

**PROTECTIVE COVENANTS AND DECLARATION
OF BUILDING AND USE RESTRICTIONS
FOR
RED BUTTE ESTATES SUBDIVISION**

This protective Covenants and Declaration of Building and Use of Restrictions for Red Butte Estates Subdivision is made and executed in St. George, Washington County, Utah this 15th day of July 2003 by Mervin W. and Beverly B. Prince, Husband and Wife, hereinafter called "Declarants".

RECITALS

- A. Whereas, Declarants are the owners of the following described real property located in Washington County, State of Utah, and more particularly described as follows, to-wit:

Beginning at the Southeast corner of section 11, T38S, R13W, SLB&M and running thence S 89°51'09" W 1334.40 feet along the section line; thence N 00°33'06" W 2837.50 feet to the center section line; thence N 00°30'05" W 2635.69 feet to the section line; thence N 89°35'45" E 1352.42 feet along the section line to the northeast corner of said section 11; thence S 00°76'51" E 2642.49 feet along the section line to the East ¼ corner of said section 11; thence S 00°22'50" E 2636.57 feet along the section line to the point of beginning.

As subdivided, Red Butte Estates Subdivision recorded as Document No. 829679
in Book 1563 Page 1742

- B. WHEREAS, the above-described property has been legally subdivided; and
- C. WHEREAS, certain covenants and building and use restrictions must be established and observed to ensure harmonious relationships, protect property values, eliminate hazardous conditions, and preserve the natural beauty of the area.

NOW, THEREFORE, said Declarants hereby declare that all of the property described above is held and shall be held, conveyed, or encumbered, leased, rented, used, occupied, and improved subject to the following limitations, restrictions, and covenants, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the lands; and are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of the lands and every part thereof. The acceptance of any deed or conveyance thereof by the grantee or grantees therein, and their heirs, executors, administrators, successors, and assigns shall constitute their covenant and agreement with the undersigned and with each other to all other property owners within the above described property, to accept and hold the property described or conveyed in or by such deed or conveyance, subject to said covenants and restrictions, as follows, to-wit:

ARTICLE I

GENERAL RESTRICTIONS

1. ARCHITECTURAL CONTROL. No structure, fence, or wall shall be erected, altered, placed, or shall be permitted to remain on any lot without prior written approval of plans and specifications by the Architectural Control Committee of the subdivision. Said plans and specifications shall show the location of the structure on the lot, materials to be used, external design, and location with respect to topography and finish grade elevation. No fence, wall, swimming pool, or other structure shall be erected, placed, renovated, remodeled or altered in anyway on any lot without prior written approval of the Architectural Control Committee.

2. DWELLING SIZE. No single-family unit shall be less than eighteen hundred (1800) square feet in size on the main level, exclusive of garages or carports. All dwellings shall have a private garage or carport sufficient to park at least one (1) car. In the case of a multilevel home (basement not included), an exception to this requirement shall be made in which the second level is equal to or exceeds the minimal allowed square footage of the main level, which in such situations shall not be less than twelve hundred fifty (1250) square feet. No modular, pre-constructed or mobile structure shall be erected on any property at any time.

3. OUTBUILDINGS AND BARN. The barn shall be constructed out of similar materials and conform to the same general color scheme and design as the exterior features of the primary dwelling on the same lot.

Construction of auxiliary buildings shall be permitted. Any auxiliary building shall be defined to include a shop, garage, or storage building, or any combination of the same. An auxiliary building must be the same general construction, color, and design as the primary dwelling on the lot.

Outbuildings other than a barn or auxiliary building are permitted, subject to the following limitations: Outbuildings shall be the same general color scheme and design as the exterior features of the primary dwelling on the lot.

4. BUILDING LOCATION. No structure shall be located on any lot nearer to the front line than thirty (30) feet therefrom, measured to the foundation of such structure; or nearer than thirty (30) feet to the rear property lot line; nor nearer than thirty (30) feet to the side lot line. For the purpose of this covenant, eaves, steps, and open porches shall not be considered as part of a building for the purpose of determining such distances.

5. 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 of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements or which may impede ingress and egress.

The easement area of such 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 for utility company is responsible.

An easement is further granted for all police, fire protection, ambulance, trash collection, maintenance or service crews and all similar persons to enter upon the streets or property in performance of their duties.

6. NUISANCES. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No automobiles, trailers, boats, or other vehicles are to be stored on streets or front or side lots unless they are in running condition, properly licensed and registered, and being regularly used, and in any event for no more than seventy two (72) consecutive hours.

7. TEMPORARY AND OTHER STRUCTURES. No structures of temporary nature, including but not limited to trailer, bus, motor home, basement house, tent, shack, garage, barn or other outbuilding shall be used at any time as a residence, either temporarily or permanently, nor shall said structures 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 said subdivision, shall be new construction of good quality workmanship and materials, subject to the following exceptions:

A temporary dwelling such as a motor home or travel trailer may be placed on the property and utilized by the owner as a temporary residence during construction of the permanent residence, conditioned upon the following: The Architectural Control Committee shall have sole discretion in granting such right and size; and further, subject to the restrictions that such temporary residence must have a self-contained septic unit or to be hooked to a legal and approved in-ground septic disposal system, shall not exceed thirty-five (35) feet in length, and shall not remain on the lot where the residence is under construction or upon any adjacent lot for a period in excess of one (1) year and shall be removed from the lot with thirty (30) days after completion of construction of the permanent residence or the requirements for home completion as set forth in Article 1, Section 8 below, whichever first occurs. The Architectural Control Committee upon good cause shown, may extend the time that a temporary dwelling may be placed upon a lot, but in no event shall such time extension exceed an additional nine (9) months. No such temporary residence shall be moved onto any lot until express written permission has been obtained from the Architectural Control Committee.

8. HOME COMPLETION. All construction of dwellings as herein provided shall be constructed upon a permanent concrete foundation. Once construction has begun, all improvements, construction, landscaping or alterations approved by the Committee shall be diligently pursued to completion. All buildings and structures must have prior approval for construction by the Architectural Control Committee and in accordance with the requirements of Washington County and shall be completed no later than one (1) year subsequent to the commencement of said construction. In the event a building or structures fails to be completed consistent with this Section, the North Valley Ranches Water Company may, at the recommendation of the Architectural Control Committee, after sixty (60) days written notice to

the owners, enter onto the property where buildings and structures are in violation, dismantle or destroy structure and proceed to complete all reasonable and necessary improvements, the cost of which shall attach as a valid lien against said property in favor of the Company and shall be subject to collection and enforcement as hereafter provided.

9. CONSTRUCTION OF WALLS AND FENCES. All fences and walls shall be constructed of material, which will enhance the appearance of the landscape. Barbed wire fences or barricades are not permitted except on perimeter fences where it may be used as (2) strands, (6) inches apart above a (4) foot net wire fence. The use of other types of materials for fencing and walls, such as pipe, lodge pole, cement, or cinder block used for decorative fencing, backyards or corrals is subject to final approval by the Architectural Control Committee prior to installation.

10. WALLS, FENCES, AND HEDGES. All walls and fences shall be kept in good repair, and no fence, wall or hedge shall exceed an overall height as measured from the top of the footing or grade, whichever is higher, to the top of the fence, wall, or hedge in excess of six (6) feet. No walls, fences or hedges may exceed an overall height of four (4) feet across frontage or setback areas. All fences or walls on lots with drainage or water flow must not hinder or alter the natural flow or drainage.

11. DUMPING AND TRASH. To protect and preserve the overall appearance of the development, no lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, rubbish, or other waste shall not be kept excepting sanitary containers. All incinerators or other equipment, if authorized under law for the storage or disposal of such material, shall be kept in a clean and sanitary condition stored in rear of residence.

Each lot and its abutting street are to be kept free of trash, weeds, and other refuse by the lot owner. No unsightly material or other objects are to be stored on any lot in view of the general public.

12. SIGNS. No sign of any kind shall be displayed to the public view on any lot except (a) one (1) sign of not more than five (5) square feet in size advertising the property for sale or rent; or (b) signs used by the builder or developer to advertise the property during the construction and sales period of not more than five (5) square feet in size. Any other sign for any other purpose must be approved by the Architectural Control Committee prior to its erection. This provision shall not prohibit the developer from placing a large sign near the development to be used in marketing the entire subdivision.

13. DIVISION OF LOTS. No lot in this subdivision shall be divided, subdivided, partitioned, parceled, or broken up into smaller lots or units.

14. SIGHT DISTANCE AT INTERSECTIONS AND CORNERS. No fence, wall, hedge, or shrub planting shall be placed or permitted on any lot at street corners or curves within a (50) feet by (50) feet triangular area formed by the front and side lines of such lot which obstructs sight lines greater than two (2) feet above the public roadways. Sight lines are subject

to final approval by the Architectural Control Committee prior to installation. No tree or shrub shall be permitted to remain within such distances of such intersections or obstructions of such sight lines.

15. FIRE HAZARDS. No open fires shall be allowed without a fire permit. Accumulations of dry underbrush or any other combustible materials will not be allowed. Spark arrestors shall be installed on all chimneys or fireplaces or any other device designated to contain a fire.

16. INOPERABLE MOTOR VEHICLES. Motor vehicles that are inoperable shall not be permitted to accumulate upon any lot or road areas, adjacent thereto. In the event an inoperable motor vehicle remains upon any lot or road area for a period exceeding fifteen (15) days the North Valley Ranch Water Company, which company shall be the agency responsible for enforcement of these covenants and restrictions, may, pursuant to the recommendation of the Architectural Control Committee, remove inoperable motor vehicles after five (5) days' written notice. The cost of such removal shall attach as a valid lien on the property associated with the vehicle in favor of the Company upon the recording of proper notice. For the purposes of this Section, inoperable motor vehicle shall mean any motor vehicle that is unable to be operated in a normal manner upon the streets under its own power, or is unlicensed or unregenerate. So as to protect and preserve the appearance of the area farm equipment, recreational vehicles, and yard care equipment must be stored to the rear of the residence.

17. MOBILE HOMES. Subject to the provisions of Article 1, Section 7, herein, mobile homes shall not be placed upon any lot in the subdivision as a permanent, temporary, or guest house residence. For the purposes of this Section, mobile home is defined as a residential dwelling unit designed for transportation on streets or highways on its own wheels or on flatbed or other trailers, and arriving at the site where it is to be occupied as a dwelling complete and ready for occupancy except for minor and incidental unpacking and assembly operations, location on jacks, or other temporary or permanent foundations, reconnections to utilities, and the like.

18. HAZARDOUS OR TOXIC WASTES. No bulk storage of hazardous materials, hazardous wastes, hazardous substances, or toxic substances or any toxin regulated by any federal or state statute or regulation may be stored upon any lot within the subdivision; but not by way of limitation, including garage, barn or outbuilding.

19. LANDSCAPING. Within one (1) year of completion of the construction of any structure upon the property, the lot owner must have substantially completed the front landscaping of his lot. All property in front of the dwelling 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 subdivision. 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 where there is an intersection with a public road. All landscaping must be approved by the Architectural Control Committee.

20. WATER.

- A. All use of water from the North Valley Ranches Water Company shall be metered, except that used for fire protection. Meters to be supplied, installed, and maintained at lot owners expense by qualified person or persons approved by North Valley Ranches Water Company.
- B. North Valley Ranches Water Company's obligation for operation and maintenance of service shall terminate at the property side of the shutoff valve. The lot owner shall be responsible for maintenance of the service lateral from property side of shut-off valve to the structure receiving water service.
- C. The water system operates by electrical pump. Payment of electrical (pump bill) expenses will be determined by individual metered percent of total.
- D. Repairs and maintenance expenses of the water system will be shared equally by number of lots connected to the system and shall be billed monthly.
- E. Landlords of Lessors shall be held primarily liable for all assessments. The legal owner of any rented or leased property served by the water system shall beheld primarily responsible for payment of charges both electrical (pump bill) and/ or repairs and maintenance.

ARTICLE II

LAND USE

1. 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 any lot. No derrick or other structure designed or used in boring for oil or natural gas shall be erected, maintained, or permitted upon any lot.

ARTICLE III

GENERAL PROVISIONS

1. DURATION OF RESTRICTIONS. All of the conditions, covenants, and reservations set forth in this Declaration shall continue and remain in full force and effect at all times against said property and the owners thereof, subject to the right of change or modification provided for in this Article, until twenty-five (25) years, and shall as then in force be continued for a further period of twenty (20) years and thereafter for successive periods of twenty (20) years each without limitation, unless a written agreement is executed by the then recorded owners of more than three-fourths (3/4) of the owners of Red Butte Estates Subdivision, with one

vote per lot and not owner. (The first name on the deed will be considered the owner). If any of said conditions or covenants are changed, modified, or extinguished in whole or in part as to all or any part of the property originally subject thereto, in the manner and to the extent therein provided they shall be placed on record in the office of the Recorder of Washington County, Utah by the terms of written agreement and shall continue in force thereafter for successive periods of twenty (20) years unless and until further changed, modified, or extinguished in the manner therein provided, by mutual written agreement with not less than seventy-five percent (75%) of the then owners of recorded title of said property (including the mortgagees under record mortgages and the trustees under recorded deed of trust) with one (1) vote per lot and not per lot owner, duly executed and placed on record in the office of the recorder of Washington County, Utah.

2. ENFORCEMENT. Each and all of said conditions, covenants and reservations is and are for the benefit of each owner (or any interest therein) of said property, and they and each thereof shall inure to and pass with each and every parcel of said property and shall apply to and bind the respective successors in interest of said Declarants. Each transfer of any interest in any parcel shall include reference to these CC&R's. Each grantee of the Declarants of any part or portion of said property by acceptance of deed incorporating the substance of this Declaration, either by setting it forth or by reference therein, accepts the same subject to all of such restrictions, conditions, covenants, and reservations. As to each lot owner, the said restrictions, conditions, and covenants of equitable servitude, and the breach shall affect or impair the lien of any bona fide mortgage or deed of trust, which shall have been given in good faith and for value; provided, however that any subsequent owner of said property shall be bound by the said conditions and covenants, whether obtained by foreclosure or at a trustee's sale or otherwise. Notwithstanding any provision contained within this Declaration to the contrary, the decision of whether or not North Valley Ranches Water Company would take enforcement action against any lot owner with respect to the violation of any covenant, condition, or restriction contained herein, shall be at the sole discretion of the then current Board of North Valley Ranches Water Company.

3. LIEN RIGHTS FOR DELINQUENT ASSESSMENTS AND PAYMENTS AND RIGHTS TO FORECLOSE THE SAME AS HEREAFTER SET FORTH.

- A) For any delinquent water assessment or payment, the North Valley Ranch Water Company shall be entitled to all or any combination of the following remedies against a lot owner in the subdivision whose payment is delinquent.
1. Fill a notice of lien on the lot;
 2. Bring an action at law against the owner personally obligated to pay for the following:
 - a. The principal amount of the delinquent payment.
 - b. Interest from the date of delinquency at the rate of eighteen percent (18%) per annum, or such other rate as

the Board may establish from time to time; and all court costs and attorney fees.

3. Foreclose the lien against the lot to satisfy judgment rendered for the full amount of the delinquent payment including interest, costs, and attorney fees as specified above.
4. Levy as an additional sum to such delinquent payment, all expenses for preparation of the notice of lien (whether or not prepared by an attorney), court costs, interest and a reasonable attorney fee.
5. Withhold and interrupt the service of water to any such lot owner on which the payment is delinquent.

B) Each lot owner, by his acceptance of a deed to a lot, hereby expressly grants to North Valley Ranch Water Company, its successors, assigns, or agents, the right and power to bring all action 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 North Valley Ranch Water Company in a like manner as a mortgage or deed or trust lien on real property and such owner hereby expressly grants to North Valley Ranch Water Company a power of sale in connection with said lien. The lien provided for in this Section shall be in favor of North Valley Ranch Water Company, acting on behalf of the lot owners, which have the power to bid of an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

4. ARCHITECTURAL CONTROL COMMITTEE. The Architectural Control Committee, which is vested with the powers described herein, shall consist of three (3) persons appointed by the Declarants. No property owner shall apply for a building permit from Washington County without having first obtained written approval from the Architectural Control Committee. Prior to the commencement of any excavations, construction, remodeling, or adding to any existing completed structure, there shall first be filed with the Architectural Control Committee two (2) complete sets of building plans and specifications therefor; together with a block or plot plan indicating the exact part of the building site the improvements will cover. Work shall not commence unless the Architectural Control Committee shall endorse said plans as being in compliance with these covenants and are otherwise approved by the Committee. In the event said Architectural Control Committee fails to approve or disapprove in writing said plans within thirty (30) days after their submission, then said approval shall not be required. When seventy-five percent (75%) of the lots in the subdivision have been sold by Declarants, said plans and specifications shall be approved by an Architectural Control Committee elected by a majority vote of the owners of lots in the subdivision, and only owners of said lots shall be privileged to vote for said Architectural Control Committee members. The Declarants shall have the right to appoint members of the Architectural Control Committee until such time as seventy-five percent (75%) of the lots in the subdivision have been sold by the Declarants. By way of example and not by way of limitation, the following matters among

others, must be approved by the Architectural Control Committee before such uses will be permitted in the subdivision: use of antennae, which have the capability of interfering with radio and television signals received by others; use of solar devices; use of exterior lighting, which may be offensive to neighbors; use of any structure, which would tend to bloc the view of others in the normal use of their property; permissible paint colors to be used on the structures in the subdivision; location of individual water wells and overhead power lines.

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

- A. The approval or rejection of or the failure to approve or reject any plans, drawings, or specifications;
- B. The development or manner of development of any of the property; or
- C. Any engineering or other defect in approved plans and specifications.

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.

5. UTILITIES. Each lot owner shall pay for all utility services which are separately billed or metered to individual lots, including water, sewer, garbage, electrical, and telephone service, natural gas, cable or as otherwise furnished.

6. MANAGEMENT AGREEMENT. The water companies servicing this subdivision may employ from time to time 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 their respective companies. The costs associated with this service will be determined by individual metered percent of total.

7. DAMAGE. Any damage caused to the services being provided to an owner by an owner, his tenant, guest, invitee, minor child, or any animal or pet under the control of the owner or any combination of the foregoing shall create an assessable debt owned by such owner. If the owner does not actually repair the damage the same may be repaired by the water company incurring such damage and the cost incurred in repairing the damage shall be added to and become a charge and if not paid within thirty (30) days of notice shall be subject to collection and the remedies of Article III, Section 3. Any repair work of damage undertaken by the owner or agent of the owner pursuant to this section must first be approved by the appropriate service representative for that service being repaired.

Any damage inflicted on existing improvements such as curb, gutter, street, etc. by the purchaser or owner, and/or his agent, representative, employee or contractor of any particular lot, must be repaired or the expense of such repair must be borne by the purchaser or owner at his own expense. This also includes any damage to existing landscape. Any payment not made for

such damages within thirty (30) days of notice shall be delinquent and subject to collection and the remedies of Article III, Section 3.

8. VIOLATION CONSTITUTES NUISANCE. Every act or omission, whereby any restriction, condition or covenant in this Declaration set forth, if violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by Declarants or their successors in interest and/or by any lot owner of Red Butte Estate Subdivision and such remedy shall be deemed cumulative and not be exclusive.

9. 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 Declarants and grantee, 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 becomes unenforceable.

10. RIGHT TO ENFORCE. The provisions contained in this Declaration shall bind and inure to the benefits of and be enforceable by Declarants, by the owner or owners of any portion of said property, their, and each of their legal representatives, heirs, successors, and assigns, and the Red Butte Estates Subdivision property owners, and failure by Declarants, or property owners, to enforce any of said restrictions, conditions, covenants, or reservations shall in no event be deemed a waiver of the right to do so thereafter.

11. NORTH VALLEY RANCH WATER COMPANY. All matters, including enforcement of these covenants and restrictions, will be managed, maintained, enforced, and otherwise taken care of by the North Valley Ranch Water Company, of which all lot owners in the subdivision will be members. The owners of all property in said subdivision shall be entitled to all the rights and privileges and members of said company, and subject to all assessments and further obligations imposed upon the members by said Company.

12. COMPLIANCE WITH LAWS. In addition to compliance with all the terms and conditions of these covenants and restrictions, the property owners of this subdivision shall be subject to and shall comply with the rules, regulations, and laws passed or otherwise placed into effect by Washington County, State of Utah, and all governmental agencies, which have jurisdiction over the properties affected by this subdivision.

13. WATER RIGHTS. Each lot has been allocated two (2) acre feet of water. Water cannot be transferred from subdivision. However, an owner may lease or rent unused portion of his 2 acre feet to other owners in Red Butte Estates subdivision. Upon change of ownership, water lease shall terminate. Additional personal wells may be drilled at owners' expense, only on

his property, and per regulations of county and Utah division of water rights. However any additional water cannot be placed in the existing system except by North Valley Ranches Water Company, which if done will be subject to all regulations set forth in these covenants.

14. ASSIGNMENT OF POWERS. Any and all rights and powers of the Declarants herein contained may be delegated, transferred, or assigned. Wherever the term "Declarants" is used herein, it includes assigns or successors in interest of the Declarants.

IN WITNESS WHEREOF, Declarants have executed this Declaration on the day and year first written above.

DECLARANTS

Mervin W. Prince
Beverly B. Prince

By: *Mervin W. Prince*
By: *Beverly B. Prince*

State of Utah

County of Washington

On the 27th day of August 2003, personally appeared before me Mervin W. Prince and Beverly B. Prince, who, being by me duly sworn, did say that they are the Declarants of said instrument.

Caroline Blunck

