

**When Recorded, Return to:**

Jonathan G. Brinton  
769 N 1280 E  
American Fork, UT 84003

Space Above for Recorder's Use

**ENCROACHMENT AGREEMENT**

This Encroachment Agreement ("**Agreement**") is entered into effective August 1, 2008, by and between **Sally P. Brinton and Gregory S. Brinton, as Co-Trustees of the Sally P. Brinton Trust ("Brinton")**, whose mailing address is 1714 Fort Douglas Cir, Salt Lake City, UT 84103-4450, and **Simpar Associates, L.C.**, a Utah limited liability company ("**Simpar**"), whose mailing address is 460 W Mountain View Dr, PO Box 0759, Midway, UT 84049-0759.

**BACKGROUND**

A. Brinton owns certain real property located in Wasatch County, Utah, and more particularly described on Exhibit A to this Agreement ("**Brinton Property**").

B. Simpar owns certain real property located adjacent to the Brinton Property in Wasatch County, Utah, and more particularly described on Exhibit A to this Agreement ("**Simpar Property**").

C. Simpar has installed a fence, an asphalt driveway, a culvert, and some trees that encroach onto the Brinton Property as shown on the survey attached as Exhibit B to this Agreement. The encroaching portions of the fence, driveway, culvert, and trees, together with any other encroaching improvements installed by Simpar are collectively referred to in this Agreement as the "**Encroaching Improvements**". The portion of the Brinton Property on which the Encroaching Improvements are located is referred to in this Agreement as the "**Encroachment Area**".

D. Brinton is willing to allow the Encroaching Improvements to remain on the Encroachment Area on a temporary basis, but solely in accordance with the terms and conditions of this Agreement.

**AGREEMENT**

1. **Encroachment License.** Brinton hereby grants to Simpar a revocable license ("**Encroachment License**") to use the Encroachment Area for the purpose of maintaining, repairing, replacing, and removing the Encroaching Improvements, subject to the terms and conditions of this Agreement.

2. **Revocation and Termination of License.** The Encroachment License may be revoked and terminated by Brinton at any time and for any reason, which revocation and

termination will take effect upon delivery of written notice to Simpar at the mailing address listed in the introductory paragraph to this Agreement.

3. **Simpar's Obligations Relating to Encroachment Area.** In consideration of the grant set forth in Section 1, Simpar agrees as follows:

(a) Simpar, at its sole cost and expense, will maintain, repair, and replace the Encroachment Area and the Encroaching Improvements in a safe, clean, and attractive condition, free from debris and obstructions.

(b) The Encroaching Improvements will not be moved or expanded from their current location as depicted on Exhibit B, and no additional improvements of any kind will be installed on the Encroachment Area or any other portion of the Brinton Property.

(c) Neither the Encroachment Area nor the Encroaching Improvements will be used by Simpar or its affiliates, contractors, licensees, or invitees for any purpose other than maintenance, repair, replacement, and removal of the Encroaching Improvements and restoration of the Encroachment Area in accordance with the terms and conditions of this Agreement.

(d) Upon revocation and termination of the Encroachment License by Brinton pursuant to Section 2, Simpar, at its sole cost and expense, will, within 30 days after such revocation and termination, remove the Encroaching Improvements and restore the Encroachment Area to the same condition it was in before the installation of the Encroaching Improvements.

4. **Right to Cure.** If at any time Simpar fails to comply with Section 3 of this Agreement, Brinton will have the right, but not the obligation, to perform the applicable maintenance, repairs, or replacements or to remove the Encroaching Improvements and restore the Encroachment Area at Simpar's cost and expense, and Simpar will reimburse Brinton for Brinton's costs and expenses incurred in connection therewith within 10 days after receiving an invoice from Brinton therefor.

5. **Indemnification.** Simpar hereby agrees to indemnify, defend, and hold harmless Brinton and Brinton's trustees, beneficiaries, agents, representatives, successors, assigns, contractors, tenants, and invitees (collectively, the "**Brinton Indemnified Parties**"), from and against any claim, action, proceeding, obligation, liability, injury, loss or damage, cost or expense, including attorneys' fees, relating to, arising out of, or in any way connected with the design, construction, maintenance, use, or presence of the Encroaching Improvements or with Simpar's use of the Encroachment Area, including but not limited to, personal injury or death to any person or property damage, except to the extent caused by the negligence or willful misconduct of any of the Brinton Indemnified Parties.

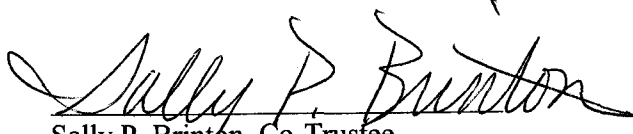
6. **No Claims of Adverse Possession, Prescriptive Easement, or Abandonment.** Simpar acknowledges and agrees that it does not have and will not assert at any time any claim of adverse possession or prescriptive easement with respect to the Encroachment Area or any claim that by granting the License, Brinton has abandoned the Encroachment Area.


7. **Miscellaneous.** This instrument does not create any fiduciary relationship between the parties. This Agreement will be governed by Utah law. Any action or proceeding arising out of or in connection with this Agreement will be tried and litigated in the Salt Lake City District Court (of the Third Judicial District Court in and for Salt Lake County). This Agreement may be signed in counterparts. This Agreement will run with the land and will be binding upon and inure to the benefit of the parties and their respective successors and assigns. All payment and indemnity obligations relating to events occurring prior to the termination of this Agreement will survive any such termination.

The parties have executed this Agreement to be effective as of the date first set forth above.

**BRINTON:**

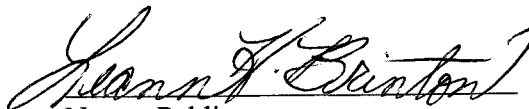
**Sally P. Brinton and Gregory S. Brinton, as Co-Trustees of the Sally P. Brinton Trust**

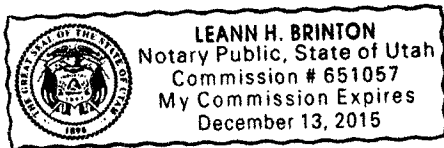
  
Sally P. Brinton, Co-Trustee

  
Gregory S. Brinton, Co-Trustee

State of Utah     )  
                          ) ss.  
County of Utah    )

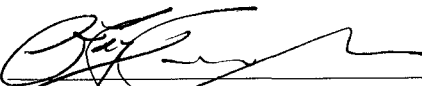
The foregoing instrument was acknowledged before me on ~~March~~ <sup>June</sup> 3, 2012, by Sally P. Brinton and Gregory S. Brinton, as Co-Trustees of the Sally P. Brinton Trust.

  
Notary Public



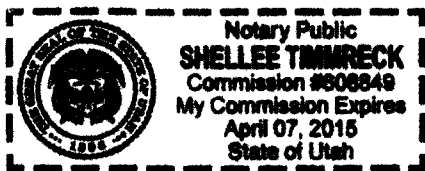
SIMPAR:

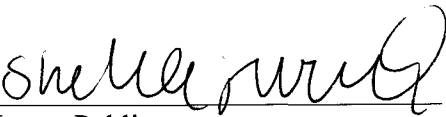
**Simpar Associates, L.C.,**  
a Utah limited liability company

By:   
Name: Gregory M. Simonsen  
Its: Managing Member

State of Utah            )  
                                  ) ss.  
County of Salt Lake    )

The foregoing instrument was acknowledged before me on ~~March~~ <sup>May</sup> 30, 2012, by Gregory M. Simonsen, Managing Member of Simpar Associates, L.C.



  
Notary Public

**Exhibit A**

**Legal Description of the Brinton Property**

Beginning at a point south 36.30 feet; south 62°55' east 217.80 feet; south 72°15' east 171.60 feet; south 87°18' east 257.40 feet; and south 0°48' west 573.72 feet from the northeast corner of the southwest quarter of Section 27, Township 3 South, Range 4 East, Salt Lake Base and Meridian; thence south 0°48' west 100 feet; thence north 89°12' west 343 feet; thence north 75°49'01" west 744.01 feet to Snake Creek; thence up Snake Creek north 20°10'22" west 230 feet to a point south 470.58 feet and west 538.56 feet from the northeast corner of the southwest quarter of said Section 27; thence south 69°36'18" east 855.685 feet; thence south 89°12' east 343 feet to the point of beginning.

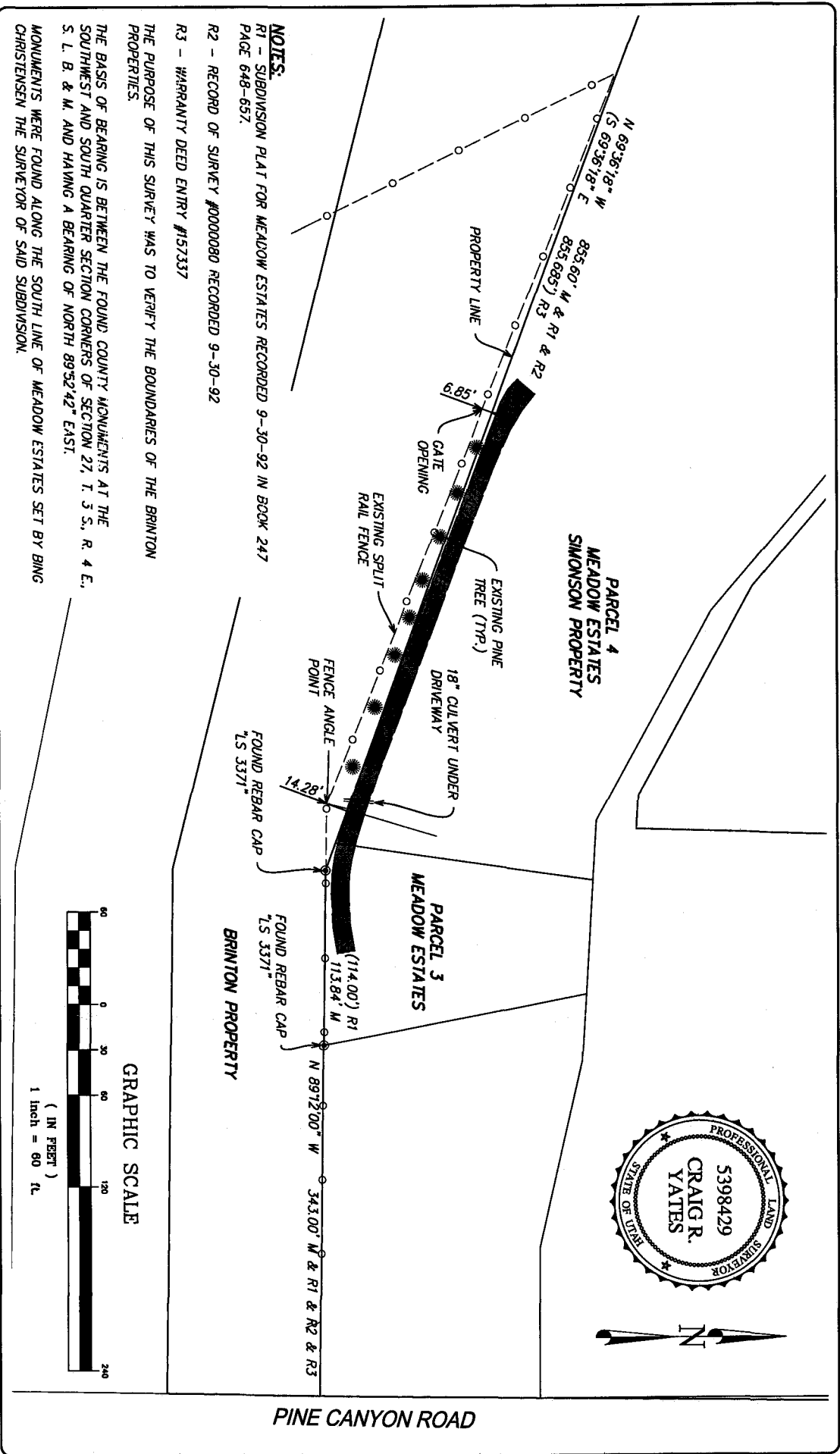
[For Reference Only: Wasatch County Parcel Serial Number OMI-0221-0-027-034]

**Legal Description of the Simpar Property**

Parcel No. 4, Meadow Estates, a planned unit development, according to the official plat thereof, recorded September 30, 1992, as Entry Number 162413 in Book 247 at Pages 648–657 in the official records of Wasatch County, Utah.

[For Reference Only: Wasatch County Parcel Serial Number OME-0004-0-027-034]

**Exhibit B** Ent 380105 Bk 1058 Pg 0592  
 Depiction of Encroaching Improvements



**NOTES:**  
 R1 - SUBDIVISION PLAT FOR MEADOW ESTATES RECORDED 9-30-92 IN BOOK 247 PAGE 648-657.  
 R2 - RECORD OF SURVEY #0000080 RECORDED 9-30-92  
 R3 - WARRANTY DEED ENTRY #157337

THE PURPOSE OF THIS SURVEY WAS TO VERIFY THE BOUNDARIES OF THE BRINTON PROPERTIES.

THE BASIS OF BEARING IS BETWEEN THE FOUND COUNTY MONUMENTS AT THE SOUTHWEST AND SOUTH QUARTER SECTION CORNERS OF SECTION 27, T. 3 S., R. 4 E., S. L. B. & M. AND HAVING A BEARING OF NORTH 89°52'42" EAST.

MONUMENTS WERE FOUND ALONG THE SOUTH LINE OF MEADOW ESTATES SET BY BING CHRISTENSEN THE SURVEYOR OF SAID SUBDIVISION.

| ENT. NO. | DATE | DESCRIPTION |
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**CALDWELL RICHARDS BORENSEN**  
 REGISTERED PROFESSIONAL LAND SURVEYOR  
 ADDRESS: 1524 S. 1000 W., SUITE 200, OGDEN, UT 84403

5398429  
 CRAIG R. YATES  
 PROFESSIONAL LAND SURVEYOR  
 STATE OF UTAH

**BRINTON PROPERTY BOUNDARY ENCROACHMENT**  
 LOCATED IN SECTION 27, T. 3 S., R. 4 E., S. L. B. & M.  
 WASHINGTON COUNTY, UTAH

1 of 1 SHEETS  
 PROJECT NUMBER: 050725