

## ARTICLES OF INCORPORATION

OF

## BIG WHEEL COMMERCIAL PARK ASSOCIATION

We, the undersigned, for the purpose of forming a corporation pursuant to the Utah Nonprofit Corporation and Cooperative Association Act, Utah Code Annotated, 16-6-18 et. seq., in the capacity of incorporators, adopt the following Articles of Incorporation:

ARTICLE I  
NAME

The name of the corporation is BIG WHEEL COMMERCIAL PARK ASSOCIATION. For convenience, the corporation shall be referred to in this instrument as the Association.

ARTICLE II  
DURATION

The existence of the corporation shall be perpetual.

ARTICLE III  
PRINCIPAL OFFICE AND REGISTERED AGENT

The principal office of the corporation is located at 1205 Quail Ridge Drive, Washington, Utah 84780 and the initial registered agent shall be ALLAN R. THURSTON who's address is 1205 Quail Ridge Drive, Washington, Utah 84780. ALLAN R. THURSTON hereby acknowledges and accepts the appointment as registered agent Allan R. Thurston.

ARTICLE IV  
PURPOSE AND POWERS

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for maintenance, preservation, and architectural control of the Commercial Units, Lots and Common Area within BIG WHEEL COMMERCIAL PARK, a commercial condominium park, located in St. George, Washington County, Utah, within that certain tract of property described as:

Beginning at a point South 538.91 feet and East 593.37 feet from the North Quarter Corner of Section 20, Township 42 South, Range 15 West, Salt Lake Base and Meridian, and running thence North 67°30'00" East 160.00 feet; thence South 09°33'47" East 270.50 feet; thence North 59°15'15" West 148.07 feet to a point of tangency with a 160.00 foot radius curve to the Left, thence Northwesterly along the arc of said curve 16.93

feet; thence North 22°30'00" West 132.00 feet to the point of beginning.

And as the same may be constituted from time to time, and to promote the health, safety, and welfare of the residents within the above described development and any additions thereto as may hereafter be brought within the jurisdiction of this Association for this purpose to:

- (a) Meet the commercial needs of the members and for other purposes not for profit, no part of the net earnings of which may inure to the benefit of any member as provided under UCA 59-13-4 (6) 1953, and to provide for the mutual and cooperative management and operation of BIG WHEEL COMMERCIAL PARK, PHASE I, a commercial condominium project, located at St. George, Utah, all the income therefrom to be collected from its members and to be used solely to meet losses and operating expenses as provided in UCA 58-13-1-(8) 1953.
- (b) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association and enforce any and all covenants, restrictions, and agreements applicable to the Common Area and commercial units of the development as set forth in that certain Declaration of Covenants, Conditions, and Restrictions, hereinafter called the "Declaration," applicable to the property and recorded or to be recorded in the Office of the Washington County Recorder and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length.
- (c) Fix, levy, collect, and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connections therewith and all office and other expenses incident to the conduct of the business of the Association, including but not limited to all licenses, taxes of governmental charges levied or imposed against the property of the Association.
- (d) Acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of real or personal property in connection with the affairs of the Association.

- (e) Borrow money, and with the assent of two-thirds (2/3) of the members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security of money borrowed or debts incurred.
- (f) Dedicate, sell, or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been signed and executed as provided in the Declaration.
- (g) Participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional commercial property and Common Area, provided that any such merger, consolidated or annexation, shall have the assent as required in the Declaration.
- (h) Purchase of insurance upon the Common Area and insurance for the protection of the Association and its members.
- (i) Reconstruct improvements after casualty loss and the further improvements of the property.
- (j) Make and amend reasonable regulations respecting the use of the Common Areas.
- (k) Enforce by legal means the provisions of the Declaration, these Articles, the By-laws of the Association, and the regulations for the use of the Common Area.
- (l) Contract for the management of the Common Area and delegate to such manager all powers and duties of the Association except such as are specifically required by the Declaration to have approval of the Board of Trustees or the membership of the Association.
- (m) Contract for the management or operation of portions of the Common Area susceptible to separate management or operation, and to lease such portions as allowed under the Declaration.
- (n) Employ personnel to perform the services required for proper operation of the Common Area.
- (o) Make and perform any contracts and do any acts and

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things and exercise any powers suitable, convenient, proper, or incidental for the accomplishment of any objects enumerated herein.

- (p) Have and exercise any and all powers, rights, and privileges which a corporation organized under the Nonprofit Corporation Law of the State of Utah by law may now or hereafter have or exercise.

#### ARTICLE V MEMBERSHIP

Every person or entity who is a record owner of a fee, or undivided fee interest in any lot which is subject by covenants or record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold any interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association. Membership in the Association shall automatically terminate upon transfer of title by the record owner to another person or entity.

#### ARTICLE VI VOTING RIGHTS

The Association shall have two classes of voting membership:

- (a) Class A. Class A member(s) shall be all owners, with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person owns an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.
- (b) Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:
1. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or,
  2. On January 1, 1986.

#### ARTICLE VII BOARD OF TRUSTEES AND OFFICERS

The affairs of the corporation shall be conducted in accordance with the Utah Nonprofit Corporation and Cooperative Association Act and By-laws adopted and amended from time to time by its Board of Trustees.

The Board of Trustees and Officers of the corporation shall be: A Board of Trustees consisting of three (3) persons or Trustees.

Except for the first Board of Trustees, the Trustees shall be elected at an annual meeting of the members, by a majority vote of the members present whom must represent a majority of the members of the corporation, and shall hold office until the next annual meeting and/or the election and qualification of a successor.

Vacancies in the Board of Trustees or other officers of the corporation may be filled by the Board of Trustees.

The officers of the corporation shall be a president, one or more vice presidents, a secretary and treasurer. The Trustees of the corporation may be removed from office with or without cause by a majority vote of the members at any meeting of the members called specifically for that purpose.

Any officer may be removed by a majority vote of the trustees and their term shall be one (1) year or until their successors are duly elected at a meeting of the members.

Any officer may resign his office by filing resignation with the Board of Trustees and upon acceptance of the same by the Board of Trustees his resignation shall become effective. In case the Board of Trustees shall neglect to act upon the resignation within 20 days after receipt by them, the resignation shall become effective and the office shall be deemed vacant. A majority of the members of the Board of Trustees shall be necessary to constitute a quorum to be authorized to transact business and to exercise the corporate powers.

Until the first meeting of the corporation as hereinafter provide, and the following named persons shall be trustees and officers of the corporation:

- President: Allan R. Thurston 1205 Quail Ridge Drive  
Washington, Utah
- Vice-Pres.: Jon H. Brazeau P. O. Box 429  
Washington, Utah 84780
- Secretary-  
Treasurer: Steven A Thurston 372 Quail Ridge Drive  
Washington, Utah 84780

ARTICLE IX  
INDEMNIFICATION

Every Trustee, committeeman, and officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably

incurred by or imposed upon him in connection with any proceeding or any settlement of any proceeding to which he may be a party or in which he may become involved by reason of his being or having been a trustee, committeeman, or officer of the Association, whether or not he is a trustee, committeeman, or officer at the time such expenses are incurred, except when the trustee, committeeman, or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only when the Board of Trustees approves such settlement and reimbursement as being for the best interests of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such trustee, committeeman, or officer may be entitled.

#### ARTICLE X DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of the members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed, and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to such similar purposes.

#### ARTICLE XI AMENDMENTS

Amendment of these Articles shall require the assent of seventy-five percent (75%) of the entire membership.

#### ARTICLE XII INCORPORATORS

The names and addresses of the incorporators are:

Allan R. Thurston	1205 Quail Ridge Drive Washington, Utah
Steven A. Thurston	372 Quail Ridge Drive Washington, Utah 84780
Jon H. Brazeau	P. O. Box 429 Washington, Utah 84780

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Utah, we, the undersigned, constituting the incorporators of this Association, being over the age of 21 years and being residents of the State

of Utah, have executed these Articles of Incorporation this  
10 day of February, 1986.

Alfred Thurston

Steven A. Thurston

John W. Buzare

STATE OF UTAH )  
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COUNTY OF WASHINGTON )

I, Scott A. Gubler, a Notary Public, hereby  
certify that on the 10 day of February, 1986,  
personally appeared before me, who being by me duly sworn,  
declared to me that they are the persons who signed the foregoing  
document as incorporators and that the statements therein  
contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and  
seal this 10 day of February, 1986.

Scott A. Gubler  
Notary Public  
Residing at: St. George, Utah

My Commission Expires:  
07-29-86