

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
OF  
THE BOULDERS  
Phase 1  
SUBDIVISION

THIS DECLARATION of covenants, conditions and restrictions, hereinafter called "Declaration," is made and executed in St. George, Washington County, State of Utah, this 14<sup>th</sup> day of September, 1993, by Sun River Development, L.C., a Utah Limited Liability company, hereinafter called "Declarant."

RECITALS:

- A. Declarant is the owner of certain real property located in St. George, Washington County, Utah, which is more particularly described below.
- B. Declarant will convey the property subject to certain protective covenants, conditions, restrictions, reservations, liens, charges, and assessments as provided hereafter.
- C. It is the desire and intention of Declarant to convey area to an association in which homeowners will be members.
- D. The Boulders Homeowners Association, a Utah Non-Profit Corporation, will be formed or has been formed to administer the terms of this Declaration.

NOW, THEREFORE, Declarant as the current owner of the project, hereby declares as follows:

DECLARATION

Declarant declares that all of the property described below shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, conditions, reservations, assessments, charges, liens, and to the Official Plat Map recorded concurrently. *This is for the purpose of protecting the value and desirability of said property.* This Declaration and the Official Plat Map shall be construed as covenants of equitable servitude which shall run with the land and shall be binding all parties having any right, title, or interest in the described property, 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 more particularly described as follows:

Beginning at a point North 89°40'55" East 1389.81 feet along the section line and South 00°00'00" East 709.18 feet from the North 1/4 corner of Section 5, Township 43 South, Range 15 West of the Salt Lake Base and Meridian, said point also being North 89°55'00" East 229.43 feet and South 00°00'00" East 156.48 feet from the street control monument (Ring & Lid) at the intersection of St. James Lane and Lizzy Lane and running thence North 01°13'09" East 334.66 feet to the point of curvature of a 1196.28 foot radius curve; Thence Northwesterly 343.39 feet along the arc of said curve concave to the Southwest through a central angle of 16°26'48" to a point of cusp with a curve concave to the

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Southwest having a radius of 1120.00 feet and from which point a radial line bears South 79°05'12" West; Thence Northwesterly 35.70 feet along the arc of said curve through a central angle of 1°49'35" to a point from which the radius point bears South 77°15'36" West, Thence North 77°17'24" East 865.94 feet; Thence South 12°42'36" East 195.00 feet, Thence North 77°17'24" East 24.80 feet, Thence South 12°42'36" East 125.00 feet; Thence South 77°17'24" West 100.00 feet; Thence South 36°02'57" West 86.23 feet to a point on a 200.00 foot radius curve concave to the Northeast from which point a radial line bears North 36°02'57" East; Thence Northwesterly 59.22 feet along the arc of said curve through a central angle of 16°57'58"; Thence North 36°59'05" West 49.05 feet; Thence South 53°00'55" West 125.00 feet; Thence South 36°59'05" East 627.62 feet; Thence South 89°40'55" West 955.27 feet to the point of beginning.  
Phase 1 of the "Boulders" subdivision contains 14.667 acres.

Less and excepting therefrom the areas of the St. George Valley Irrigation Company tract as shown on the Plat, which is not part of the property.

## ARTICLE I DEFINITIONS

The following definitions control in this Declaration. Words and phrases not defined in this Article shall be given their ordinary meaning

Section 1. **Board of Trustees** shall mean and refer to the governing board of the Homeowners Association

Section 2. **Common Area** shall mean all real property (including the improvements thereto) owned by the Homeowners Association or hereafter acquired for the common use and enjoyment of the members and not dedicated for use by the general public. The Declarant may increase the common area by deeding additional property to the Homeowners Association. Specifically exempted from common area are lots and dedicated public streets which are identified on the official plat of "The Boulders" Phase I and/or plats prepared pursuant to Article X, as recorded on the official records of the Washington County Recorder and as the same, may hereafter be modified, amended, supplemented, or expanded in accordance with the provisions of this Declaration, or supplements to this Declaration which are to occur in conjunction with the expansion of the project. Common Area shall also include all land which the Association has an easement right in.

Section 3. **Conveyance** shall mean and refer to actual conveyance of fee title to any Lot to any owner by a warranty deed or other document of title and shall also mean the execution an installment sales contract.

Section 4. **Declarant** shall mean Sun River Development, L.C., a Utah Limited Liability Company, its successors and assigns, if such successors or assigns (1) by written agreement shall be given Declarant's rights and (2) acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 5. **Declaration** shall mean and refer to this Declaration of Covenants, Conditions and Restrictions applicable to the properties, and any amendments or supplements thereto, recorded in the office of the Recorder of Washington County, State of Utah

Section 6. **Expandable Land** shall mean and refer to those portions of land set forth in Exhibit A attached hereto and made a part hereof, which sets forth property upon which Declarant may expand the Project in one or more phases

Section 7. **Home** shall mean and refer to any detached single-family residential dwelling constructed within the Project. Multiple family dwellings are not included in this definition and are not allowed in the Project

Section 8. "Homeowners Association" or "Association" shall mean and refer to Boulders Homeowners Association, its successors and assigns, a Utah nonprofit corporation.

Section 9. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties and specifically excepting Common Area and areas dedicated to the use of the general public

Section 10. "Member" shall mean and refer to every person or entity who holds membership in the Homeowners Association.

Section 11. "Mortgage" shall mean and refer to any person named as a first mortgagee or beneficiary, owner or holder of a first deed of trust.

Section 12. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract buyers, but excluding those having an interest merely as security for the performance of an obligation.

Section 13. "Plat" or "Plat Map" shall mean and refer to the Phase I portion of "The Boulders" and/or plats prepared pursuant to Article X, as recorded in the office of the County Recorder of Washington County, Utah, and as the same may hereafter be modified, amended, supplemented, or expanded in accordance with the provisions of this Declaration or supplements to this Declaration which are to occur in conjunction with the expansion of the Project as provided herein.

Section 14. "Properties," "Property" and "Project" shall mean and refer to that certain real property herein before described and such additions thereto as may hereafter be subject to this Declaration or any supplements to this Declaration which occur in conjunction with the expansion of the Project as provided herein.

Section 15. "Supplementary Declaration" shall mean and refer to any supplementary declaration of covenants, conditions, and restrictions, or similar instrument, which extends the provisions of the Declaration to all or any portion within the expandable land and containing such complimentary or amended provisions for such additional land as are herein required by the Declaration.

Section 16. "Utilities" shall mean public utilities, including, but not limited to, sewer, water, drainage, natural gas, telephone, electricity, and cable television.

## ARTICLE II PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every lot owner shall have a right and easement of use and enjoyment in and to the Common Area. This Easement is appurtenant to and passes with Title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Area. Fees charged by the Association shall in no way affect its status as a non-profit corporation.

(b) The right of the Association, in accordance with its Articles of Incorporation and Bylaws and with the approval of two-thirds of each class of membership to borrow money for the purpose of the Common Area and in aid thereof to mortgage said property; the rights of such mortgage in said property to be subordinate to the rights of the Owners hereunder.

(c) The right of the Association to suspend the voting rights of a member and to deny said member use of any recreational facility for any period during which any assessment against his Lot remains unpaid; and for a period of not to exceed sixty days for any infraction of its published rules and regulations.

(d) With the approval of all the holders of first mortgage liens on lots, and owner approval as provided below, the right of the Association to sell, exchange, hypothecate, alienate, encumber, dedicate, release or transfer all or 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. The granting of easements for public utilities or other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause. No such dedication or transfer shall be effective unless (1) all owners consent in writing to the dedication of sale or transfer or (2) an instrument has been signed by two-thirds (2/3) of the members of both classes, agreeing to such dedication, sale, or transfer and the legislative body of St. George approves the Plat change that is necessitated by the dedication, sale, or transfer, at a public hearing held in accordance with Utah Code Ann. § 10-9-801 et. seq. (1953, as amended).

- (e) The right of the Association to seek to abandon, petition, subdivide, encumber, sale, or transfer the Common Areas owned, directly or indirectly, by the Homeowners Association for the benefit of the Lots. The granting of an Easement for public utilities or other public services consistent with the intended use of the Common Area is not a transfer within the meaning of this clause. No such abandonment, petition, subdivision, encumbrance, sale, or transfer shall be effective unless (1) all owners consent in writing to such abandonment, petition, subdivision, encumbrance, sale or transfer or (2) an instrument has been signed by two-thirds (2/3) of the members of both classes and the legislative body of the City of St George approves the Plat change necessitated by the abandonment, petition, subdivision, encumbrance, sale, or transfer at a public hearing held in accordance with Utah Code Ann. § 10-9-801 et. seq. (1953, as amended).
- (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 right of the Declarant and of the Association to grant and reserve easements and rights-of-way through, under, over and across the Common Area, for the installation, maintenance and inspection of lines and appurtenances for public or private utilities.
- (h) The right of the Association to make, publish and enforce reasonable rules pertaining to the regulation and use of all common areas by owners, guests, invitees and tenants of owners.
- (i) The terms of the Declaration.
- (j) The right of the Association with approval of two-thirds of each class of owners 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.
- (k) The right of the City of St. George and any other governmental entity or quasi-governmental body having jurisdiction over the property to access and to have the right of ingress and egress over open spaces and Common Areas contained within the Property for purposes of providing police and fire protection and providing any other governmental or municipal service. AND
- (l) The easement with the St. George Irrigation Company as more fully set forth in Article VIII, section 4.

**Section 2 Delegation of Use** Any member may designate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, his guests, or contract purchasers who reside on the property. All such use by family members, tenants, guests or contract purchasers shall be subject to this Declaration, the Bylaws and the Rules and Regulations to be promulgated by the Board of Trustees. Damage caused to the Common Area and facilities, including personal property owned by the Association, by a member, or by a person who has been delegated the right to use and enjoy such Common Area and facilities by the member, shall create a debt to the Association. Debts owed to the Association as a result of damage to the Common Area

and facilities shall be an assessment charged to the Lot owner as provided in Article IV.

Section 3. Title to the Common Area. The Declarant covenants that it will convey fee simple title, subject to consent from lien holders having a security interest therein, to the Common Area to the Homeowners Association at the time of or prior to the conveyance of the first Lot. The Declarant further covenants and agrees that it will discharge all liens and encumbrances on said Common Area on or before the sale and closing of the last Lot within the Project as the same may be expanded and additional phases be annexed from time to time.

In accepting the Deed, the Association covenants 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 quality standards. Said conveyance of the Common Area shall also be subject to, (i) any state of facts an accurate survey may show, and (ii) Easements and rights-of-way of record

Section 4. Rules. A Board of Trustees shall have the authority to promulgate rules and regulations for the governance of the properties, and persons within the properties. These rules of the Association shall be available for inspection and copying by the Trustees during reasonable hours

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Classes of Membership. The Association shall have two classes of 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. A vote cast at an Association meeting by any of such co-owners, whether in person or in proxy, shall be conclusively presumed to be both attributable to the Lot concerned unless written objection is made prior to said meeting, or verbal objection at said meeting by another co-owner of the same Lot. In the event objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.
- (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 seventy-five percent (75%) of all lots owned in the project by Declarant are sold; or
  2. On December 31, 2000.
- (c) Changes in Voting Procedure. If Declarant shall exercise his option to add additional lots by platting additional phases, then at such time as additional subdivision plats are filed, the voting shall be adjusted accordingly, including that developer may regain his Class B voting status for all lots owned, even if previously converted to Class A status in prior phases and according to the terms hereof.

**ARTICLE IV**  
**COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant and each subsequent owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments, (b) special assessments, (c) insurance assessments, if any, (d) additional assessments, (e) any other amount or assessment levied or charged by the Association or Board of Trustees pursuant to this Declaration, and (f) interest, costs of collection and a reasonable attorney's fee, as hereinafter provided. The assessments shall be a charge on the land and shall be a continuing lien on the Lot against which such assessment is made. Each such assessment shall also be the personal obligation of the person who is owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessment shall not pass to a Lot owner's successor in Title unless expressly assumed by them.

**Section 2. Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of promoting the maintenance, health, safety, and welfare of residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas; management and supervision of the Common Areas; repair and maintenance 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.

**Section 3. Basis and Maximum of Annual Assessments.** Until January 1, 1995, the maximum annual assessment shall be Four Hundred and Twenty Dollars (\$420) per Lot.

- (a) From and after January 1, 1995, the maximum annual assessment may be increased each year not more than fifteen percent (15%) above the maximum assessment for the previous year without a vote of the membership
- (b) From and after January 1, 1995, the maximum annual assessment may be increased more than fifteen percent (15%) only by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken incident to a merger or consolidation, which the Association is authorized to participate in under its Articles of Incorporation
- (c) The Board of Trustees shall fix the annual assessment at an amount not in excess of the maximum.
- (d) Each lot which has been conveyed to an owner shall be assessed according to the schedule set forth above. For the purpose of assessment, the term "owner" shall exclude lots owned by Declarant, who shall pay no assessment unless it constructs a home on a lot and it is occupied for a permanent residence, provided that the Declarant or its assigns shall have the obligation to subsidize the Association until control of the Association as provided in Article III passes to lot owners. Subsidization shall be defined as "the payment of a reasonable fee to meet the needs of the Association for ordinary and necessary maintenance expenses upon the Common Areas, but which amount shall not include the payment of reserves for capital replacement." In no event shall the subsidy required of the Declarant hereunder exceed the monthly assessment that otherwise would be chargeable under this Section 3.

**Section 4. Special Assessments.** In addition to the annual assessments authorized above, the Association with approval of two-third (2/3) of each class of members may levy, in any assessment year, a special assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement, upon the Common Area, including fixtures and personal property related thereto and for such other purposes reasonably necessary to fulfill the intent of this Declaration.

**Section 5. Additional Assessments.** In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to Common Areas from the activities of the City of St. George in maintaining, repairing or replacing utility lines and facilities thereon, it being acknowledged that the ownership of utility lines, underground or otherwise is in the City up to and including the meters for individual lots, 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 called for the purpose of taking any action authorized under Sections 3, 4, or 5 shall be sent to all members not less than thirty (30) days, no more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty-six and two thirds percent (66-2/3%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting shall be called subject to the same notice requirement, and the required quorum of the subsequent meeting shall be one-half (1/2) 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. Rate of Assessment.** Annual, special and capital assessments shall be fixed at uniform rates for all lots and may be collected on a monthly basis.

**Section 8. Regular Assessments: Due Dates.** The Board of Trustees shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates for payment of said assessment shall be established by the Board of Trustees on either a quarterly or annual basis, or some combination thereof.

The Association shall, upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. Furthermore, a first mortgage holder, upon request, is entitled to a written certificate from the Association advising of any default by the Lot owner of any obligation not cured within sixty (60) days. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 9. Effect of Non-Payment of Assessments: Remedies of the Association.** Any assessments not paid within thirty (30) days after the due date, thereof shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lower rate as the Trustees shall determine appropriate) until paid. The Association shall have the remedies provided in the subsections below if payment is not made when due.

(a) **Remedies.** For delinquent assessments the Association shall be entitled to (1) bring an action at law against the owner, personally obligated to pay such delinquent assessment without waiving the lien or assessment or (2) foreclose the lien against the property in accordance with the laws of the State of Utah applicable to the exercise of powers of selling Deeds of Trust or to the foreclosure of mortgages, or in any other manner permitted by law, and/or (3) withhold, interrupt, or terminate any or all services performed by the Association in behalf of the delinquent member.

(b) Additional Remedies. In addition to the remedies stated above, Trustees may assess a late fee for each delinquent installment which shall not exceed twenty percent (20%) of the installment.

(c) Costs and Attorneys Fees. The costs and expenses of any judicial action, arbitration, sale or foreclosure, preparation of Notice of Lien, and any other costs and expenses directly or indirectly related to the delinquent payment, including reasonable attorneys fees, shall be an assessment charged to the Lot owner.

(d) Right to Bring Action. Each such owner, by his acceptance of a deed to a Lot, hereby expressly grants to the Association, its successors, assigns, or agents the right and power to bring all actions against such owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or trust deed lien on real property, and such owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other lot owners. The Association, acting on behalf of the lot owners, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage, sell and convey the same.

**Section 10. Non-use and Abandonment.** No owner may waive or escape personal liability for the assessments provided for herein, nor release the Lot owned by him from the liens and charges hereof, by non-use of any Common Area or abandonment of his Lot.

**Section 11. Subordination of the Lien to Mortgages.** The lien created hereunder upon any Lot shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any first mortgage (meaning a mortgage with first priority over other mortgages) or equivalent security interest on any Lot, made in good faith and for value, recorded prior to the date any such assessment becomes due. Any holder of a first mortgage lien or equivalent security interest on a Lot who comes into possession by virtue of foreclosure of a mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale will take said Lot and the improvements appurtenant thereto free of any claims for unpaid assessment charges against said Lot which accrue prior to the time such holder comes into possession of the Lot, except for the claims for a share of such expenses or charge resulting from a reallocation of such assessment or charges to all lots including the mortgaged Lot. Any first mortgagee, who obtains title to a lot in the development pursuant to the remedies in the mortgage/deed of trust or through foreclosure of the mortgage/deed of trust or any other security instrument, shall not be liable for more than six (6) months of the lot's unpaid dues or charges which have accrued before the acquisition of title to the lot by the mortgagee through foreclosure. However, no such sale or transfer shall relieve such Lot from liability for any assessments which thereafter become due or from the lien thereof.

**Section 12. Exempt Property.** The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) All Properties dedicated to and accepted by any local public authority;
- (b) The Common Area

## ARTICLE V SEPARATION WALLS

**Section 1. Separation Walls.** Declarant will construct block landscaping walls which border the development project and separate same from other developments and public right-of-ways. Such walls border the exterior lots of the project development. It is the intent of the Declarant that all such separation walls be maintained by the lot owner whose lot

is bordered by the wall and is therefore directly benefitted. Separation walls shall also include walls constructed by Declarant for the purpose of separating Common Areas from lots.

**Section 2. General Rules of Law to Apply.** To the extent not inconsistent with the provisions of this Article, general rules of law regarding separation walls and liability for property damage due to negligence or willful acts of omissions shall apply thereto.

**Section 3. Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a separation wall shall be borne by the owner whose lot is bordered by such wall. In the case where the wall divides property owned by a lot owner and by the Association, such costs of repair and maintenance shall be split equally between the lot owner and the Association.

**Section 4. Destruction by Fire or Other Casualty.** If a separation wall is destroyed or damaged by fire or other casualty, any owner or the Association who has used the wall may restore it, and if the other owners or the Association thereafter makes use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, except as to the right of any such owner or the Association to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

**Section 5. Weatherproofing.** Notwithstanding any other provision of this Article, an owner or the Association who by negligent or willful acts causes a separation wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 6. Right to Contribution Runs with Land.** The right of any owner or the Association to contribution from any other owner and/or the Association under this Article shall be appurtenant to the land and shall pass to such successors in title or assignees of the Association.

**Section 7. Arbitration.** In the event of any dispute arising concerning a separation wall each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

**Section 8. Applicability.** This article shall be applicable to walls built by Declarant for the purposes stated in section 1. This article shall not apply to yard walls and fences constructed by owners as provided in Article VI, Section 2(f).

## ARTICLE VI ARCHITECTURAL CONTROL AND LAND USE RESTRICTIONS

**Section 1. Architectural Control Committee.** The Board of Trustees of the Association shall appoint a three (3) member committee (hereinafter sometimes referred to as "ACC") the function of which shall be to insure that all exteriors of homes and landscaping within the property harmonize with existing surroundings and structures. The committee need not be composed of owners. If such a committee is not appointed, the board itself shall perform the duties required of the committee. The Declarant shall have the right to appoint members of the Architectural Control Committee until the happening of either of the following events, whichever occurs earlier: (1) When seventy-five percent (75%) of the lots owned in the project by the Declarant are sold, or (2) on December 31, 2000.

(a) **Submission to Committee.** No home, accessory or addition to a home, landscaping, or other improvement of a lot which is visible from the Common Areas shall be constructed, maintained, or accomplished, and no alteration, repainting or refurbishing of the exterior of any home shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Architectural Control Committee.

(b) **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 lots within the property conform to and harmonize with existing surroundings and structures. The board may formulate general guidelines and procedures. The adopted guidelines and procedures shall be incorporated in the book of rules and regulations adopted by the board and the Architectural Control Committee, or the board, as the case may be, shall act in accordance with such guidelines and procedures.

(c) 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.

(d) Construction Once begun, any improvements, construction, landscaping, or alterations approved by the committee shall be diligently pursued to completion. If reasonably necessary to enable such improvement, construction, landscaping or alteration, the person or persons carrying out the same shall be entitled to temporary use and occupancy of unimproved portions of the Common Area in the vicinity of the activity.

(e) Disclaimer of Liability. Neither the Architectural Control Committee, nor any member thereof acting in good faith, shall be liable to the Association or any owner for any damage, loss, or prejudice suffered or claimed on account of:

(1) The approval or rejection of, or the failure to approve or reject, any plans, drawings or specifications;

(2) The development or manner of development of any of the property; or

(3) Any engineering or other defect in approved plans and specifications.

(f) Non-Waiver The approval of the Architectural Control Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Architectural Control Committee to disapprove any similar plans and specifications subsequently submitted.

(g) Exception for Declarant. The foregoing provisions of this Article shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any lot or on any part of the Common Areas and which occurs at any time during the three (3) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Washington County, Utah. Declarant shall further have the right to designate the location and design of any common area amenities, however Declarant shall not be required to provide any such amenities by virtue of this Section.

## Section 2. Land Use Restrictions.

(a) Building Type: All lots shall be used only for single family residential purposes, and no professional or commercial use shall be made of the same, or any portion thereof, nor shall any resident's use of a lot endanger the health or disturb the reasonable enjoyment of any other owner or resident. The building or structure permitted to be erected, placed or permitted to be located on any lot within the project shall be a detached single family dwelling, with an enclosed private garage for not less than two (2) nor more than four (4) vehicles. The height of the garage door header shall be limited to the height of the roof line of the house and shall not in any event exceed ten (10) feet. No carport or other outdoor or partially enclosed parking facility shall be permitted. All construction shall be of new materials, except that used brick may be used as long as it conforms with the building and subdivision ordinances of the City of St. George. All structures shall be constructed in accordance with the zoning and building ordinances of St. George City. "Family" is defined to mean persons related by blood or marriage, by legal adoption, or by operation of law.

(b) Soils Test: The lot purchaser is encouraged to obtain a soils test and recommendation on foundation from a Utah registered soils engineer prior to

construction. The Architectural Control Committee may require that the lot owner obtain a soils test and recommendation on foundation prior to the final approval. Furthermore, the Architectural Control Committee may condition final approval following the recommendations set forth in the soils test document.

(c) Building Location: No building shall be located on any lot nearer to the front line than twenty-five (25) feet measured to the foundation of such building; nor nearer than ten (10) feet to the rear lot line; Side yards are to conform to existing ordinances of no less than ten (10) feet on one side and eight (8) feet on the other side. For the purpose on this covenant, eaves, steps and open porches shall not be considered as part of building of the purpose of determining such distances, provided, however, that this shall not be construed to permit any portion of a building, including such eaves, steps of open porches, to encroach upon another lot.

(d) Driveways: Driveways shall be constructed out of concrete or other approved hard materials approved by the Architectural Control Committee. Driveways consisting of cinders, sand, gravel, asphalt, or dirt shall not be permitted on any lot. There shall be sufficient driveway parking of not less than two (2) vehicles per lot.

(e) Easements: Easements for installation and maintenance of utilities, drainage facilities and ingress and egress are reserved as shown upon the recorded plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow or drainage channels in the easements or which may impede ingress and egress. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

(f) Yard Walls and Fences: Yard walls and/or fences shall be of brick or stone, shall substantially conform in style and construction to the entrance walls of the Project, shall be of a color which blends with the exterior of the structure on the lot, and shall be approved by the Architectural Control Committee. No chain link, wire, or wood fences will be permitted. The Architectural Control Committee will consider approval of aesthetically compatible fences or walls which are not more than six (6) feet in height, are located on the side lot line of a lot or on the perimeter on a patio or open porch and do not extend beyond the front or rear yard setback lines. Walls or fences are intended to enhance the privacy of the residents of such lot, and do not unreasonable interfere with the line of sight towards the view from any neighboring lot. Where a fence or wall is located along an interior property line separating two lots and there is a difference in grade of the two lots, the fence or wall may be erected or allowed only to the maximum height permitted from the grade of the lowest lot. Fences may not be bermed for the purpose of increasing allowable height.

General rules of law and written agreements shall apply to yard walls and fences in relation to maintenance, repair, and liability for negligent acts and omissions.

(g) Mailboxes: Mailboxes shall be shared by lot owners and shall be located on a common boundary line. The mailboxes shall conform to the style and construction as set forth in plans and specifications maintained at the Association office and shall be approved by the Architectural Control Committee. No pipe, wood, or small black posts are allowed.

(h) Temporary and Other Structures: No structure of a temporary nature; trailer, bus, house, tent, shack, garage, or other outbuilding shall be used at any time as a residence either temporarily or permanently. No old or second-hand structures

shall be moved onto any of said lots. It being the intention hereof that all dwellings and other buildings to be erected on said lots, or within the Project shall be new construction of good quality workmanship and materials.

(i) Site Review: Prior to the commencement of construction of any dwelling, garage, storage building, fence, wall, pool, or improvements on any lot of this Project, plot plans and/or construction drawings shall be submitted and approved by the Architectural Control Committee.

(j) Landscaping: Within three (3) months after the completion of the construction of any home upon the property, the homeowner must have substantially completed the landscaping of his lot, part or portion of the property, including landscaping of slopes and terraces. All property shall be landscaped appropriately with lawn, trees, shrubs, etc., and all landscaping shall be maintained at a reasonable standard compatible with other homes in the Project. Shrub and tree planting on corner lots shall be located so as not to create a hazard for the movement of vehicles along streets. No trees or shrubs shall be planted on any corner.

(k) Architectural Controls: No building shall be erected, placed, or altered on any lot until the construction plans and specifications and plans showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered on any lot nearer to any street than the minimum building setback line unless similarly approved.

(l) Residence/ Minimum Square Footage and Building Height: The minimum total square footage of living area on the first level above ground and located within the area of a foundation for any residential dwelling constructed on any lot within the project, exclusive of porches, balconies, patios, decks and garages, shall be not less than one thousand eight hundred (1,800) square feet. Where the home is two (2) story, then ground level of home must be one thousand four hundred (1,400) square feet and the entire home must be at least two thousand six hundred (2,600) square feet, exclusive of porches, balconies, patios, decks and garages. No home shall consist of more than two stories.

Building height shall be measured from the elevation of the lot to the highest point of the roofline of a home. Single-story homes shall not exceed twenty-five (25) feet in height. Two-story homes shall not exceed thirty-five (35) feet in height.

(m) Construction Materials: In order to promote a harmonious community development and protect the character of the neighborhood, the following guidelines are applicable to the property.

(1) Home style, design, alterations, and additions will conform to standards established by the Architectural Control Committee.

(2) Exterior construction materials will be limited to stone, veneer, brick, or brick veneer, stucco or other materials approved for use by the Architectural Control Committee, and shall be in colors and of materials indigenous to the area.

(3) Roofing materials will be limited to tile. No asphalt shingles, built up roofs, or wood shakes will be allowed. No mansard roofs will be allowed. Dome structures of any type will not be allowed.

(4) All air conditioning equipment, utility pipes, and utility equipment, shall be placed discreetly as possible and covered with landscaping or fence materials. Roof mount air conditioning equipment will not be allowed.

- (n) Maintenance of Lot During Construction/Fine: Contractors or subcontractors as owner/ builders must provide onsite dumpsters during construction and are required to clean up the site daily to maintain a clean worksite during construction. Dirt or mud from the construction site or elsewhere, dispersed, directly or indirectly, on the public streets within the project must be cleaned up within twenty-four (24) hours by the contractor or subcontractor as owner/builder. The Association may levy a Five Hundred Dollar (\$500) fine against a violator of this provision. The fine shall be a charge on the land and shall be a continuing lien on the lot as provided in Article IV.
- (o) Lateral and Subjacent Support and Drainage: An owner's activities which effect the lateral or subjacent support, or both, of adjacent landowners shall be responsible for damages proximately caused by such activities. Owners shall be responsible for all damage proximately caused by drainage from their lot(s) to adjacent landowners.

**Section 3. Time is of the Essence to Commence Construction.** After a lot is purchased time is of the essence to commence construction of a home thereon. Where an owner does not commence construction of a home within One Hundred Eighty (180) days of the purchase thereof, said owner shall install temporary landscaping consisting of low maintenance buffalo grass and a temporary sprinkling system and shall keep the lot free of debris and rubbish. The owner shall also pay the Association a maintenance fee for the lot in an amount to be determined from time to time by the Trustees. This maintenance assessment shall be a charge on the land and shall be a continuing lien on the lot as provided in Article IV.

**Section 4. Damages** Any damage inflicted on existing improvements such as curbs, gutters, streets, concrete sidewalks, by the owner or their guests, assigned, agents or independant contractors of any particular lot must be repaired as soon as possible after such damage is discovered, and expense of such repair shall be borne by the owner. Damages not repaired by the owner shall be on assessment to the lot as provided in Article IV

## ARTICLE VII OPERATION AND MAINTENANCE

**Section 1. Maintenance of Common Areas.** The Common Areas shall be maintained by the Association so as not to detract from the appearance of the property and so as not to affect adversely the value or use of any Lot

**Section 2. Maintenance of Entrance Island.** The Declarant shall construct an island within the public street at approximately the corner of Boulder Spring Road and River Road. The island shall include, by way of example and not of limitation, a fountain and landscaping. The Association shall maintain the island, including its fountain and landscaping, in a good and orderly manner. The island is not Common Area of the Project.

**Section 3. Maintenance of Right of Way.** The Declarant shall landscape the public right-of-way located between the west side of the Project and River Road, landscaping to include landscaping upon the public right-of-way. The Association shall maintain the landscaping in a good and orderly manner. The public right-of-way is not Common Area of the Project.

**Section 4. Maintenance By Owner.** Each owner shall be solely responsible for maintenance of his Lot and the exterior of his home. In the event any owner shall fail to perform this maintenance in a manner consistent with the terms of this Declaration, the Trustees shall have the right to have maintenance performed on the Lot and exterior of the home. The cost of such maintenance shall be added to and become part of the assessment to which such Lot is subject.

**Section 5. Utilities** The Association shall not pay for the monthly cable T.V. service, sewer, and garbage pick-up for each lot. Each lot owner shall pay for all utility

services which are separately billed or metered to individual lots by the City of St. George or other party furnishing such service.

**Section 6. Indemnification by Declarant.** The Declarant, by this instrument and recording of same, agrees to indemnify the Association against loss or damage arising or accruing on the Common Areas or to the Common Area property as a result of the construction activities of the Declarant or his agents.

**Section 7. Access at Reasonable Hours.** For the purpose solely of performing the maintenance required by this Article, the Association, to its duly authorized agents or employees, shall have the right, after reasonable notice to the owner, to enter upon any Lot at reasonable hours.

**Section 8. Management Agreements.** The Board may employ a manager or other persons who may contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association in relation to the Common Areas. Any contract with a personal firm appointed as a manager or managing agent shall be terminable by the Association for cause upon thirty (30) days written notice thereof. Any such contract, and any other contract with a third person, wherein the third person is to furnish goods or services for any Common Area or the Association shall be limited to a duration of one (1) year, provided, however, that contracts may be renewable for successive one (1) year periods with the approval of the majority of the Board.

## ARTICLE VIII EASEMENTS

**Section 1. Minor Encroachments.** Each Lot and the Common Area shall be subject to an easement for encroachment created by construction, repair, shifting, settling or movement, and overhangs as designed or constructed by the Declarant. A valid easement for said encroachment and for the maintenance of same, so long as it stands, shall and does exist.

**Section 2. Utilities Easement.** There is hereby granted and conveyed to the City of St. George, cable television companies, Mountain Fuel Supply Company, telephone companies, and other governmental or quasi-governmental entities, their successors and assigns, a blanket easement upon, across, over and under all of the said Common Areas for ingress, egress, installation, replacing, repairing and maintaining all utilities at such location or locations as deemed appropriate by the provider of the utility. By virtue of this easement, it shall be expressly permissible for the providing electrical, cable television and/or telephone company to construct and maintain the necessary equipment on said property and to affix and maintain electrical, cable television and/or telephone wires, circuits and conduits on, across and under the Common Area.

An easement is further granted to all police, fire protection, ambulance, trash collection and all similar persons to enter upon Common Areas in the performance of their duties. Should any company furnishing a service conveyed by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on said property without conflicting with the terms hereof.

**Section 3. Easements for Ingress and Egress.** An easement is hereby granted to the Association, its officers, agents, employees and to any management company selected by the Association to enter in or to cross over the Common Area and any Lot to perform the duties of maintenance and repair of the home, yard and landscape area, or Common Area provided for herein. The Declarant expressly reserves to itself, its successors and assigns, a perpetual easement and right, at their own risk, to cross the Common Area established or hereafter established on the Property by the Declarant, for the purpose of having access for ingress and egress to such other adjacent property upon which Declarant has or may create additional subdivisions.

**Section 4. Easement Agreement With St. George Irrigation Company.** The Owners shall be subject to a non-exclusive easement agreement to be executed by and between the Association and the St. George Irrigation Company ("Irrigation Company") in relation to the tract of land owned by the Irrigation Company as shown on the official plat map and any additions or amendments thereto

In such agreement the Irrigation Company shall grant to the Association an easement for the purpose of establishing and maintaining as Common Area a walkway and intermittent stream, including reasonable accessory uses related thereto.

It is expressly understood that the Irrigation Company shall have no duty to supply water to the intermittent stream. The Irrigation Company shall have the right of ingress and egress upon the easement granted in favor of the Association for the purpose of maintaining its irrigation pipeline located under the easement. The Irrigation Company shall be responsible for repair of all damage caused in the maintenance of its pipeline. It is expressly understood that the Association shall be responsible to maintain in good order and at its sole expense the walkway and intermittent stream, including reasonable accessory uses related thereto. The Association shall only be obligated to maintain the intermittent stream so long as there is water provided by the Irrigation Company in excess of its needs. The specific rights and duties of the parties are more fully contained in said agreement and the same is referred to as though fully incorporated in this Declaration. The agreement referred to herein shall be recorded on the records of the Washington County Recorder's Office.

## ARTICLE IX INSURANCE

**SECTION 1. INSURANCE ON LOTS AND HOMES.** THE ASSOCIATION SHALL HAVE NO DUTY OR RESPONSIBILITY TO PROCURE OR MAINTAIN ANY FIRE, LIABILITY, FLOOD, EARTHQUAKE OR SIMILAR CASUALTY COVERAGE FOR LOT OR HOME, OR FOR THE CONTENTS OF ANY HOME. THE ASSOCIATION ALSO SHALL HAVE NO DUTY TO INSURE AGAINST ANY NEGLIGENT ACTS OR EVENTS OCCURRING AT OR ON LOT OR IN THE HOME.

**Section 2. Assessments.** Funds for insurance to be maintained by the Association shall be provided for from annual assessments as allowed by Article IV.

**Section 3. Required Insurances.** The Association shall secure and at all times maintain the following insurance coverages.

(a) **Multi-peril Coverage.** A multi-peril type policy covering the Common Areas and facilities. Such policy shall provide coverage against loss or damage by the standard extended coverage endorsement, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, fire, earthquake, hailstorm, water damage, and such other risks as customarily are covered with respect to projects similar to this Project in its construction, location, and use. As a minimum, such policy shall provide coverage on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage specified in the policy, but not less than 100% of the full insurable value (based upon replacement cost). Such policy shall include an "agreed amount endorsement" or its equivalent, a "demolition endorsement" or its equivalent, an "increased cost of construction endorsement" or its equivalent, and a "contingent liability from operation of building laws endorsement" or its equivalent.

(b) **Broad-form Public Liability Coverage.** A comprehensive policy insuring the Owners, the Association, its trustees, officers, agents and employees against all damage or injury caused by their negligence to the public, invitees, tenants or Owners on the Common Area. Limits of the liability under such coverage shall not be less than \$1,000,000 for all claims for personal injury or property damage, or both, arising out of a single occurrence. Such policy or policies shall be issued on a comprehensive liability

basis, shall provide that cross-insurers as between themselves are not prejudiced, and shall contain "a severability of interest" clause or endorsement to preclude the insurer from denying the claim of an Owner in the development because of negligent acts of the Association or others.

(c) Fidelity Coverage A fidelity policy or policies to protect against dishonest acts on the part of a trustee(s), officer(s), manager, employee(s) of the Association and all others, including volunteers, who handle or are responsible for handling funds of the Association. The fidelity coverage shall name the Association as the obligee or insured and shall be written in an amount sufficient to offer the protection reasonably required, but in no event less than 100% of the reserves. The fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of employee or similar expression. Said policy shall also provide that it may not be canceled or substantially modified (including cancellation for non-payment of premiums) without at least thirty (30) days' prior written notice to all first mortgagees of Lots

Section 4. Additional Provisions The following additional provisions shall apply with respect to insurance:

(a) Approval of Policies All policies shall be written by a reputable company approved by the Board of Trustees

(b) Contribution Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual owners or their mortgagees

(c) Flood Insurance. In the event that some part of the Project is now or may in the future be classified by the Housing and Urban Development as an area having special flood hazards, a blanket policy of flood insurance on the flood areas shall be maintained in an amount customarily required in projects of this type to ensure against flood damage

(d) Premiums Maintained in the Name of the Association as Trustee. Premiums for all insurance coverage obtained by the Association shall be written in the name of the Association as trustee for each of the home owners.

(e) Review of Insurance Policies The Board of Trustees shall periodically, and whenever demand is made by twenty percent (20%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and actions of any mortgagee or any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board of Trustees shall be available for inspection by the Owners.

(f) Rebuilding After Damage or Destruction In the event of damage or destruction by fire or other casualty to any properties covered by insurance written in the name of the Association as trustee for the Owners, the Board of Trustees shall, upon receipt of insurance proceeds, contract to rebuild or repair such damage or destroyed portions of the Properties to as good a condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, whose accounts are insured by a federal governmental agency, with the proviso agreed to by said bank or institution that such funds may be withdrawn only by the signatures of at least two (2) members of the Board of Trustees. The Board of Trustees shall advertise for sealed bids with any licensed contractors. The contractors shall be required to provide a full performance and payment bond for the repair, construction, or rebuilding of destroyed property. In the event the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, or both, to the same condition as formerly, the Board of Trustees shall levy a special assessment against all Owners in such proportions as the Board of Trustees deems fair and equitable in light of the damage sustained.

## ARTICLE X ANNEXATION OF ADDITIONAL PROPERTIES

**Section 1. Annexation by Declarant.** Declarant reserves the right, at its sole discretion and without the consent of Class A members, to expand the Properties to include additional property more particularly described in Exhibit A attached hereto and incorporated herein for a period terminating December 31, 2000.

In the event the Declarant, within the time period set forth in this Article, files other plat(s) creating additional subdivisions in the aforescribed property under the name and style of "The Boulders" Phase \_\_\_, a subdivision, and states on said plat(s) the intention to have the property described on said plat subject to the terms, covenants and conditions of this Declaration, then, upon recording of said plat, the property described therein shall be subject to this Declaration. The terms, covenants and conditions contained herein run not only to, with and from the property described herein, but by this reference to said plat or plats, also to, with and from all adjoining additions thereto made pursuant to this Article.

**Section 2. Limitations on Annexation.** Developer's right to annex said land to the property shall be subject to the following limitations:

- (a) The annexed land must be a part of the land described on Exhibit A and attached hereto.
- (b) Any additional subdivision annexed hereto by the Declarant shall be comprised exclusively of lots for detached residential single-family dwellings. The Declarant shall have the sole discretion to develop the Common Area in said addition(s) and to include any facilities or amenities thereon that Declarant deems necessary.
- (c) If additional subdivisions are created by the Declarant pursuant to the terms of this Article, the lot owners in said addition(s) shall be members of the Association and shall have the same rights to the use and enjoyment of the property and facilities of the Association as any other member, either an owner in "The Boulders", PHASE 1 or otherwise. The Common Area in any such additional subdivision(s) as set forth therein shall be deeded by the Declarant to the Association, prior to the conveyance of the first Lot on said plat, and the Association must accept the deed to said Common Area.

## ARTICLE XI USE RESTRICTIONS

**Section 1. Residential Use.** No owner shall occupy or use his home, or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the owner and the owner's family or the owner's lessees or guests.

**Section 2. Fee Conveyed.** Each Lot shall be conveyed as a separately designated and legally described freehold estate, the owner taking title in fee simple, subject to the terms, conditions, and provisions hereof.

**Section 3. Uses Permitted by Declarant During Construction.** Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant on the building of said homes to maintain during the period of construction and sale of said homes, upon such portion of the premises as Declarant deems necessary, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of said homes, including, but without limitation, a business office, storage area, construction yard, signs, model homes and sales office.

**Section 4. Household Pets Permitted.** No animals, livestock or poultry of any kind may be raised, bred, or kept on any Lot or in the Common Area, except that dogs, cats or other household pets may be kept in homes, or upon any Lot, subject to the rules and

regulations adopted by the Board of Trustees. All dogs or cats, while not on a lot, shall be on a leash.

**Section 5. Obstruction of the Common Area.** There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior consent of the Board of Trustees.

**Section 6. Oil and Mining Operations.** No drilling, quarrying or mining operations of any kind shall be permitted upon or in any Lot or upon the Common Area.

**Section 7. Alteration of Common Area.** Nothing shall be altered or constructed, or removed from the Common Area, except with the written consent of the Board of Trustees.

**Section 8. Leases.** Any lease agreement between a home owner and a lessee shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, Articles of Incorporation of the Association, the Bylaws of said Association, and all rules enacted and published by the Board of Trustees, and that any failure by lessee to comply with the terms of such documents and rules shall be a default under the lease. Furthermore, all leases shall be in writing and a copy of each signed lease shall be left in the office of the Association by the homeowner.

**Section 9. Recreational Vehicles.** No recreational vehicles may be parked within the Common Areas or upon the driveways of each lot for longer than a forty-eight (48) hour period. In no event shall any recreational vehicle, camper, trailer, tent trailer, or mobile home be used for camping or for overnight accommodations by the lot owner or by the lot owner's guests in and on the Common Areas of the project or on the driveways of the homes.

**Section 10. Nuisances.** No noxious or offensive activities shall be carried on or upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the Project.

**Section 11. Violation Constitutes a Nuisance.** Any act or omission, whereby any restriction, condition, or covenant as set forth in this Declaration, if violated in whole or in part is declared to be and shall constitute a nuisance, and may be abated by the Declarant or affected property owners and such remedy shall be deemed to be cumulative and not exclusive.

**Section 12. Antennas.** No television, radio, satellite dishes, or other external antennas shall be erected, placed, or maintained upon any of the property, or in front of any building constructed thereon without the prior approval of the Architectural Control Committee and said Committee shall have the right to remove or cause removal of the antennas erected, placed, or maintained without said prior approval.

## ARTICLE XII GENERAL PROVISIONS

**Section 1. Enforcement.** The Association, or the Declarant or its successors in interest, or any owner, shall have the right to sue for damages, or to enforce by any proceeding injunctive or otherwise, at law or in equity, all restrictions, conditions, covenants, reservations, leases and charges now or hereafter imposed by the provisions of this Declaration, Bylaws or Articles of Incorporation. Specifically, the aggrieved party may seek to recover damages and for injunctive relief. Failure by the Association to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event any Covenant, Conditions or Restriction included herein is consistent or in conflict with restrictions set forth in the subdivision building, zoning or other ordinances of the City of St. George, the ordinances shall govern so long as the restrictions contained in the ordinances are more restrictive than the terms of this Declaration. However, where the terms of this Declaration are more restrictive than those contained in the ordinances of the City of St. George, owners shall be subject to the enforcement of the terms of this declaration.

**Section 2. Severability, Construction and Validity of Restrictions** All of said conditions, covenants and reservations contained in this Declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants or reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Declarant and lot owners, their successors, heirs and/or assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the fact that any article, section, subsection, paragraph, sentence, clause or phrase be declared invalid or inoperative or for any reason become unenforceable.

**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 Lot subject to this Declaration, their respective legal representative, heirs, successors, and assigns for a term of thirty (30) 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. Gender and Grammar**. The singular wherever used in this Declaration 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 5. Conflicts** In case of any conflict between this Declaration, as the same may be amended from time to time, and the Articles of Incorporation and the Bylaws of the Association, as they may be amended from time to time, the provisions of this Declaration shall be controlling.

#### ARTICLE XIII AMENDMENT

**Section 1. Declarant's Right to Amend**. Until all portions of "The Boulders" Phase I land are developed, or until the right to enlarge the project through the addition of tracts or subdivisions terminates, whichever event first occurs, Declarant shall have, and is hereby vested with, the right to unilaterally amend the Declaration and or the Plat as may be reasonably necessary or desirable: (i) to adjust the boundaries of the Lots; (ii) to more accurately express the intent of any provisions of the Restrictive Covenants and Declaration in the light of then existing circumstances or information; (iii) to better insure, in light of the existing circumstances or information, workability of the arrangement which is contemplated by the Restrictive Covenants; (iv) to facilitate the practical, technical, administrative or functional integration of any additional tract or subdivision into the Project; or to conform to the underwriting guidelines of major secondary market investors in order to facilitate the availability of financing.

**Section 2. Lot Owners Right to Amend** Subject to Section 1, this Declaration may be amended during the first twenty (20) year period by any instrument signed by not less than seventy percent (70%) of the lot owners, and thereafter, by an instrument signed by not less than sixty percent (60%) of the lot owners, which amendment shall be effective upon recordation in the Office of the Recorder of Washington County, State of Utah. Prior to any material amendment to this Declaration, written notice shall be sent to all holders of first mortgage liens, setting forth said amendment and advising them of the date that the members will vote on said amendment.

ARTICLE XIV  
INITIAL REGISTERED AGENT AND INITIAL REGISTERED OFFICE

The address of the initial registered office of the Association shall be 31 North 700 East #142, St. George, Utah 84770. The name of the registered agent at that address is Darcy Stewart.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this document on the day and year first above written

Declarant

SUN RIVER DEVELOPMENT, L.C.,

By: Darcy Stewart  
DARCY STEWART  
Its: MEMBER

STATE OF UTAH, )  
: ss.

County of Washington.

On the 14th day of September 1993, before me DARCY STEWART, signer of the within and foregoing instrument, who being by me duly sworn, did say that he is a Member of Sun River Development, L.C., and that said instrument was signed in behalf of said company by authority of its Operating Agreement

IN WITNESS WHEREOF, I have hereunto set my hand and seal this

14th day of September 1993.

Telina Bishop  
Notary Public  
Residing at: St. George, UT

My Commission Expires

April 17, 1996



Exhibit A

Parcel 1:

Beginning at a point North 89° 40' 55" East 2181.03 feet along the Section line and North 00° 00' 00" East 185.14 feet from the North 1/4 corner of Section 5, Township 43 South, Range 15 West of the Salt Lake Base and Meridian, said point being the Northeast corner of Lot 33 in the proposed "BOULDERS" Phase 1, and running thence North 77° 17' 24" East, 513.51 feet; Thence South 00° 12' 16" East 305.09 feet; Thence South 44° 40' 55" West 28.92 feet; Thence South 45° 19' 05" East 160.00 feet; Thence South 44° 40' 55" West 31.59 feet; Thence 45° 19' 05" East 199.12 feet; Thence South 40° 40' 55" West 300.00 feet; Thence South 00° 12' 16" East 191.49 feet; Thence South 89° 40' 55" West 352.08 feet; Thence North 36° 59' 05" West 627.63 feet; Thence North 53° 00' 55" East 125.00 feet; Thence South 36° 59' 05" East 49.05 feet to the point of curvature of a 200.00 foot radius curve, concave to the Northeast; Thence Southeasterly 59.22 feet along the arc of said curve through a central angle of 16° 57' 58"; Thence North 36° 02' 57" East 86.23 feet; Thence North 77° 17' 24" East 100.00 feet; Thence North 12° 42' 36" West 125.00 feet; Thence South 77° 17' 24" West 24.80 feet; Thence North 12° 42' 36" West 195.00 feet to the point of beginning. Contains 12.33 acres.

Parcel 2:

Beginning at a point North 89° 40' 55" East 2681.71 feet along the Section line and North 00° 00' 00" East 295.34 feet from the North 1/4 corner of Section 5, Township 43 South, Range 15 West, of the Salt Lake Base and Meridian, said point being the Northeast corner of lot 55 in the proposed "BOULDERS" Phase 3 and running thence North 59° 58' 44" East 263.80 feet; Thence North 51° 49' 07" East 699.07 feet; Thence North 08° 25' 56" East 231.09 feet to the center line of a proposed 80.00 foot wide road; Thence South 73° 47' 04" East 375.26 feet; Thence South 00° 53' 19" East 703.11 feet; Thence South 50° 36' 34" West 1526.20 feet; Thence North 00° 12' 16" West 169.70 feet; Thence North 44° 40' 55" East 300.00 feet; Thence North 45° 19' 05" West 199.12 feet; Thence North 44° 40' 55" East 31.59 feet; Thence North 45° 19' 05" West 160.00 feet; Thence North 41° 40' 55" East 28.92 feet; Thence North 00° 12' 16" West 305.09 feet to the point of beginning. Contains 23.93 acres.

Parcel 3:

Beginning at a point on the North line of Section 4, South 89° 28' 24" West 1295.27 feet from the North 1/4 corner of Section 4, Township 43 South, Range 15 West, of the Salt Lake Base and Meridian, said point being the Northeast corner of Sectional Lot 4 of said Section 4 and running thence South 00° 57' 50" East 1350.42 feet to the Southeast corner of said Sectional Lot 4; Thence South 89° 02' 52" West 1307.61 feet to the Southwest corner of said Sectional Lot 4; Thence North 00° 26' 33" West 651.26 feet along West line of said Section 4; Thence North 50° 22' 17" East 1123.89 feet to a point of the North line of said Section 4; Thence North 89° 28' 24" East 424.15 feet to the point of beginning. Contains 33.40 acres, more or less.