

2008

William Campbell and Marjorie Campbell,  
husband and wife v. Christopher Stuhmer and  
Michelle Stuhmer, as Trustees of the Stuhmer  
Family Trust : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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WILLIAM CAMPBELL AND MARJORIE  
CAMPBELL, husband and wife,

Appellants,

vs.

CHRISTOPHER STUHMER AND  
MICHELLE STUHMER, as Trustees of the  
Stuhmer Family Trust,

Appellees and Counter  
Appellants.

**BRIEF OF APPELLEES AND  
COUNTER APPELLANTS**

**APPEAL NO. 20080295-CA**

---

Appeal from the Third Judicial District Court, Summit County, State of Utah

The Honorable Bruce Lubeck, District Court Judge

Trial Court Case No. 030500815MI

---

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UTAH APPELLATE COURTS  
APR 10 2009**

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## **I. STATEMENT OF JURISDICTION**

Jurisdiction in this Court is proper pursuant to Utah Code Ann. § 78A-4-103(2)(j).

## **II. ISSUES PRESENTED ON APPEAL AND STANDARDS OF REVIEW**

Issue 1: Whether the court properly interpreted the Declaration governing the Homeowners' Association regarding attorneys' fees and properly applied Utah Code Ann. § 78-27-56.5<sup>1</sup> when denying an award of attorneys' fees to the Stuhmers as the prevailing party. This issue was preserved at R. 357-368, 635, 647-649, 1291-1301, 1307-1310, 1318-1323, 1382.

Standard of Review 1: Interpretation of a contracts and statutes involve conclusions of law, which are accorded no particular deference, but are reviewed for correctness. Traco Steel Erectors, Inc. v. Comtrol, Inc., 175 P.3d 572, 579 ¶ 34 (Utah Ct. App. 2007); State of Utah v. Miller, 170 P.3d 1141, 1143 ¶ 6 (Utah Ct. App. 2007).

## **III. DETERMINATIVE STATUTES AND RULES**

Rule 56, Utah Rules of Civil Procedure; Utah Code Ann. §§ 78-27-56.5 and 78B-5-826. Copies of Rule 56, 59 and § 78B-5-826 are included as Addenda "A" and "B".

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<sup>1</sup> Has since been renumbered as Utah Code Ann. § 78B-5-826.

## **IV. STATEMENT OF THE CASE**

### **A. NATURE OF THE CASE, COURSE OF PROCEEDINGS, AND DISPOSITION BELOW**

#### **1. NATURE OF THE CASE**

Appellees and Counter Appellants Christopher Stuhmer and Michelle Stuhmer, as Trustees of the Stuhmer Family Trust (the “Stuhmers”), appeal from a judgment entered by the Honorable Bruce Lubeck, Third District Court, Summit County, that ruled that the Stuhmers were not entitled to attorneys’ fees as the prevailing party. (R. 1375-1382.) The Court ruled in the Stuhmers’ favor by dismissing plaintiffs’ claims that included allegations that the Stuhmers’ home violated restrictive covenants regarding height limitations and the number of dwellings allowed on the property. (R. 1376-1378, 1381.) The court also ruled in the Stuhmers’ favor with respect to allegations that water trespassed upon plaintiffs’ property by dismissing the Campbells’ claim for injunctive relief. (R. 1378-1380, 1381.) The court ruled in favor of the Campbells on one issue, determining that posting no trespassing signs on the border of the property was inappropriate. (R. 1380-1381.) The jury granted the Stuhmers’ claim for breach of contract against the Campbells and awarded the Stuhmers \$7,569.38. (R. 1382.) The jury also ruled that although the Stuhmers’ diversion dam caused water to back up onto the Campbells’ property, no damages were awarded. (R. 1382, 1403 at 638-639.) The Court awarded costs to the Stuhmers as the prevailing party in the amount of \$2,965.95. (R. 1382.)

## **B. COURSE OF PROCEEDINGS**

1. On or about December 30, 2003, the Campbells filed a complaint against the Stuhmers for injunctive relief relating to the allegations that the Stuhmers' home exceeded the height limitation allowed by the White Pine Ranches Homeowners' Association and by Summit County. (R. 1-15.)

2. The motion for injunctive relief was later amended on July 16, 2004. (R. 97-101.)

3. The Campbells filed a Second Amended Complaint on December 21, 2004 (R. 245-257) and a Third Amended Complaint was filed on April 28, 2005 (R. 417-436).

4. The Stuhmers filed answers to the complaint and amended complaints on March 31, 2004, June 22, 2004 and April 17, 2005. (R. 56-65, 258-270, 381-396.)

5. The Stuhmers also filed a counterclaim against the Campbells on December 22, 2004, which was amended on April 13, 2005. (R. 258-270, 381-396.)

6. On April 8, 2005, the Stuhmers filed a motion for summary judgment seeking dismissal of the Campbells' claim that the Stuhmers' home was too high and that the Stuhmers' home constituted two structures. The memorandum also requested that the Stuhmers be awarded their attorneys' fees pursuant to the Declaration. (R. 357-368.)

7. After the Campbells filed an opposition memorandum to the motion for summary judgment on April 27, 2005 (R. 437-447), and the Stuhmers filed a reply memorandum on May 11, 2005 (R. 511-527) the court conducted a hearing on August 8, 2005 and ruled in a written ruling an order dated August 10, 2005. (R. 620-634, 1406 pp. 1-56. A copy of the court's ruling is included as Exhibit "C" to the Addendum hereto.)

8. The court's ruling granted the Stuhmers' motion with respect to the claim that the Stuhmers' home was too high, but denied the motion as to the allegations that the Stuhmers' home constituted more than one structure. (R. 620-634.)

9. The court reserved the issue of attorneys' fees for trial. (R. 635, 647-649.)

10. A jury trial was conducted on November 5-7, 2007. (R. 1401-1403.) At the conclusion of the Campbells' evidence, the Stuhmers moved to dismiss the Campbells' claims. (R. 1402 at 400-416.)

11. The court granted dismissal of the Campbells' claim that the Stuhmers' home constituted two structures. (R. 1402 at 416-417.)

12. Upon conclusion of the evidence regarding the Campbells' claim that the stream constituted a trespass and the Stuhmers' breach of contract claim, the court denied the Campbells' claim for injunctive relief related to the streambed. The court also ruled in the Campbells' favor that the no trespassing signs upon the Stuhmers' property were inappropriate. (R. 1381.)

13. The jury determined that although the diversion dam from the Stuhmer property had caused the water to back up on the Campbells' property, the jury awarded the Campbells no damages. The jury also ruled in favor of the Stuhmers' breach of contract claim and awarded the Stuhmers \$7,569.38 against the Campbells for breaching the agreement with respect to sharing costs on the berm that separated the property. (R. 1382.)

14. Upon conclusion of the trial, the court ruled that the Stuhmers were the prevailing parties and determined that the neither the Declaration governing the

Homeowners' Association nor Utah Code Ann. § 78-27-56.5 entitled the Stuhmers to an award of attorneys' fees. (R. 1382, 1403 at 623-637. The transcript containing the court's ruling regarding attorneys' fees is included in the Addendum hereto as Exhibit "D".)

15. Prior to the court's entry of the Findings of Fact and Conclusions of Law, the Stuhmers filed a Rule 59 motion and memorandum seeking an award of attorneys' fees as the prevailing party. (R. 1291-1293, 1294-1301, 1307-1310, 1318-1323.)

16. The court denied the Stuhmers' request for attorneys' fees. (R. 1327-1330. A copy of the court's ruling is included in the Addendum as Exhibit "E".)

17. The court's findings of fact, conclusions of law and final judgment were entered on March 3, 2008. (R. 1375-1382. A copy is attached to the Addendum as Exhibit "F".)

18. The Stuhmers filed a notice of appeal on March 28, 2008. The Campbells filed a notice of appeal on March 31, 2008, but have dismissed the appeal. (R. 1383-1385, 1386-1388.)

### **C. STATEMENT OF FACTS**

1. Plaintiffs William and Marjorie Campbell and defendants Christopher and Michelle Stuhmer are members of the White Pine Ranches Homeowners' Association ("White Pine Ranches HOA"). (R. 361, 417, 1376.)

2. The rights of the homeowners in the White Pine Ranches are governed by a Declaration drafted in 1993 (the "Declaration"). (R. 18, Exhibit "C"; 360, Exhibit "A";

418, 1376. A copy of the Declaration is included as Exhibit “G” to the Addendum hereto.)

3. The Stuhmers timely obtained grading and building permits and obtained approval from Summit County to build the Stuhmers' home pursuant to the plans submitted to the County. (R. 1377.)

4. Section 6 of the Declaration requires that the Stuhmers submit their plans to the Architectural Committee of the White Pine Ranches HOA. (R. 1377.)

5. The Stuhmers complied with Section 6 of the Declaration by submitting their plans to the Architectural Committee of the HOA, which approved the Stuhmers' plans. (R. 1377.)

6. The Campbells' claims against the Stuhmers involved alleged breaches of the Declaration related primarily to the height of the Stuhmers' home and whether the Stuhmers' home constituted more than one structure. (R. 1-15, 361, 420-430, 1376.)

7. The Campbells' complaint also contained claims for injunctive relief related to the streambed behind the Stuhmers' home and a diversion dam, which the Stuhmers had built, as well as a claim that the no trespassing signs upon the Stuhmers' property were inappropriate under the Declaration. (R. 430-431.)

8. The Stuhmers filed a counterclaim against the Campbells for breach of contract related to the berm separating the two properties. (R. 258-270.)

9. The Stuhmers prevailed at trial on all issues except for the no trespassing sign, which was a minor issue. (R. 1279-1281, 1375-1382.)

10. Section 9.1 of the Declaration provides for an award of attorneys' fees to a group of individuals identified as "Declarants" as follows:

9.1 Enforcement and Remedies: The obligations, provisions, Covenants, restrictions, liens and charges now or hereafter imposed by the provisions of this Declaration or any Amended Declaration shall be enforceable by Declarants, the Association, or any Owner of a Lot by any proceeding at law or in equity. If court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the Declarants or the Association shall be entitled to costs and expenses in connection therewith, including reasonable attorneys' fees.

(R. 18, Exhibit C, p. 26 and Exhibit "G" to the Addendum hereto.) (Emphasis added.)

11. The Declarants are identified in paragraph 2.3 of the Declaration to include the following:

2.3 Declarants: "Declarants" means Leon H. Saunders, Saunders Land Investment Corporation, a Utah Corporation, White Pine Enterprises, Robert Felton, FDIC in its Corporate Capacity as Purchaser of Certain Assets of Tracy Collins Bank & Trust, Stewart M. Collester & Johanna Collester as Trustees of the Collester Family Trust, White Pine Enterprises, James C. Bard, Donald Lewis Lappe & Alice Ann Lappe as Trustees of the Donald & Alice Lappe Family Trust, Howells Investment, Thomas H. Fey and Carolyn L. Fey, together with their successors, mortgagees and assigns and also, where appropriate includes those described herein as "Declarant Developers."

(R. 18, Exhibit C, p. 4 and Exhibit "G" to the Addendum hereto.) (Emphasis added.)

12. The Stuhmers and Campbells are both successors and assigns to parties or entities listed in paragraph 2.3. The Stuhmers are downline successors and assigns because they obtained their property through Tom and Carolyn Fey, defined as Declarants who conveyed to Martin Granoff, who then conveyed to the Stuhmers. (R. 1294-1300, Exhibit "1" to Exhibit "B" and as Exhibit "H" to the Addendum hereto.)



13. The Campbells purchased their property directly from Stewart and Johanna Collester, who were expressly defined as “Declarants” in Section 2.3 of the Declaration. (R. 1294-1300, Exhibit “2” to Exhibit “B” and as Exhibit “I” to the Addendum hereto.)

14. The Stuhmers requested attorneys’ fees from the trial court and first submitted a memorandum regarding the Stuhmers’ argument why they were entitled to attorneys’ fees in connection with their motion for summary judgment filed on April 8, 2005. (R. 357-358, 367, 437-447, 511, 524-526.)

15. In the court’s ruling on the summary judgment motion, the court granted the Stuhmers’ motion to dismiss the Campbells’ claim that the Stuhmers’ home was too high, but the court did not award attorneys’ fees. (R. 620-634. See Exhibit “C” to the Addendum hereto.)

16. Due to the fact that the attorneys’ fees were requested in the motion, but not addressed in the court’s order, the Stuhmers filed a request for clarification with the court regarding attorneys’ fees, which the court reviewed and the court reserved the issue for trial. (R. 635, 647-648. The court’s ruling is included in the Addendum as Exhibit “J”.)

17. Following the trial, the court declined to award attorneys’ fees. (R. 1280, 1327-1330, 1382.)

18. The court entered findings of fact, conclusions of law and the final judgment on March 3, 2008. (R. 1375-1382. A copy of the findings of fact, conclusions of law and judgement are included in the Addendum as Exhibit “F”.)

## **V. SUMMARY OF ARGUMENT**

The Declaration governing the Homeowners' Association expressly provides that a group of individuals, comprised of the initial owners, which are defined in the Declaration as "Declarants" are entitled to attorneys' fees. The Declaration also provides that the Declarants' "successors, mortgagees, and assigns," which includes the Stuhmers and the Campbells, are also entitled to attorneys' fees.

The Campbells purchased their property directly from a party who was expressly defined in the group of "Declarants." The Stuhmers were a downline successor by purchasing their property from the Granoffs who had previously purchased the property from the Feys, and the Feys are expressly defined in the Declaration as a Declarant. Therefore, the Stuhmers are entitled to attorneys' fees pursuant to the Declaration, and even if they were not entitled to fees pursuant to the Declaration, they are entitled to attorneys' fees pursuant to Utah Code Ann. § 78-27-56.5 (now § 78B-5-826) because the Campbells are unquestionably included with the group defined as "successors" and "assigns" and would have been entitled to fees if they had prevailed. Section 78B-5-826 provides:

A court may award costs and attorney's fees to either party that prevails in a civil action based upon any promissory note, written contract, or other writing executed after April 28, 1986, when the provisions of the promissory note, written contract, or other writing allow at least one party to recover attorney's fees.

There is no debate that the Declaration at issue in this case awards fees to at least one party. As the prevailing party to a dispute governed by the Declaration, the Stuhmers are entitled to their attorneys' fees under this statute.

## **VI. ARGUMENT**

### **A. THE STUHMERS ARE ENTITLED TO ATTORNEYS' FEES IN THIS ACTION**

The express terms of the Declaration provide that the Stuhmers are entitled to their attorneys' fees. Section 9.1 of the Declaration provides for an award of attorneys' fees to "Declarants" in relevant part as follows:

9.1 Enforcement and Remedies: . . . If court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the Declarants or the Association shall be entitled to costs and expenses in connection therewith, including reasonable attorney's fees.

(R. 18, Exhibit C, p. 26.) (Emphasis added.)

The Declarants are identified in paragraph 2.3 of the Declaration to include the following:

2.3 Declarants: "Declarants" means Leon H. Saunders, Saunders Land Investment Corporation, a Utah Corporation, White Pine Enterprises, Robert Felton, FDIC in its Corporate Capacity as Purchaser of Certain Assets of Tracy Collins Bank & Trust, Stewart M. Collester & Johanna Collester as Trustees of the Collester Family Trust, White Pine Enterprises, James C. Bard, Donald Lewis Lappe & Alice Ann Lappe as Trustees of the Donald & Alice Lappe Family Trust, Howells Investment, Thomas H. Fey and Carolyn L. Fey, together with their successors, mortgagees and assigns and also, where appropriate includes those described herein as "Declarant Developers."

(R. 18, Exhibit C, p. 4 and Exhibit "G" to the Addendum hereto.) (Emphasis added.)

The Stuhmers and Campbells are both successors to parties or entities listed in paragraph 2.3. The Stuhmers obtained their property through Tom and Carolyn Fey, defined as Declarants who conveyed to Martin Granoff, who then conveyed to the Stuhmers. (R. 1294, Exhibit “1” to Exhibit “B”.) (See paragraph 12 above and Exhibit “H” to the Addendum hereto.) The Campbells purchased their property directly from Stewart and Johanna Collester, who were defined as “Declarants” in Section 2.3. of the Declaration. (R. 1294, Exhibit “2” to Exhibit “B”.) (See paragraph 13 above and Exhibit “I” to the Addendum hereto.) Therefore, the Stuhmers are a downline successor and the Campbells are a direct successor and assign.

Section 2.3 of the Declaration uses the terms “successors, mortgagees and assigns” containing the plural which establishes an intent for the provision to apply to all subsequent successors, mortgagees and assigns and not just the initial successor, mortgagee and assignee. “The intention of the parties is ascertained from the document itself and the language used within the document.” Swenson v. Erickson, 998 P.2d 807, 811 ¶ 11 (Utah 2000).

Additionally, Section 1.2 of the Declaration, provides that the conditions of the Declaration run with the land, in relevant part, as follows:

“All provisions hereof shall be deemed to run with the land as Covenants running with the land or as equitable servitudes as the case may be.” (R. 18, Exhibit C, pp. 1-2 and Exhibit “G” to the Addendum hereto.)

Section 1.5 of the Declaration similarly provides in relevant part:

Declarants hereby covenant, agree and declare that all of said Lots and Property described above and such additions thereto as may be hereafter be made hereof shall be held, sold and conveyed subject to these Covenants,

conditions, restrictions, easements, the Articles of Incorporation and By-Laws of the White Pine Homeowner's Association and all subsequent amendments thereto. all of which are hereby declared to be for the benefit of the whole Property described herein and the Owners thereof, their successors and assigns. These Covenants, conditions, restrictions, easements, Articles of Incorporation and By-Laws shall run with the said Real Property and shall be binding on all parties having or acquiring any right, title or interest in the described real Property or any part thereof and shall inure to the benefit of each Owner thereof and are imposed upon said real Property and every part thereof as a servitude in favor of each and every parcel thereof as the dominant tenement or tenements.

(R. 18, Exhibit C, pp. 2-3 and Exhibit "G" to the Addendum hereto.) (Emphasis added.)

Section 1.5, just as Section 2.3, was intended by the drafters to benefit the "successors and assigns." These terms are used in the plural which establishes an intent that the documents apply to successors and assigns. Indeed, the reasonable interpretation of such a provision is to apply it to all downline successors. "In interpreting a contract, we look to the writing itself to ascertain the parties' intentions, and we consider each contract provision in relation to all of the others, with a view toward giving effect to all and ignoring none." WeBank v. American General Annuity Service Corp., 54 P.3d 1139, 1144 ¶ 18 (Utah 2002).

"If the language within the four corners of the contract is unambiguous, the parties' intentions are determined from the plain meaning of the contractual language, and the contract may be interpreted as a matter of law."

Id. (Citations omitted.) With the provisions of the Declaration running with the land and inuring to the benefit of each owner, and the Stuhmers being owners of the land and a successor and assign to one of the Declarants, the Stuhmers are entitled to fees.

**B. THE STUHMERS ARE ENTITLED TO FEES PURSUANT TO UTAH CODE ANN. § 78B-5-826**

The undebatable issue in this appeal is that even if the terms “successors, mortgagees and assigns” who are “Declarants” that are entitled to attorneys’ fees, apply to only the immediate successor, mortgagee or assignee, the Stuhmers are nevertheless entitled to attorneys’ fees due to the Campbells’ immediate successor and assignee status pursuant to Utah Code Ann. § 78-27-56.5 (§ 78B-5-826), which provides as follows:

A court may award costs and attorney’s fees to either party that prevails in a civil action based upon any promissory note, written contract, or other writing executed after April 28, 1986, when the provisions of the promissory note, written contract, or other writing allow at least one party to recover attorney’s fees.

The Declaration unquestionably allows at least one party to recover attorneys’ fees. As the successor of one of the parties specifically defined as a “Declarant” under Section 2.3, which includes “successors, mortgagees and assigns,” the Campbells would have been entitled to fees had they prevailed in this action. (R. 18, Exhibit “C” and Exhibit “G” to the Addendum herewith.) The Campbells themselves asserted that they were entitled to fees relating to the dispute with the Stuhmers in their Third Amended Complaint. (R. 435.)

With the Declaration granting fees to the Campbells as successors to one of the defined Declarants who would be entitled to fees, the Stuhmers should also be awarded fees, pursuant to Utah Code Ann. § 78-27-56.5 (§ 78B-5-826), particularly in view of the fact that the Campbells’ claims were equitable claims for injunctive relief.

[I]n order to further the statute’s purpose, the exposure to the risk of a contractual obligation to pay attorney fees must give rise to a corresponding

risk of a statutory obligation to pay fees. In exercising their discretion, therefore, district courts should award fees liberally under Utah Code section 78-27-56.5 where pursuing or defending an action results in an unequal exposure to the risk of contractual liability for attorney fees.

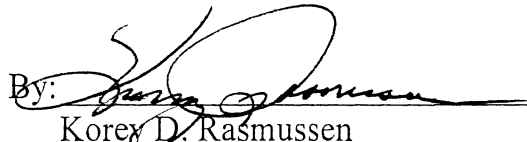
Bilanzich v. Lonetti, 160 P.3d 1041, 1046 ¶ 19 (Utah 2007).

## VII. CONCLUSION

Based on the foregoing, the Stuhmers should be awarded their attorneys' fees.

DATED this 6<sup>th</sup> day of April, 2009.

SNOW, CHRISTENSEN & MARTINEAU

By:   
Korey D. Rasmussen  
*Attorneys for Appellees and Counter Appellants  
Christopher Stuhmer and Michelle Stuhmer*

## CERTIFICATE OF SERVICE

I hereby certify that on the 6<sup>th</sup> day of April, 2009, I caused two (2) true and correct copies of the **BRIEF OF APPELLEES AND COUNTER APPELLANTS** to be mailed by first class United States Mail, postage prepaid, to the following:

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A handwritten signature in black ink, appearing to read "Michael D. Zimmerman", with a long horizontal flourish extending to the right.



# **ADDENDUM “A”**

#### **Rule 56. Summary judgment.**

1) For claimant. A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move for summary judgment upon all or any part thereof.

2) For defending party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought, may, at any time, move for summary judgment as to all or any part thereof.

3) Motion and proceedings thereon. The motion, memoranda and affidavits shall be in accordance with Rule 7. The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

4) Case not fully adjudicated on motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

5) Form of affidavits; further testimony; defense required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto and served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or other affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. Summary judgment, if appropriate, shall be entered against a party failing to file such a response.

6) When affidavits are unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

7) Affidavits made in bad faith. If any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party presenting them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused, including reasonable attorney's fees, and any offending party or attorney may be judged guilty of contempt.

**Rule 59. New trials; amendments of judgment.**

) Grounds. Subject to the provisions of Rule 61, a new trial may be granted to all or any of the parties and on all or part of the issues, for any of the following causes; provided, however, that on a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment:

)(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion by which either party was prevented from having a fair trial.

)(2) Misconduct of the jury; and whenever any one or more of the jurors have been induced to assent to any general or special verdict, or to a finding on any question submitted to them by the court, by resort to a determination by chance or as a result of bribery, such misconduct may be proved by the affidavit of any one of the jurors.

)(3) Accident or surprise, which ordinary prudence could not have guarded against.

)(4) Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial.

)(5) Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice.

)(6) Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

)(7) Error in law.

) Time for motion. A motion for a new trial shall be served not later than 10 days after the entry of the judgment.

) Affidavits; time for filing. When the application for a new trial is made under Subdivision (a)(1), (2), (3), or (4), it shall be supported by affidavit. Whenever a motion for a new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits. The time within which the affidavits or opposing affidavits shall be served may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

) On initiative of court. Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party, and in the order shall specify the grounds therefor.

) Motion to alter or amend a judgment. A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment.

# **ADDENDUM “B”**

**78B-5-826. Attorney fees -- Reciprocal rights to recover attorney fees.**

A court may award costs and attorney fees to either party that prevails in a civil action based upon a promissory note, written contract, or other writing executed after April 28, 1986, when the provisions of the promissory note, written contract, or other writing allow at least one party to recover attorney fees.

Numbered and Amended by Chapter 3, 2008 General Session

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*revised: Friday, December 12, 2008*

# **ADDENDUM “C”**

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SUMMIT COUNTY, STATE OF UTAH

WILLIAM CAMPBELL, et.al.,  Plaintiffs,  vs.  CHRISTOPHER STUHMER, et.al.,  Defendants.	<b>RULING and ORDER</b>  Case No. 030500815  Honorable BRUCE C. LUBECK  DATE: August 10, 2005
--	---

The above matter came before the court on August 8, 2005, for argument on various motions. Plaintiffs were present with Eric Easterly and defendants were present with Korey Rasmussen.

BACKGROUND

The court held an evidentiary hearing on January 26, 2005, the *Honorable Deno Himonas* presiding, and denied from the bench and in a written order of April 10, 2005, the request of plaintiff for a preliminary injunction.

Defendant then filed on April 12, 2005, a motion for summary judgment. Plaintiff filed an opposition on April 28, 2005, and defendant filed a reply on May 13, 2005. On May 16, 2005, a notice to submit was filed by defendant and the matter was scheduled on June 3, 2005, for argument August 8, 2005.

On April 15, 2005, defendant filed a motion to dismiss the rescission claims.

On May 3, 2005, plaintiff filed a motion to reconsider or enter final judgment. Defendant opposed that on May 19, 2005,

and plaintiff replied June 7, 2005. Plaintiff on June 6, 2005, requested a hearing on this motion.

On June 10, 2005, plaintiff filed a motion for a temporary restraining order and preliminary injunction and on June 30, 2005, defendant opposed the motion.

The court sent notice on June 28, 2005, that all motions would be heard August 8, 2005.

**1. Defendants' motion for summary judgment.**

Defendants claim that plaintiffs and the Stuhmers are members of the defendant association (HOA), which association has been dismissed by stipulation, and that there is a declaration (CCRs) which governs. The CCRs establish a maximum height of 28 feet, but allows the architectural committee to grant variances. That variance was granted to the Stuhmers, and that decision is claimed to be final and binding. The court has ruled the CCRs were not violated and a variance was granted.

Defendants argue that their home does not violate the CCRs. The plans were approved, and the committee decision is binding. There is thus no fact dispute about the height of the Stuhmer home and whether it violates the CCRs.

Defendants also claim their home is not three structures, as one roof covers everything, and so there are no detached buildings and so the home is not in violation of the CCRs.



Defendants also seek attorney fees under the CCRs as the prevailing party in a dispute in connection with the CCRs.

Plaintiffs oppose the motion and argue defendants are in error in attempting to turn the findings of fact from the preliminary injunction hearing into uncontested facts. Plaintiffs argue that their complaint alleges violations of the CCRs but not solely those violations set forth by defendants in their motion. Plaintiffs assert defendants admit their home violates the CCRs but defendants rely on a variance. Plaintiffs argue there was no variance granted. Plaintiffs argue that even if the committee did grant a variance, it was improper and was not based on valid reasons or good cause. Plaintiff also claims there are four areas, or structures, that make up this home, in violation of the CCRs and there are disputes about whether the home is one or more structures.

In reply defendants cite to a letter to defendants from the HOA which stated the committee had waived the height requirement of the CCRs, and plaintiffs have not properly disputed that fact. A member testified at the preliminary injunction hearing that the committee was aware of the height of the Stuhmer home and approved the plans, which defendants argue was a waiver of the height restriction. Another member in deposition indicated the height of the Stuhmer home was considered and the plans approved. Another member also gave deposition testimony that there was a

variance given and no formal method existed to notify the owner of a variance.

Defendants also argue there was good cause to approve the plans and grant a variance. The CCRs give broad discretion to the committee, for "other matters," to grant a variance.

Defendants again say the home is one structure as it is under one roof.

Defendants are said to be declarants under the CCRs and are thus entitled to attorney fees, as they are successors.

The court believes that the summary judgment request must be granted as to the height aspects involved. The court believes that there is no factual dispute that the Stuhmers were given a variance by the architectural committee and that variance was based on good cause. The court in the January 26, 2005, hearing, found facts that the court now believes make those facts uncontested and undisputed. The court agrees with plaintiffs that not all facts found at a preliminary injunction hearing necessarily become undisputed for summary judgment purposes but on the state of this record the court sees no genuine dispute about material facts related to the height of the building of defendants.

Another "fact finder" would not be exposed to another presentation of the facts. The testimony was found and is

undisputed that a variance was granted. Under the CCRs, sections 8.5, 6.7, and 6.4, defendants must prevail on the cause of action seeking injunctive relief and declaratory relief as to the height of the structures.

The architectural committee approved the plans submitted and that amounted to the granting of a variance, and there is no formal or structured manner in which that variance needs to be granted. While not all the language of the CCRs, 6.7 and 8.5, is perfectly clear, the court believes the language is not ambiguous in that it allows variances for reasons, and the facts showed those reasons, good cause, and the committee decision is thus binding.

The motion for partial summary judgment is thus GRANTED as it relates to the height issues.

As to the other claims relating to the single structure issues, the court believes there are factual disputes which preclude summary judgment as to that aspect.

## **2. Plaintiffs' motion to reconsider or enter final judgment.**

Plaintiffs claim the court's previous findings at the preliminary injunction hearing held January 26, 2005, concerning plaintiffs' failure to seek relief from Summit County and concerning the variance granted by the committee wrongly informed the court's decision. Plaintiffs claim that based on additional

authority developed since then, the findings are unsupportable and the court should find the Stuhmer residence is in violation of the CCRs and the county's development code and the court should grant the requested preliminary injunction.

Plaintiffs claim they were not required to exhaust their remedies, or seek redress from Summit County. Plaintiffs claim that this was not a "land use decision" because the decision of the County was a decision under the zoning ordinance. Similarly, plaintiffs claim the development code does not require exhaustion of remedies under these circumstances where a land owner is aggrieved by issuance of a building permit. The development code contains no provision that allows the Campbells to challenge the issuance of a building permit so they cannot be faulted for failing to challenge the County's action. Plaintiffs claim the Stuhmers never raised this issue and the court raised it on its own and so the issue was not briefed nor facts adduced that covered the issue. In fact plaintiffs did bring their complaint to the attention of the director of community development when they wrote a letter December 30, 2003, the same date this lawsuit was filed. Plaintiffs claim Summit County could have been sued, but they need not have been.

Plaintiffs claim there was no good cause that supported the variance that the court found. The court discussed the fact that even if over height, this home complied with the county

development code, neighborhood relations must be enhanced, plaintiffs had not objected, and there was a minimal impact on plaintiffs. Plaintiffs argue those findings are legally not "good cause," which is a legal question, and the committee is to act on objective criteria related to the variance requested. The CCRs state that other matters must "require" a variance and so the committee may not just grant a variance on their whim. The harm is not trivial because the court orally stated the harm would be irreparable if the CCRs were violated. Plaintiffs claim they did not consent and there are ample facts justifying the finding that there was no consent or waiver.

Plaintiffs argue defendants did not apply for a variance but only submitted his plans to the committee. The committee never formally communicated with the Stuhmers that there was a variance, and the committee did so in other instances with other property owners.

Plaintiffs then again analyze the four factors needed to obtain injunctive relief under Rule 65A and conclude an injunction should issue.

In the alternative, plaintiffs ask under Rule 65A(a)(2) that the court rule on the facts presented January 26, 2005, that the court certify as final the judgment under Rule 54(b).

Defendants oppose the motion to reconsider again discussing the same basic reasons they advance in support of their summary

judgment motion. They assert the CCRs provide that the decision of the committee is final and binding and not subject to judicial review.

Defendants argue that the development code provision is not enforceable by plaintiffs, and the code requires only substantial compliance. There is no format established in the CCRs which requires a waiver application or notification.

Good cause exists, as found by the court in the January 26, 2005, hearing. A "reasonable" variance can be granted and all reasons need not be set forth. The factors listed in the CCRs, topography, hardship, property lines, stream location, and other matters, were considered by the committee. No requirement exists for the committee to list or catalogue the factors it considered.

Defendants argue that both the Administrative Procedures Act and CLUDMA require exhaustion, and where there was and has been no timely petition to review the county decision, the county argument is moot and determined. Similarly, the development code requires exhaustion.

Defendants assert that at the hearing the plaintiffs mentioned only violation of the CCRs and so the exhaustion discussion is moot.

Defendants also repeat the arguments concerning Rule 65A and conclude there is no irreparable injury as the court found and as discussed in a previous ruling after a view, the balance of

interests favors defendants, there is a public interest at issue, and plaintiffs are not likely to prevail on the merits.

As to certification under Rule 54(b), defendants argue there is more evidence that can be presented that favors the Stuhmers.

In reply plaintiffs argue that the committee cannot waive the development code provisions as the CCRs provide they shall be complied with "in all events." There was no substantial compliance as there was evidence that the noncompliance was 11%, 3.5 feet over the height limit. Plaintiffs repeat the lack of good cause arguments. Plaintiffs argue it is irrelevant how the committee has acted on variances, but then cite to a situation where the committee utilized formal notice mechanisms.

Much has been written about a motion to reconsider. This motion is for a reconsideration. The courts of Utah have had several things to say in that regard. Here, there has been a change in judges on this case, and that complicates matters.

The Utah Supreme Court recently said in *Shipman v Evans*, 2004 UT 44 (May 28, 2004):

The Utah Rules of Civil Procedure do not recognize motions to reconsider. Although we have discouraged these motions, . . . , they have proliferated in civil actions to the extent that they have become the cheatgrass of the litigation landscape. We acknowledge that the extraordinary circumstance may arise when it is appropriate to request a trial court to reconsider a ruling. These occasions are rare, however, and we encourage attorneys to reverse the trend to make motions to reconsider routine.

Much earlier, the Utah Supreme Court said:

We think the motion to reconsider . . . is abortive under the rules. . . . When a motion has been made and the court has ruled upon the motion, if the party ruled against were permitted to go beyond the rules, make a motion for reconsideration, and persuade the judge to reverse himself, the question arises, why should not the other party who is now ruled against be permitted to make a motion for reconsideration, asking the court to again reverse himself? . . . Practical expediency demands that there be some finality to the actions of the court; and he should not be in a position of having the further duty of acting as a court of review upon his own ruling. *Peay v Peay*, 607 P.2d 841, 843 (Utah 1980)

Still, the court recognizes that the court may consider whether a manifest injustice will result if there is no reconsideration or a court needs to correct its own errors, among other reasons for considering a motion to reconsider.

In this case, evidence was taken by *Judge Himonas* on plaintiffs' request for a preliminary injunction. This judge has not seen a transcript of that hearing, and of course did not see or determine the believability of any witnesses.

The court does not see that it should in any way find those facts were erroneous. The record before the court, not even considering the evidence presented there, supports the findings and conclusions. The height restriction aspect has been discussed.

The court is inclined to believe the court was correct about the exhaustion arguments and review aspects of county action. However, even if not correct, the court correctly ruled on the



variance aspect of those restrictions, as discussed above concerning the summary judgment motion.

The motion to reconsider is DENIED.

The court does not certify as final the denial of the preliminary injunction.

### **3. Plaintiffs' motion for temporary restraining order and preliminary injunction.**

Plaintiffs claim they own Lot 4 in White Pines Subdivision and defendants own Lot 5, which is east of plaintiffs lot. A creek, Red Pine Canyon Creek, crosses the northern aspects of Lots 4 and 5, and the water flows east, across Lot 4 first then Lot 5. Defendants in 2001 obtained permission from the Utah Division of Water Rights to divert water from the creek into small ponds, subject to certain restrictions. In November 2004 it was determined by the State Engineer that defendants were causing water to back up onto plaintiffs' property and they were ordered to remove large rocks. Plaintiffs alleged defendants have failed to comply, causing trespass, nuisance, and a danger.

Plaintiffs contend they are entitled to injunctive relief, as all the Stuhmers have to do is remove rocks from the stream, plaintiffs may suffer because it is an ongoing trespass and nuisance and danger to visiting children, and plaintiffs are likely to prevail.

Defendants oppose the request and argue plaintiffs cannot meet the factors needed to obtain injunctive relief. There is no injury because the water backup, if it exists, is small and no great injury results. It is not irreparable as money damages could be obtained. The supporting affidavit is from a person with no background and it does not indicate the normal water depth absent the actions of defendants.

Defendants deny they raised the water level significantly, and assert that there was a headgate when defendants purchased the property. Defendants deny they acted without the State Engineer's input and affirmatively assert in October 2002 and May 2003 there was contact with the State Engineer, as evidenced by letters attached. They assert they were not ordered, but asked, to take certain action, namely, lower the diversion spillway. Defendants deny they have not taken action, and attach the affidavit of Stuhmer. Sandbags were placed due to high runoff, and those have now been removed.

Defendants argue they cannot possibly have wronged plaintiffs as the State Engineer approved their action, and any excess water was not intentional or unreasonable.

The court, when it received this motion in early July, believed, with some but evidently not complete justification, that any "crisis" in water depth would have been alleviated by

nature when any heavy Spring run off diminished. At this hearing, the court proceeded by way of proffer. It appears to the court that any immediate serious danger to children is at a minimum due to lower water levels in the creek and any ponds and that any possible danger will not likely re-emerge until next Spring. However, weather could impact that and because, if factually proven, there may be a recurring injury injunctive relief may be appropriate.

Based on the pleadings and proffers, and an examination of the factors involved, the court cannot conclude that the extraordinary remedy of a TRO is necessary at this time. The court will deny the TRO but have the parties to contact the scheduling clerk to obtain date to schedule an evidentiary hearing for a preliminary injunction. The court believes it must be better informed factually to determine if the elements of injunctive relief are met and the court cannot do that based on the pleadings and proffers.

The parties are to contact the scheduling clerk, obtain a 15 minute scheduling conference, and the court will schedule an evidentiary hearing with the parties on the motion for preliminary injunction.

The motion for TRO is DENIED and the motion for preliminary injunction is to be scheduled for evidentiary hearing as above.

This Ruling and Order is the Order of the court and no

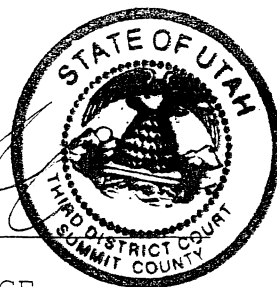
other order is required.

DATED this 10 day of Aug., 2005.

BY THE COURT:



BRUCE C. LUBECK  
DISTRICT COURT JUDGE



Case No: 030500815  
Date: Aug 10, 2005

---

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 030500815 by the method and on the date specified.

METHOD NAME

Mail ERIC G EASTERLY  
ATTORNEY PLA  
1795 SIDEWINDER DR STE 201  
PARK CITY, UT 84060  
Mail KOREY D RASMUSSEN  
ATTORNEY DEF  
POB 45000  
SALT LAKE CITY UT 84124

By Hand CALENDAR CLERK

Dated this 10th day of August, 2005.

  
Deputy Court Clerk

# **ADDENDUM “D”**

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SUMMIT COUNTY, STATE OF UTAH

---

WILLIAM CAMPBELL and MARJORIE CAMPBELL,	:	Case No. 030500815
	:	
Plaintiffs,	:	Appellate Case No. 20060658-SC
	:	
v	:	Volume III of III
	:	
WHITE PINES RANCHES HOMEOWNERS ASSOCIATION, et al.,	:	
	:	
Defendants.	:	With Keyword Index

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JURY TRIAL NOVEMBER 5, 6 & 7, 2007

BEFORE

THE HONORABLE BRUCE LUBECK

---

**FILED DISTRICT COURT**  
Third Judicial District

MAY 19 2008

By   *LA*   SALT LAKE COUNTY  
Deputy Clerk

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CAROLYN ERICKSON, CSR  
CERTIFIED COURT TRANSCRIBER  
1775 East Ellen Way  
Sandy, Utah 84092  
801-523-1186

**FILED**  
UTAH APPELLATE COURTS

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1 don't, I don't have any reason to, we may, I may inquire of  
2 them because we, as I mentioned, in terms of a dinner  
3 decision, I may inquire of them 5:30-ish and say does it look  
4 like you're going to do something tonight, or do you think  
5 you're going to want to eat, or what do you think you're  
6 going to want to do? But if they say oh you know give us a  
7 couple of hours or something, but I don't have a set time.  
8 If they want to stay, I'll let them do that. But I don't  
9 think they're any more eager to stay after seven-ish tonight,  
10 then probably any of us are. But we'll see what they say.

11 So counsel, I'll just take it under advisement.  
12 Again, I'll rule before I know their verdict.

13 MR. RASMUSSEN: Your Honor, can I make one more  
14 statement?

15 THE COURT: On?

16 MR. RASMUSSEN: Not related to this, but -

17 THE COURT: Oh, sure.

18 MR. RASMUSSEN: We have in our Summary Judgment that  
19 was granted earlier, we requested fee. You reserved the fee  
20 issue for trial. [inaudible] prevailing party and I just want  
21 to make a formal request now that the home/house, the home  
22 issues are resolved, that the request that our fees be  
23 awarded. Thank you.

24 THE COURT: I'd frankly forgotten that. Under the  
25 CCR's -



1 MR. EASTERLY: Your Honor, we'd like to brief that  
2 issue.

3 THE COURT: Is that right?

4 MR. EASTERLY: Yeah. I don't believe that under the  
5 CC&Rs they're entitled to attorney's fees.

6 MR. RASMUSSEN: We already briefed the issue, Your  
7 Honor. I think you've ruled that we were, and [inaudible] --

8 THE COURT: Frankly, I don't deny, I frankly  
9 forgotten completely about that.

10 MR. RASMUSSEN: I'm happy to show you where, I don't  
11 know exactly now, but I'm [inaudible] --

12 THE COURT: Yeah. I, went through the whole file  
13 the other day and I made some notes. But let me see if I  
14 have an outline of my rulings. But I don't know if I  
15 remembered --

16 MR. RASMUSSEN: Yeah, it was extensively briefed I  
17 think in our, probably our reply memo. Their opposition and  
18 our reply in the first Summary Judgment Motion that you  
19 granted -

20 THE COURT: On?

21 MR. RASMUSSEN: On the, the fact that they, on the  
22 dismissal of the height claim.

23 THE COURT: Okay, that was Judge Himonas, wasn't it?  
24 Was that me?

25 MR. RASMUSSEN: No, you -

1 THE COURT: Did I do that?

2 MR. RASMUSSEN: - he, he did the TRO. You granted  
3 Summary Judgment, but you reserved the issue for trial.

4 THE COURT: Okay. Let me. Okay. Let me see if I  
5 can -

6 MR. RASMUSSEN: In fact there was a, I requested a  
7 clarification and you said that you were reserving the issue  
8 for trial to determine the prevailing party.

9 MR. EASTERLY: I don't remember that it was a matter  
10 of determining the prevailing party.

11 THE COURT: Okay, so, yes. On August 10th of '05 I  
12 granted Summary Judgment on the height. There was a request  
13 to reconsider. I denied that. I didn't make any, I don't  
14 remember that. But I, so it would be in the August 10 ruling  
15 of '05 you say I did something there about fees.

16 MR. RASMUSSEN: I believe it was, it was after that  
17 and then I asked for a clarification and you provided it -

18 THE COURT: Right.

19 MR. RASMUSSEN: - saying that you would, you would-

20 MR. EASTERLY: I think it was a letter actually.

21 MR. RASMUSSEN: Well, you issued a ruling and it  
22 said that you were reserving the prevailing party until  
23 trial. Something to that effect.

24 THE COURT: Okay. Okay, I'll look at that. I don't,  
25 I don't remember. I don't, again, I don't -

1 MR. RASMUSSEN: I'll find it for you, Your Honor.

2 THE COURT: Well, I can find it. I don't disagree.  
3 I just don't remember. All right, I'll take a look at that,  
4 and again, I'll, rather than come back in a few minutes I'll  
5 just, we'll just do it all at once. But I'll announce my  
6 decisions on these matters before I am aware of what the  
7 verdict is. So we'll be in recess, informal.

8 Counsel, [inaudible] know where to go. But I  
9 suppose if you go to the gas station you're within five  
10 minutes. But if you do go somewhere, make sure she has your  
11 cell number and don't be more than three or four minutes.  
12 They're, it's not bad to make them wait a few minutes after  
13 they have a verdict, but if they have a question, it's a  
14 difficult to make them wait 15 minutes while we assemble and  
15 decide how to answer it. So stay nearby if you would.

16 MR. RASMUSSEN: Thank you, Your Honor.

17 THE COURT: Thank you, counsel.

18 (Whereupon a recess was taken)

19 THE COURT: All right, we're on the record in  
20 Campbell v. Stuhmer. The parties and counsel are here. I  
21 was advised by the bailiff that the jury has a verdict and so  
22 I'm going to go through this a little faster than I'd like  
23 to. Maybe my plan wasn't so good, because I don't want to  
24 keep them waiting. But we had had arguments on the issues  
25 that were presented to me and I'd indicated I'd take it under

1    advisement for a little while and then I thought well maybe  
2    it's better to do it all at once. But now, so I'll kind of  
3    go through a little more quickly than perhaps I'd like to.  
4    But I, of course, had given this case considerable thought  
5    over the years that I've lived with it, so to speak, and I've  
6    considered your arguments and the facts that I heard, and so  
7    with respect to the signs, let me just indicate that I  
8    believe that factually there's really not a lot of dispute,  
9    other than possibly on someone's intent. But really the  
10   CCR's govern the section 7.4 as you all seem to recognize  
11   and, and I think as a factual matter, and as a matter of law  
12   I can find and conclude that the intent of those is to, at  
13   least, in part maintain the integrity of this area, the  
14   beauty of it, the serenity and such so that it, they just  
15   don't want a bunch of signs all over. It talks about not  
16   allowing builders and developers and so on having a sign that  
17   allows an architect or prime contractor and so on to indicate  
18   who it is.

19           But, Mr. Rasmussen, I just can't accept your view  
20   of things. It seems to me that if I can be sort of  
21   indelicate here, I mean a sign that says, you know, kiss off  
22   or you know bite me as a direction really only three of these  
23   five things have any possible application. We talked about  
24   variances. We talked about the ability of an, of an  
25   Architectural Committee to grant variances in the context of

1 the multiple structures and given the context of these and  
2 the intent of what I believe to be and find to be the intent  
3 of these, a no trespassing sign just is not allowed. The one  
4 on directions again certainly it does provide a direction.  
5 But it seems to me that what was intended was something that  
6 says a direction to turn right to Bob's Ranch or, you know,  
7 gazebo or pond, or whatever. The rules and regulations again  
8 would be it seems to be things that, that make sense in the  
9 context of not only the HOA, but of a, of a property owner.  
10 Again, like I say, go away as a direction, but it seems to me  
11 what's intended there is something that, you know, stay on  
12 paths, or don't, don't remove rocks or something. So I just  
13 don't think that that category fits.

14 And the danger category, I don't find that that  
15 does either. I understand Mr. Stuhmers saying his motive  
16 here and I guess we all have to be pretty honest. This, this  
17 whole case is about these parties attitudes towards each  
18 other. I think a sign that says danger deep water or frozen  
19 ponds, or, you know, whatever it may want to say that really  
20 tells people that there's a danger there is absolutely  
21 permitted by the Architectural Committee as to size and color  
22 and such. But I just don't think that a no trespassing sign  
23 is what they had in mind. A true warning tells of some  
24 danger. Granted, it does give some warning to stay away.  
25 But it seems to me the intent of these signs, this sign

1 section of the CCR's is simply not to, not to allow any kind  
2 of signs. But ones that fit specifically within there, and  
3 while they could grant a variance and maybe they would  
4 testify that they did, just as in the multiple structure  
5 aspect they, I think the Architectural Committee can grant a  
6 variance, but only up to a point, only reasonable and within  
7 the confines of the intent of the CCRs and I just don't think  
8 no trespassing signs fit there. Again, I'm not sure why  
9 they're needed. Obviously, the Campbells know where the line  
10 is. Again, I'm not denigrating Mr. Stuhmer or Mr. Campbell,  
11 but it's pretty apparent to me, frankly, that there are lots  
12 of reasons for these signs and they're not all altruistic to  
13 save little children. And again, it pains me to say that  
14 about you folks. I mean you're obviously men of great  
15 accomplishment, talent and abilities, very enviable positions  
16 in life. But I don't understand this. I don't understand  
17 why they're necessary and I don't understand getting very  
18 upset about them either, frankly. But it doesn't seem to me  
19 that the Architectural Committee has the right to grant a  
20 variance given the five strictures that are within 7.4. So I  
21 do grant that relief to the plaintiffs. There simply can't  
22 be any no trespassing signs erected.

23 As to the really more important aspect of things,  
24 and that is the stream bed, in the request for injunction to  
25 remove the dam and return things to their, as they were, I

1 don't know what the jury is going to do obviously, and I  
2 specifically did this in this order so I wouldn't be  
3 influenced in any way. But my take on the evidence is that  
4 as far as - and again, in your own words, prospectively  
5 looking forward, is this going to happen again. I can't  
6 enjoin whatever's been occur, whatever has occurred. I  
7 ordered back in June of '05 that the TRO issue and it's  
8 remained in effect by agreement of the parties that Mr.  
9 Stuhmer not allow water to back up onto the Campbells'  
10 property. I feel very strongly about that, regardless of  
11 what the state does, regardless of anything else, whether  
12 it's attractive, whether it's a foot deep, whether it's  
13 pretty or whether it isn't pretty, I think a neighbor has no  
14 right whatever to allow water to back up onto another  
15 neighbors property if that neighbor just doesn't want it  
16 there.

17 But on the other hand, the request here was for  
18 injunctive relief asking that not only that the water not be  
19 allowed to back up, but then arguing that, and something I  
20 hadn't even thought of, and I guess maybe he, Mr. Easterly  
21 hadn't either until the last moment, that we not allow the  
22 sediment, we'll call it for a lack of a better word, to build  
23 up. It was an interesting thing that I hadn't thought about  
24 and I'm still not sure I've absorbed it properly. But in  
25 order to, to gain the right to stop something from occurring

1 and require someone to remove something, it seems to me there  
2 is a pretty high standard that has to be met by the facts.  
3 I don't know what the jury will do. They may determine that  
4 the flume never caused anything to back up and a fair amount  
5 of damages are justified. But from my perspective as I, my  
6 take on the evidence, and what I'm finding and concluding is  
7 that I can't determine that - and I went out to the scene as  
8 well, that this area of what the Campbells now call  
9 unattractiveness, the sediment area for a lack of a better  
10 term, behind the dam that's flat without trees was caused by  
11 these dams. There's certainly is no question that in 2005,  
12 2006 the water backed up in roughly that area. I frankly  
13 find it very hard to believe that that amount of build up,  
14 sediment was accomplished in two years. Moreover, there have  
15 been changes. There, by everyone's agreement, there was no  
16 flooding this year in the spring of 2007. Whether that's a  
17 result of timing of the heat and the snow melt, whether it's  
18 a result of the amount of snow pack, whether it's the result  
19 of lowering this dam, I'm not satisfied from the evidence  
20 that it is what it is. The bottom line is I expressed very  
21 strongly in the past that if this occurred in the future this  
22 dam was coming down. It didn't occur after 2006, and to me  
23 that's an indication, at least some, that the evidence  
24 doesn't convince me that, that it's going to happen again.  
25 It may well, and it pains me greatly to think of next spring,



1 and Mr. Easterly's words, be back here with a new lawsuit and  
2 a new T-R-O. But if that, but I frankly don't see any other  
3 way. I can't, I can't find from the evidence and say this is  
4 going to happen again. I sure hope it doesn't, because if it  
5 does Mr. Stuhmer, I won't even have a hearing. If they bring  
6 me a picture that shows this is backed up, I'm going to grant  
7 a TRO in a very big hurry and I'll obviously hear everyone,  
8 but I, I can't imagine how this isn't coming down. It would  
9 come down now had there been flooding in 2007. I don't care  
10 what the state says. How closely you're working with them.  
11 If it backs up on their property again, that thing is coming  
12 down. I'm just about as sure of it as I can be. But I can't  
13 say at this point that I, that the Campbells are going to be  
14 harmed from it happening next year. It clearly won't happen  
15 til the spring, and it's just guess work that it'll happen.  
16 I'm just, I'm not, I've not been convinced that, that it's  
17 the low runoff that caused the failure of flooding this year,  
18 or the lack of flooding. It may well be that the lowering of  
19 this dam has accomplished its goal and that there'll never be  
20 flooding again, and again, I'm the last one to say I want to  
21 see you again. I don't mean it disrespectfully. I don't  
22 want this to go on either. But in terms of the context and  
23 the law of irreparable harm and so on, I find that there  
24 just, it just has not been shown that it's going to happen in  
25 the future. If the jury sees that, that Mr. Stuhmer caused

1 it intentionally and unreasonably in the past they can award  
2 damages. But as far as looking in the future and moving  
3 forward, I'm just not satisfied that, that it's been, it's  
4 been demonstrated to me that harm will occur in the future.

5 As far as the requiring the removal of the sediment  
6 and so on that Mr. Easterly you talked about, again, to me I,  
7 I think I understand what you were saying. But I saw the  
8 terrain there and I saw your experts description of the  
9 topography, but it was clear to me that at that area of near  
10 the dam there was a clearly a decrease in the, in the grade,  
11 and it wasn't all the result of sediment build up and so  
12 whether it was the flume, whether it was just a decrease in  
13 grade and then a, I mean to me, and the lines were much  
14 sharp, much steeper than they, drawn much steeper than they  
15 really were. But if they were 7 or 7.9 percent grade,  
16 whatever it said, it clearly, if you will, bottomed out and  
17 then went back to a steeper grade. But to me observing the  
18 trees and the other terrain around there, there's just no way  
19 that all came about in two years from this dam and so it, it,  
20 I just don't think the proof was shown to me that the  
21 Campbells have any, by preponderance of the evidence that  
22 it's more probable than not that this will happen again, and  
23 therefore I don't think that there's been shown to me that  
24 there's likely to be damage again next year. Again, I don't,  
25 I'm not in a threatening business, but, but - and again I

1 really don't want this to happen, have you back next year and  
2 let's see what happens. Again, had it happened again this  
3 year in the spring and the Campbells did what they did in '05  
4 and '06 and filed a request for a TRO, I'm pretty sure we -  
5 this trial wouldn't have been concerning that because it  
6 would have been down and it will be next year. It just, it  
7 doesn't make any sense to do it this way. The Campbells  
8 argument that to eliminate it for sure we ought to just tear  
9 it down and that would ensure it doesn't happen again then  
10 brings in the balancing and the balance of harms and it just  
11 seems to me that because I'm not satisfied that it's going to  
12 happen again, there's no irreparable harm and to make certain  
13 it doesn't happen again, the balance of harms clearly favors  
14 the defendants and I'm just not willing to issue any  
15 injunctive relief on the dam and unfortunately, we'll have to  
16 see if it happens and hope that it doesn't.

17 MR. EASTERLY: Your Honor, is the, the TRO that  
18 enjoins them from allowing water to be backed up -

19 THE COURT: Yeah, I think, I thought about that and  
20 again that was stipulated that it go until the trial. Again,  
21 I really think it makes no sense to even maintain that. I  
22 mean I think it doesn't make any sense to do that. I mean if  
23 it backs up there's got to be a new one. The new one  
24 wouldn't just say don't let it happen, because as you said if  
25 it'd happened in '07 it would have been a violation of that

1 and the only remedy would have been to order it either  
2 modified completely or torn down and that's really where it  
3 is now. I mean it's very clear that, that, that that can't  
4 happen. But I don't, I just don't think an order is  
5 necessary, and I don't think it, it can continue in that way.  
6 I mean all I can, because really the relief you're asking for  
7 is to, is to alter it so that it won't happen again. It has  
8 happened and if the jury concludes that it's his fault  
9 because he acted intentionally or unreasonably and caused  
10 damage, they can so say in their verdict. But for me to now  
11 say that that ought to continue and he ought to continue to  
12 be ordered is simply an empty ruling. Clearly it can't  
13 happen. It's trespassing, whether they say it or not. This  
14 is pretty good evidence of intent if he lets it happen again.  
15 But his belief is that it won't happen and I'm not convinced  
16 by the proof that it will.

17 I need to get them in here. I don't want to wait  
18 any longer.

19 I reviewed the Motion for Summary Judgment in the  
20 past where I ruled in August of '05. I reviewed the  
21 pleadings. I reviewed the CCR Section 9.1. It wasn't  
22 extensively briefed, but it was a little bit, and again, I,  
23 without having given it hours and hours of thought, it seems  
24 to me that - and let me indicate that the defendants have  
25 clearly and unequivocally in my mind prevailed on the CCR

1 alleged violations, height and now multiple structures. They  
2 didn't on the sign aspect. But nevertheless it talks in  
3 terms of declarants and association.

4 I disagree, Mr. Rasmussen, of your reading the  
5 section with the definition of declarants in 9.1. It says  
6 that declarants and the association can recover if they  
7 prevail and if, but it does not say owners and I don't think  
8 individual owners are the declarants. They're the named  
9 people. Mr. Saunders, Mr. Feltman for FDIC and Mr. Cullister  
10 and Mr. Fay and whoever else there was. Those were the named  
11 Declarants and the H, the Association is the Association. So  
12 I, whether it was intentional or not, it's not an, it's not  
13 ambiguous to me that it does not state that owners can  
14 recover attorney fees. So -

15 MR. RASMUSSEN: It does mention -

16 THE COURT: - I'm ruling that despite prevailing  
17 under the CCR's 9.1 does not allow recovery by a property  
18 owner.

19 MR. RASMUSSEN: It does mention successors, Your  
20 Honor, I don't have it in front of me -

21 THE COURT: Right [inaudible] definition -

22 MR. RASMUSSEN: - and assigns.

23 THE COURT: - and the definition of Declarant,  
24 right, but I don't think, I don't think the intent is that  
25 any owner can recover. Otherwise, it simply would have said

1     that.  I mean I've seen lots of CCR's that say property  
2     owners.  So -

3             MR. RASMUSSEN: Right, Your Honor, we'd also like, I  
4     don't have my rules in front of me, but I believe on the  
5     basis that T-R, that the, that the injunctive relief has been  
6     sustained that we're prevailing on that and we should be, we  
7     request fees pursuant to that rule to, Rule 65, and they not  
8     prevail on their request for injunctive relief, we're  
9     entitled to attorney's fees.

10            THE COURT: Okay.  Well, I'm going to make you file  
11    a Motion on that, and again, I didn't on the CCRs because you  
12    were right, you did do it and I indicated in the later ruling  
13    after your letter request that it would be reserved to see  
14    who ultimately prevailed.  But I don't know if I didn't look  
15    at it carefully then, or just didn't see it the same way.  
16    But, but that's my ruling on the CCRs.  If you want to try to  
17    recover attorney fees on something else, I'm going to require  
18    you to file a motion I think and an affidavit and let Mr.  
19    Easterly respond.

20            MR. RASMUSSEN: Thank you, Your Honor.

21            THE COURT: So I'll bring the jury in.

22            BAILIFF: All rise for the jury.

23            (Whereupon the jury entered the courtroom)

24            THE COURT: Be seated please.  We're back on the  
25    record in session - I've been talking a long time - in

# **ADDENDUM “E”**

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SUMMIT COUNTY, STATE OF UTAH

WILLIAM and MARJORIE CAMPBELL,  Plaintiffs,  vs.  CHRISTOPHER and MICHELLE STUHMER,  Defendants.	<b>RULING and ORDER</b>  Case No. 030500815  Judge BRUCE C. LUBECK  DATE: December 6, 2007
---	--

The above matter came before the court for decision on defendants' motion to alter or amend ruling.

The motion was filed November 26, 2007, after a jury and bench trial. Plaintiffs somehow filed an opposition response on the same date, November 26, 2007. Defendants filed a reply December 5, 2007, together with a Request to Submit.

The court has reviewed the pleadings and determined oral is not necessary. The court has, in reality, twice rejected this argument and certainly rejected it at trial. The court will decide the issues based on the pleadings.

Defendants of course blame plaintiffs entirely for this litigation and seek attorney fees under the Declaration. The court has ruled, right or wrong, that it believes the language of the Declaration, Section 9.1, does not give these property owners (defendants or plaintiffs) the right to recover attorney fees

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under that Declaration. It gives only the original Declarants and or the Association the right to recover attorney fees.

Defendants assert the court is wrong as a matter of law and so the court must, again, examine that ruling. If this court is wrong an appellate court may so declare, but this court has ruled and ruled again and now again that this court does not believe it is wrong in its interpretation of the Declaration.

Defendants also seek fees under UCA 78-27-56.5. Defendants argue that because plaintiffs sought fees under the Declaration, defendants are entitled to fees. The court, based on the same reading of the Declaration, would not have allowed plaintiffs to recover fees under the Declaration either and so this argument, as the court understands it, is flawed.

Again, this court reads section 9.1 as it is written, that the named Declarants, the Association, and any property owner may proceed in law or equity, but only the Declarants and the Association are entitled to attorney fees in such action. Obviously any named Declarant, upon sale of the property which made the named persons a Declarant, would have a successor as to ownership of the property. However, section 9.1 clearly states that property owners, as well as Declarants and the Association, may seek to enforce the Declaration, but only the Declarants and the Association may recover fees in such proceedings.

Any further errors this court has made and will make in the

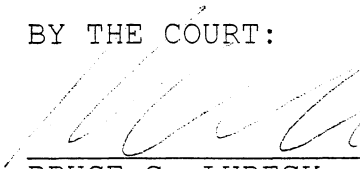
future of this never-ending case should be brought to the attention of an appellate court as this court is weary of continued motions for reconsideration.

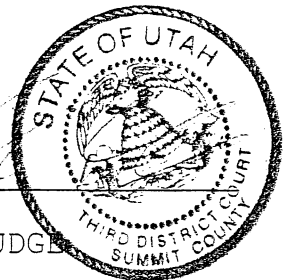
The motion to alter or amend the previous ruling is DENIED.

This Ruling and Order is the Order of the court and no other order is required.

DATED this 6 day of Dec, 2007.

BY THE COURT:

  
\_\_\_\_\_  
BRUCE C. LUBECK  
DISTRICT COURT JUDGE



CERTIFICATE OF NOTIFICATION

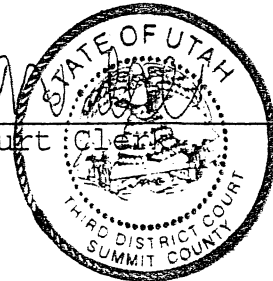
I certify that a copy of the attached document was sent to the following people for case 030500815 by the method and on the date specified.

METHOD NAME

Mail	ERIC G EASTERLY Attorney PLA 1795 SIDEWINDER DR STE 201 PARK CITY, UT 84060
Mail	KOREY D RASMUSSEN Attorney DEF 10 EXCHANGE PLACE 11TH FLR POB 45000 SALT LAKE CITY UT 84145-5000

Dated this 6<sup>th</sup> day of December, 2017.

B. M. [Signature]  
Deputy Court Clerk



# **ADDENDUM “F”**

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FILED BY

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*18(1)*

KOREY D. RASMUSSEN (A6129)  
SNOW, CHRISTENSEN & MARTINEAU  
Attorneys for Defendant Christopher Stuhmer  
and Michelle Stuhmer  
10 Exchange Place, 11th Floor  
Post Office Box 45000  
Salt Lake City, Utah 84145-5000  
Telephone: (801) 521-9000

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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SUMMIT COUNTY, STATE OF UTAH

---

WILLIAM CAMPBELL AND MARJORIE  
CAMPBELL, husband and wife,

Plaintiffs,

v.

WHITE PINE RANCHES HOMEOWNERS'  
ASSOCIATION, a Utah non-profit  
corporation; and CHRISTOPHER  
STUHMER AND MICHELLE STUHMER,  
As Trustees of the Stuhmer Family Trust,

Defendants.

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND JUDGMENT**

Case No. 030500815MI

Judge Bruce Lubeck

---

This matter having come before the court for trial on November 5, 6 and 7, 2007, before  
the Honorable Bruce Lubeck, with plaintiffs being present and represented by Eric G. Easterly,  
and defendants being present and represented by Korey D. Rasmussen, and the Court having

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heard testimony and having admitted trial exhibits, the Court being fully advised in the premises, hereby enters the following Findings of Fact, Conclusions of Law and Judgment.

### **FINDINGS OF FACT**

#### **Findings of Fact Regarding the Stuhmers' Home**

1. Plaintiffs William and Marjorie Campbell and defendants Christopher and Michelle Stuhmer are neighbors and members of the White Pine Ranches Homeowners' Association ("White Pines HOA").
2. The Campbells are owners of Lot 4 in the White Pine Ranches subdivision (the "Subdivision") which is adjacent to the home currently being constructed by the Stuhmers.
3. Defendants Christopher and Michelle Stuhmer, as trustees of the Stuhmer Family Trust, are owners of Lot 5 in the Subdivision
4. All lots in the Subdivision are subject to the combined and amended declaration of protective covenants for White Pine Ranches, Phase I and II (the "Declaration") dated June 4, 1993.
5. Section 8.1 of the Declaration establishes that each five-acre lot is allowed to have a single-family dwelling house, and one garage together with a related non-residential structure and improvements.
6. The Campbells claim that the Stuhmers breached Section 8.1 because the Stuhmers' home allegedly constitutes more than one single-family dwelling house.

7. Section 6.4 provides that "[t]he decision of the Architectural Committee shall be final, binding and conclusive on all of the parties affected." *objection overruled*  
*SCC*

8. Section 6.7 of the Declaration empowers the Architectural Committee the authority to grant variances. *objection overruled*  
*SCC*

9. The Stuhmers timely obtained grading and building permits and obtained approval from Summit County to build the Stuhmers' home pursuant to the plans submitted to the County.

10. Section 6 of the Declaration requires that the Stuhmers submit their plans to the Architectural Committee of the White Pine Ranches HOA.

11. The Stuhmers complied with Section 6 of the Declaration by submitting their plans to the Architectural Committee of the HOA, which approved the Stuhmers' plans. *objection*  
*impliedly SC* *overruled*

12. The Architectural Committee *impliedly SC* determined that the Stuhmers' home constituted one single family dwelling and was only one structure.

13. The Stuhmers followed all policies and procedures necessary for obtaining approval of the building plans from the Architectural Committee.

14. Prior to the Stuhmers being issued their building permit and commencing work on their home, the Campbells never raised the issue with the Stuhmers or the Architectural Committee that the Campbells believed that the Stuhmers' home constituted more than one structure of single family dwelling. *objection*  
*overruled*  
*SC*

15. During trial, Mr. Campbell testified that he thought the portion of the Stuhmer home in question is attractive, that it is not blocking the Campbells' view, and that the Stuhmers elevated walkway is not visible from the Campbells' home.

16. The Court finds that the Stuhmers' home constitutes one single family dwelling structure.

17. The Court further finds that the Campbells have not established that they will suffer special damages, and finds that the Campbells do not have a property right or protectable interest, that legal remedies are adequate, that the Campbells will not suffer irreparable harm due to the Stuhmers' home, that Court enforcement is not feasible, and that the injunctive relief requested is not warranted after balancing the equities.

#### **Findings of Fact Regarding the Stream**

18. In approximately November of 2000, the Stuhmers applied to the Utah State Engineer for permission to divert water from Red Pine Canyon Creek, that runs through the Stuhmers' property, into small ponds on the Stuhmers' property for irrigation and decorative purposes.

19. Formal approval of the Stuhmers' request to divert the water was granted by the Division of Water Rights of the Utah Department of Natural Resources.

20. Thereafter the Stuhmers constructed a dam and a concrete head gate to divert water from Red Pine Canyon Creek.



21. The Court finds that the area behind the dam, which includes sediment buildup and the absence of trees, was caused at least in part by factors other than the Stuhmers' dam.

22. The Court finds that the slope of the hillside levels off in the general area where the dam is located, as well as upstream from the dam. The trees and topography in that area establish that the ground was not built up and was not altered to its current state merely during the time the Stuhmers' dam has been in place.

23. The Stuhmers' dam, built pursuant to the State's permit, caused the water in the stream to back up onto the Campbells' property in 2005.

24. Following the runoff in 2005, the State Engineer requested that the Stuhmers lower the dam, which the Stuhmers did.

25. In 2006, the dam again caused water to back up onto the Campbells' property.

26. Following the runoff in 2006, under the State's direction, the Stuhmers widened the dam several feet and lowered the dam several inches.

27. The dam did not cause the water to back up in 2007.

28. The Court finds that the Stuhmers have altered the dam and it appears the dam will not cause the water to back up in the future.

29. The Court finds that the Campbells have not shown that the Stuhmers' dam will cause the water to backup and trespass onto the Campbells' property in the future, and if it does, plaintiff may seek relief.

30. The Court finds that the Campbells have failed to show that they will suffer irreparable harm if the dam is allowed to remain. The Court finds that the Campbells' legal

remedies are adequate, that the damage to the Campbells is outweighed by the damage to the Stuhmers that the requested injunctive relief would cause, that the public interest weighs in favor of the Stuhmers being allowed to retain their dam, and the Court further finds that the Stuhmers prevail on the merits after balancing the equities.

### **No Trespassing Signs**

31. Sometime after the Campbells filed the lawsuit against the Stuhmers, Mr. Stuhmer erected no trespassing signs on the border of the Stuhmers' and Campbells' property line.

32. On August 9, 2005, members of the Homeowners' Association had a meeting and discussed whether the Stuhmers' no trespassing signs were appropriate. The members referred the matter to the Architectural Committee of the Homeowners' Association.

33. On August 10, 2005, the Architectural Committee, including Gary Francis, Jim Gaddis, Hy Saunders and Chris Stuhmer, met and approved the Stuhmers' no trespassing signs allowing the no trespassing signs that comply with certain dimensions.

34. Hy Saunders, the HOA and Architectural Committee, and Mr. Campbell testified that the Architectural Committee had historically functioned informally.

35. The Campbells objected to the signs and claim that the Architectural Committee is not authorized to approve of such signs in the White Pine Ranches Subdivision.

36. Although the Stuhmers have already removed the signs pursuant to the request of the Campbells, the Stuhmers nevertheless assert that the Architectural Committee had the authority to approve the no trespassing signs pursuant to Section 7.4 of the Declaration.

37. The Court finds that the Section 7.4 of the Declaration allows signs warning of danger, but does not empower the Architectural Committee to authorize the Stuhmers' no trespassing signs.

38. The Court finds that the Campbells have established standing by demonstrating special damages, and finds that the Campbells have a property right or protectable interest, that legal remedies are inadequate, that irreparable harm will result to the Campbells if the Stuhmers erect no trespassing signs, that Court enforcement is feasible and that the Campbells merit the injunction after balancing the equities.

#### **CONCLUSIONS OF LAW**

Based upon the court's findings of fact, the court now enters the following conclusions of laws:

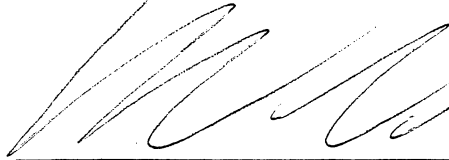
1. The Campbells' motion for a permanent mandatory injunction seeking to tear down or alter a portion of the Stuhmers' home is denied.
2. The Campbells' motion for a permanent mandatory injunction seeking to require the Stuhmers to tear out the dam in the stream is denied.
3. The Temporary Restraining Order dated August 7, 2006, prohibiting the Stuhmers from allowing water to backup onto the Campbells' property is hereby dissolved.
4. The Architectural Committee did not have authority to approve the Stuhmers' no trespassing signs, and under the existing version of the Declaration, the Stuhmers are prohibited from erecting no trespassing signs on their property.

**JUDGMENT**

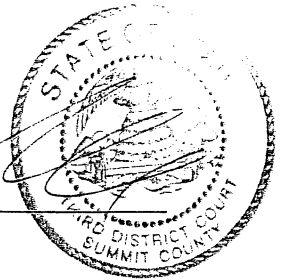
IT IS HEREBY ORDERED, ADJUDGED AND DECREED and judgment is hereby entered against plaintiffs William and Marjorie Campbell regarding the Stuhmers' claim for breach of contract in the amount of \$7,569.38. The Stuhmers are also entitled to costs as the prevailing party in the sum of \$2,965.95.

DATED this 29 day of Feb, 2008.

BY THE COURT:



Judge Bruce Lubeck  
District Court Judge



APPROVED AS TO FORM:

---

Eric G. Easterly  
Attorneys for Plaintiffs William and  
Marjorie Campbell

21967\2\Pleadings\Findings of Fact

# **ADDENDUM “G”**

on-record  
7/10/93  
Saunders Dr.  
99 Lehigh Valley  
217 4th St  
64134

COMBINED AND AMENDED  
DECLARATION OF PROTECTIVE COVENANTS FOR  
WHITE PINE RANCHES, PHASES I & II

THIS DECLARATION is made this day of 4 June, 1993, by  
WHITE PINE RANCHES, a Utah partnership, Leon H. Saunders, Saunders  
Land Investment Corporation, a Utah Corporation, White Pine  
Enterprises, sometimes hereinafter referred to as "Declarant  
Developers," and where appropriate, as a part of "Declarants,"  
Robert Felton, FDIC in its Corporate Capacity as Purchaser of  
Certain Assets of Tracy Collins Bank & Trust, Stewart M. Collester  
& Johanna Collester as Trustees of the Collester Family Trust,  
White Pine Enterprises, James C. Bard, Donald Lewis Lappe & Alice  
Ann Lappe as Trustees of the Donald & Alice Lappe Family Trust,  
Howells Investment, Thomas H. Fey and Carolyn L. Fey, hereinafter  
referred to as "Declarants".

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1. Purpose of Covenants

ALAN SPRIGGS, SUMMIT COUNTY RECORDER  
1993 JUN 29 16:52 PM FEE \$99.00 B#  
FOR: ASSOCIATED TITLE

1.1 Declarant Developers and Declarants are the Owners of  
Property located in Summit County, State of Utah, described on  
Exhibit "A" attached hereto (the "Property"). Exhibit "A" consists  
of two pages being the plat of White Pine Ranches Phase 1 and Phase  
2 as recorded 12/23/83 and 11/23/92 respectively. The Property is  
more fully and completely described as:

White Pine Ranches, Phases I and II a planned  
residential subdivision according to the  
records of the Recorder of Summit County Utah.

By this Declaration it is the intention of Declarant  
Developers and Declarants to combine and amend the prior  
Declaration of Protective Covenants previously executed and  
recorded for White Pine Ranches, Phases I and II and hereby  
substitute this Declaration for those prior Declarations, and  
replace them totally.

1.2 It is the intention of Declarants, expressed by the

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ALAN SPRIGGS, SUMMIT COUNTY RECORDER

execution of this instrument, for the purpose of exercising the powers and functions aforesaid, that the Property be developed and maintained as a highly desirable residential area. It is the purpose of these Covenants that the present natural beauty, view and surrounding of the Property shall be always protected insofar as it is possible in connection with the uses and structures permitted by this instrument. The Property and every part thereof shall be held, conveyed, demised, leased, rented, encumbered, used, occupied, improved or otherwise affected, in any manner, subject to the provisions of this Declaration. All provisions hereof shall be deemed to run with the land as Covenants running with the land or as equitable servitudes as the case may be.

1.3 Declarants deem it desirable for the efficient preservation of the value, desirability and attractiveness of the portion of the Property and any additional property which may be annexed thereto, pursuant to the provisions of this Declaration, to create a corporation to which should be delegated and assigned the powers of maintaining and administering the Common Area and administering and enforcing these Covenants, conditions and restrictions and collecting and disbursing funds pursuant to the assessment and charges hereinafter created and referred to.

1.4 White Pine Ranches Homeowner's Association, a nonprofit corporation, has been incorporated under the laws of the State of Utah and the Articles of Incorporation and its By-Laws are attached hereto as Exhibits "B" and "C" respectively.

1.5 Declarants hereby covenant, agree and declare that all of

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said Lots and Property described above and such additions thereto as may hereafter be made hereof shall be held, sold and conveyed subject to these Covenants, conditions, restrictions, easements, the Articles of Incorporation and By-Laws of the White Pine Homeowner's Association and all subsequent amendments thereto, all of which are hereby declared to be for the benefit of the whole Property described herein and the Owners thereof, their successors and assigns. These Covenants, conditions, restrictions, easements, Articles of Incorporation and By-Laws shall run with the said real Property and shall be binding on all parties having or acquiring any right, title or interest in the described real Property or any part thereof and shall inure to the benefit of each Owner thereof and are imposed upon said real Property and every part thereof as a servitude in favor of each and every parcel thereof as the dominant tenement or tenements.

1.6 The following terms used in these Covenants, conditions and restrictions shall be applicable to this Declaration and also to any supplemental declarations or amendments hereunder and are defined as follows:

## 2. Definition

2.1 Association: White Pine Homeowner's Association is a nonprofit corporation, incorporated under the laws of the State of Utah.

2.2 Declarant Developers: "Declarant Developers" means Leon H. Saunders, Saunders Land Investment Corporation and White Pine Enterprises, and White Pine Ranches.

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2.3 Declarants: "Declarants" means Leon H. Saunders, Saunders Land Investment Corporation, a Utah Corporation, White Pine Enterprises, Robert Felton, FDIC in its Corporate Capacity as Purchaser of Certain Assets of Tracy Collins Bank & Trust, Stewart M. Collester & Johanna Collester as Trustees of the Collester Family Trust, White Pine Enterprises, James C. Bard, Donald Lewis Lappe & Alice Ann Lappe as Trustees of the Donald & Alice Lappe Family Trust, Howells Investment, Thomas H. Fey and Carolyn L. Fey, together with their successors, mortgagees and assigns and also, where appropriate includes those described herein as "Declarant Developers."

2.3 Property: "Property" means that certain real Property located in Summit County, Utah, described on Exhibit "A" attached hereto commonly referred to as White Pine Ranches, Phases I and II.

2.4 Common Area and Common Facilities: "Common Area" and "common facilities" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association.

2.5 Lot: A "Lot" shall mean any parcel of Property shown as such on the recorded plat of the Property, with the exception of the Common Areas.

2.6 Building: "Building" means any structure constructed on the Property.

2.7 Owner: "Owner" shall mean the owner or owners of record of any Lot as disclosed by the records of the Summit County Recorder's Office.

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2.8 Development: "Development" shall mean the Planned Residential Development set out on the Exhibit "A" property subject to this Declaration. It shall also refer, where applicable, to White Pine Ranches, Phases I and II.

2.9 Limited Common Area: "Limited Common Area" shall mean that portion of each Lot as shown on the recorded plats of the property. No building may be erected on the Limited Common Area without Architectural Committee approval. The owner of each lot shall otherwise have exclusive possession and control of such lot.

3. White Pine Ranches Homeowner's Association

3.1 General Purposes and Powers: White Pine Ranches Homeowner's Association ("Association") was formed to perform functions as provided in this Declaration and to further the common interests of all Owners of Property which may be subject, in whole or in part, to any or all of the provisions, Covenants, conditions and restrictions contained in this Declaration. The Association shall be obligated to and shall assume and perform all functions and obligations imposed on it or contemplated for it under this Declaration and any similar functions or obligations imposed on it or contemplated for it under any Amended Declaration with respect to any Property now or hereafter subject to this Declaration. The Association shall have all powers necessary or desirable to effectuate these purposes.

3.2 Membership in the Association: Every record owner of a fee or undivided fee interest in a Lot in White Pine Ranches, Phases I and II, shall be a member of the Association. T h e

members shall elect a Board of Trustees to manage the Association pursuant to the Articles of Incorporation and By-Laws of the Association. The terms and provisions set forth in this Declaration, which are binding upon all Owners of all Lots and all members in the Association, are not exclusive, as the member shall, in addition, be subject to the terms and provisions of the Articles of Incorporation and the By-Laws of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership for each Lot owned. Membership shall be appurtenant to and may not be separated from the ownership on any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

3.3 Transfer: The membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Lot, and then only to the purchaser or deed of trust holder of such Lot. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books of any records of the Association. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the purchaser of such Lot, the Association shall have the right to record the transfer upon the books of the Association.

3.4 Voting Rights: Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for

membership. When more than one person holds such interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. All voting rights shall be subject to the restrictions and limitations provided herein in the Articles and By-Laws of the Association.

#### 4. Duties and Powers of the Association

##### 4.1 Duties and Powers: The Association shall:

(a) Own, and/or maintain and otherwise manage or provide for the maintenance of the Common Areas with the exception of Limited Common Areas, and all facilities, improvements and landscaping thereon, including but not limited to the private streets and pathways, water system and fire hydrants, street fixtures, any guard house at the entrance to the properties and all other Property acquired by the Association.

(b) Establish and maintain street entrance ways and the equestrian and pedestrian pathways and maintain street signs and special lighting which may be placed by the Association. Watering and weeding of planting areas shall be the responsibility of Lot Owners as specified in Section 7.

(c) Pay any real personal Property taxes and other charges assessed against any Common Areas.

(d) Have the authority to obtain, for the benefit of any Common Areas, any water, gas and electric services and refuse collection.

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(e) Grant easements where necessary for utilities, and sewer facilities over the Common Areas to serve the Common Areas and the Lots.

(f) Maintain such policy or policies of insurance as the Association deems necessary or desirable in furthering the purposes of and protecting the interest of the Association and its members.

(g) Have the Authority to employ if required a manger or other person and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed as a manager or managing agent during any period of Declarant's control of the Association shall provide for the right of the Association to terminate the same by majority vote at any Special Meeting of the members of the Association.

(h) Have the power to establish and maintain working capital and contingency fund in an amount to be determined by majority vote at any Annual or Special Meeting.

(i) Have all other authority necessary to effectuate the purposes of the Association.

## 5. Property Rights in the Common Areas

5.1 Members' Easements of Enjoyment: Every member shall have a non-exclusive right and easement of enjoyment in and to the Common Area, if any, and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

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(a) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area including but not limited to private streets and the recreational facilities thereof.

(b) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities, to mortgage said property, provided that the rights of any mortgagee shall be subject to the terms of this Declaration.

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless a written instrument pursuant to a two-thirds majority vote of those present at a Special Meeting for this purpose that has been duly called of members including proxies who are entitled to vote has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action and the Special Meeting is sent to every member not less than ten (10) days in advance. However, for a period not to exceed two years from the date hereof the Declarant Developers reserve the right to grant easements over any part of the Common Area or any other designated utility easement areas for utility purposes for service to the property.

5.2 Delegation of Use: Any member may delegate, in accordance with the By-Laws, the right of enjoyment to the Common

Area and facilities to guests, members of his or her family, tenants or contract purchasers who reside on the property.

5.3 Waiver of Use: No member may be exempted from personal liability for assessments duly levied by the Association, nor release the Lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his Lot other than by sale thereof.

5.4 Title to the Common Area: Each Declarant hereby covenants for itself, its successors and assigns, that in the event it designates any portion of the properties as a Common Area, that, to the extent it has not already been done so, it hereby conveys fee simple title or rights-of-way to such Common Area in the existing property to the Association, free and clear of all encumbrances and liens, except current real property taxes, which taxes shall be prorated to the date of transfer, and easements, conditions and reservations then of record, including those set forth in this Declaration.

6. Architectural Committee:

6.1 Architectural Committee: The Architectural Committee shall consist of three members and an Alternate. Two members of the Committee and the Alternate shall be selected by Declarants. The remaining member shall be elected by the Association at the Annual Meeting of the Association or at a Special Meeting called for that purpose, as provided in the By-Laws of the Association. At such time as 2 years have expired from the date of recordation

hereof or at such earlier time as Declarants shall designate, the Declarants' authority to select members of the Committee shall pass from the Declarants to the Association. Thereafter, Committee members and the Alternate shall be elected at the Annual Meeting as provided in the By-Laws of the Association. The Alternate shall serve in the absence of any Committee member or when a Committee member has a conflict of interest, as may be determined by the Board of Trustees. Said Architectural Committee shall have and exercise all of the powers, duties and responsibilities set out in this section.

6.2 Approval by Architectural Committee: No improvements of any kind, including but not limited to dwelling houses, swimming pools, ponds, parking areas, fences, walls tennis courts, garages, drives, bridges, corrals, barns, outbuilding, antennae, satellite dishes, flag poles, curbs and walks shall ever be erected, altered or permitted to remain on any Lots within the Development, nor shall any excavating, alteration of any stream, clearing, removal of trees, shrubs, or natural vegetation, or landscaping be done on any Lots within the Development, unless the complete plans and specifications therefor are approved by the Architectural Committee prior to the commencement of such work. A fee of \$350 shall be paid to the Architectural Committee to cover costs and expenses of review. Improvements costing less than \$2,000 shall be submitted to the Architectural Committee for approval but the Review Fee of \$350 shall not be required. The Architectural Committee shall consider the materials to be used on the external features of all



buildings or structures, including exterior colors and materials, harmony of external design with existing structures within the development, location with respect to topography, finished grade elevations and harmony of landscaping with the natural setting. The various architectural plans and specifications must be prepared by an architect licensed by the State of Utah and certain of such plans and specifications must be submitted in duplicate in accordance with the "Architectural Committee Guidelines" as specified in Article 6.6 hereof.

6.3 The Architectural Committee shall not give its consent to the proposed improvement unless, in the sole and majority opinion of the Architectural Committee, the improvement is properly designed and the design, contour, materials, shapes, colors and general character of the improvement shall be in harmony with existing structures on the lot and on neighboring lots, and in harmony with the surrounding landscape, and the improvements shall be designed and located upon the Lot so as to minimize the disruption to the natural land forms and vegetation cover.

6.4 The Architectural Committee shall have the right to disapprove any application in the event said application and the plans and specifications submitted therewith are not of sufficient detail, or are not in accordance with the provisions herein set forth, or if the design or construction of the proposed improvement is not in harmony with neighboring improvements and the general surroundings, or if the design and the plans for construction do not include sufficient safeguards for preservation of the

environment or for any other reason the Architectural Committee may deem in the best interests of the Property. The decision of the Architectural Committee shall be final, binding and conclusive on all of the parties affected.

6.5 Non-Waiver: The approval of the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or in connection with any other matter, requiring the approval of the Architectural Committee under these restrictions, shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter whenever subsequently or additionally submitted for approval. Upon approval or disapproval of the plans by the Architectural Committee, one set of plans signed by a member of the Architectural Committee shall be returned to the Lot Owner and one set shall be retained by the Committee. In the event the Architectural Committee fails to approve or disapprove such plans within 45 days after complete plans for such work have been submitted to it, then all of such submitted plans shall be deemed to be approved.

6.6 Architectural Committee Rules: The Architectural Committee may, from time to time and in its sole discretion adopt, amend and repeal by its majority Committee vote, rules and regulations to be known as "Architectural Committee Guidelines" which, among other things interpret or implement the provisions of this Section. A copy of the Architectural Committee Guidelines as they may from time to time be adopted, amended or repealed, certified by any member of the Architectural Committee shall be

available from the Architectural Committee. Attached hereto as Exhibit "D" is the First Edition of the Architectural Committee Guidelines which as mentioned above under certain conditions may be amended and/or repealed. The Architectural guidelines may be modified by the Association.

6.7 Variances: Where circumstances, such as topography, hardship, location of property lines, location of stream or other matters require, the Architectural Committee may, by an affirmative vote of a majority of the members of the Architectural Committee, allow reasonable variance as to any of the architectural covenants and restrictions contained in this instrument or any applicable amended declaration, on appropriate terms and conditions.

6.8 General Requirements: The Architectural Committee shall exercise its best judgment to see that all improvements, construction, landscaping and alterations on the lands within the Development conform and harmonize with the natural surroundings and with existing structures with relation to external design, materials, comparable value, color, citing, height topography, grade and finished group elevation.

6.9 Preliminary Approvals: Persons who anticipate constructing improvements on Lots within the Development, whether they already own a Lot or Lots or are contemplating the purchase of such Lots, may submit preliminary sketches of such improvements to the Architectural Committee for informal and preliminary approval or disapproval. All preliminary sketches shall be submitted in duplicate and shall contain a proposed site plan, together with

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sufficient general information on all aspects that will be required to be in the complete plans and specifications to allow the Architectural Committee to act intelligently to give an informed and preliminary informal approval or disapproval. For formal approval, the Owner of the Lot must comply with the requirements specified in Article 6.6 hereof.

6.10 Architectural Committee Not Liable: The Architectural Committee shall not be liable in damages to any person submitting any plans for approval, or to the Association or to any Owner or Owners of Lots within the Development, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, with regard to such plans, including when such may have been caused by or presumed to have been caused by negligence and/or gross negligence. Any person acquiring the title to any Property in the Development or any person submitting plans to the Architectural Committee for approval, by so doing shall be deemed to have agreed and covenanted that he will not bring any action or suit whatsoever to recover damages against the Association and/or the Architectural Committee, their members as individuals, or their advisors, employees or agents.

6.11 Written Records: The Architectural Committee shall keep and safeguard complete written records of all applications for approval submitted to it and of all actions of approval or disapproval and all other actions taken by it under the provisions of this instrument which records shall be maintained for a minimum of three years after approval or disapproval.

7. General Restriction on All Property

7.1 Zoning Regulations: No lands within the Development shall be occupied or used by or for any building or purpose or in any manner which is contrary to the zoning regulations applicable thereto.

7.2 No Mining, Drilling or Quarrying: No mining, quarrying, tunneling, excavating, or drilling for any substances within the earth, including oil, gas, minerals, gravel, sand, rock and earth shall be permitted on the surface of the Property. This provision does not apply to the drilling for water for the sole use of a Lot Owner.

7.3 No Business Uses: The Lots within the Property shall be used exclusively for residential living purposes, such purposes to be confined to approved residential buildings within the Property. No Lots within the Property shall ever be occupied or used for any commercial or business purposes, provided, however, that nothing in this Paragraph 7.3 shall be deemed to prevent (a) Declarants or its duly authorized agent from using any Lot owned by Declarants or such agent for the location of a sales office, or sale model, or (b) any Owner or his duly authorized agent from renting or leasing said owner's residential building for residential uses from time to time, subject to all of the provisions of this Declaration, but nightly rentals are prohibited and any allowed rental must be for no less than one month in duration, under written lease.

7.4 Restriction on Signs: With the exception of a sign no larger than three square feet identifying the architect and a sign

of similar dimension identifying the prime contractor to be displayed only during the course of construction, no signs or advertising including, without limitation, signs advertising the Lot or Building for sale or rent; commercial; political; informational or directional signs, shall be erected or maintained on any of the Property, except signs approved in writing by the Architectural Committee as to size, materials, color and location: (a) as necessary to identify ownership of the Lots and its address; (b) as necessary to give directions; (c) to advise of rules and regulations; (d) to caution or warn of danger; and (e) as may be required by law. Signs advertising the Lot or Building for sale must be approved by the Architectural Committee.

7.5 Restrictions on Animals: Except for no more than four (4) horses per Lot, all in approved barns or corrals, which shall prevent any encroachment of the horses onto another lot, no animals other than ordinary household pets shall be kept or allowed to remain on any of the Property unless and until written authorization is obtained from the Board of Trustees of the Association. The Board of Trustees, in its sole discretion, shall have the right at any time in its sole discretion, to revoke any authorization given and shall additionally have the power to require any Owner, lessee or person in possession of lands in the Development to remove any animal or pet which is kept in violation of this restriction or any animal or pet which is not disciplined or which constitutes an undue annoyance to other Owners or lessees of land in the Development.

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7.6 No Resubdivision: No Lot shall be subdivided and no building shall be constructed or allowed to remain on any tract that comprises less than one full Lot.

7.7 Underground Utility Lines: All water, gas, electrical, telephone, and other electronic pipes and lines and all other utility lines within the limits of the Property must be buried underground and may not be exposed above the surface of the ground.

7.8 Service Yards: All clothes lines, equipment, service yards or storage pile on any Lot in the Property shall be kept screened by approved planting or fencing so as to conceal them from the view of neighboring Lots, streets, access roads and areas surrounding the Property.

7.9 Maintenance of Property: All Property and all improvements on any Lot shall be kept and maintained by the Owner thereof in clean, safe, attractive and sightly condition and in good repair. Landscaping of a front yard of approved size on each Lot must be complete within one year of the time of completion of the Building on any Lot. Where natural vegetation is kept, such natural vegetation must be maintained reasonably free of unsightly weeds and free of any trash and deadwood.

7.10 No Hazardous Activities: No activities shall be conducted on any Lot or the Property and no improvements constructed on any Lot or the Property which are or might be unsafe or hazardous to any person or Property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot or the Property and no unattended fires shall be permitted.

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7.11 Dwelling Construction and Fence Restrictions: In order to promote a harmonious community development and protect the character of the neighborhood, the following guidelines are set out:

(a) Dwelling, style, design, alterations or additions will conform to standards determined by the Architectural Committee.

(b) Exterior construction materials will be limited to stone, stone veneer, brick or brick veneer, logs, wood siding, or stucco and shall be in earth tones indigenous to the area. Specifications regarding the color, texture, finish and quality for the above must be approved by the Architectural Committee.

(c) Roof design shall be limited to a minimum of 4/12 pitch.

(d) Location of all storage or utility buildings, garbage and refuse containers, air conditioning equipment, clothes drying lines, and utility pipes, etc., must be placed at the rear of the dwelling and located on the site in such a manner as not to be conspicuous from the frontage street.

(e) Any light used to illuminate garages, patios, parking areas or for any other purpose shall be so arranged as to reflect light away from adjacent residences and away from the vision of passing motorists.

(f) All fences within the Limited Common Area must be approved by the Architectural Committee prior to their construction.

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7.12 No Unsightliness: No unsightliness shall be permitted upon any of the Property. Without limiting the generality of the foregoing, (a) any unsightly structures, facilities, equipment, tools, boats, vehicles other than automobiles, objects and conditions shall be enclosed within an approved building or appropriately screened from view, except equipment and tools when in actual use for maintenance or repairs; (b) no trailers, mobile homes, tractors, truck campers or trucks other than pickup trucks shall be kept or permitted to remain upon the Property unless screened from view; (c) no vehicle, boat or equipment shall be constructed, reconstructed, repaired or abandoned upon any of the Property unless appropriately screened from view; (d) no lumber, grass shrub or tree clippings, plant waste, metals, bulk materials, weeds or scrap shall be kept, stored or allowed to grow or accumulate on any of the Property; (e) refuse, garbage and trash shall be placed and kept at all times in covered containers and such containers shall be kept within an enclosed structure or appropriately screened from view; (f) hanging, drying or airing of clothing or household fabrics shall not be permitted within buildings or on Lots if visible from building, Lots or other areas surrounding the Property. Violation of this section or other restrictive sections of this Declaration shall allow the Association to correct the violation at the expense of the Owner and if such cost is not paid by the Owner a lien upon the applicable Lot can be placed and foreclosed under Articles 10 and 11 hereof.

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7.13 No Annoying Lights, Sounds or Odors: No light shall be emitted from any Lot or Property which is unreasonably bright or causes unreasonable glare, no sound shall be emitted from any Lot or Property which is unreasonably loud or annoying, including, but without limitation, speakers, horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively to protect any of the Property or Buildings; and no noxious odors shall be emitted from any Lot or Property.

7.14 Septic Tanks and Sewage Disposal: Underground sewer lines have been or will be installed by White Pine Ranches and/or its affiliate to the front of each Lot on the Property.

7.15 Ingress or Egress: No ingress or egress to properties designated hereunder shall be permitted for use of any person or vehicle except through designated gateways and roadways, unless authorized in writing by the Board of Trustees. The Association shall be responsible for maintaining any fencing placed along the exterior perimeter of the Property by Developer or the Association according to its original state or replacing such with a wall or fence for the purpose of preserving or improving the security of the area.

7.16 Landscaping Control: Each Owner shall maintain his Lot in an attractive and safe manner so as not to detract from the community. Natural vegetation shall not be disturbed until commencement of construction and then only as required for construction and approved landscaping.

7.17 Maintenance of Entrance Ways: The Association shall be

responsible to maintain any special landscaping placed at street entrances or locations by the Developer or the Association. Such maintenance shall include watering and weeding of planting areas. The Association shall be responsible for maintenance of signs and special lighting, if any.

7.18 Building and Landscaping Time Restrictions: The construction of all structures shall precede diligently upon commencement and shall be completed within a period of eighteen (18) months following commencement of construction. The approved front yard of each Lot shall be landscaped within a period of one (1) year following completion or occupancy of the dwelling. Areas covered with natural foliage will be considered landscaped so long as unsightly weeds are controlled. Any Owners possessing vacant Lots shall be responsible for keeping such Lots clean in appearance and free from all refuse and potential fire hazards. No vacant Lot shall be used for storage of any kind except during the construction period.

7.19 Failure to Remove Rubbish or Comply: Upon failure or neglect of any Owner to remove rubbish, trash, weeds or unsightly debris from his Lot or to otherwise comply with these Covenants within 10 days after written notice has been mailed to him by the Architectural Committee or such additional time as the Architectural Committee may deem reasonable under the circumstances, the Architectural Committee may cause the same to be removed or the Property to be brought into compliance and the Owner shall be responsible for the expenses of such removal or compliance

including attorney's fees. Failure to pay such expenses shall result in charges against the Owner's account and may result in a lien against said Lot all as outlined in Sections 10 and 11 or these Covenants.

7.20 Permissible Building Area: The location of Buildings shall be subject to approval of the Architectural Committee.

7.21 Erosion Control: Each owner of a Lot in the Development shall be responsible to insure that improvements and/or other alterations of his Lot will not result in erosion or water drainage which may adversely affect neighboring properties and/or roads.

7.22 Disturbance of Hillsides: Grading plans, retaining walls, revegetation, etc., shall be approved by the Association through its Architectural Committee.

7.23 Interior Fences: Interior fencing, if approved, by the Architectural Committee may be permitted.

7.24 Special Use and Disclosure: A covered water reservoir has been constructed. Easements for the reservoir, access roads and distribution lines for the reservoir and water system are recorded. The water system may be conveyed by Declarants to Summit Water Distribution Company, with a customary monthly water delivery charge.

## 8. Restrictions on Lots

8.1 Number and Location of Buildings: No Buildings or structures shall be placed, erected, altered or permitted to remain on any Lot other than one, single-family dwelling house, and one garage together with related non-residential structures and

improvements. Each Lot must be improved with a garage with at least a two-car capacity at the time of construction of the dwelling house on the Lot.

The building sites for all Buildings and structures shall be approved by the Architectural Committee. In approving or disapproving the building sites, the Architectural Committee shall take into consideration the locations with respect to topography and finished grade elevations and the effect thereof on the setting and surrounding of the Development and the view of surrounding Owners.

8.2 Residence Floor Area: Any residence structure constructed on a Lot in the Property shall have a minimum living floor area, exclusive of garage, balconies, porches and patios of 2,000 square feet for a one floor structure and a minimum of 1,200 square feet per floor for split entry and a two story home.

8.3 Dwelling House to be Constructed First: No garage or other structure shall be constructed on any Lot until after commencement of construction of the dwelling house on the same Lot, except as otherwise specifically permitted by the Architectural Committee. All construction and alteration work shall be prosecuted diligently, and each Building, structure, or improvement which is commenced on any Lot shall be entirely completed within eighteen (18) months after commencement of construction.

8.4 Setbacks: Unless specifically authorized hereunder or by the Architectural Committee in accordance with Article 6.7 all Buildings and structures on all Lots shall be located at least 50

feet from the side Lot lines, and 100 feet from the from the front and back Lot lines all within the Architectural Committee approved building area for each Lot.

8.5 Height Limitations: No Building or structure shall be placed, erected, altered or permitted to remain on any Lot, which exceeds a height of 28 feet measured vertically from the average finished grade elevation of the foundation of such building or structure. In all events, building height must comply with applicable zoning ordinances. The Architectural Committee may waive this requirement for good cause.

8.6 Towers and Antennae: No towers, and no exposed or outside radio, television or other electronic antennae, with the exception of normal television receiving antennae, shall be allowed or permitted to remain on any Lot, unless the Architectural Committee is satisfied that they cannot be seen anywhere outside of the subject Lot. Satellite dishes may be installed with prior written approval of the Architectural Committee. Such approval shall be conditional upon citing of the satellite dish in the Lot in a manner that will have the least visual impact upon other Lot Owners.

8.7 Used or Temporary Structures: No used or previously erected or temporary house or structure and no house trailer, mobile home, camper or non-permanent outbuilding shall ever be placed, erected or allowed to remain on any Lot except during construction periods, and no dwelling house shall be occupied in any manner prior to its completion and the issuance of a

certificate of occupancy.

8.8 Fire Sprinklers: If required, residences shall have complete automatic sprinkling systems installed at the time of construction.

8.9 Fences: It is the general intention that fencing, if installed on the Property, have a continuity of appearance in keeping with the setting and surroundings of the Property. Fences, corral fences, screens or walls may be allowed if the design, material and height are approved by the Architectural Committee.

## 9. Enforcement

9.1 Enforcement and Remedies: The obligations, provisions, Covenants, restrictions, liens and charges now or hereafter imposed by the provisions of this Declaration or any Amended Declaration shall be enforceable by Declarants, the Association, or any Owner of a Lot by any proceeding at law or in equity. If court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the Declarants or the Association shall be entitled to costs and expenses in connection therewith, including reasonable attorney's fees.

9.2 Protection of Encumbrances: No violation or breach of any provision, restriction, Covenant or condition contained in this Declaration, or any Amended Declaration, and no action to enforce the same, shall defeat or affect the lien of any first mortgage or first deed of trust perfected by recording prior to the time of

recording of an instrument giving notice of such violation or breach.

9.3 Limited Liability: Neither Declarants, the Association, the Board of Trustees, the Architectural Committee nor any member, agent or employee of the same shall ever be liable to any party for any action or for any failure to act with respect to any matter pertaining to or contemplated by this Declaration, including but not limited to, when such may have been caused by or presumed to have been caused by negligence and/or gross negligence.

#### 10. Covenant for Maintenance Assessments

10.1 Creation of the Lien and Personal Obligation for Assessments: Each Owner, by acceptance of a real estate contract or deed for a Lot, whether or not it shall be so expressed in any such contract or deed, is deemed to covenant and agree to pay to the Association: (1) regular assessments or charges and (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided and (3) expenses incurred by the Association pursuant to Section 7 hereof. The regular and special assessments and expenses together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment or charge together with such interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessment or charge fell due. The

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personal obligation shall not pass to its successors in title unless expressly assumed by them or filed of record in the County Recorder's Office. No membership in the Association may be transferred to a subsequent Lot Owner until all due charges, assessments, interest and penalty charges have been paid in full.

10.2 Purpose of Assessments: The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, security and welfare of the members of the Association and, in particular, for the improvement and maintenance of the Property, the private roadways and trails, the private water system and service and facilities devoted to these purposes and related to the use and enjoyment of the Owners, including specifically, security personnel and gatekeepers if utilized.

10.3 Regular Assessments: The amount and time of payment of regular assessments shall be determined by the Board of Trustees and approved by a majority of the membership of the Association pursuant to the Articles of Incorporation and By-Laws of the Association after giving due consideration to the current costs and future needs of the Association. Written notice of the amount of an assessment, regular or special, shall be sent to every Owner, and the due date for the payment of same shall be set forth in said notice.

10.4 Special Assessments for Capital Improvements: In addition to the regular assessments, the Association may levy in any calendar year, a special assessment applicable to that year

only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon any Common Area, including the necessary fixtures and personal Property related thereto, provided that any such assessment shall have the consent of a majority of the votes of the members who are voting in person or by proxy at a Special Meeting duly called for the purpose, written notice of which shall be sent to all members not less than ten (10) days in advance of the meeting, setting forth the purpose of the meeting.

10.5 Uniform Rate of Assessment: Both regular and special assessments shall be fixed at a uniform rate for all Lots in the Development, and may be collected on a monthly, quarterly or annual basis.

10.6 Date of Commencement of Regular Assessments and Fixing Thereof: The regular assessments provided for herein shall commence as to each Lot on the first day of the month following the purchase of each Lot by an individual Owner.

10.7 Certificate of Payment: The Association shall, upon demand, furnish to any Owner liable for said assessment, a certificate in writing signed by an Officer of the Association, setting forth whether the regular and special assessment on a specified Lot have been paid, and the amount of the delinquency, if any. A charge of \$25 will be made by the Board of Trustees for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to

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have been paid.

11. No-Payment of Assessments of Charges

11.1 Delinquency: Any assessment or charge provided for in this Declaration, which is not paid when due, shall be delinquent. With respect to each assessment or charge not paid within forty--five (45) days after its due date, the Association may, at its election, require the Owner to pay a "late charge" of \$100.00 for each delinquent assessment or charge. If any such assessment or charge is not paid within forty-five (45) days after the due date, the assessment or charge shall also bear interest from the due date at the rate of 18% per annum, and the Association may, at its option, bring an action at law against the Owner personally obligated to pay the same, or, upon compliance with the notice provisions set forth in Article 11.2 hereof, to foreclose the lien (provided for in Article 10.1 hereof) against the Lot, and there shall be added to the amount of such assessment or charge the late charge, the interest and the costs of preparing and filing the notices and complaint in such action, and in the event a judgment is obtained, such judgment shall include said late charge, interest and attorney's fee, together with the costs of action. Each Owner vests in the Association or its assigns, the right and power to bring all actions at law or lien foreclosure against such delinquent Owners for the collection of such delinquent assessment or charge.

11.2 Notice of Lien: No action shall be brought to foreclose an assessment, charge or lien or to proceed under the power of sale

herein provided, until thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, addressed to the Owner of said Lot and such notice is recorded in Summit County Property records.

11.3 Foreclosure Sale: Any foreclosure of a lien shall be conducted in accordance with the laws of the State of Utah. The Association, through its duly authorized agents, shall have the power to bid on the Lot at sale, and to acquire hold, lease, mortgage and convey the same.

11.4 Cumulative Remedies: The assessment lien, and the right to foreclose and sale thereunder, shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments and charges as above provided.

## 12. Easements

12.1 Rights and Duties: The rights and duties of the Owners of Lots with respect to sanitary sewer and water, electricity, gas and telephone and cable television lines and drainage facilities shall be governed as follows:

(a) Wherever sanitary sewer connections and/or water connections or electricity, gas or telephone and cable television lines or drainage facilities are installed with connections, lines or facilities, or any portion thereof located in or upon Property owned by the Association, the Association and the Owners of any Lot served by said connections, lines or facilities shall have the

right, and are hereby granted an easement to full extent necessary therefore, to enter upon the Property or to have utility companies enter upon the Property in or upon which said connections, lines or facilities, to repair, replace and generally maintain such connections.

(b) Wherever sanitary sewer connections and/or water connections or electricity, gas or telephone or cable television lines or drainage facilities are installed within the Property, which connections serve more than one Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service his/her Lot.

12.2 Easements Reserved: Easements over the Lots and Common Area properties for the installation and maintenance of electric, telephone, cable television, water, gas and sanitary sewer lines, water wells, private streets, water reservoir, private pathways, drainage facilities, and street entrance ways are reserved to the Association.

### 13. Private Roadways and Pathways

13.1 On the plat of White Pine Ranches, Phase I, there is set forth a certain fifty foot wide easement as Common Area of the Development which easement includes within its boundaries the private roadway of the Development and its adjacent equestrian trail and pedestrian and jogger trail. The portions of the reserved Property covered with hard surface or asphalt shall be restricted to vehicle use. The portions of the reserved area not

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hard surfaced shall be available for equestrian, pedestrian and jogger use. Each Owner of each Lot in the Development covenants and agrees that the road in some respects does not meet the minimum standards of Summit County, Utah, for a publicly dedicated roadway. Likewise, each Owner of each Lot in the Development understands that the roadway is not and shall not be dedicated as public roadway but will remain private roadway for the use and benefit of the owners of Lots in the Development.

13.2 The expenses of maintaining, improving, plowing, and cleaning the private roadway and equestrian trail and pedestrian and jogger trail shall be a common expense of the Association in the manner set forth in this Declaration.

#### 14. Private Water System

The Association shall accept the existing water system as is and be responsible for the operation, upkeep, maintenance, repair and replacement ("Operation Costs") of the existing water distribution system, including source capacity. The Declarant Developer shall be entitled to any excess water in the system over and above the needs of twelve (12) families requiring one acre foot per family, provided, however, if such excess is utilized, Declarant Developer or their assigns shall participate, pro rata, in the Operation Costs. The Association shall operate the private water system, including source supply, and reservoir and allocate all Operation Costs pro rata between the Lot Owners of White Pine Ranches, Phases I and II, unless and until Declarants transfer the system to a private non-profit mutual water company.

Declarant Developers shall provide each Lot Owner with one acre foot of water right approved for use on the Owner's Lot. It shall be Lot Owner's responsibility to connect to the existing water system and provide whatever additional facilities, etc. which may be required to accept delivery of system water. In times of water shortage, the Lot Owners of White Pine Ranches, Phases I and II, shall pro rate between themselves existing water supply. Declarant Developers retain an option until January 1, 2001, to turn over the operation of the private water system to a private non-profit mutual water company. In the event Declarant Developers elect to exercise its option, all Lot Owners agree to surrender and transfer all their right, title and interest in the private water system to the private non-profit mutual water company, including water rights. Subject to the rights hereinabove provided, Declarant Developers also reserve the right to provide a one acre foot of water to John Sharp for delivery out of the water system. In the event Declarant Developers elects to provide John Sharp such use, Declarant Developer will obligate him to take his water and pay a pro rata portion in accordance with the rules and regulations requiring that Lot Owners pay a pro rata portion of all Operating Costs. All Lot Owners of the White Pine Ranches, Phases I and II, shall treat his/her use of water on an equal pro rata basis with their own.

15. General Provisions

15.1 Duration Of Declaration: Any provision, Covenant, condition or restriction contained in the Declaration, or any

Amended Declaration, which is subject to the common law rule sometimes referred to as the rule against perpetuities, shall continue and remain in full force and effect for the period of 60 years from the date of recordation of this Declaration or until this Declaration is terminated as hereinafter provided. All other provisions, Covenants, conditions and restrictions contained in the Declaration, or any Amended Declaration, shall continue and remain in full force and effect until January 1, 2060 A.D., provided, however, that unless at least one year prior to said time of expiration, there is recorded an instrument directing the termination of the Declaration, executed by the Owners of all of the Lots then subject to this Declaration, said other provisions, Covenants, conditions and restrictions shall continue automatically for an additional ten (10) years and thereafter for successive periods of ten (10) years unless, this Declaration is terminated by recorded instrument directing termination signed by the Owners of all of the Lots then subject to this Declaration as aforesaid.

15.2 Amendment or Revocation: At any time while any provision, Covenant, condition or restriction contained in this Declaration, or any Amended Declaration is in force and effect, it may be amended or repealed by the recording of a written instrument specifying the amendment or the repeal, executed by the Owners of a majority of the Lots then subject to this Declaration. No such amendment or repeal shall be effective with respect to the holder or successor or assign of the holder of a first mortgage or first deed of trust recorded prior to recording of the instrument, unless



such holder executes or approves the said instrument.

15.3 Severability: Invalidity or unenforceability of any provision of this Declaration, or any Amended Declaration, in whole or in part, shall not effect the validity or enforceability of any other provision or valid and enforceable part of a provision of this Declaration.

15.4 Captions: The captions and heading in this instrument are for convenience only and shall not be considered in construing any provision, restriction, Covenant or condition contained in this Declaration.

15.5 No Waiver: Failure to enforce any provision, restriction, Covenant or condition in this Declaration or in an Amended Declaration shall not operate as a waiver of any such provision, restriction, Covenant or condition of any other provision, restriction Covenant or condition.

15.6 Construction: The provision of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community or tract and for the maintenance of common recreational facilities and common areas and streets.

15.7 All signatories hereto agree for themselves and their successors in interest to execute and deliver to the Association any and all documents and things necessary to effectuate the purposes described herein.

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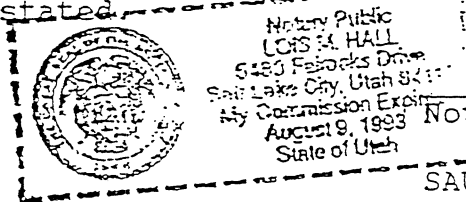
IN WITNESS WHEREOF, White Pine Ranches, Leon H. Saunders,  
Saunders Land Investment Corporation and Robert Felton have  
executed this Declaration the day and year first above written.

WHITE PINE RANCHES,  
a Utah Partnership

BY: Leon H. Saunders  
Leon H. Saunders, General Partner

STATE OF UTAH                    )  
  : SS  
COUNTY OF SALT LAKE )

On the 4 day of June, 1993, personally appeared  
before me LEON H. SAUNDERS, known to me to be the person who  
executed the within document in behalf of said partnership and  
acknowledged to me that he executed the same for the purposes  
therein stated.

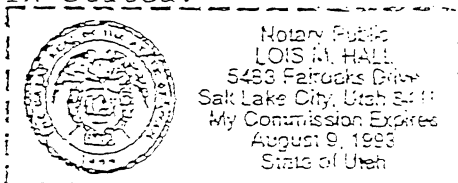


Lois M. Hall  
Notary Public  
SAUNDERS LAND INVESTMENT CORPORATION  
a Utah Corporation

BY: Leon H. Saunders  
Leon H. Saunders, President

STATE OF UTAH                    )  
  : SS  
COUNTY OF SALT LAKE )

On the 4 day of June, 1993, personally appeared  
before me LEON H. SAUNDERS, known to me to be the person who  
executed the within document in behalf of said partnership and  
acknowledged to me that he executed the same for the purposes  
therein stated.



Lois M. Hall  
Notary Public

00382138 840735 P4021

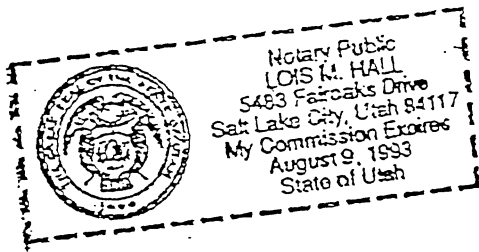
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LEON H. SAUNDERS

Leon H. Saunders  
Leon H. Saunders

STATE OF UTAH            )  
                                  : ss  
COUNTY OF SALT LAKE )

On the 4 day of June, 1993, personally appeared before me LEON H. SAUNDERS, known to me to be the person who executed the within document and acknowledged to me that he executed the same for the purposes therein stated.



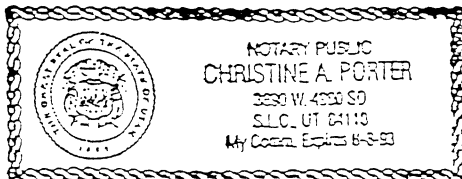
Robert Felton  
Notary Public

ROBERT FELTON

Robert Felton  
Robert Felton

STATE OF UTAH            )  
                                  : ss  
COUNTY OF SALT LAKE )

On the 9<sup>th</sup> day of June, 1993, personally appeared before me ROBERT FELTON, known to me to be the person who executed the within document and acknowledged to me that he executed the same for the purposes therein stated.



Christine A. Porter  
Notary Public

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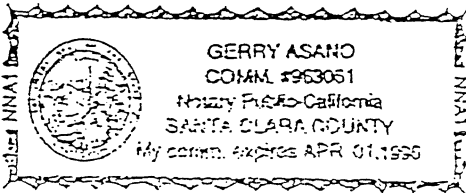
00382138 Br0735 Pa0220

FDIC in its Corporate Capacity as  
Purchaser of Certain Assets of  
Tracy Collins Bank & Trust

BY: *Donald V. Martin*  
Donald V. Martin, Department Head *DPD*  
As Attorney In Fact

STATE OF CALIFORNIA )  
: SS  
COUNTY OF Santa Clara )

On the 26th day of August, 1993, personally appeared  
before me Gerry Asano, Notary Public, of FDIC in its Corporate  
Capacity as Purchaser of Certain Assets of Tracy Collins Bank &  
Trust, known to me to be the person who executed the within  
document in behalf of said corporation and acknowledged to me that  
he/she executed the same for the purposes therein stated.



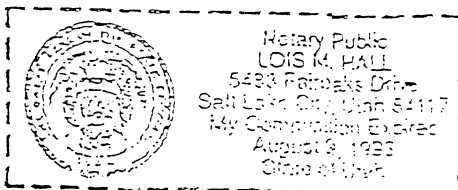
*Gerry Asano*  
Notary Public

STEWART M. COLLESTER & JOHANNA  
COLLESTER, TRUSTEES OF THE  
COLLESTER FAMILY TRUST

BY: *Stewart M. Colvester*  
Stewart M. Colvester

STATE OF UTAH )  
: SS  
COUNTY OF SALT LAKE )

On the 4 day of June, 1993, personally appeared  
before me STEWART M. COLLESTER, known to me to be the person who  
executed the within document and acknowledged to me that he  
executed the same for the purposes therein stated.



*Lois M. Hall*  
Notary Public

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00382138 BK0735 Pg022

STEWART M. COLLESTER & JOHANNA  
COLLESTER, TRUSTEES OF THE  
COLLESTER FAMILY TRUST

BY: Johanna Colleser  
Johanna Colleser

STATE OF UTAH )  
: ss  
COUNTY OF SALT LAKE )

On the 4 day of June, 1993, personally appeared  
before me JOHANNA COLLESTER, known to me to be the person who  
executed the within document and acknowledged to me that she  
executed the same for the purposes therein stated.

[Signature]  
Notary Public

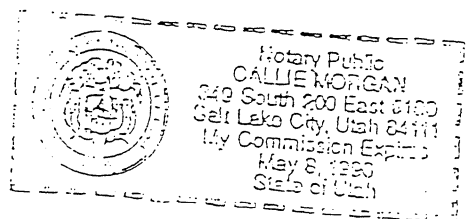
WHITE PINE ENTERPRISES

BY: Leon H. Saunders, General Partner

STATE OF UTAH )  
: ss  
COUNTY OF SALT LAKE )

On the 2ND day of JULY, 1993, personally appeared  
before me LEON H. SAUNDERS, GENERAL PARTNER, of WHITE PINE ENTERPRISES,  
known to me to be the person who executed the within document in  
behalf of said corporation and acknowledged to me that he/she  
executed the same for the purposes therein stated.

[Signature]  
Notary Public



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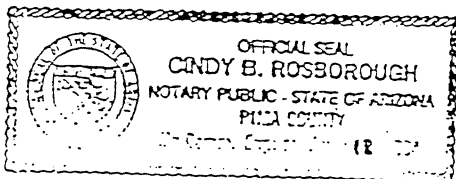
00385989 800747 P00816

JAMES C. BARD

James C. Bard  
James C. Bard

STATE OF ARIZONA       )  
                                      : ss  
COUNTY OF Pima       )

On the 25 day of JUNE, 1993, personally appeared before me JAMES C. BARD, known to me to be the person who executed the within document and acknowledged to me that he executed the same for the purposes therein stated.



Cindy B. Rosborough  
Notary Public

DONALD LEWIS LAPPE & ALICE ANN LAPPE,  
TRUSTEES OF THE DONALD & ALICE LAPPE  
FAMILY TRUST

BY: Donald Lewis Lappe  
Donald Lewis Lappe

STATE OF UTAH       )  
                                      : ss  
COUNTY OF SALT LAKE   )

On the 15<sup>th</sup> day of JUNE, 1993, personally appeared before me DONALD LEWIS LAPPE, known to me to be the person who executed the within document and acknowledged to me that he executed the same for the purposes therein stated.

James Lappe  
Notary Public



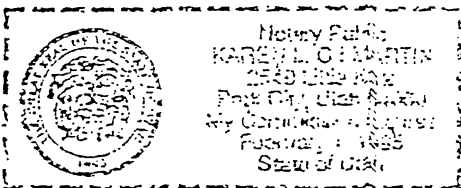
00382138 880735 P602

THOMAS H. FEY

BY: Thomas H. Fey  
THOMAS H. FEY

Utah  
STATE OF ~~NEW YORK~~ )  
COUNTY OF Summit : SS

On the 21st day of June, 1993, personally appeared before me THOMAS H. FEY, known to me to be the person who executed the within document and acknowledged to me that he executed the same for the purposes therein stated.



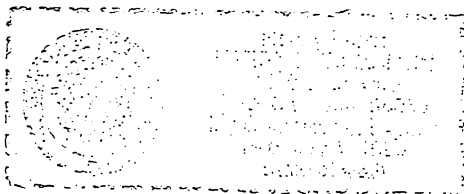
Karen L. O'Neil  
Notary Public

CAROLYN L. FEY

BY: Carolyn L. Fey  
CAROLYN L. FEY

Utah  
STATE OF ~~NEW YORK~~ )  
COUNTY OF Summit : SS

On the 21st day of June, 1993, personally appeared before me CAROLYN L. FEY, known to me to be the person who executed the within document and acknowledged to me that she executed the same for the purposes therein stated.



Karen L. O'Neil  
Notary Public

DONALD LEWIS LAPPE & ALICE ANN LAPPE,  
TRUSTEES OF THE DONALD & ALICE LAPPE  
FAMILY TRUST

BY: *Alice Ann Lappe*  
Alice Ann Lappe

STATE OF UTAH                    )  
                                      : ss  
COUNTY OF SALT LAKE )

On the 15<sup>th</sup> day of June, 1993, personally appeared  
before me ALICE ANN LAPPE, known to me to be the person who  
executed the within document and acknowledged to me that she  
executed the same for the purposes therein stated.

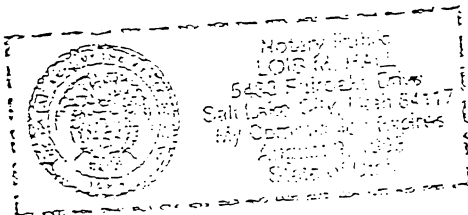
*Janet Seaw*  
Notary Public

HOWELLS INVESTMENT

BY: *J. S. Howells*

STATE OF UTAH                    )  
                                      : ss  
COUNTY OF SALT LAKE )

On the \_\_\_\_\_ day of June, 1993, personally appeared  
before me *Kevin S. Howells*, of HOWELLS INVESTMENT,  
known to me to be the person who executed the within document in  
behalf of said corporation and acknowledged to me that he/she  
executed the same for the purposes therein stated.



*Lois R. Hall*  
Notary Public

00382138 880735 88022



# **ADDENDUM “H”**

RCEL OWNERSHIP QUERY

SUMMIT COUNTY

DATE: 05/09/05

<u>PARCEL NUMBER</u>	<u>ACCOUNT YEAR</u>	<u>ACREAGE</u>	<u>DIST</u>	<u>PARCEL ADDRESS</u>
R-1-5	0227219 1999	5.26	10	2350 WEST WHITE PINE LANE

OWNER: STUHMER J CHRISTOPHER H/W (JT)  
STUHMER MICHELLE D H/W (JT)

TAX NOTICE MAILED TO: STUHMER J CHRISTOPHER & MICHELLE D (JT)  
\* NOT CURRENT RECORD! \*\* 2220 CHATSWORTH CT  
OK: 01189 PAGE: 00001 HENDERSON NV 89014  
TRY NUMBER: 00519362

PARCEL DESCRIPTION:

#5 OF WHITE PINE RANCHES PHASE I (P.R.D.) ACCORDING TO THE OFFICIAL PLAT  
REOF AS RECORDED IN THE OFFICE OF THE SUMMIT CO RECORDER CONT 5.2665 AC  
-392-404 295-337 730-135 840-600 1189-1-6 1262-166-171  
CHRISTOPHER STUHMER & MICHELLE D STUHMER TRUSTEES OF THE STUHMER FAMILY  
ST

PARCEL OWNERSHIP QUERY

SUMMIT COUNTY

DATE: 05/09/05

SERIAL NUMBER	ACCOUNT YEAR	ACREAGE	DIST	PARCEL ADDRESS
PR-1-5	0227219 1994	5.26	10	2350 WEST WHITE PINE LANE

OWNER: GRANOFF MARTIN J

TAX NOTICE MAILED TO: GRANOFF MARTIN J

\* NOT CURRENT RECORD! \*\* 36 ACKERMAN RD

BOOK: 00840 PAGE: 00600 SADDLE RIVER NJ 07458-2602

ENTRY NUMBER: 00416126

PARCEL DESCRIPTION:

#5 OF WHITE PINE RANCHES PHASE I (P.R.D.) ACCORDING TO THE OFFICIAL PLAT  
REOF AS RECORDED IN THE OFFICE OF THE SUMMIT CO RECORDER CONT 5.2665 AC  
-392-404 295-337 730-135 840-600

PARCEL OWNERSHIP QUERY

SUMMIT COUNTY

DATE: 05/09/05

<u>PARCEL NUMBER</u>	<u>ACCOUNT YEAR</u>	<u>ACREAGE</u>	<u>DIST</u>	<u>PARCEL ADDRESS</u>
R-1-5	0227219 1994	5.26	10	2350 WEST WHITE PINE LANE

OWNER: FEY THOMAS H (JT)  
FEY CAROLYN L (JT)

TAX NOTICE MAILED TO: GRANOFF MARTIN J  
NOT CURRENT RECORD! \*\* 36 ACKERMON ROAD  
BOOK: PAGE: SADDLE RIVER NJ 07458  
PARCEL NUMBER:

PARCEL DESCRIPTION:  
#5 OF WHITE PINE RANCHES PHASE I (P.R.D.) ACCORDING TO THE OFFICIAL PLAT  
DEED AS RECORDED IN THE OFFICE OF THE SUMMIT CO RECORDER CONT 5.2665 AC  
392-404 295-337 730-135 840-600

SERIAL NUMBER	ACCOUNT YEAR	ACREAGE	DIST	PARCEL ADDRESS
PR-1-5	0227219 1993	5.26	10	2350 WEST WHITE PINE LANE

OWNER: WHITE PINE RANCHES

TAX NOTICE MAILED TO: SAUNDERS LEON  
\*\* NOT CURRENT RECORD! \*\* 1899 LONGVIEW DRIVE  
BOOK: PAGE: SALT LAKE CITY UT 84124  
ENTRY NUMBER:

PARCEL DESCRIPTION:

#5 OF WHITE PINE RANCHES PHASE I (P.R.D.) ACCORDING TO THE OFFICIAL PLAT  
HEREOF AS RECORDED IN THE OFFICE OF THE SUMMIT CO RECORDER CONT 5.2665 AC  
-392-404 295-337 730-135

CEL OWNERSHIP QUERY

4MIT COUNTY

DATE: 05/09/05

IAL NUMBER	ACCOUNT YEAR	ACREAGE	DIST	PARCEL	ADDRESS
-1-5	0227219 1985	5.26	13	2350	WEST WHITE PINE LANE

ER: SAUNDERS LAND INVESTMENT CORP

TAX NOTICE MAILED TO: SAUNDERS LAND INVESTMENT CORP  
NOT CURRENT RECORD! \*\* 1899 LONGVIEW DRIVE  
K: 00288 PAGE: 00424 SALT LAKE CITY UT 84124  
RY NUMBER: 00216064

P R C E L D E S C R I P T I O N :

#5 OF WHITE PINE RANCHES PHASE I (P.R.D.) ACCORDING TO THE OFFICIAL PLAT  
EOF AS RECORDED IN THE OFFICE OF THESUMMIT CO RECORDER CONT 5.2665 AC

# **ADDENDUM “I”**

PARCEL OWNERSHIP QUERY

SUMMIT COUNTY

DATE: 05/09/05

SERIAL NUMBER	ACCOUNT YEAR	ACREAGE	DIST	PARCEL	ADDRESS
1-1-4	0227201 1999	5.00	10	2400	WEST WHITE PINE LANE

OWNER: CAMPBELL BILL H/W (JT)

MURPHY MARJORIE H/W (JT)

TAX NOTICE MAILED TO: SMITH GAYLE

\* NOT CURRENT RECORD! \*\* 6100 LAKE FORREST DR STE 430

OK: 01252 PAGE: 00241 ATLANTA GA 30328

TRY NUMBER: 00537317

PARCEL DESCRIPTION:

LOT 4 OF WHITE PINE RANCHES PHASE I (P.R.D.) ACCORDING TO OFFICIAL PLAT  
REOF AS RECORDED IN OFFICE OF SUMMIT COUNTY RECORDER CONT 4.9965 ACRES  
-762,763,764 462-376 602-744 701-392-404 (REF:718-677-678) 718-679  
7:719-853) 810-643 1245-45 1252-241 1256-59



PARCEL NUMBER	ACCOUNT YEAR	ACREAGE	DIST	PARCEL ADDRESS
-1-4	0227201 1999	5.00	10	2400 WEST WHITE PINE LANE

ER: JOHANNA P COLLESTER 1996 TRUST

TAX NOTICE MAILED TO: JOHANNA P COLLESTER 1996 TRUST  
NOT CURRENT RECORD! \*\* PO BOX 46570

K: 01245 PAGE: 00045 LEEDS UT 84746

RY NUMBER: 00534924

R C E L D E S C R I P T I O N :

LOT 4 OF WHITE PINE RANCHES PHASE I (P.R.D.) ACCORDING TO OFFICIAL PLAT  
EOP AS RECORDED IN OFFICE OF SUMMIT COUNTY RECORDER CONT 4.9965 ACRES  
762,763,764 462-376 602-744 701-392-404 (REF:718-677-678) 718-679  
:719-853) 810-643 1245-45 1252-241 1256-59

DEL OWNERSHIP QUERY

SUMMIT COUNTY

DATE: 05/09/05

<u>PARCEL NUMBER</u>	<u>ACCOUNT YEAR</u>	<u>ACREAGE</u>	<u>DIST</u>	<u>PARCEL</u>	<u>ADDRESS</u>
1-4	0227201 1994	5.00	10	2400	WEST WHITE PINE LANE

TR: COLLESTER FAMILY SURVIVORS TRUST

TAX NOTICE MAILED TO: COLLESTER JOHANNA P  
NOT CURRENT RECORD! \*\* PO BOX 46570  
K: 00810 PAGE: 00643 LEEDS UT 84746  
RY NUMBER: 00405951

R C E L D E S C R I P T I O N :

LOT 4 OF WHITE PINE RANCHES PHASE I (P.R.D.) ACCORDING TO OFFICIAL PLAT  
EOF AS RECORDED IN OFFICE OF SUMMIT COUNTY RECORDER CONT 4.9965 ACRES  
762,763,764 462-376 602-744 701-392-404 (REF:718-677-678) 718-679  
:719-853) 810-643 (WPR-1-4-A IS NOW COMBINED WITH THIS)  
NNA P COLLESTER ASSUMED TRUSTEE OF COLLESTER FAMILY SURVIVORS TRUST

PARCEL NUMBER	ACCOUNT YEAR	ACREAGE	DIST	PARCEL ADDRESS
R-1-4	0227201 1993	5.00	10	2400 WEST WHITE PINE LANE

OWNER: COLLESTER STEWART M TRUSTEE  
COLLESTER JOHANNA P TRUSTEE

TAX NOTICE MAILED TO: COLLESTER STEWART M TRUSTEE  
NOT CURRENT RECORD! \*\* PO BOX 4491  
BOOK: 00718 PAGE: 00679 PARK CITY UT 84060  
SERIAL NUMBER: 00377131

PARCEL DESCRIPTION:  
LOT 4 OF WHITE PINE RANCHES PHASE I (P.R.D.) ACCORDING TO OFFICIAL PLAT  
AS RECORDED IN OFFICE OF SUMMIT COUNTY RECORDER CONT 4.9965 ACRES  
762,763,764 462-376 602-744 (SEE QCD 701-392 HOWELLS INVESTMENT TO  
WHITE PINE ENTERPRISES ETAL) (SEE QCD 701-404 ROBERT FELTON TO WHITE  
ENTERPRISES ETAL) (REF:718-677-678) 718-679 (REF:719-853) STEWART M  
ESTER & JOHANNA P COLLESTER TRUSTEE OF COLLESTER FAMILY TRUST  
-1-4-A IS NOW COMBINED WITH THIS)

CEL OWNERSHIP QUERY

SUMMIT COUNTY

DATE: 05/09/05

PARCEL NUMBER	ACCOUNT YEAR	ACREAGE	DIST	PARCEL ADDRESS
1-4	0227201 1993	4.99	10	2400 WEST WHITE PINE LANE

ER: WHITE PINE RANCHES

TAX NOTICE MAILED TO: SAUNDERS LEON H  
NOT CURRENT RECORD! \*\* 1899 LONGVIEW DRIVE  
K: 00701 PAGE: 00381 SALT LAKE CITY UT 84117  
RY NUMBER: 00371373

R C E L D E S C R I P T I O N :  
LOT 4 OF WHITE PINE RANCHES PHASE I (P.R.D.) ACCORDING TO OFFICIAL PLAT  
EOF AS RECORDED IN OFFICE OF SUMMIT COUNTY RECORDER CONT 4.9965 ACRES  
762,763,764 462-376 602-744 (SEE QCD 701-392 HOWELLS INVESTMENT TO  
E PINE ENTERPRISES ETAL) (SEE QCD 701-404 ROBERT FELTON TO WHITE  
ENTERPRISES ETAL) (REF:718-677-678) 718-679 (REF:719-853) STEWART M  
ESTER & JOHANNA P COLLESTER TRUSTEE OF COLLESTER FAMILY TRUST  
-1-4-A IS NOW COMBINED WITH THIS)

# **ADDENDUM “J”**

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SUMMIT COUNTY, STATE OF UTAH

WILLIAM CAMPBELL, et.al.,  Plaintiffs,  vs.  CHRISTOPHER STUHMER, et.al.,  Defendants.	<b>RULING and ORDER</b>  Case No. 030500815  Honorable BRUCE C. LUBECK  DATE: October 17, 2005
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The above matter came before the court for decision on a letter request for clarification. On August 10, 2005, the court issued a ruling and order. On August 19, 2005, defendant sent a letter seeking clarification on attorney fees. On August 23, 2005, plaintiff filed a letter response.

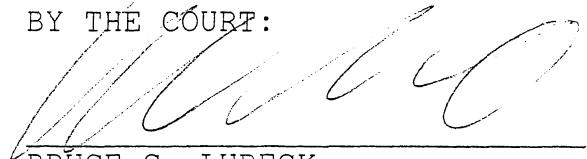
The court agrees with plaintiff at this point. Further hearing on the issuance of a preliminary injunction is pending is further litigation on remaining issues. The court did not award attorney fees and believes it is premature to do so at this point. The request will not be determined at this point but is reserved for further litigation to determine the prevailing party.

This Ruling and Order is the Order of the court and no

other order is required.

DATED this 17 day of Oct, 2005.

BY THE COURT:

A handwritten signature in dark ink, appearing to read 'Bruce C. Lubeck', written over a horizontal line.

BRUCE C. LUBECK  
DISTRICT COURT JUDGE