

**DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF PINE BROOK SUBDIVISION**

This Declaration of Covenants, Conditions, and Restrictions (the "Declaration") is made and executed this 5 day of July, 2001 by C. Blake Homes, Inc., a Utah corporation, the Owner of real property commonly known as the Pine Brook Subdivision and more fully described in the attached Exhibit "A" (the "Property") which is made a part hereof by this reference.

**RECITALS**

Declarant intends to sell the Property, restricting it in accordance with a common plan designed to preserve the value and residential qualities of the land, for the benefit of its future owners and their successors.

NOW, THEREFORE, for the foregoing purposes, Declarant declares that the Property described above is held and will be held, transferred, encumbered, used, sold, conveyed, leased, and occupied subject to the covenants, conditions and restrictions set forth in this Declaration, all of which are declared and agreed to be in furtherance of a common plan for the subdivision, improvement, use, and sale of the Property, and are established and agreed on for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property and every part of it. All of the covenants, conditions and restrictions will run with the land and will be binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof, and will inure to the benefit of all of the Property and the future owners of that Property. Each grantee of a conveyance or purchaser under a contract or agreement of sale covering any right, title, or interest in any part of the Property, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all of the covenants, conditions and restrictions set forth in this Declaration.

**ARTICLE I  
DEFINITIONS**

When used in this Declaration (including in that portion hereof under "RECITALS"), the following terms shall have the meaning indicated.

- i. "Conveyance" shall mean and refer to actual conveyance of fee title to any Lot to any Owner by a warranty deed or other document of title.
- ii. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions for Pine Brook Subdivision, applicable to the Property, and any modifications or amendments thereto, recorded in the office of the County Recorder of Washington County, Utah.

iii. "Declarant" shall mean and refer to C. Blake Homes, Inc., a Utah corporation, the owner of the Property, and to its successors and assigns.

iv. "Expandable Land" shall mean and refer to the land set forth in Article VII herein and made a part hereof, which sets forth property upon which Declarant may expand the Project in one or more phases.

v. "Front Yard Area" shall mean and refer to the yard area of each Living Unit from the street to nearest part of the Living Unit (on corner lots, the street on the side with the front door shall be the "front" side).

vi. "Living Unit or Home" shall mean and refer to any detached single-family residential dwelling constructed within the Project. Multiple family dwellings are not included in this definition and are not allowed in the Project.

vii. "Lot" shall mean and refer to any of the separately numbered and individually described plots of land shown on any recorded subdivision Plat of the Project.

viii. "Owner" shall mean and refer to the person who is the Owner of record (in the office of the County Recorder of Washington County, Utah) of a fee or an undivided fee interest in the 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.

ix. "Plat" shall mean and refer to the drawings or plats for Phase I of Pine Brook Subdivision and/or any other recorded plats prepared pursuant to Article VII, as recorded in the County Recorder of Washington County, Utah, and as the same may hereafter be modified, amended, supplemented, or expanded in accordance with the provisions of this Declaration or supplements to this Declaration which are to occur as a result of the expansion of the Project as provided herein.

x. "Property," "Properties," and "Project" shall mean and refer to all of the real property which is covered by Phase I, Pine Brook Subdivision, as set forth in the attached Exhibit "A" of this Declaration, and such additions thereto as may hereafter be subject to this Declaration or any supplements to this Declaration which occur in conjunction with the expansion of the Project as provided herein.

xi. "Utilities" shall mean public utilities, including, but not limited to, sewer, water, drainage, natural gas, telephone, electricity, and cable television.

**ARTICLE II  
DESCRIPTION OF PROPERTY**

1. **Property Description.** The Property which is associated with the Project and which is and shall be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration consists of real property situated in Washington County, State of Utah, and more particularly described in the attached Exhibit "A" which is incorporated herein by this reference, and TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying said property. HOWEVER, ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all valid instruments of record which affect the above-described land or any portion thereof including without limitation any mortgage or deed of trust; all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies otherwise existing; an easement for each and every pipeline, cable, wire, utility line, or similar facility which traverses partially occupies the above-described land at such time as construction of all project improvements is complete; and all easements necessary for ingress to or egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities. BUT RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the above-described land and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or for any assignee or successor of Declarant (a) to construct and complete each of the Living Units on the Lots and all of the other improvements as Declarant deems to be appropriate, and to do all things reasonably necessary or proper in connection therewith; and (b) to improve portions of the Property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners or Declarant or as such assignee or successor may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the above-described land or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire eight (8) years after the date on which this Declaration is filed for record in the Office of the County Recorder of Washington County, Utah.

**ARTICLE III  
PROPERTY RIGHTS**

1. **Right of Access.** Each member (and his tenants, lessee, contract purchasers, and guests, etc.) shall have a right of ingress and egress to and from his Lot from the public street adjacent to his Lot. Such right and easement shall be appurtenant to and shall pass with title to each Lot.

2. Form for Conveyancing. Any Deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. \_\_\_\_, Pine Brook Subdivision as the same is identified in the plat recorded in the Office of the Washington County Recorder. SUBJECT TO all of the provisions of the Declaration of Covenants, Conditions and Restrictions (Declaration) as currently amended and recorded.

#### ARTICLE IV ASSESSMENT FOR LANDSCAPE MAINTENANCE

1. Personal Obligation and Lien. By acquiring or in any way becoming vested with title to a Lot in Pine Brook Subdivision and by being legally on notice of this requirement due to the recordation of this Declaration, the Owner or Owners agree to be obligated to pay to Declarant the assessment described in this Article, together with the hereinafter provided for interest and costs of collection. Said obligation commences as of the close of escrow of the Owner's purchase of a Lot, and shall be prorated as of the date of close. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (b) the personal obligation of the Owner or Owners of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights by abandonment of his Lot.

2. Purpose of Assessment. Monthly assessment levied by the Declarant shall be used for landscape maintenance of the Front Yard Area of each Lot. A Lot Owner is solely responsible for providing a continuous supply of water and power to the Front Yard Area and irrigation systems for use by Declarant in performing these maintenance duties. Each Owner shall be solely responsible for maintenance of the Lot area contained within the rear-yard and side-yard area. Each Owner shall also be solely responsible for maintaining the exterior of the Living Unit and shall do so in a manner as not to adversely affect the value or use of any other Lot or Living Unit. The Declarant shall have no obligation regarding maintenance or care of Lots or Living Units except as provided in this Article.

3. Base, Rate and Commencement of Assessment. Ownership of Lots shall be the base for assessment. For purpose of assessment, Lots owned by Declarant shall accrue no assessment unless Declarant constructs a home on a Lot and it is occupied for a permanent residence. Each Lot shall be assessed in the amount of Sixty Dollars (\$60.00) each month. The monthly assessment shall be fixed at a uniform (equal) rate for all Lots, regardless of the value of improvements thereon. Once assessments begin, whenever a Lot is sold, the assessment shall be prorated as of the date of sale. The monthly assessment provided for herein shall be due and payable to C. Blake Construction, Inc., 112 North Painted Hills Drive, Ivins, Utah 86765 on or before the 10<sup>th</sup> day of the month following the assessment due date, after which date the assessment shall be delinquent.

4. Certificate Regarding Payment. Upon the request of any Owner or purchaser, Declarant shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

5. Effect of Non-payment and Remedies. Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection, be, constitute, and remain a continuing lien on the Lot, provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any mortgage recorded prior to the date any such assessments become due. The person who is the Owner of the Lot at the time the assessment falls due shall be and remain personally liable for payments. Such personal liability shall not pass to the Owner's successors in title unless expressly assumed by them. Delinquent assessments shall bear interest from the date of delinquency until paid at the rate of eighteen percent (18%) per annum, plus a late payment service charge equal to five percent (5%) of each delinquent amount due. Declarant may, in its discretion, bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot. Any judgment obtained by Declarant shall include reasonable attorney's fees, court costs, and each and every other expense incurred by Declarant in enforcing its rights.

6. Assessment Expiration Date. The assessment authorized by this Article shall expire and have no force or effect after the expiration of two (2) years from the date this Declaration is first recorded in the office of the County Recorder of Washington County, Utah. Thereafter, each Lot Owner is solely responsible for the maintenance of the Front Yard Area of his Lot.

## ARTICLE V USE RESTRICTIONS

1. Use of Lots and Living Units. All Lots are to be improved with Living Units and are to be used only as a single-family residence, and are therefore restricted to such use. No Lot or Living Unit shall: (a) be used, occupied, or altered in violation of law; (b) be used in a way that creates a nuisance; (c) be used in a way that is offensive to the senses of sight, hearing and smell of other Owners; and (d) be used in a way that interferes with the rights of other Owners. All backyard fenced areas which are visible to Owners of adjacent Living Units shall be maintained in a clean and reasonable manner so as not to be visually offensive to the adjacent Owners.

2. Minimum Square Footage and Garage. The minimum square footage requirements for any Living Unit shall be 1,150 square feet of main floor finished interior space exclusive of basements, second level or upstairs areas, garages, patios, balconies, decks or other semi-external space. Basements (defined as having four or more feet below grade level of the Lot) shall be allowed, but none of the square footage for any basements shall be counted toward the 1,150 minimum square footage. Second stories are also allowed, but the main or ground

level must contain a minimum of 1,150 square feet. Each Living Unit must have, at the minimum, a two car garage.

3. Block Walls. Lot Owners may install block wall fencing to define the boundaries of their respective Lots, but all such fencing must be done in compliance with the applicable zoning ordinances of St. George City respecting fences. Further, such block wall fencing must be the same type and color of the block wall fencing constructed by Declarant in the Project. No chain link, wire, wood or vinyl fencing material is allowed. Walls and fences are intended to enhance the privacy of the residents of such Lots, and should not unreasonably interfere with the view from any neighboring Lot.

4. Landscaping. Lot Owners must completely landscape the rear-yard and side-yard areas of each Lot no later than one (1) year following close of escrow of the Owner's purchase of said Lot.

5. Non-residential Use. No part of the Property shall be used for any commercial, manufacturing, mercantile, storing, vending, or other such non-residential purposes. For example, Owners shall not use the streets, their driveways or yards to work on automobiles, trucks, boats, RV's, or other equipment for a period of time exceeding one day. Declarant, its successors or assigns, may use the Property for a model home site display, and as a sales office during the construction and sales period.

6. Signs. No signs or billboards of any kind shall be displayed to the public view on any portion of the property or any Lot advertising the property for sale or rent or for any other purpose. There are two exceptions: (1) the Declarant, and its successors or assigns, are allowed to advertise the property during the construction and sales period without restriction; and (2) Owners shall be allowed to display a "for sale" sign or a "for sale by Owner" sign or a "for rent" sign, so long as such signs shall be less than three feet by three feet in size and are set back ten feet from the property line.

7. Quiet Enjoyment. No noxious or offensive trade or activity shall be carried on upon any Lot or any part of the Property, 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 by the Owners or which shall in any way increase the rate of insurance.

8. Temporary Structures, Equipment, and Vehicles. No structure of a temporary character, trailer, tent, shack, garage, barn, or other out building shall be used on any Lot at any time as a residence, either temporarily or permanently. No inoperable vehicles or equipment may be kept or stored upon any Lot longer than three days. Motorhomes, boats and other recreational vehicles or equipment may not be parked in the streets but shall be kept in the garage or parked behind or along the home so that no part thereof extends in front of the edge of the home closest to the street.

9. Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot except for dogs, cats, and other household pets, provided that they are not kept, bred or maintained for any commercial purpose or kept in unreasonable numbers.

10. Garbage Removal. All rubbish, trash and garbage shall be regularly removed from the property, and shall not be allowed to accumulate thereon. All clotheslines, refuse containers, woodpiles, storage areas and machinery and equipment shall be prohibited upon any Lot unless obscured from view of adjoining Lots and streets by a fence, building, or other appropriate screen.

11. Electronic Antennas and Stove or Chimney Flues. Television antennas on the roofs shall be no more than eight (8) feet higher than the highest ridge of the home. Dishes up to twenty-four (24) inches in diameter can be placed on roofs.

12. Exception for Declarant. Notwithstanding the restrictions contained in this Article, the Declarant shall have the right to use any Lot or Living Unit owned by them, for a sales office or the like in furtherance of any construction, marketing, promotion or other activities designed to accomplish or facilitate the completion and sale of the Project. Declarant may also conduct collateral business activity on the Property.

## ARTICLE VI ANNEXATION OF ADDITIONAL PROPERTIES

1. Annexation by Declarant. Declarant reserves the right, at its sole discretion, to expand the Properties to include additional property more particularly described in Exhibit B attached hereto and incorporated herein for a period terminating after the expiration of eight (8) years from the first Lot conveyance to an Owner.

In the event the Declarant, within the time period set forth in this Article, files other plat(s) creating additional subdivisions in the Exhibit B property under the name and style of "Pine Brook Subdivision - Phase \_\_\_\_\_," and states on said plat(s) the intention to have the property described on said plat subject to the terms, covenants and conditions of this Declaration, then, upon recording of said plat, the property described therein shall be subject to this Declaration. The terms, covenants and conditions contained herein run not only to, with and from the Property described herein, but by this reference to said plat or plats, also to, with and from all adjoining additions thereto made pursuant to this Article.

2. Declarant's right to annex said land to the Property shall be subject to the following limitations:

- a. The annexed land must be a part of the land described in Exhibit B attached hereto.



- b. Any additional subdivision annexed hereto by the Declarant shall be comprised exclusively of Lots for detached residential single-family dwellings.

## ARTICLE VII MISCELLANEOUS

1. Notice. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner, at the mailing address for the Owner's Lot.

2. Term. This Declaration is to run with the land and will be binding on all parties and persons claiming under them for a period of thirty (30) years from the date this Declaration is recorded, after which time the Declaration shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of the Lots has been recorded, agreeing to change the Declaration in whole or in part.

3. Declarant's Right to Amend. Notwithstanding the preceding paragraph 2 of this, or of anything else in this Declaration, until such time as eighty percent (80%) of the Lots in the Project have been sold to purchasers, the Declarant shall have the unilateral right to amend this Declaration as may be reasonably necessary or desirable by the recordation of an Amended Declaration signed by Declarant.

4. Lease Provisions. Any Owner may lease a Lot or Living Unit, provided, however, that the lease agreement between the Owner and the lessee must be in writing and contain a provision stating that the terms of the lease shall, in all respect, be subject to the provisions of the Declaration, and that any failure of the lessee to comply with the terms of such documents shall constitute a default under the lease.

5. Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned. Should any Declarant sell its position to another developer, the new developer shall replace the selling Declarant and become a Declarant hereunder.

6. Interpretation. The captions which precede the sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The invalidity or enforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.



7. Provisions of Declaration To Run With Land. This Declaration and all provisions hereof shall constitute covenants and/or equitable servitudes that shall run with the land, and shall be binding upon and shall inure to the benefit of Declarant and all parties who acquire any interest in any Lot subject to this Declaration. All such parties shall be subject to the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and decisions contemplated by this Declaration, and failure to comply with any of the foregoing shall be grounds for appropriate action by the Declarant and/or any Owner for the recovery of damages, injunctive relief, or both.

8. Effective Date. This Declaration and any amendment hereof shall take effect and be enforceable upon its being filed for record in the Office of the County Recorder of Washington County, Utah.

**EXECUTED** the day and first year above written.

**DECLARANT:**

C. BLAKE HOMES, INC., a Utah corporation

By Cary Blake  
Cary Blake  
Its President

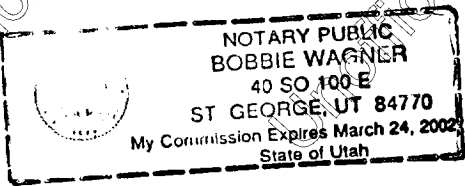
STATE OF UTAH )

: ss.

COUNTY OF WASHINGTON )

The foregoing instrument was acknowledged before me this 5 day of July, 2001, personally appeared Cary Blake, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the President C. Blake Homes, Inc., a Utah corporation, and that the foregoing Declaration of Covenants, Conditions, and Restrictions of Pine Brook was signed by him on behalf of that corporation being authorized and empowered and he acknowledged before me that the corporation executed the same for the uses and purposes stated therein.

Bobbie Wagner  
NOTARY PUBLIC  
Residing at: St. George, Ut.



**EXHIBIT "A" - LEGAL DESCRIPTION**

43763v1

File No. 93213

EXHIBIT "A" - LEGAL DESCRIPTION

PROOFREAD

Beginning at a point North 00°44'13" East, 1675.59 feet along the Center Section Line and East 521.19 feet from the South Quarter Corner of Section 26, Township 42 South, Range 16 West, Salt Lake Base and Meridian, said point being on the East Boundary Line of CREEKSIDE HOMES AMENDED as recorded in the Office of the Washington County Recorder, and running thence South 72°17'40" East, 766.09 feet to a point on the Westerly Right-of-Way Line of Indian Hills Drive, a 66.00 foot public street as recorded in the Washington County Recorder; thence along said right-of-way South 15°14'33" West, 230.72 feet; thence North 74°45'27" West, 100.13 feet; thence North 67°56'59" West, 50.36 feet; thence North 72°17'40" West, 481.69 feet; thence North 65°38'56" West, 50.34 feet; thence North 72°17'40" West 91.56 feet to a point on the East Boundary Line of said CREEKSIDE HOMES AMENDED; thence along said boundary North 17°04'11" East, 225.19 feet to the point of beginning.

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**EXHIBIT "B"**

**EXPANSION PROPERTY LEGAL DESCRIPTION**

ALL PROPERTY LOCATED IN THE GENERAL VICINITY OF  
THE PROPERTY PREVIOUSLY DESCRIBED HEREIN,  
WHICH IS CONTIGUOUS TO ANY PHASE OF THE  
DEVELOPMENT.