

Recording Requested By And
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Mountainlands Community Housing
Association
1960 Sidewinder Dr. Suite 202
Park City, Utah 8406

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ALAN SPRIGGS, SUMMIT CO RECORDER
2002 JAN 31 15:44 PM FEE \$39.00 BY DMG
REQUEST: METRO NATIONAL TITLE

**DECLARATIONS OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR LOTS 82-93 NORTH BENCH
FARMS SUBDIVISION**

NBF 82 thru 93

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR NORTH BENCH FARMS SUBDIVISION (the "Declaration") is executed this 29th day of January, 2002 by MOUNTAINLANDS COMMUNITY HOUSING ASSOCIATION dba MOUNTAINLANDS COMMUNITY HOUSING TRUST, a Utah non profit corporation ("MCHT") with reference to the following:

- A. MCHT is the owner of certain real property located in Summit County, Utah known as Lots 82,83,84,85,86,87,88,89,90,91,92 and 93 of The North Bench Farms Subdivision as set forth in that certain Plat Map recorded in the Official Records of Summit County, Utah on December 11, 2001, as Entry No. 605682 (the "Lots"). The Lots shall include any improvements to the real property. This Declaration shall not apply to Lots 1-81 of The North Bench Farms Subdivision.
- B. MCHT has received ownership of the Lots from the original developer Central Valley Builders L.L.C. ("Developer") pursuant to a Development Agreement between Developer, MCHT and Oakley City, a municipality wherein Developer was required to deed the Lots to MCHT for development of twelve single family residences to be sold as "affordable housing" to be sold to households earning 60 and 80 percent of the Summit County area median income.
- C. MCHT desires to establish covenants, conditions and restrictions to satisfy the obligation of retaining affordable housing on the Lots all in accordance with this Declaration.

COVENANTS, CONDITIONS AND RESTRICTIONS

1. COVENANT TO RESTRICT SALES TO QUALIFIED INDIVIDUALS.

1.1 GENERAL. The sale of the Lots shall be limited exclusively to purchasers who meet the definition of Qualified Buyer except that any of the Lots may be sold to MCHT. One half of the Lots will initially sold to buyers earning no more than 60 percent of the Summit County, Utah average median income and one half to buyers earning no more than 80 percent of the Summit County, Utah average median income. A subsequent Qualified Buyer shall be defined as a household earning no more than 80 percent of the Summit County, Utah area median income, as adjusted annually, who has applied to MCHT to be qualified and included on the list of Qualified Buyers for the Lots. Any sale, assignment or other conveyance of any ownership interest shall require the consent and approval of MCHT. In the event that no Qualified Buyer is available to purchase a Lot under the terms and conditions in this Declaration, then upon certification and approval by MCHT, the current owner of the Lot shall have the right to sell that Lot to a purchaser that is not a Qualified Buyer.

1.2 INVALID CONVEYANCES. In the event a Lot is sold and/or conveyed without compliance herewith, such sale and/or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported buyer. Each and every conveyance of a Lot, for all purposes, shall be deemed to include and incorporate by this reference the covenants contained, even without reference therein to this Declaration.

2. SALE AND OPTION TO PURCHASE.

2.1 OFFER. Subject to Section 1.1., in the event that an owner desires to sell a lot that selling owner shall first offer the Lot to MCHT (the "Option") at the "Maximum Sales Price" (defined below) by delivering a written notice of such offer to MCHT. The date the selling owner delivers such notice to MCHT shall be the "Offer Date"

2.2 OPTION TO MCHT. MCHT shall have 45 days after the Offer Date to exercise the Option by delivering to the selling owner written notice of MCHT's exercise of the Option. MCHT shall use its best efforts to notify selling owner of whether MCHT will exercise the Option as early as possible within that

45 day period. If MCHT elects to exercise the Option, MCHT shall finalize the acquisition of the Lot within 30 days after delivering notice of MCHT's election to exercise the Option. If MCHT does not deliver that notice to selling owner within that initial 45 day time period or close within 30 days after delivering that notice, MCHT's Option shall automatically expire without the need for further notice or documentation.

2.3 SALE TO QUALIFIED BUYER. Upon expiration of the Option, selling owner shall have the right to sell the Lot to the highest ranking Qualified Buyer on the list maintained by MCHT. MCHT shall have the exclusive right to determine who constitutes a Qualified Buyer and shall prepare guidelines and policies to establish eligibility. MCHT shall have the right to amend and change guidelines and policies from time to time as it determines necessary. In order to be placed on the list, a Qualified Buyer must deliver to MCHT evidence of being pre-qualified for financing the purchase of a Lot. If there are no Qualified Buyers on the list, the selling owner shall have the right to sell the Lot to any other Qualified Buyer.

2.4 SALE TO NON-QUALIFIED INDIVIDUALS. If, after using best efforts to sell the Lot to a Qualified Buyer within 120 days of the Offer Date, the selling owner shall have the right to sell the Lot to any buyer at the Maximum Sales Price or below.

2.5 List. MCHT shall maintain at its office the list which shall record the Qualified Buyers in order of the dates on which they applied to be placed on the list. In addition to the Maximum Sales Price or a sales price of lesser amount, the selling owner shall charge to the Qualified Buyer the sum of \$250.00 which shall be paid to MCHT upon each transfer of ownership of a Lot.

3.0 MAXIMUM SALES PRICE. In no event shall a Lot be sold by the initial buyer and subsequent buyers for an amount in excess of the "Maximum Sales Price" which shall constitute \$129,900, or the actual purchase price, whichever is less, Permitted Capital Improvements, plus an increase of three percent of such price per year from the date of selling owner's notice to MCHT of owner's intent to sell (prorated at the rate of 0.25 percent for each whole month for any part of a year), plus the \$250.00 fee set forth in Section 2.5 payable to MCHT.

3.1 NO GUARANTY. NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTY BY MCHT THAT ON SALE OWNER SHALL OBTAIN THE MAXIMUM SALES PRICE.

3.2 PERMITTED CAPITAL IMPROVEMENTS.

3.2.1 GENERAL. For the purpose of determining the Maximum Sales Price, an owner may add to the amount specified above the cost of Permitted Capital Improvements (as defined in Exhibit "A") in a total amount not to exceed \$13,000 (as increased by the "Consumer Price Index" defined below) each year. In calculating such amount, only those Permitted Capital Improvements identified in Exhibit "A" hereto shall qualify for inclusion. All such Permitted Capital Improvements installed or constructed over the life of the improvements on the Lot shall qualify. However, the allowance permitted by this Paragraph is a fixed amount, which shall be calculated on a cumulative basis applicable to the original owner and all subsequent purchasers, and not exceed the maximum dollar amount set forth in this Paragraph. The cost of Permitted Capital Improvements shall be depreciated on a straight line basis at the rate of 10% per annum for ten years commencing one year from the date of the installation of each improvement. The total amount of the cost of Permitted Capital Improvements shall be depreciated amounts of such improvements. However, notwithstanding anything to the contrary contained herein, MCHT may approve in advance Permitted Capital Improvements exceeding \$13,000 (as adjusted by the Consumer Price Index) that will be added to the Maximum Sales Price. MCHT shall have sole discretion to allow or disallow Permitted Capital Improvements. If improvements exceeding the Permitted Capital Improvement amount are not approved in advance by MCHT, they shall not be included in the Maximum Sales Price.

3.2.2 EXCLUSIONS. Permitted Capital Improvements shall not include any changes or additions to the Lots made by owner during construction or thereafter, except in accordance with Paragraph 3.2.1 above. Permitted Capital Improvements shall be included in MCHT's listed purchase price, even if made or installed during original construction.

3.2.3 QUALIFICATION. In order to qualify an improvement as a Permitted Capital Improvement, owner must furnish to MCHT the following information with respect to the improvements which owner seeks to include in the calculation of Maximum Sales Price:

- 3.2.3.1** Original or duplicate receipts to verify the actual costs expended by owner for the Permitted Capital Improvements;
- 3.2.3.2** Owner's affidavit verifying that the receipts are valid and correct receipts tendered at the time of purchase;

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3.2.3.3 True and correct copies of any building permit or certificate of occupancy issued by Oakley City Building Department with respect to the Permitted Capital Improvements.

3.2.4 OUT OF POCKET COSTS. In calculating the costs under Paragraph 3.2.1 through 3.2.3, only the owner's actual out-of pocket costs and expenses shall be eligible for inclusion. Such amount shall not include an amount attributable to owner's profit, labor ("sweat equity") or to any appreciation in the value of the improvements.

3.3 INDUCEMENTS TO SELL PROHIBITED. Owner shall not permit any prospective buyer to assume any or all of owner's customary closing costs nor accept any other consideration which would cause an increase in owner's return on the sale so as to induce owner to sell to such prospective buyer.

3.4 CONSUMER PRICE INDEX. The "Consumer Price Index" shall mean the increase that is the greater of the Department of Labor and Commerce, Bureau of Labor Statistics Consumer Price Index, All Urban for the Salt Lake Metropolitan areas or, if not available, for the Department of Labor and Commerce, Bureau of Labor and Commerce, Bureau of Labor Statistics Consumer Price Index, All Urban, for Summit County, Utah. The Consumer Price Index shall be deemed to have a base year of 2002.

3.5 LENDER'S PERMITTED ADJUSTMENT TO MAXIMUM SALES PRICE. Notwithstanding anything to the contrary contained herein concerning the Maximum Sales Price, any third party having a secured interest in the Lots that obtains title to a Lot(s) upon default of the owner thereof shall be able to sell a Lot to a Qualified Buyer at a price equal to the greater of the Maximum Sales Price or the amount of such party's principal amount of an encumbrance recorded against a Lot(s), delinquent interest and the costs to recover the Lot through a trustee's sale, judicial foreclosure or other legal means, provided such third party did not loan to an owner of a Lot(s) an amount combined with other encumbrances on the Lot(s) greater than the Maximum Sales Price at the time of the encumbrance. In no event shall a third party lender be able to sell a Lot after recovering the lot upon default for an amount greater than one hundred eight percent (108%) of the Maximum Sales Price in effect at the time such party obtains title to the Lot(s). MCHT shall approve the sales price prior to the sale of a Lot to a Qualified Buyer.

4.0 RENTAL. The Lot(s) shall not be rented without the express written consent of MCHT. A Lot(s) may be rented to a qualified person or household

earning no more than 60 percent of the Summit County, Utah area median income who has been qualified by MCHT for a maximum period of 180 days. Nothing contained in this provision shall prohibit an owner of the Lots to have house guests without charge in their home.

5.0 DEFAULT OR BREACH. In the event of a default or breach of the provisions of this Declaration MCHT shall be entitled to specific performance of and injunctive and other equitable relief against the defaulting party. Any transfer of a Lot(s) inconsistent with the terms of this Declaration shall be void *ab initio*.

6.0 NOTICES. Any notice, consent or approval required herein shall be in writing and shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to the address provided herein or to subsequent mailing address of a party as long as prior written notice of the change of address has been given to the other party. In the case of MCHT, the recording of a subsequent address with the county recorder referring to this Agreement shall constitute notice under this paragraph.

Any notice to MCHT shall be delivered to 1960 Sidewinder Dr. Suite 202 Park City, Utah 84060 until notified in writing or by recording of a change of address.

7.0 SEVERABILITY. Whenever possible, each provision of this Declaration shall be interpreted in such a manner as to be valid under applicable law; but if any provision of any of the forgoing shall be invalid or prohibited under said applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provision of this Declaration.

8.0 ATTORNEYS' FEES. If any party shall take or defend against any action for any relief against another party, or successor in interest to the Lots, arising out of this Declaration, the prevailing party in such action or defense shall be entitled to be reimbursed by the losing party for all costs including, but not limited to, attorneys' fees and court costs, incurred by the prevailing party in such action or defense and/or enforcing any judgment granted therein, all of which costs shall be deemed to have accrued upon the commencement of such action and /or defense is prosecuted to judgment. Any judgment or order entered in such action or defense shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment.

9.0 CHOICE OF LAW. This Declaration shall be governed and construed in accordance with the laws of the State of Utah.

10.0 SUCCESSORS. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties hereto and all of those parties obtaining a subsequent interest in the Lots. In the event that MCHT ceases to exist for any reason or fails to perform the duties set forth in this Declaration, Oakley City, a municipality shall become the successor-in-interest to MCHT under this Declaration.

11.0 PARAGRAPH HEADINGS. Paragraph or section headings within this Declaration are inserted solely for convenience of reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

12.0 WAIVER. No claim of waiver, consent or acquiescence with respect to any provision of this Declaration shall be valid against any party or third party. However, the party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition.

13.0 COVENANTS TO RUN WITH LAND. MCHT intends, declares and covenants, on behalf of itself and all future owners and operators of the Lots, that this Declaration regulating and restricting the use, occupancy and transfer of the Lots (a) shall be and are covenants running with the land and improvements, and encumbering the Lots in perpetuity (or in the event the rules of perpetuity disallow this provision, upon the death of the last survivor of the existing first grade class of South Summit Elementary School).

14.0 INCONSISTANCY WITH OTHER CCR'S In the event any of the provisions of this Declaration are in conflict with previously recorded Declarations, Conditions and Restrictions for North Bench Farms Subdivision, the previously recorded declaration shall prevail. This Declaration shall apply only to Lots 82-93 of The North Bench Farms Subdivision.

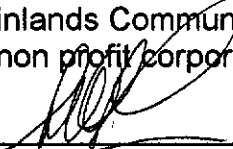
IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the date set forth hereinabove.

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"MCHT"

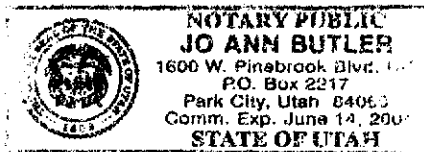
Mountainlands Community Housing Association,
A Utah non profit corporation

By 
Its EXECUTIVE DIRECTOR

STATE OF UTAH)
)
COUNTY OF SUMMIT)

ss.

On the 29th day of January, 2002 personally appeared before me
Heate Loomis, who after having been sworn upon oath,
duly acknowledged that he/she) is the Executive Director of
Mountainlands Community Housing Association and as such has the power to
appear on behalf of said corporation, and acting in such capacity executed the
foregoing document on the day and year aforementioned.




Notary Public

EXHIBIT 'A' TO DECLARATION

PERMITTED CAPITAL IMPROVEMENTS

1. The term "Permitted Capital Improvements" as used in the Declaration shall only include the following:
 - a. Improvements or fixtures erected, installed or attached as permanent, functional, non-decorative improvements to real property, excluding repair, replacement and/or maintenance improvements;
 - b. Improvements for energy and water conservation;
 - c. Improvements for the benefit of seniors and/or handicapped persons;
 - d. Improvements for health and safety protection devices;
 - e. Improvements to add and/or finish permanent/finished storage space;
 - f. Improvements to finish unfinished space;
 - g. The cost of adding decks and balconies, and any extensions thereto;
 - h. Improvements that add or finish living space; and/or
 - i. Improvements constructed or installed as a result of any requirement imposed by any government agency.

2. Permitted Capital Improvements as used in the Declaration shall not include the following:
 - a. Landscaping;
 - b. Upgrades of appliances, plumbing and mechanical fixtures, carpets, and other similar items included as part of the original construction of the Lot;
 - c. Jacuzzis, saunas, steam showers and other similar items;

- d. Improvements required to repair, replace and maintain existing fixtures, appliances, plumbing and other mechanical fixtures, painting, carpeting and other similar items;
- e. Upgrades or additions of decorative items, including lights, window coverings, and other similar items.

3. All Permitted Capital Improvement items and costs shall be approved by Mountainlands Community Housing Association (MCHT) prior to being added to the Maximum Sales Price as defined herein. In the event of a disagreement concerning a Permitted Capital Improvements, MCHT shall have the final and exclusive authority to interpret the provisions of this Exhibit "A".