

**DECLARATION OF BUILDING AND USE RESTRICTIONS  
PARK AT SOUTH POINTE**

The Undersigned, being the owners of PHASE H of the Park at South Pointe subdivision, have deemed it desirable to provide a general plan for the development of this property and the establishment of covenants upon said real property for the purpose of enhancing and protecting the value and attractiveness of said tract.

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

The Undersigned hereby covenants, agrees and declares that all of the lots and property described above and such additions thereto as by hereafter be made shall be held, sold and conveyed subject to the following covenants, conditions, and restrictions which are hereby declared to be for the benefit of all the property described herein and the owners thereof, their successors and assigns. These covenants, conditions, and restrictions shall run with the said real property and shall be binding upon 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.

ENT 91156 BK 4769 PG 29  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
1998 Sep 09 12:01 pm FEE 32.00 BY SS  
RECORDED FOR FIRST AMERICAN TITLE CO

**ARTICLE I**

**DEFINITIONS**

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

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

Section 2. "Owner" shall mean and refer to the record owners, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, including contract buyers, but excluding those have such interest merely as security for the performance of an obligation.

**ARTICLE II**

**ARCHITECTURAL CONTROL**

Section 1. Building Type. No lot shall be used except for residential and related purposes. No building shall be erected, altered or permitted to remain on any lot other than one (1) single family dwelling. Every single family dwelling shall have a minimum area above the ground of one thousand six hundred fifty (1650) square feet for a rambler or two thousand three hundred (2300) square feet muti-level dwelling not to exceed three storied in height and private garages for not more than four vehicles. All construction to be of new material, except that used with prior written approval of the Architectural Control Committee. In addition, 100% of the building of each residence is to be of the following: brick, stone, and stucco.

Section 2. Moving of Structures. No structure of any kind shall be moved from any other place to the property without written approval of the Architectural Control Committee.

Section 3. Temporary Structures. No trailer, basement, tent, shack or other outbuilding shall be placed upon or used at any time within said subdivision as a temporary or permanent residence.

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Section 4. Dilligence in Building. When the erection of any residence or other structure is once begun, work thereon must be prosecuted diligently and completed within sixteen (16) months. No building shall remain incomplete for any reason for a period in excess of sixteen (16) months from the date that site excavation is commenced.

Section 5. Compliance with Zoning Ordinances of Alpine City. All buildings in said subdivision shall be placed and used upon said lots in accordance with the provisions of Alpine City Zoning Ordinances relating to Zone CR or as the same may be hereinafter amended, unless otherwise modified or restricted by these covenants herein.

Section 6. Approval Required. No building shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered on any lot nearer to any street than the front building setback line unless similarly approved.

Section 7. Architectural Guidelines. The following architectural guildlines shall apply to all lots in the Park at South Pointe Subdivision:

- (a) Driveways: Driveways for dwellings must be large enough to accommodate two (2) parked cars.
- (b) Retaining Walls: All retaining walls must be approved by the Architectural Control Committee. The Architectural Control Committee will not approve the use of unfaced concrete retaining walls except for swimming pools and tennis courts, and the Committee will encourage the use of rock-faced walls and walls screened by vegetation. Railroad ties and large rocks may be used for landscaping.
- (c) Site Plan: The direction which dwellngs on corner lots shall face must be approved by the Architectural Control Committee. All dwellings on corners on circles must face in the general direction of the access road leading into the circle.
- (d) Fences: All fences to be approved by the Architectural Control Committee.
- (e) Prohibition Against Soil Erosion and Runoff: It shall be the responsibility of the property owner to direct site work relative to the lot in such a manner as to minimize erosion and runoff. Construction shall be conducted in such a manner as to prevent the movement of earth materials or construction debris onto neighboring property or into the storm drainage system. Lot owners shall cause all construction to take place in a good and workmanlike fashion so as not to misuse the natural streams or irrigation ditches or the natural drainage once constructed.

Section 8. Architectural Procedure. The Architectural Control Committee's

approval or disapproval shall be in writing. All decisions of the Architectural Control Committee shall be final, and neither the Architectural Control Committee nor its designated Representative shall be subject to any liability therefor. Any errors or omissions in the design of any building or landscaping, or any violations of county or city ordinances are the sole responsibility of the lot owners and/or their designer or architect. The Architectural Control Committee's review of plans shall in no way be construed as an independent review of the structural or mechanical adequacy of the building or with architectural soundness thereof and the Architectural Control Committee shall have no responsibility for a determination of such adequacy or soundness.

### ARTICLE III

#### ARCHITECTURAL CONTROL COMMITTEE

Section 1. Duties of the Committee. An Architectural Control Committee (hereinafter the "Committee"), consisting of three (3) members is hereby created, and the undersigned may fill vacancies in the Committee and remove members thereof at its pleasure, provided, however, that when ninety percent (90%) of the lots in the subdivision have been sold (either deeded or sold under contract of sale) thereafter, upon designation of eighty-five percent (85%) of those who are owners (either by contract of purchase or in fee) of lots in said tract, of some person or persons whom such owners desire to make a member or members of said Committee, the Undersigned will appoint such person or persons to the Committee, and if necessary, will remove from said Committee existing members in order to create vacancies for the new appointments, provided further, however, that one person designated by the Undersigned shall always remain a member of said Committee if the undersigned so desires. The functions of said Committee shall be in addition to the functions elsewhere in the Declaration set forth, to pass upon, approve or reject any plans or specifications for structures to be erected on lots in the subdivision, so that all structures shall conform to the restrictions and general plans of the undersigned, and of the Committee, for the improvement and development of the entire subdivision. Nothing in this paragraph shall be construed as authorizing or empowering the Committee to change or waive any restrictions which are set forth in this Declaration except as herein specifically provided. The Committee may act by any two (2) of its members, and any authorization, approval or power made by the Committee must be in writing signed by at least two (2) members.

Section 2. Enforcement. The committee or any owner or the successor in interest of an owner of Utah County shall have the right to enforce by proceedings at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any Amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants or reservations and the right to recover damages for any such violation. Should any suit be instituted, the affected lot owner or owners agree that if the court finds in favor of the party bringing the action to enforce the covenants herein contained, that such lot owner or owners shall pay a reasonable attorney's fee as such fees may be fixed by the court.

GENERAL PROVISIONS

Section 1. Enforcements. Any owner or the successor in interest of an owner shall have the right to enforce by proceedings at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any Amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants or reservations and the right to recover damages for any such violation. Failure by any owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Waterways. Each lot owner or purchaser shall refrain from interfering with or impeding the flow of any irrigation ditch, flume, creek, stream, or river which runs across, over or through said lot and said owner's or purchasers shall have no right of use of said waters.

Section 3. Landscaping.

- (a) Timing: Each lot owner shall diligently strive to landscape his lot as quickly as feasible. Front yard must be landscaped within one year of move-in.
- (b) Permanent Restrictions on Landscaping and the Use of Water for Outside Watering and Irrigation Purposes: It is the intent of South Pointe as Owner and Developer and Alpine City to maintain the area in an open and natural condition and to conserve scarce water resources to the maximum extent possible by imposing landscaping restrictions, promoting water conservation practices and other measures to reduce the use of culinary water for outside watering purposes. All Owners and shall, in improving and landscaping their lot, give preference to the use of locally indigenous plants, trees and shrubs in order to minimize the necessity for outside watering and irrigation. Furthermore, the maximum area on any lot which shall be planted in grass or other similar vegetation requiring any significant consumption and use of Alpine City water for outside watering and irrigation purposes shall not exceed 10,000 square feet of the surface of the lot. Any additional landscaping must use locally indigenous plants, trees and shrubs and an irrigation system, such as drip irrigation, which conserves water. If any person shall violate or attempt to violate any of these provisions, either the Developer of South Pointe, any other owners within South Pointe or Alpine City shall have the right to pursue any proceedings and remedies at law or in equity against such person or persons violating or attempting to violate these provisions and to prevent them from doing so. These provisions shall not impose an obligation on Alpine City to enforce the terms hereof. Any such enforcement action shall be undertaken solely at the discretion of Alpine City.

Section 4: Animals

All farm animals are expressly prohibited. This would include, but not be limited to: horses, cows, pigs, goats, sheep, ducks, chickens, and geese.

Section 5. Acceptance of Restrictions. All purchasers of property described above shall, by acceptance of contracts or deeds for every lot or lots developed within said subdivision are hereby conclusively deemed to have consented and agreed to all restrictions, conditions, covenants, and agreements set forth herein.

DATED this 8<sup>th</sup> day of September, <sup>1998</sup> 1995.

Park at South Pointe L.C.

by M. Daniel Dunt member  
M. Daniel Dunt, Alpine Investments L.C., member

Park at South Pointe L.C.

by Will Jones member  
Will Jones, SAB, L.C., member

STATE OF UTAH  
COUNTY OF UTAH

On this 8<sup>th</sup> day of Sept, 1998, the above personally appeared before me, as signers of the above instrument who duly acknowledged to me that the same has been executed.

Marnae Ballantyne  
Notary Public

RESIDING IN: Utah County  
MY COMMISSION EXPIRES Feb 10, 1999

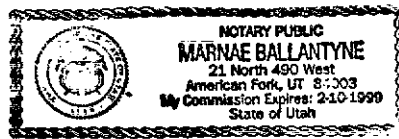


EXHIBIT "A"

Lots 801 to 813, Plat "H", PARK AT SOUTH POINTE SUBDIVISION,  
Alpine, Utah, according to the official plat thereof on file and  
of record in the office of the Utah County Recorder.