) any other proceeding charging that the individual derived an improper personal benefit, whether or not involving action in the individual's official capacity, in which proceeding the individual was adjudged liable on the basis that the individual derived an improper personal benefit.

The corporation may indemnify an officer, employee, fiduciary, or agent to the same extent that it can indemnify a Director.

IN WITNESS WHEREOF, we hereunto sign and verify these Articles of Incorporation this 22 day of OCT, 2002.

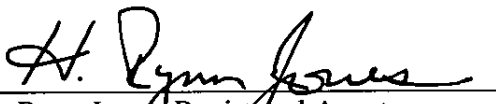
INCORPORATORS:


H. Rynn Jones, Incorporator


Craig D. Rushton, Incorporator

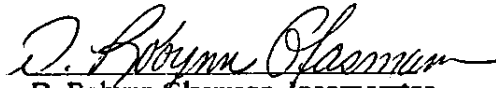
ATTACHED
D. Robynn Glasmann, Incorporator

The appointment of the undersigned as the initial registered agent of the Corporation is hereby accepted.


H. Rynn Jones, Registered Agent

H. Rynn Jones, Incorporator

Craig D. Rushton, Incorporator


D. Robynn Glasmann, Incorporator

The appointment of the undersigned as the initial registered agent of the Corporation is hereby accepted.

H. Rynn Jones, Registered Agent

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

I hereby certify that on this 25th day of October, 2002, personally appeared before me H. Rynn Jones, who, being by me first duly sworn, declared that he signed the foregoing Articles of Incorporation as an incorporator, and that the statements therein contained are true.

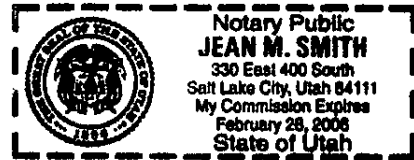
Jean M. Smith

NOTARY PUBLIC

Residing at: SLC, Utah

My commission Expires:

2-28-06



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

I hereby certify that on this 25th day of October, 2002, personally appeared before me Craig D. Rushton, who, being by me first duly sworn, declared that she signed the foregoing Articles of Incorporation as an incorporator, and that the statements therein contained are true.

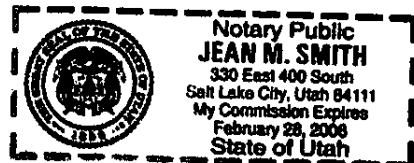
Jean M. Smith

NOTARY PUBLIC

Residing at: SLC, Utah

My commission Expires:

2-28-06



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

I hereby certify that on this _____ day of _____, 2002, personally appeared before me D. Robynn Glasmann, who, being by me first duly sworn, declared that he signed the foregoing Articles of Incorporation as an incorporator, and that the statements therein contained are true.

ATTACHED

NOTARY PUBLIC
Residing at: _____

My commission Expires:

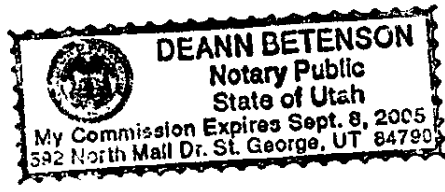
BOOK 8681 PAGE 4231 E

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

I hereby certify that on this 22 day of Oct, 2002, personally appeared before me D. Robynn Glasmann, who, being by me first duly sworn, declared that he signed the foregoing Articles of Incorporation as an incorporator, and that the statements therein contained are true.

Deann Betenson
NOTARY PUBLIC
Residing at: St George Ut.

My commission Expires:



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