

AFTER RECORDING, PLEASE RETURN TO:

Robert J. Grow, Esq.  
ROOKER, LARSEN, KIMBALL & PARR  
185 South State Street, Suite 1300  
Salt Lake City, Utah 84111  
Telephone: (801) 532-7840

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SECOND AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOREST CREEK COVE

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, FOREST CREEK COVE (the "Second Amendment") is executed on this \_\_\_\_ day of \_\_\_\_\_, 1985 by the Forest Creek Cove Homeowners Association, a Utah nonprofit corporation (the "Association").

RECITALS:

A. Alton R. Larsen, Jr. and Cola Dawn Larsen, husband and wife ("Declarants"), created Forest Creek Cove, a planned unit development (the "Project"), which includes certain real property located in Salt Lake County, Utah, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference, by filing for record in the office of the Recorder of Salt Lake County, Utah the following: (1) Declaration of Covenants, Conditions and Restrictions, Forest [Creek] Cove (the "Declaration"), as Entry No. 3232021, in Book 4808, at Pages 1263-1314, on February 1, 1979; and (2) Amended Declaration of Covenants, Conditions and Restrictions (the "First Amendment"), as Entry No. 3233200, in Book 4810, at Page 150, on February 5, 1979. All terms used in this Second Amendment that are defined in the Declaration shall have the meanings ascribed to them therein.

B. Declarants have disposed of all of their right, title and interest in and to the Project, and the Association is composed of the present owners of the Project.

C. The Association desires to amend the Declaration.

AMENDMENTS:

NOW, THEREFORE, in accordance with the procedures and requirements set forth therein, the Declaration is hereby amended

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as follows:

1. Article III, Section (4)(a) is hereby deleted in its entirety and replaced with the following new Article III, Section 4(a):

(a) Residential Housing Restrictions. Only the types of buildings described in this paragraph shall be permitted, except as otherwise expressly set forth herein. Single family residential buildings that have two (2) or more stories completely above ground level, one constructed directly above the other, shall be permitted; provided, that such buildings shall have at least one thousand six hundred (1,600) square feet of finished, heated, living space on the main floor and at least one thousand (1,000) square feet of finished, heated, living space on the second floor. Single family residential buildings that have only one (1) story completely above ground level (commonly referred to as "ramblers") and split-level single family residential buildings shall be permitted; provided, that such buildings shall have at least two thousand (2,000) square feet and two thousand six hundred (2,600) square feet, respectively, of finished, heated, living space on floors entirely above ground level. For purposes of determining whether the above minimum size restrictions have been met, square footage shall be calculated by using the exterior dimensions of floors containing furnished, heated, living space. Garage space, porches or similar areas, even if heated, shall not be counted in calculating such square footage. Buildings having split entries or exceeding three (3) stories above ground level shall not be permitted. A building not exceeding two (2) stories in height may also be constructed to be used as a garage, and may contain living areas for domestic help, but any such garage shall not have more than four (4) doors for automobile ingress and egress. Any structure proposed to be built within the Project which does not come within the express guidelines contained herein may not be

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constructed unless and until the Architectural Control Committee approves said structure pursuant to Section 5 of this Article III, which approval may be withheld in the sole and absolute discretion of the Architectural Control Committee. In the event of an unresolvable dispute, the question will be decided by a 75% vote of the Association Members.

2. The second paragraph of Article III, Section (4)(b), is deleted in its entirety and replaced with the following new paragraph:

The exterior surface of the outside walls of the main floor of any building which is two (2) or more stories above ground level, and the exterior surface (exposed above finish grade) of the outside walls of all other buildings shall be veneered with brick, natural stone and/or other approved materials. The exterior surface of the outside walls of floors other than the main floor of any building which is two (2) or more stories above ground level shall be completely veneered with first-class, select, high quality, superior material, and shall receive the prior approval of the Architectural Control Committee pursuant to Section 5 of Article III. Under no circumstances whatsoever shall any building have an exterior wall exposed above finish grade, the surface of which is plywood, concrete, concrete blocks or cinder blocks.

3. Article III, Section (4)(c) is hereby deleted in its entirety and replaced with the following new Article III, Section (4)(c):

(c) Outside Aesthetic Requirements. No carports shall be permitted and doors shall be installed on all garage openings. Doors to garages facing the street shall be closed at all reasonable times. The erection, location and design of all mailbox and newspaper receptacles shall be approved by the Architectural Control Committee. Garbage and trash containers shall be installed underground or enclosed with a fence and gate

which must be approved by the Architectural Control Committee. No yard fencing shall exceed six (6) feet in height and, other than decorative yard fencing not exceeding three (3) feet in height (exclusive of decorative pillars and posts), yard fencing shall be placed on a lot so that it is not closer to the front line of said lot than the single family residential building thereon; provided, however, that owners of lots 17, 19 and 22 may place a fence along the border of said lots facing the irrigation ditch that is part of the Common Area, for protective purposes; provided, further, that the Architectural Control Committee may make exceptions to such requirements as it deems appropriate under the circumstances, in the exercise of its sole and absolute discretion. Any plan for yard fencing must be submitted to the Architectural Control Committee for its approval. The use and location of a construction trailer or shed by a builder or owner while a house is being constructed must receive the prior approval of the Architectural Control Committee. No swamp coolers or other air conditioning or air cooling devices or equipment shall be visible from the front of the home which they service unless approved in advance by the Architectural Control Committee.

4. Article III, Section (5)(a) is hereby deleted in its entirety and is replaced with the following new Article III, Section (5)(a):

(a) Approval of Plans. One (1) set of complete plans and specifications of the home as well as the proposed lot selection shall be submitted to the Architectural Control Committee for approval. Such plans and specifications shall include the foundation plan, the floor plan, all exterior elevations, the location and width of driveway, all setbacks, roof design, including the pitch thereof, projected finish grades following backfilling and landscaping, and all other material information or information requested by the Architectural Control Committee. Actual samples and/or descriptive

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information on materials to be used such as brick, stone, siding and roofing, as well as exterior color schemes, shall be submitted. The Architectural Control Committee may require shake shingles to be used as the exclusive roofing material on any home unless the architectural integrity of the home otherwise requires. No building permit may be applied for and no construction may be begun until the builder or owner receives a letter of approval from the Architectural Control Committee, a copy of which shall be signed by the builder or owner and returned to and retained by the Architectural Control Committee, along with the set of plans and specifications previously submitted. Any change of any kind made following approval must be submitted to the Architectural Control Committee for reapproval.

5. Article III, Section (5)(c) is hereby deleted in its entirety and replaced with the following new Article III, Section (5)(c):

(c) Landscape Plans. Landscape plans shall be submitted to the Architectural Control Committee for prior approval, and the design of that portion of the yard facing the street shall be approved by the Architectural Control Committee before the home is occupied. All landscaping approved by the Architectural Control Committee shall be completed within one (1) year after the home is occupied in accordance with the plans previously submitted to the Architectural Control Committee.

6. A new Section (5)(d) is hereby added to Article III and shall read as follows:

(d) Set Back and Side Yard Requirements. Any building placed (A) on a lot other than hillside lots (lots 1 through 13, inclusive), shall not be less than thirty (30) feet from the front lot line; and (B) on hillside lots (lots 1 through 13, inclusive), shall not be less than twenty-five (25) feet from the front lot line.

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Before commencing excavation for a structure, the owner and builder shall have the lot surveyed to locate the front lot line, provide the survey to the Architectural Control Committee, stake the locations of said lot line and said structure, and receive the written confirmation of said Committee that said structure will comply with the requirements of this paragraph. [Note: The front lot line for most lots is set back a significant distance from the edge of the asphalt for the common private street.]

Each lot shall possess minimum side yards of eight (8) feet and ten (10) feet in width, respectively, unless otherwise approved by the Architectural Control Committee.

7. Article III, Section (14) is hereby deleted in its entirety and replaced with the following new Article III, Section (14):

(14) Exterior Alterations. No owner shall at his expense or otherwise make any alterations or modifications to the exterior of the buildings, fences, railing or walls situated on his lot, or to any part of the Common Area, without the prior written consent of the Association in each and every instance.

8. Article IV, Section (3)(d) is hereby deleted in its entirety and replaced with the following new Article IV, Section (3)(d):

(d) Mortgagee Voting Rights. In the event of a default by any owner under a promissory note secured by a trust deed on his individual lot, the beneficiary of said trust deed shall have the right, upon giving written notice to the Association and to the defaulting owner and properly placing on record a notice of such default, to exercise the vote of such owner at all meetings of owners and to execute the written approvals of owners during such time as such default may continue. After the beneficiary of such deed of trust has complied with such conditions, upon his written request, the Association

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shall notify him of all meetings of owners so long as such default remains.

9. The first paragraph of Article IV, Section (5)(a)(vii) is hereby deleted in its entirety and replaced with the following new Article IV, Section (5)(a)(vii):

(vii) Conveyance or Encumbrances of the Common Area. The power upon written approval of seventy-five percent (75%) of the Class A members of the Association to grant, convey, hypothecate, encumber, mortgage, abandon, partition, subdivide or transfer the Common Area.

10. The first sentence of Article IV, Section (5)(b)(vi) is hereby deleted in its entirety and replaced with the following new sentence:

(vi) Professional Management. Provide at all times during the term hereof for the management of the Project.

11. Article IV, Section (8)(c) is hereby deleted in its entirety and replaced with the following new Article IV, Section (8)(c):

(c) The Association shall prepare or cause to be prepared an annual operating statement reflecting the income and expenditures of the Association for its fiscal year and a copy of said statement shall be distributed to each member within ninety (90) days after the end of each fiscal year.

12. Article XII, Section (2) is hereby deleted in its entirety and replaced with the following new Article XII, Section (2):

(2) Amendment. Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Association at which the proposed amendment is to be considered. A resolution adopting a proposed amendment may be proposed by a lot owner at a meeting of the members of the Association. The resolution shall be adopted by not less than seventy-five percent (75%)

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of the Class A members. A copy of each amendment shall be certified by at least two (2) officers of the Association and the amendment shall be effective when recorded in the public records of Salt Lake County, State of Utah. The foregoing notwithstanding, no amendment shall be adopted affecting the provisions of Sections (3) and (4) of Article VI of this Declaration without the prior written approval of not less than seventy-five per cent (75%) of all holders of first mortgages of record on lots within the Project. No amendments shall be adopted affecting the term of this Declaration except as set forth in Section (1) of this Article XII.

13. Article XIV, Section (1) is hereby deleted in its entirety and replaced with the following new Article XIV, Section (1):

(1) Default; Legal Proceedings. Failure by any owner to comply or to cause compliance with any of the terms or provisions of this Declaration, or the Articles and Bylaws of the Forest Creek Cove Homeowners Association (including any regulations adopted pursuant thereto) shall be grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, which relief may be sought by the Association in the exercise of its sole and absolute discretion, or if appropriate, by an aggrieved lot owner. In the event that the Association or the Architectural Control Committee takes any action whatsoever, whether or not formal legal proceedings are involved, to enforce the terms and provisions of this Declaration, or the Articles and Bylaws of the Forest Creek Cove Homeowners Association, or to remedy any default thereof, any costs and expenses whatsoever (including attorneys' fees) incurred by the Association or the Architectural Control Committee in connection therewith shall be immediately due and payable by the owner or owners of the lot or lots necessitating such enforcement or committing such default, and shall accrue

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interest at eighteen percent (18%) per annum from and after the date on which demand therefor is made, until paid in full. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Project. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce such provision, or any other provisions hereof. Any lot owner not at the time in default hereunder, or any member of the Association, shall be entitled to bring an action for damages against any defaulting lot owner and in addition, may enjoin any violation of this Declaration. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in such amount as the court may deem reasonable in favor of the prevailing party.

14. Other than as expressly modified by the provisions of this Second Amendment, all of the terms and provisions of the Declaration and the First Amendment are hereby ratified and affirmed in their entirety.

EFFECTIVE DATE:

This Second Amendment shall be effective as of the date of its recordation in the office of the Recorder of Salt Lake County, Utah.

CERTIFICATION:

NOW, THEREFORE, pursuant to the procedures set forth in the Declaration for implementing the amendments set forth above, the Association, by two of its duly elected officers, hereby certifies as follows:

1. All facts and matters set forth in the "Recitals" portion of this Second Amendment are true and correct.
2. The requirement of Article XII, Section (2) of the Declaration that at least seventy-five percent (75%) of the Class A members of the Association vote in favor of those amendments to the Declaration embodied in this Second Amendment was fulfilled.

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3. There are no Class B members of the Association.

IN WITNESS WHEREOF, this Declaration is executed as of the day and year first above written.

FOREST CREEK COVE HOMEOWNERS  
ASSOCIATION,  
a Utah nonprofit corporation  
By: *Douglas L. Israelsen*  
DOUGLAS L. ISRAELSEN  
President

ATTEST

By: *Rachel I. Frandsen*  
RACHEL I. FRANSEN  
Secretary

STATE OF UTAH            )  
                                : ss.  
COUNTY OF SALT LAKE    )

On this 11 day of April, 1985, personally appeared before me Douglas L. Israelsen and Rachel I. Frandsen who, being by me duly sworn, did say that they are the President and Secretary, respectively, of the Forest Creek Cove Homeowners Association, a Utah nonprofit corporation, did verify to me that the contents of the "Certification" portion of the foregoing Second Amendment are true and correct, did say that the foregoing Second Amendment was signed on behalf of the Association by authority of its Bylaws or a resolution of its Board of Directors, as the case may be, and did acknowledge to me that said Association executed the same.

*Susan Inger*  
NOTARY PUBLIC

Residing at: 1422 So 700 West Shc

My Commission Expires:

May 25, 1985

EXHIBIT A

Description of the Project

The following-described real property located in Salt Lake County, State of Utah:

BEGINNING at the Southeast corner of the Crestview Estates Subdivision at a point South 988.80' and East 229.05' from the East 1/4 Corner of Section 28, Township 2 South, Range 1 East, Salt Lake Base and Meridian and running thence along the South Boundary of said Crestview Estates Subdivision for two courses as follows:

South  $84^{\circ}25'00''$  West 412.91'; thence North  $60^{\circ}15'26''$  West 566.45'; thence leaving the subdivision boundary South  $02^{\circ}15'24''$  East 595.96'; thence South  $77^{\circ}40'00''$  East 182.81'; thence South  $16^{\circ}34'00''$  West 54.38'; thence South  $44^{\circ}19'00''$  East 93.86'; thence South  $07^{\circ}10'00''$  East 53.15'; thence South  $74^{\circ}49'00''$  East 734.97'; thence South  $30^{\circ}36'00''$  East 212.19'; thence South  $42^{\circ}42'00''$  East 356.98' to the West Right of Way line of 2000 E Street; thence along said Right of Way line for four courses as follows: Along the Arc of a 523.69' radius curve to the left 271.721' (The chord bears North  $15^{\circ}30'07''$  West 268.683'); thence North  $30^{\circ}21'58''$  West 161.00'; thence along the Arc of a 1005.370' radius curve to the right 254.432' (The chord bears North  $23^{\circ}06'58''$  West 253.753'); thence North  $15^{\circ}51'58''$  West 594.65' to the point of BEGINNING.

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