

12-462 + 10-6

DECLARATION OF PROTECTIVE COVENANTS
FOR
CHERRY VILLAGE PHASE I

WHEREAS, BENCHMARK REAL ESTATE COMPANY, is the owner and possessor of the following described property situated in Davis County, Utah.

And it is Benchmarks desire and intent to place certain restrictions on the lots included within said subdivision, to insure a uniform development therein and to enhance the future value thereof.

NOW, THEREFORE, we do hereby state and declare that all of said lots in said subdivision shall be henceforth conveyed subject to the following:

1. **LAND USE AND BUILDING TYPE.** No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling not to exceed two stories in height and private garage for not less than 2 nor more than 3 cars. The Architectural Control Committee may, however, permit one or more of the lots to be used for school or church purposes or to be used for recreational facilities for the benefit of the owners of some or all of the other lots described above. Any prefabricated, modular or preconstructed buildings of any type must be approved in advance by the Architectural Control Committee.

2. **ARCHITECTURAL CONTROL.** No building shall be erected, placed or altered on any lot until the construction plans and specifications and site plans showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures and as to locations with respect to topography and finished grade elevation and to meet Syracuse City requirements. No structure of any kind shall be moved from any other prior residence upon said premises, nor shall any incomplete building be permitted to remain incomplete for a period in excess of one year from the date the building was started, unless approved by the Architectural Control Committee. No fence shall be erected or wall shall be erected, placed or altered on any lot nearer to any street than the minimum set back line of the REAR of the home unless similarly approved. All fences are to be continually maintained and built so as to be attractive in appearance and not detract from the quality of the neighborhood. All exterior fencing will be constructed of white vinyl. Any remodeling or addition must meet these same covenants and be built with the same exterior material as the primary structure.

The Architectural Control Committee is composed of BRENT A. NELSON, MICHAEL E. NELSON AND SUSAN S. NELSON. A majority of the committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor. Neither the members of the committee, nor its designated representative, shall be entitled to any compensation for services performed pursuant to this covenants. At any time, the then recorded owners of a majority of the lots shall have the power through a duly recorded written instrument to change the membership of the committee or restore to it any of its power and duties.

Any lot owner may apply for a variance to covenants by submitting in writing to the Architectural Committee any necessary changes. The Committee's approval or disapproval of any plans or variance to any of the covenants as required in these covenants, shall be in writing. In the event the Committee, or its designated representative, fails to approve or disapprove within 30 days after plans and specification have been submitted to it,

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or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and related covenants shall be deemed to have been duly complied with. It is understood that all plans submitted to the Committee become the property of the Committee and may not be returned to the home owner.

3. **BUILDING QUALITY AND SIZE.** No dwelling shall be permitted on any lot at a cost of less than \$140,000.00 plus lot, based upon the cost levels prevailing on the date of these covenants, it being the intention and purpose of the covenants to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date these covenants are recorded at the minimum costs stated herein for the minimum permitted dwelling size.

The following minimum FINISHED square foot living area requirements shall apply.

- A. One story dwellings (Ramblers): The finished main floor area of the main structure shall be no less than 1400 square feet, exclusive of porches and garages.
- B. Two story dwellings: The combined finished floor area above the curb level shall not be less than 1800 square feet, exclusive of porches and garages.
- C. Multi level buildings: The combined finished floor areas above curb level shall not be less than 1750 square feet, exclusive of porches and garages.
- D. Split entry dwellings: The combined area of the two levels above ground shall not be less than 2000 square feet with the finished main floor area (including kitchen, living room and bedrooms) no less than 1400 square feet, exclusive of porches and garages.

THE EXTERIOR shall be primarily brick or stucco or stone or a combination of these materials with aluminum siding being limited to soffit and fascia and gable ends. Other exterior materials may be used upon written approval of the Architectural Control Committee. **In any event, all exterior designs must be approved by the Committee before construction begins.** All roofing will be of 25 year asphalt multilevel, tile or shake shingles. Other roofing materials must be approved in advance by the Architectural Control Committee. Any detached garages must be constructed with the same external building materials as the primary residence.

4. **SET BACKS.** No building shall be located on any lot nearer than 30 feet to the front lot line, or nearer than 20 feet to any side street line. The minimum distance for the main building to the rear lot line shall be 30 feet. The minimum distance from any side lot line shall be 10 feet. For the purpose of this covenant, eaves, steps and open porches shall not be considered as a part of the building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot. A detached garage or other permitted accessory building may be located next to a side lot line in accordance with the Syracuse City Zoning Ordinance.

5. **EASEMENTS.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting of other material shall be placed or permitted to remain which may damage or interfere with the installation and

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maintenance of utilities or which may change the direction of flow of 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 for which a public authority or utility company is responsible.

6. **CURB AND GUTTERS.** Buyer hereby warrants that they have reviewed the curb and gutter and side walks that abut to and are part of the lots being purchased and accept the curb, gutters and sidewalks in their current condition. Buyers also warrant the curb, gutter and sidewalk to be free from defects to Syracuse City for a period of two years from the date of closing of the purchase of said lot (s).
7. **SUB SURFACE DRAINS.** Sub Surface Drain lines have been installed to each lot for the purpose of helping to protect the home owners against possible ground moisture. All homes shall install subsurface drains around the footing of their home and tie said drains into the existing subsurface drain located in the street adjacent to the lot. Maintenance of the sub surface laterals will be the sole responsibility of the home owners.
8. **NUISANCES.** No noxious or offensive activity or noise shall be carried on upon any lot, or shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No clothes line, outbuildings or storage of any articles which are unsightly in the opinion of the Canterbury Crossing Architectural Control Committee will be permitted unless it is in an enclosed area built and designed for such purposes. No automobiles, trailers, motor homes, recreational vehicles, boats or other vehicles are to be stored on the streets. Nor shall such vehicles be stored on front or side or rear of the lots unless they are in running condition, properly licensed, and are being regularly used.
9. **TEMPORARY STRUCTURES.** No structure of a temporary character, trailer, basement home, tent, shack, garage, barn, or other out building shall be used on any lot at any time as a residence, either temporarily or permanently.
10. **GARAGE AND REFUSE DISPOSAL.** No lot shall be used as or maintained as a dumping ground for rubbish, trash, garbage or other waste and such materials shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No trash, refuse or construction debris may be burned on any lot at any time, neither in an incinerator nor open fire. Each lot and its abutting street is to be kept free of trash, weeds and other refuse buy the lot owner. No unsightly material or objects are to be stored on any lot in view of the general public. No lot owner or home owner will place grass clippings, yard clippings or other debris on any vacant lots within the project.
11. **ANIMALS.** No livestock, Poultry, or animals, other than dogs, cats or other house-hold pets may be kept on the premises as permissible within current zoning regulations. A total of two dogs and/or cats are permissible provided that they are not kept, bred or maintained for any commercial purposes and are restricted to the owners premises and under handlers control. Leashes will be required at all times on dogs outside fenced areas and dog manure retained on the owners own premises.
12. **LANDSCAPING.** Each lot is to be landscaped within 18 months of its initial purchase or within 12 months of the occupancy date or completion of any structure built upon said lot. Landscaping of lots shall be considered complete when the first 30' of the lot is planted with grass and maintained, and the remainder of the lot is cultivated or planted and kept free of weeds and debris.

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The parking strip between the curb and sidewalk shall also be landscaped with grass, trees, or shrubs within the above mentioned time frame. Trees, lawns, shrubs and other planting provided by the owner either before or after construction of a dwelling unit upon said lot shall be properly nurtured and maintained or replaced at the owners expense.

13. **SIGNAGE.** No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, or signs used by the builder to advertise the property during the construction and sales period.
14. **MINERAL RIGHTS.** No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.
15. **FENCING.** No fence, wall, hedge, or shrub 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 lines connecting them at points 25 feet from the intersection of the street property lines 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 or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. All fencing and its location must be approved in advance by the Architectural Control Committee.
16. **ROOFTOP ANTENNA.** No television, ham radio, citizens band or radio antenna or other similar electronic receiving or sending device shall be permitted upon the rooftop or side of any home or elsewhere if exposed to the view from any other lot, unless approved by the Architectural Control Committee. In no case will any such device be allowed to interfere with the peace and quiet enjoyment of any neighboring lot owner's premises or home entertainment facilities or equipment.
17. **TERM OF RESTRICTIONS.** These covenants are to run with the land and shall be binding on all persons and parties claiming under them for a period of thirty years from the date these covenants are recorded, after which time said covenants are to be automatically extended for successive periods of ten years unless an instrument signed by a majority of the owners of the lots has been recorded changing said covenants in whole or in part.
18. **ENFORCEMENT.** Enforcement shall be proceedings at law or in equity against any person or persons violation or attempting to violate any covenant either to restrain violation or to recover damage.
19. **SEVERABILITY.** Invalidation of any one of these covenants by judgement or court order shall in no way effect any of the other provisions which shall remain in full force and effect.
20. **RELEASE.** Purchaser hereby agrees to accept the lot in its current condition and releases the seller from any and all claims, actions, demands, rights, damages, losses, costs, expenses, or liabilities, known or unknown, which arise out of or in connection with the environmental condition of the property. The term "Environmental Condition" shall mean any condition with respect to the property which could or does result in any damage, loss, cost, expense, or liability to or against the owner of the property by any third party (including, without limitation, any governmental entity).

Dated this 14th Day of February, 2002

Brent A. Nelson
BENCHMARK REAL ESTATE COMPANY

STATE OF UTAH)
 SS.
COUNTY OF DAVIS)

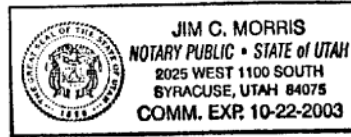
On the 14TH day of FEBRUARY, 2002, Personally appeared before me BRENT A. NELSON, known to be the PRESIDENT of BENCHMARK REAL ESTATE COMPANY, authorized agent for the corporation that executed the within and foregoing instrument and acknowledged the instrument to be the free and voluntary act and deed of the corporation, by authority of its bylaws or by resolution of its Board of Directors, for the uses and purposes therein mentioned and on oath states that he was authorized to execute the instrument and that the seal affixed is the corporate seal of the corporation.

Jim C. Morris

NOTARY PUBLIC

Commission Expires: 10-22-03

Residing at: DAVIS COUNTY



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ALL OF LOTS 1 THROUGH 28 CHERRY VILLAGE SUBDIVISION NO 1, according to the official plat thereof, recorded in the office of the County Recorder of Davis County.