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NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
SUDWEEKS DEVELOPMENT  
9677 S 700 E #D  
SANDY UT 84070  
REC BY:V ASHBY DEPUTY - HI

**DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS OF  
ENCHANTED COVE, P.U.D.,  
A PLANNED UNIT DEVELOPMENT IN  
SALT LAKE COUNTY, UTAH**

This Declaration is made and executed this 27<sup>th</sup> day of December, 1996, by SUDWEEKS DEVELOPMENT, LLC, a Utah limited liability company, for itself, its successors, grantees and assigns (hereinafter referred to as "Developer").

**RECITALS**

- A. Developer is the record owner of that certain Property more particular described in Article II of this Declaration. Developer desires to create on said Property, a planned unit development.
- B. Developer desires to provide for preservation of the values and amenities in said development and for the maintenance of the Common Area. To this end, and for benefit of the Property and of the Owners thereof, Developer desires to subject the property described in Article II of this Declaration to the covenants, restrictions, easements, charges, and liens hereinafter set forth.
- C. Developer deems it desirable. For the efficient preservation of the values and amenities in the development, to create an entity which possesses the power to maintain and administer the Common Area, to collect and disburse the assessments and charges hereinafter provided, and otherwise to administer and enforce the provisions of this Declaration. For such purpose Developer has, in conjunction with recordation of this Declaration, caused to be incorporated under the laws of the State of Utah, as a nonprofit corporation, the ENCHANTED COVE, P.U.D, PROPERTY OWNERS ASSOCIATION.

NOW, THEREFORE, for the foregoing purposes, Developer declares that the Property described in Article II of this Declaration is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

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## I. DEFINITIONS

When used in this Declaration (including in that portion hereof headed "Recitals") the following terms shall have the meaning indicated.

- 1.1 Declaration shall mean this Declaration of Covenants, Conditions, and Restrictions.
- 1.2 Plat shall mean the subdivision plat covering the Property, entitled "ENCHANTED COVE, P.U.D" executed and acknowledged by Developer on the \_\_\_\_\_ day of \_\_\_\_\_, 1996, prepared and certified to be \_\_\_\_\_, (a duly registered Utah Land Surveyor holding Certificate No. \_\_\_\_\_) and filed for record in the office of the County Recorder of Salt Lake County, Utah, concurrently with the filing of this Declaration.
- 1.3 Property shall mean the entire tract of real property covered by the Plat, a description of which is set forth in Article II of this Declaration.
- 1.4 Lot shall mean any of the thirty-three (33) separately numbered and individually described parcels of land as shown on the plat.
- 1.5 Common Areas shall mean that part of the Property which is not included within the Lots, but including interior and incidental roadways, sidewalks, walkways, curbs, and landscaping within or adjacent to the Lots, together with all improvements other than utility lines which are now or hereafter constructed or located thereon except for utility lines.
- 1.6 Residential Unit shall mean a structure or portion of a structure which is designated and intended for residential use, together with all improvements located on such Lot which are used in conjunction with such Residential Unit.
- 1.7 Owner shall mean the person who is the owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided fee interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed, or trust, or like instrument, the term Owner shall not mean or include a mortgage or beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.
- 1.8 Association shall mean the ENCHANTED COVE, P.U.D. PROPERTY OWNERS ASSOCIATION, a Utah nonprofit corporation.
- 1.9 Member shall mean every person who holds membership in the Association.

## II. PROPERTY DESCRIPTION

The Property which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the following described real property situated in Salt Lake County, State of Utah:

Beginning at a point which is S0 deg. 07'00"W, 42.41 feet and East, 1322.94 feet from the West quarter corner of Section 5, Township 3 South, Range 1 East, Salt Lake Base and Meridian; and running thence S0 deg. 02'13"W, 92.45 feet; thence N16 deg. 06'37"E, 1.09 feet; thence N14 deg. 52'00"E, 82.33 feet; thence N18 deg. 17'00"E, 820.55 feet; thence N27 deg. 34'10"E, 18.27 feet; thence N89 deg. 48'20"W, 370.29 feet to the point of beginning.

Excluding all presently existing or to be constructed or installed sewer lines, water mains, gas lines, electrical conduits, telephone lines, related facilities to the extent they are located outside the Lots included within the above-described tract.

Reserving unto Developer, its employees, agents, and successors, however, such easements and rights of ingress and egress over, across, through, and under the above-described tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for the Developer, its employees, agents and successors (in a manner not inconsistent with the provisions of this Declaration) to engage in construction upon or to improve the Common Areas with such structures and facilities (including, but not limited to parking areas, sidewalks, parking area and sidewalk lighting, and various landscaped areas) designated for the use and enjoyment of all the Members as Developer may reasonably determine to be appropriate. If, pursuant to this reservation, the above-described tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservation hereby effected shall, unless sooner terminated in accordance with its terms, expire thirty (30) years after the date on which this Declaration is filed for record in office of the County Recorder of Salt Lake County, Utah

All of the foregoing is subject to all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; all instruments of record which affect the above-described tract or any of record which affect the above-described tract or any portion thereof,

including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; and all easements and rights-of-way of record.

### III. MEMBERSHIP AND VOTING RIGHTS

- 3.1 **Membership.** Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains. Neither the issuance nor the holding of shares of stock shall be necessary to evidence membership in the Association.
- 3.2 **Voting Rights.** The Association shall have the following described classes of voting membership:
- (a) **Class A.** Class A Members shall be all Owners other than the Developer until the Class B membership ceases, at which time the Developer shall become a Class A Member with respect to any Lot or Lots which the Developer may own at that time or from time to time. Class A Members shall be entitled to one (1) vote for each one hundred (100) square feet of ground space in each lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any one hundred (100) square feet of ground space in any Lot. No vote shall be allowed for ground space of less than one hundred (100) square feet in each lot.
  - (b) **Class B.** The Class B Member shall be the Developer. The Class B Member shall be entitled to six (6) votes for each one hundred (100) square feet of ground space in each Lot in which the Developer holds interest required for membership in the Association. The Class B membership shall automatically cease and be converted to a Class A membership on the first to occur of the following events:
    - (1) When the total number of votes held by all Class A Members equals the total number of votes held by the Class B Member.
    - (2) The expiration of thirty (30) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

#### IV. PROPERTY RIGHTS IN COMMON AREAS

- 4.1 **Easement of Enjoyment.** Each Member shall have a right and easement of use and enjoyment in and to the Common Area. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any tenant, lessee, or contract purchaser who does business on such Member's Lot.
- 4.2 **Transfer of Title.** Developer agrees that it shall, at or prior to the time the Class B membership is converted to Class A membership, convey to the Association title to the Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities, or for easements or rights-of-way reserved to the Developer or otherwise enforceable in law or equity).
- 4.3 **Limitation on Easement.** A Member's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:
- (a) The right of Salt Lake County and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, and providing any other governmental or municipal service; and
  - (b) The right of the Association to dedicated or transfer all or any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the vote of each class of membership in which Members are present in person or by proxy and are entitled to cast at a meeting duly called for the purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10), but not more than thirty (30), days prior to the meeting date.
  - (c) The right of the Developer, prior to conveyance of the Common Areas to the Association, and after said conveyance, the right of the Association to grant and reserve easements and right-of-way through, under, or over and across the Common Area, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, gas electricity, telephone and other utilities.

- 4.4 Utility Easement. The Developer for itself and its successors and assigns, including but not limited to the Association, hereby grants easements over, under, in, on and through the Common Area for the installation, construction, reconstruction, relocation, removal, maintenance, repair, operation and inspection of sewer, water, drainage, electric, gas and telephone facilities and wires, lines, cables, conduits, pipes and other necessary and proper attachments therewith, for the benefit of the Property or any part thereof, to the Developer, the Association and any federal, state or local authority, commission or agency having jurisdiction thereover and any corporation, be it public, quasi-public or private, supplying or servicing such facilities.
- 4.5 Overhang Easement. Each Owner shall have an easement over the Common Areas for any portion of any Commercial Unit which extends into the airspace over the Common Areas, provided the following conditions are met: (i) the "overhang" does not extend more than six (6) feet past the furthest extension of the boundary line between the Owner's Lot and the Common Areas and in no event interferes with use of the parking area or any interior roadway; and (ii) the "overhang" extends no lower than eight (8) feet above the ground.
- 4.6 Form of Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. \_\_\_\_\_ contained within the ENCHANTED COVE, P.U.D., as the same is identified in the Plat recorded in the office of the County Recorder of Salt Lake County, Utah, in Book \_\_\_\_\_ at Page \_\_\_\_\_ and in the "Declaration of Covenants, Conditions, and Restrictions of the ENCHANTED COVE, P.U.D." recorded in the office of the County Recorder of Salt Lake County, Utah in Book \_\_\_\_\_ at Page \_\_\_\_\_. TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Covenants, Conditions, and Restrictions.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

## V. ASSESSMENTS

- 5.1 Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association the monthly and the special assessments described in this Article, together with all other fines, penalties, interest and costs of collection as

described in this agreement. All such amounts shall be, constitute, and remain: (i) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (ii) the personal obligation of the person who is the Owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot for payment of assessments by waiver of this rights concerning the Common Areas or by abandonment of his Lot.

- 5.2 Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the commercial development of the Property. The use made by the Association of funds obtained from Assessments may include payment of the cost of: advertising for the common benefit of the Owners, taxes and insurance on the Common Areas; maintenance, repair, and improvements of the Common Areas; managements and supervision of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Commons Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles of Incorporation.
- 5.3 Maximum Monthly Assessment. As of the date set under Section 5.7, each Lot shall be subject to a monthly assessment of not more than one-thirty-third (1/33) of the yearly assessment rate of \_\_\_\_\_ (\$ \_\_\_\_\_) per square foot of ground space on each Lot. From and after January 1, 1997, the maximum monthly assessment may be increased or decreased so long as the change is assented to by sixty (60) percent of the votes of each class of membership which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10), but not more than thirty (30), days prior to the meeting date. The Board of Directors of the Association may from time to time and in its discretion set the amount of the monthly assessment at any sum not in excess of the then applicable maximum amount.
- 5.4 Special Assessments. From and after the date set under Section 5.7, the Association may levy special assessments for the purpose of defraying, in whole or in part: (i) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (ii) the cost of any construction, reconstruction, or unexpectedly required repair or replacement of any improvement or of personal property upon the Common Areas. Any such assessment must be assented to by fifty (50) percent of the votes of each class of membership which Members present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10), but not more than thirty (30), days prior to the meeting date.

- 5.5 **Quorum Requirements.** The quorum required for any action authorized by Section 5.3 or Section 5.4 above shall be as follows: At the first meeting called, the presence of Members or of proxies entitled to cast fifty (50) percent of all votes of each class of membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to notice requirements set forth in Section 5.3) at which a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.
- 5.6 **Uniform Rate of Assessment.** Both monthly and special assessments shall be fixed at a uniform rate. All costs except landscape maintenance shall be allocated among the Owners based on the square footage of living space. Landscape maintenance shall be allocated based on the square footage of each Lot. Any Owner may elect to exclude his fenced-in back and side yards from the computation of the square footage of his Lot by signing a written agreement in a form approved by the Association under which the Owner assumes full responsibility for maintenance of his back and side yards.
- 5.7 **Monthly Assessment Due Dates.** The monthly and special assessments provided herein shall commence as to all Lots on the first day of the second month following conveyance of the Common Areas to the Association. At least fifteen (15) days prior to such commencement date, and at least fifteen (15) days prior to the effective date of any change in amount of monthly assessment, the Association shall give each Owner written notice of the amount and first due date of the assessment concerned.
- 5.8 **Certificate Regarding Payment.** Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot, the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.
- 5.9 **Effect of Nonpayment — Remedies.** Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection, be, constitute and remain a continuing lien on the Lot. The person who is the Owner of the Lot at the time the assessment falls due shall be and remain personally liable for payment. Such personal liability shall not pass to the Owner's successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of ten (10) percent per annum, and the Association may bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot. Any judgment obtained



by the Association shall include reasonable attorney's fees, court costs, and each and every other expense incurred by the Association in enforcing its rights.

- 5.10 Exception for Developer. Notwithstanding, anything to the contrary contained in this Declaration, if at the time specified in Section 5.7 for the commencement of monthly assessments the Developer retains title to any Lot, the rate of all assessments made upon such Lot under the provisions of Section 5.3 shall be one-half (1/2) the amount specified therein and the rate of any assessment made upon such Lot under the provisions of Section 5.4 shall be one-half (1/2) of the amount charged to other Owners thereunder. The terms of this Section 5.10 shall continue in operation and effect as to any Lot retained by the Developer until either (i) the Developer sells, leases, or otherwise conveys any interest in such Lot or in any Commercial Unit erected thereon, or (ii) the expiration of one (1) year from the date upon which the Developer conveys the Common Areas to the Association, whichever shall first occur.

## VI. OPERATION AND MAINTENANCE

- 6.1 Responsibility to Rebuild or Repair. Because the physical condition of each Residential Unit effects the value of every other Residential Unit, the Owner of each Unit shall maintain its Residential Unit in such a manner that it shall have the continued capacity to be used as a Residential Unit, and thus benefit the other Residential Units. The Owner shall not cause or permit to occur any damage, loss or injury to the Owners of the benefitted Residential Units or their tenants by or as a result of any act of negligence or any willful, wanton or reckless act on its part or on the part of its tenant with respect to the flood, wind, snow or any other cause of whatever nature, the Owner shall cause the Residential Unit upon the Lot owned by him to be repaired or rebuilt. Such repair or rebuilding shall commence not later than ninety (90) days after the occurrence of the damage or destruction and shall be completed not later than one (1) year after such occurrence.
- 6.2 Liability for Physical Damage. Notwithstanding anything to the contrary contained in this Article VI, the Owner in the course of building, rebuilding, repairing, maintaining or otherwise working or causing work to be done upon his Lot shall be liable to the Owners of any adjacent Lots or to the Association with respect to the Common Areas for any physical damage to any other Lot or Residential Unit and for any physical damage to any Common Area. The Owner shall cause any such damage to be repaired and the Lot, Residential Unit or Common Area affected to be placed in the same state or condition that it was in prior to said damage. All such repairs shall be subjected to the approval of the Board of Directors of the Association.
- 6.3 Maintenance of Residential Units. Each Residential Unit shall be maintained by the

Owner thereof at his own cost and expense so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Residential Units. The Association shall have no obligation regarding maintenance or care of Residential Units.

- 6.4 Operation and Maintenance by Association. The Association shall provided for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Lots and to keep them clean, functional, attractive, and generally in good condition and repair. In addition, the Association shall provide for maintenance and upkeep of any portion of any Lot which lies between the extremities of the Residential Unit situated thereon and the boundaries of the Lot.
- 6.5 Liability of Owner During Construction. The Owner, in the course of building, shall not be liable to the Owners of adjacent Lots affected by such work for any inconvenience, annoyance, disturbance or loss of business to the Owner affected by the performance of such work (or his tenants) arising out of or during the performance of such work (unless occasioned by the negligence of the Owner of the improvement with respect to which the work in question was being performed or its agents); but the Owner of the Lot or Residential Unit with respect to which such work is being performed shall make all reasonable efforts to keep any such inconvenience, annoyance, disturbance, or loss of business to the minimum reasonably required by the work in question.

## VII. INSURANCE

The Association shall and at all time maintain the following insurance coverage:

- (i) A policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Common Areas. The name of the insured under each such policy shall be in form and substance similar to: "ENCHANTED COVE, P.U.D. Property Owners' Association for the use and benefit of the individual Lot Owners and mortgagees, as their interests may appear."
- (ii) A policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use, or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall be not less than \$1,000,000 for any one person injured, \$1,000,000 for all persons injured in any one accident, and \$100,000 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive

liability basis and shall provide a cross-liability endorsement pursuant to which the rights of the named insured as between themselves are not prejudiced.

- (iii) A policy of workmens compensation insurance which meets the requirements of the law; provided, however, that such insurance coverage shall not be required unless the Association hires an employee or employees.
- (iv) A policy of fidelity insurance covering those employees hired by the Association to handle Association funds, in amounts as determined by the Board of Directors of the Association.

The following provisions shall apply with respect to insurance:

- (a) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature and use.
- (b) All policies shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a financial rating by Best's Insurance Reports of Class X or better.
- (c) The Association shall have the authority to adjust losses.
- (d) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgagees.
- (e) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: (i) A waiver of the insurer's subrogation rights with respect to the Association, the Owners, and their respective directors, officers, agents, employees invitees, and tenants; (ii) That it cannot be canceled, suspended, or invalidated due to the conduct of any particular Owner or Owners; (iii) That it cannot be canceled, suspended, or invalidated due to the conduct of the Association or of any director, officer, agent, or employee of the Association without a prior written demand that the defect be cured; and (iv) That any "no other

insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

In addition to coverage obtained by the Association, Owners of individual Lots shall obtain policies of fire and casualty insurance and a policy or policies covering their agents and employees against liability to the ownership of their separate lots and improvements thereon. These policies shall contain all the provisions set forth above where possible.

## VIII. USE RESTRICTIONS

- 8.1 Use of Lots and Residential Units. The Common Areas shall be used only in a manner consistent with the planned unit residential concept and with the use restrictions applicable to Lots and Residential Units.
- 8.2 Use of Lots and Residential Units. All Lots are intended to be improved with Residential Units and are restricted to such use. No Lot or Residential Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Residential Unit, so as to create a nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of any insurance covering the Common Areas.
- 8.3 Non-harmonious Use. No use or operation will be made, conducted or permitted on any Lot, or any portion of a Lot, which is obnoxious to or out of harmony with the residential use of all property in the ENCHANTED COVE, P.U.D. Prohibited activities include, but are not limited to, the following: any public or private nuisance; any noise or sound that is objectionable due to its intermittent character, beat, frequency, shrillness or loudness; any obnoxious odor; any noxious, toxic, caustic or corrosive fuel or gas; any dust, dirt or fly ash in excessive quantities; any unusual fire explosion or other damaging or dangerous hazards; any assembly, manufacturing or distillation operation; and the raising of animals except as generally permitted in residential developments in Salt Lake County, Utah.
- 8.4 Recreational Vehicles. No snow mobiles, recreational equipment, trailer, camper, boat or truck larger than three-quarter (3/4) ton or any other similar equipment shall be permitted to remain upon any Lot, or any portion of a Lot, for more than a 24-hour period unless written approval is granted by the Association. The Association may levy a fine for any violation of this paragraph 8.4 up to Fifty Dollars (\$50) for each day the violation continues.
- 8.5 On-Street Parking. On-street parking is intended for temporary visitors only. No motor vehicle, boat, recreational equipment, or any similar item may be parked, stored or left on or next to the streets in and around Property for more than a six

(6) hour period unless written approval is granted by the Association. The Association may levy a fine for any violation of this paragraph 8.5 of up to Fifty Dollars (\$50) for each day the violation continues.

- 8.6 **Garages Required.** Each home within the Enchanted Cove PUD shall have at minimum one, two-car garage.
- 8.7 **Use of Garage.** Any garage constructed on a Lot is intended for the parking of motor vehicles. Although incidental storage in a garage used for the parking of motor vehicles is permitted, no garage may be used for storage to such an extent or in such a manner that the storage prohibits or otherwise interferes with its primary use in the parking of motor vehicles. The Association may from time to time prescribe detailed rules regarding the use of garage space for storage. The Association may levy a fine for any violation of this paragraph 8.6 or the rules issued by the Association of up to Fifty Dollars (\$50) for each day the violation continues.
- 8.8 **Height Limitation.** No dwelling shall exceed the height limitation for the R-1-8 Zone of Sandy City as specified at the time of recordation of the Enchanted Cove final plat.
- 8.9 **Dwelling Size.** The minimum dwelling sizes shall be as follows: 1,000 sq. ft. of finished floor area for ramblers and 1,500 sq. ft. of finished floor area for multi-level and two-story homes.
- 8.10 **Landscaping.** Fully landscaped yards shall be installed prior to occupancy of each home. For homes completed during winter months, a landscape bond shall be posted with Sandy City prior to occupancy to assure landscape completion. Each home shall include two trees in the front yard. Deciduous trees shall be at least 1 ½ inches in caliper and coniferous trees shall be a minimum height of five (5) to six (6) feet.
- 8.11 **Fencing.** Fencing of individual lots shall be restricted to the rear yard only. Fencing within side yard space as defined by Sandy City Zoning Regulations shall be prohibited. Fencing material shall be white vinyl, 20-year no maintenance and shall be solid with lattice atop, six-feet in total height.
- 8.12 **Temporary Structures and Equipment.** No structure of a temporary type, character, trailer, basement, tent, shack, garage, barn or other out building shall be used on any Lot at any time as a Residential Unit, either temporarily or permanently unless approved in writing by the Association. No trailer, camper, boat, truck larger than three-quarters (3/4) ton, or similar equipment shall be permitted to remain upon any Lot, unless written approval is given by the

Association; provided, however, that this sentence shall not apply to any Lot during the construction of a Residential Unit thereon, except as to any camper or boat.

- 8.13 Electronic Antennas. No television, radio, or other electronic antenna shall be erected, constructed, placed or permitted to remain on any lot of the Lots unless and until the same shall have been approved in writing by the Association; provided, however, that the approval shall not be withheld unreasonably.
- 8.14 Walkway to LDS Church. A pedestrian walkway shall be installed as part of the overall subdivision improvements.
- 8.15 Exception for Developer. Notwithstanding the restrictions contained in this Article VIII, of the five (5) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, Developer shall have the right to use any Residential Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvements of the Common Areas or improvement and/or sale of all Lots owned by Developer.

#### IX. ARCHITECTURAL CONTROL

- 9.1 Architectural Control Committee. The Board of Directors of the Association shall serve as the Architectural Control Committee, the function of which shall be to insure that all improvements and landscaping within the Property harmonize with existing surroundings and structures.
- 9.2 Submission to the Committee. No Residential Unit, accessory structure or addition to a Residential Unit, landscaping, sign or other improvement of a Lot shall be constructed or maintained, and no alteration, repairing, or refurbishing of the exterior of any Residential Unit shall be performed, unless complete plans and specifications thereof have first been submitted to and approved by the Architectural Control Committee, whose judgement shall be final in all cases.
- 9.3 Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all improvements, construction, landscaping, and alterations of Lots within the Property conform to and harmonize with existing surroundings and structures.
- 9.4 Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the Committee fails to take any action within such period,

it shall be deemed to have approved that material submitted.

- 9.5 **Building Materials.** All Residential Units shall have masonry front elevations. Masonry shall consist of brick, stone, or stucco in any combination so as to comprise the building material for the complete front elevation. Side and rear elevations shall be masonry or vinyl siding.
- 9.6 **No liability for Damages.** The Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article IX.
- 9.6 **Exception for Developer.** The foregoing provisions of this Article X shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Developer on any Lot or on any part of the Common Areas and which occurs at any time during the twenty (20) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

#### X. MISCELLANEOUS

- 10.1 **Notices.** Any notice required or permitted to be given to any Owner or Member under the provisions of this Declaration shall be deemed to have been properly furnished if mailed, postage prepaid, to the person who appears as a Member or Owner, at the latest address for such person appearing, in the records of the Association at the time of mailing.
- 10.2 **Rules and Regulations.** The Association shall have authority to promulgate and enforce such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interests of the Owners.
- 10.3 **Amendment.** Any amendment to this Declaration shall require: (i) the affirmative vote of at least two-thirds (2/3) of all Class A membership votes which members present in person or represented by proxy are entitled to cast at a meeting called for such purpose; and, so long as the Class B membership exists, (ii) the written consent of Developer. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all members at least ten (10), but not more than thirty (30), days prior to the meeting date. The quorum required for any such meeting shall be as follows: At the first meeting called, the presence of Members or of proxies or of proxies entitled to cast fifty (50) percent of all the votes of the Class A membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may

be called (subject to the notice requirements set forth in the foregoing portion of this Section 10.3) at which a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the Association (and by the Developer if the Class B membership then exists).

10.4 Consent in Lieu of Vote. In any case in which this Declaration required for authorization or approval of a transaction, the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the Class of membership concerned.

10.5 Mortgage Protection. In the event an Owner neglects for a period of thirty (30) or more days to cure any failure on his part to perform any of his obligations under this Declaration, the Association shall give written notice of such fact to the holder of any first mortgage (or trust deed) covering such Owner's Lot.

The lien for unpaid assessments provided for under Article V shall be subordinate to any first mortgage (or trust deed) affecting a Lot, but only to the extent of assessments which become due prior to foreclosure of the mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure.

Unless all holders of first mortgages (or trust deeds) on the individual Lots have given their prior written approval, neither the Association nor any other party shall be entitled to:

- (a) Alter the provisions of Section 5.0 (pertaining to uniform rate of assessment);
- (b) Partition or subdivide any Lot or the Common Area or dedicate or transfer (pursuant to Section 4.3(c)) all or any part of the Common Areas; or
- (c) By act or omission seek to abandon or materially alter the arrangement which is established by this Declaration.

10.6 Developer's Right Assignable. The rights of Developer under this Declaration or in any way relating to the Property may be assigned.

10.7 Interpretation. The captions which precede the Articles and Sections of this



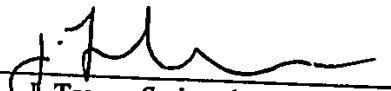
Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof. This Declaration shall be liberally constructed to effect all of its purposes.

- 10.8 Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Developer, all parties who hereafter acquire any interest in a Lot or in the Common Areas, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Residential Unit shall comply with, and all interests in provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.
- 10.9 Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

EXECUTED the day and year first above written.

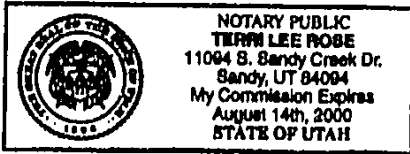
"DEVELOPER"  
SUDWEEKS DEVELOPMENT, LLC

By:

  
J. Trevor Sudweeks  
Managing Member

STATE OF UTAH )  
 )  
:SS  
COUNTY OF SALT LAKE )

On this 27<sup>th</sup> day of December, 1996, personally appeared before me, J. TREVOR SUDWEEKS, who having been first duly sworn, deposed and said that he is the managing member of SUDWEEKS DEVELOPMENT, LLC and has executed the foregoing document on behalf of said limited liability company.



Terri Lee Rose  
NOTARY PUBLIC

Residing at: Sandy Utah  
Salt Lake County

My Commission Expires: Aug. 14, 2000