

**PROTECTIVE COVENANTS FOR
DUCK CREEK PINES SUBDIVISION**
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
(CC&R's)

Duck Creek Pines, L.C. (the Developer), the legal and equitable owners of DUCK CREEK PINES SUBDIVISION do hereby acknowledge, declare and adopt the following protective covenants with regard to DUCK CREEK PINES SUBDIVISION ("the Subdivision").

The real property subject to the Declaration is situated in the County of Kane, State of Utah, and is more particularly described as follows: Phases I, II, III, IV, V, VI, and VII of the Duck Creek Pines Subdivision as recorded in the County Recorder's office, Kane County, Utah.

The protective covenants are to run with the land and shall be binding upon all parties and all persons owning lots within the Subdivision or claiming an interest under them. The protective covenants shall inure to the benefit of not only the lot owner but to the benefit of each, every and any future owner of each, every and any portion or portions of the Subdivision.

If the owners of such lots, or their heirs or assigns, shall violate any of the covenants hereinafter set out, it shall be lawful for any other person, or entity owning real property situated in the Subdivision to prosecute or pursue any proceedings at law or in equity against the persons or persons violating any of such covenants, and prevent violation of such covenant, condition or restriction.

Invalidation of any of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

ARTICLE 1. General Use and Construction Restrictions

- A) No lot located within the subdivision shall be used for any other purpose than a single family residence, except those deemed as common areas by the developer. There shall not exist on any residential lot more than one residence. One garage or other storage building which is not of temporary construction may be located on residential lots under two acres. A lot of two acres or more may have two garages or other storage buildings which are not of temporary construction.
- B) No tent, house trailer, motor home, camper or large truck shall at any time be used as a residence, except for a period not to exceed ninety (90) days while constructing a permanent residence.
- C) All material used in the construction of buildings located on any lot shall be new. No old, used, existing building or structure of any kind and no part of an old, used, existing building or structure shall be moved onto any lot.

- D) No mobile or manufactured homes will be allowed in the Subdivision.
- E) Outbuildings or garages erected and maintained upon any lot or building site shall conform generally in architectural design and exterior material to the finish of the dwelling house to which they are appurtenant.
- F) All residences shall have a main floor of not less than 768 square feet of living area and have a total living area of not less than 1000 square feet, exclusive of carports, garages, patios, and covered porches.
- G) No structure shall be located nearer the front boundary line of any lot than 30 feet; or nearer the side boundary line of any lot than 20 feet; or nearer the rear boundary line of any lot than 30 feet.
- H) No person shall erect or maintain upon any part of the Subdivision or any lot, any sign, advertisement, billboard, or other advertising structure without prior approval of the Architectural Committee, with the exception of standard real estate signs.
- I) The natural vegetation and contour of the terrain within the Subdivision shall be preserved as far as possible in the construction of any dwelling on any lot. Natural growth shall be preserved and remain as nearly as possible in the natural state. The removal of natural vegetation and cutting the soil on any lot shall not be undertaken without the permission in writing from the Architectural Committee.
- J) No fence, wall or hedge shall be planted, erected, located or maintained upon any lot in such location or at such height as to unreasonably obstruct the view from any other lot or lots in the Subdivision.
- K) On each lot, the lot owner shall install (not less than twenty-five (25) feet from the family dwelling) a self-draining water faucet attached to the water line feeding the dwelling from the main system.
- L) No animals or birds shall be kept or maintained on any part of a lot within the Subdivision except dogs, cats, pet birds and other domestic animals which may be kept in reasonable numbers as pets, but not for any commercial purpose. All domestic animals or birds kept on the premises shall be confined within the structures on the lot or will be tied or fenced within the boundaries of the lot and will not be allowed to roam from the owner's lot.
- M) Roof material shall be of fireproof product, such as metal, fireproof fiberglass shake, or equivalent, and approved by the Architectural Committee.

ARTICLE 2. Duck Creek Pines Water Company

Upon purchasing a lot, the owner becomes a member of the Duck Creek Pines Water Company and is entitled to water subject to compliance with the Users Agreement, By-Laws and Articles of Incorporation of Duck Creek Pines Water Company.

Full-time residences will be required to purchase an additional .25 acre foot of water to be added to the Duck Creek Pines Water Company and the additional water will be permanently assigned to the purchasing lot.

ARTICLE 3. Activity Restrictions

- A) The shooting of firearms or deadly weapons of any nature is prohibited within the Subdivision. Target practice, including with bows and arrows, and any other type of deadly weapon within 500 feet of the Subdivision boundaries, is prohibited. Hunting of wild life of any kind within 1,000 feet of the Subdivision boundaries is prohibited, including during established hunting seasons.
- B) No owner of any lot within the Subdivision will do or permit to be done any act upon his property which is or may become a nuisance.
- C) No garbage incineration or burning shall be permitted on any lot except for purposes of cooking or heating a structure located on a lot.
- D) Said Subdivision shall not, nor shall any part thereof, nor any lot therein be used for the purpose of mining, quarrying, drilling, exploring for, taking or producing therefrom, water, oil gas, or other hydrocarbon substances, minerals, or ores of any kind except the lots designated for water storage.
- E) To preserve the natural pristine atmosphere of the Subdivision, no refuse piles, no trash of any kind, appliances, unlicensed automobiles, or parts, shall be placed or allowed to remain outdoors on any lot.

ARTICLE 4. Construction Controls

For the protection of the lot owners, and for the purpose of further ensuring development of the Subdivision as an area of high standards, any and all structures will be reviewed and approved by the Architectural Committee. The Committee shall have the right to control the buildings, structures, and other improvements placed on each lot, as well as to make such exception to these restrictions as the Architectural Committee shall deem necessary and proper.

No building, wall, or other structure shall be placed upon any lot unless and until the plans and specifications therefore and plot plan have been approved in writing by the State of Utah or any of its political subdivisions where required, and the Architectural Committee. Each such building, wall or structure shall be placed on the premises only in accordance with the plans and specifications and plot plans so approved.

Any set of construction plans that exhibit quality construction, is not unsightly as to exterior appearance, preserves the beauty of its natural surroundings, and does not violate any of the Covenants, Conditions, or Restrictions, will be approved for construction by the Architectural Committee. The primary purpose of the Architectural Committee, shall be to aid the individual owners and builders in the expedient approval and quality development and construction of and on their properties.

- A) Exterior construction is to be completed no later than two (2) years after Kane County permit approval date.

- B) Construction area is to be kept clean of excess debris and no construction material is to be stored on vacant lots except during active construction as defined by two (2) year exterior completion provision.

ARTICLE 5. Easements

The Subdivision and the lots and building sites included therein are subject to such easements and rights-of-way as may be necessary or convenient for erecting, constructing, maintaining and operating public service wires and conduits for lighting, heating, power, telephone, water and other methods of conducting and performing and public or quasi-public utility service or function as easements and rights-of-way are shown and designated on the Plat of said real property recorded in the Office of the County Recorder of Kane County, Utah and all said easements and rights-of-way are reserved for the purposes herein and in said Plat set forth.

ARTICLE 6. Architectural Review

- A) The Developer will act as the Architectural Committee of each Phase until such time that 75% of the lots have been privately purchased. At that time, Members of the Architectural Committee shall be selected and appointed each year at the annual meeting of the Duck Creek Pines Owners Association.
- B) No building, garage, patio, outbuilding, fence or other structure shall be constructed, erected, altered, remodeled, placed, maintained, or be permitted to remain in said Subdivision unless and until two complete sets of plans and specifications therefore including finished grading plans, plot plan showing location of such structure on the building site, floor and roof plan, exterior elevations, sections, and salient exterior details and colors scheme, including the type and location of hedges, walls, and fences, shall have submitted to and approved in writing by any two (2) members of the Architectural Committee, which shall be composed of three (3) members, selected as hereinafter set forth. The second set of plans shall be filed as a permanent record with the Architectural Committee.
- C) Members of the Architectural Committee shall be selected and appointed each year at the annual meeting of the Duck Creek Pines Owners Association by the record owners of the Subdivision lots, with each lot having one vote. Selection of such members shall be by written ballot cast either in person at the meeting, or received by mail prior to the meeting.
- D) The Architectural Committee approval in no way alleviates the need for independent county approval, appropriate building permit(s), approval(s), and compliance with all otherwise applicable state, county and local building codes, ordinances, etc.
- E) If the Architectural Committee fails to take any action, either approval or disapproval, of such plans and specifications and plot plan within sixty (60) days after said plans, specifications and plot plan have been submitted to it, it shall be

presumed that the Committee has approved said plans, specifications and plot plan as submitted.

ARTICLE 7. Duck Creek Pines Owners Association

Upon purchasing a lot, the owner becomes a member of the Duck Creek Pines Owners Association. Owners are bound by the provision of the Duck Creek Pines Subdivision Covenants, Conditions, and Restrictions.

- A) Owners are entitled to one vote for each lot owned, except the Developer of the Subdivision shall have three votes for each share associated with a lot which has not been sold. When more than one person holds an interest in any lot, the group of such persons shall be considered an owner. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.
- B) Members of the Board of Directors shall be selected and appointed each year at the annual meeting of the Duck Creek Pines Owners Association by the record owners of the Subdivision lots, with each lot having one vote. Selection of such members shall be by written ballot cast either in person at the meeting, or received by mail prior to the meeting. The annual meetings of the members of the Duck Creek Pines Owners Association shall be held in the area of Duck Creek Pines Subdivision, in Kane County, Utah, at such place the Board of Directors designates, on the first Saturday in July of each year, commencing with the year 2000.
- C) Each lot owner shall pay the Association an annual fee for utility services, sewer charges, road maintenance within the Subdivision and other charges for services provided by the Association, except the Developer shall be exempt from assessment as to any lot within and developing thereon. The Board of Directors shall determine the amount assessed to each lot based on a per lot share of the total cost of such items. The Board of Directors shall also determine the due dates of assessments. The Board of Directors shall determine what additional services are to be furnished to lots within the subdivision and the cost of such services on a per lot basis according to the use of the lot, such as one fee for vacant lots, another fee for improved lots. The annual assessment may be increased each year not more than five percent (5%) above the assessment for the previous year, without a majority vote of the lot owners present in person or by proxy at a meeting duly called. This assessment shall be the personal obligation of the lot owner when the assessment falls due, and shall be a continuing lien on the lot assessed.
- D) In addition to the assessments for services and maintenance, the Association may levy a special assessment as hereafter authorized. Special assessments may only be levied to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of structures, fixtures and personal property generally beneficial to the owners of land within Duck Creek Pines Subdivision. Special assessments must have the assent of sixty-seven percent (67%) of the votes of each class of the members authorized to vote, in person or by proxy, at a meeting duly

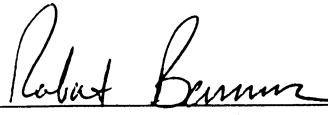
called for this purpose. At such a meeting, the presence of sixty-seven percent (67%) of the members authorized to vote, in person or by proxy, shall constitute a quorum.

- E) If any assessment is not paid when due, the Association may (a) bring an action at law against the owner personally obligated to pay such delinquent assessment without waiving the lien of assessment or (b) may foreclose the lien against the property subject to the lien of assessment in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law.
- F) Delinquency: Any Assessment provided for in the Declaration which is not paid when due shall be delinquent on said due date (the "delinquency date"). If any such assessment is not paid within thirty (30) days after the delinquency date, a late charge of Twenty Dollars (\$20.00) shall be levied and the Assessment shall bear interest from the delinquency date, at the rate of eighteen percent (18%) per annum. The Association may, at its option, and without waiving the right to foreclose its lien against the Lot, bring an action at law against the Member personally obligated to pay the same, and/or upon compliance with the notice provisions set forth in Section E of this Article to foreclose the lien against the Lot. If action is commenced, there shall be added to the amount of such Assessment the late charge, interest, the costs of preparing and filing the complaint in such action, and attorneys' fees incurred in connection with the commencement of such action and in the event a judgment is obtained, such judgment shall include the said late charge, interest and a reasonable attorney's fees, together with the costs of action. Each Member vests in the Association or its assigns, the right and power to bring all action at law and/or for lien foreclosure against such member for the collection of such delinquent assessments.
- G) Control of Common Areas: As provided in the Article hereof entitled "Definitions", the Common Areas shall consist exclusively of the common roadways within the Project. Developer contemplates, but does not warrant, that the roadways will be dedicated to the Town. Developer may also, but shall not be obligated to, convey open space and/or recreational common areas to the Association. Declarant, its subcontractors, agent and employees shall have the right to come on the Common Areas. Also, notwithstanding the foregoing, in the event that any of the Declarant's subcontractors are contractually obligated to maintain improvements on the Common Areas, such maintenance shall not be assumed by the Association until the termination of such contractual obligation. Neither such construction nor such maintenance shall in any way postpone the commencement of Assessments pursuant to this Article or entitle a Member to claim any offset or reduction in the amount of such Assessments. If any excess of Assessments collected over actual Common Expenses incurred by the Association is caused by aforesaid, or otherwise, such excess shall be placed in the reserve to offset the future expenses of the Association in any manner designated by the Board.

ARTICLE 8. General Provisions

- A) These Protective Covenants may be amended by an instrument signed by not less than Sixty-seven percent (67%) of the lot owners. Any amendments must be properly recorded in the records of Kane County, Utah, to become effective.
- B) All the covenants, conditions and restrictions set forth herein shall run with the land and each grantee, by accepting a deed to such premises, accepts the same subject to the covenants, conditions, and restrictions and agrees for himself, his heirs, administrators, and assigns to be bound by them jointly, separately, and severally.
- C) Each covenant, condition and restriction shall be considered to be an independent and separate covenant and agreement and in the event any shall for any reason be held to be invalid or unenforceable, all remaining covenants, conditions and restrictions shall remain in full force and effect.

IN WITNESS WHEREOF, ROBERT BARRUS, FOR DUCK CREEK PINES L.C., has signed these Protective Covenants of Duck Creek Pines Subdivision this 5 day of Aug, 1999, and caused the same to be placed of record at the office of the Kane County Recorder.



Robert Barrus, Member
Duck Creek Pines L.C.