



## **Appendix Part III**

Conservation Easement

Property Owner's Association

## CONSERVATION EASEMENT

This CONSERVATION EASEMENT (hereinafter the "Easement") is executed this \_\_\_\_ day of November 2004, by THE BLACK BOULDER MESA PROPERTIES, LLC, (hereinafter "Grantor"). The Easement is executed in contemplation of one or more conveyances of land by Grantor to owner (the "Owner") of the specific parcels described on Exhibit "A." In those conveyances, this Easement shall be reserved. The Owner shall be a member of and the Owner's land shall be associated with an association of Owners known as The Black Boulder Mesa Property Owners Association, Inc., (the "Association").

The Easement may, in the sole discretion of Grantor, at some future date, be conveyed to an organization qualified under Utah Code Ann. § 57-18-1 et. seq. to hold and administer the Easement. The party holding the rights of this Easement, whether reserved, conveyed or assigned, shall be the "Grantee."

### WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain real property (the "Property") in Garfield County, Utah, which is described in the documents attached hereto as Exhibit "A"; and

WHEREAS, in the contemplated conveyance to third parties this Easement shall not encumber the Development and Transition Envelopes, driveway, and roadway, trail and utility easements, including septic tanks and drainage fields, as described in the deeds to such third parties, or in survey plats or other documents of record in the office of the Garfield County Recorder; and

WHEREAS, the balance of the real property conveyed to third parties, less and excepting the Development and Transition Envelopes, driveway, roadway, trail and utility easements, including septic tanks and drainage fields, shall be the Property subjected to this Easement; and

WHEREAS, the Property possesses natural, scenic, open space, or recreational values (collectively, "conservation values") of great importance to Grantor, the people of Garfield County, the people of the State of Utah, and the people of the United States of America; and

WHEREAS, the specific conservation values of the Property and adjacent land are further documented in an inventory of relevant features of the Property, dated December 15, 1998, on file at the offices of Utah Open Lands, authenticated by the signatures of Grantor and Utah Open Lands, and incorporated by this reference ("Baseline Documentation"), which consists of reports; maps; photographs; legal descriptions, including roadways, access rights-of-way, well easements, trails and drainage easements; and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective, though non-exclusive, information baseline for monitoring compliance with the terms of this grant constituting the minimum level at which the parties expect the Property shall be maintained; and

WHEREAS, Grantor intends that the conservation values of the Property be preserved and maintained by permitting only those land uses on the Property that do not significantly impair or interfere with the conservation values of the Property and as may be consistent with this document; and

WHEREAS, the Governor of the State of Utah, by Executive Order on May 24, 1996 established the Critical Lands Committee articulating the importance of communities to maintain agricultural land in order to protect self-sufficiency and self-reliance as well as the protection of these areas as open space; and

WHEREAS, Grantor further intends, as owner of the Property, to reserve the right to preserve and protect the conservation values of the Property in perpetuity;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Utah and in particular in contemplation of the Utah Land Conservation Easement Act, Utah Code Ann. § 57-18-1 et. seq. Grantor hereby reserves a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth (the "Easement").

1. Purpose. It is the purpose of this Easement to assure that the Property will be retained forever predominantly in its natural, scenic, open space condition and to prevent any use of the Property that will impair or

interfere with the conservation values of the Property. Grantor intends that this Easement will confine the use of the Property to such activities, including, without limitation, those uses set forth in the restrictive covenants and exceptions thereto and this Easement, as are not inconsistent with the purpose of this Easement.

2. Rights of Grantee. The Grantee of this Easement shall have the following rights:

(a) To preserve and protect the conservation values of the Property;

(b) To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement in accordance with Paragraph 6; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to the Association, and Grantee shall not in any case unreasonably interfere with use and quiet enjoyment of the Property by the Owner thereof;

(c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in Paragraph 6; and

(d) To place a sign as may be customarily used by Grantee relating to the Property, the conservation values and the purposes of this Easement, which shall not exceed 24 inches by 24 inches in size, identifying Grantee as the holder of this Easement and the terms of this Easement.

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(a) Construction of any structure;

(b) Use of motorized vehicles, other than on improved and designated roadways and driveways, except as necessary to take action under Paragraphs 4(c) and 4(d);

(c) Exploration and drilling for and extraction of oil and gas from any site on the Property;

(d) Dumping or storing of ashes, trash, garbage or junk on the Property;

(e) Quarrying, mining, excavation, depositing or extraction of sand, gravel, soil and rocks and/or, without limitation, any mineral or similar materials from the Property;

(f) Dumping, depositing, discharging, releasing or abandoning any solid or hazardous wastes, hazardous substances or material, pollutant or debris in, on or under the Property or into the surface or groundwater on or under the Property;

(g) Burning of any materials on the Property;

(h) Hunting or trapping for any purpose other than as approved in advance by the Grantee for problem or diseased animal control on the Property;

(i) Any agricultural, commercial, recreational, or industrial use of the Property; and

(j) The placement or maintenance of signs, billboards or any other outdoor advertising of any kind or nature on the Property except for signs relating to the use or limitations on use applicable to the Property and directional and regulatory signs relating to the Property.

4. Reserved Rights.

4.1 Rights Reserved to the Grantor and the Owner of the Property.

Grantor, while the owner of the Property, and, upon conveyance to the Owner, the Owner and their heirs, successors and assigns in ownership of the Property, shall have all rights accruing from ownership of land and rights in land, including easements, including the right to engage in, or permit or invite others to engage in, all uses of the Property

that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. The following are among these rights which pertain to the Property.

- (a) To hike, walk, ride horses, cross-country ski or picnic, and to make other uses and perform other activities that will not result in impact inconsistent with the intent of this Easement and the values expressed herein;
- (b) To drill and locate water wells, and the associated underground power line and underground pipeline, after Notice as required in Paragraph 5;
- (c) To relocate the roadways and utility lines and roadway and utility easements as may be necessary by reason of natural phenomenon, weather, or governmental regulation, after Notice as required in Paragraph 5. In the event of such relocation, the area used by the former location shall be restored as much as reasonably possible to its former natural condition;
- (d) To plant and maintain native trees, bushes and grasses to protect, preserve and enhance the aesthetic and wildlife habitat values of the Property;
- (e) To remove such weeds and other flora that are hazardous to the uses and practices herein reserved, but only after Notice as provided in Paragraph 5;
- (f) To maintain and restore watercourses, ditches and other drainage improvements, and stabilize slopes after Notice as provided in Paragraph 5; and
- (g) To build, maintain and repair fences and cattle guards reasonably appropriate for wildlife protection purposes and to exclude stock.

4.2 Rights of the Association. The Association shall have the right:

- (a) To relocate or enlarge the roadway and utility easements as may be necessary by reason of natural phenomenon, weather, or governmental regulation, after Notice as required in Paragraph 5. In the event of such relocation, the area used by the former location shall be restored as much as reasonably possible to its former natural condition;
- (b) To adopt and enforce rules concerning the control and use of the private streets, roadways, and common parking areas located upon roadways, including the right to regulate the kind of vehicles and their speed and the parking of vehicles upon such private streets and roadways, including the right to delegate to a municipality or other governmental entity or to contract with any private security patrol company to exercise its authorized right in connection with such private streets, roadways, and parking areas;
- (c) To grant emergency vehicle access across the roadways, and other areas, except that the areas outside the roadways shall be so breached only in extreme emergencies;
- (d) To install, repair, maintain and operate all easements, including without limitation those for  
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the areas of facilities and easements as they now exist or are shown on documents or plats of record;
- (e) To dedicate existing roadway and/or utility easements to a governmental entity;
- (f) To make any use of the Property as may be permitted by the Declaration of Covenants, Conditions and Restrictions for The Black Boulder Mesa;
- (g) To remove such weeds and other flora that are hazardous to the uses and practices herein reserved, but only after Notice as provided in Paragraph 5;
- (h) To build, maintain and repair fences and cattle guards reasonably appropriate for wildlife protection purposes and to exclude stock;
- (i) To replace injured and diseased trees and shrubs or other vegetation and plant trees, shrubs and ground cover; and

(j) To place and maintain upon any roadways, such signs and markers as the Association may deem appropriate for the proper identification, use and regulation thereof.

4.3 Property Not Subject to Easement. The Development and Transition Envelopes, if applicable, driveways and roadways, trail and utility easements for ingress, egress and utilities, including septic tanks and drainage fields, affecting the Property are not Property subject to this Easement.

4.4 Other Permission May Be Required. The activities permitted under this Paragraph may, under the Declaration, require approval by the Architectural Control Committee of the Association.

5. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring notice to the Grantee prior to undertaking certain permitted activities is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Easement. Whenever notice is required the Grantee shall be notified in writing by the person proposing to take such action not less than thirty days prior to the date proposed for the activity in question, unless an emergency situation exists, in which case such notice as is reasonable shall be given. In such notice, the methods of remediation of the Property shall be specified, in order that impacts from such uses are minimized, consistent with the purposes of the Easement, and that restoration of surface and appearance is made to the extent reasonably possible.

#### 6. Grantee\*s Remedies.

6.1 Notice of Violation; Corrective Action. If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to the person responsible for such violation, Grantor, his heirs, successors and assigns and the Association. The Notice shall specify the corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

6.2 Injunctive Relief. If the violation is not cured by the party responsible for the condition or activity which is alleged to be a violation within thirty days after receipt of notice thereof from Grantee (or under circumstances where the violation cannot reasonably be cured within a thirty day period, the cure of such violation has not commenced within the thirty day period), Grantee shall refer the matter to arbitration or if immediate and irreparable action is threatened, may bring an action in equity in a court of competent jurisdiction to enjoin the violation.

6.3 Costs of Enforcement All reasonable costs incurred by Grantee in a successful action to enforce the terms of this Easement, including, without limitation, costs and expenses of suit or arbitration and reasonable attorneys' fees, and any costs of restoration necessitated by violation of the terms of this Easement shall be borne by the party causing such violation.

6.4 Forbearance. Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any rights under this Easement. No delay or omission in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

6.5 Acts Beyond Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action for any injury to or change in the Property resulting from extraordinary causes, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. Nothing herein shall create a liability of the owner of the Property, the Grantor, Owners, or the Association for actions of third parties over which they exercise no control or authority.

6.6 Arbitration. If a dispute arises under this Easement, the disputed matter shall be referred to non-binding arbitration by request made in writing to the other party to the dispute. The other party shall be obligated to participate in and complete such arbitration. No suit, except for injunctive relief necessitated by immediate and irreparable harm, may be brought by any party regarding a dispute under this Easement, without the completion of such arbitration. Within thirty days of the receipt of such a request, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree on the selection of a single arbitrator, then each party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator; provided, however, if either party fails to select an arbitrator, or if the two arbitrators

selected by the parties fail to select the third arbitrator within fourteen days after the appointment of the second arbitrator, then in each such instance a proper court, on petition of a party, shall appoint the second or third arbitrator or both, as the case may be. A judgment on the arbitration award may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled, in addition to such other relief as may be granted, including orders of restoration or permanent injunctive relief, to a reasonable sum as and for all its costs and expenses related to such arbitration, including, without limitation, the fees and expenses of the arbitrators and attorneys\* fees, which shall be determined by the arbitrators and any court of competent jurisdiction that may be called upon to enforce or review the award.

6.7 Mediation. If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Easement, the parties may agree to mediate the dispute.

6.8 Rules. Arbitration and Mediation shall be conducted by and under the Rules of the American Arbitration Association in Salt Lake City, Utah.

6.9 Documentation of Use and Condition of the Property. If a controversy arises with respect to the nature a□ instrument, the Parties shall refer to the Baseline Documentation but shall not be foreclosed from utilizing all relevant or material documents, surveys, reports, and other evidence to assist in the resolution of the controversy.

7. Access. No right of access by the general public to any portion of the Property is conveyed by this Easement.

8. Costs, Liabilities, Taxes, and Environmental Compliance.

8.1 Costs, Legal Requirements, and Liabilities. All responsibilities and all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage shall be the responsibility of the fee owner of the Property. The Association and any other owner of the Property are solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. The Property shall be kept free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

8.2 Taxes. The Owner of the Property shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

8.3 Representations and Warranties. Grantor represents and warrants that, after reasonable investigation and to the best of its knowledge:

(a) No substance defined, listed or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property;

(b) There are not now any underground storage tanks located on the Property, whether presently in service or dosed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements;

(c) The Property is in compliance with all federal, state and local laws, regulations, and requirements applicable to the Property and its use;

(d) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and

(e) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that might reasonably be expected to form the basis for any such

proceedings, investigations, notices, claims, demands, or orders.

8.4 Remediation. If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, the Owner of such Property agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required.

8.5 Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA").

9. Limitations on Extinguishment. If circumstances arise in the future that render the purpose of the Easement impossible to accomplish, the Easement can only be terminated or extinguished, whether with respect to all or part of the Property by judicial proceedings in a court of competent jurisdiction. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Property (or any other Property received in connection with an exchange or involuntary conversion of the Property after such termination or extinguishment) and after the satisfaction of prior claims and net of any costs or expenses associated with such sale, Grantor and Grantee shall divide the proceeds from such sale (minus any amount attributable to the values of improvements made by Grantor after the date of the conveyance of the Easement to Grantee, which amount is reserved to Grantor) in accordance with their respective percentage interests in the fair market values of the Property, to reflect a partial termination or extinguishment of the Easement. All such proceeds received by Grantee shall be used by Grantee in a manner consistent with Grantee's conservation purposes.

10. Assignment of Easement. This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization authorized to acquire and hold conservation easements under the Utah Land Conservation Easement Act, Utah Code Ann. §57-18-1 et. seq., (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the conservation purpose which this grant is intended to advance continue to be carried out. Grantee agrees to give written notice to the Grantor, his heirs, successors or assigns and the Association of an assignment at least thirty days prior to the date of such assignment.

11. Subsequent Transfers of Fee Interest. Grantor agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest.

12. Estoppel Certificates. Upon request by Grantor, Grantee, or the Association, the requested party shall within twenty days execute and deliver to the requesting party, any document, including an estoppel certificate, which certifies, to the best of the certifying party's knowledge, compliance with any obligation contained in this Easement.

13. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to another shall be in writing and either served personally or sent by first class mail, postage prepaid, to the last known address of that party or to the address as stated on the records of Garfield County or to such other address as either party from time to time shall designate by written notice to the other.

14. Recordation. This instrument shall be recorded in the official records of Garfield County, Utah.

15. General Provisions.

15.1 Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Utah.

15.2 Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

15.3 Entire Agreement. This instrument sets forth the entire relationship, rights and duties of the Grantor and Grantee with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding

unless in writing and recorded in the office of the Garfield County Recorder. Until such time as the Easement is conveyed to Grantee, the Easement may be amended or revoked by the written act of Grantor acting with the Owner of any interest in the Property.

15.4 Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

15.5 Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

15.6 Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

16. Limitations on Amendments. If circumstances arise under which an amendment to or modification of the Easement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend the Easement; provided that no amendment shall be made that will adversely affect the qualification of the Easement or the status of grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Code and the laws of the State of Utah. Any such amendment shall be consistent with the purpose of the Easement, shall not affect its perpetual duration, and shall not permit any impairment of the significant conservation values of the Property. Any such amendment shall be filed in the County Recorder's Office of Garfield County, Utah. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

Grantor:

THE BLACK BOULDER MESA PROPERTIES, LLC

By \_\_\_\_\_  
Curtis K. Oberhansly, Its Member

By \_\_\_\_\_  
Mark M. Austin, Its Member

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On November \_\_\_\_, 2004, personally appeared before me CURTIS K. OBERHANSLY, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF UTAH )  
 ) ss.  
COUNTY OF GARFIELD )

On November \_\_\_\_, 2004, personally appeared before me MARK M. AUSTIN, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC



RECEIVED

OCT 23 1997

Utah Div. of Corp. & Comm. Code

State of Utah  
Department of Commerce  
Division of Corporations and Commercial Code

I hereby certify that the foregoing has been filed and approved on the 23 day of Oct 1997 in the office of this Division and hereby issue this Certificate thereof.

Examiner *C. Davidson* Utah 10-23-97



*Karla T. Woods*  
KARLA T. WOODS  
Division Director

ARTICLES OF INCORPORATION  
OF

THE BLACK BOULDER MESA PROPERTY OWNERS ASSOCIATION, INC.

Curtis K. Oberhansly, the undersigned natural person over the age of twenty-one years, acting as incorporator of a nonprofit corporation pursuant to the Utah Nonprofit Corporation and Cooperative Association Act, hereby adopts the following Articles of Incorporation for said corporation:

ARTICLE I

NAME

The name of the nonprofit corporation is THE BLACK BOULDER MESA PROPERTY OWNERS ASSOCIATION, INC. (the "Association").

ARTICLE II

PERIOD OF DURATION

The period of duration of the Association shall be PERPETUAL.

ARTICLE III

PURPOSES

The Association is organized as a nonprofit corporation and shall be operated exclusively for the purpose of maintenance, repair, replacement, administration and operation of the common interests of the Black Boulder Mesa Subdivision, including maintenance of the Common Roadway Easement, payment of costs, assessment of expenses, acquisition of insurance, owning, maintaining, operating, and governing utilities, common areas, and other common assets of the Black Boulder Mesa Subdivision (the "Subdivision") located east of Boulder, Garfield County, State of Utah. The Association is organized and shall be operated to perform the functions and provide the services contemplated herein, in the bylaws of the Association, and in the Declaration of Covenants, Conditions and Restrictions for the Black Boulder Mesa, including the Residential Development Standards, recorded in relation to the subdivision (hereafter the "Declaration"), recorded <sup>at 11:30 a.m.</sup> on Oct 23, 1997, Book 336, pages 544 to 603, Entry No. 217211. Specifically, but without limitation, the Association shall have the right and duty to enforce all of the provisions of the Declaration; to maintain, preserve and improve the property within the Subdivision; to own, keep and maintain the common areas within the Subdivision, and to transact such other business as is permitted by law. No dividends shall be

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paid and no part of the net income of the Association, if any, shall be distributed to the members, trustees, or officers of the Association, except as otherwise provided herein, or by law.

#### ARTICLE IV

##### POWERS

In addition to having the power to do any and all things that a nonprofit corporation may now or hereafter do under the laws of the State of Utah, the Association shall have the power to do any and all things that the Association is authorized or required to do under the bylaws of the Association, or the Declaration, as the same may from time to time be amended, including the specific power to fix, levy and collect the charges and assessments as provided in the Declaration.

#### ARTICLE V

##### MEMBERSHIP

The Association shall have members, which shall be of two voting classes only. The members of the Association shall be all record owners of lots in the Black Boulder Mesa subdivision, as such owners are shown on the records of Garfield County, State of Utah. Membership in the Association shall be mandatory and not optional. Each membership in the Association shall be appurtenant to and shall not be separated from the lot to which it relates. No person or entity other than a record owner of a lot in the Subdivision may be a member of the Association.

The two classes of voting membership are designated as Class A Members and Class B Members.

Class A. Class A Members shall be all the Owners other than the Declarant, as named in the Declaration. Class A Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.

Class B. The Class B Member shall be the Declarant. Declarant, as the Class B Member, shall have the right to control the Association to the extent of having the exclusive right (either directly or through a person designated by the Declarant) to elect, appoint and remove the members of the Board and the officers of the Association until the Transition Date (as hereinafter defined). The special control rights of the Declarant, as the Class B Member, shall cease and terminate upon the earlier of the following (the "Transition Date"):

(a) the date ninety (90) days after the conveyance by Declarant of ninety percent (90%) of the Lots created by this Declaration (including additional land) to Owners (other than Declarant);

(b) the date ninety (90) days after Declarant relinquishes its Class B membership rights by giving written Notice to the Association and all Owners.

#### **ARTICLE VI**

#### **STOCK AND MEMBERSHIP CERTIFICATES**

The Corporation shall not issue stock. The Association may issue certificates of membership, but such certificates shall not be necessary to evidence membership in the Association. Membership in the Association shall begin immediately and automatically upon becoming a record owner of the lot to which such membership appertains and shall cease immediately and automatically upon ceasing to be a record owner of such lot.

#### **ARTICLE VII**

#### **ASSESSMENTS**

Members of the Association shall be subject to assessments by the Association from time to time in accordance with the provisions of the Declaration, the bylaws and applicable law and shall be liable to the Association for payment of such assessments.

#### **ARTICLE VIII**

#### **INITIAL PRINCIPAL OFFICE AND REGISTERED AGENT**

The initial principal office of the Association shall be located at 2100 Emigration Canyon, Salt Lake City, Utah 84108, where the initial registered agent of the Association shall be Curtis K. Oberhansly.

#### **ARTICLE IX**

#### **INITIAL BOARD OF TRUSTEES**

The affairs of the Association shall be managed by a Board of Trustees. Except for Trustees appointed by the Declarant, Trustees must be members of the Association. The initial Board shall consist of three Trustees, and the names and addresses of the persons who are to serve as Trustees on the initial Board are as follows:

**Curtis K. Oberhansly**

2100 Emigration Canyon  
Salt Lake City, Utah 84108

**Mark M. Austin**

General Delivery  
Boulder, Utah 84716

**Max Licher**

40 Soldier Pass Road  
La Pasada Plaza  
Sedona, Arizona

**ARTICLE X**

**MANAGEMENT**

The Board of Trustees may delegate to a professional management organization or individual such of its managerial duties, responsibilities, functions and powers as are properly delegable. Such delegation shall be valid, however, only if made by written contract.

**ARTICLE XI**

**BYLAWS, RULES AND REGULATIONS**

The Board of Trustees may adopt, amend, repeal and enforce Bylaws, rules and regulations governing the operation of the Association and the operation and use of the Subdivision, to the extent that the same are not inconsistent with these Articles of Incorporation, the Declaration or applicable laws and ordinances.

**ARTICLE XII**

**INCORPORATOR**

The incorporator of the Association is Curtis K. Oberhansly, 2100 Emigration Canyon, Salt Lake City, Utah 84108.

DATED this 23 day of October, 1997.

REGISTERED AGENT:

INCORPORATOR:

  
CURTIS K. OBERHANSLY

  
CURTIS K. OBERHANSLY

**BYLAWS**  
**OF**  
**THE BLACK BOULDER MESA PROPERTY OWNERS ASSOCIATION, INC.**

**I. NAME AND LOCATION**

1. Name. The name of the corporation is The Black Boulder Mesa Property Owners Association, Inc., a Utah nonprofit corporation.
2. Principal Office. The principal office of the Association shall be located at Salt Lake City, Salt Lake County, Utah, and meetings of Members and trustees may be held at such places within the County of Garfield, State of Utah, as may be designated by the Board of Trustees.

**II. DEFINITIONS**

When used in these Bylaws, the following terms shall have the meaning indicated:

1. Articles shall mean and refer to the Articles of Incorporation of Black Boulder Mesa Owners Association.
2. Association shall mean and refer to the Black Boulder Mesa Owners Association, a Utah nonprofit corporation which is organized by the filing of the Articles.
3. Member shall mean and refer to every person who holds membership in the Association.
4. Properties shall mean and refer to all real property which becomes subject to the Declaration together with such other real property as may hereafter be annexed thereto under the provisions of the Declaration.
5. Declaration shall mean and refer to the instrument entitled "Declaration of Covenants, Conditions and Restrictions for the Black Boulder Mesa," including the Development Standards executed and acknowledged by Declarant and filed for record in the office of the County Recorder of Garfield County, Utah, on October 23, 1997, Entry No. 217211, as the same may from time to time be supplemented or amended.
6. Lot shall mean and refer to any of the separately numbered and individually described plots of land on the recorded Plat of the development.

7. Developer shall mean The Black Boulder Mesa Properties, L.L.C.

8. Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Garfield County, Utah) of a fee or an undivided fee interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

9. Living Unit shall mean and refer to a structure on any Lot which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the Lot concerned which are used in connection with such residence.

10. Board of Trustees or the Board shall mean and refer to the Board of Trustees of the Association.

11. Development shall mean and refer to The Black Boulder Mesa.

### III. MEETINGS OF MEMBERS

1. Annual Meeting. The first annual meeting of the Members shall be held during the month of \_\_\_\_\_, 1997, at the date and time set by the Board. Thereafter an annual meeting of the Members shall be held during the same month of each succeeding year. The purpose of the annual meeting shall be the election of the trustees and the transaction of such other business as may come before the Membership.

2. Special Meetings. A special meeting of the Members for any purpose or purposes may be called by the President, by the Board, by the Developer, or upon written request of the Members holding one-fourth (1/4) of all of the votes of the Association.

3. Place of Meeting. The Board of Trustees may designate any place within Garfield County, Utah, as the place for any annual meeting or for any special meeting called by the Board. If no designation is made the place of meeting shall be the registered office of the Association.

4. Notice of Meetings. Written or printed notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to all Members at least ten but not more than thirty days prior to the meeting date. Such notice shall be deemed to have been properly furnished if mailed postage prepaid within the required time period to the person who appears as a Member, at the latest address for such person appearing in the records of the Association at the time of mailing.

5. Quorum. Except as otherwise provided in the Articles, or by law, the members present in person or by proxy after proper notice of the meeting shall constitute a quorum at any meeting of the Members.

6. Proxies. At any meeting of the Members, a Member may vote by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. All proxies shall be filed with the secretary of the Association before or at the time of the meeting. Unless otherwise provided therein, no proxy shall be valid after eleven months from the date of its execution.

7. Necessary Vote. Except as concerns the election of trustees and except with respect to those proposals which under the Articles, under the Declaration, or by law require a greater proportion for adoption, the affirmative vote of a majority of all those members present in person or represented by proxy are entitled to cast at a meeting shall be sufficient for the adoption of any matter voted on by the Members.

#### IV. BOARD OF TRUSTEES

1. Number and Tenure. Except for the initial Board of Trustees appointed by Declarant, the affairs of the Association shall be managed by a Board of Trustees composed of not less than three (3) and not more than five (5) individuals, as shall be determined by the Board. The Trustees shall serve two (2) year terms. Any change in the number of Trustees may be made only by amendment of the Articles. Each Trustee shall hold office until his term expires and until his successor has been duly elected and qualifies.

2. Qualifications. Except for Board members elected or appointed by Declarant, each Trustee shall be an Owner or the spouse of an Owner (or if an Owner is a corporation, partnership, or trust, a Trustee may be an officer, partner, trustee or beneficiary of such Owner). If a Trustee shall cease to meet such qualifications during his term, he will thereupon cease to be a Trustee and his place on the Board shall be deemed vacant.

3. Compensation. The Board may provide by resolution that the Trustees shall be paid their expenses, if any, by attendance at each meeting of the Board. Trustees shall not be paid any salary or other compensation for their services as Trustees and shall not receive directly or indirectly any other profit or pecuniary advantage by virtue of their status as Trustees.

4. Action Taken Without a Meeting. The Trustees shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Trustees. Any action so taken shall have the same effect as though taken at a meeting of the Trustees.

## V. POWERS AND DUTIES OF THE BOARD OF TRUSTEES

1. Powers. The Board of Trustees shall have power to:

(a) exercise for the Association the powers, duties, and authority vested in or delegated to the Association and not reserved to the membership by other provisions of these Bylaws, the Articles, or the Declaration;

(b) declare the office of a Member of the Board of Trustees to be vacant in the event such Member shall be absent from four consecutive regular meetings of the Board of Trustees without cause;

(c) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties; and

(d) enforce the provisions of the Declaration.

2. Duties. It shall be the duty of the Board of Trustees to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth of the Members who are entitled to vote;

(b) supervise all officers, agents, and employees of the Association, and to see that their duties are properly performed;

(c) act as the architectural control committee or appoint the architectural control committee, as set forth in the Declaration and in Article VIII, below;

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) if an Owner of any Lot shall fail to maintain his Lot and the Living Unit located thereon in a manner satisfactory to the Architectural Control Committee and/or the Board of Trustees, the Association, after approval by two-third vote of the Board, shall have the right, through its agents or employees, or through an independent



contractor, to enter upon his Lot and to repair, maintain and restore the Lot and the exterior of the Living Unit and any other improvements erected thereon; and

(f) levy assessments as set forth in the Declaration.

(g) carry out the duties specified in the Declaration.

## VI. NOMINATION AND ELECTION OF TRUSTEES

1. Appointment of Trustees. Until the Class B memberships lapse as specified in the Articles of Incorporation, the Developer shall be entitled to appoint the Trustees. Thereafter, the Trustees shall be elected by the Members by cumulative vote at the annual meeting of the Association.

2. Nomination. As soon as the right to elect Trustees has vested in the Members, nomination for election to the Board of Trustees shall be made from the floor at the annual meeting.

3. Election. Elections to the Board of Trustees shall be made by secret written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles.

## VII. MEETING OF TRUSTEES

1. Regular Meetings. A regular meeting of the Board of Trustees shall be held without notice other than this section immediately after, and at the same place as, the annual meeting of the Members. The Board of Trustees may provide by resolution the time and any place within the State of Utah or the holding of additional regular meetings without notice other than such resolution.

2. Special Meetings. Special meetings of the Board of Trustees may be called by or at the requests of the president or any trustee. The person or persons calling a special meeting of the Board may fix any place within the State of Utah as the place for holding such meeting.

3. Notice. Written or printed notice stating the place, day, and hour of any special meeting of the Board shall be given to all directors at least three days prior to the meeting date. Such notice shall be deemed to have been properly furnished if mailed, postage prepaid, at least three (3) business days before the meeting date to each Trustee at his address. Attendance of a Trustee at any meeting shall constitute a waiver of notice of such meeting unless the trustee attends for the express purpose of objecting to the transaction of any business because the

meeting is not properly called or convened. Neither the business to be transacted at nor the purpose of any meeting need be specified in the notice thereof.

4. Quorum. A majority of the Trustees then in office shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Trustees at a meeting at which a quorum is present shall constitute the act of the Board of Trustees unless the act of a greater number is required by law.

5. Vacancies. Any vacancy on the Board, subject to the provisions of Section 1 of Article IV, may be filled by the affirmative vote of a majority of the remaining Trustees, even though such remaining Trustees constitute less than a quorum. A Trustee thus selected to fill a vacancy shall serve for the unexpired term of his predecessor in the office.

## VIII. ARCHITECTURAL CONTROL COMMITTEE

1. Appointment of Architectural Committee. The Association shall have an Architectural Committee consisting of not less than three (3) nor more than five (5) persons, as specified from time to time by resolution of the Board. The Developer shall initially appoint the members of the Architectural Committee. The Developer shall retain the right to appoint, augment or replace all members of the Architectural Committee until the Transition Date. Thereafter, members of the Architectural Committee shall be appointed by the Board. Persons appointed to the Architectural Committee, other than those persons appointed by the Developer, must be Owners. Members of the Architectural Committee may be, but need not be, members of the Board. The Developer voluntarily may (but shall not be required to) permit the Owners to appoint one or more members of the Architectural Committee at any time.

2. Development Standards. The Architectural Committee shall establish reasonable procedural rules, regulations, restrictions, architectural standards, design guidelines and development standards (collectively the "Development Standards"), which the Architectural Committee may, from time to time in its sole discretion, amend, repeal or augment. A copy of the current Development Standards shall at all times be a part of the Association's records. The Development Standards may include, among other things without limitation, those restrictions and limitations set forth below:

(a) Time limitations for the completion, within specified periods after approval, of the improvements for which approval is required pursuant to the Development Standards;

(b) Standards relating to all aspects of structural improvement and landscaping within the Building Envelope, Development Envelope, Transition Zone and Conservation Easement of any Lot;

(c) Conformity of completed improvements to plans and specifications approved by the Architectural Committee; provided, however, as to subsequent purchasers and encumbrances of a Lot in good faith and for value, unless notice of non-completion or nonconformance identifying the violating Lot and specifying the reason for the notice, executed by the Architectural Committee, shall be recorded with the County Recorder of Garfield County, copy given to the Owner of such Lot, within one year of the expiration of the time limitation described in Section (a) above, or, if later, within one year following completion of the improvement, or unless legal proceedings shall have been instituted to enforce compliance or completion within said one-year period, the completed improvements shall be deemed to be in compliance with plans and specifications approved by the Architectural Committee and in compliance with the Architectural Standards of the Association and the Declaration;

(d) Such other limitations and restrictions as the Board or Architectural Committee in its reasonable discretion shall adopt, including, without limitation, the regulation of all landscaping (including without limitation absolute prohibition of certain types of landscaping, trees and plants), construction, reconstruction, exterior additions, change or alteration to or maintenance of any building, structure, wall or fence, including, without limitation, the nature, kind, shape, height, materials, exterior color, surface texture, and location of any such improvement.

### 3. General Provisions.

(a) The Architectural Committee may assess reasonable fees in connection with its review of plans and specifications.

(b) The Architectural Committee may delegate its plan review responsibilities, except final review and approval as may be required by the Development Standards, to one or more of its members or architectural consultants retained by the Architectural Committee, or both. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants shall be equivalent to approval or disapproval by the entire Architectural Committee.

(c) The address of the Architectural Committee shall be the address established for giving notice to the Association, unless otherwise specified in the Development Standards. Such address shall be the place for the submittal of plans and specifications and the place where the current Development Standards shall be kept.

(d) The establishment of the Architectural Committee and the procedures herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain or repair their Lots as may otherwise be specified in the Declaration, the Bylaws or Association Rules.

(e) The Architectural Committee shall approve or disapprove any plans and specifications submitted to it in accordance with the Development Standards within such period as may be specified in the Development Standards.

4. Approval and Conformity of Plans. No building, fence, wall, landscape or other structure or improvement of whatever type shall be commenced, erected or maintained upon the Property (except for initial construction of the Common Roadway Easement and any fences by the Developer), nor shall there be any addition to or change to the exterior of any residence or other structure or improvement upon a Lot or the landscaping, grading or drainage thereof, including, without limitation, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with plans and specifications therefore which have been submitted to and approved by the Architectural Committee in accordance with the Development Standards.

5. Non-Liability for Approval or Non-Approval of Plans. Plans and specifications shall be approved by the Architectural Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances, and, by approving such plans and specifications, neither the Architectural Committee, the members thereof, the Association, the Board nor the Developer assumes any liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications. Neither the Architectural Committee, any member thereof, the Association, the Board nor the Developer shall be liable to any Owner or other Person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development, or manner of development of any Lot within the Property, (d) the granting of, or refusal to grant, any variance from the Development Standards, or (e) the execution and filing of an estoppel certificate pursuant to the Development Standards, whether or not the facts therein are correct; provided, however, that such action, with the actual knowledge possessed, was taken in good faith. Approval of plans and specifications by the Architectural Committee is not, and shall not be deemed to be, a representation or warranty that said plans or specifications comply with applicable governmental ordinances or regulations including, but not limited to, zoning ordinances and building codes. Nor shall anything herein, either express or implied, be taken as assurance that local municipal authority will grant a building permit, or under what conditions such a permit might be granted. The Standards referred to herein are solely for the purpose of imposing and enforcing the design aesthetics and environmental quality of The Black Boulder Mesa project. Owners acknowledge and agree that the decisions required of the Architectural Committee hereunder are inherently subjective to a degree and therefore agree that the owners have no vested right of approval and that there shall be no liability to the Association for approval or disapproval of any given plan.

6. Inspection and Recording of Approval. Any member or authorized consultant of the Architectural Committee, or any authorized officer, Trustee, employee or agent of the Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot after reasonable notice as provided herein to the Owner in order to inspect improvements constructed or being constructed on such Lot to ascertain that such improvements have been or are being built in compliance with the Development Standards and the Declaration. The Architectural Committee shall cause such an inspection to be undertaken within thirty (30) days of a request therefore from any Owner as to his Lot, and if such inspection reveals that the improvements located on such Lot have been completed in compliance with this ARTICLE VIII and the Development Standards, the Architectural Committee shall provide to such Owner a notice of such approval in recordable form which, when recorded, shall be conclusive evidence of compliance with the provisions of this ARTICLE VIII and the Development Standards as to the improvements described in such recorded notice, but as to such improvements only.

7. Additional Powers of the Board. The Board may promulgate as a part of the Development Standards such additional architectural and landscape standards, rules and regulations as it deems to be appropriate and as are not in conflict with the Declaration. **WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE BOARD MAY FIX A FINE OF UP TO \$10,000 FOR FAILURE TO OBTAIN REQUIRED APPROVAL FROM THE ARCHITECTURAL COMMITTEE.**

## IX. OFFICERS

1. Number and Qualifications. The Officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer. Any two (2) or more offices, other than the office of President and Secretary, may be held by the same person. After the Transition Date, officers must be Members of the Association.

2. Tenure. The Officers of the Association shall be elected by the Board of Trustees annually at the first meeting of the Board held after the annual meeting of the Members. If election of Officers does not occur at such meeting, it shall be held as soon thereafter as is convenient. Each Officer shall hold office until his successor has been duly elected and qualifies or until he is removed. Any Officer may be removed by the Board whenever in its judgment the best interests of the Association would be served thereby.

3. Vacancies. A vacancy in office resulting from death, resignation, removal, or any other cause shall be filled by the Board of Trustees for the unexpired portion of the term of the person previously in office.

4. President. The President shall be the principal executive Officer of the Association and, subject to the control of the Board of Trustees, shall exercise general

supervision and control over all of the property and affairs of the Association. The President shall, when present, preside at all meetings of the Members and of the Board of Trustees. If the President is not present then the Vice President shall preside. Except in cases where the signing and execution thereof is expressly delegated by the Board of Trustees or by these Articles to some other Officer or agent of the Association or where required by law to be otherwise signed or executed, the President, together with the Secretary or any other Officer of the Association authorized by the Board of Trustees may sign any deeds, mortgages, contracts, or other instruments which the Board of Directors has properly authorized to be executed. The President shall, in general, perform all duties incident to the office of President and such other duties as may from time to time be prescribed by the Board of Trustees.

5. Vice President. In the absence of the President or in the event of his death, inability, or refusal to act, the Vice President shall perform all of the duties of the President. When so acting, he shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice President shall perform such duties as may from time to time be assigned to him by the President or by the Board of Trustees.

6. Secretary. The Secretary shall keep minutes of meetings of the Members and of the Board of Trustees in one or more books provided for that purpose, shall see that all notices are given in accordance with the provisions of these Articles, the Declaration, and law, shall maintain the membership list required by these Articles, and, in general, shall perform all duties incident to the office of Secretary and such other duties as may from time to time be assigned to him by the President or by the Board of Trustees.

7. Treasurer. The Treasurer shall have the custody of and shall be responsible for all funds of the Association, shall receive and give receipts for money due and payable to the Association, shall deposit all such money in the name of the Association in such banks, trust companies, or other depositories as are selected by the Board, shall perform all accounting, financial record-keeping, and similar services which may be necessary or desirable in connection with the Association's affairs, and, in general, perform all duties incident to the office of Treasurer and such other duties as may from time to time be assigned to him by the President or by the Board of Trustees.

8. Compensation. Officers shall not be paid any salary or other compensation for their services as such and shall not receive directly or indirectly any other profit or pecuniary advantage by virtue of their services as Officers.

## X. AMENDMENTS

1. Amendment. These Bylaws may be amended, at any regular or a special meeting of the Board of Trustees, by a vote of the majority of the Board of Trustees.

2. **Conflict.** In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

#### XI. MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, we, being the acting Trustees of the Black Boulder Mesa Owners Association, and the Secretary of the Association, have hereunto set our hands to these Bylaws to be effective as of October 23, 1997.

  
CURTIS K. OBERHANSLY

T.B./s/  
MARK M. AUSTIN

T.B./s/  
MAX LICHER