

DECLARATION OF ESTABLISHMENT OF  
PROTECTIVE CONDITIONS, COVENANTS, RESERVATIONS AND  
RESTRICTIONS AFFECTING THE REAL PROPERTY KNOWN AS  
"SWAIN'S CREEK PINES UNIT NO. 2"  
SITUATED IN THE COUNTY OF KANE, STATE OF UTAH

KNOW ALL MEN BY THESE PRESENTS:

J. B. Investment Co., a Utah corporation, being the owner of that certain tract of real property located in Section 34, Township 38 South, Range 7 West, Salt Lake Meridian in the County of Kane, State of Utah, and described as follows, to-wit:

Those subdivided lots numbered 257-351, both inclusive, as shown on that certain map entitled, "Swain's Creek Pines-Unit 2" as filed in the office of the County Recorder of Kane County, Utah, on February 13, 1973, in Book "S", at Page 64 thereof, as Entry No. 216000,

has established a general plan for the improvement and development of such premises, and does hereby establish the covenants, conditions, reservations, and restrictions upon which and subject to which all lots and portions of such lots shall be improved or sold and conveyed by it as owner thereof. Each and every one of these covenants, conditions and reservations, and restrictions is and all are for the benefit of each owner of land in such subdivision, or any interest therein, and shall inure to and pass with each and every parcel of such subdivision, and shall bind the respective successors in interest of the present owner thereof. These covenants, conditions, reservations, and restrictions are and each thereof is imposed upon such lots, all of which are to be construed as restrictive covenants running with the title to such lots and with each and every parcel thereof, to-wit:

1. RESIDENTIAL USE. Each and all of said lots, excepting 287, 288 and 317-323 are for single-family residential purposes only and are not subject to further subdivision or partition by sale; said lots to be used, built upon, improved and held in such a way as to preserve and enhance their pastoral, scenic beauty as mountain cabin residential recreational sites free from unsightly neglect or abuse. No building or structure intended for or adapted to business purposes, and no apartment house, double house, lodging house, rooming house, hospital, sanatorium or doctor's office, or other multiple-family dwelling shall be erected, placed, permitted, or maintained on such premises, or on any part thereof. No improvement or structure whatever, other than a first class private dwelling house, patio walls, swimming pool, and customary outbuildings, garage, carport, servants' quarters, or guest house may be erected, placed, or maintained on any lot in such premises.

2. COMMERCIAL RESTRICTIONS. If lots numbered 287, 288 and 317-323, both inclusive, are zoned commercial prior to their sale as residential lots, all buildings erected on such lots shall be limited to stores, offices, business buildings, commercial enterprises, hotels, and restaurants. If such lots are sold as residential lots, the restrictions set forth in paragraph 1 hereof, governing residential use, shall also be applicable to such lots.

3. NATIVE GROWTH. The native growth of such premises shall not be permitted to be destroyed or removed except as approved in writing by the reversionary owner hereinafter named. In the event such growth is removed, except as stated above, the reversionary owner may require the replanting or replacement of same, the cost thereof to be borne by the lot owner.

4. TAXES AND GOVERNMENT LIMITATIONS. Any conveyance of such property is made subject to taxes and other assessments, if any, levied or assessed against the property in the year in which it is conveyed and subject to all restrictions and limitations imposed by governmental authority.

5. SEWERS. In the event governmental authority should require the installation of sanitary sewers and appurtenances in part or in all of the subdivision, the purchasers or owners of the lot or lots in the subdivision shall pay his or their proportionate share of the cost and expense of installing the sewer system. This proportionate share will be computed by dividing the total number of lots served by such sewer system into the total cost of such system. All building, in lots to be served by such sewer system, must be connected to such system as soon as same is constructed and thereafter further use of septic tanks or other sanitary disposal systems on such lots shall be prohibited.

1400  
KANE COUNTY RECORDER  
PAGE 244-250  
DEPUTY RECORDER  
M. W. WILKINSON  
AT 11:14 A.M. FEBRUARY 13, 1973  
ENTRY NO. 216000 RECORDED AT REQUEST OF  
J. B. INVESTMENT CO.

Owners of lots shall pay a reasonable monthly minimum and monthly charge for the use of the sewage system.

6. SETBACK LINES. No building, structure, fence, outbuilding, or appurtenance of any nature shall be located closer than 15 feet from any lot or property line.

7. SIGNS. No billboards or advertising signs of any character shall be erected, placed, permitted or maintained on any lot or improvement thereon except as herein expressly permitted. A name and address sign, the design of which shall, upon request, be furnished to the lot owner by the reversionary owner, shall be permitted. No other sign of any kind or design shall be allowed. The provisions of this paragraph may be waived by the reversionary owner, only when in his discretion the same is necessary to promote the sale of property in and the development of the subdivision area. Nothing herein shall be construed to prevent the reversionary owner from erecting, placing, or maintaining sign structures and offices as may be deemed necessary by him for the operation of the subdivision.

8. LETTER AND DELIVERY BOXES. The reversionary owner shall determine the location, color, size, design, lettering, and all other particulars of all mail or paper delivery boxes, and standards and brackets and name signs for such boxes in order that the area be strictly uniform in appearance with respect thereto.

9. NUISANCES. No owner of any part of the property will do or permit to be done any act upon his property which may be or is or may become a nuisance.

10. ANIMALS. No animals, birds, or fowl shall be kept or maintained on any part of the property, except dogs, cats, and pet birds (except parrots) which may be kept thereon in reasonable numbers as pets for the pleasure and use of the occupants but not for any commercial use or purpose. Birds shall be confined in cages.

11. EASEMENTS. Easements and rights-of-way are hereby expressly reserved for the creation, construction, and maintenance of utilities, such as gas, water, telephone, telegraph, electricity, sewers, storm drains, public, quasi-public, utility or function deemed necessary or expedient for the public health and welfare. Such easements and rights-of-way shall be confined to the rear six feet of every lot and six feet along the side of every building plot, and along every street of the subdivision.

12. BUILDING PLANS. Plans and specifications for all structures must be submitted to the reversionary owner for written approval as to quality or workmanship and materials, harmony of external design, size, and existing structures, and as to location with respect to topography and finish grade elevation prior to the commencement of any construction in such subdivision.

13. ROAD EASEMENTS. No owner of any lot shall convey or grant an easement or right-of-way to be used for the purpose of constructing or maintaining a public road, without the prior consent in writing having been first had and obtained from the reversionary owner.

14. GARBAGE AND REFUSE DISPOSAL. No lot or common area shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers and shall be installed either underground or screen or placed and kept so as to not be visible from any street or adjacent lot, except during times of refuse collections. No garbage incinerators shall be permitted.

15. MAINTAINING NATURAL DRAINAGE. No construction, diversion, or confining of the existing channels through which surface water in time of storms naturally flows upon and across any lot, shall be made by any lot owner in such a manner as to cause damage to other properties.

16. OFFENSIVE ACTIVITY. No noxious or offensive activities shall be carried on upon any lot hereinbefore described or any part or portion thereof, nor shall anything be done thereon which may become an annoyance or nuisance to the occupants of other lots within said subdivision.

17. CHANGES IN GROUND LEVEL. No change in ground level may be made on any lot in excess of one foot from existing grades without the written approval of the environmental control committee obtained prior to the commencement of work.

18. FENCES. No fence shall be erected or maintained upon any lot without the written approval of ~~the reversionary owner~~. Applications for such approval shall specify the type of fence to be constructed, the materials to be used, the \*the reversionary owner having been first obtained.

location of the fence on the lot and such other information as the committee may require. No fence shall be approved unless constructed substantially of natural wood and unless constructed in such a way and in such a location on the lot so as to minimize any detrimental effect which it may have on the natural mountainous setting of the subdivision.

19. LOT OWNERS' ASSOCIATION. For the purpose of providing common community services of every kind and nature required or desired within the subdivision area for the general use and benefit of all lot owners, each and every lot owner, in accepting a deed to or contract to purchase any lot in such premises, agrees to and shall be a member of and be subject to the obligations set forth in the Articles of Incorporation of the Swain's Creek Pines Lot Owners' Association, a Utah nonprofit corporation; said Articles of Incorporation as initially filed in the office of the Utah Secretary of State at Salt Lake City, Utah, reading as follows:

ARTICLES OF INCORPORATION  
OF  
SWAIN'S CREEK PINES LOT OWNERS' ASSOCIATION  
(A Nonprofit Corporation)

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We, the undersigned, being natural persons over twenty-one years of age and residents of the State of Utah and acting as incorporators for creating a nonprofit corporation under the laws of the State of Utah, do hereby certify as follows:

ARTICLE I

The name of the corporation shall be and is SWAIN'S CREEK PINES LOT OWNERS' ASSOCIATION.

ARTICLE II

This corporation shall have perpetual existence unless sooner dissolved in accordance with the laws and statutes of the State of Utah.

ARTICLE III

The purposes for which said nonprofit corporation is organized are as follows:

1. To develop, manage and control the facilities to provide the owners of lots in the hereinafter designated subdivisions with those services desirable and necessary to the health and well being of such owners and to the enhancement and preservation of the recreational and scenic values essential to a proper enjoyment of such subdivision lots by such owners; said subdivisions being identified and designated as (a) Swain's Creek Pines-Unit No. 1 and Swain's Creek Pines-Unit No. 2, each being Utah subdivisions presently platted and of record in the County of Kane, State of Utah and (c) any other subdivisions, adjacent to said subdivisions, acquired and/or subdivided by J. B. Investment Company, a Utah corporation, for the use and benefit of the owners of lots within said subdivision areas.
2. To acquire, own, manage and control culinary water facilities and the distribution of water to owners of lots within such subdivisions.
3. To acquire, own, manage and control the facilities necessary to provide garbage collection, fire protection, airport and other like services to the owners of lots within such subdivisions and to perform all acts necessary to provide such services.
4. To negotiate for, promote, manage and control recreational facilities for the use and benefit of such lot owners.
5. To make assessments to pay for services provided to lot owners, real and personal property taxes, insurance and other reasonable expenses incurred by the corporation.

6. To obtain, through negotiation and agreement, access to property, in the area of such subdivisions, for the recreational use of the members of the corporation and to grant grazing rights and other rights (not inconsistent with the enjoyment and use for its members) of property owned by it in exchange for the use by its members of other and adjoining property for the recreational pursuit of its members.

7. To take such reasonable measures as may preserve the natural state of the common areas of said subdivisions and to reduce and eliminate fire hazards.

8. To adopt and enforce reasonable rules and regulations governing the use of said subdivision lots and any other properties and facilities under its jurisdiction.

9. The foregoing objects and powers are in addition to any other and further powers authorized by the Utah Nonprofit Corporation Act.

#### ARTICLE IV

Membership in this corporation shall consist of the owners of lots in the hereinbefore referred to subdivisions. One voting membership shall be issued for each lot within said subdivisions regardless of the number of persons or parties having a legal or equitable interest in said subdivision lot. Membership in said corporation shall be appurtenant to the lots for which they are issued and shall be automatically transferred when the legal or equitable ownership to the lots are transferred. In cases where more than one person or party owns a lot within said subdivisions and less than all of the owners thereof are present at any annual or special meeting, the owner or owners present at any such meeting shall be entitled to cast the one vote appurtenant to such lot. "Owners," as used herein, is defined to be those individuals, corporations or other legal entities listed on the records of the County Recorder of Kane County, Utah as owning the legal title to a lot in any subdivision in such area and any individual, corporation or other legal entity receiving a Deed to or Contracting to purchase any lot in any subdivision in such area, whether or not such Deed or Contract of purchase has been duly and regularly recorded on the records of said county recorder. Anything to the contrary herein contained notwithstanding, owners of lots in Swain's Creek Pines-Unit No. 1 are not now and shall not automatically become members of this corporation. However, it is intended that all of such owners shall be invited to voluntarily become members of this corporation.

#### ARTICLE V

The governing board of said corporation shall initially consist of three trustees. One of the trustees shall be designated as chairman, one as vice-chairman and one as secretary and treasurer. The initial Board of Trustees shall serve until the first annual meeting of the corporation and until their successors are duly elected and qualified. At the first election of trustees, two trustees shall be elected for a term of one year (one to be designated as vice-chairman and one to be designated as secretary and treasurer), and one trustee shall be elected for a term of two years, (to be designated as chairman), and until their successors have been duly elected and qualified. Thereafter, the trustees elected by the membership, to fill expiring terms, shall serve for a period of two years and until their successors have been duly elected and qualified.

The governing board shall include at least one trustee from each platted and recorded subdivision unit within the area, but each trustee shall be elected by a majority of all of the voting members in attendance at any annual or special membership meeting held for such purpose; provided, however, that this provision shall not be operative as to Swain's Creek Pines-Unit No. 1, unless and until the owners of all lots in said subdivision voluntarily consent to become members of this corporation.

#### ARTICLE VI

Assessments shall be levied by the corporation upon the lot owners for corporate purposes. In the event any such assessment is not paid, the same shall become a lien upon the real property of such lot owners in the subdivisions or development. The lien of a mortgage or deed of trust placed upon any

lot for the purpose of permanent financing of a residence or other improvement thereon shall be superior to any such lien as provided for herein.

ARTICLE VII

The corporation shall hold an annual meeting of the members on May 1st of each year or, if such day be a Sunday or legal holiday, on the first day thereafter that is not a Sunday or a legal holiday. Other membership meetings may be held at such time and place as the governing board shall determine. Meetings of members shall be called by the governing board to consider corporation matters upon the petition of at least fifteen percent (15%) of the outstanding voting memberships of said corporation.

ARTICLE VIII

The initial governing board shall consist of:

<u>NAME</u>	<u>OFFICE</u>
Keith Christensen	Trustee-Chairman
L. Derral Christensen	Trustee-Vice-Chairman
Barbara Christensen	Trustee-Secretary/Treasurer

ARTICLE IX

The initial principal office of the corporation is 372 West Main, Delta, Utah 84624. The registered agent at such address is Thorpe Waddingham.

ARTICLE X

The name and address of each incorporator is as follows:

<u>NAME</u>	<u>ADDRESS</u>
Keith Christensen	826 South 600 West #27 Provo, UT 84601
L. Derral Christensen	372 West Main Delta, UT 84624
Barbara Christensen	372 West Main Delta, UT 84624

IN WITNESS WHEREOF, we, the incorporators hereinbefore named, have hereto set our hands this 24th day of May, A.D., 1974.

s/Keith Christensen  
Keith Christensen

s/L. Derral Christensen  
L. Derral Christensen

s/Barbara Christensen  
Barbara Christensen

STATE OF UTAH            )  
                                  : ss:  
COUNTY OF MILLARD    )

KEITH CHRISTENSEN, L. DERPAL CHRISTENSEN and BARBARA CHRISTENSEN, being first duly and severally sworn on oath, depose and say: That they are the persons who signed the foregoing document as incorporators, and that the statements therein contained are true.

s/Keith Christensen  
Keith Christensen

s/L. Derral Christensen  
L. Derral Christensen

s/Barbara Christensen  
Barbara Christensen

s/Jetta B. Swalberg  
Notary Public  
Residing at Delta, Utah

My Commission Expires:

9/9/77

20. SUBJECT TO LAWS, ORDINANCES, ETC. OF POLITICAL SUBDIVISIONS. Said subdivision and each of the lots thereof shall be subject to any and all rights and privileges which the County of Kane, State of Utah, may have acquired through dedication or the filing and recording of maps and plats of the subdivided areas, as authorized by law and provided further, that all activities carried on by the owners of any subdivision lot shall be in strict conformity with all laws, statutes, ordinances, rules and regulations of the United States of America, the State of Utah and the County of Kane, Utah.

21. REVERSIONARY OWNER. The reversionary owner herein mentioned is J. B. Investment Company, by and through its President, L. Derrol Christensen and his successors in office as such. The reversionary owner shall have the right to grant and convey any and all its rights to enforce these covenants, conditions, reservations, and restrictions to the Swain's Creek Pines Lot Owners' Association, at such time as in the sole judgment of the reversionary owner the Lot Owners' Association is ready to undertake the obligation of enforcing them. Upon such conveyance and grant, the said Lot Owners' Association shall have and shall succeed to all rights and duties with the same powers as if the Association had been named as reversionary owner herein.

22. REMEDIES FOR VIOLATIONS. In the event of a violation or breach of any of these covenants, conditions, reservations and restrictions, the reversionary owner or the owner or owners of another lot in said subdivision or any of them, acting individually or severally, shall have the right to proceed at law or in equity to compel compliance with the provisions herein set forth or to prevent the violation or breach of any provision hereof. In addition, to the foregoing right, the reversionary owner shall have the right, whenever there shall have been built on any lot any structure which is in violation of any of the provisions set forth herein, to enter upon the lot where such violation exists and summarily abate or remove the same at the expense of the owner, and further, any such entry and abatement or removal shall not be deemed to be a trespass.

The reversionary owner may employ counsel to enforce any of the foregoing covenants, conditions, reservations, or restrictions, or reentry, by reason of such breach and should he do so, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the owner of such lot or lots and the reversionary owner and/or lot owners, as the case might be, shall have a lien upon such lot or lots to secure payment of all such accounts.

No delay or omission on the part of the reversionary owner or the owners of other lots in such premises in exercising any rights, power, or remedy herein provided, in the event of any breach of the covenants, conditions, reservations, or restrictions herein contained, shall be construed as a waiver thereof or acquiescence therein, and no right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the reversionary owner for or on account of its failure to bring any action on account of any breach of these covenants, conditions, reservations, or restrictions, or for imposing restrictions herein which may be unenforceable by the reversionary owner.

The breach of any of the foregoing covenants, conditions, reservations, or restrictions, or any reentry by reason of such breach, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any lot or lots or portions of lots in such premises, but these covenants, conditions, reservations, and restrictions shall be binding upon and effective against any such mortgage or trustee or owner thereof, whose title thereto or whose grantor's title is or was acquired by foreclosure, trustee's sale, or otherwise.

23. AMENDMENT. J. B. Investment Company hereby reserves the right to alter or amend these covenants at any time prior to the conveyance or sale by it of any lots or parcels contained within said subdivision and thereafter with the unanimous written consent of all lot owners.

24. TERMINATION. All of the foregoing covenants, conditions, reservations, and restrictions shall continue and remain in full force and effect at all times as against the owner of any lot in such premises, regardless of how he acquired title, until the commencement of the calendar year 2000, on which date these covenants, conditions, reservations,

and restrictions shall terminate and end, and thereafter be of no further legal or equitable effect on such premises or any owner thereof; provided, however, that these covenants, conditions, reservations, and restrictions shall be automatically extended for a period of ten years, and thereafter in successive ten-year periods, unless on or before the end of one of such extension periods or the base period the owners of a majority of the lots in the subdivision shall by written instrument, duly recorded, declare a termination of the same. In the event the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then and in that event such time shall be reduced by such court, to a period of time which shall not violate any rule against perpetuities as set forth in the laws of the State of Utah, or otherwise effective in said State.

25. VALIDITY. It is understood and agreed that if any section, part, clause or word of this Declaration be declared by judicial decree of a court of competent jurisdiction to be void, or any section, part, clause or word of this Declaration be made inoperative by any legislative enactment, such decree or enactment shall not affect the other sections, parts, clauses or words contained herein, which shall continue to bind the parties hereto, or any of them, their and each of their heirs, devisees, executors, administrators, successors, assigns, and grantees.

IN WITNESS WHEREOF, J. B. Investment Company, a Utah Corporation, has caused this instrument to be executed by its duly authorized officer, and its corporate seal to be hereto affixed this 24<sup>th</sup> day of May, A.D., 19774.

J. B. INVESTMENT COMPANY  
BY L. Derral Christensen  
President

STATE OF UTAH            )  
                                  : ss:  
COUNTY OF MILLARD    )

On this 24<sup>th</sup> day of May, A.D., 19774, personally appeared before me L. DERRAL CHRISTENSEN, who, being by me duly sworn did say, that he is the President of J. B. Investment Company, a Utah corporation, and that said instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and said L. Derral Christensen acknowledged to me that said corporation executed the same.

Delta B. Swaberg  
Notary Public  
Residing at Delta, Utah

