

2008

William Campbell and Majorie Campbell v.
Christopher Stuhmer and Michelle Stuhmer, as
Trustees of the Stuhmer Family Trust : Reply Brief

Utah Court of Appeals

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Recommended Citation

Reply Brief, *Campbell v. Stuhmer*, No. 20080295 (Utah Court of Appeals, 2008).
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IN THE UTAH COURT OF APPEALS

WILLIAM CAMPBELL and MAJORIE
CAMPBELL,

Case No. 20080295

Plaintiffs/Appellees,

v.

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

Defendants/Appellants.

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FILED
UTAH APPELLATE COURT

JUN 22 2009

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Jurisdiction

The court has jurisdiction under Utah Code section 78A-4-103(2).

Statement of Issues and Standards of Review

Issue 1: Whether the district court correctly interpreted the term “Declarant” in a declaration of protective covenants to exclude subsequent purchasers of lots in the subdivision where the declaration distinguishes between “Declarants” and mere “Owners.”

Standard of Review: A district court’s review of a written contract is reviewed for correctness. Home Sav. & Loan v. Aetna Cas. & Sur. Co., 817 P.2d 341, 347 (Utah Ct. App. 1991).

Issue 2 (in the alternative): Whether the district court abused its discretion in refusing to award attorney fees under Utah Code Ann. § 78-B-56.5 (now § 78B-5-826), where the district court made clear that it did not believe either party deserved to recover attorney fees in this dispute between neighbors.

Standard of Review: The court reviews for abuse of discretion a district court’s refusal to award attorney fees under Utah Code Ann. § 78-B-56.5. Bilanzich v. Lonetti, 2007 UT 26, ¶17, 160 P.3d 1041.

Issue 3 (in the alternative): Whether the Stuhmers qualify as the prevailing parties where the Campbells and Stuhmers both prevailed on claims under the Declaration.

Standard of Review: The court reviews for the abuse of discretion a determination of whether a party is the prevailing party for purposes of awarding attorney fees. R.T. Nielson Co. v. Cook, 2002 UT 11, ¶25, 40 P.3d 1119.

Determinative Provisions

A court may award costs and attorney 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 fees.

Utah Code Ann. § 78-B-56.5 (now § 78B-5-826).

Statement of the Case

I. Nature of the Case

This appeal concerns whether the district court properly denied the Stuhmers' request to be awarded attorney fees. The Stuhmers contend they are entitled to recover their fees under (i) the Declaration of Protective Covenants for the White Pine Ranches, Phases I & II (the "Declaration") and (ii) Utah Code section 78-B-56.5 (now section 78B-5-826). Under the Declaration, a Declarant may be awarded attorney fees in an action involving the enforcement of rights under the Declaration. (R. 18 at ¶ 9.1.)

On appeal, the Stuhmers contend they are "Declarants" under the Declaration, and therefore, may be awarded attorney fees. (AOB at 11-12.) In the alternative, the Stuhmers contend that the Campbells are "Declarants" under the Declaration, and therefore, under Utah Code section 78B-5-826's reciprocity requirement, the Stuhmers may be awarded attorney fees. (AOB at 13.)

The district court rejected both arguments on a number of occasions, emphasizing that an award of attorney fees was not appropriate given the parties' behavior throughout the litigation. (R. 1328-1329.) The record could not be more clear that the district court did not believe an attorney fees award was appropriate even if there were legal authority to make such an award. (R. 1329.)

This appeal involves (i) whether the Stuhmers were eligible for an attorney fees award, and if so, (ii) whether the trial court abused its discretion in refusing to award attorney fees to the Stuhmers, and (iii) whether the Stuhmers qualify as prevailing parties on the claims for which the Stuhmers claim they are eligible for an attorney fees award.

II. Course of Proceedings

The Campbells filed a complaint on December 30, 2003, alleging that the Stuhmers had violated the Declaration and the Summit County Code when they built a house that exceeded height restrictions and improperly constituted more than one single detached principal building. (R. 1-15, 257.) The Campbells also alleged that the Stuhmers had (i) caused water to back up and trespass on the Campbells' property when the Stuhmers constructed a dam on the Stuhmers' property; and (ii) intentionally placed "No Trespassing" signs on their property in places where it would be a visual nuisance to the Campbells. (R. 354 ¶¶7.1-8.5; see also 1381, 417.) The Stuhmers filed a counterclaim that the Campbells had breached a contract to construct a berm on their property line by failing to pay their portion of the construction costs. (R. 268.)

The claims seeking damages were tried to a jury. After trial, the court entered findings of fact and conclusions of law as to all claims. (R. 1375-82.) The jury found that the Stuhmers were not in violation of the height restrictions. (R. 1377.) The jury found that the Stuhmers had trespassed with water diverted by their dam, but the Campbells had proven no damages or entitlement to permanent injunctive relief. (R. 1377, 1379.) The jury found that the Stuhmers' trespassing signs were a violation of the Declaration. (R. 1380-81.) And finally, the jury concluded that the Campbells had

violated a separate contract to pay costs of a berm and awarded the Stuhmers damages of \$7,569.38 and costs of \$2,965.95. (R. 1382.)

On a number of occasions during the litigation, the Stuhmers asked the court to award them attorney fees under the Declaration. (R. 647, 1294-1301, 1318-1323.) Every time, the court denied their request. On appeal, the Stuhmers raise these same arguments concerning attorney fees.

III. Statement of Facts

On June 4, 1993, a number of individuals and entities entered into the Declaration.¹ (R. 18 at 37-42.) In section 2.3 of the Declaration, “Declarants” is defined as the parties to the Declaration and “their successors, mortgagees and assigns.” (R. 18 at § 2.3.) Neither the Campbells nor the Stuhmers were among the original parties to the Declaration. (R. 18 at 37-42.) The Declaration does not expressly define the terms “successors, mortgagees and assigns.” (R. 18.)

The Declaration does, however, include a number of other relevant definitions. It defines “Owner” as the “owner or owners of record of any Lot as disclosed by the records of the Summit County Recorder’s Office.” (R. 18 at § 2.7.) The Declaration defines “Association” as the: “White Pine Homeowner’s Association [,] a nonprofit corporation, incorporated under the laws of the State of Utah.” (R. 18 at § 2.1.) Further, it defines

¹ White Pine Ranches, Saunders Land Investment Corporation, Leon H. Saunders, Robert Felton, FDIC in its Corporate Capacity as Purchaser of Certain Assets of Tracy Collins Bank & Trust; Stewart M. Collester & Johanna Collester, Trustees of the Collester Family Trust, White Pine Enterprises, James C. Bard, Donald Lewis Lappe & Alice Ann Lappe, Trustees of the Donald & Alice Lappe Family Trust, Thomas H. Fey, Carolyn L. Fey; Howells Investment.

“Member” as: “Every record owner of the fee or undivided fee interest in a Lot in White Pine Ranches, Phases I and II, shall be a member of the Association.” (R. 18 at § 3.2.)

The Declaration expressly provides that while Declarants and the Association are entitled to attorney fees, Owners are not:

Enforcement of 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, Declarants or the Association shall be entitled to costs and expenses in connection therewith, including reasonable attorneys’ fees.

(R. 18 at § 9.1.)

Summary of the Argument

The Stuhmers argue that they qualify “Declarants” under the Declaration, and therefore, are eligible to recover attorney fees. More specifically, the Stuhmers argue that the Declaration defined “Declarant” to include successors of an original Declarant, and therefore, as an Owner of a lot owned by an original Declarant, the Stuhmers are Declarants. The language of the Declaration undermines this argument.

The Declaration distinguishes between Owners and Declarants. On the Stuhmers interpretation, there would be no distinction because every Owner would be a “successor” to an original Declarant. The court should not interpret the term “successor” to render meaningless a distinction plainly drawn in the Declaration. In addition, the term “successor” has a specific legal meaning, such as the heir. As a mere purchaser of a lot from someone who in turn purchased the lot from a Declarant, the Stuhmers do not qualify. Accordingly, the Stuhmers are Owners, not Declarants, under the Declaration.

And for all of the same reasons, the Campbells are not Declarants under the Declaration. The Stuhmers argue that the Campbells are Declarants, and therefore, at least one party to this dispute could recover attorney fees under the Declaration, a fact that would trigger Utah Code section 78B-5-826. Under section 78B-5-826, if one party is entitled to fees, then a court may award fees to either party. Even assuming the Campbells were Declarants—which they are not—the Stuhmers’ section 78B-5-826 argument fails. Under 78B-5-826, the trial court has discretion in determining whether to award fees, and here, the record is clear that the trial court did not believe that either party deserved an attorney fees award. The court specifically noted the overly litigious nature of the dispute and declined to award fees. The Stuhmers have not argued, let alone demonstrated, that the district court abused its discretion in declining to award fees.

Finally, even if the Stuhmers and Campbells were Declarants, and even if the trial court had not concluded that neither party deserved attorney fees, the Stuhmers still would not be entitled to an attorney fees award because the Stuhmers were not the “prevailing party” under Utah law. The only claims relevant to the attorney fees issue were those brought under the Declaration. On these claims, the Campbells prevailed in their claim that the Stuhmers had violated the Declaration with their “No Trespassing” signs and the Stuhmers prevailed on the Campbells’ claim that they had violated the height restrictions and single detached principal building requirement in the Declaration. The Stuhmers were not prevailing parties.

For all of these reasons, the court should affirm the trial court’s decision not to award the Stuhmers attorney fees.

Argument

I. The Stuhmers Are Not Entitled to Attorney Fees Because They Are Not Declarants Under the Declaration

The Stuhmers first claim that they are entitled to attorney fees under the Declaration because either they or the Campbells are “Declarants” under the Declaration. (AOB at 10-12.) The Stuhmers argue that they and the Campbells are “successors” to original Declarants because each currently owns a lot that was once owned by an original Declarant. (AOB at 11.) Because the Declaration defines “Declarant” to include original Declarants and their “successors,” the Stuhmers argue both they and the Campbells are Declarants and eligible for an award of attorney fees. (AOB at 11, 13.) This interpretation of the Declaration cannot be correct.

First, the Stuhmers’ interpretation of the Declaration renders meaningless the express distinction in the Declaration between Declarants and Owners. A court interpreting a contract must consider all its terms “in relation to all of the others, . . . giving effect to all [the terms] and ignoring none.” WebBank v. American Gen. Annuity Serv. Corp., 2002 UT 88, ¶18, 54 P.3d 1139. And the court should not interpret a “contractual term such that it renders an explicit right meaningless.” Cafe Rio, Inc. v. Larkin-Gifford-Overton, LLC, 2009 UT 27, ¶33, 629 Utah Adv. Rep. 21.

Here, the Declaration defines three specific and distinct entities: Declarants, Owners, and the Association. “Declarants” are defined as the original parties to the contract and their successors. “Owners” are defined as the record owners of the property. And the “Association” is defined as the non-profit entity that operates as the homeowners association for the subdivision. Under the Stuhmers’ interpretation, however, every

Owner would also be a Declarant and every Declarant would be an Owner, making the distinction between the two terms meaningless.

Yet the distinction between “Owners” and “Declarants” is important under the Declaration. Section 9.1 states that while Owners, Declarants, and the Association can enforce the terms of the Declaration, only the “Declarants or the Association shall be entitled to costs and expenses in connection therewith, including reasonable attorneys’ fees.” (R. 18 at § 9.1.) There would be no need for this distinction—in the very paragraph the Stuhmers are seeking to enforce here—if all Owners qualified as Declarants simply because they are “successors” of Declarants in the sense that they own lots a Declarant once owned. For this reason, the court should reject all of the Stuhmers’ arguments on appeal.

Second, the Stuhmers have misinterpreted the term “successor” to mean anyone who purchased a lot from an original Declarant. (AOB at 12.) This also is incorrect. While the term “successor” is not expressly defined in the Declaration, the term has a settled legal meaning that does not include a subsequent purchaser of assets. Ekotek Site PRP Comm. v. Self, 948 F. Supp. 994, 1000 (D. Utah 1996) (a “mere asset purchaser” is not liable under CERCLA as a successor corporation); Gamez v. Country Cottage Care & Rehab., 377 F. Supp. 2d 1103, 1116 (D.N.M. 2005) (evaluating whether purchaser company is a successor by applying nine-part test).

Perhaps more telling, Black’s Law Dictionary defines “successor” as “[t]hose persons, other than creditors, who are entitled to property of a decedent under his will or succession statute.” Black’s Law Dictionary, 1432 (6th ed. 1990). The Stuhmers have cited no authority to support their assertion that any subsequent purchaser of a lot is a

“successor.” For this additional reason, the court should reject all of the Stuhmers’ arguments on appeal.

II. The Court Did Not Abuse Its Discretion in Declining to Award Attorney Fees

Even if the Campbells did qualify as Declarants under the Declaration, the Stuhmers’ argument that they are eligible for an attorney fees award under Utah Code section 78B-5-826 still fails.

Section 78B-5-826 states that “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 fees.” Utah Code Ann. § 78B-5-826 (emphasis added). In interpreting this section, the Utah Supreme Court has emphasized that it is discretionary in nature. Bilanzich v. Lonetti, 2007 UT 26, ¶17, 160 P.3d 1041. The trial court is in the best position to “assess the credibility of witnesses and to derive a sense of the proceedings as a whole, something an appellate court cannot hope to garner from a cold record.” Hughes v. Cafferty, 2004 UT 22, ¶24, n.2, 89 P.3d 148. Such determinations are “multilayered” and rely on the court’s “traditional capacity to evaluate witnesses’ credibility, the weight of factual evidence, and the satisfaction by parties of their burdens of proof.” Utahns for Better Dental Health-Davis, Inc. v. Rawlings, 2007 UT 97, ¶7, 175 P.3d 1036.

Here, the district court made clear on a number of occasions that neither party deserved an award of attorney fees. The record is rife with statements that because the parties over-litigated the case, an attorney fees award would not be appropriate. For example, in denying the Stuhmers’ third identical request for attorney fees, the district

court referred to the “never-ending case” and the fact that “this court is weary of continued motions for reconsideration.” (R. 1329.)

On this record, even if the Stuhmers could demonstrate that the Campbells were Declarants, the Stuhmers could not demonstrate that the district court abused its discretion in declining to award fees the Stuhmers fees under section 78B-5-826. For this additional reason, the court should affirm.

III. The Stuhmers Were Not the Prevailing Party on the Claims Brought Under the Declaration

The trial court also did not err in refusing to award attorney fees because the Stuhmers were not the prevailing party under Utah law. Thus, assuming (i) the Stuhmers were Declarants under the Declaration and (ii) the trial court had exercised its discretion to consider the Stuhmers eligible for an attorney fees award under the Declaration and Utah Code section 78B-5-826, the Stuhmers still would not be entitled to recover attorney fees because they were not the prevailing party on the claims brought under the Declaration—i.e., the claim to which the attorney fees provision applies.

As the Utah Supreme Court has explained, the determination of the prevailing party “by use of the flexible and reasoned approach.” A.K. & R. Whipple Plumbing & Heating v. Guy, 2004 UT 47, ¶14, 94 P.3d 270. Courts should “use their common sense in deciding whether a party was successful.” Id. at ¶26. On this approach, a plaintiff does not automatically recover attorney fees simply because he recovers some of his claimed damages. For example, in Occidental/Nebraska Fed. Sav. Bank v. Mehr, a plaintiff had claimed \$600,000 in damages, but only recovered the \$7900 defendant had admitted it owed plaintiff early in the litigation. 791 P.2d 217, 222 (Utah Ct. App. 1990).

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JUN 22 2009

June 22, 2009

Lisa Collins
Clerk of the Utah Court of Appeals
450 South State Street
Salt Lake City, UT 84114


Re: Campbell v. Stuhmer, Case No. 20080295

Dear Lisa:

There is a letter missing on one word on page 8 of the "Appellees' Response Brief" we filed on Friday, and rather than submitting a replacement brief, we are alerting the court to the issue by letter. In the last paragraph on page 8, we quote a definition from Black's Law Dictionary for the word "successor." The word is missing an "s" on the end, and it should read "successors." This is an important difference because the two words are defined differently. To assist the court on this issue, we have attached to this letter a copy of the definition from Black's Law Dictionary.

Very truly yours,

Snell & Wilmer



Troy L. Booher

TLB:mkj
Enclosure

cc: Korey Rasmussen (w/enclosure)

BLACK'S LAW DICTIONARY

Definitions of the Terms and Phrases of
American and English Jurisprudence,
Ancient and Modern

By

HENRY CAMPBELL BLACK, M. A.

SIXTH EDITION

BY

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the same rights as original owner without change in ownership and there must be change in form only and not in substance, and transferee is not a "successor in interest." In case of corporations, the term ordinarily indicates statutory succession as, for instance, when corporation changes its name but retains same property. *City of New York v. Turnpike Development Corp.*, 36 Misc.2d 704, 233 N.Y.S.2d 887, 890.

Successors. Those persons, other than creditors, who are entitled to property of a decedent under his will or succession statute. Uniform Probate Code, § 1-201(42).

Successor trustee. A trustee who follows or succeeds an earlier trustee and who generally has all the powers of the earlier trustee. Trusts generally make provisions for appointment of successor trustees.

Succinct /səksɪŋkt/. Brief, precise, exact.

Succurritur minori; facilis est lapsus juventutis /səkəhrətər mənóray, fæsləs èst ləpsəs jùwvənt(y)úwtəs/. A minor is [to be] aided; a mistake of youth is easy [youth is liable to err].

Such. Of that kind, having particular quality or character specified. Identical with, being the same as what has been mentioned. Alike, similar, of the like kind. "Such" represents the object as already particularized in terms which are not mentioned, and is a descriptive and relative word, referring to the last antecedent.

Sudden. Happening without previous notice or with very brief notice; coming or occurring unexpectedly; unforeseen; unprepared for. *Hagaman v. Manley*, 141 Kan. 647, 42 P.2d 946, 949.

Sudden emergency doctrine. When a person finds himself confronted with a sudden emergency, which was not brought about by his own negligence or want of care, such person has the legal right to do what appears to him at the time he should do, so long as he acts in a reasonably prudent manner as any other person would have done under like or similar circumstances, to avoid any injury, and if he does so act, he will not be deemed to have been negligent even though it might afterwards be apparent that some other course of action would have been safer. *Swann v. Huttig Sash & Door Co.*, C.A.Tex., 436 F.2d 60, 62. Under sudden emergency doctrine, one placed in position of sudden emergency or peril other than by his own negligence, is not held to same degree of care and prudence as one who has time for thought and reflection. *Dadds v. Pennsylvania R. Co.*, Del., 251 A.2d 559, 560. *See also* Emergency doctrine; Sudden peril rule.

udden heat of passion. In the common-law definition of manslaughter, this phrase means an excess of rage or anger, suddenly arising from a contemporary provocation. It means that the provocation must arise at the time of the killing, and that the passion is not the result of a former provocation, and the act must be directly caused by the passion arising out of the provocation at the time of the homicide. *See also* Heat of passion.

udden or violent injury. Injury occurring unexpectedly and not naturally or in the ordinary course of events.

Sudden peril rule. Under this rule, a defendant who is guilty of primary negligence is not liable in case of sudden peril where the peril or alarm was caused by the negligence of the opposite party, apprehension of peril from the standpoint of defendant seeking to excuse his primary negligence was reasonable, and appearance of danger was so imminent as to leave no time for deliberation. *White v. Munson*, Tex.Civ.App., 162 S.W.2d 429, 432. But rule cannot be invoked by one bringing emergency on or not using due care, to avoid it. *McClelland v. Interstate Transit Lines*, 142 Neb. 439, 6 N.W.2d 384, 391. *See also* Sudden emergency doctrine.

Sudder /sédər/. In Hindu law, the best; the forecourt of a house; the chief seat of government, contradistinguished from "*mofussil*," or interior of the country; the presidency.

Sue. To commence or to continue legal proceedings for recovery of a right; to proceed with as an action, and follow it up to its proper termination; to gain by legal process. *Lervold v. Republic Mut. Fire Ins. Co.*, 142 Kan. 43, 45 P.2d 839, 843. To commence and carry out legal action against another. Word includes a proceeding instituted by confession of judgment. *Commonwealth ex rel. Bradford County v. Lynch*, 146 Pa.Super. 469, 23 A.2d 77, 78. *See also* Suit.

Sue out. To obtain by application; to petition for and take out. Properly the term is applied only to the obtaining and issuing of such process as is only accorded upon an application first made; but conventionally it is also used of the taking out of process which issues of course. The term is occasionally used of instruments other than writs.

Suerte /s(u)wértey/. In Spanish law, a small lot of ground. Particularly, such a lot within the limits of a city or town used for cultivation or planting as a garden, vineyard or orchard. Building lots in towns and cities are called "solares."

Suffer. To allow, to admit, or to permit. *Osborne v. Winter*, 133 Cal.App. 664, 24 P.2d 892. It includes knowledge of what is to be done under sufferance. *First Nat. Bank & Trust Co. of Port Chester v. New York Title Ins. Co.*, 171 Misc. 854, 12 N.Y.S.2d 703, 709. To suffer an act to be done or a condition to exist is to permit or consent to it; to approve of it, and not to hinder it. It implies knowledge, a willingness of the mind and responsible control or ability to prevent. *Wilson v. Nelson*, 183 U.S. 191, 22 S.Ct. 74, 46 L.Ed. 147.

Also to have the feeling or sensation that arises from the action of something painful, distressing or the like; to feel or endure pain; to endure or undergo without sinking; to support; to bear up under; to be affected by; to sustain; to experience; to feel pain, physical or mental. The customary use of the word indicates some experience of conscious pain. *New York Life Ins. Co. v. Calhoun*, C.C.A.Mo., 97 F.2d 896, 898.

Sufferance /səf(ə)rəns/. Toleration; negative permission by not forbidding; passive consent; license implied from the omission or neglect to enforce an adverse right.

Not only did the court refuse to consider the plaintiff the “prevailing party,” it determined that defendant was the prevailing party and awarded fees accordingly.

Here, the trial court found that both the Campbells and the Stuhmers prevailed on claims brought under the Declaration. (R. 1483:635-36.) The trial court did not find that either party was entitled to damages for any claims under the Declaration. (R. 1381.) The jury found that the Stuhmers’ house did not violate the height restriction or the restriction as to a single detached principal building. (R. 1-12; R. 354.) It did find, however, that the Stuhmers had violated the restriction as to the inappropriate signage in the Declaration. (R. 1377-78; 1381.) In this circumstance, the Stuhmers can hardly be considered the prevailing party on the claims brought under the Declaration.² For this additional reason, the court should affirm.

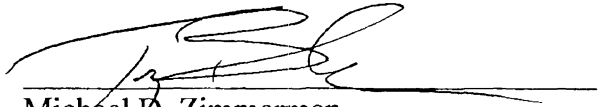
Conclusion

The trial court correctly denied the Stuhmers’ repeated requests for attorney fees because (i) neither the Stuhmers nor the Campbells are Declarants under the Declaration, (ii) the trial court made clear that neither party deserved an attorney fees award even if they were eligible for one, and (ii) the Stuhmers were not prevailing parties on the claims brought under the Declaration. This court should affirm.

² As for the remaining claims, the court declined to enjoin the Stuhmers’ development of a dam that had caused flooding on the Campbells’ property primarily because of the representation by the Stuhmers that the problem was seasonal and resolved. (R. 689-97.) The court’s only finding in favor of the Stuhmers was as to their claim that the Campbells had breached a separate contract concerning the construction of the berm (R. 638, 1381), which explains why the court considered the Stuhmers the prevailing party in light of all of the claims in the lawsuit. (R. 1882; 1483: 635-37 (stating that the defendants have prevailed only on “the CCR alleged violations, height and now multiple structures” but not on the “sign aspect”).)

DATED this 19th day of June, 2009.

SNELL & WILMER L.L.P.

A handwritten signature in black ink, appearing to read "Michael D. Zimmerman", written over a horizontal line.

Michael D. Zimmerman

Troy L. Booher

Emily V. Smith

Attorney for William and Marjorie Campbell

CERTIFICATE OF SERVICE

This is to certify that the foregoing was mailed, postage prepaid, this 19th day of June 2009, to the following:

Korey Rasmussen
Snow Christensen & Martineau
10 Exchange Place, Eleventh Floor
PO Box 45000
Salt Lake City, UT 84145-5000

A handwritten signature in black ink, appearing to be "Korey Rasmussen", written over a horizontal line.

Tab A

DEC - 3 2003

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".

1. Purpose of Covenants

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
1993 JUN 29 16:52 PM FEE \$99.00 BY
FOR ASSOCIATED TITLE

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ALAN SPRIGGS, SUMMIT COUNTY RECORDER
1993 AUG 27 15:01 PM FEE \$99.00 BY DMG
PROPERTY IN EXAMINATION

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

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 **500175** 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

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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

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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 protecting the interest of the Association and its members.

(g) Have the Authority to employ if required a manager 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

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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

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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

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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

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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

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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 **500185** 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.

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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

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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 500181 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

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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 500193

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

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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 **50019.**

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

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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 **500198** 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

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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

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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.

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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, **500205** 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

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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.



Notary Public
LOIS M. HALL
5483 Fairbairns Drive
Salt Lake City, Utah 84111
My Commission Expires
August 9, 1993
State of Utah

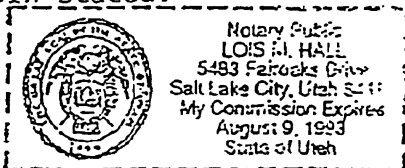
Lois M. Hall
Notary Public

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.



Notary Public
LOIS M. HALL
5483 Fairbairns Drive
Salt Lake City, Utah 84111
My Commission Expires
August 9, 1993
State of Utah

Lois M. Hall
Notary Public

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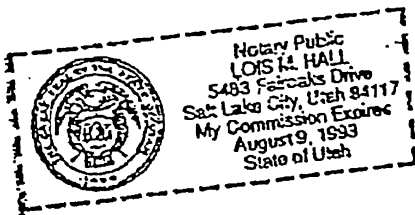
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LEON H. SAUNDERS

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.



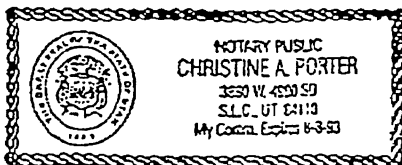
Robert Felton
Notary Public

ROBERT FELTON

Robert Felton
Robert Felton

STATE OF UTAH)
: ss
COUNTY OF SALT LAKE)

On the 9th 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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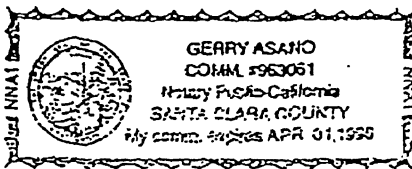
00382138 Ex0735 Ps0220

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

BY: Donald V. Martin
Donald V. Martin, Department Head *DPB*
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.



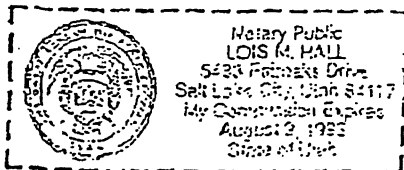
Gerry Asano
Notary Public

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

BY: Stewart M. Colleston
Stewart M. Colleston

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

00385989 8x00747 Pa00815

00382138 8x0735 Pa0221

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.

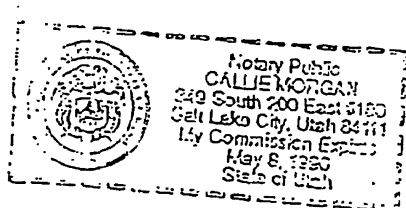
[Signature]
Notary Public

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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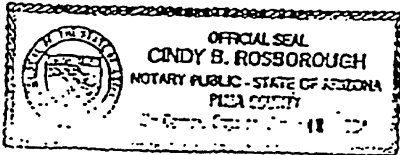
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JAMES C. BARD

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. Rossborough
Notary Public

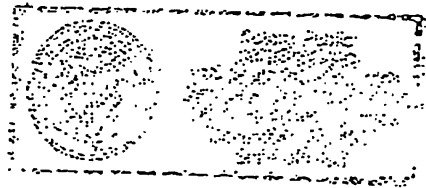
DONALD LEWIS LAPPE & ALICE ANN LAPPE,
TRUSTEES OF THE DONALD & ALICE LAPPE
FAMILY TRUST

BY: Donald Lewis Lappe
Donald Lewis Lappe

STATE OF UTAH)
: ss
COUNTY OF SALT LAKE)

On the 15th 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.

Janis Seaw
Notary Public



00382138 Bk0735 Pg0223

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 15th 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.

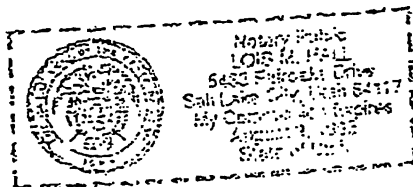
Janis Seaw
Notary Public

HOWELLS INVESTMENT

BY: *J. S. Howells*

STATE OF UTAH)
: SS
COUNTY OF SALT LAKE)

On the ___ day of June, 1993, personally appeared
before me *Norm 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.



Norm S. Howells
Notary Public

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