

## SUNBROOK ESTATES

### DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by SUNBROOK DEVELOPMENT, LTD., a Utah limited partnership, its successors and assigns, (hereinafter referred to as "Declarant"),

#### WITNESSETH:

WHEREAS, Declarant is the owner of certain real property known as SUNBROOK ESTATES, a portion of which (River's Edge at Sunbrook) is more particularly described in Exhibit A attached hereto and by this reference made a part hereof and any lands hereafter annexed hereto (hereinafter referred to as "Sunbrook");

WHEREAS, The Declaration of Covenants and Restrictions for Sunbrook Estates (hereinafter referred to as the "Declaration") contemplates and provides for the annexation of additional property to the Sunbrook Declaration; and

WHEREAS, Declarant has established a land use plan for Sunbrook and desires to provide for the preservation of the values and amenities hereby established and to this end does hereby subject the real property described in Exhibit A to the land use covenants, restrictions, easements, reservations, regulations, burdens, and liens hereinafter set forth; and

WHEREAS, Declarant has deemed it desirable for the maintenance and preservation of the values and amenities established as aforesaid to establish the SUNBROOK ESTATES PROPERTY OWNERS ASSOCIATION, INC., a Utah corporation not for profit (hereinafter referred to as the "Property Owners Association"), and to delegate and assign certain powers and duties of ownership, operation, administration, maintenance, and repair of certain property within the Sunbrook project, the enforcement of the covenants, conditions, restrictions, and easements contained herein and the collection and disbursement of the assessments and charges hereinafter provided to the Property Owners Association.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, Declarant hereby declares that Sunbrook, to the extent now committed to this Declaration, shall be owned, held, used, transferred, sold, conveyed, demised, and occupied subject to the covenants, conditions, restrictions, easements, reservations, regulations, burdens, and liens hereinafter set forth.

#### 1. DEFINITIONS

As used herein, the following terms have the indicated meanings:

1.1 "Lot Owner" shall mean and refer to the fee simple title holders of a Lot within Sunbrook.

1.2 "Lot" shall mean a parcel held in fee simple title, as shown on and included within the Plats of Sunbrook, now or hereafter filed for record by Declarant with the Washington County Recorder

1.3 "Declaration" shall mean this Declaration of Covenants and Restrictions for Sunbrook.

1.4 "Property Owners Association" shall mean the Sunbrook Estates Property Owners Association, Inc.

## 2. PROPERTY RIGHTS.

2.1 Lot Owners Easements. Every Lot Owner shall be a member of the Property Owners Association and shall have a right and easement of enjoyment in and to the Common Property and shall have a permanent and perpetual right and easement of enjoyment in and to the property subject to this Declaration, which shall be appurtenant to and shall pass with the title to every Lot within Sunbrook, subject to all of the following:

2.1.1 All provisions of this Declaration, any plat of all or any part of parts of Sunbrook, the Articles of Incorporation and the By-Laws of the Property Owners Association;

2.1.2 Rules and regulations adopted by the Property Owners Association governing the use and enjoyment of that portion of the Common Property not intended to be a part of any Lot;

2.1.3 The right of the Property Owners Association to promulgate rules and regulations concerning Sunbrook;

2.1.4 The rights of the Property Owners Association to levy assessments against each Lot Owner for the maintenance, protection, and preservation of Sunbrook in compliance with this Declaration;

2.1.5 Easements, both recorded and unrecorded, for public and/or private utilities.

2.2 Delegation Of Use. A Lot Owner may delegate, in accordance with this Declaration, the Articles of Incorporation and By-Laws of the Property Owners Association, his right to use of the Common Property to the members of his family, his tenants, or contract purchasers who reside on his Lot.

2.3 Permitted Uses. Property in Sunbrook shall be restricted to the following uses:

2.3.1 All Lots shall be used only for single family residential purposes and no professional, business 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, provided, however, that the Lot restrictions contained in this section shall not be construed in such a manner as to prohibit an Owner or resident from (a) maintaining his personal, professional library therein; (b) keeping his personal business or professional records or accounts therein; or (c) handling



his personal business or professional telephone calls or correspondence therefrom. Lot sizes as described on the recorded plat of any subdivision in Sunbrook are considered minimum lot sizes, and unless specified in the Architectural Guidelines for that subdivision, no person shall further subdivide any Lot other than as shown on the recorded plat of said subdivision.

2.3.2 The Common Property, now and forever, shall be restricted hereby such that it shall be maintained as open space for the use and benefit of the Lot Owners, and to the extent necessary for their benefit, the Lot Owners of Sunbrook, including easements and rights of way for the construction, operation, and maintenance of utility services, both public and private, and drainage facilities, and also for common access, ingress and egress, and shall not be used for any commercial or industrial use except as herein described.

### 3. MEMBERSHIP AND VOTING RIGHTS IN THE PROPERTY OWNERS ASSOCIATION.

3.1 Membership. Every person or entity who is, a record owner of a fee or undivided fee interest in any Lot, which is subject to assessment by the Property Owners Association, including contract sellers and Declarant, shall be a member of the Property Owners Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Property Owners Association. Change of membership shall be established by recording in the Official Records of Washington County, Utah, a deed or other instrument establishing record fee title to such Lot and by the delivery to the Property Owners Association of a certified copy of such instrument. The owner designated by such instrument or such certificate thus becomes a member of the Property Owners Association, and the membership of the prior owner shall be terminated. In the event that certified copy of said instrument or such certificate is not delivered to the Property Owners Association, said Lot Owner shall become a member, but shall not be entitled to voting privileges. The foregoing shall not, however, limit this Property Owners Association's powers or privileges.

### 4. COVENANT FOR MAINTENANCE.

4.1 The Property Owners Association shall not repair or maintain the Lot Owners property; provided, however, the Property Owners Association hereby reserves the right to care for vacant and unimproved and unkempt improved Lots within Sunbrook, to remove and destroy tall grass, undergrowth, weeds and rubbish there from, and any unsightly and obnoxious things there from, and to do any other things and perform any labor necessary or desirable in the judgement of the Board of Directors of the Property Owners Association to keep the Lot(s) and Sunbrook neat and in good order, and to charge the same against the Owner of said Lot or Lots. Any and all such costs that exceed the annual paid assessment fees, shall be charged as a lien on the Lot or Lots which may be foreclosed and shall include the Property Owners Association's attorney fees and other costs in connection with said foreclosure.

4.2 The area between the curb and the sidewalk (within the public right-of-way) on any public street shall be planted with grass and a sprinkler system installed to irrigate the same by the Lot Owner. It shall be the responsibility of each Lot Owner to maintain that property between Lot Owner's front property line and the street curbing.

5. COVENANT FOR MAINTENANCE ASSESSMENTS.

5.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned in a recorded subdivision within Sunbrook, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Property Owners Association: (1) annual assessments or charges and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. The lien described herein arises by the Lot Owner's acceptance of the deed to the Lot and shall be deemed to relate back to the time of the filing of this Declaration. The lien rights described herein shall therefore constitute a valid pre-existing lien and the Lot Owner shall take title to the Lot subject to said lien, except where otherwise provided in this Declaration. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

5.2 Purpose of Assessment. The assessments levied by the Property Owners Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of Rivers Edge Lane, including "BUT NOT LIMITED TO" cable TV (if renewed), weed control, filing fees & dues, taxes, insurance and any other common administration expenses approved by the Board of Directors. At no time, shall the Board of Directors enter into or sign any contract or purchase agreement in excess of \$1000.00 without **A vote** and majority approval (66%) of the entire Homeowners Association themselves.

5.3 Declarant's Assessment Guaranty. The Declarant guarantees to initial purchasers of Lots that the monthly assessments due from such initial purchasers of Lots for items of common expenses of the Property Owners Association will not exceed the amount therefore reflected in the initial budget for the Property Owners Association which is provided to such purchasers by the Declarant during the first calendar year after the conveyance of the first Lot by the Declarant. This guaranty shall only be in force until the earlier of (1) the date upon which the Board of Directors of the Property Owners



Association are elected by Lot Owners other than the Declarant or (2) such earlier date as Declarant elects to terminate this guaranty and pay his proportional share of assessments for common expenses of the Property Owners Association based upon the number of Lots owned by Declarant. During the period of time this guaranty is in force and effect the Declarant, as Owner of such Lots as are owned by him, shall be relieved from the obligation of paying his pro rata share of assessments for common expenses of the Property Owners Association, but instead shall be obligated to pay to, or for the benefit of, the Property Owners Association all sums in excess of sums due from all Lot Owners other than the Declarant which are necessary to pay the actual expenses of the Property Owners Association.

5.4 Notice and Quorum for Any Action Authorized under Section 5.3. Written notice of any meeting called for the purpose of taking any action authorized under Section 5.3 shall be sent to all members not less than twenty (20) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at 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.

5.5 Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, subject to the rights of the Declarant as stated in Section 5.3 of this Article 5.

5.6 Date of Commencement of Annual Assessments: Due Dates. The assessments provided for herein shall commence as to all Lots on the first day of the month following conveyance of each such Lot to the purchaser thereof. The first annual assessment shall be adjusted according to the number of months remaining in the Association's fiscal year. The Board of Directors of the Property Owners Association shall fix the amounts 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 Lot Owner subject thereto. The due dates shall be established by the Board of Directors. The assessments, at the election of the Property Owners Association, may be collected on an annual, semi-annual, quarterly or monthly basis. The Property Owners Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an Officer of the Property Owners Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Property Owners Association as to the status of the assessments on a Lot is binding upon the Property Owners Associations as of the date of its issuance. The Property Owners Association may delegate to a mortgage company, financial institution, or a management company the duty of collection of assessments.

5.7 Effect of Non-Payment of Assessment: Remedies of the Property Owners Association. If any assessment is not paid within fifteen (15) days after the due date, a late fee of Twenty-Five Dollars (\$25.00) shall be charged. Any assessment not paid within thirty (30) days of the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum. The Property Owners Association may, at its election, bring an action at law against the Lot Owner personally obligated to pay the same and/or foreclose the lien against the subject Lot. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Property, Limited Common Property, or abandonment of his Lot.

5.8 Subordination of the Lien to Mortgages. The lien of the assessments for which provision is herein made, as well as in any other Article in this Declaration, shall be subordinate to the lien of any first mortgage of record which is perfected by recording prior to the sale or transfer of such Lot by deed in lieu of foreclosure of such Lot or pursuant to a decree of foreclosure, and in any other proceeding in lieu of foreclosure of such mortgage; provided, however, that any such Lot shall be liable, following the sale, for a pro rata share of any unpaid assessments against such Lot accruing prior to such sale, in common with all other Lots. No sale or other transfer shall relieve the owner of any Lot from liability for any assessments thereafter becoming due nor from the lien of any such subsequent assessment.

5.9 Effect of Foreclosure of Assessment Lien. Foreclosure of the assessment lien shall be deemed subordinate to, and shall not operate to effect the impairment of, the lien of any institutional first mortgage now or hereafter placed upon such Lot, or the acceptance of a deed in lieu thereof, except where otherwise provided in this Declaration.

5.10 Exempt Property. All properties dedicated to, and accepted by, a local public authority and all properties owned by charitable or non-profit organization exempt from taxation by the laws of the State of Utah shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

## 6. STAGE DEVELOPMEMIS AND ANNEXATION OF PROPERTY.

Additional property and Common Property may be annexed to Sunbrook with the affirmative vote of two-thirds (2/3) of the votes of the Property Owners Association. Such annexation shall become effective upon the recording of an amendment, approved by Washington County, to this Declaration in the Official records Of Washington County, Utah.

## 7. USE RESTRICTIONS.



Use of the Common Property, Limited Common Property, and the Lots shall be in accordance with the following provisions so long as the Property Owners Association exists, and these restrictions shall be for the benefit of and enforceable by all Lot Owners and members of the Property Owners Association.

7.1 Pets. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, part or portion of Sunbrook, except that dogs, cats or other domesticated household pets may be kept in a residence constructed on a Lot, provided that said pets are not kept to be bred, boarded or maintained for commercial gain, and subject to the reasonable rules and regulations adopted by the Board, and the right of the Board to direct the Lot Owner to remove the pet from the Lot if the Board determines the pet(s) to be a nuisance. No outside dog houses or dog runs are allowed.

7.2 Nuisance. No Lot Owner shall make or permit any noises that will disturb or annoy the occupants of any of the Lots or do or permit any noxious or offensive activity on any Lot, part or portion of Sunbrook which will interfere with rights, comfort or convenience of other Lot Owners.

7.3 Commercial and Recreational Vehicles. No boats, trailers, buses, motor homes, campers or commercial trucks shall be parked or stored upon the lot owners property or vacant lot(s), except within an enclosed garage, unless it is a commercial vehicle in the process of being loaded or unloaded. No boats, trailers, buses, motor homes, campers or commercial trucks shall be parked on Rivers Edge Lane for longer than 48 hours, and then only for the purpose of loading, unloading or cleaning of said vehicle.

7.4 Litter and Garbage Collection. No Lot Owner shall sweep or throw from any structure on his Lot any dirt or other materials or litter. No garbage, trash, refuse, or rubbish shall be deposited, dumped, or kept on any part of the Lot except in closed containers, dumpsters, or other sanitary garbage collection facilities, and proper-sized, closed containers or closed plastic bags shall be placed for pickup in accordance with any rules and regulations promulgated by the Property Owners Association. Garbage that is placed for pickup shall be located near the roadways contiguous to the Lot but shall only be left outside the night before scheduled pickup and shall be subject to such additional rules and regulations as the Property Owners Association may from time to time promulgate.

7.5 Notices. No sign, advertisement, notice, lettering, or descriptive design shall be posted, displayed, inscribed, or affixed to the exterior of any structures located on any Lot. NO "For Sale" or similar signs or notices of any kind shall be displayed or placed upon any part of a vacant Lot by Lot Owners other than approved by the Declarant or the Property Owners Association. Any sign approved for display shall be no larger than six (6) square feet. However, the Declarant may display any sign which it deems, in its sole discretion, to be necessary.

7.6 Interruption of Drainage. No change in the elevation of a Lot shall be made and no change in the condition of the soil or level of the land of a Lot shall be made which results in any permanent change in the flow and drainage of surface water which the Property Owners Association, in its sole discretion, considers detrimental. The Property Owners Association may cause the property to be returned to its initial condition at the expense of the Lot Owner.

7.7 Mining. No drilling, mining, or quarrying operations or activities of any kind shall be undertaken or permitted to be undertaken on any part of Sunbrook.

7.8 Fences. No fences or walls shall be allowed on any Lot without the prior written consent thereto from the Property Owners Association and the Architectural Control Committee of the Property Owners Association.

7.9 Lawful Use. No immoral, improper, offensive, or unlawful use shall be made of Sunbrook or any property operated by the Property Owners Association nor any part of it; and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction shall be observed.

7.10 Recreational Use of Lakes. The lakes within the Sunbrook project shall not be used for swimming or for boating of any kind.

7.11 Temporary or Other Structures. No structure of a temporary nature, and no trailer, bus, basement, outhouse, tent, shack, garage, or other out building shall be used at any time as a residence, either temporarily or permanently, nor shall any such structures be erected or placed on any Lot at any time. 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 within Sunbrook shall be new construction of good quality, workmanship, and materials.

7.12 Antennae. No radio, television or other antennae of any kind or nature, or device for the reception or transmission of radio, microwave or similar signals, except approved small satellite dishes, shall be permitted on the exterior of any home.

7.13. Clothes Drying. No portion of any Lot shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities be provided within the dwelling to be constructed on each Lot.

7.14 Guests. The Owners of Lots shall be fully responsible for the activities and actions of their guests, invitees, tenants, or visitors and shall take all action necessary or required to insure that all such persons fully comply with the provisions of this



Declaration, and all rules and regulations of the Property Owners Association.

8. ARCHITECTURAL CONTROL.

The Board of Directors of the Property Owners Association is authorized to appoint an Architectural Control Committee in accordance with the provisions of the By-Laws.

8.1 No building, fence, wall, or other structures shall be commenced, erected, or maintained by any Lot Owner, nor shall any exterior addition or change or alteration therein, including a change in the building exterior paint color, be made nor shall any improvements be made within the Lot Owner's property line until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to the harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee.

8.2 In order to promote a harmonious community development and protect the character of Sunbrook, the Architectural Control Committee shall, upon recordation of that subdivision plat, adopt a set of Architectural Guidelines for each subdivision within Sunbrook. The provisions of that particular set of Architectural Guidelines shall be binding upon the Lot Owners in said subdivision, and are incorporated herein by reference.

8.3 In the event said Board of Directors, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval of the Board will not be required and this Article will be deemed to have been fully complied with.

9. OBLIGATION TO BUILD WITHIN A SET PERIOD OF TIME

Every Lot Owner shall have three years, from the date of recording of the deed of conveyance from Declarant to that Lot Owner, to commence construction of a single family residence on any Lot within Sunbrook. Once construction has started on a single family residence, it shall be completed within six (6) months. To commence construction, a Lot Owner shall have obtained final approval of the Architectural Control Committee, a building permit from the City of St. George, and shall have started the construction of the foundation and/or cement slab upon which the residential dwelling shall be constructed. In the event a Lot Owner fails to commence construction within the time period set forth in this paragraph the Lot Owner may apply in writing to the Architectural Control Committee within said three (3) year period for an extension of time to commence construction, setting forth the period of time requested and the reason for said extension. The Architectural Control Committee must act upon said request within thirty (30) days after receipt or the request shall be deemed granted. However, if the Architectural Control

Committee does not grant said extension, the Declarant, at its option, may repurchase said Lot, by notifying the Lot Owner of its intention to repurchase in writing, and tendering to the Lot Owner the amount of the gross sales price received by the Declarant from the first lot purchaser of said Lot, less the amount, if any, required to satisfy any taxes, assessments, liens, charges or encumbrances accruing or encumbering said Lot after conveyance of the same to the Lot Owner.

#### 10 GOLF OVERFLIGHT EASEMENT.

Declarant hereby dedicates and grants to the public a perpetual golf overflight easement over, across and upon all Common Property and all Lots located within Two Hundred (200) feet (at any point) of the Sunbrook Golf Course perimeter legal description. Furthermore, all Lot Owners within Sunbrook, their guests and invitees, agree to indemnify Declarant (its agents or employees), the golf course architect and the City of St. George (its agents and employees) from personal injury or property damage resulting from any person or property being struck by a golf ball within the golf overflight easement herein described.

#### 11 UTILITY SERVICE.

Declarant has and will dedicate certain portions of Sunbrook, through which easements are now and may hereinafter be granted, for use by all utilities, public and private, for the construction and maintenance of their respective facilities servicing the lands described in this Declaration. Declarant hereby grants to such utilities, jointly and severally, easements for such purpose. Such easements may, but are not required to, be dedicated by recorded plat or other instrument. Additional easements may be granted by the Property Owners Association for utility or recreational purposes in accordance with the requirements of this Declaration.

#### 12 GENERAL PROVISIONS.

12.1 Enforcement. The Property Owners Association, or any Lot Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Property Owners Association or by any Lot Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

12.2 Severability. Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions, which shall remain in full force and effect.

12.3 Duration: Amendment. The covenants and restrictions of this Declaration shall run with and bind the property subject hereto for a term of forty (40) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of twenty (20) years. This Declaration may be amended by an instrument executed by the holders of two-thirds (2/3) of the voting



interest of membership in the Property Owners Association. Notwithstanding the above, the Declarant, its successors and/or assigns shall have the right, until to amend this Declaration. Any amendment must be recorded, and the portion of any plat containing Common Property or area may not be vacated in whole or in part unless the entire plat is vacated.

12.4 Duty to Repair Structure. In the event a structure on a Lot is damaged, through an act of God or other casualty, the Owner of the Lot shall promptly cause the structure to be repaired or rebuilt substantially in accordance with the original architectural plans.

Dennis R. Carter

STATE OF UTAH )  
 )  
COUNTY OF WASHINGTON )

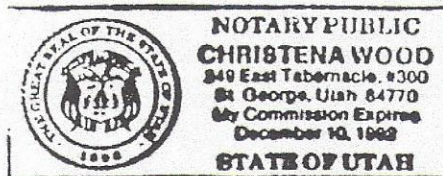
The foregoing Sunbrook Estates Declaration of Covenants and Restrictions was acknowledged before me this 14<sup>th</sup> day of December, 1990, by FRANK A. ALLEN, as President of WPB Utah Associates, Inc., a Florida corporation, sole general partner of Sunbrook Development, Ltd., a Utah limited partnership.

My Commission Expires:

12-10-92

STATE OF UTAH )  
 )  
COUNTY OF WASHINGTON )

Christena Wood  
NOTARY PUBLIC  
Residing at St. George, Utah



The foregoing Sunbrook Estates Declaration of Covenants and Restrictions was acknowledged before me this \_\_\_\_\_ day of December, 1990, by DENNIS R. CARTER.

My Commission Expires:

NOTARY PUBLIC  
Residing at \_\_\_\_\_