

After recordation, return to:

David A. Whetten  
526 East 3250 North  
Provo, Utah 84604

ENT 41939 BK 3711 PG 45  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
1995 JUN 30 2:58 PM FEE 24.00 BY MB  
RECORDED FOR DAVID A WHETTEN

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
EASEMENTS, RESERVATIONS AND RESTRICTIONS**

**HILLSIDE OAKS SUBDIVISION**

**Provo, Utah**

**THIS DECLARATION** (the "Declaration") is made as of this 19 day of June, 1995, by **DAVID A. WHETTEN and ZINA P. WHETTEN** (together the "Declarant"), as an owner and developer of the real property herein described to which this Declaration is applicable.

A. Declarant is the record owner of Lots 1, 2, 4 and 5 in the subject subdivision (together "Declarant's Property").

B. **DIANA SORENSEN** (aka Diana Hooker) is the record owner of Lot 3 in the subject subdivision and does concur and join with Declarant in executing this Declaration and imposing upon the subject subdivision mutual, beneficial restrictions under a general plan or scheme of improvement for the benefit of all of such property, the owners thereof, and their successors and assigns.

**NOW, THEREFORE**, Declarant hereby declares that all of the property described below (sometimes herein referred to as "lands", "lots", "tract", "subdivision" or "property") shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved, subject to the following covenants, conditions, easements, reservations and restrictions, all of which are declared and agreed to be in furtherance of the plan for the subdivision, improvement, and sale of the lands and are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of the lands and every part thereof. All of the provisions of the Declaration will be deemed to be covenants or equitable servitudes, as the case may be, running with the land and shall be binding upon all parties having or acquiring any right, title or interest in the described lands or any part thereof.

**ARTICLE I**

**PROPERTY**

The property subject to the provisions of this Declaration is located in Provo City, Utah County, Utah and is described as follows:

All of Lots 1 through 5, inclusive, HILLSIDE OAKS, Plat "B", A Revision of Lots 1, 4 and 5 of Plat "A" Hillside Oaks Subdivision, Provo City, Utah County, Utah, according to the official plat thereof as recorded in the office of the County Recorder of Utah County.

**ARTICLE II**

**RESIDENTIAL AREA COVENANTS**

2.01 Land Use. The property is zoned R-1 and is restricted to single family detached residential use pursuant to applicable ordinances of Provo City. No lot shall be used except for residential purposes.

2.02 Geotechnical Study. The subdivision is the subject of that certain report entitled "Geotechnical Study, Hillside Oaks Subdivision, Provo, Utah" dated December 13, 1993 (the "Geotechnical Study"), prepared for Declarant by Earthtec Testing and Engineering, 133 North 1330 West, Orem, Utah 84057. A copy of the Geotechnical Study shall be made available by Declarant to each owner of a lot in the subdivision.

2.03 Building Type. No building shall be erected, altered, placed or permitted to remain on any lot other than one single family detached residence dwelling, with such assessorly uses and structures as are permitted by Provo City Zoning Ordinances and approved by the Architectural Control Committee (the "Committee").

2.04 Dwelling Quality, Size and Height. All dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be procured for and used in subdivisions and lots of similar size and general location in Utah County, Utah, on the date this Declaration is recorded. The ground floor area of the main structure, exclusive of basements, garages and open porches, shall not be less than 1800 square feet for a single family residence dwelling, nor less than 1400 square feet for a single family residence dwelling of more than one story. No dwelling structure shall exceed the height limitations approved by the Committee which shall have as its primary concern the preservation of view for other dwellings in the immediate proximity. In any event, approved heights shall not exceed Provo City ordinances for building height limitations.

2.05 Construction and Set-Back Lines

(a) All construction of improvements upon the property shall be done pursuant to and in accordance with the ordinances and permit requirements of Provo City, including compliance with approved front, side and rear set-back lines, and in conformity with the recommendations of the Geotechnical Study.

(b) For the purpose of this covenant, eaves, steps, and open porches shall not be considered as a part of a building; provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot in any way, including airspace.

(c) Construction of residences shall take place within the "Building Envelope" for each lot as delineated on the recorded subdivision plat map.

(d) Water conservation devices such as low-flow toilets and shower heads shall be used in all construction.

(e) No residence or attached or detached improvement constructed in the subdivision shall contain a swamp cooler, unless otherwise consented to by the Committee.

2.06 Prohibited Trees. The following trees, because of their undesirable characteristics are prohibited in said subdivision:

<u>Species Name</u>	<u>Popular Name</u>
Allanthus altissima	Tree of heaven
Plantanus occidentals	American plane tree
Populus alba	Silver poplar
Populous alba bolleana	Boileana poplar
Populus angustifolia	Narrow--leaf poplar
Populus deltoides	Carolina poplar
Populus fremontii	Fremont's poplar
Populus nigra italica	Lombardy poplar
Populus Pseudoaa	Black locust
Ulmus Pumila	Siberian elm

Further, in order to maintain the present character and nature of the subdivision, the Architectural Control Committee may consider in its approval process the extent to which native vegetation is preserved.

2.07 Utility Easements. Easements for installation and maintenance of utilities are reserved as noted on the recorded subdivision plat map of the property. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of natural drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements, if any, for which a public authority or utility company is responsible.

2.08 Joint Access Easement. As reflected and set forth on the recorded subdivision plot map, there exists between lots 2 and 3 and lots 3 and 5 a 20 foot public utility and joint access easement for lots 2,3, 4 and 5 from Foothill Drive, a public street fronting the subdivision along its northwestern boundary. The access easement shall be initially improved by Declarant and used by the owners of lots 2,3, 4 and 5 for ingress and egress to and from such lots. Subsequent maintenance costs shall be shared on an equal basis between such owners who use the same as a means of access to their lots. All decisions regarding the said access, its use and maintenance, shall be made by a majority of the owners of said lots, each lot having one vote. Landscaping and entry statements from (Foothill Drive) pertaining to such access easement shall be subject to the approval of the Committee, including construction and placement of mailboxes and address signs serving the lots using such access easement.

2.09 Drainage Channels. All natural drainage channels within the subdivision shall remain open and unobstructed; provided, however, that the same may be piped or enclosed as required by the City of Provo in order to obtain a building permit for improvements to be constructed on any lot.

2.10 Landscaping. The landscaping of each lot (including frontage on Foothill Drive, Timp View Drive, or the joint access easement referred to in Section 2.08), shall be completed within one year from the date of occupancy of any residence constructed thereon. Landscaping plans must be submitted to the Committee for approval before landscaping is commenced and may be submitted at the same time as residential construction plans. Trees and shrubs shall be placed so as not to obstruct views from other lots.

2.11 Existing Trees and Shrubs. The removal of existing trees and shrubs shall be prohibited until the Committee has approved construction and/or landscaping plans involving the same. This prohibition shall apply to initial construction and landscaping as well as to future remodeling or modification of previously approved construction or landscaping.

2.12 Signs. No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder or realtor to advertise the property during the construction and sales period. This provision shall not impair Declarant's right to utilize larger signage for permanent entrance statements or for advertisement during construction and development of the subdivision.

2.13 Livestock, Poultry and Pets. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats, and other domesticated household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose, and provided further that all pets kept outside must be restrained in a humane manner. Kennels, runs and leash areas must be kept clean and sanitary. No pets may be kept in unreasonable numbers. Barking dogs shall be deemed to be nuisances to the neighborhood.

2.14 Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

2.15 Temporary Structures. No structure of a temporary nature nor any trailer, basement, tent, shack, garage, barn, or other out buildings shall be used on any lot at any time as a residence, either temporarily or permanently.

2.16 Garbage and Refuse Disposal. No lot shall be used or maintained as a dumping ground for rubbish or debris. Trash, garbage or other waste shall not be kept except in sanitary containers. All containers used for the storage or disposal of such materials shall be kept in a clean and sanitary condition. During construction, excess building material and debris shall not be permitted to accumulate.

2.17 Parking: Trucks, Boats, Campers, Etc. Inoperable vehicles shall not be kept or stored within the subdivision. No automobiles, trucks, campers, trailers, boats, equipment, recreational vehicles, motor homes, or other similar vehicles shall be parked or stored on Foothill Drive or Timp View Drive for more than 24 consecutive hours nor on the joint access easement referred to in Section 2.08 at any time. None of the above may be kept or stored on any lot unless stored in a garage or unless parking stalls or other cover approved by the Architectural Control Committee is provided. No such parking or storage facilities may be located nearer than twenty (20) feet to the front lot line and must conform to all building ordinances of Provo City and the other provisions of this Declaration.

2.18 Maintenance of Lots. All lots, whether improved or unimproved, must be kept free of rubbish, weeds, trash and debris of any kind and must be maintained in such manner as to not detract from the subdivision as a whole. Sidewalk, curbs and gutters must be kept clean, unobstructed and in good repair. Front yards of completed dwellings shall be landscaped at or prior to occupancy by the first owners and shall be well maintained by the owners at all times.

2.19 Architectural Control. No buildings or fences shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the proposed structure on the lot have been approved by the Committee as to quality of workmanship and materials, harmony of exterior design with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed, or altered on any lot nearer to any street than the minimum building set-back line unless similarly approved and permitted by the ordinances of Provo City. No residence dwelling shall contain less square footage than the minimums set forth in this Declaration unless, by reason of lot size, set-back lines, etc., the Committee shall approve a lesser amount.

### ARTICLE III

#### ARCHITECTURAL CONTROL COMMITTEE

3.01 Membership. Members of the Architectural Control Committee (the "Committee") shall be lot owners. The initial committee is composed of David A. Whetten, Zina P. Whetten and Diana Sorensen. A majority of the Committee shall be required to approve matters coming before it. In the event of a vacancy on the Committee, the remaining members shall have full authority to designate a successor. The members of the Committee shall not be entitled to any compensation for services performed pursuant to this Declaration. From and after December 31, 1997, the then record owners, including Declarant, of a majority of the lots within the subdivision shall have the power, through a written instrument signed by said majority owners, to change the membership of the Committee or any of its powers and duties.

3.02 Procedure. The Committee shall establish and set forth in writing its standards and requirements for submission of construction and landscaping plans pertaining to improvements to be constructed on any lot within the subdivision. A copy of such standards and requirements shall be given to each owner (or prospective owner) upon demand. All plans and specifications submitted to the Committee must be submitted in duplicate and accompanied by a written request for approval. The Committee's approval or disapproval shall be in writing and returned to the one making submission, together with a notation of approval or disapproval and the date thereof affixed to one copy of such plans and specifications. In the event the Committee, or its designated representative, fails to approve or disapprove such plans and specifications within thirty (30) days after the same have been submitted to it, or in any event if no suit to enjoin the construction has been commenced before completion thereof, approval will not be required and the related covenants herein shall be deemed to have been fully complied with.

ARTICLE IV

GENERAL PROVISIONS

4.01 Term. The provisions of this Declaration shall run with the land and shall be binding on all parties and all persons claiming under them for a period of forty (40) years from the date of recordation of this Declaration, after which time the covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument in writing signed by a majority of the then owners of the lots within the subdivision has been recorded, agreeing to change the covenants in whole or in part.

4.02 Amendment. Except as otherwise provided in Section 4.01, above, this Declaration can be amended at any time by a recorded writing executed by at least a majority of the total votes entitled to be cast by the then record owners of the lots within the subdivision.

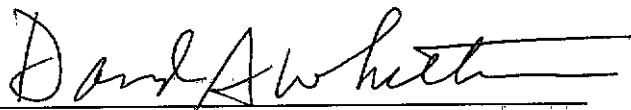
4.03 Lot Ownership and Votes. All owners of a single lot shall be considered as one owner for purposes of determining lot ownership within the subdivision as to matters requiring lot owners' votes or consents. If joint or co-owners of a lot are not united on any matter the subject of a vote, then the vote attributed to such lot shall not be counted. Each lot shall be entitled to one (1) vote except that lot 5 shall be entitled to two (2) votes as long as it is owned by Declarant (or by either of the parties who comprise Declarant).

4.04 Enforcement. Enforcement shall be by proceedings at law or in equity, brought by Declarant or any aggrieved lot owner, either to restrain violation or to recover damages against any person or persons violating or attempting to violate any of the provisions contained within this Declaration.

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

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

DECLARANT:



David A. Whetten



Zina P. Whetten

**CONSENT AND CONCURRENCE OF OTHER OWNER**

The undersigned Diana Sorensen, without in any way subjecting herself to any joint venture, partnership or other concerted development activity of any kind with Declarant, hereby concurs with the Declarant and agree to the provisions set forth in the above Declaration and does attest to such concurrence and agreement by her signature.

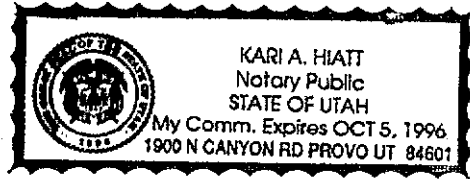
*Diana Sorensen*  
\_\_\_\_\_  
Diana Sorensen

ENT 41939 BK 3711 PG 50

STATE OF UTAH        )  
                              : ss.  
COUNTY OF UTAH    )

On the 19 day of June, 1995, personally appeared before me David A. Whetten and Zina P. Whetten, who being by me duly sworn, did say that they signed the within and foregoing instrument.

*Kari A. Hiatt*  
\_\_\_\_\_  
NOTARY PUBLIC



STATE OF UTAH        )  
                              : ss.  
COUNTY OF UTAH    )

On the 20 day of June, 1995, personally appeared before me Diana Sorensen (aka Diana Hooker) who, being by me duly sworn, did say that she signed the within and foregoing instrument.

*Kari A. Hiatt*  
\_\_\_\_\_  
NOTARY PUBLIC

