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St. George, Utah 84770

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Agreement Page 1 of 11
Russell Shirts Washington County Recorder
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By ST. GEORGE CITY



Tax ID #: SG-SUR-All Phases

**RIGHT-OF-WAY EASEMENT AGREEMENT
Golf Cart Use at Sun River St. George**

THIS RIGHT-OF-WAY EASEMENT AGREEMENT (hereafter "Agreement") is entered into this 28th day of April, 2011, by and between the City of St. George, a Utah municipal corporation (hereafter "City"), and Sun River St. George Community Association, Inc. (hereafter "SunRiver"). City and SunRiver are at times referred to together herein as the "Parties."

WITNESSETH:

WHEREAS, the real estate development known as SunRiver St. George (the "Community") is located within the municipal boundaries of the City;

WHEREAS, SunRiver is a non-profit corporation whose membership includes all of the homeowners in the Community;

WHEREAS, transportation within the Community is facilitated by the presence of both private roadways, owned and maintained by SunRiver, and public roadways dedicated to the public and maintained by the City;

WHEREAS, SunRiver desires for its members, their guests and invitees, to have the ability to drive golf carts on the public roadways located within the Community, for the purpose of travelling between locations within the Community; and

WHEREAS, City is willing to permit SunRiver's members, guests and invitees said ability, upon the following terms and conditions.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual covenants contained herein and in the Agreement, together with good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Easement.** City hereby grants to SunRiver a nonexclusive easement in the public rights-of-way more particularly described herein below and in Exhibit "A" attached hereto, the scope of use of which shall be strictly limited to the fulfillment of the purposes stated herein, and

to the physical scope of use described herein. This Easement shall not be revoked except by mutual agreement of the Parties or by termination as expressly set forth herein.

2. **Roadways Affected.** The parties agree that the roadways affected by this Agreement shall be limited to particular public roadways located within the Community, which Community is contained within the Sun River St. George Planned Development Zone. The particular roadways shall be as set forth on Exhibit "A" hereto (hereafter the "Roadways"). In each case, the travel lane to be established for golf carts shall be aligned parallel to the motor vehicle travel lanes, and located away from the motor vehicle travel lanes to the extent reasonably possible, with said golf cart lanes still upon the finished surface of the roadway. The exception shall be the roadway known as Sun River Parkway, upon which golf cart travel shall not be permitted except to cross the road at the intersections designated on Exhibit "A" hereto. These travel lanes established for golf cart travel shall hereafter be known as the "Golf Cart Travel Lanes."

3. **Purposes.** SunRiver desires to use the Golf Cart Travel Lanes for the purpose of travel by golf cart upon said Roadways by SunRiver's members, their guests and invitees.

4. **Definition of Golf Cart.** For purposes of this agreement, "Golf Cart" shall mean and refer to any self-propelled device of conveyance of at least four wheels (whether or not authorized for operation on public streets), designed for the primary purpose of transporting a person or persons on golf courses, and which is also permitted to be used upon the private golf course(s) that are operated by SunRiver in the Community. "Golf Cart" shall exclude any vehicle classified pursuant to Utah Code Annotated 41-1a-102 (2010, as amended) or other Utah state law as a "motor vehicle," an "all-terrain type I vehicle," or an "all-terrain type II vehicle," the use of each of which upon the Roadways shall be governed by existing laws and ordinances.

5. **Non-exclusivity; Priority of Uses.** This Agreement shall in no way be construed to exclude other existing or future uses of the Roadways by City or to interfere with the City's right of access, use and maintenance of the Roadways on behalf of the public, or the City's right to locate or authorize the location of utilities upon or beneath the Roadways. All such approved uses of the public utility easements, whether established before or after the date of this Agreement, shall be deemed prior and superior to the use approved herein. The use established herein shall not unreasonably interfere with regular motor vehicle traffic upon the Roadways, and shall be established as much as is reasonably possible to be compatible with regular motor vehicle traffic.

6. **Regulation of Use by City and SunRiver.** SunRiver and those individuals who receive the benefit of this Agreement shall comply with any and all rules, regulations, and permits required or established by the City to regulate the use authorized by this Agreement. SunRiver shall also have an independent right to regulate use of the Golf Cart Travel Lanes through licensing, permits, rules, regulations, and fees, provided that said regulation efforts are compatible with any regulation by the City, and not in violation of any applicable laws and ordinances. In no event shall the City have any obligation to enforce any of the regulation efforts of SunRiver hereunder.

7. **Easement Fee.** The Easement Fee to be paid to City for the initial term hereof shall equal One Hundred Dollars (\$100.00) per year, payable in advance for each year of the term of this Agreement. The Easement Fee shall be non-refundable, except in the event of unilateral termination or suspension of this Agreement by the City in accordance with Section 10, in which case the City shall refund to SunRiver a portion of Easement Fees already paid, pro rata from the date of termination or during the time such suspension is effective. The Easement Fee shall be due and payable to City annually and for the first year shall be due upon the Effective Date of this Agreement, and thereafter on the same date of each following year.

8. **Term.** The initial term of this Agreement shall run from the date on which all of the parties have signed this Agreement, or on which the St. George City Council has approved or adopted this Agreement, whichever is later (the "Effective Date"); and the initial term shall continue for a period of twenty (20) years from said date.

9. **Renewal.** Upon the expiration of the initial term hereof, this Agreement shall renew automatically for additional consecutive renewal terms of twenty (20) years each, which renewal terms shall be on the same terms and conditions as set forth herein. The consecutive renewals shall continue until such time as the parties hereto decide mutually to modify the terms of this Agreement, or this Agreement is terminated as set forth herein below.

10. **Relinquishment of Easement by SunRiver.** SunRiver agrees that it shall relinquish this Easement if State and City laws change to allow for travel on public streets by Golf Carts, or if the City, in its sole discretion, determines that it needs the property occupied by this Easement. If the City determines that it needs the property occupied by this Easement, then the City shall notify SunRiver in writing that this Easement must be relinquished. SunRiver shall then cooperate with City to prepare and file all documents which are required to relinquish this Easement.

11. **Width of Golf Cart Travel Lanes.** The parties anticipate that, except where exceptions are noted in this Agreement and Exhibit "A" hereto, the Golf Cart Travel Lanes shall be established on both sides of the motor vehicle travel lanes and running parallel thereto. The width of the Golf Cart Travel Lanes shall be determined generally by the availability of space outside the motor vehicle travel lanes upon each Roadway, but more specifically is anticipated to be seven feet (7') wide for each Golf Cart Travel Lane, for a total width of fourteen feet (14') for both Golf Cart Travel Lanes on a Roadway.

12. **Improvements by SunRiver.** SunRiver agrees that it shall pay for and make improvements to the Roadways to make them safe for the use and purpose contemplated herein, which improvements shall include: (a) striping to divide the Golf Cart Travel Lane from the motor vehicle travel lane(s) on each of the affected Roadways; (b) identification of the Golf Cart Travel Lane as such, either through identification painted within said lane or with proper signage; (c) signage identifying the terminus of each Golf Cart Travel Lane at the boundaries of the Community, to discourage golf cart travel on the public roadways outside of the Community; and (d) such other safety-related improvements as may be reasonably required from time to time by the City. SunRiver shall ensure that any striping, signage, or other improvements complies with all applicable Utah State and City of St. George laws, rules, and regulations, including but

not limited to AASHTO and MUTCD standards and regulations, relating to such improvements. Any striping, signage, or other improvements shall also be subject to review and approval by the City of St. George before any striping, signage, or other improvements may be installed by SunRiver.

With respect to striping to indicate Golf Cart Travel Lanes, the parties agree as follows:

a. Striping. The roadways marked on Exhibit "A" as "Roads proposed for golf cart lanes – lanes to be striped," and the roadways marked as "Public Roadways" within the Community, excluding Sun River Parkway, shall have stripes painted to identify the location of Golf Cart Travel Lanes.

b. No striping – crossing only. The roadway known as Sun River Parkway shall not have Golf Cart Travel Lanes striped, as golf cart travel will be restricted to crossing the road at the locations designated on Exhibit "A."

c. Striping upon completion. The roadway known as Havasu Drive is currently improved only to half width, as noted on Exhibit "A." The parties agree that golf carts may travel on Havasu Drive, and if and when the road is completed to full width, then SunRiver shall complete striping of the Golf Cart Travel Lanes.

d. No striping. The roadways marked on Exhibit "A" as "Roads proposed for golf cart lanes – no striping," shall not have stripes painted to identify the location of Golf Cart Travel Lanes. However, signage which is compliant with applicable laws, rules, and regulations shall be installed and shall be subject to approval by the City of St. George before the installation of the signage.

All of the foregoing improvements shall be considered part of the Cart Lane Improvements, as defined in section 13 below.

13. **Authorization for Improvements**. Before construction of any of the improvements set forth in the prior section, SunRiver shall seek the approval of the City with respect to sufficiency of design, placement, materials, and the like. In all cases where such prior approval is sought, City shall make every effort to ensure that the requested approval is not unreasonably withheld or delayed.

14. **Maintenance**. SunRiver shall be responsible for maintenance of all improvements which are required as a result of the Easement granted in the Golf Cart Travel Lanes herein, which improvements would not be required but for the use intended herein (the "Cart Lane Improvements"). This shall include maintenance of the improvements listed in Section 11 above.

15. **Costs of Maintenance**. SunRiver shall bear the cost of all Cart Lane Improvements, as defined in section 13 above. However, there may be particular items of maintenance that, by mutual agreement of the parties, can be completed by the City more efficiently, safely, conveniently, and/or at lower cost. In that event, the parties may agree that the City shall

complete said maintenance, and SunRiver shall reimburse the City for the City's actual costs, including the cost of labor, materials and equipment required to complete the same. In the event such maintenance is completed by the City as part of a larger maintenance project, then the parties shall also agree on a reasonable means of determining the portion of costs for the larger project which are attributable to maintenance of the Cart Lane Improvements.

16. **Indemnification of City by SunRiver.** SunRiver agrees that it shall indemnify City and hold City harmless for any and all losses, claims, damages, accidents, injuries, or deaths that result from or are related to the use of golf carts licensed or permitted by SunRiver upon any of the Roadways identified herein, whether the same are suffered or asserted by members of SunRiver, or by guests or invitees of said members, or by any third parties, including but not limited to any general or special damages claimed, and attorneys' fees and court costs expended by City to defend against the same. SunRiver shall also be bound to defend City against such losses, claims, damages, accidents, injuries, or deaths, and may elect at any time to settle any of the same which are brought against the City, provided such settlement does not require the City to admit to any wrongdoing.

17. **Notices.** Any notices required by this Agreement shall be in writing and given by letter mailed, or by personal delivery, to the following for each party, as the case may be. Notice shall be deemed to be received at the earliest five (5) days after being placed for mailing, or on the date actually delivered to a party as evidenced by signature or otherwise.

City:

City Manager
St. George City Hall
175 East 200 North
St. George, Utah 84770

With a copy to:

City Attorney
St. George City Hall
175 East 200 North
St. George, Utah 84770

SunRiver:

Sun River St. George Community
Association, Inc.
c/o Sun West Management, LLC
1404 W. SunRiver Parkway, Ste. 200
St. George, Utah 84790

With a copy to:

Bruce Jenkins
Vial Fotheringham
1173 South 250 West, Ste. 308
St. George, Utah 84770

With a copy to:

Darcy Stewart
1404 W. SunRiver Parkway, Ste. 200
St. George, Utah 84790

With a copy to:

V. Lowry Snow
Snow Jensen & Reece
134 North 200 East, Suite 302
St. George, Utah 84770

18. **Corporate Authority.** The parties represent and warrant that they have respective corporate authority by virtue of their respective governing documents or law or a resolution of the respective board of managers or council to enter into this Agreement.

19. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the state of Utah.

20. **Integration.** This Agreement constitutes the entire agreement between the Parties pertaining to the Roadways and supersedes all prior agreements and understandings. No covenant, representation, or condition not expressed in this Agreement shall affect or be deemed to interpret, change or restrict the express provisions herein unless otherwise provided herein.

IN WITNESS WHEREOF, this Agreement has been executed as of the dates set forth below.

(remainder of page intentionally left blank)

SUN RIVER ST. GEORGE COMMUNITY ASSOCIATION, INC.:

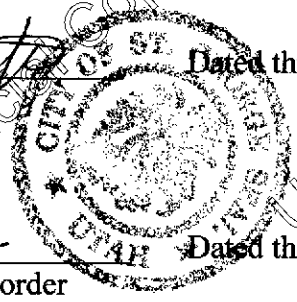
Lonnie K. Umbenhower Dated this 28th day of April, 2011.
By: Lonnie K. Umbenhower
Its: President

Kelly Stephens Dated this 28th day of April, 2011.
By: Kelly Stephens
Its: Secretary

CITY OF ST. GEORGE:

Daniel D. McArthur Dated this 19 day of May, 2011
Daniel D. McArthur, Mayor

Attest: *Gay Cragun* Dated this 19 day of May, 2011
Gay Cragun, City Recorder



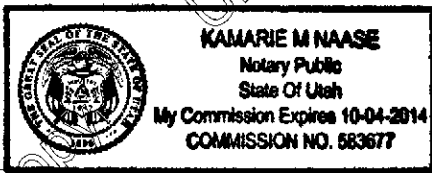
Approved as to form:

Shawn Guzman 5/20/11
Asst. St. George City Attorney

Bruce Jenkins
Attorney for SunRiver

STATE OF UTAH)
)
) ss.
 WASHINGTON COUNTY)

On the 28th day of April, 2011, appeared before me Daniel D. McArthur whose identity is personally known to me or proved to me on the basis of satisfactory evidence and who did say that he/she is the President of the SunRiver St. George Community Association, a Utah corporation, and that said document was signed by him/her in behalf of said company by authority of a resolution of its board of directors, and said Daniel D. McArthur acknowledged to me that said corporation executed the same.



Kamarie M. Naase
Notary Public

STATE OF UTAH)
)
) ss.
 WASHINGTON COUNTY)

On the 19 day of May, 2011, appeared before me Daniel D. McArthur, Mayor of the City of St. George, who being duly sworn did say that the within and foregoing instrument was signed by him on behalf of said municipal corporation by authority of a resolution of its City Council, and said Daniel D. McArthur did duly acknowledge to me that said corporation executed the same.

Diana M. Hamblin
Notary Public

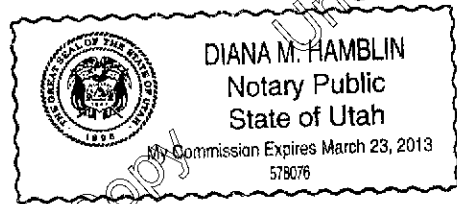
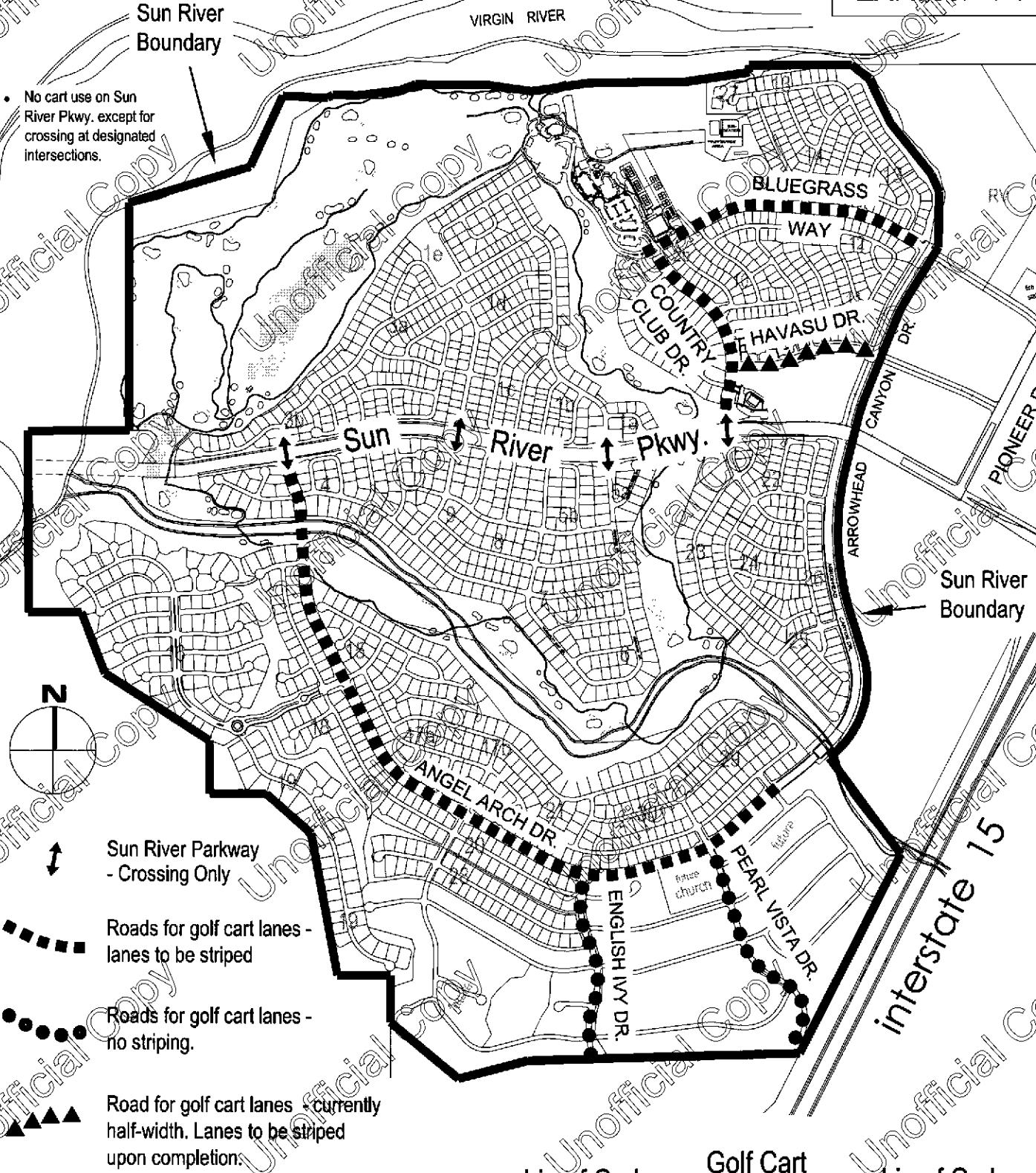
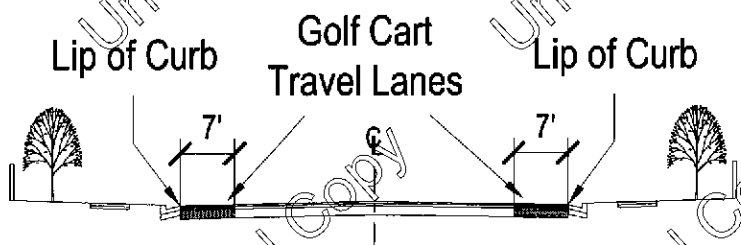


Exhibit "A"



Golf Cart Travel Lanes
 Sun River St. George

for SUN RIVER ST. GEORGE
 6-29-11



TYPICAL CROSS-SECTION - SCALE : NONE

Sun River Boundary for Golf Cart Agreement with the City of St. George

Note: This legal description describes the boundary of the Sun River St. George Planned Development Community as of July 22, 2011.

Beginning at a point being South 01°12'20" West 1,319.20 feet along the section line from the Southeast Corner of Section 22, Township 43 South, Range 16 West, Salt Lake Base & Meridian, and running;

thence North 88°47'57" West 387.75 feet;
thence North 09°17'04" West 1,046.17 feet;
thence North 47°29'20" West 438.94 feet;
thence North 88°50'45" West 415.03 feet;
thence North 01°12'30" East 386.71 feet to the southwesterly corner of Sun River St. George

Phase 16;

thence North 56°17'52" West 907.91 feet along said westerly line;
thence North 19°51'30" West 476.66 feet along said westerly line to the 1/16th line;
thence North 88°49'44" West 386.31 feet along said 1/16th line to the center section line;
thence North 01°11'22" East 1,320.25 feet along the center section line to the center quarter section of said section 22;

thence South 88°48'46" East 744.33 feet along the center section line;
thence North 01°11'22" East 1,650.00 feet;
thence North 74°51'08" East 930.51 feet;
thence North 26°13'33" East 567.99 feet;
thence South 86°00'02" East 329.71 feet;
thence North 59°16'03" East 45.55 feet;
thence South 86°17'52" East 165.15 feet;
thence North 84°25'49" East 327.33 feet;
thence North 70°46'18" East 122.78 feet;
thence South 88°11'11" East 530.02 feet;
thence South 80°43'20" East 320.52 feet;
thence North 83°11'49" East 427.91 feet;
thence South 88°43'37" East 675.00 feet;
thence North 83°08'37" East 495.00 feet to and along the northerly line of Sun River St.

George Phase 27 to the westerly line of Sun River St. George Phase 13;

thence North 01°13'52" East 50.00 feet along the said westerly line to the North Quarter Corner of Section 23, Township 43 South, Range 16 West, Salt Lake Base & Meridian;
thence South 88°45'06" East 751.53 feet along the northerly line of said Phase 13;
thence southeasterly the following (5) courses along the Easterly Line of said Phase 13
thence South 50°02'55" East 167.12 feet;
thence South 24°44'53" East 353.21 feet;
thence South 37°26'10" East 476.86 feet;
thence South 22°35'41" East 140.40 feet;
thence South 11°59'04" West 374.00 feet to the northerly line of Sun River St. George Phase

12;

thence southwesterly the following (4) courses along the northeasterly and easterly lines of said Phase 12

thence South 59°18'21" East 31.76 feet;
thence southerly 39.27 feet along an arc of a 25.00 foot radius curve to the left (center bears South 56°41'58" East, long chord bears South 11°41'58" East 35.36 feet with a central angle of 90°00'00");
thence South 33°18'02" West 66.00 feet;
thence westerly 39.27 feet along an arc of a 25.00 foot radius curve to the left (center bears South 33°18'02" West, long chord bears South 78°18'02" West 35.36 feet with a central angle of 90°00'00");

thence South 33°18'02" West 327.78 feet to and along the westerly line of Sun River St.
George Phase 11;
thence southwesterly the following (5) courses along said easterly line of Sun River St.
George Phase 11;
thence southwesterly 164.54 feet along an arc of a 967.00 foot radius curve to the left (center
bears South 56°41'58" East, long chord bears South 28°25'34" West 164.34 feet with a central
angle of 09°44'57");
thence South 23°33'05" West 240.44 feet;
thence southerly 39.27 feet along an arc of a 25.00 foot radius curve to the left (center bears
South 66°26'55" East, long chord bears South 21°26'55" East 35.36 feet with a central angle of
90°00'00");
thence South 23°33'05" West 66.00 feet;
thence westerly 39.27 feet along an arc of a 25.00 foot radius curve to the left (center bears
South 23°33'05" West, long chord bears South 68°33'05" West 35.36 feet with a central angle of
90°00'00") to the easterly line of Arrowhead Drive;
thence South 23°33'05" West 260.02 feet along said easterly line of Arrowhead Drive;
thence southerly 130.17 feet along an arc of a 967.00 foot radius curve to the left (center
bears South 66°26'55" East, long chord bears South 19°41'43" West 130.07 feet with a central
angle of 07°42'45") along said easterly line of Arrowhead Drive;
thence South 15°50'20" West 59.32 feet along said easterly line of Arrowhead Drive;
thence southeasterly 73.17 feet along an arc of a 50.00 foot radius curve to the left (center
bears South 74°09'39" East, long chord bears South 26°04'56" East 66.81 feet with a central
angle of 83°50'33") along said easterly line of Arrowhead Drive to the northerly line of Sun River
Parkway;
thence easterly 10.93 feet along an arc of a 800.00 foot radius curve to the right (center bears
South 21°24'32" West, long chord bears South 68°11'59" East 10.93 feet with a central angle of
00°46'58") along said northerly line of Sun River Parkway, said point also being the northeast
corner of Sun River St. George phase 26;
thence South 22°11'30" West 100.00 feet along said easterly line of Phase 26;
thence southwesterly 67.28 feet along an arc of a 40.00 foot radius curve to the left (center
bears South 22°11'30" West, long chord bears South 64°00'11" West 59.63 feet with a central
angle of 96°22'38") along said easterly line of Phase 26;
thence South 15°48'52" West 136.04 feet along said easterly line of Phase 26;
thence southerly 1,067.48 feet along an arc of a 1,967.00 foot radius curve to the left (center
bears South 74°11'08" East, long chord bears South 00°16'03" West 1,054.43 feet with a central
angle of 31°05'39") along said easterly line of Phase 26 and beyond;
thence South 15°16'46" East 340.32 feet;
thence southerly 734.23 feet along an arc of a 661.00 foot radius curve to the right (center
bears South 74°43'14" West, long chord bears South 16°32'32" West 697.06 feet with a central
angle of 63°38'35") to and along the southerly line Angel Arch Drive;
thence South 48°21'49" West 62.62 feet along said southerly line;
thence South 35°22'31" East 923.35 feet to the northwesterly line of Interstate 15;
thence South 28°35'09" West 420.22 feet along the northwesterly line of Interstate 15;
thence South 28°33'08" West 1,199.40 feet;
thence West 1,986.47 feet;
thence South 76°47'00" West 526.38 feet;
thence North 49°22'10" West 645.11 feet to the center section line;
thence North 01°15'23" East 339.64 feet along said center section line to the Point of
Beginning.

Containing 35,295,839 square feet or 810.28 acres.