

When Recorded Mail to:  
Enve, LLC  
3183 Old Ridge Circle  
Salt Lake City, Utah 84121

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07/19/2002 04:24 PM 19.00  
Book - 8622 Pg - 1346-1349  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
FIRST AMERICAN TITLE  
BY: ZJM, DEPUTY - WI 4 P.

## COMMON WALL AGREEMENT

AGREEMENT dated as of July 19, 2002, by and between ENVE, L.L.C. (the "South Parcel Owner") and GARRITY REPTA or assigns (the "North Parcel Owner"). The South Parcel Owner and the North Parcel Owner are sometimes hereinafter referred to collectively as the "Parties" or, individually, as a "Party". The North Parcel or property is located at 2122-2128 South Richards Street, South Salt Lake City, County of Salt Lake, State of Utah is also known as:

**For the North Parcel:**

Lots 27 to 30, inclusive, Block 5 SOUTH BOULEVARD ADDITION, according to the Official Plat thereof, on file and of record in the office of the Salt Lake County Recorders office.

**For the South Parcel:**

Lots 31 to 36, inclusive, Block 5 SOUTH BOULEVARD ADDITION, according to the Official Plat thereof, on file and of record in the office of the Salt Lake County Recorders office.

Tax ID No. 15-24-233-014-0000

### RECITALS:

The South Parcel Owner is the owner of a certain parcel of real property, together with the improvements located thereon (collectively, the "South Parcel"), having a street address of approximately 2132-2136 South Richards Street, Salt Lake City, Utah. The South Parcel Owner is also the current owner of a certain parcel of real property, together with the improvements located thereon (collectively, the "North Parcel"), having a street address of approximately 2122-2128 South Richards Street, Salt Lake City, Utah; pursuant to the terms of a certain Real Estate Purchase Contract, Addendum: No. 1, and Addendum No. 2 (collectively, the "REPC"), dated on or about May 23, 2002, the North Parcel Owner has agreed to purchase the North Parcel. The South Parcel and the North Parcel share a certain "Common Wall" more particularly described herein. The building located upon the South Parcel is currently connected to the building located upon the North Parcel by two doorways (the "Doorways") through the Common Wall and associated passageways. Additionally, the southwest portion of the roof of the building located on the North Parcel is connected to, but is slightly lower than, the northwest portion of the roof of the building located on the South Parcel. This Agreement is intended to set forth the agreements of the Parties with respect to the Common Wall, the roof, and other matters more particularly set forth herein.

1. Recitals. The foregoing Recitals are incorporated herein by this reference.
2. The Common Wall; Related Matters. For purposes of this Agreement and the rights, duties, and obligations of the Parties set forth herein: (i) the common wall (the "Common Wall") relating to the South Parcel and the North Parcel shall be deemed to be that portion of a certain cinderblock wall which extends in a straight line from east to west and which constitutes the northern wall of the building located upon the South Parcel and a portion of another certain wall that forms the southern wall of the building located on the North Parcel, (ii) the Common Wall shall be deemed to be subject to the terms and conditions set forth herein, regardless of whether such Common Wall is, in fact, located upon the property line that separates the South Parcel from the North Parcel, as such property line may be shown by a legal description, a survey, or otherwise, (iii) the south wall of the North Parcel shall be deemed to extend from east to west in an irregular fashion, following the walls of the passageways that lead to the Doorways, and (iv) the roof of the building located upon the southwest portion of the building located on the North Parcel, being deemed to be part of the North Parcel.

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3. Modifications. The South Parcel Owner shall, within 45 days of closing the sale, be responsible for: (i) causing the Doorways to be closed off with cinderblock walls which are to be similar in nature to the existing construction of the Common Wall, (ii) causing all holes in the Common Wall and the south wall of the building on the North Parcel to be patched or repaired, (iii) removing all penetrations of the Common Wall and the south wall of the building on the North Parcel including but not limited to the removal of a certain pipe which is associated with an alarm system, (v) patching the holes associated therewith and (vi) removing all debris created by virtue of the modifications. All work in the modifications to be done by licensed contractors adequately insured for personal injury, property damage and worker's compensation. All work to be completed in a workman like manner. For purposes of performing the modifications described herein, the South Parcel Owner or its contractors shall have access to the North Parcel.

4. Roof Access. The Parties acknowledge and agree that the current sole interior access to the roof (the "Existing Roof Access") is situated in the building which is located on the North Parcel. Subsequent to completion of the modifications described herein, the South Parcel Owner shall not be entitled to utilize the Existing Roof Access

5. Future Repair, Maintenance, And Other Duties And Responsibilities. Subsequent to the completion of the modifications described herein, the South Parcel Owner shall be solely responsible for repairing and maintaining all portions of the South Parcel, including all matters associated with the portion of the Common Wall which faces the South Parcel. The South Parcel Owner shall also be responsible for all damages, whether to the Common Wall or otherwise, caused as a consequence of the intentional acts of, or the negligent acts or omissions of, the South Parcel Owner, its employees, contractors, or invitees. Similarly, and subsequent to the completion of the modifications described herein, the North Parcel Owner shall be solely responsible for repairing and maintaining all portions of the North Parcel, including all matters associated with the portion of the Common Wall which faces the North Parcel and all portions of the roof which are located north of the Common Wall. The North Parcel Owner shall also be responsible for all damages, whether to the Common Wall or otherwise, caused as a consequence of the intentional acts of, or the negligent acts or omissions of, the North Parcel Owner, its employees, contractors, or invitees. In the event of damage to the Common Wall which is not the responsibility of either Party (the "Non Responsible Damage"), the Parties shall equally share all costs and expenses associated with repairing such damages to the Common Wall. In the case of Non Responsible Damage, neither Party shall be responsible for restoring any other part or parts of the respective building or buildings that were damaged as a consequence of the Non Responsible Damage to the Common Wall. In the case of a Non Responsible Damage or a damage that is determined to be the responsibility of one of the Parties, both Parties agree to allow the other Party reasonable access to the other Party's building for the purpose of effecting the obligations under this Agreement.

6. Agreement Binding Upon Future Owners. The Parties hereby expressly agree that, and specifically stipulate that, this Agreement shall be binding upon their respective heirs, successors, and assigns. Such determination by the Parties is based upon their conclusion that the rights, duties, and obligations of the Parties with respect to the Common Wall and the other matters described herein are in the best interests of the orderly maintenance, management, and repair of the Common Wall, the North Parcel, and the South Parcel.

7. Contingency. The effectiveness of this Agreement and the rights, duties, and obligations of the Parties hereunder are expressly contingent upon the North Parcel Owner purchasing the North Parcel pursuant to the terms of the REPC. In the event that such contemplated purchase does not take place, for any reason, this Agreement, together with the Parties' rights, duties, and obligations hereunder, shall be null and void.

8. General Provisions.

A. This Agreement constitutes the entire agreement of the Parties with respect to the matters discussed herein. All oral representations or prior negotiations are deemed to have

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been merged into this Agreement. This Agreement may not be changed or modified except by a writing signed by all of the Parties.

B. This Agreement shall be governed by the laws of the state of Utah. The courts of Salt Lake County, Utah shall have exclusive jurisdiction over all matters arising in connection with, or in any way relating to, this Agreement.

C. A Party that has breached any of such Party's warranties, representations, obligations, or responsibilities herein shall pay all legal and other expenses incurred by the non-breaching Party.

9. Restrictions on Building Modifications. Neither Party shall remove or modify the Common Wall or make alterations to the respective Party's building that may affect the strength or structural integrity of the Common Wall, without the expressed written consent of the other Party, not to be unreasonably withheld.

10. Timely Repair. In the event of damage to the Common Wall, the Party judged to be responsible shall immediately commence and prosecute the restoration or repair of the Common Wall and any other damage to the non damaging Party's building's structure, systems, personal property or improvements.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written.

ENVE, L.L.C.,

By: Bea Versteeg  
BEA VERSTEEG, Manager

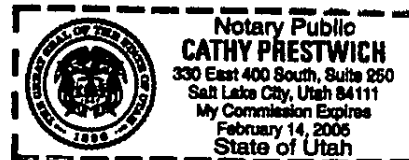
Garrity Rosta  
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STATE OF UTAH )  
: ss  
COUNTY OF SALT LAKE )

On this 19<sup>th</sup> day of July, 2002, personally appeared before me BEA VERSTEEG, Who being by me duly sworn, did sat that she is the Manager of ENVE, L.L.C., a Utah limited liability company, and that the foregoing instrument was signed on behalf of said limited liability company by authority of its operating agreement or a unanimous consent of its managers, and said BEA VERSTEEG acknowledges to me that said limited liability company executed the same.

Cathy Prestwich  
NOTARY PUBLIC  
Residing at:

My Commission Expires:  
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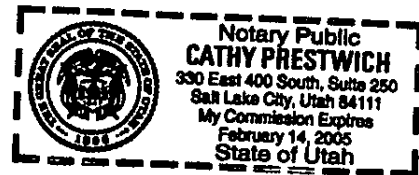
STATE OF UTAH )  
 : ss  
COUNTY OF SALT LAKE )

On this 19<sup>th</sup> day of July, 2002, before me, the undersigned notary,  
personally appeared GARRITY REPTA, who is personally known to me or who proved to me his identity  
through documentary evidence in the form of a  
Driver's Licence

to be the person whose name is signed on the preceding document, and acknowledged to me that he  
signed it voluntarily for its stated purpose.

Cathy Prestwich  
NOTARY PUBLIC  
Residing at:

My Commission Expires:  
  
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