

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR THE AUTUMN RETIREMENT CONDOMINIUM ASSOCIATION, INC.

This Declaration made this 1st day of July, 2004 by Co-ax Enterprises, Inc., Developer - owner, of the properties containing Retirement Homes, hereinafter collectively referred to as "Declarant".

WITNESSETH:

Now therefore, Declarant is owners of real property described in Article II hereof and desires to create thereon one (1) multiple family condominium living unit (unit #19) for the existing home at 76 West 400 South and eighteen (18) single family condominium retirement units (#1 through #18) on the balance of the property and whereas Declarant desires to provide for the preservation of the values and amenities of said Association for the benefit of the condominium owners thereof and for the maintenance and care of the lawns and winter snow removal thereon, and desire to subject the real property described in Article II hereof to the covenants and restrictions set forth hereinafter for the benefit of said property and each owner thereof; and,

Now therefore, Declarant has deemed it desirable for the PRESERVATION of the values and amenities of said Association to create "THE AUTUMN RETIREMENT CONDOMINIUM ASSOCIATION, INC." (the Association) for the purpose of maintaining and enforcing the covenants and restrictions as specified herein;

Now therefore, the Declarant declares that the real property, hereinafter described in Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, liens and easements, hereinafter set forth.

Ent 846472 Bk 1307 Pg 1594
Date 17-Jul-2004 10:33AM Fee \$22.00
Michael Bleed, Rec. - Filed by MB
Cache County, UT
For CO-AX ENTERPRISES

ARTICLE I

DEFINITIONS

Section 1. The following terms used in this Declaration shall have the following meanings:

- a. "Assessment" shall mean any charge imposed by the association, including common expenses on or against a unit owner pursuant to the provisions of the declaration, and bylaws.
- b. "Association" shall mean and refer to The Autumn Retirement Condominium Association, Inc. which is made up of all the unit owners acting as a group in accordance with the declaration and bylaws.
- c. "Common areas" shall mean and refer to the land included within the condominium project as shown on any recorded map of the subject property of the Declaration, whether leasehold or in fee simple. Said common areas are owned and maintained by the Association.
- d. "Condominium" shall mean the ownership of a single unit in a multiunit project together with an undivided interest in common in the common areas and facilities of the property.
- e. "Condominium plat" shall mean a plat or plats of survey of land and units prepared in accordance with section 57-8-13.
- f. "Condominium project" shall mean a real estate condominium project; a plan or project whereby two or more units are offered or proposed to be offered for sale.
- g. "Condominium unit" shall mean a unit together with the undivided interest in the common areas and facilities appertaining to that unit.
- h. "Convertible land" shall mean a building site which is a portion of the common areas and facilities, described by metes and bounds, within which additional units or limited common areas and facilities may be created.
- i. "Declarant" shall mean all persons who execute the declaration or on whose behalf the declaration is executed.
- j. "Declaration" shall mean the instrument by which the property is submitted to the provisions of the Condominium Act, Utah Code Section 57, as it from time to time may be lawfully amended.

k. "Expandable condominium" shall mean a condominium project to which additional land or an interest in it may be added in accordance with the declaration.

l. "Limited Common areas and facilities" shall mean those common areas and facilities designated in the declaration and shown on the plat as reserved for use of a certain unit or units to the exclusion of the other units. (ie. driveways and back porches) The Limited Common areas remain the property of the Association and are maintained by the same.

m. "Majority" or "majority of the unit owners" shall mean the owners of more than 50% in the aggregate in interest of the undivided ownership of the common areas and facilities.

n. "Management committee" shall mean the committee charged with and having the responsibility and authority to make and to enforce all of the reasonable rules covering the operation and maintenance of the property.

o. "Par Value" shall mean a number of dollars or points assigned to each unit by the declaration.

p. "Person" shall mean an individual, corporation, partnership, association, trustee, or other legal entity.

q. "Property" shall mean the land, whether leasehold or in fee simple, the building, if any, all improvements and structures thereon, all easements, rights, and appurtenances belonging thereto, and all articles of personal property intended for the use in connection therewith.

r. "Record", "recording", "recorded", and "recorder" shall have the meaning stated in the Condominium Act, Title 57, Chapter 3, Recording of Documents.

s. "Retirement" shall mean and refer to an age restriction of 50 years of age of one member of the household.

t. "Retirement single family" shall mean and refer to the owner or occupant of a Unit which is identified and intended to be used for retirement single family.

u. "Size" shall mean the number of cubic feet, or the number of square feet of ground or floor space, within each unit as computed by reference to the record of survey map and rounded off to a whole number.

v. "Unit" shall mean and refer to a separate physical part of the property, as identified by the unit number, intended for any type of independent use and occupancy as a residence.

w. "Unit number" shall mean the number, letter, or combination of numbers and letters designating the unit in the record of survey map.

x. "Unit owner" shall mean and refer to the person or persons owning a unit or units in fee simple and an undivided interest in the fee simple estate of the common areas and facilities in the percentage specified and established in this declaration.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

(see attached Exhibit 'A')

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ARTICLE III

PROPERTY RIGHTS

Section 1. UNIT OWNER'S EASEMENTS OF USE. Every unit owner shall have right and easement of equal use to the Common Areas which shall be appurtenant to and shall pass with the title to every condominium unit. The Limited Common Area, as shown on the property plat, shall be for the use of specific unit owners who have direct access to the property as shown on the plat.

Section 2. OWNERSHIP AND POSSESSION RIGHTS. Each unit owner shall be entitled to the exclusive ownership and possession of his unit.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS OF THE ASSOCIATION

Section 1. **MEMBERSHIP.** Every person or entity who is a record owner of a fee simple or undivided fee simple interest in any unit which is the subject of this Declaration shall be a member of the Association, provided however that any such persons or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. **VOTING RIGHTS.** The Association shall have one class of voting memberships which shall be made up of all Unit owners, including the Declarant, and shall be entitled to one vote for each unit owned, whether or not there exists a condominium unit on the property.

Section 3. **BOARD OF DIRECTORS.** A board of directors, made up of three of the Unit owners, shall be established for the purpose of directing the affairs of the Association. All decisions will be based on a majority vote.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. CREATION OF LIEN AND PERSONAL OBLIGATION OF ASSESSMENT.

The Declarant, for each Unit owned within the subject property, hereby covenants, and each Unit owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, cost, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Unit owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. **PURPOSE OF ASSESSMENTS.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the properties and for the improvement and maintenance of the Common Areas including the yard lawn care, snow removal from the Road including driveways, the infrastructure of the subject property, maintenance of the exteriors of the units, all subject utilities and insurance on the property and units.

Section 3. **MAXIMUM ANNUAL ASSESSMENT.** Until January 1, 2005, the maximum annual assessment shall be Six Hundred Sixty Dollars (\$660.00) per living unit, prorated through 2004, payable monthly.

a. From and after January 1, 2005, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without the vote of the membership.

b. From and after January 1, 2005, the maximum annual assessment may be increased above 10% by a vote of two-thirds (2/3) of the voting members, at a meeting duly called for this purpose.

Section 4. **SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special 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 and other areas of responsibility of the Association within each of the units therein, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members of the Association.

Section 5. NOTICE OF ANY ACTION AUTHORIZED UNDER SECTION 3 AND 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. A required vote of two-thirds (2/3) will be required to authorize any work as described above.

Section 6. UNIFORM RATE OF ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all Units within the Association and may be collected on a monthly basis.

Section 7. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES. The annual assessments provided for herein shall commence as to all units on the first day of the month following the conveyance of the unit. The first annual assessment shall be prorated according to the number of months remaining in the calendar year.

Section 8. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of fourteen percent (14 %) per annum. The Association may bring an action at law against the Unit owner personally obligated to pay the same, or foreclose the lien against the property. No Unit owner may waive or otherwise escape liability for the assessments provide for herein by non-use of the assessed areas.

Section 9. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinate to the lien of the first mortgage. Sale for transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to mortgage foreclosure of any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof. Unit owners agree that they have waived and will not claim any homestead exemption if proceedings supplementary to obtaining judgment are required to collect said amounts.

Section 10. PAYMENT FOR MANAGEMENT OF ASSOCIATION. Reasonable payment will be made by the Association for management of the Association for time, materials and postage.

ARTICLE VI

OBLIGATIONS AND LIMITATION OF UNIT OWNER

Section 1. UNIT OWNER'S OBLIGATION TO REPAIR. The interior of each unit and personal shrubs and flowers on the property are the Unit owners obligation and each Unit owner shall, at Owner's expense, keep the units, its equipment and appurtenances in good order, condition and repair, and in a clean and sanitary condition.

Section 2. LANDSCAPING. The owner of each living unit shall be responsible for providing and maintaining any personal landscaping around his unit, including any personal flowers, shrubs, trees and apparatus in the property outside the units. The association will maintain all common trees and shrubs and mow, trim, and remove the clippings and leaves from the lawn within the common areas, which are accessible.

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Section 3. LIMITATIONS OF USE OF UNITS. The units shall be occupied and used as follows:

a. No unit owner shall occupy or use his unit or permit the same or any part thereof to be occupied for any purpose other than as a private residence for Unit #19 and as private retirement residences for Units #1-#18, for the Unit owner and the Unit owner's family or the Unit owners tenants and the family or guests of such tenants.

b. Unit owner may maintain fire and casualty insurance upon the contents of the unit in an amount equal to one hundred percent (100%) of its fair market value.

c. No sign of any kind shall be displayed to the public view on or from any unit without prior consent of the board of directors of the Association.

d. No animals, livestock, or poultry of any kind shall be raised, bred or kept in or about any units, and shall be subject to the rules and regulations adopted by the Association. Household pets are allowed in accordance with city ordinances.

e. No noxious or offensive trade, business or activity shall be carried on in any unit nor shall anything be done which may be or become an annoyance or nuisance to other unit owners.

f. No trailer, tent, shack, garage or barn or other outbuilding erected within the boundaries of the subject property of this Declaration shall at any time be used as a residence temporarily or permanently nor shall any structure of a temporary character be used as a residence.

g. No parking or storage of any non-functioning vehicle shall be allowed in any part of the yard of any unit and the parking or storage of any large truck, trailer or recreational vehicle, except as necessary and incidental to the construction or repair of a unit shall be allowed. The Hammer Head Road (south end of 80 West road in project) is a fire lane and must be kept clear and free of cars, and other objects, at all times and therefore any vehicles parked which cause an obstruction of the road will be subject to being towed away at the owners expense.

ARTICLE VII

GENERAL PROVISIONS

Section 1. DURATION AND AMENDMENT. The covenants and restrictions of this Declaration shall run with the land and inure to the benefit of, and be enforceable by, the Association or any Unit owner of the land subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty (20) years from the date this Declaration is recorded with the office of the Cache County Recorder.

Therefore, said covenants and restrictions shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by not less than two thirds (2/3) of the living unit owners. Any amendment must be recorded.

Section 2. NOTICES. Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed postage prepaid to the last known address of the person who appears as a member or owner on the records of the Association at the time of such mailing.

Section 3. ENFORCEMENT. The Association, or any unit owner, shall have the right to enforce these covenants, conditions and restrictions. Enforcement of the covenants and restrictions contained in this Declaration shall be made by any proceeding at law or inequity against any person or persons violating or attempting to violate any covenant or restriction specified herein, either to restrain violation or reoccur damages, and against the unit to enforce any lien created by these covenants; and failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Any person in default of the terms of this Declaration or otherwise violating the provisions of this Declaration shall pay in addition to all proven damages, all costs incurred in the enforcement of these provisions, to include a reasonable attorney's fee.

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Section 4. SEVERABILITY. Invalidation of any one provision of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

Section 5. EXPANDABLE CONDOMINIUM PROJECT. Not used.

Section 6. CONSTRUCTION REQUIREMENTS. All requirements for the construction of each of the units within the Association shall be under the rules and requirements of Co-Ax Enterprises, Inc. The new units shall be wood framed construction, slab on grade, with brick & stucco exterior finishes having asphalt shingle roofing and aluminum soffit, fascia and gutter. Each new unit will have 1340 square feet of living area and 492 square feet of attached garage area.

Section 7. EASEMENTS AND UTILITY RIGHT-OF-WAYS. For the purpose of allowing adequate easement for utilities, including but not limited to power, natural gas, telephone, cable, water, sewer and irrigation, the placement in common areas shall be allowed in an organized and coordinated manner. The right of the utility companies to enter the property to repair or extend said utilities shall be allowed.

Section 8. SERVICE OF PROCESS. Until changed in the future, the name and address of the person to receive service of process on behalf of the Association is Reed A Elder or Ty Jaynes, 3665 N Hwy 91, Hyde Park, Utah 84318.

Dated the day and year first written.

Co-Ax Enterprises, Inc.

By: [Signature]
Reed A Elder, President

STATE OF UTAH)
) ss.
County of Cache)

On this 1st day of July, 2004, personally appeared before me Reed A Elder, President of Co-Ax Enterprises, Inc., who duly acknowledged to me that they are the authorized Declarant, duly authorized and empowered to execute the foregoing document.

[Signature]
NOTARY PUBLIC

Commission Exp. Dec 17 2004

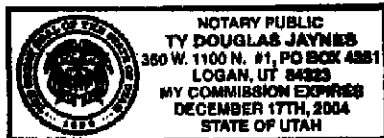


EXHIBIT "A"

SURVEY CERTIFICATE

I, JEFF S. HANSEN, A REGISTERED LAND SURVEYOR IN THE STATE OF UTAH, DO HEREBY CERTIFY THAT I HAVE SURVEYED THE ALUTIAN RETIREMENT CONDOMINIUMS, A CONDOMINIUM PROJECT IN CACHE COUNTY, UTAH AS SHOWN HEREIN. I FURTHER CERTIFY THAT THE DESCRIPTION CORRECTLY DESCRIBES THE PROPERTY ON WHICH HAS BEEN CONSTRUCTED THE "ALUTIAN RETIREMENT CONDOMINIUMS", A CONDOMINIUM PROJECT, THAT THIS RECORD OF SURVEY MAP CONSISTING OF THREE (3) SHEETS WAS PREPARED IN ACCORDANCE WITH THE "UTAH CONDOMINIUM ACT" AND REPRESENTS A TRUE AND ACCURATE MAP OF THE BUILDINGS TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Jeff S. Hansen
Jeff S. Hansen R.L.S. No. 325023



5-11-04
Date

BOUNDARY DESCRIPTION

A PARCEL OF GROUND LOCATED IN THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 13 NORTH, RANGE 1 EAST, OF THE SALT LAKE BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE CACHE COUNTY SURVEYORS ALUMINUM CAP MONUMENT FOUND AT THE WEST QUARTER CORNER OF SECTION 33, TOWNSHIP 13 NORTH, RANGE 1 EAST OF THE SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 00°20'17" WEST ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION AS CURRENTLY MONUMENTED 1687.44 FEET; THENCE THENCE LEAVING SAID SECTION LINE SOUTH 88°47'35" EAST 5180.48 FEET TO THE TRUE POINT OF BEGINNING A POINT LOCATED SOUTH 88°47'35" EAST 81.38 FEET OF A POINT DESCRIBED OF RECORD AS BEING LOCATED 38.88 CHAINS EAST AND 5.78 CHAINS NORTH OF THE WEST QUARTER CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 33, SAID POINT ALSO LOCATED NORTH 88°47'35" WEST 0.50 FEET OF A POINT DESCRIBED OF RECORD AS BEING LOCATED 0.8 CHAINS WEST AND 13.8 CHAINS SOUTH OF THE NORTHEAST CORNER OF SAID SECTION 33, ALSO NORTH 88°47'35" WEST 831.77 FEET FROM THE NORTHEAST CORNER OF LOT 1, BLOCK 4, PLAT "C" OF THE SMITHFIELD CITY SURVEY; AND RUNNING THENCE SOUTH 88°47'35" EAST 82.33 FEET TO AN AGREED UPON BOUNDARY CORNER; THENCE FOLLOWING AGREED UPON BOUNDARY LINES THE FOLLOWING TWO COURSES: 1) SOUTH 00°22'53" WEST 556.78 FEET; 2) THENCE NORTH 88°44'52" WEST 305.10 FEET; THENCE NORTH 00°05'41" WEST 446.80 FEET; THENCE SOUTH 88°47'35" EAST 209.27 FEET; THENCE NORTHERLY 25.41 FEET ALONG THE ARC OF A 38.50 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 30°51'07" AND A LONG CHORD THAT BEARS NORTH 18°27'08" EAST 24.97 FEET; THENCE NORTH 00°01'34" EAST 86.17 FEET TO THE POINT OF BEGINNING, CONTAINING 3.38 ACRES

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