

WHEN RECORDED, MAIL TO:

Gold Homes Construction Inc.
490 W 6500 S
MURKIN UTAH 84107

DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
QUAIL MEADOWS TOWNHOMES
A PLANNED UNIT DEVELOPMENT SUBDIVISION
SUMMIT COUNTY, UTAH

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ALAN SPRIGGS, SUMMIT COUNTY RECORDER
1996 SEP 24 08:58 AM FEE \$44.00 BY DMG
REQUEST: THE SUMMIT DEVELOPMENT INC

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**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
QUAIL MEADOWS TOWNHOMES,
A PLANNED UNIT DEVELOPMENT SUBDIVISION
SUMMIT COUNTY, UTAH**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND RESERVATION OF EASEMENTS ("Declaration"), is made on this 23rd day of September 1996, by JOHN HOLMES CONSTRUCTION, INC., a Utah corporation ("Declarant"), with reference to the following facts:

A. Declarant is the owner of a certain tract of land located in Summit County, Utah, which property is more particularly described as follows:

See attached Exhibit "A"

For purposes of development and marketing, the above-described property is divided into two phases or, Phases 3 & 4, the legal descriptions for which are set forth on Exhibit "A". In this Declaration, the term "Property" shall refer to both Phases 3 & 4.

B. Declarant has improved or intends to improve the Property by construction thereon of certain residential improvements and facilities, and to establish thereon a planned unit development subdivision, to be managed, operated, and maintained by an Association of Owners, for the benefit of all parts of the Property.

C. The development shall be hereinafter referred to as the "Project". The Owner of each Unit shall receive fee title to his individual Lot and the residential Dwelling thereon, together with all rights associated with membership in THE QUAIL MEADOWS TOWNHOMES OWNERS ASSOCIATION.

D. Declarant intends by this document to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all of the said Units and the Owners thereof.

E. Declarant hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions, and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and the Project, and every part thereof, in accordance with the plan for the improvement, sale, and operation of the Property as a planned unit development. All of the limitations, covenants, conditions, restrictions, and easements shall constitute covenants and encumbrances which shall run with the land and shall be perpetually binding upon Declarant and its successors-in-interest and assigns, and all parties having or acquiring any right, title, or interest in or to any part of the Property or the Project.

ARTICLE 1
DEFINITIONS

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Unless otherwise expressly provided, the following words and phrases, when used in this Declaration and in the Project Documents, shall have the following meanings:

1.1 Assessment: that portion of the cost of maintaining, improving, repairing, operating, and managing the Property which is to be paid by the Unit Owners as determined by the Association under this Declaration. Assessments may be designated as Regular Assessments, Extraordinary Assessments, or Special Assessments, as those terms are more specifically defined in Article 6 of this Declaration.

1.2 Association: THE QUAIL MEADOWS TOWNHOMES OWNERS ASSOCIATION, INC., a Utah nonprofit corporation, formed or to be formed by Declarant in conjunction with the establishment of the planned unit development subdivision, the members of which shall be the Owners of Units in the Project.

1.3 Board or Board of Trustees: the governing body of the Association.

1.4 Bylaws: the Bylaws of the Association as amended from time to time. The initial Bylaws shall be as adopted by the incorporating members of the Board of Trustees.

1.5 Common Area: all the real property and improvements located within the Property, other than the Lots and Dwellings, as depicted on the Plat Map, including without limitation, all landscaped areas, all of which shall be owned by the Association for the common use and enjoyment of all Owners. The Common Area is designated as such on the Plat Map, as defined below.

1.6 Common Expenses: the actual and estimated expenses of maintenance, improvement, repair, operation, insurance, and management of the Common Area, and of the exterior and structural components of the Dwellings, expenses of administration of the Association, and any reasonable reserve for such purposes as determined by the Board, and all sums designated Common Expenses by or pursuant to the Project Documents. Without limiting the generality of the foregoing, Common Expenses shall also include: all commonly metered utility charges for the Property; the costs of trash collection and removal; compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all maintenance, gardening, security and other services benefitting the Common Area; the costs of fire insurance, errors and omissions and director, officer and agent liability insurance, and other insurance covering the Property and the directors, officers and agents of the Association; and any other costs incurred by the Association pursuant to its authority for any reason whatsoever, for the common benefit of the Owners.

1.7 Common Wall: any wall which is common to and separates any two attached Dwellings.

1.8 Declarant: JOHN HOLMES CONSTRUCTION, INC., a Utah corporation, and its successors-in-interest and assigns with respect to the Property, but shall not include members of the public purchasing completed Units.

1.9 Declaration: this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements, as it may be amended from time to time.

1.10 Dwelling: that portion of any building (including the garage, balcony and/or patio, and other improvement) which is located on a single Lot or building pad, as shown on the Plat Map, and which is designed and intended for use and occupancy as a residence by a single-family unit.

1.11 Lot: any residential Lot or building pad shown upon the recorded Plat Map of the Project, created for the construction of a private Dwelling. The term "Lot" does not include any portion of the Common Area.

1.12 Member: a person entitled to membership in the Association as provided herein.

1.13 Mortgage: includes a recorded mortgagee, deed of trust, real estate contract, or other instrument creating a security interest in any Unit.

1.14 Mortgagee: includes a mortgagee, beneficiary or holder of a deed of trust, real estate contract vendor, or other holder of a mortgage on any Unit.

1.15 Mortgagor: includes a mortgagor, the trustor of a deed of trust, real estate contract vendee or other individual granting a security interest in any Unit.

1.16 Owner or Owners: the record holder or holders of title to or a contract vendee's interest in a Unit in the Project. This shall include any person having a fee simple title to any Unit, but shall exclude persons or entities having

any interest merely as security for the performance of any obligation. Further, if a Unit is sold under a recorded contract of sale to a purchaser, the purchaser, rather than the fee owner, shall be considered the "Owner", and the fee owner would be considered as a mortgagee.

1.17 Person: any natural person, corporation, partnership, association, trustee, or other legal entity.

1.18 Plat Map: the recorded map or maps prepared by or for Declarant showing the surface of the Property and the division thereof into Lots and Common Area, as amended and/or supplemented from time to time.

1.19 Project Documents: this Declaration, the Plat Map, and the Articles and Bylaws of the Association, as each shall be amended from time to time.

1.20 Property or Project (synonymous): the real property covered by this Declaration, all easements, rights and appurtenances belonging thereto, and all improvements erected or to be erected thereon.

1.21 Unit: all elements of individual ownership of a residential interest in the Project, including ownership of a Lot and Dwelling thereon, nonexclusive use of the remainder of the Common Area, and all rights of membership in the association.

ARTICLE 2
ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND
VOTING RIGHTS

2.1 Organization of Association. The Association is or shall be incorporated under the name of THE QUAIL MEADOWS TOWNHOMES OWNERS ASSOCIATION INC., in accordance with the requirements of the Utah Non-Profit Corporation and Co-operative Association Act.

2.2 Duties and Powers. The duties and powers of the Association are those set forth in this Declaration, the Articles and Bylaws, together with its general and implied powers of a nonprofit corporation, generally to do any and all things that a corporation organized under the laws of the State of Utah may lawfully do which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in this Declaration, the Articles and Bylaws.

2.3 Membership. The Owner of a Unit shall automatically, upon becoming the Owner of that Unit, be a Member of the Association, and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership shall be in accordance with the Articles and Bylaws of the Association.

2.4 Transferred Membership. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Unit to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in his name to the purchaser of his Unit, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

2.5 Classes of Membership, Voting Requirements. The Association shall have two (2) classes of voting membership established according to the Articles. Voting rights shall be as set forth in the Bylaws.

2.6 Membership Meetings Regular and special meetings of Members of the Association shall be held with the frequency, at the time and place, and in accordance with the provisions of the Bylaws of the Association.

2.7 Board of Trustees The affairs of the Association shall be managed by a Board of Trustees, which shall be established and which shall conduct regular and special meetings according to the provisions of the Bylaws of the

Association.

2.8 Use of Agent The Board of Trustees, on behalf of the Association, may contract with a professional management agent for the performance of maintenance and repair and for conducting other activities on behalf of the Association, as may be determined by the Board. The term of any such contract shall comply with the restrictions set forth in the Bylaws.

ARTICLE 3 RIGHTS IN COMMON AREA

3.1 Common Area The Common Area shall include all real property and improvements within the Property, other than the Lots and Dwellings, as are depicted on the recorded Plat Map, including without limitation, all landscaped areas within the Property, all of which shall be owned by the Association for the common use and enjoyment of all Owners. The Common Area shall be operated, maintained, and insured by the Association for the use and benefit of Owners of Units in the Project, subject to reasonable rules and regulations enacted according to the Bylaws. Each Unit Owner, through membership in the Association, shall have a nonexclusive right to use the Common Area in accordance with the purposes for which it is intended without hindering the exercise of or encroaching upon the lawful rights of any other Unit Owners. The Declarant hereby reserves in itself and its successors-in-interest and assigns, an easement (and the right to grant further easements) over and onto the Common Area for ingress to and egress from the Project for the purpose of necessary construction, maintenance, or repair work in connection with the development, use, and occupancy of the Project.

3.2 Partition of Common Area Prohibited Regardless of the possible dissolution of the Association and the conveyance of fee title to the Common Area to the Owners as tenants in common pursuant thereto, no Owner shall bring any action for partition or division of any part of the Common Area, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation, management, use, and enjoyment of the Common Area.

3.3 Extent of Easements The rights and easements of use and enjoyment of the Common Area created by this Declaration shall be subject to such rules and regulations as may be adopted by the Board of Trustees according to the Bylaws. Without limiting the generality of the Board's authority to enact reasonable rules and regulations, such easements shall be subject to the following:

3.3.1 The right of the Board to suspend the rights and easement of any Member, and the persons deriving such rights and easements from any Member, for use and enjoyment of any recreational facilities located within the Common Area, for any period during which the payment of any Assessment against the Member and his Unit remains delinquent; provided, however, that any suspension for either nonpayment of any assessment or breach of any provision in the Project Documents shall not constitute a waiver or discharge of the Member's obligation to pay Assessments as provided in this Declaration;

3.3.2 The right of the Association to consent to or otherwise cause the construction of additional improvements on the Common Area and to consent to or otherwise cause the alteration or removal or any existing improvements on the Common Area for the benefit of the Members of the Association; and,

3.3.3 The right of the Association, acting through the Board, to consent to or join in the grant or conveyance of easements, licenses or rights of way in, on or over the Common Area for purposes not inconsistent with the intended use of the Property as a residential planned unit development.

3.4 Damage by Member Each Member shall be liable to the Association for any damage to the Common Area not fully reimbursed to the Association by insurance, if the damage is sustained because of the negligence or willful misconduct of the Member, his guests, tenants, or invitees, or any other persons deriving their right and easement of use and enjoyment of the Common Area from the Member, or his or their respective family and guests, both minor and adult. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserves the right to levy a Special Assessment

equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Member or the person for whom the Member may be liable as described above. The cost of correcting the damage to the extent not reimbursed to the Association by insurance shall be a Special Assessment against the Unit and may be enforced as provided hereby for the enforcement of any other Assessment.

ARTICLE 4 REPAIR AND MAINTENANCE

4.1 Repair and Maintenance Rights and Duties of Association. Subject to provisions in this Declaration pertaining to eminent domain and destruction of improvements, the Association shall paint, maintain, repair and replace the Common Area and all improvements and landscaping thereon, and the exteriors and structural components of all Dwellings, or shall contract for such maintenance, repair and replacement to assure maintenance of such areas are in good condition, reasonable wear and tear excepted. By way of example and not of limitation, and in an effort to economize such repairs and maintenance, the Association may consider painting, or other repair work which is common to all the exteriors and/or structural components of the Dwellings, all the exteriors of all of the Dwellings where it appears to the Association that one or two of the Dwelling exteriors is in need of such painting or other common repair work. However, the Association shall not be responsible for, or obligated to perform those items of maintenance, repair or improvement which are the responsibility of the Owners as provided in Paragraph 4.2 below. However, in the event an Owner fails to maintain his Dwelling or to provide other maintenance or repair as provided herein in a manner which the Board deems necessary to preserve the appearance and value of the Property, the Board may notify the Owner of the work required and request it be done within sixty (60) days from the giving of such notice. In the event the Owner fails to carry out such maintenance within such period, the Board may cause such work to be done and may specially assess the cost thereof to such Owner, and, if necessary, lien his Unit for the amount thereof.

For the purpose of performing any maintenance, repair or replacement as authorized by this Article, or for purposes of making emergency repairs necessary to prevent damage to the Common Area or to other Dwellings, or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association (and its agents and employees) shall have an irrevocable easement over and onto all portions of the Common Area, and shall also have the irrevocable right, after reasonable notice to the Owner, and at reasonable hours, to enter any Lot and/or Dwelling.

4.2 Repair and Maintenance Rights and Duties of Owners Except for those portions of the Property which the Association is required or elects to maintain and repair, as set forth above, each Unit Owner shall, at his sole cost and expense, maintain and repair all interior and non-structural components of his Dwelling, keeping the same in good condition, and shall repair all damage to the Common Area for which the Owner is responsible under Paragraph 3.4 above. Additionally, each Owner shall maintain, repair and replace as necessary, all doors and windows (and appurtenant hardware and accessories) to his Dwelling, and any separate air conditioning, water heating, or other separate utility unit which services his Dwelling. Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his Dwelling.

ARTICLE 5 ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

5.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Unit owned within the Project hereby covenants, and each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following Assessments, which shall be established and collected as provided herein and in the Bylaws of the Association:

- 5.1.1 Regular Assessments;
- 5.1.2 Extraordinary Assessments; and

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5.1.3 Special Assessments.

All Assessments, together with interest, costs, penalties, and actual attorneys' fees, shall be a charge and a continuing lien upon the Unit against which each Assessment is made. Each such Assessment, together with interest, costs, penalties, and actual attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the Assessment fell due. No Owner of a Unit may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by the abandonment of his Unit.

5.2 Purpose of Assessment. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the entire Project, for the improvement and maintenance of the Common Area, including the exteriors and structural components of all Dwellings, and for the common good of the Project. The Regular Assessments shall include an adequate reserve fund for maintenance, repairs and replacement of those portions of the Common Area and the exterior and structural components of all Dwellings which must be maintained, repaired and replaced on a periodic basis, creation of an adequate contingency reserve, major maintenance reserve, and/or sinking fund for maintenance and repairs of all Common Areas, including the exteriors and structural components of all Dwellings, located within the Project as shown on the official Plat Map recorded in the office of the Summit County Recorder.

5.3 Regular Assessments. Until the end of the Association's fiscal year immediately following the closing of the sale of the first Unit in the Project, the annual maximum Regular Assessment per Unit shall be such amount as is set forth in the Project budget prepared by Declarant, payable in quarterly installments, or such other billing period as the Board determines from time to time. Each Unit's share for the first fiscal year shall also be prorated based on the number of months remaining in that fiscal year. Thereafter, the Board shall determine and fix the amount of the maximum annual Regular Assessment against each Unit at least sixty (60) days in advance of the start of each fiscal year; provided, however, that the maximum annual Regular Assessment may not be increased by more than twenty percent (20%) above the maximum annual Regular Assessment for the immediately preceding fiscal year, without the vote or written assent of a majority of the voting power of the Association.

5.4 Extraordinary Assessments. In addition to the Regular Assessments authorized above, the Board may levy, in any fiscal year, an Extraordinary Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or of any exterior or structural component of any Dwelling, or to defray any unanticipated or underestimated expense not covered by the Regular Assessment (and, where necessary, for taxes assessed against the Common Area); provided, however, and except as provided in the last sentence of this paragraph 5.4, that the aggregate Extraordinary Assessments for any fiscal year shall not exceed ten percent (10%) of the budgeted gross expenses of the Association (excluding reserves) for that fiscal year, without the vote or written assent of a majority of the voting power of the Association. Notwithstanding any language in this Declaration to the contrary, a one-time extraordinary assessment of \$ 450⁰⁰ shall be assessed at the time of closing of the purchase of a Unit by the first Owner thereof, to establish a reserve fund for the Association.

5.5 Special Assessment. In addition to the Regular and Extraordinary Assessments authorized above, the Board may levy Special Assessments (without limitation as to amount or frequency) against an individual Unit and its Owner to reimburse the Association for costs incurred in bringing that Owner and his Unit into compliance with the provisions of this Declaration and the Bylaws, including actual attorneys's fees and costs.

5.6 Allocation of Assessments; Limited Exemption of Declarant. Except for the initial exemption provided to Declarant in this paragraph 5.6, all Units shall be assessed according to their equal and undivided proportionate interest in the Common Area. Declarant's obligation to pay the full assessment attributable to Units owned by Declarant shall not begin until such time as 75% of the Units in the Project have been sold and closed, or one (1) year from the date of the closing of the sale of the first Unit in that particular phase of the Project, whichever occurs later. Notwithstanding the aforementioned exemption, so long as Declarant shall own one or more Units in the Project, Declarant shall be obligated to pay the proportionate share of the insurance costs applicable to each Unit owned by Declarant in that particular phase

of the Project.

5.7 Date of Commencement of Assessment; Due Dates. Except as provided in paragraph 5.6 above, the Regular Assessments provided for herein shall commence as to all Units in the Project on the first day of the month following the closing of the sale of the first Unit in the Project. Due dates of Assessment shall be the first day of each calendar quarter or such other billing period as the Board may determine from time to time. No notice of such Assessment shall be required other than an annual notice setting forth the amount of the periodic Assessment.

5.8 Transfer of Unit by Sale or Foreclosure. The sale or transfer of any Unit shall not affect any Assessment lien, or relieve the Unit from any liability therefor, whether the lien pertains to payments becoming due prior or subsequent to such sale or transfer. Notwithstanding the foregoing, the sale or transfer of any Unit pursuant to foreclosure or by deed in lieu of foreclosure of a recorded first mortgage given in good faith and for value shall extinguish the lien of all such Assessments as to payments which became due prior to such sale or transfer (except for Assessment liens arising prior to the recordation of the mortgage). Sale or transfer pursuant to mortgage foreclosure shall not, however, affect the personal liability of the Owner for unpaid Assessments. Any Assessments for which the liens are extinguished pursuant to this Paragraph shall be deemed to be Common Expenses collectible from all of the Units including the Unit for which the lien was extinguished. In a voluntary conveyance of a Unit, the grantee of the same shall be jointly and severally liable with the grantor for all unpaid Assessments by the Association against the latter up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Board, setting forth the amount of the unpaid Assessments due the Association, and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for any unpaid Assessments made by the Association against the grantor in excess of the amount set forth in the statement; provided, however, the grantee shall be liable for any such Assessment becoming due after the date of any statement.

5.9 Enforcement of Assessment Obligation; Priorities; Discipline. If any part of any Assessment is not paid and received by the Association or its designated agent within ten (10) days after the due date, an automatic late charge of Ten Dollars (\$10.00) shall be assessed and additional Ten Dollar (\$10.00) sums shall be assessed for each month or fraction thereof from the due date until the Assessment and all late charges are paid. Each unpaid Assessment shall constitute a lien on each respective Unit prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first mortgage of record made in good faith and for value. Such lien, when delinquent, may be enforced by sale by the Association, its attorney or other person authorized by this Declaration or by law to make the sale, after failure of the Owner to pay such Assessment, in accordance with the provisions of Utah law applicable to the exercise of powers of sale in deeds of trust, or by judicial foreclosure as a mortgage, or in any other manner permitted by law. The Association, acting on behalf of the Unit Owners, shall have the power to bid for the Unit at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. The foreclosing party shall have the right to reduce or eliminate any redemption rights of the defaulting Owner as allowed by law. Suit to recover a money judgment for unpaid Assessments, rent and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same. The Board may impose reasonable monetary penalties including actual attorney's fees and costs, and may temporarily suspend the Association membership rights of a Unit Owner who is in default in payment of any Assessment, after notice and hearing according to the Bylaws.

5.10 Payment of Taxes Assessed Against Common Area or Personal Property of Association. In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than against the Units, said taxes shall be included in the Assessments made under the provisions of this Article, and, if necessary, an Extraordinary Assessment may be levied against the Units in an amount equal to said taxes (regardless of the limitation on Extraordinary Assessments set forth in paragraph 5.4 above), with such payment due thirty (30) days prior to the due date of the tax installment.

ARTICLE 6
EASEMENTS AND UTILITIES: 00463292 BK00994 Pg00657
COMMON WALLS; MANAGER'S UNIT

6.1 Access, Use and Maintenance Easements. Declarant expressly reserves for the benefit of the Owners, reciprocal, nonexclusive easements for access, ingress and egress over all of the Common Area, and for the use and enjoyment of all recreational facilities thereon, including any private streets or driveways currently existing in the Property, or subsequently added to it, which easements shall be deemed granted by Declarant to the Owners and to the Association. Subject to the provisions of this Declaration governing use and enjoyment thereof, the easements may be used by Declarant, its successors, purchasers and all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Property, for walkways, vehicular access and such other purposes reasonably necessary for use and enjoyment of a Unit in the Project.

Declarant also expressly reserves for the benefit of the Board of Trustees and all agents, officers and employees of the Association, nonexclusive easements over the Common Area, and all Lots and Dwellings, as necessary, to maintain and repair the Common Area, and to perform all other tasks in accordance with the provisions of this Declaration. Such easements over the Common Area, and all Lots and Dwellings, shall be appurtenant to, binding upon and shall pass with the title to, every Unit conveyed, as more fully described in paragraph 4.1 above

6.2 Encroachments and Utility Easements. Each Unit within the Property is hereby declared to have an easement over all adjoining Units and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of any building, or any other cause. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Unit agree that minor encroachments over adjoining Units or Common Area shall be permitted and that there shall be a valid easement for the maintenance of said encroachments so long as they shall exist.

Declarant also expressly reserves for the benefit of itself and its successors-in-interest and assigns, including the Association, easements over and under the entire Property (together with the right to grant and transfer the same) for the installation, repair, and maintenance of sanitary sewer, water, electric, gas, telephone, television, and other utility lines and services, as may be deemed appropriate to service the Project.

6.3 Owners' Rights and Duties With Respect to Utilities. The rights and duties of the Owners of Units within the Project with respect to utilities shall be as follows:

6.3.1 Whenever sanitary sewer, water, electric, gas, television receiving, or telephone lines or connections, heating or air conditioning conduits, ducts, flues or other utility or service connections are located or installed within the Project, which connections, or any portion thereof, lie in or upon or beneath Lots or Dwellings owned by other than the Owner of a Dwelling served by said connections, the Owners of any Dwellings served by said connections shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the Dwelling or to have the utility companies enter upon the Dwellings in or upon or below which said connections, or any portion thereof lie, to repair, replace and generally maintain said connections as and when necessary.

6.3.2 Whenever sanitary sewer, water, electric, gas, television receiving, or telephone lines or connections, heating or air conditioning conduits, ducts, flues or other utility or service connections are located or installed within the Project, which connections serve more than one Dwelling, the Owner of each Dwelling served by said connection shall be entitled to the full use and enjoyment of such portions of said connections as service his Dwelling.

6.3.3 In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then, upon written request of one of such Owners addresses to the Association, the matter shall be submitted to the Board, which shall decide the dispute, and the decision of the Board shall be final and conclusive on the parties.

6.4 Owner's Rights and Duties With Respect to Common Walls. The Owner of any Dwelling which shares a Common Wall with another Dwelling shall be deemed to own the one-half (1/2) of the wall nearest his Dwelling, and

shall have an exclusive and perpetual easement over the remainder of the Common Wall for support and maintenance. Any such Common Wall shall be deemed a structural component of the building in which it is located, and shall therefore be maintained by the Association, subject to the Unit Owner's responsibility to repair damage caused by negligence or willful misconduct as described in paragraph 3.5.

ARTICLE 7
RESIDENCE AND USE RESTRICTIONS

In addition to all of the covenants contained herein, the use of the Property and each Unit therein is subject to the following:

7.1 Use of Individual Dwellings. No Dwelling shall be occupied and used except for single-family residential purposes by the Owners, their tenants, and social guests, and no trade or business shall be conducted therein. An Owner shall have the right to rent out his Unit to a tenant or tenants or to place his Unit in a "rental pool", under such terms and conditions as may be deemed appropriate by the Owner; provided that any tenant shall occupy the Unit subject to all terms and conditions of the Project Documents.

7.2 Nuisances. No noxious, illegal, or offensive activities shall be carried on in any Dwelling, or in any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the Owners of his respective Dwelling, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or which will impair the structural integrity of any building.

7.3 Signs. No Signs advertising Units for sale or rent may be displayed on the Property or on any portion of the Property, unless first approved by the Board, and unless such signs comply with any and all local ordinances. Notwithstanding the preceding sentence, until all Units in all phases of the Project have been sold, the Declarant shall have the right to advertise Units for sale, provided Declarant complies with the requirements of Summit County, if any, with respect to such advertising.

7.4 Animals. No animals or birds of any kind shall be raised, bred, or kept in any Dwelling, or on any portion of the Property, except that no more than two (2) usual and ordinary household pets such as dogs, cats, or birds, may be kept, provided that they are not kept, bred or maintained for any commercial purposes, and that they are kept under reasonable control at all times. Any such dog shall be kept on a leash at all times that the dog is in the Common Area. Owners shall prevent their pets from soiling any portions of the Common Area and in the event a pet does soil a portion of the Common Area, the Owner or person in control of such pet shall immediately clean up after the pet. The Board may enact reasonable rules respecting the keeping of animals within the Project and may designate certain areas in which animals may not be taken or kept, or may require that specific animals not be allowed on any part of the Property.

7.5 Garbage and Refuse Disposal. All rubbish, trash and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment, garbage cans, wood piles, or storage piles shall be kept screened and concealed from view of other Dwellings, streets and the Common Area.

7.6 Radio and Television Antennas. No alteration to or modification of a central radio or television antenna system or cable television system, whichever is applicable, shall be permitted, and no Owner may be permitted to construct, use, or operate his own external radio, television antenna, or other electronic antenna without the consent of the Board. No Citizens Band or other transmission shall be permitted on the Property.

7.7 Clothes Line. No exterior clothes lines shall be erected or maintained and there shall be no outside laundering or drying of clothes.

7.8 Power Equipment and Car Maintenance. No power equipment, or car maintenance of any nature

whatsoever (other than minor repairs requiring no more than twenty-four (24) hours work) shall be permitted on the Property except with prior written approval of the Board. In deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections.

7.9 Recreational Vehicles. No boats, trailers, recreational vehicles, trucks or commercial vehicles belonging to Owners or other residents of the Property shall be parked or stored in or upon any of the Common Areas, except as may be approved by the Board in accordance with such rules and regulations as the Association may from time to time promulgate.

7.10 Parking Restriction. No parking shall be allowed in front of the garages of the Units. Said parking regulation shall be strictly enforced.

7.11 Window Covers. Curtains and drapes (with a white lining), shutters, or blinds of a neutral color may be installed as window covers, subject to the Board's absolute discretion. No window shall be covered with aluminum foil or similar material.

7.12 No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants contained in this Article 7 or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, and the Unit owner shall assume all risks of the validity and enforceability thereof and, by acquiring the Unit agrees to hold Declarant harmless therefrom.

ARTICLE 8 INSURANCE

8.1 Duty to Obtain Insurance: Types. The Board shall cause to be obtained and maintained adequate blanket public liability insurance (including medical payments), with such limits as may be considered desirable by the Board, but not less than One Million Dollars (\$1,000,000.00) in combined single limit coverage (taking into consideration the requirements of mortgagees), insuring against liability for bodily injury, death and property damage arising from the activities of the Association and its Members, with respect to the Common Area and any other property under its jurisdiction. The Board shall also cause to be obtained and maintained fire and casualty insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement value of the Common Area and all Dwellings and, if economically feasible, those portions of the Dwellings consisting of all fixtures, installations or additions comprising a part of the Dwellings and all built-in or set-in appliances, cabinets and initial basic floor coverings, as initially installed or replacements thereof in accordance with the original plans and specifications for the Project, or as installed by or at the expense of the Owners. Such insurance shall be maintained for the benefit of the Association, the Owners, and the mortgagees, as their interests may appear as named insured, subject, however, to loss payment requirements as set forth herein. The Board of Trustees shall purchase such other insurance as necessary, including, but not limited to, errors and omissions, directors', officers' and agents' liability insurance, plate glass insurance, medical payments, malicious mischief, liquor liability and vandalism insurance, fidelity bonds and worker's compensation, and such other risks as shall be deemed desirable for the Project.

8.2 Waiver of Claim Against Association. As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another, the Board of Trustees and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of said persons.

8.3 Right and Duty of Owners to Insure. It is the responsibility of each Owner to provide insurance on his personal property and upon all other property and improvements within his Dwelling. Nothing hereby shall preclude any Owner from carrying any public liability insurance as he deems desirable to cover his individual liability for damage to persons or property occurring inside his individual Dwelling or elsewhere upon the Property. Such policies shall not

adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

8.4 Notice of Expiration Requirements. If available, all of the policies of insurance maintained by the Association shall contain a provision that said policy or policies shall not be cancelled, terminated or expired by their terms, without twenty (20) days prior written notice to the Board, Declarant, Owners and their respective first mortgagees (provided that Declarant, such Owners or mortgagees have filed written requests with the carrier for such notice) and every other person in interest who requests such notice of the insurer.

8.5 Insurance Premiums. Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board of Trustees shall be a Common Expense to be included in the Regular Assessments levied by the Association and collected from the Owners.

8.6 Trustee for Policies. The Association, acting through its Board of Trustees, is hereby appointed and shall be deemed trustee of the interests of all named insured under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies as provided for in paragraph 8.1 above shall be paid to the Board as Trustees. The Board shall have full power to receive and to receipt for the proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried or otherwise disposed of as provided in Article 10 of this Declaration. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers, with participation, to the extent they desire of first mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in this Declaration.

8.7 Actions as Trustees. Except as otherwise specifically provided in this Declaration, the Board, acting on behalf of the Association and all Owners shall have the exclusive right to bind such parties in respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance.

8.8 Required Waivers. All policies of physical damage insurance shall provide, if reasonably possible, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers:

8.8.1 Subrogation of claims against the Owners and tenants of the Owners;

8.8.2 Any defense based upon co-insurance;

8.8.3 Any right of set-off, counterclaim apportionment, proration or contribution by reason of other insurance not carried by the Association;

8.8.4 Any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured, and

8.8.5 Any right of the insurer to repair, rebuild or replace, and, if the improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the improvements insured.

ARTICLE 9 DESTRUCTION OF IMPROVEMENTS

Declarant is undertaking the work of construction of the Project and the creation of the planned unit development on the Property. The completion of that work and the sale or other disposition of the Units is essential to the establishment and welfare of the Property as a residential community. In order that said work may be completed and said Property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

10.1 Prevent Declarant, its contractors, or subcontractors from doing on the Property, whatever is reasonably necessary or advisable in connection with the completion of the work; or

10.2 Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Property, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Property as a residential community and disposing of the same in parcels by sale or other disposition; or

10.3 Prevent Declarant from maintaining such sign or signs on any of the Property as may be necessary for the sale or disposition thereof.

So long as Declarant, its successors-in-interest and assigns, owns one or more of the Units established and described in this Declaration and except as otherwise specifically provided herein, Declarant, its successors and assigns, shall be subject to the provisions of this Declaration.

In the event Declarant shall convey all of its right, title and interest in and to the Property to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

ARTICLE 11 RIGHTS OF MORTGAGEES

In order to induce various lenders and lending agencies to participate in the financing of Units within the Project, this Article 11 is included in this Declaration. To the extent these added provisions, pertaining to the rights of such lenders and lending agencies conflict with any other provisions of this Declaration or any other of the Project Documents, these added restrictions shall control. For purposes of this Article 11, the terms "Eligible Holder" and "Eligible Insurer Guarantor" refer to a Holder, Insurer or Guarantor of any first mortgage on a Unit, who has provided a written request to the Association, to be notified of any proposed amendment or action described in paragraph 11.5 or paragraph 11.6 below.

11.1 Notwithstanding any other provision of the Project Documents, no amendment or violation of the Project Documents shall operate to defeat or render invalid the rights of any mortgagee of a Unit made in good faith and for value, provided that after the foreclosure of any such mortgage, such Unit shall remain subject to the Project Documents.

11.2 Each first mortgagee of a mortgage encumbering any Unit, which obtains title to such Unit pursuant to judicial foreclosure or the powers provided in such mortgage, shall take title to such Unit free and clear of any claims for unpaid Assessments or charges against such Unit which accrued after the time such mortgagee recorded its mortgage, and prior to the time such mortgagee acquires title to such Unit.

11.3 First mortgagees, upon written request, shall have the right to (1) examine the books and records of the Association during normal business hours; (2) require from the Association the submission of annual audited financial reports and other financial data; (3) receive written notice of all meetings of the Owners; and (4) designate, in writing, a representative to attend all such meetings.

11.4 Each Owner hereby authorizes the first mortgagee of a first mortgage on his Unit to furnish information to the Board concerning the status of the first mortgage and the loan which it secures.

11.5 Unit Owners shall have the right to amend the Project Documents according to their terms, subject to the rights of Eligible Holders to participate in the amendment process as provided in this Paragraph. Amendments of a material nature shall be agreed to by (i) the Declarant (so long as there are two classes of voting power); and (ii) Unit Owners representing at least sixty-seven percent (67%) of the total votes in the Association (excluding votes residing in Declarant, so long as two classes of voting power exist). Additionally, approval must be obtained from Eligible Holders representing at least fifty-one percent (51%) of the votes of Units that are subject to mortgages held by Eligible Holders. A change to any of the following would be considered as material:

- 11.5.1 Voting rights;
- 11.5.2 Assessments, assessment liens, or subordination of assessment liens;
- 11.5.3 Reserves for maintenance, repair and replacement of Common Area;
- 11.5.4 Responsibility for maintenance and repairs;
- 11.5.5 Reallocation of interests in the Common Area, or rights to its use;
- 11.5.6 Boundaries of any Unit;
- 11.5.7 Convertibility of Units into Common Area or vice-versa;
- 11.5.8 Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- 11.5.9 Insurance or fidelity bonds;
- 11.5.10 Leasing of Units;
- 11.5.11 Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- 11.5.12 A decision by the Association to establish self-management when professional management had been previously required by an Eligible Holder;
- 11.5.13 Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;
- 11.5.14 Any action to terminate the legal status of the Project after substantial destruction or condemnation (when Unit Owners are considering termination of the legal status of the Project for reasons other than substantial destruction or condemnation, approval must be obtained from Eligible Holders representing at least sixty-seven percent (67%) of the votes of Units that are subject to mortgages held by Eligible Holders); or
- 11.5.15 Any provisions that expressly benefit mortgage holders, insurers or guarantors.

If the Association determines that an addition or amendment to the Project Documents is not a material change, the approval of Eligible Holders shall be implied by the failure of an Eligible Holder to submit a response to a written proposal for an amendment within thirty (30) days after the proposal is made.

11.6 Each Eligible Holder and each Eligible Insurer or Guarantor is entitled to timely written notice of the following:

- 11.6.1 Any condemnation or casualty loss that affects either a material portion of the Project or the

Unit securing its mortgage;

11.6.2 Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Unit on which it holds the mortgage;

11.6.3 A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

11.6.4 Any proposed action that requires the consent of a specified percentage of Eligible Holders.

In addition to the foregoing, the Board shall have the power and authority, without the vote of the Association, to enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of any generally recognized federal agency of lending institution (e.g., FNMA, GNMA, FHA, VA, or the Mortgage Corporation), so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first mortgages encumbering Units. Each Owner hereby agrees that it will benefit the Association and the membership of the Association, as a class of potential mortgage borrowers and potential sellers of their residential Units, if such agencies or lending institutions approve the Property as a qualifying Project under their respective policies, rules and regulations, as adopted from time to time.

ARTICLE 12 DURATION AND AMENDMENT

12.1 Duration. This Declaration shall continue in full force for a term of fifty (50) years from the date hereof, after which time the same shall be automatically extended for successive periods of ten (10) years, unless a Declaration of Termination is recorded, meeting the requirements of an amendment to this Declaration as set forth in Paragraph 12.2. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any Unit from the concomitant membership of the Association, as long as this Declaration shall continue in full force and effect.

12.2 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 a proposed amendment is to be considered. A resolution adopting a proposed amendment may be proposed by an Owner at a meeting of the Members of the Association. The resolution shall be adopted by the vote, in person or by proxy, or written consent of Members of the Association. The resolution shall be adopted by the vote, in person or by proxy, or written consent of Members representing not less than sixty-seven percent (67%) of the total voting power of the Association (both classes combined).

Notwithstanding the foregoing, the following special voting provisions shall apply:

- (a) Amendments of a material nature shall be enacted in compliance with the provisions of Article 11 of this Declaration;
- (b) The specified percentage of the voting power necessary to amend a specified provision of this Declaration shall be not less than the percentage of affirmative votes prescribed for action to be taken under that provision;

A certificate, signed and sworn to by two (2) officers of the Association, that the record Owners of the required number of Units have either voted for or consented in writing to any amendment adopted as provided above, when recorded, shall be conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for a period of at least four (4) years. Such a certificate reflecting any amendment which requires the written consent of any of the record holders of first mortgages shall be signed and sworn to by such first mortgagees.

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ARTICLE 13
GENERAL PROVISIONS

13.1 Enforcement. The Board or any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration, and in such action shall be entitled to recover costs and reasonable attorneys' fees as are ordered by the Court. Any such action by the Board shall be taken on behalf of three (3) or more Unit Owners, as their respective interests may appear, with respect to any cause or action relating to the Common Area or more than one Unit. Failure by any such person or entity to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

13.2 Invalidity of Any Provision. Should any provision of this Declaration be declared invalid or in conflict with any law of the jurisdiction where the Project is situated, the validity of all other provisions shall remain unaffected and in full force and effect.

13.3 Conflict of Project Documents. If there is any conflict among or between the Project Documents, the provisions of this Declaration shall prevail; thereafter, priority shall be given to Project Documents in the following order: Plat Map; Articles; Bylaws; and rules and regulations of the Association. Notwithstanding the foregoing, any provision in any of the Project Documents which is for the protection of mortgagees shall have priority over any inconsistent provision in that document or in any other Project Document.

The undersigned, being the Declarant herein, has executed this Declaration on the 23rd day of SEPT 1996.

DECLARANT:

JOHN HOLMES CONSTRUCTION, INC., a Utah corporation

By: [Signature]

Its: MANAGING PARTNER

STATE OF Utah
County of Summit ss.

On this 23 day of September, 1996, before me, the undersigned, a Notary Public in and for the State of Utah, duly commissioned and sworn, personally appeared Robert McCowan to me known to be an officer of JOHN HOLMES CONSTRUCTION, INC., a Utah corporation, the company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument by authority of its operating agreement.

Notary Public
MARSHA S. CRITTENDEN
1181 South Hoytsville Rd.
Coalville, Utah 84017
My Commission Expires August 18, 1999
WITNESSES: [Signature] and [Signature] affixed the day and year first above written.
Notary Public in and for the State of Utah
Residing at: Coalville, Ut
Commission Expires: 8-16-99

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EXHIBIT "A"

LEGAL DESCRIPTION OF DECLARANT'S PROPERTY

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