

670176

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS-CELESTE PLACE TOWNHOUSES

Lots 1 thru 76

THIS DECLARATION, made on the date hereinafter set for DAVID B. HOLBROOK AND ANGELA P. HOLBROOK, HEREINAFTER REFERRED TO AS "DECLARANT".

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in Sunset, County of Davis, State of Utah, which is more particularly described as:

BEGINNING AT A POINT WHICH IS S.0°03'32" W. 635.42 feet from the Center of Section 23, T.5N., R.2W., S.L.B.&M.; and running thence S.0°03'32"W. 683.86 feet to the Northerly Boundary line of ROI-DELL SUBDIVISION NO.2; thence S.0°55'57"W" 33.20 feet along said Northerly Boundary line to the Westerly right-of-way line of Sequoia Drive (475 West St.), thence leaving said Northerly Boundary line and running thence S.16°20'03"E 234.42 feet along said Westerly right-of-way to a point on a 20.00 foot radius curve to the right (radius point bears S.73°39'57"W); thence Southwesterly along said curve 31.42 feet; thence S.73°39'57"W. 174.76 feet to the Easterly right-of-way line of the Union Pacific Railroad, and said point also being on a 5259.09 foot radius curve to the left (radius point bears S.78°19'26"W.); thence Northwesterly along said curve and said Easterly right-of-way line 443.29 feet; thence continuing along said Easterly right-of-way N.16°30'20"W.577.54 feet to the Davis County line;thence leaving Easterly right-of-way and running S.89°53'54"E. 421.23 feet along the Davis County line to the point of beginning. Containing 6.21 Acres

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

Platted   
On Margin   
Compared   
Abstracted   
Indexed   
Entered

SECTION 1. "Association" shall mean and refer to Celeste Place Townhouse Association, its successors and assigns.

SECTION 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

SECTION 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. Such Common Area shall include, but shall not be limited to, easements granted for the common use and enjoyment of the owners. The Common Area to be owned by the Association is shown on the official plot plan of Celeste Place Townhouses Plot Plan in the office of the Davis County Recorder.

SECTION 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area and Public Dedicated area.

SECTION 6. "Declarant" shall mean and refer to David B. Holbrook and Angela P. Holbrook, their successors and assigns if such successors or assigns should acquire from the Declarant, all of its rights and obligations of development.

47.50  
David B. Holbrook  
641 Rayden Way  
775C 84054

ARTICLE II  
PROPERTY RIGHTS

SECTION 1. OWNERS' EASEMENTS OR ENJOYMENT. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable assessments and other fees for the maintenance of any improvements situated upon the Common Area, or any portion thereof;

(b) the right of the Association to suspend the voting rights and right to use of any Common Area or improvements thereon by an owner for any period during which any assessment against his Lot remains unpaid and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to enforce the payment by any owner of the assessments made herein in accordance with the provisions herein;

(d) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members; provided, however that the Association may grant such easements as shall be necessary for the development of the property without the consent of the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of the members has been recorded;

(e) the right of individual owners to the exclusive use of parking spaces as provided in this article.

SECTION 2. DELEGATION OF USE . Any owner may delegate, in accordance with the Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

SECTION 3. PARKING RIGHTS. Ownership of each lot shall entitle the owner or owners thereof, to the use of not more than two automobile parking spaces, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking area. The Association shall permanently assign two vehicle parking spaces for each dwelling.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

SECTION 1. Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

SECTION 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all owners, with the exception of Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any lot.

Class B. The Class B. members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) on July 1, 1990.

COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot 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: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessment to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the 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 the 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 Area and of the homes situated upon the properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Four Hundred Twenty Dollars (420.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 10% above the maximum assessment for the previous year without a majority vote of each class of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 10% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Trustees may fix the annual assessment at an amount not in excess of the maximum.

SECTION 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy, in an 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, 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 each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

SECTION 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 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. At the first such meeting called the presence of members or proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

SECTION 6 UNIFORM RATE OF ASSESSMENT Both annual and special assessments must be fixed at a uniform rate for all Lots 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 Lots on the first day of the month following the conveyance of the Common Area to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Trustees shall fix the amount of the annual assesment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assesments on a Lot is binding upon the Association as of the date of its issuance.

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 18 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. Additionally, a late charge of \$15.00 shall be added on payments made more than 10 days after due.

SECTION 9. SUBORDINATION OF THE LIEN TO MORTGAGES. THE LIEN OF THE ASSESMENTS provided for herein shall be subordinate to the lien of any first mortgage or first Deed of Trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure (Trust Deed power of sale) or any proceeding in lieu therof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assesments thereafter becoming due or from the Lien thereof.

ARTICLE V

EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assesment hereunder, as follows: paint, repair, replacment and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces, doors to entry of units, or snow, ice or debris removal from sidewalks or driveways.

In the event that the need for maintanance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of its Owner, or through the willful or negligent acts of the family, guests or invitees of the owner of the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such lot is subject.

ARTICLE VI

RESIDENTIAL AREA COVENANTS

Section 1 LAND USE. No Lot, nor building thereon shall be used except solely for residential purposes.

Section 2. Architectural Control No fence, wall or other structure shall

be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Trustees of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board, In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 3. NUISANCES. No noxious or offensive activity shall be carried on upon any Lot or Common Area, nor shall anything be done thereon which may be or may become any annoyance or nuisance to the neighborhood. No clothes drying or storage of any articles which are unsightly in the opinion of the Association or the Architectural Control Committee will be permitted on a Lot or the Common area, unless in enclosed areas designed for such purpose. No Automobiles, trailers, boats or other vehicles are to be stored on streets or in the front or side of the Lots unless they are in running condition, properly licensed and are being regularly used, and no owner, or any other individual shall be permitted to repair or otherwise work on such except in enclosed garages.

Section 4. Signs. No sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than four feet square, advertising the property for sale or rent, or signs approved by the Declarant and used by a builder to advertise the property during the construction and sales period.

Section 5. ANIMALS. No animals of any kind shall be kept or permitted by any owner on any Lot, except such animal as would be kept exclusively indoors.

Section 6. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No unsightly materials or other objects of any kind are to be stored on any Lot in view of the general public.

Section 7. PARTY WALLS. Each wall which is built as part of the original construction of the homes upon the properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use. If a party wall is destroyed or damaged by fire or other casualty, any owner who had used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

Section 8 EASEMENT. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the plat that is recorded. Each owner shall be required to keep the driveway and sidewalks appurtenant to his unit free from snow ice, and debris.

ARTICLE VII  
GENERAL PROVISIONS

Section 1. ENFORCEMENT. THE ASSOCIATION, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by 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 Owner in violation of any restriction, condition or covenant shall, in addition to any other obligation it may be responsible for, be liable for the costs of enforcement and collection including but not limited to reasonable attorneys' fees.

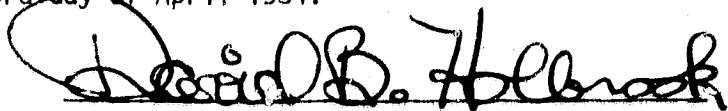
Section 2. Severability Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument obtained by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded in the office of the Davis County Recorder, State of Utah.

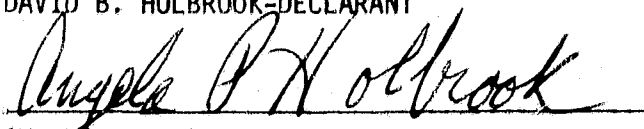
Section 4. ANNEXATION. Additional residential property and Common Area may be annexed to the properties with the consent of two-thirds (2/3) of each class of members.

Section 5 Property Taxes. Each unit and its percentage of undivided interest in the Common Area and facilities shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law as provided in Title 57-8-27 Utah Code Annotated, 1953, as amended.

IN WITNESS WHEREOF, THE UNDERSIGNED, BEING THE DECLARANT HEREIN, has hereunto set its hand and seal this 23rd day of April 1984.



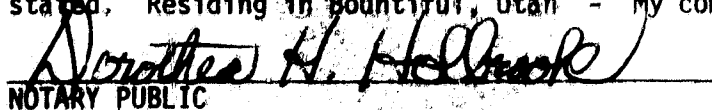
DAVID B. HOLBROOK-DECLARANT



ANGELA P. HOLBROOK-DECLARANT

ACKNOWLEDGEMENT  
STATE OF UTAH  
COUNTY OF DAVIS

On this 23rd day of April 1984, personally appeared before me, the undersigned Notary Public, in and for said County of Davis in said State of Utah, the signers of the above - DAVID B. HOLBROOK AND ANGELA P. HOLBROOK-DECLARANTS-acknowledged to me that they signed it freely and voluntarily and for the uses and purposes therein stated. Residing in Bountiful, Utah - My commission expires 21 August 1984.



NOTARY PUBLIC