

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
ENSIGN DOWNS PLAT J**

5074820

**WHEREAS**, the undersigned ("Declarant") is the legal and beneficial owner of a certain tract of land situated in Salt Lake County, State of Utah, described as follows:

Ensign Downs Plat J, according to the official plat thereof as recorded in the office of the County Recorder of said county,

and, **WHEREAS**, Declarant desires to subject the above property to the provisions of this declaration to create a residential community of single family housing; and,

**WHEREAS**, Declarant intends to sell lots within the property described above, pursuant to a general plan of improvement and subject to certain covenants, conditions, restrictions, stipulations, and agreements as hereinafter set forth:

**NOW, THEREFORE**, Declarant hereby declares that all of the property described above is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, leased, occupied, developed, resided upon, mortgaged, hypothecated, or otherwise encumbered, subject to the covenants, conditions, restrictions, stipulations, agreements, easements, assessments, and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby made subject hereto. This Declaration shall be binding on all persons having any right, title, or interest in all or any portion of the real property subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof:

**1. MUTUAL AND RECIPROCAL BENEFITS, ETC.:** All of said covenants, conditions, restrictions, stipulations, and agreements are made for the direct and mutual and reciprocal benefit of each and every lot created on the above-described property and are intended to create reciprocal rights and obligations between the respective owners of all of the lots so created and to create a privity of contract and estate between the grantees of said lots, their heirs, successors and assigns, and shall, as to the owners of each lot in said tract, their heirs, successors and assigns, operate as covenants running with the land for the benefit of all other lots in said tract and in adjacent subdivisions.

**2. PERSONS BOUND BY THESE RESTRICTIVE COVENANTS, AGREEMENTS AND CONDITIONS:** All covenants, conditions, restrictions, stipulations, and agreements herein stated shall run with the land and all owners, purchasers or occupants thereof shall by acceptance of contracts or deeds, possession or occupancy, be conclusively deemed to have consented and agreed with the present and future owners of said land and with their respective successors and assigns to have consented and agreed to conform to and observe the following covenants, conditions, restrictions, and stipulations as to the use of the land and construction of residences and improvements thereon.

**3. DURATION:** These Restrictive Covenants, conditions, restrictions, stipulations, and agreements shall remain in effect for a period from the date hereof to January 1, 2011, at which time said conditions, restrictions, covenants, stipulations and agreements shall be automatically extended for successive periods of 10 years, unless, by an affirmative vote of eighty percent (80%) of the then owners of said lots, it is agreed to amend or release said covenants, conditions, restrictions, stipulations, and agreements in whole or in part and such agreement is evidenced by an appropriate written agreement

specifying the covenant(s), condition(s), restriction(s), stipulation(s), or agreement(s) amended or released, signed by said eighty percent (80%) of the then owners of said lots, and filed with the Office of the County Recorder of Salt Lake County, Utah.

4. **AMENDMENT:** These covenants, conditions, restrictions, stipulations, and agreements, however, may be changed, altered or amended at any time by the affirmative action of eighty-five percent (85%) of the owners of the lots in the Subdivision. These changes shall be evidenced by the execution of an appropriate agreement in writing signed by eighty-five percent (85%) of the individual legal lot owners, and filed for record in the Office of the County Recorder of Salt Lake County, Utah.

Provided; however, that any amendment or release regarding paragraph 5 of this Declaration shall require a unanimous vote of all of the individual legal owners of all of the Lots (a) in the subdivision and (b) in all other subdivisions sharing a common border with the property. Any such change shall be evidenced by the execution of an appropriate agreement in writing signed by one hundred percent (100%) of such legal lot owners and filed for record in the Office of the County Recorder of Salt Lake County, Utah.

5. **ARCHITECTURAL AND STRUCTURAL CONTROL COMMITTEE:**

5.1 **COMMITTEE; MEMBERS; QUORUM:** An architectural and Structural Control Committee (hereinafter "the Committee"), consisting of three (3) members is hereby created. The Declarant may fill vacancies in the Committee and remove members thereof at its pleasure; provided, however, that after 90% of the lots in the subdivision have been sold (either deeded or sold under contract of sale), upon written designation of eighty-five percent (85%) of those who are owners (either by contract to purchase, or in fee) of lots in said tract, of a person whom such owners desire to make a member of the Committee, the Declarant will appoint such person to the Committee, and if necessary, will remove from the Committee an existing member in order to create a vacancy for the new appointment; provided further, however, that two persons designated by the Declarant shall always remain as members of the Committee if the Declarant or the Committee so desires. The functions of the Committee shall be, in addition to the functions set forth elsewhere in this Declaration, to pass upon, approve or reject any plans or specifications for structures to be erected or remodeled on lots in the subdivision, so that all structures shall conform to the restrictions contained herein and to the general development plans of the Declarant and of the Committee, for the improvement and development of the whole tract and adjacent land. Nothing in this paragraph shall be construed as authorizing or empowering the Committee to 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 authorizations, approval or action taken by the Committee must be in writing signed by a minimum of two (2) members of the Committee.

The initial members of the Committee shall be:

Glen Saxton  
139 East South Temple, Suite 310  
Salt Lake City, Utah 84111

Scott R. Turville  
139 East South Temple, Suite 310  
Salt Lake City, Utah 84111

Glen A. Lloyd  
511 East 300 South  
Salt Lake City, Utah 84111

**5.2 ARCHITECTURAL AND STRUCTURAL CONTROL PROCEDURE;  
REQUIREMENTS:**

(1) **Approval Required.** No building or structure, including a tennis court or swimming pool or other facility, shall be erected, remodeled or placed on any lot without the written approval as to location, height, design, materials and harmony with existing structures first having been obtained from the Committee. No construction of any kind or nature on any of the lots shall be commenced until either sidewalk or curb grade has been established.

**5.3 ADDITIONAL ARCHITECTURAL GUIDELINES:** In addition to those requirements set forth elsewhere in this Declaration, the following architectural guidelines shall apply to all lots in Ensign Downs Plat J:

(1) **Harmony in Building.** The exterior material of all homes shall be either wood, stucco, brick, stone or other material approved by the Committee, or a combination thereof. The roofing materials shall be either tile, treated wood shingles or other fire resistant material approved by the Committee, in approved colors which shall be harmonious with the natural environment.

(2) **Fences.** The height and placement of all fences shall be in conformity with Salt Lake City ordinances. All fence materials and placement of all fences must be harmonious with the natural environment and approved by the Committee prior to erection. No fence or wall shall be erected on any lot nearer to the street than the minimum building set back line unless similarly approved.

(3) **Exterior Lighting.** The design of each home shall include exterior lighting. All such exterior lighting shall require approval of the Committee.

(4) **Samples.** Prior to the construction of any building or structure, appropriate building material samples must be provided to the Committee in order to determine if said materials comply with the terms and intent of these restrictive covenants, conditions, stipulations, and agreements.

**5.4 COMMITTEE DECISION; LIABILITY:** The Committee's approval or disapproval shall be in writing signed by a majority of its members. All decisions of the Committee shall be final, and neither the Committee nor its designated representative shall be subject to any liability therefor. Any errors or omissions in the design of any building or landscaping, and any violations of city ordinances are the sole responsibility of the lot owners and/or their designer, architect or builder. The Committee's review of plans shall in no way be concerned with the structural or mechanical integrity or ability of the building or with architectural or structural soundness thereof.

**5.5 ENFORCEMENT:** The lot owners hereby agree that the Committee, or any owner of a lot within the subject property or within adjacent plats, may institute in its own name any suit or suits necessary in order to obtain a decree for specific performance or any restraining order necessary to enforce the provisions of this Declaration. Should any suit be instituted, the affected lot owner or owners agree that if the Court finds in the Committee's favor, such owner shall pay reasonable attorneys' fees for the services of plaintiff's attorney as such fees may be fixed by the Court.

**6. RESTRICTIONS ON USE, CONSTRUCTION, LOCATION OF IMPROVEMENTS:**

**6.1 LAND USE:** No lot shall be used except for residential purposes.

**6.2 BUILDING TYPE:** No buildings shall be erected, altered, or permitted to remain on any lot other than one detached single-family dwelling not to exceed three (3) stories, and a private garage for not less than two (2) nor more than four (4) vehicles and such accessory buildings, structures and facilities as may be approved by the Committee. Depending upon the design of the dwelling structure, the Committee may, if it deems such action advisable, approve parking inside the dwelling structure for more than four (4) vehicles. Notwithstanding the foregoing, the height of any building, structure or appurtenance thereto shall not be higher than thirty (30) feet above the natural grade of the lot, unless approved in writing by the Committee. The Committee, in its sole and exclusive discretion, shall have power to further limit the number of stories and the height of structures as to all lots if it deems such limitation is necessary to preserve the value of other lots within the subject property. Every detached single family dwelling, exclusive of garages and open porches, erected on any lot shall have a minimum above grade finished living area, excluding garages, of 1,900 square feet for a single level residence or 2,200 square feet for a multi-level or two story dwelling provided, however, that a two story dwelling shall have a minimum of 1,200 square feet on the first floor above grade. All construction shall be of new materials except for "used brick" or "used stone" specifically approved by the Committee. The Committee may at its sole and exclusive discretion, at any time, for the purpose of protecting and/or preserving the character of the subdivision, change any of the above requirements to be more restrictive and/or impose additional requirements.

**6.3 MOVING OF STRUCTURES:** No structure of any kind shall be moved from any other place to the property, except for new factory built or manufactured dwellings specifically approved, prior to placement on the lot, by the Committee.

**6.4 TEMPORARY STRUCTURES:** No trailer, basement, tent, shack or other out-building shall be placed upon any lot or used at any time within said subdivision as a temporary or permanent residence. Subject to ordinances of Salt Lake City, a trailer or other temporary building may be placed upon a lot during construction solely for the purpose of facilitating construction management, but not as a residence or for overnight accommodation, and shall be removed from the lot immediately upon completion of construction of the dwelling on the lot.

**6.5 DILIGENCE IN BUILDING:** When the erection or remodeling of any residence or other structure is once begun, work thereon must be prosecuted diligently and completed within 12 months. No building shall remain incomplete or any remodeling unfinished for any reason for a period in excess of twelve (12) months from the date physical construction commenced.

**6.6 COMPLIANCE WITH ZONING AND BUILDING ORDINANCES OF SALT LAKE CITY:** All excavation work, all foundations, all construction, and all buildings in said subdivision shall be done, performed, placed or constructed, as the case may be, in, on or upon said lots in accordance with the provisions of Salt Lake City Zoning and Building Ordinances in effect in connection with the property described heretofore when the buildings are constructed or remodeled. This provision shall not affect the applicability of the other provisions hereof.

**6.7 LOT AREA AND WIDTH:** No dwelling shall be erected or placed on any lot having a width of less than 100 feet at the minimum building set back line nor shall any dwelling be erected or placed on any lot having an area of less than 17,000 square feet, except that a dwelling may be erected or placed on all corner and cul-de-sac lots as shown on the recorded plat, provided that the required front, side and rear yard clearances are maintained and all zoning and other Salt Lake City requirements are satisfied.

**6.8 SET BACKS:** No dwelling house or other structure shall be constructed or situated on any of said lots except in conformity with the "set back" provisions of applicable Salt Lake City ordinances and "set back" lines as established in each instance by the Committee and in conformity with

any "set back" lines which may be fixed by the Declarant, its successors and assigns in the recorded subdivision plat, contracts or deeds to any or all of the lots created on said property. In any event, the front of no dwelling house shall be located on any lot nearer than 20 feet to the front lot line. Such set back must comply with all applicable zoning regulations.

No dwelling house shall be located nearer than 20 feet to any interior side lot line. A 10 foot minimum side yard shall be permitted for a garage or other permitted accessory building located 60 feet or more to the rear of the front lot line. No dwelling shall be located on any lot nearer than 40 feet to the rear lot line. Rear yard set backs on any lot containing an "undevelopable area" must further comply with all Salt Lake City requirements for such lots in this subdivision. Notwithstanding the foregoing provisions of this section 6.8, placement of any and all building(s), structures, fences, and other facilities on lots 5, 6 and 7 shall, because of the hillside nature of said lots, be subject to site specific and site sensitive review by the Committee, and approval by the Committee prior to construction, for the purpose of assuring to the degree possible that any construction on said lots 5, 6 and 7 shall be in harmony with the character of said lots. Except on lots 5, 6 and 7, detached garages or other permitted accessory buildings may be located within 15 feet of the rear lot line, so long as such buildings do not encroach upon any easements or violate any Salt Lake City requirements. The location of all dwellings and any permitted detached garage or other accessory building must be approved in writing by the Committee prior to the start of construction and must comply with all applicable Salt Lake City regulations.

For the purpose of this covenant, eaves or steps and open porches without roofs shall not be considered as a part of a building; provided, however, that this shall not be construed to permit any portion of any building on any lot to encroach upon another lot.

6.9 EASEMENTS: Easements and rights of way over portions of said real property have been dedicated as utility easements for the use of Salt Lake City and public or private utility companies or entities for the erection, construction, maintenance and operation therein or thereon of drainage conduits or pipes and for pipes, conduits, poles, wires and other means of conveying to and from lots in said tract, gas, electricity, power, water, telephone and telegraph services, sewage and other services for convenience to the public and owners of lots in said tract, as are shown on the subdivision plat. No structural improvements shall be placed in any such easements.

6.10 UNDEVELOPABLE AREA; OPEN SPACE EASEMENTS: The recorded subdivision plat includes areas which are identified as "Undevelopable Area". Such areas have been dedicated to Salt Lake City as perpetual open space and vegetation preservation easements. Within these areas, no fence, no structure, new planting or other material of any nature whatsoever shall be placed or permitted to remain, nor shall any activities be undertaken which shall interfere with the natural vegetation, the established slopes, or the existing natural condition of the land, or damage or interfere with the established slope ratios, create erosion or sliding problems or retard the flow of water through any drainage channels. All such areas shall be kept clean and clear of any trash or debris by the owner of the lot within which such area is located.

6.11 LANDSCAPING; NATURAL VIEWS: Lots shall be landscaped and planted with trees, lawns, shrubs or other plantings which shall be properly nurtured and maintained or replaced at the property owner's expense. Landscaping must be in accordance with the provisions of this Declaration and must be commenced within one month of the date the house is ready for occupancy (or by the succeeding April 30th if a house is ready for occupancy between October 15th and the following April 1st) and must be materially completed within nine months of the date the house is approved for occupancy. Gravel, cinder or other "no plant" areas shall not be permitted in front yards or side yards.

It is recognized by the Declarant that one of the important and valuable amenities attendant to each lot is the natural view from the lot afforded by the location and character of the individual lot. It is the intention of the Declarant that these natural views be maintained, and even enhanced, to the extent possible while allowing the orderly development of an attractive residential community including appropriate buildings, lawns, trees, shrubs and other landscaping. Therefore, except for one single family dwelling and permitted garages and accessory buildings, the suitability of which shall be determined by the Committee as herein provided, no buildings or plantings shall be permitted on any lot which shall inappropriately interfere with natural views from another lot in the development, including adjacent plats; provided, however, that two-story homes complying with the zoning requirements of Salt Lake City Corporation shall be permitted if approved prior to the start of construction by the Committee, and further provided that all landscaping approved by the Committee prior to installation shall be permitted, so long as such landscaping is not in conflict with the following sentence. Trees with an overall height of more than 30 feet shall not be permitted to remain without the written approval of the Committee and any owner of property in the development, including adjacent plats, whose view may be negatively impacted by the existence of such tree(s). As to this restriction, the Committee may, in its sole and exclusive judgment, determine if any tree(s) are in violation and may, in the event of a violation, request the owner of such tree(s), in writing, to remove or trim such tree(s), whereupon such owner shall do so within thirty (30) days. In the event such owner fails to comply with such written request, the Committee shall be empowered to trim such tree(s), recover payment from the owner for the costs incurred by such action, and record a lien against the owner's property to secure the repayment of all such costs. Declarant recognizes that, by its very occurrence, development will diminish and interfere with the original natural views afforded by the location and character of the property; however, attractive well-planned landscaping and trees add to the overall attractiveness and value of a community and largely mitigate the impacts of development. The intent of the restrictions contained in this paragraph is not to prohibit or unnecessarily limit attractive development and landscaping, but rather, to encourage development and landscaping which is in harmony with, or improves upon, the natural vista and enhances the natural appeal of the land.

**6.12 PROHIBITION AGAINST SOIL EROSION AND RUNOFF:** It shall be the responsibility of each lot 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 maintain all materials, including excavated and/or imported soils, on site and prevent the movement of earth materials or construction debris onto neighboring property, including public streets, or into the storm drainage system.

**6.13 SOILS, GEOTECHNICAL REQUIREMENTS:** Soils and geotechnical reports for the property have been issued by Dames and Moore and by Sergent, Hauskins & Beckwith. Said reports have been filed with the Salt Lake City Planning Commission. All requirements of Salt Lake City and these soils and geotechnical reports must be complied with in the construction of all buildings, structures and facilities on all lots. The design, and subsequently, the actual construction, of all footings and foundations must be certified by a qualified engineer registered with the State of Utah. The Declarant makes no warranties of any kind relative to soils or geotechnical matters.

**7. ADDITIONAL COVENANTS:**

**7.1 CONCRETE MAINTENANCE:** Each lot owner shall at all times keep the curb and gutter and sidewalk in front of his or her lot or lots in good condition, and shall repair any cracks or breaks in such concrete within a reasonable time, not to exceed 60 days, after receiving notification to do so from The Committee.

**7.2 SIGHT DISTANCE AT INTERSECTION:** No fence, wall, hedge, shrub or other planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines

and a line connecting them at points 2½ feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines so extended. The same sight-line limitations shall apply on any lot within 10 feet from the intersection of a street property line with the edge of a driveway. No tree shall be permitted to remain within such distances of such intersections unless (a) the caliper of the trunk of such tree does not exceed ten (10) inches and (b) the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

## 8. NUISANCES:

8.1 **NOXIOUS OR OFFENSIVE ACTIVITIES:** No noxious or offensive activity shall be carried on upon any lot or within the subdivision, nor shall anything be done thereon which may be an annoyance or nuisance to the neighborhood. The Committee shall have the authority to determine if an activity is noxious or offensive and constitutes an annoyance or nuisance to the neighborhood.

8.2 **PETS:** No barn, coop, shed, sty or building of any type shall be constructed for the purpose of housing pigs, cows, sheep, goats, horses, rabbits, pigeons, poultry, or any other livestock, and none of the foregoing shall be kept, maintained or permitted at any place within the limits of said subdivision, excepting only a reasonable number of common household pets. Pets shall at all times be under proper control and supervision of their owners.

8.3 **STORAGE:** No storage of any articles, materials, equipment or vehicles (recreational or otherwise, including but not limited to boats, campers and trailers) of any nature is permitted in the front yard or side yard portion of any lot, except that regularly used passenger cars and light pick-up trucks properly licensed and in running order may be parked upon driveway areas. Trailers, trucks, campers, boats, and all types of accessory equipment are permitted to be stored or repaired only in garages.

8.4 **SIGNS:** Except for signs displayed by the Declarant or homebuilders during the sales and construction period of the development, no signs, other than name plates, shall be displayed to the public view on any lot except one sign not exceeding four square feet advertising the availability for sale or lease of a lot and the improvements thereon.

8.5 **DRILLING AND MINING:** There shall be no oil drilling, mining, quarrying or related operations of any kind permitted upon any lot.

8.6 **RUBBISH:** No rubbish shall be stored or allowed to accumulate anywhere in said subdivision, except in sanitary containers appropriately shielded from public view.

8.7 **TRANSMITTING AND RECEIVING EQUIPMENT:** No external radio, citizen's band, ham radio or any other transmitting and/or receiving antennas or equipment shall be placed upon any structure or lot, provided, however, a television antenna or satellite dish receiver may be placed in a yard at a secluded location, at a height and in a manner specifically approved by the Committee in writing prior to erection. Any such television antenna or satellite dish shall not be readily visible from other lots in the subdivision or adjacent subdivisions.

8.8 **CONSTRUCTION DERRIS:** All lot owners shall properly maintain their lots during the construction period so as to insure that no "spoils" or any other debris from construction shall be permitted to blow or otherwise be deposited upon any adjoining lot or any other private or public property or public right of way. Lot owners shall take whatever action is necessary to prevent run-off onto, and resultant erosion of, adjoining private property. Lot owners agree that the Declarant or the Committee shall be empowered to clean up any and all "spoils" or construction debris which are located upon any adjoining public or private property resulting from activities of a lot owner, his builder or any

other person employed or otherwise controlled by a lot owner, and record a lien against the lot owner's property to secure the repayment of all sums expended by the Committee or by the Declarant in cleaning up and removing said "spoils" and debris from adjoining public or private property if same is not voluntarily cleaned up and removed by the lot owner within 48 hours of written notice from the Declarant, another lot owner, or the Committee, identifying the required clean up and removal work.

9. **MANNER OF VOTING:** In voting, pursuant to the provisions of paragraphs 3, 4, or 5.1 hereof, the owners of record of each lot shall be entitled to one vote for each lot owned, and any amendment or repeal of this Declaration or change in the membership of the Committee, resulting from any such vote shall be evidenced by an appropriate written instrument signed by the required number of property owners, which instrument shall be acknowledged and promptly recorded in the County Recorder's Office of the County of Salt Lake, State of Utah.

10. **VIOLATIONS OF RESTRICTIONS, PENALTIES:** Violation of any of the covenants, conditions, restrictions, stipulations, or agreements herein contained shall give the Committee, the Declarant and their successors and assigns, the right to enter upon the property on which said violation or breach exists, and to summarily abate and remove at the expense of the owner, any erection, thing or condition that may be or exist thereon contrary to the provisions hereof, without being deemed guilty of trespass. The result of every action or omission whereby any covenant, condition, restriction, stipulation, or agreement of this Declaration is violated, in whole or in part, is hereby declared to be and constitute a nuisance and every remedy allowed by law against a nuisance, either public or private, shall be applicable against such condition. Such remedy shall be deemed cumulative and not exclusive.

11. **GENERAL PROVISIONS:**

11.1 **EFFECT OF WAIVER OR BREACH OR FAILURE TO ENFORCE:** Each and all of the covenants, conditions, restrictions, stipulations, and agreements contained herein shall be deemed and construed to be continuing, and the extinguishment of any right of re-entry or reversion for any breach shall not impair or affect any of the covenants, conditions, restrictions, stipulations, or agreements, so far as any future or other breach is concerned. It is understood and agreed by and between the parties hereto that no waiver of a breach of any of the covenants, conditions, restrictions, stipulations, and agreements herein contained shall be construed to be waiver of any other breach of the same, or other covenants, conditions, restrictions, stipulations, and agreements contained herein, nor shall failure to enforce any one of such covenants, conditions, restrictions, stipulations, or agreements, either by forfeiture or otherwise, be construed as a waiver of any other covenant, condition, restriction, stipulation, or agreement contained in this Declaration.

11.2 **SEVERABILITY:** Invalidation of any one of or any portion of any one of these covenants, conditions, restrictions, stipulations, and agreements by judgment or court order shall in no wise affect any of the other provisions of this Declaration which shall remain in full force and effect.

11.3 **PARAGRAPH CAPTIONS:** The paragraph captions and phrases as to the contents of particular paragraphs are inserted only as a matter of convenience and for reference and in no way are intended to be part of this Declaration or in any way to define, limit or describe the scope or intent of the particular paragraph to which they refer.

11.4 **ATTORNEYS' FEES AND COSTS:** In the event any claim, demand or lawsuit is made or instituted to enforce any of the provisions contained in this Declaration, the defaulting owner or purchaser agrees to pay all costs and expenses of enforcing the same, or collecting any penalties or damages, including the payment of a reasonable attorneys' fee and all court costs.

