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DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS

THIS IS A DECLARATION of Covenants, Conditions and Restrictions which establishes a Cluster Subdivision known as PINETREE CLUSTER SUBDIVISION PHASE I.

RECITALS

Declarant possesses fee simple title to certain real property in Kaysville, Davis County, Utah, which is more particularly described below, and is entitled to exercise all the rights of a Declarant, and is fully able to assign the Declarant's rights.

Declarant will convey the properties subject to certain protective covenants, conditions, restrictions, easements, charges and liens and hereinafter set forth.

DECLARATION

Declarant hereby declares that all of the properties described below shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and to the Map recorded concurrently. This is for the purpose of protecting the value and desirability of the Properties. This declaration and the Map shall be construed as covenants of equitable servitude, shall run with the properties and be binding on all parties having any right, title or interest in the properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

The Properties are located in Kaysville, Davis County, Utah and are described as:

LEGAL DESCRIPTION OF PROPERTY

See schedule C for property's legal description.  
(see attached)

ARTICLE I -- DEFINITIONS

The following definitions control in this Declaration. These terms, though defined, are generally not capitalized in the Declaration.

- Section 1 Declaration means this instrument, and any amendments.
- Section 2 Plat or Map means that certain real property hereinbefore described.
- Section 3 Property means that certain real property hereinbefore described.
- Section 4 Common Area means that portion of the property owned by the Association, shown on the plat as dedicated to the common use and enjoyment of the owners.
- Section 5 Limited Common Area means that portion of property owned by the Association, shown on the Plat as dedicated to the exclusive use and enjoyment of the owner of the lot to which such limited common area is subject to the rights of the Association set forth in this Declaration.
- Section 6 Owner means the entity, person, or group of persons owning fee simple title to any lot which is within the properties. Regardless of the number of parties participating in ownership in each lot. The group of these parties shall be treated as one "owner".
- Section 7 Association means Pinetree Association, its successors and assigns.
- Section 8 Member means every person or entity who holds membership in the Association, Every member is an owner, and every owner is a Member.
- Section 9 Trustee means the governing body of the Association.
- Section 10 Declarant includes Bruce Rigby and the Declarant's heirs, successors and assigns, but excludes grantees of a Declarant unless the Declarant's rights are specifically assigned.
- Section 11 Mortgage includes "deeds of trust" and Mortgagee includes "trust deed beneficiary".

## ARTICLE II -- PROPERTY RIGHTS

- Section 1 Owner's Easements of Enjoyment Every owner has a right and easement of use and enjoyment in

## Section 1 - continued

and to the common area. This easement is appurtenant to and passes with the title to every lot, subject to:

- a) The right of the Association to limit the number of guests of members using the common area.
- b) The right of the Association to suspend the voting rights and/or common utility service of a member for any period during which any assessment or portion thereof against his lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.
- c) The right of the Association to grant easements for public utilities or other public purposes consistent with the intended use of the common area by the Association.
- d) The Right of the Associates to take such steps as are reasonably necessary or desirable to protect the common area against foreclosure.
- e) The terms and conditions of the Declaration.
- f) The right of the Association, through its trustees, to adopt rules and regulations concerning use of the common area.

Section 2 Limited Common Area A lot owner is entitled to the exclusive use of the limited common area adjacent and appurtenant thereto, if any, and to exclusive use of the parking area, if any, designated with his lot number on the plat. Limited Common Area is subject to rights of the Association set forth in this Declaration. The Association, through its Trustees, may adopt rules and regulations concerning use of the limited common area.

Section 3 Declaration of Use An owner is deemed to delegate his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property. No one who is non-resident shall have any such right of enjoyment.

Section 4 Lot Each lot is owned in fee simple by the owner.

- a) As common area, if adjacent to and

naturally forming a part of common area;  
or

b) As limited common area, if adjacent and naturally forming a part of limited common area.

### ARTICLE III -- MEMBERSHIP AND VOTING RIGHTS

Section 1 Membership Every owner is a member of the Association. The term "owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to any may not be separated from lot ownership. Membership in the Association automatically transfers upon transfer of title by the record owner to another person or entity.

Section 2 Voting Rights The Association has two classes of voting membership:

CLASS A Class A members are all members with exception of the Declarant. Class A members are entitled to one vote for each lot owned. When more than one person holds an interest in any lot, the group of such person shall be a member. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot. A vote cast at any association meeting by any of such co-owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the lot concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-owner of the same lot. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

CLASS B The Class B member is the Declarant. The Class B member is entitled to three (3) votes for each lot owned. The Class B membership will cease and be converted to Class A membership on the happening of either of the following events, which ever occurs earlier.

- a) Upon conveyance of seventy-five percent (75%) of the lots subject to this declaration to purchasers: or
- b) The expiration of four (4) years from the first lot conveyance to a purchaser.

#### ARTICLE IV -- FINANCE AND OPERATIONS

Section 1 Creation of the Lien and Personal Obligation of Assignments. The Declarant and each subsequent owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. (3) any other amount or assessment levied or charged by the Association or GBoard of Trustees pursuant to this Declaration, and (4) interest, costs of collection and a reasonable attorney's fee, as hereinafter provided. All such amounts shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. Successors-in-title shall not be personally liable for assessments delinquent at the time they took title unless that obligation is expressly assumed by them.

Section 2 Purpose of Assessments. The assessments levied by the Association shall be used (a) for the purpose of promoting the recreation, health, safety and welfare of the residents of the properties and (b) for the improvement and maintenance of properties, services, and facilities devoted to this purpose. The assessments must provide for but are not limited to, the payment of taxes on Association property and insurance maintained by the Association property; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the common and limited common areas; the payment of administrative expenses of the Association:

insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of those common and limited common areas which must be replaced on a periodic basis; and other amounts required by this Declaration or that the Trustees shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Trustees, for the payment of other charges including, without limitation, maintenance, management, utility, cable television trash collection, sewer and water charges, and snow removal.

Section 3 Maximum Annual Assessment Until January 1, recording of this Declaration, the maximum annual assessment shall be Twelve Hundred dollars (\$1200.00) per lot. This amount shall be the basis of calculations for future maximum annual assessment.

- a) From and after the date referred to above the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year, without a vote of the membership.
- b) The Association may change the basis and maximum of the assessments fixed by this section prospectively for any annual period provided that any such change shall have the assent of sixty-seven percent (67%) of the votes of each class of the members authorized to vote in person or by proxy, at a meeting duly called for this purpose.

Section 4 Special Assessment for Capital Improvements In addition to the annual assessments, the Association may levy in any assessment year, a special assessment applicable to that year only. Special assessments may only be levied to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of common or limited common area structures. Fixtures and personal property related thereto. Special assessments must have the assent of sixty-seven percent (67%) of the votes of each class of the members authorized to vote in person or by proxy, at a meeting duly called for this purpose.

Section 5 Additional Assessments In addition to the



annual assessments and special assessment for capital improvements authorized herein, the Association shall levy such additional assessments as may be necessary from time to time for the purpose of repairing and restoring the damage of disruption resulting to the streets or other common or limited common areas from activities of the City of Kaysville, in maintaining, repairing or replacing utility lines and facilities thereon. It is acknowledged that the ownership of utility lines, underground or otherwise is in the City up to and including the meters for individual lots, and that they are installed by the Declarant and shall be maintained by the City to City specifications.

Section 6 Notice and Quorum for any Action Authorized Under Sections 3, 4 and 5 Written notice of any meeting of members called for the purpose of taking any action authorized under Sections 3, 4 or 5 shall be sent to all members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of members, or of proxies, entitled to cast sixty percent (60%) of all votes of each class of membership shall constitute a quorum. If the quorum requirement is not met at such a meeting, another meeting may be called, on at least thirty (30) days advance written notice, and the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7 Uniform Rate of Assessment: Periodic Assessment Both annual and special assessments must be fixed at a uniform rate for all improved lots. Property taxes on common areas will be prorated equally among the 7 lot owners. This method of determining the assessments, dues and charges may not be changed without the prior written approval of all first mortgagees. Annual, special and additional assessments may be collected on a monthly or quarterly basis, as the Trustees determine.

Section 8 Date of commencement of Annual Assessment: Due Dates The annual assessment provided for herein shall commence to accrue on the first day of the month following conveyance of the common area. The first annual assessment shall

be adjusted accordingly to the number of months remaining in the calendar year. In the absence of a determination by the Trustees as to the amount of said assessment, the first annual assessment shall be an amount equal to ninety percent (90%) of the maximum annual assessment provided above.

At least thirty (30) days prior to the commencement of each new assessment period, the Trustees shall send or cause to be sent a written notice of the annual assessment to each owner subject thereto. Receipt of notice shall not be a pre-requisite to validity of the assessment.

The assessment due dates shall be established by the Trustees. The Trustees may provide for the payment of annual and special assessment in equal installments throughout the assessment year.

The Trustees shall prepare a roster of the properties and the assessments applicable thereto at the same time that it shall fix the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any member at reasonable times.

The Associations shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified lot has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

#### Section 9

Effect of Non-Payment of Assessment - Remedies of the Association. Any Assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Trustees shall determine appropriate) until paid. The Trustees may, in the name of the Association, (a) bring an action at law against the owner personally obligated to pay any such delinquent assessment without waiving the lien of

assessment, or (b) may foreclose the lien against the property in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law, and/or (c) may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent member.

There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and a reasonable attorney's fee, together with an account for the reasonable rental for the lot from time to time of commencement of the foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security.

A power of sale is hereby conferred upon the Association which it may exercise. Under the power of sale, the lot of an owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as Trustee for purposes of power of sale foreclosure.

No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or by abandonment of his lot.

#### Section 10

Subordination of the Lien to Mortgagee The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender or insured by the Federal Housing Administration or the Veterans Administration if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. NO sale or transfer, however, shall relieve a lot or owner from personal liability for assessments coming due after he takes title or from the

lien of such later assessments.

Section 11 Books, Records and Audit The Association shall maintain current copies of the Declaration, articles, Bylaws, rules and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection by lot owners and insurers as well as by holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. A lot owner or holder, insurer or grantor of a first mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

#### ARTICLE V - INSURANCE

Section 1 Casualty Insurance on Insurable Common Area  
The Trustees shall keep all insurable improvements and fixtures of the common area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss of damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The Insurance coverage with respect to the common area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses which shall be included in the regular annual assessments made by the Association.

In addition to casualty insurance on the Common Area, the Trustees may elect to obtain and continue in effect, on behalf of all owners, adequate blanket casualty and fire insurance in such form as the Trustees deem appropriate in

an amount equal to the full replacement value.

Insurance premiums from any such blanket insurance coverage and any other insurance premiums paid by the Association shall be a common expense of the Association to be included in the regular annual assessments a levied by the Association.

Section 2      Replacement or Repair of Property In the event of damage to or destruction of any part of the common area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all lot owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such lot owner.

In the event of damage or destruction by fire or other casualty to any portion of the development covered by insurance written in the name of the Association, the Trustees are empowered to and shall represent the members in any proceedings, negotiations, settlements or arguments. The Association is appointed attorney-in-fact of each owner for this purpose.

Section 3      Liability Insurance The Trustees shall obtain a comprehensive policy of public liability insurance covering all of the common and limited common property for at least One Million Dollars (\$1,000,000.00) per occurrence for personal or bodily injury and property damage that results from operation, maintenance or use of the common areas. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause of endorsement which shall preclude the insurer from denying the claim of and owner because of negligent acts of the Association or other owners.

Section 4      Fidelity Insurance The Trustees may elect to obtain coverage against dishonest acts on the part of the managers, Trustees, officers, employees, volunteers, management agents or

others responsible for handling funds held and collected for the benefit of the owners or others responsible for handling funds held and collected for the benefit of the owners or members. In procuring fidelity insurance the Trustees shall seek a policy which shall (1) name the Association as obligee or beneficiary, plus (2) be written in an amount not less than the sum of (i) three months' operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition or "employee".

#### Section 5

Annual Review of Policies All insurance policies shall be reviewed at least annually by the Trustees in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the property which may be damaged or destroyed.

#### ARTICLE VI -- ARCHITECTURAL CONTROL COMMITTEE

No structure, building, fence, wall or addition, extension or expansion of any of the foregoing shall be commenced, erected or maintained upon the properties, nor shall any exterior addition or change or alteration to any lot or Garden Home be made until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Trustees or, if such a committee is in existence, by, an Architectural Control Committee composed of three (3) or more representatives appointed by the Trustee. In the event said Trustees, or their designated committee fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and compliance with this article will be deemed to have been made.

## ARTICLE VII -- EXTERIOR MAINTENANCE

- Section 1     Exterior Maintenance by Owner Each owner shall responsible for maintenance to the exterior of the Home owned. The Trustees shall, however, in the default of the owner to perform maintenance which is the owner's responsibility, and after a two-thirds (2/3) vote, and after ten days written notice (which notice shall not be required in the event of emergency or threat to life, health, property or safety), provide exterior maintenance upon each Home and lot. The cost of such maintenance shall be assessed against the lot or Home.
- Section 2     Exterior Maintenance by Association The Association shall be responsible for maintenance upon the common area.
- Section 3     Access at Reasonable Hours For the purpose solely of performing maintenance required by this article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the owner, to enter upon any lot or limited common area at reasonable hours.
- Section 4     Failure to Maintain In the even the Homeowners Association does not maintain the common facilities and improvements as proposed and indicated at the time of subdivision, the City may, at its option, do or contract to have done the required maintenance, and recover the costs incident thereto by means of a lien against the involved properties of the members of the Homeowners Association.

## ARTICLE VIII -- USE RESTRICTIONS

- Section 1     General Use Restrictions All of the properties which are subject to this declaration are hereby restricted to residential dwellings and lots in connection therewith, including, but not limited to community buildings on the common property. All lots or structures erected in the properties shall be of new construction and no lots or structures shall be removed from other locations to the property and no subsequent lot or structures dissimilar to those initially constructed shall be built

on any lot. No lot or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any lot at any time.

## Section 2

Construction, Business and Sales

Notwithstanding any provision to the contrary herein contained, it shall be expressly permissible for Declarant to maintain such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of lots during the period of construction and sale of said lots and upon such portion of the premises as Declarant deems necessary including but not limited to the business office, storage areas, construction yard, signs, model units and sales offices

## Section 3

Signs: Commercial Activity Except for one "For Rent" or "For Sale" sign of not more than five (5) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisance shall be erected, placed, or permitted to remain on any lot or any portion of the properties. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the properties. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time.

## Section 4

Quiet Enjoyment No noxious or offensive activity shall be carried on upon any part of the properties nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the owners or which shall in any way increase the rate of insurance.

## Section 5

Animals No animals, livestock or poultry of any kind shall be raised, bred, or kept on any of said lots, except that small dogs, cats or other household pets, one (1) per household may be kept provided that they are not kept, bred or maintained for any commercial purpose.



Notwithstanding the foregoing, no animals or foul may be kept on the property which result in an annoyance or are obnoxious, by noise, smell, or otherwise, to lot owners. All pets must be kept on the lots or on a leash when in the common areas. This provision may be made more restrictive by Rule of the Association.

Section 6

Use of Common Area Except for the rights of ingress and egress, owners are hereby prohibited and restricted from using any of said common area, other than as permitted in this declaration of covenants or as may be allowed by the Trustees. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all owners of lots in the properties and is necessary for the protection of the interest of all said owners in and to the common area.

Section 7

Parking Parking spaces with the properties shall be used for parking of motor vehicles actually used by the owner or his immediate family for personal use and not for commercial use. No motor vehicle which is inoperable shall be placed in parking areas, and any motor vehicle which remains parked over seventy two (72) hours shall be subject to removal by the Association, at the owner's expense. Such expense of removal shall be secured by the lien for assessment obligations previously provided. If parking spaces are designated on the plat with numbers corresponding to lot numbers, each such space is for the exclusive use of the lot owner. If parking areas are not designated on the plat with lot numbers, the Board may assign vehicle parking space for each lot. Recreational vehicles, boats, travel trailers and similar property may not be parked in common parking areas, and unless permitted by rule of the Association, may not be parked in parking areas designated on the plat for exclusive use.

Section 8

Planting and Gardening No Planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon any property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Trustees.

- Section 9      External Appartus No lot owner shall cause or permit anything (including, without limitation, awnings, canopies, or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, oron the outside of windows or doors, without the prior wirtten consent of the Trustees.
- Section 10     Exterior Television or Other Antennas No exterior radio or other antennas, except on television antenna which shall not exceed four feet in height, per lot, shall be placed, allowed or maintained upon any lot or upon any structure or portion of the improvements situated and located upon the properties without prior written approval of the Trustees.
- Section 11     Garbage Removal All rubbish, trash and garbage shall be regularly removed from the lots and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers.
- Section 12     Oil and Mining Operations No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shallbe permitted upon or in the properites of any lot No derrick lift, shaft or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the properties or any lot.
- Section 13     Interior Utilites All utilities, fixtures and equipment installed with a lot, commencing at a point where the utility lines, pipes, wires conduits or systems enter boundaries of a lot, shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair any easement of hereditament nor do any act nor alter any existing condition which will adversely affect the other lots or owners.
- Section 14     Leases Any lease or rental agreement shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations of the Association and that any failure by leasee to comply with the terms of such documents shall be a default under the lease.

## ARTICLE IX -- EASEMENTS

Section 1      Encroachments Each lot and the property included in the common and limited common areas shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the structure containing lots is partially or totally destroyed and then rebuilt, the owners of the lots so affected agree that minor encroachments of parts of the adjacent lots or common or limited common areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2      Utilities There is hereby created a blanket easement upon, across, over and under all of the properties for ingress, egress, limited to water, sewers, gas telephone and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for all public utilities serving the properties to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the properties provided that all such services shall be placed underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the properties except as initially programmed and approved by the Declarant or thereafter approved by Declarant or the Association. Should any utility furnishing a service covered by this general easement herein provided require a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on said property without conflicting with the terms hereof. All utilities that are installed in upon, under or through the common areas of the properties shall be maintained by the Association, or Kaysville City, as agreed.

Section 3 Police, Fire and Ambulance Service An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and common and limited common area in the performance of their duties.

Section 4 Maintenance by Association An easement is hereby granted to the Association, its officers, agents employees and to any maintenance company selected by the Association to enter in or to cross over the common and limited common areas and any lot to perform the duties of maintenance and repair.

ARTICLE X -- GENERAL PROVISIONS

Section 1 Enforcement The Association, the Declarant or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, including but not limited to any proceeding at law or in equity against any person or person violating damages and against the land to enforce any lien created by these covenants. Failure of the Association or of any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right of the Association or any owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provisions hereof, the party against whom enforcement is sought shall pay to the Association or enforcing owner a reasonable attorney's fee. The Trustees may levy a fine or penalty not to exceed ten percent (10%) of the amount of the maximum annual assessment against any owner who fails to refrain from violation of these covenants or a role of the Association, after three (3) days written notice.

Section 2      Severability All of said conditions, covenants and reservations contained in this Declaration shall be construed together, but if any one of said conditions, covenants or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant or reservation, or any part thereof, shall be thereby affected or impaired and the Declarant, Association and owners, their successors, heirs and assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this declaration, irrespective of the invalidity or unenforceability of any other article, section subsection, paragraph, sentence clause or phrase.

Section 3      Duration The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

Section 4      Amendment The covenants, conditions and restrictions of the Declaration may be amended by instrument signed by not less than sixty-seven percent (67%) of the owners. Any amendment must be properly recorded in the records of Davis County, Utah, to become effective.

Notwithstanding the foregoing, the Declarant reserves the right for so long as he shall have class B membership status, to unilaterally amend the Declaration to comply with City, State and other laws, or regulations or requirements of holders, insurers, or guarantors of first mortgages, subject to the approval of the Federal Housing Administration or Veterans Administration.

- Section 5. Notices Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it.
- Section 6. Gender and Grammar The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, man or woman, shall in all cases be assumed as though in each case fully expressed.
- Section 7. Waivers No provision contained in the Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.
- Section 3. Topical Headings The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.
- Section 9. Bruce Rigby at 1064 w 450 s layton ,ut. 84041 will receive all services of process. subsequent changes shall be noted at davis county recorder.

**ARTICLE XI -- ASSIGNMENT OF POWERS**

Any and all rights and powers of Declarant herein contained may be delegated, transferred or assigned.

IN WITNESS HEREOF, the undersigned, being the declarant herin, have hereunto set our hand and seal this 21<sup>st</sup> day of October, 1999

Bruce B. Rigby  
BRUCE RIGBY

Kari M. Rigby  
KARI M. RIGBY

Herman C. Blamires  
HERMAN C BLAMIRE\$ trustee for the HC and Donna BLAMIRE\$ revocable trust

Donna G. Blamires  
DONNA G. BLAMIRE\$ trustee for the HC and Donna BLAMIRE\$ revolvable trust

STATE OF UTAH )

SS

COUNTY OF DAVIS )

On this 21<sup>st</sup> day of October, 1999, before me personally appeared Bruce b. Rigby, Herman Blamires and Donna BLAMIRE\$ whose identity is personally known to or proved to me on the basis of satisfactory evidence. the above named have executed this document for its stated purpose. Also appearing before me is Kari M. Rigby

Marjorie Slade  
NOTARY PUBLIC

My commision expires:

4-11-2001



Beginning at a point 898.26 feet South  $41^{\circ}15'00''$  East along the Westerly right of way line of a State Highway from the Northeast Corner of Block 2 Plat G, Kaysville City Survey, said point also being 939.93 feet North  $0^{\circ}21'12''$  West along the Section line to a point on the Westerly right of way line of said State Highway and 1151.40 feet North  $41^{\circ}15'00''$  West along said Westerly right of way line from the East Quarter Corner of Section 3 Township 3 North, Range 1 West, Salt Lake Base and Meridian, and running thence South  $41^{\circ}15'00''$  East 69.75 feet along said right of way; thence South  $48^{\circ}34'47''$  West 92.55 feet; thence South  $74^{\circ}31'12''$  West 56.62 feet; thence South  $15^{\circ}28'48''$  East 56.96 feet to a point on the Northerly line of Spencer Estates; thence South  $74^{\circ}31'12''$  West 134.00 feet along said Northerly line to the Easterly line of Barton Estates; thence North  $17^{\circ}13'12''$  West 155.71 feet along said Easterly line; thence North  $73^{\circ}27'21''$  East 248.92 feet to the point of beginning. To be known as Pine Tree Cluster Subdivision Phase 1)

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