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Restrictive Page 1 of 15  
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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF  
WILLOWBROOK PROFESSIONAL PARK**

THIS IS A DECLARATION of Covenants, Conditions and Restrictions which establishes a planned unit development known as WILLOWBROOK PROFESSIONAL PARK.

**RECITALS**

Declarant is the owner of certain real property (the "properties") in St. George, Washington County, Utah which is more particularly described below.

Declarant will convey the properties subject to certain protective covenants, condition, restrictions, reservations, assessments, charges and liens as hereinafter set forth.

It is the desire and intention of Declarant to construct buildings and sell and convey the same to various purchasers, and to convey common area to an Association in which the building owners will be members.

**DECLARATION**

Declarant hereby declares that all of the properties described below shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and to the Map recorded concurrently. This is for the purpose of protecting the value and desirability of the properties. This Declaration and the Map shall be construed as covenants of equitable servitude, shall run with the properties and shall be binding on all parties having any right, title or interest in the properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

The Properties are located in St. George, Washington County, Utah, and are described as:

**PARCEL 1**

BEGINNING AT THE CENTER QUARTER CORNER OF SECTION 28, TOWNSHIP 42 SOUTH, RANGE 15 WEST SALT LAKE BASE AND MERIDIAN, SAID POINT BEING N00°54'14"E 2575.91 FEET ALONG THE CENTER SECTION LINE FROM THE SOUTH QUARTER CORNER OF SAID SECTION 28, T42S, R15W, SLB&M, AND RUNNING THENCE N89°22'25"W 186.57 FEET ALONG THE QUARTER SECTION LINE; THENCE N03°54'07"W 199.90 FEET; THENCE N14°04'17"W 209.69 FEET; THENCE N60°51'29"W 201.92 FEET; THENCE N27°44'31"W 33.15 FEET; THENCE N60°19'22"W 49.02 FEET; THENCE N27°44'31"W 11.24 FEET; THENCE N39°16'19"E 74.07 FEET; THENCE N26°52'14"E 57.34 FEET; THENCE N09°23'45"W 93.87 FEET; THENCE N40°56'36"W 180.93 FEET; THENCE N66°20'02"W 76.56 FEET; THENCE N27°46'42"W 99.90 FEET; THENCE N13°53'03"W 13.78 FEET TO A POINT ON THE SOUTH LINE OF 110 SOUTH STREET A 50 FOOT RIGHT-OF-WAY; THENCE ALONG SAID RIGHT-OF-WAY S87°11'26"E 122.59 FEET, TO A POINT ON A 175.00 FOOT RADIUS CURVE TO THE LEFT; THENCE 67.23 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 22°00'36" TO A POINT OF REVERSE CURVE WITH A 20.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE 28.40 FEET ALONG THE ARC OF SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 81°21'46" TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF MALL DRIVE; THENCE S27°50'16"E 1119.47 FEET ALONG SAID WEST RIGHT OF WAY; THENCE LEAVING SAID WEST RIGHT-OF-WAY S01°27'04"W 41.77 FEET TO SAID QUARTER SECTION LINE; THENCE N89°22'25"W 62.71 FEET ALONG SAID QUARTER SECTION LINE TO THE POINT OF BEGINNING.

CONTAINS 4.3663 ACRES

**PARCEL 2**

A PARCEL OF LAND LYING IN THE NW ¼ OF SECTION 28, T42S, R16W, SLB&M BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF FOX BOROUGH PHASE 5 AT A POINT ON THE WEST RIGHT-OF-WAY LINE OF MALL DRIVE (AN 80 FOOT RIGHT- OF -WAY) SAID POINT BEING N0°54'14"E, 2575.91 FEET ALONG THE ¼ SECTION LINE TO THE CENTER OF SAID SECTION 28 AND N0°54'14"E, 1362.68 FEET ALONG THE ¼ SECTION LINE AND WEST 655.56 FEET FROM THE SOUTH ¼ CORNER OF SAID SECTION 28, T42S, R15W, SLB&M; THENCE S27°50'16", 282.96 FEET ALONG SAID RIGHT-OF-WAY LINE TO A POINT OF CURVATURE WITH A 20.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE 37.07 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 106°11'41" TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF 110 SOUTH STREET, SAID POINT ALSO BEING A POINT OF COMPOUND CURVATURE WITH A 125.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE 31.53 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 14°27'09"; THENCE N87°11'26"W, 137.58 FEET; THENCE LEAVING SAID NORTHERLY RIGHT-OF-WAY LINE N13°53'03"W, 98.01 FEET; THENCE N31°22'03"W, 122.76 FEET; THENCE N62°09'44"E, 42.33 FEET; THENCE N52°36'10"W 2.08 FEET TO THE SW CORNER OF FOX BOROUGH PHASE 5 THENCE N62°09'44"E, 15.26 FEET TO THE POINT OF BEGINNING.

CONTAINS 0.9801 ACRES

#### ARTICLE I – DEFINITIONS

The following definitions control in this Declaration. These terms, though defined, are generally not capitalized in the Declaration.

Section 1. Declaration means this instrument, and any amendments.

Section 2. Plat or Map means the subdivision plat recorded herewith entitled "WILLOWBROOK PROFESSIONAL PARK " consisting of one sheet, prepared and certified by a Utah Registered Civil Engineer or Land Surveyor or any replacements thereof, or additions thereto.

Section 3. Property or Properties means that certain real property herein as before described, and such additions thereto as may hereafter be subjected to this Declaration.

Section 4. Common Area means that portion of property owned by the Association, shown on the plat as dedicated to the common use and enjoyment of the owners. All sidewalks, paths, walkways and driveways constructed by the Declarant or the Association shall be considered as Common Area and shall also be considered as easements; and as such, shall be subject to the provisions of Article XI of this Declaration, except as may be modified in the purchase agreement between seller and purchaser, which purchase agreement controls any dispute or disagreement with this document.

Section 5. Limited Common Area there are no limited common areas pursuant to the recorded plan for phase one and the requirements of the City of St. George.

Section 6. Unit means a separately numbered and individually described plot of land shown on the plat designated for private ownership, but specifically excludes the common areas.

Section 7. Building means with or without walls or roofs in common with other units. "Building" includes fee title to the real property lying directly beneath or within unit boundary lines.

Section 8. Owner means the entity, person, or group of persons owning fee simple title to any unit which is within the properties. Regardless of the number of parties participating in ownership of each unit, the group of those parties shall be treated as one "owner." The term "Owner" shall include contract buyers, but exclude those having such interest merely as security for the performance of an obligation.

Section 9. Association means WILLOWBROOK PROFESSIONAL PARK ASSOCIATION, its successors and assigns. Said Association shall be registered as a non-profit corporation with the State of Utah and comply with all appropriate statutes.

Section 10. Member means every person or entity who holds membership in the Association. Every member is an owner, and every owner is a member.

Section 11. Trustees means the governing body of the Association.

Section 12. Declarant means RED SANDS INDUSTRIAL PARK, INC., and the Declarant's heirs, successors and assigns.

Section 13. Mortgage includes "deed of trust" and mortgagee includes "trust deed beneficiary."

## ARTICLE II -- PROPERTY RIGHTS

Section 1. Title to the Common Area. The Declarant will convey fee simple title to the common area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first unit, but subject to this Declaration, and easements and rights-of-way of record. In accepting the deed, the Association will covenant to fulfill all the terms of this Declaration, to maintain the common area in good repair and condition at all times and to operate the common area at its own expense in accordance with high standards.

Section 2. Owners' Easements of Enjoyment. Every owner has a right and easement of use and enjoyment in and to the common area. This easement is appurtenant to and passes with the title to every unit, subject to:

(a) The right of the Association to charge reasonable admission, use, service and other fees for the use of any service, or parking facility situated upon the common area. No fees shall be charged for parking specifically designated on the plat as appurtenant to a unit.

(b) The right of the Association to suspend the voting rights and/or common utility service of a member for any period during which any assessment or portion thereof against his unit remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.

(c) The right of the Association to enter into agreements or leases which provide for use of the common areas and facilities by a similar Association in consideration for use of the common areas and facilities of the other Association, or for cash consideration.

(d) The right of the Association with the approval of sixty-seven percent (67%) of each class of owners, to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the common area to any private individual, corporate entity, public agency, authority, or utility.

(e) The right of the Association to grant easements for public utilities or other private or public purposes consistent with the intended uses of the common area by the Association.

(f) The right of the Association to take such steps as are reasonably necessary or desirable to protect the common area against foreclosure.

(g) The terms and conditions of this Declaration

(h) The right of the Association, through its Trustees, to adopt reasonable rules and regulations concerning use of the common area.

Section 3. Limited Common Area. A unit owner is entitled to the exclusive use of the parking area, if any, designated with his unit number on the plat.

Section 4. Parking. The parking area shall be used as cross parking, with shared ingress and egress easements by all property owners. Parking areas have been dedicated the public utility

easement and drainage easement for the installation and maintenance as stated in the owner's dedication. The Association has the power to regulate, restrict, and assign parking.

Section 5. Sidewalks. All sidewalks shown and/or constructed denote the physical location of access easements to and between buildings. Access easement shall include 5' behind front sidewalks.

Section 6. Public Utilities. All common areas are subject to public utilities and drainage easements for the installation and maintenance of improvements and such easements shall be subject to the right of the City of St. George to require the owner's association to assess its' members to repair streets where needed to repair or replace public utilities.

Section 7. Delegation of Use. An owner is deemed to delegate his right of enjoyment to the common area and facilities to his tenants, or contract purchasers who reside on the property.

Section 8. Rules. The Board of Trustees shall have the authority to promulgate rules and regulations for the governance of the Properties and persons within the Properties. The rules of the Association shall be compiled and copies shall be made available for inspection and copying by the Trustees.

Section 9. Unit. Each unit is owned in fee simple by the owner. However, area within the surveyed unit boundaries but outside the originally constructed building walls shall be treated as limited common area for use purposes, and as exterior area for maintenance purposes. After the initial construction on a unit, subsequent construction, if any, on that unit must nevertheless conform to the location, size, and appearance of the originally constructed building.

### ARTICLE III – MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every owner is a member of the Association. The term "owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from unit ownership. Membership in the Association automatically transfers upon transfer of title by the record owner to another person or entity.

Section 2. Voting Rights. The Association has two classes of voting membership:

**CLASS A.** Class A members are all members with the exception of the Declarant, as defined in the Declaration. Class A members are entitled to one vote for each square foot of building owned or 2,400 votes for each designated building pad owned. When more than one person holds an ownership interest, the group of such persons shall be a member. The vote for such ownership shall be exercised as they among themselves determine, but in no event shall the vote of the ownership of a building or building pad be cast other than as a unified vote of a single owner. A vote cast at any association meeting by any of such co-owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the ownership concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-owner of the same unit. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

**CLASS B.** The Class B member is the Declarant. The Class B member is entitled to three (3) votes for each square foot of building owned or 7,200 votes for each building pad owned. The Class B membership will cease and be converted to Class A membership (with only one vote for each square foot of building owned or 2,400 votes per building pad owned) on the happening of one of the following listed events herein:

- (a) upon conveyance of seventy five percent (75%) of the building pads subject to the Declaration to purchasers; or
- (b) the expiration of ten (10) years from the recording of this Declaration.

In the case of expansion (as provided under the Declaration) which occurs while the Declarant has Class B membership, the Declarant's membership votes appurtenant to the building pads in the expansion area shall be Class B memberships.

**Section 3. Surrender of Class B Status.** The Declarant may surrender its Class B membership status by express written action.

#### ARTICLE IV -- FINANCES AND OPERATIONS

**Section 1. Creation of the Lien and Assessments.** The Declarant and each subsequent owner of any building or building pad by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association (1) annual assessment or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (3) any other amount or assessment levied or charged by the Association or Board of Trustees pursuant to this declaration, and (4) interest, costs of collection and a reasonable attorney's fee, as hereinafter provided. All such amounts shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment or amount is charged. Such assessments and other amounts shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. Successors-in-title shall not be personally liable for assessments delinquent at the time they took title unless that obligation is expressly assumed by them. The City of St. George is entitled to assess the Association for any city required repairs to the common areas.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the improvement and maintenance of the Common Area and of the improvements situated upon the properties and for the improvement and maintenance of properties, services, and facilities devoted to this purpose. The assessments must provide for but are not limited to, the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the common areas; the payment of administrative expenses of the Association; insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of those common areas (which must be replaced on a periodic basis); to defray the cost of any construction, reconstruction, repair or replacement of common area structures for which insurance or other monies are not available, and to repair or restore any damage or disruption resulting to streets or other common areas from the activities of the City of St. George in maintaining, repairing the City's utility lines and facilities thereon only when insurance, tax or other monies are not available; and other amounts required by this Declaration or that the Trustees shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Trustees, for the payment of other charges including, without limitation, maintenance, management, utility, trash collection, sewer and water charges.

**Section 3. Maximum Amount of Annual Assessment.** Until January 1, 2008 following recording of this Declaration, the maximum assessment made in any fashion or defined in any manner shall not exceed \$.07 per square foot of completed building per month. After January 1, 2008 the Association may change the basis and maximum of the assessments fixed by this Section prospectively for any period provided that any such change shall have the assent of sixty-seven percent (67%) of the votes of each class of members, voting in person or by proxy, at a meeting duly called for this purpose.

**Section 4. Special Assessments for Capital Improvements.** In addition to the annual assessments, the Association may levy in any assessment year a special assessment, applicable to that year only. Special assessments may only be levied to defray, in whole or in part the cost of any construction, reconstruction, repair or replacement of common or limited common area structures, fixtures and personal property related thereto. Special assessments must have the assent of sixty-seven percent (67%) of the votes of each class of members, voting in person or by proxy, at a meeting duly called for this purpose.

**Section 5. City's Right to Assessment.** In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such additional assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to streets or other common or limited common areas from the activities of the City of St. George in maintaining, repairing or replacing the City's utility lines and facilities thereon. It is acknowledged that the ownership of said utility lines, underground or otherwise is in the City up to and including the meters for individual buildings, and that they are installed and shall be maintained to City specifications.

**Section 6. Notice and Quorum for Any Action Authorized Under Sections 3, 4 and 5.**

Written notice of any meeting of members called for the purpose of taking any action authorized under Sections 3, 4 and 5 shall be sent to all members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting 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 quorum requirement is not met at such a meeting, another meeting may be called, on at least thirty (30) days advance written notice, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 7. Uniform Rate of Assessment; Periodic Assessment.**

Both annual and special assessments must be fixed at a uniform rate for all owners; provided, however, that assessments shall not accrue against the Declarant so long as the Declarant has Class B membership on the condition that the Declarant shall fund any fiscal deficiency in the operation of the Association until the termination of Class B membership. This method of determining the assessments, dues and charges may not be changed without the prior written approval of all first mortgages.

Assessments may be collected on a monthly basis, as the Trustees determine and as authorized herein. The Declarant shall pay the annual and special assessments for each building which it owns, which has been completed and which is being marketed for lease or sale.

**Section 8. Date of Commencement of Annual Assessments; Due Dates.**

The annual assessment provided for herein shall commence to accrue on the first day of the month following conveyance of the common area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. In the absence of a determination by the Trustees as to the amount of said assessment, the first annual assessment shall be an amount equal to ninety percent (90%) of the maximum annual assessment provided above.

At least thirty (30) days prior to the commencement of each new assessment period, the Trustees shall send or cause to be sent a written notice of the annual assessment to each owner subject thereto. Receipt of notice shall be a pre-requisite to validity of the assessment.

The assessment due dates shall be established by the Trustees. The Trustees may provide for the payment of annual and special assessments in equal installments throughout the assessment year.

The Trustees shall prepare a roster of the properties and the assessments applicable thereto at the same time that it shall fix the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any member at reasonable times.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified unit has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

**Section 7. Effect of Non-Payment of Assessment - Remedies of the Association.**

Any assessment or installment thereof not paid within thirty (30) days after the due date therefore shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Trustees shall determine appropriate) until paid. In addition, the Trustees may assess a single late fee for each delinquent installment which shall not exceed five percent (5%) of the installment.

The Trustees may, in the name of the Association, (a) bring an action at law against the owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment, or (b) may foreclose the lien against the property only in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds or trust or to the foreclosure of mortgages, or in any other manner permitted by law, and/or (c) may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent member.

There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and a reasonable attorney's fee, together with an account for the reasonable rental for the unit from time to time of commencement of the foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security.

A power of sale is hereby conferred upon the Association which it may exercise. Under the power of sale the unit of an owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust. The association may designate any person or entity qualified by law to serve as Trustee for purposes of power of sale foreclosure.

No owner may waive or otherwise escape liability for the assessments provided fore herein by non-use of the common area or by abandonment of his unit.

**Section 10. Subordination of the Lien to Mortgages.** Any lien for the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any unit shall not affect the assessment lien. However, the sale or transfer of any unit pursuant to foreclosure of a first mortgage, or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a unit or owner from personal liability for assessments coming due after he takes title or from the lien of such later assessments.

**Section 11. Books, Records and Audit.** The Association shall maintain current copies of the Declaration, Articles, Bylaws, Rules and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection by unit owners and insurers as well as by holders, insurers, and guarantors of first mortgages during normal business hours upon reasonable notice. Reasonable commercially acceptable charges shall be made for copying, researching or extracting from such documents. A unit owner, insurer or guarantor of a first mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

#### ARTICLE V -- INSURANCE

**Section 1. Casualty Insurance on Insurable Common Area.** The Trustees shall keep all insurable improvements and fixtures of the common area insured against loss or damage by fire for the full insurance 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, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the common area 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 which shall be included in the regular annual assessments made by the Association.

In addition to casualty insurance on the Common Area, the Trustees may elect to obtain and continue in effect, on behalf of all owners, adequate blanket casualty and fire insurance in such form as the Trustees deem appropriate an amount equal to the full replacement value, without deduction for depreciation or co-insurance, of all of the Buildings including the structural portions and fixtures thereof. Insurance premiums from such blanket insurance coverage, and any other insurance premiums paid by the Association shall be a common expense of the Association to be included in the regular annual assessments as levied by the Association. The insurance coverage with respect to the Buildings shall be written in the name of, and the proceeds thereof shall be payable to the Association as trustee for the owners.

**Section 2. Replacement or Repair of Property.** In the event of damage to or destruction of any part of the common area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all unit owners to cover the additional cost of repair or replacement not covered by the insurance proceeds in addition to any other common assessments made against such unit owner.

**Section 3. Liability Insurance.** The Trustees shall obtain a comprehensive policy of public liability insurance covering all common and limited common property for at least \$1,000,000.00 (One Million Dollars) per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the common areas. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an owner because of negligent acts of the Association or other owners.

**Section 4. Fidelity Insurance.** The Trustees may elect to obtain fidelity coverage against dishonest acts on the part of managers, Trustees, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the owners or members. In procuring fidelity insurance the Trustees shall seek a policy which shall (1) name the Association as obligee

or beneficiary, plus (2) be written in an amount not less than the sum of (i) three months' operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

Section 5. Annual Review of Policies. The Trustees shall review all insurance policies at least annually in order to ascertain whether the coverage contained in the policies is sufficient to compensate for risks and potential damage/injury.

#### ARTICLE VI – ARCHITECTURAL CONTROL COMMITTEE

No exterior structure, building, fence, wall or addition, extension or expansion of any of the foregoing shall be commenced, erected or maintained upon the properties, nor shall any exterior addition or change or alteration to any unit or building be made until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Trustees, or if such a committee is in existence, by an Architectural Control Committee composed of three (3) or more representatives appointed by the Trustees. If the Trustees have failed to appoint a committee, the Trustees shall constitute the Architectural Control Committee. In the event said Trustees, or their designated committee fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and compliance with this article will be deemed to have been made.

Notwithstanding the foregoing, without the prior vote of at least sixty-seven percent (67%) of the owners, neither the Association nor the Architectural Control Committee shall have the power, by act or omission, to change, waive or abandon any plan, scheme or regulations pertaining to the architectural design or the exterior appearance or maintenance of buildings and units, and the maintenance of the common areas, including walls, fences, driveways, lawns and plantings.

The Declarant shall not be required to comply with the provisions of this paragraph in the initial construction of the Properties.

#### ARTICLE VII – EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance by Owner. Each owner shall be responsible for maintenance to the interior of buildings. The Trustees shall, however, in the default to perform maintenance which is the owner's responsibility and after a two-thirds (2/3) vote and ten (10) days written notice (which notice shall not be required in the event of an emergency or threat to life, health, property or safety), provide exterior maintenance upon each building unit. The cost of such maintenance shall be assessed against the unit or building.

Section 2. Exterior Maintenance by Association. The Association shall be responsible for maintenance upon the common area, the deeded area not occupied by the building, and the area of any unit outside the walls of the buildings which is of the same character as surrounding common area. The cost of such maintenance shall be a common expense.

Section 3. Access at Reasonable Hours. For the purpose solely of performing the maintenance required by this article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the owner, to enter upon any unit or common area at reasonable hours.

Section 4. Alteration of Certain Maintenance Duties by Rule. The duty of maintenance for the area of a unit outside the walls of the building, and the common areas adjacent and appurtenant to the buildings may be altered by Rule of the Association.

#### ARTICLE VIII – USE RESTRICTIONS

Section 1. Construction, Business and Sales. Notwithstanding any provisions to the contrary herein contained, and except of it unreasonably interferes with an owner's ability to conduct its business, it shall be expressly permissible for Declarant to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of units during the period of construction and sale of said units and upon such portion of the premises as Declarant deems necessary including but not limited to a business office, storage areas,



construction yard, signs, model units and sales offices. As part of the overall program of development of the properties into a business and office park and to encourage the marketing thereof, the Declarant shall have the right of use of common area and facilities thereon, including any community buildings, without charge during the sales and construction period to aid in its construction and marketing activities.

**Section 2. General Use Restrictions.** All of the properties which are subject to this declaration are hereby restricted to office units, and buildings in connection therewith, including but not limited to community buildings on the common property. All buildings or structures erected in the properties shall be of new construction and no buildings or structures shall be removed from other locations to the properties. After the initial construction on a unit, no subsequent building or structure dissimilar to that initially constructed shall be built on that unit. No building or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any unit at any time.

**Section 3. Signs: Commercial Activity.** Except for one "For Rent" or "For Sale" sign of not more than two (2) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any unit or any portion of the properties without specific written approval from the Association. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time.

**Section 4. Quiet Enjoyment.** No noxious or offensive activity shall be carried on upon any part of the properties nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment or business activities each of the owners or which shall in any way increase the rate of insurance. The Association shall be responsible for policing and correcting violation of this by other provisions of these Declarations.

**Section 5. Animals.** No animals, livestock or poultry of any kind shall be raised or bred in any of said units.

**Section 6. Use of Common Area.** Except for the rights of ingress and egress, owners are hereby prohibited and restricted from using any said common area, other than as permitted in the declaration of covenants or as may be allowed by the Trustees. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all owners of units in the properties and is necessary for the protection of the interests of all said owners in and to the common area.

As part of the overall program of development of the properties into a business and office park and to encourage the marketing thereof, the Declarant shall have the right of use of the common area and facilities thereon, including any community buildings, without charge during the sales and construction period to aid in its marketing activities.

**Section 7. Parking.** No motor vehicle which is inoperable shall be allowed within the Properties, and any motor vehicle which remains parked over 72 hours shall be subject to removal by the Association, at the owner's expense. If parking spaces are designated on the plat with numbers corresponding to unit numbers, each such space is for the exclusive use of the unit owner with the corresponding number. If parking areas are not designated on the plat with unit numbers, the Association may assign vehicle parking space for each unit. Parking spaces within the Properties shall be used by the owner or his employees and customers/clients in the normal conduct of business. Recreational vehicles, boats, travel trailers and similar property may not be parked within the Properties unless permitted by rule of the Association.

**Section 8. Planting and Gardening.** No planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon any property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Trustees.

**Section 9. External Apparatus.** No unit owner shall cause or permit anything (including, without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Trustees.

Section 10. Exterior Television or Other Antennas. No exterior radio, television, satellite dish or other antennas shall be placed, allowed or maintained upon any unit or upon any structure or portion of the improvements situated and located upon the properties without prior written approval of the Trustees.

Section 11. Garbage Removal. All rubbish, trash and garbage shall be regularly removed from the units and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers. The Association shall not provide for garbage removal and exterior containers or collect the same. Each property owner shall be responsible to have their own garbage collection area and be responsible for have all garbage removed on a timely basis.

Section 12. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the properties of any unit. No derrick, lift, shaft or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the properties or any unit.

Section 13. Interior Utilities. All utilities, fixtures and equipment installed within a unit, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a unit, shall be maintained and kept in repair by the owner thereof. An owner shall do neither act nor any work that will impair any easement nor do any act nor allow any condition to exist which will adversely affect the other units or owners.

Section 14. Leases. Any lease or rental agreement shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association and that any failure by lessee to comply with the terms of such documents shall be a default under the lease.

#### ARTICLE IX – EASEMENTS

Section 1. Encroachments. Each unit and the property included in the common areas shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the structure containing units is partially or totally destroyed, and then rebuilt, the owners of the units so affected agree that minor encroachments of parts of the adjacent units or common areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist. The City of St. George may also require assessments against the Association for city-required assessments to repair common areas.

Section 2. Utilities. There is hereby created a blanket easement upon, across, over and under all of the properties for public utilities. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on said property only without conflicting with the terms hereof.

Section 3. Police, Fire and Ambulance Service. An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and common areas in the performance of their duties.

Section 4. Maintenance by Association. An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the common areas and in any unit to perform the duties of maintenance and repair.

Section 5. Other Easements. The easements provided for in this Article shall in no way affect any other recorded easement.

Section 6. Property Tax. Each unit and its percentage of undivided interest in the common areas and facilities shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for types of taxes authorized by law as provided in Title 57-8-27 Utah Code Annotated, 1953, as amended.

#### ARTICLE X – EXPANSION

The Declarant reserves the right, at its sole election, to expand the Properties to include additional property contiguous to the property now subject to the Declaration, more particularly described below by unilateral action of the Declarant without the consent of owners, for a period of ten (10) years from the date of recording this Declaration in the office of the Washington County Recorder, County of Washington, State of Utah.

The property, all or part of which may be included in one or more expansions, is located in Washington County, Utah, and is more particularly described as follows:

ALL PROPERTY LOCATED IN THE GENERAL VICINITY OF THE PROPERTY PREVIOUSLY DESCRIBED HEREIN.

Expansion shall occur by the Declarant filing:

1. an additional subdivision plat or plats creating additional planned unit developments on the property described above, stating on each plat the intention to have the property described on said plat bound by the terms, covenants and conditions of this Declaration upon the filing of a Declaration of Annexation and
2. a Declaration of Annexation (after satisfying conditions hereafter stated), which shall state the Declarant's intention to have the area described therein subject to this Declaration. Upon the recording of such a Declaration of Annexation the property described therein shall be subject to this Declaration.

Any additional properties annexed hereto by the Declarant must be contiguous to the property now subject to the Declaration and shall be exclusively for a business office park, architecturally compatible to the existing buildings, similar to the buildings already constructed, constructed out of similar materials, with similar unit size. The maximum number of units to be added shall be 40. The Declarant shall have the sole discretion as to development of the common area in any expansion area and may include any facilities or amenities thereon that Declarant deems necessary and such common areas shall be owned by the Association.

The common area in such expansion area shall be deeded by the Declarant to the Association, free and clear of all encumbrances and liens, prior to recordation of the Declaration of Annexation and the Association shall accept the deed to said areas. Owners in the original and expansion areas shall have the same rights to use and enjoyment of the property and facilities of the Association. If, at the time of the expansion, the Declarant has Class B ownership status, that status shall extend to all units in the expansion area. Otherwise, owners in the original and expansion areas shall all have equal membership status in the Association. The liability for assessments of each unit and unit owner in any expansion area shall be equal to the liability of each unit and unit owner in the original properties.

#### ARTICLE XI – GENERAL PROVISIONS

**Section 1. Enforcement.** The Association, the Declarant or any owner, shall have the right to enforce, by and proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or any rule of the Association, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or of any owner to enforce any covenant or restriction herein contained or any rule of the Association shall in no event be deemed a waiver of the right of the Association or any owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof or any rule of the Association, the party against whom a judgment is obtained shall pay to the Association or enforcing owner a reasonable attorney's fee. The Trustees may levy a fine or penalty, not to exceed ten percent (10%) of the amount of the maximum annual assessment against any owner who fails to refrain from violation of these covenants or a rule of the Association, after three (3) days written notice.

**Section 2. Severability.** All of said conditions, covenants and reservations contained in this Declaration shall be construed together, but if any one of said conditions, covenants, or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired, and the Declarant, Association and owners, their successors, heirs and assigns shall be bound by each article, section,

subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any unit subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

Section 4. Amendment. The covenants, conditions and restrictions of this Declaration may be amended by vote by not less than sixty-seven percent (67%) of the owners. Any amendment must be properly recorded in the records of Washington County, Utah, to become effective.

Notwithstanding the foregoing, the Declarant reserves the right for so long as he shall have Class B membership status, to unilaterally amend the Declaration.

Section 5. Notices. Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it.

Section 6. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 7. Waivers. No provision contained in the Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

Section 8. Topical Headings. The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

ARTICLE XII -- ASSIGNMENT OF POWERS

Any and all rights and powers of Declarant herein contained may be delegated, transferred or assigned.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 30th day of December, 2005.

By Fred R. Salisbury  
RED SANDS INDUSTRIAL PARK, INC.  
President Fred R. Salisbury

STATE OF UTAH  
COUNTY OF WASHINGTON

On this 30th day of December, 2005 before me personally appeared FRED SALISBURY, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is President of RED SANDS INDUSTRIAL PARK, INC., a Nevada Corporation, and that the foregoing document was signed by him on behalf of that

Company authority of its bylaws or of a resolution of its board of directors, and he acknowledged before me that the Company executed the document and the document was the act of the Company for its stated purpose.

Marianne Brent  
NOTARY PUBLIC

Address: 411 N 2350 E Circle St George UT 84790

My Commission Expires: May 17, 2009



By Brien Heideman  
HEIDEMAN MORTUARY  
Owner - Brien Heideman

STATE OF UTAH  
COUNTY OF WASHINGTON }

On this 3rd day of January, 2006 before me personally appeared BRIEN HEIDEMAN, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is Owner of HEIDEMAN MORTUARY, and that the foregoing document was signed by him on behalf of that Company.

Marianne Brent  
NOTARY PUBLIC

Address: 411 N 2350 E Circle St George UT 84790

My Commission Expires: May 17, 2009



By *[Signature]*  
B. Don Taylor

STATE OF UTAH )  
COUNTY OF WASHINGTON )

On this 3rd day of January, 2006 before me personally appeared B. DON TAYLOR, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is Owner of Lot 4, and that the foregoing document was signed by him.

*Marianne Brent*  
NOTARY PUBLIC  
Address: 161 N 2350 E Circle St. George, UT 84790



My Commission Expires: May 17, 2009

By *[Signature]*  
Craig Trujillo

STATE OF UTAH )  
COUNTY OF WASHINGTON )

On this 3rd day of January, 2005 before me personally appeared Craig Trujillo, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is Owner of Lot 6, and that the foregoing document was signed by him.

*Marianne Brent*  
NOTARY PUBLIC  
Address: 161 N 2350 E Circle St. George, UT 84790

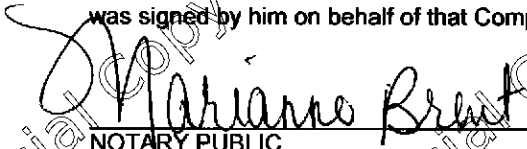


My Commission Expires: May 17, 2009

By 3   
Brian Heidemman

STATE OF UTAH  
COUNTY OF WASHINGTON

On this 3rd day of January, 2006 before me personally appeared Brian Heidemman, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is Owner of HEIDEMAN MORTUARY, and that the foregoing document was signed by him on behalf of that Company.

  
Marianne Brent



NOTARY PUBLIC

Address: 61 N 2350 E Circle St George, Ut 84790

My Commission Expires: May 17, 2009