

Payson City  
439 W. Utah Ave  
Payson, Utah 84651  
M

ENT 85065:2001 PG 1 of 11  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2001 Aug 24 10:05 am FEE 38.00 BY SS  
RECORDED FOR PAYSON CITY

**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
FOR THE BLUE HEAVEN SUBDIVISION**

The Undersigned is the owner of the real property ("property") in the County of Utah, State of Utah described as:

See Exhibit "A"

The property presently consists of Blue Heaven Subdivision. The Undersigned has deemed it desirable to provide a general plan for the architecture of all of the property and for the establishment of covenants upon the property for the purpose of enhancing and protecting the value and attractiveness of the property.

Title to all of these lots located within the property may be sold only subject to these protective covenants, conditions, and restrictions as set forth below.

The Undersigned hereby covenants, agrees and declares that all of the lots and property described above and such additions thereto as may hereafter be made shall be held, sold, and conveyed subject to the following covenants, conditions, and restrictions which are hereby declared to be for the benefit of all of the property and the owners thereof, their successors, and assigns. These covenants conditions and restrictions shall run with the property and shall be binding upon all parties having or acquiring any right, title or interest in the property or any lot or part thereof and shall inure to the benefit of each owner thereof.

The Owner hereby acknowledges that they are aware of the Payson City Title 19 Zoning ordinance and Title 20 Subdivision ordinance.

**ARTICLE I**

***Definitions***

The following terms used in these covenants, conditions, and restrictions shall be applicable to this Declaration and are defined as follows:

Section 1. "Lot" shall mean and refer to a recorded Lot within the existing property upon which there has been or will be constructed a single family dwelling.

Section 2. "Owner" shall mean and refer to the current or future record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of security for the performance of an obligation.

**ARTICLE II**

***Architectural Control***

**Section 1. Moving of Structures.** No building which was formerly located in another site shall be moved on to a lot in this project without written approval of the Blue Heaven Architectural Committee. Also modular homes are restricted from being placed on a lot in this project.

**Section 2. Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other out building shall be used on any lot at any time as a residence, either temporarily or permanently.

**Section 3. Completion of Building.** When the construction of any residence or other structure is once begun, work thereon must be carried out diligently and completed within sixteen (16) months of date of commencement of such site excavation.

**Section 4. Landscaping.** All front yard areas must be landscaped before a Certificate of Occupancy will be issued in summer months. In winter months, a sum determined by the Payson City Council may be placed into escrow so that front yard landscaping can be completed within a period not to exceed six (6) months. If home is not under construction within sixty (60) days of purchase, ground on lot must be maintained to be free from weeds, garbage, and debris and not unsightly. Landscaping is the sole responsibility of the Buyer. Each lot must be fully landscaped within five (5) years of the recordation of a deed transferring title to the property. A minimum of three (3) trees shall be incorporated in to each lot's landscaping. In order to assure uniformity of street appearance, no trees are to be planted upon city property or property on the street side of any through sidewalk without specific approval in writing of the Committee. The following trees, because of their undesirable characteristics, are prohibited in the Blue Heaven Subdivisions:

<u>Species Name</u>	<u>Popular or Common Name</u>
Ailanthus Altissima	Tree of Heaven
Placanus Occidentalis	American Plane Tree
Populus Acuminata	Lace Leaf Poplar
Populus Alba	Silver Poplar
Populus Alba Bolleana	Bolleana Poplar
Populus Angustifolia	Narrow-leaf Poplar
Populus Deltoides	Carolina Poplar
Populus Fremontil	Fremont's Poplar
Populus Nigra Italica	Lombardy Poplar
Robinia Pseudoacacia	Black Locus
Ulmus Pumila	Siberian Elm

Section 5. *Compliance with Applicable Zoning Ordinances.* All structures within the property shall be built, occupied, and used in accordance with Payson City.

Section 6. *Blue Heaven Architectural Committee Approval Required.* No building or structure, including, but not limited to, tennis court or swimming pool, shall be erected, remodeled or placed on the property without the prior written approval of the Blue Heaven Architectural Committee as to location, height, design and harmony with existing structures and in compliance with the covenants, conditions and restrictions set forth herein. The approval process will commence as soon as the proposed lot Architectural or improvement plans are tendered to the Blue Heaven Architectural Committee. A written response to the proposed plan will be returned within a reasonable time to the applicant.

Section 7. *Dwelling Quality and Size.* The intention and purpose of the covenants is to assure that all dwellings shall be built with quality materials and good workmanship. The main floor area of the main structure, exclusive of one-story open porches and garages, is encouraged to be not less than one thousand five hundred square feet. If the structure has a main floor and a second floor (two story) then the total floor area is encouraged to be not less than two thousand square feet. The architectural design will be as equally important as the size.

Section 8. *Architectural Guidelines.* The following architectural guidelines shall apply to all lots in the property affected thereby:

- (a) *Harmony in Building.* Front exterior material of all dwellings shall be primarily brick, stucco, stone, or other material acceptable to the Blue Heaven Architectural Committee. If exterior is stucco, the front of the home must be 50% or more stone or brick. The roofing materials shall be either approved wood shingles (with acceptable fire rating), composition asphalt shingles, or tile roofs. The use of natural earth tones will be required on all roofing materials. It is the desire of the Blue Heaven Architectural Committee that no white aluminum siding or other reflective materials or other colors be allowed, except for trim and small cosmetic areas, in limited amounts. All exterior elevations and colors shall be approved by the Architectural Committee. Home exteriors shall conform to the general theme of neighborhood design as determined by the Architectural Committee.
- (b) *Detached Accessory Buildings.* A detached accessory building may be permitted and shall be subject to all of the covenants, conditions, and restrictions, imposed by Article II hereof and the requirements of Payson City. The detached accessory building shall compliment in design and composition the dwellings placed on the premises and in no event shall such accessory building be

- permitted with a height greater than the dwelling itself. The design and site plans of such accessory building shall be submitted to the Blue Heaven Architectural Committee for approval prior to obtaining a building permit and commencing the construction of such accessory building.
- (c) *Fences.* Fences are not prohibited, however, when fences are constructed vinyl fencing is strongly encouraged. All fences must be approved by the Architectural Committee and shall be in compliance with Payson City ordinances. Fences in front of houses shall be a maximum of three and one-half (3 ½) feet high with no wire, chain link, or solid fencing. Vinyl rail fencing is encouraged. Fencing on the south property lines of lots, 1, 5, and 8, shall be livestock rail type with no barbed wire.
  - (d) *Lighting.* If required by Payson City, each home will have a lit street number visible on the front of the home.
  - (e) *Roof Lines.* Roof lines must be kept at 5/12 pitch or higher, unless special permission is granted by the Blue Heaven Architectural Committee upon review of plans, specifications and lot location.
  - (f) *Prohibitions Against Soil Erosion and Runoff.* It shall be the responsibility of the property owner to direct site work relative to the lot in such a manner as to minimize erosion and runoff. Construction shall be conducted in such a manner as to prevent the movement of earth materials or construction debris onto neighboring property or into the storm drainage system. Lot owners shall cause all construction to take place in a good and workmanlike fashion so as not to misuse the natural streams or drainage once constructed.
  - (g) *Retaining Walls.* Property owner will be required, when there is more than a two (2) foot difference in lot elevation at property line after grading, including final grade, to construct a retaining wall or brick wall.
  - (h) *Garages and Driveways.* Every dwelling must have a minimum of a two (2) car garage and a driveway leading thereto large enough to accommodate two cars parked side by side.

Section 9. *Ingress/Egress.* No lot within the subdivision shall be used for the permanent purpose of ingress or egress to another property inside or outside of this subdivision. The access for lot no. 2 will be from 200 North, not 600 East.

Section 10. *General.* Prior to construction, the lot owner shall be responsible for clearing weeds and debris. Property owners should be aware that the property south of the subdivision is currently zoned GC-1, General Commercial and has existing animal rights, since the uses were existing prior to the Blue Heaven Subdivision, the property owners will need to be tolerant of these rights.

Section 11. Vehicles, RV's, Trailers. Lot owners shall not park vehicles of any kind on the street for overnight parking. Guests or relatives of the owners shall be allowed to park their vehicles on the street during their visit, but not to exceed one week at a time. No vehicle shall be parked on a vacant lot for storage at any time. Parking shall not be allowed in the front yard setback or a side yard setback that is adjacent to a street unless it is in a designated driveway. Boats, trailers, other recreational vehicles, large trucks, and commercial vehicles shall not be parked on the streets. Boats, trailers, other recreational vehicles, large trucks or commercial vehicles parked on any lot shall be screened from view at the side or rear of the home with attractive and well maintained vegetation, an attractive and well maintained fence, or other sight obscuring structures approved by the Committee so as not to be visible from the street.

Section 12. Storage Tanks. No tank for the storage of fuel is allowed in the development.

Section 13. Building Location. No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines as required by Payson City, Utah.

Section 14. Building Materials. No building material of any kind or character shall be placed or stored upon any lot until the owner thereof is ready to commence improvements, and the material shall be placed within the property lines of the plot upon which the improvements are to be erected and shall not be placed in the streets or between the curb and property line.

Section 15. Easements. Easement for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. All power and telephone lines must be run underground.

Section 16. Signs. No signs, billboards nor advertising structures may be erected or displayed on any lots hereinbefore described or parts or portions thereof, except that a single sign, not more than 2x3 feet in size advertising a specific unit for sale or house for rent, or project/construction sign not to exceed 4x8 feet in size, may be displayed on the premises affected.

Section 17. Architectural Approval. No building or structure shall be erected, placed, or altered on any lot until the construction plans and specifications and a plan showing the location of the structure upon the lot have been approved by the Blue Heaven Architectural Committee as to the quality and workmanship of the materials, harmony of external design with existing structures, and as to location in respect with the topography and finish grade elevation. All homes shall be traditional in style; traditional meaning homes with a colonial, early American, English, Tudor, or French architecture. Homes with massive use of glass which resemble commercial buildings or

ultra-contemporary/modern design, and sub-terrestrial windows will be discouraged. Any home with a contemporary/modern architecture or log cabin style homes will be discouraged. No prefabricated home shall be accepted in the subdivision.

The approval or disapproval of any building or structure must be given in writing by the Blue Heaven Architectural Committee. All decisions of the Blue Heaven Architectural Committee shall be final, and neither the Blue Heaven Architectural Committee nor its designated representative shall be subject to any liability therefore. Any errors or omissions in the design of any building or landscaping or any violations of city or county ordinances are the sole responsibility of the owners and/or their designated architects. The Blue Heaven Architectural Committee's review of plans shall in no way be construed as an independent review or opinion of the structural or mechanical adequacy or soundness of the building, and the Blue Heaven Architectural Committee shall have no responsibility or liability therefore. The Blue Heaven Architectural Committee, in its discretion, shall be empowered to grant reasonable variances from the conditions and restrictions set forth in this Declaration.

### **ARTICLE III**

#### ***Blue Heaven Architectural Committee***

**Section 1. Membership.** The Blue Heaven Architectural Committee (hereinafter "Committee") is comprised of Joann Smith Anderson and others to be named in the future. Decisions of the Committee shall be by majority vote, and a majority of the Committee may designate a representative to act for it. The Committee may fill vacancies in the committee and remove members thereof in its discretion; provided, however, that when ninety percent (90%) of the land comprising the saleable property has been sold (either by deed or under contract of sale), then thereafter, upon designation by eighty percent (80%) of those who are owners (either in fee or by contract of purchase) of land comprising the property, of some person or persons who such owners desire to make a member or members of said Committee, the Undersigned will appoint such person or persons to the Committee, and if necessary, will remove from said Committee existing member or members in order to create vacancies for the new appointments; provided further, however, that one person designated by the Undersigned shall always remain a member of said Committee if the Undersigned so desires. The functions of the Committee shall be, in addition to the functions set forth elsewhere in this Declaration, to pass upon, approve, or reject any plans or specifications for structures to be erected on lots within the property, so that all structures shall conform to the restrictions and general plans of the Undersigned, and of the Committee, for the improvement and Architectural of the entire property. Nothing in this paragraph shall be construed as authorizing or empowering the Committee to change or waive any restrictions which are set forth in this Declaration except as herein specifically provided. The Committee may act by any two of its members, and any

authorization, approval, or power made by the Committee must be in writing signed by at least two members.

**Section 2. Enforcement.** The Committee or any owner or the successor in interest of an owner shall have the right to enforce by proceedings at law or in equity all restrictions, or conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration or any amendment thereto, including but not limited to, the right to prevent the violation of any such restriction, conditions, covenants or reservations and the right to recover damages for such violation as well as any and all legal expenses incurred by the enforcement of the covenants, conditions, and restrictions found within this Declaration.

## ARTICLE IV

### *New Building and Procedure*

To maintain a degree of protection to the investment which homeowners in this area may make, homes of customary design are requisite. Designs shall be limited to those prepared by architects licensed to practice in the State of Utah or by designers of outstanding ability whose previous work may be reviewed as a part of the approval process.

**Section 1. Preliminary Plans.** (To be filed for approval and accepted before final plans are begun.) Preliminary Plans shall be included as a minimum the following:

- (a) Plot plan to scale of entire site with buildings located and elevation of floors shown above or below a designated point on the street.
- (b) Floor plans of each floor level to scale.
- (c) Elevations to scale of all sides of the house.
- (d) One major section through house.
- (e) A perspective (optional).

Outline specifications shall give basic structure system and outline all materials to be used on the exterior of the residence.

**Section 2. Final Plans.** (To be filed for approval and accepted before construction is begun.) Final Plans shall include as minimum the following:

- (a) Plot plans to scale showing the entire site, buildings, garages, walks, drives, and retaining walls, with elevations of the existing and finished grades and contours, including those at the outside corners of the buildings and at adjacent property lines and street fronts, and elevations of floors from a designated point on the street.

- (b) Detailed floor plans.
- (c) Detailed elevations, indicating all materials and showing existing and finished grades.
- (d) Detailed sections, cross and longitudinal.
- (e) Details of cornices, porches, windows, doors, garage or carports, garden walls, steps, patios, etc.

Specifications shall give complete descriptions of materials to be used. Supplement these with a notation of the colors of all materials to be used on the exterior of the residence.

The Committee has the authority to judge buildings, materials, fences, painting, etc., on whatever basis available to it with the aim of preserving what it feels are the best interest of the property owners represented. These shall include aesthetics, reasonable protection of view, permanence of materials, etc. All decisions of the Committee shall be final.

## **ARTICLE V**

### ***General Provisions***

Section 1. *Nuisances.* No noxious or offensive activity shall be carried on upon any of the property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No storage of any articles which are unsightly in the opinion of the Blue Heaven Architectural Committee will be permitted on or about the premises unless in enclosed areas built and designed for such purposes or otherwise kept out of view from the street. No automobiles, campers, motor homes, trailers, boats, or other vehicles are to be stored on streets of front and side yards, only on a temporary basis and provided they are in running condition and properly licensed.

Section 2. *Garbage and Refuse Disposal.* The property shall not be used or maintained as a dumping ground for rubbish, trash, garbage or other waste, which shall not be kept except in sanitary containers. All refuse containers shall be kept in clean and sanitary condition. No unsightly material or objects are to be stored on any of the property in view of the general public. No trash, ashes nor any other refuse may be dumped or thrown on any lot hereinbefore described or any part or portion thereof. All homes must subscribe to city garbage disposal service.

Section 3. *Animals.* No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats or other household pets may be kept in compliance with Payson City Animal Ordinance, provided that they are not kept, bred, or maintained for any commercial purpose and are restricted to the Owner's



premises or on a lease under the handler's control. With the recordation of the final plat of the subdivision, all animal rights will be terminated.

Section 4. *Satellite Dishes, Other Structures.* Satellite dishes, statues, fountains, and other similar items must be submitted for approval by the Blue Heaven Architectural Committee.

Section 5. *Construction Activities; Clean Up; Owner Liability; Cash Deposit.* Each owner shall be fully responsible for clean up of all construction materials, debris, and refuse on the property resulting from construction activities undertaken with respect to the Owner's lot. Furthermore, each Owner shall be liable for damages to curbs, gutters, drainage systems, and other common areas and to adjoining lots resulting from their acts or the acts of their contractors and workmen in performing construction activities on their lot. To cover potential damages resulting from construction activities undertaken with respect to the Owner's lot, each Owner is required to have a cash reserve in the amount of \$1,000.00 at the time their plans are approved and the building permit issued. If no damages result from construction activities undertaken with respect to the Owner's lot, the cash reserve will be released to the Owner upon issuance of the Certificate of Occupancy.

Section 6. *Severability.* Invalidation of any one of these covenants, conditions, or restrictions by judgment or court order shall in no wise effect any of the other provisions which shall remain in full force and effect.

Section 7. *No Recourse.* The protective covenants, conditions, and restrictions set forth in this Declaration are established for the benefit of the Blue Heaven Subdivision. Any damage, loss, claim, or liability which might arise due to any decision, act, or failure to act regarding this Declaration, by the Undersigned or any of its agents, shall be exempt from any civil claim or action brought by any person owing or having an interest in any Lot or property within the subdivision, or by any other person. The Undersigned shall be held harmless from any such action or failure to act, and exempt from any civil claim or action resulting from any act or failure to act (whether intended or implied). Any errors or omissions in the design of any building or landscaping or any violation of city or county ordinance is the sole responsibility of the Owners. In the event proper procedures have not been followed in regards to any of these covenants, conditions, and restrictions, these covenants, conditions and restrictions will continue to govern and preside in full force and effect and will remain fully enforceable to all property Owners.

DATED this 20 day of August, 2001.

VISION INDUSTRIES, L.L.C.

*Zach Brimhall*

By: ZACH BRIMHALL

*Project Manager*  
Its: \_\_\_\_\_

STATE OF UTAH            )  
  :SS  
COUNTY OF SAL LAKE    )

On this 20 day of August, 2001, personally appeared before me, ZACH BRIMHALL, of Vision Industries, L.L.C., who being by me first duly sworn did say that he executed the foregoing instrument in behalf of Vision Industries, L.L.C., pursuant to authority vested in him.

*Elaine Openshaw*  
\_\_\_\_\_  
NOTARY PUBLIC



## EXHIBIT "A"

PROPOSED BLUE HEAVEN SUBDIVISION, DESCRIBED AS FOLLOWS:  
COMMENCING AT THE NORTHWEST CORNER OF BLOCK 10, PLAT "K",  
PAYSON CITY SURVEY, WHICH POINT LIES EAST 1959.42 FEET AND  
SOUTH 1141.10 FEET FROM THE WEST ¼ CORNER OF SECTION 9,  
TOWNSHIP 9 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN;  
THENCE SOUTH 0 DEGREES 15'20" WEST 181.50 FEET TO THE  
SOUTHWEST CORNER OF LOT 3 OF SAID BLOCK 10; THENCE SOUTH 89  
DEGREES 44'40" EAST 462.00 FEET ALONG A FENCE TO THE SOUTHEAST  
CORNER OF LOT 4; THENCE NORTH 0 DEGREES 15'20" EAST 181.50 FEET  
TO THE NORTHEAST CORNER OF LOT 4; THENCE NORTH 89 DEGREES  
44'40" WEST 462.00 FEET ALONG THE NORTH LINE OF THE BLOCK TO  
THE POINT BEGINNING. (BASIS OF BEARING = UTAH CORDINATE  
BEARINGS, CENTRAL ZONE, NORTH 10 DEGREES 49'09" EAST BETWEEN  
THE WEST ¼ CORNER OF SECTION 9, TOWNSHIP 9 SOUTH, RANGE 2  
EAST, SALT LAKE BASE AND MERIDIAN, AND THE MT. TIMPANOGOS PEAK  
BACKSIGHT TOWER).