

DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS

AFFECTING THE REAL PROPERTY KNOWN AS

MESA HILLS SUBDIVISION #2, AS AMENDED

W I T N E S S E T H:

WHEREAS, the undersigned, Mesa Hills Development, Inc., (hereafter "Mesa Hills"), is the sole owner and developer of the real property herein described, which is situate in Iron County, State of Utah, and more particularly known as the Mesa Hills Subdivision #2, as amended; and

WHEREAS, Mesa Hills desires to divide the subject property and to convey it subject to the restrictions and covenants herein contained between itself and the several purchasers of the subject property, and thereafter to impose the restrictive covenants and conditions between and among the several purchasers; and

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WHEREAS, the property subject to these restrictive covenants is located in Iron County, State of Utah, and is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference. The property will be divided and sold in parcels. Each of the separate parcels shall be subject to the covenants, restrictions and agreements herein contained; and

WHEREAS, Mesa Hills has previously created Mesa Hills Subdivision #1 and recorded similar Covenants, Restrictions and Conditions against said property.

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DIXIE B MATHESON - IRON COUNTY RECORDER  
1992 MAY 04 14:01 PM FEE \$42.50 BY PTC  
REQUEST: SO UTAH TITLE CO/CEDAR CITY

WHEREAS, Mesa Hills intends to subdivide adjacent property it owns in a similar fashion to #'s 1 & 2, as amended, and to have said property become part of the Homeowners Association as hereinafter established.

NOW THEREFORE, Mesa Hills hereby declares and decrees as follows:

#### SECTION I

##### CREATION OF COVENANT

The property herein described shall be hereafter held, sold, conveyed and occupied subject to the restrictions, covenants and conditions hereinafter set forth, which shall be covenants running with the land in perpetuity and which shall be binding between Mesa Hills and the several owners and purchasers, and between and among the several owners and purchasers themselves, and the heirs, successors and assigns of each.

#### SECTION II

##### PURPOSES AND DEFINITIONS

1. Purposes. This Declaration of Restrictive Covenants and Conditions (hereafter sometimes "Restrictive Covenants") is placed of record as a series of covenants running with the land, as herein set forth, for the purpose of establishing and preserving a quality residential subdivision. These Restrictive Covenants shall insure that the highest quality building standards will be preserved, that the Property will be kept free and clear of any rubbish, trash, noxious or offensive activity,

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and that the owners of lots within the Subdivision will be assured of peaceful enjoyment of their lot, and the other lots within the Subdivision, as single family residential dwellings. Any person who purchases any lot within the Subdivision, after the date of recording of these Restrictive Covenants, takes title to their property subject to and with a commitment to abide by each of the covenants and conditions herein contained.

2. Definitions.

"Association" shall mean the Mesa Hills Subdivision #'s 1 & 2 Lot Owners Association, a Utah non-profit corporation, organized to be the association referred to herein. Association shall also mean Mesa Hills, in regard to its actions taken prior to the formation of the non-profit corporation, as set forth in Section V, below.

"Lot" shall mean any of the designated lots within the Subdivision.

"Owner" shall mean any person or entity, or combination thereof, including Mesa Hills, at any time owning a lot within the Subdivision, as shown on the records of Iron County, State of Utah. The term "Owner" shall not refer to any mortgagee, unless the mortgagee has acquired title for other than security purposes.

"Property" shall mean the property described in the recitals above.

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"Subdivision" shall mean the property as divided into separate building lots.

### SECTION III

#### USE AND OCCUPANCY

1. The lots into which the Property shall be divided shall be used only for single family residential dwellings. There shall be no multiple unit dwellings of any kind, including but not limited to basement apartments, duplexes or apartment buildings. No condominiums of any kind are allowed. No time-sharing of any kind is allowed.

2. Each dwelling shall be occupied only by a single family. No one shall be entitled to reside in a residence constructed on a Lot unless they are members of the immediate family therein residing, or are authorized foster children or wards. No boarding houses or other group housing for unrelated people of any kind is allowed, regardless of the method or structure of the occupancy arrangement.

3. No noxious, illegal, or offensive use of property shall be carried on on any Lot, nor shall anything be done thereon that may be, or become, an annoyance or nuisance to the neighborhood. No grantee or grantees, under any conveyance, nor purchasers, shall at any time conduct or permit to be conducted on any residential lot any trade or business of any description, either commercial or non-commercial, religious or otherwise, including day schools, nurserys, or church schools, nor shall premises be

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used for any other purpose whatsoever except for the purpose of providing a private, single-family dwelling or residence.

4. No activity shall be conducted upon the Property, nor any improvements constructed thereon, which are or may become unsafe or hazardous to any person or property.

5. No automobiles, trailers, recreational vehicles, boats or other vehicles may be parked, kept or stored on streets within the Subdivision. No automobiles, trailers, recreational vehicles, boats or other vehicles may be parked, kept or stored on the Lots unless they are in running condition, properly licensed and are being regularly used.

6. No signs of any kind shall be displayed to public view on any Lot, except that each owner may display one sign of not more than five (5) square feet advertising the property for sale. Anything contained herein notwithstanding, Mesa Hills may, during the course of development of the Property and sale of Lots, place attractive signs in excess of this five square foot restriction as necessary to advertise the Property.

7. No animals, livestock or poultry of any kind shall be raised, bred or kept on the Property, or any Lot, excepting only household pets. Dogs, cats and other household pets may not be kept for commercial purposes and are restricted to the Owner's premises or under the Owner's control by leash or otherwise.

8. All Lots shall be used and kept free from trash, rubbish, garbage or other waste, and the Property shall at all

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times be kept by the various Owners in a sightly and attractive manner.

9. All such waste shall be kept at all times in appropriate sanitary containers. Garbage containers shall at all times be stored out of prominent view. Any building materials or construction materials shall be neatly stacked and kept upon the Property and shall not remain thereon for more than thirty (30) days following the completion of construction.

10. All land use and all buildings constructed shall fully comply with all zoning and land-use ordinances and regulations applicable to the property, which include the land-use and zoning ordinances of the State of Utah, of Iron County, and of Cedar City. All grading shall be done so as to preserve or restore the drainage of the land and so as to comply with all flood control requirements of any applicable agency.

11. No lot within the Property shall be divided or conveyed in part.

12. Easements for installation and maintenance of utilities and drainage are reserved, as shown on the recorded plat, and over the rear 7.5 feet of each Lot. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. This easement area of each lot shall be maintained continuously by the owner except for

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those improvements for which a public or utility company is responsible.

SECTION IV  
BUILDING RESTRICTIONS

1. No dwelling shall be constructed or erected on any Lot which has a finished, ground-level living area of less than 1,500 square feet, excluding garages and other outbuildings, except that a dwelling which has two or more levels above ground shall have a minimum of 1200 square feet on ground level (excluding garage and other outbuildings) and a total of 1,800 square feet above ground. No dwelling shall be constructed or erected on any Lot which has a finished total living area of less than 1,500 square feet.

2. Every dwelling constructed on the Property shall have an attached garage with a minimum capacity of two cars. All garages shall be fitted with a door, which shall be closed, except for normal use.

3. The minimum side yard setback for any dwelling shall be ten feet on each side, with the total width of the two required side yards not less than 20 feet. The minimum front yard setback for all dwellings shall be 25 feet. All other setback and other location requirements shall at all times be in accordance with the ordinances of Cedar City Corporation.

4. No temporary buildings, structures, or improvements of any kind shall ever be erected or maintained on any of the Lots

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within the Property. Provided, however, that in a reasonable manner during construction, a general or subcontractor shall be entitled to keep a temporary construction trailer or portable building on the Property, however, said construction trailer or portable building cannot be used as a residence by any person during or after construction.

5. No pre-fabricated, pre-built, or modular dwellings may be moved onto or constructed on the Property. All dwellings shall be of stick-built, on-site construction.

6. No dwelling shall be constructed or erected on any Lot until the plans, specifications and plot plans showing the location and style of such dwelling have been approved in writing as to conformity with these covenants and harmony with external design with existing structures in the Subdivision, by the Architectural Control Committee, as set forth in Section V, below. All dwellings shall have as their exterior color, colors that are earth tone in nature. Any modification, alteration (including re-painting) of an existing structure, or any other improvement, or construction, which requires a building permit shall also require approval of the Architectural Control Committee.

7. No fence, wall or hedge shall be constructed except after approval and review by the Architectural Control Committee, and all fences shall be designed and constructed so as to be compatible with the neighborhood. No fence, wall or hedge higher

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than 8 feet shall be erected or maintained on any Lot. Fences along rear boundaries shall be of masonry type construction, or a combination of masonry and other materials approved by the Architectural Control Committee. All fences shall be designed and constructed so as to not constitute a nuisance or offensive effect on other persons residing within the subdivision. Chain-link fences for animal containment purposes, with proper screening from neighbors and public view, may be acceptable on approval of the Architectural Control Committee. All fences shall be maintained after installation.

8. All construction within the Subdivision shall be with new materials only, except that used brick may be used when properly approved by the Architectural Control Committee.

9. The front and side yard landscaping shall be completed for each Lot within eight months after the occupancy of any dwelling on said Lot.

10. Heat pumps, propane tanks, solar devices, chimney flues, hot tub pumps, swimming pool pumps and filtration systems, satellite dishes, and similarly exposed mechanical equipment, shall be aesthetically concealed from view on all sides and shall be shielded in such a manner as to minimize noise and safety concerns.

11. All mailboxes and mailbox holders shall be of standard design accepted by the Architectural Control Committee and adhering to the applicable specifications of the U.S. Postal

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Service. All mailboxes shall be located as directed by the U.S. Postal Service. Each Lot Owner shall be responsible for the maintenance and replacement of his or her mailbox so as to keep it in a state of repair at all times.

12. All Lot Owners shall provide and maintain proper facilities to control storm water run-off onto adjacent properties and to ensure that sediments do not enter the natural drainage system.

13. All lines or wires for telephone, power, cable television, or otherwise shall be placed underground and no such wires shall show on the exterior of any building unless the same shall be in underground or in a conduit attached to a building. All television or radio antenna shall be installed inside an existing structure.

14. Roof pitches shall be a minimum of 4-12, unless otherwise approved by the Architectural Control Committee. All roofing material shall be approved by the Architectural Control Committee.

15. All driveways and parking bays shall be constructed of concrete, concrete aggregate, or asphalt, unless written approval for the use of some other material is given by the Architectural Control Committee.

#### SECTION V

##### HOME OWNERS ASSOCIATION

1. Establishment. As soon as seventy-five percent of the lots in Mesa Hills Subdivision #2, as amended, have been sold,  
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the purchaser or owner of each lot in the subdivision shall become a member of the Mesa Hills Subdivision Homeowners Association (a non-profit corporation existing under the laws of the State of Utah) which membership shall include the purchasers or owners of lots in Mesa Hills Subdivision #'s 1 & 2, as amended, or other Mesa Hills Subdivision Units developed hereafter. It is the intent of the developer to create additional subdivision units that will become part of the Homeowners Association as herein defined. The Articles of Incorporation of such corporation shall specify, among the purposes and duties of such corporation, the enforcement of all the restrictions, covenants, and conditions, contained in this instrument, and the maintenance, preservation, and improvements of such properties, and the keeping and maintaining of Mesa Hills Subdivision and every part thereof in a clean and sanitary condition, including the removal of weeds and rubbish from streets and vacant property, so far as it may lawfully act to do so, and the transaction of such other businesses as may be permitted by law. The purchaser or owner of a lot in said subdivision agrees to pay to such corporation, when formed, dues or assessments for such purposes, the amounts of which may be fixed by its by-laws or by lawful act of its board of directors.

A. The non-profit corporation shall be known as The Mesa Hills Subdivision Home Owners Association. The Home Owners Association shall have all rights and authorities

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granted to it as a non-profit corporation in the State of Utah, and in addition, shall have the authority to establish an Architectural Control Committee, as set forth below.

B. It is understood and agreed that the Articles of Incorporation and by-laws of such corporation shall provide that each purchaser or owner of a lot in any unit of Mesa Hills shall be entitled to one vote at all elections and on all other matters that may come before a meeting of the members, subject to the proviso that if any member of such corporation shall be the purchaser or owner of more than one lot in the subdivision, he shall be entitled to as many votes as the number of lots purchased or owned by him. Mesa Hills, as the developer, shall be entitled to, and obligated to accept, membership in such corporation, and shall have the benefit and bear the burdens of such membership with respect to the unsold lots in said subdivision.

C. Mesa Hills further agrees that on the organization of such corporation, it will convey to such corporation its reversionary interest and title and all rights in or to the property conveyed by this instrument, arising or that may arise out of the restrictions and conditions expressed in this instrument, if any there be. ,

D. By acceptance of the deed or other instrument of conveyance for his or her lot within the subdivision, each Lot Owner shall be deemed to covenant, and agree to be bound

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by the Articles of Incorporation and by-laws of the Association and to pay the Association annual assessments and special assessments for maintenance or necessary capital improvements. Such assessments shall be fixed, established, and collected from time to time as provided in the Articles of Incorporation or by-laws of the non-profit corporation.

2. Operation of Owners Association. The business affairs of the Owners Association, including meeting schedules, duties of officers and all conduct of the Association shall be governed by the bylaws of the Association.

3. Architectural Control Committee. The Home Owners Association shall establish an Architectural Control Committee for the purpose of approving the building and site plans for all construction within the Subdivision. No dwelling or any other structure shall be constructed without the approval of the Architectural Control Committee. The Architectural Control Committee shall consist of the governing board of the Association, and shall consist of three members, to be selected annually by the board of directors of the Association, with the members to be chosen for varying terms so as to achieve staggered terms and continuity of membership of such committee. The governing board shall be elected by the Home Owners by vote on an annual basis.

A. Any property owner seeking to construct a new home or other appurtenant structure, or to add to or modify any

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portion of the exterior of an existing home, shall submit the plans to the Architectural Control Committee for review. A modification of the home exterior will include decks, hot tubs, patios, pools, and similar alterations. Construction of new structures includes equipment and material housing, dog runs, gazebos, arbors associated with landscaping, and other similar construction.

B. No construction, change, modification, or alteration for which plans are to be submitted to the Architectural Control Committee pursuant to paragraph A, immediately above, shall commence until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same have been submitted to and approved in writing by the Architectural Control Committee as to the harmony of the external design and location in relation to surrounding structures and topography, size, estimates of cost, and other such factors as the Architectural Control Committee considers necessary, appropriate, and relevant to maintain property values of nearby properties. In the event the Architectural Control Committee fails to approve or disapprove such design and location plan within thirty (30) days after such plans and specifications have been submitted to it, approval will not be required and full compliance with this section of the Declaration will be deemed to have occurred.

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C. In spite of the foregoing provisions, the Architectural Control Committee shall have no affirmative obligation to be certain that all elements of the design comply with the restrictions contained in this Declaration, and no member of the Architectural Control Committee shall have any liability, responsibility, or obligation, whatsoever for any decision or lack thereof, in carrying out of duties as a member of such committee. Such committee and its members shall have only an advisory function, and the sole responsibility for compliance with all of the terms of this Declaration shall rest with the homeowner. Each homeowner agrees to save, defend, and hold harmless the Architectural Control Committee and each of its members on account of any activities of the Architectural Control Committee relating to such owner's property or buildings to be constructed on his or her property.

D. The Architectural Control Committee, if it observes deviations from or lack of compliance with the provisions and this Declaration, shall report such deviations or lack of compliance to the Board of Directors Association for appropriate action.

E. The approval of building plans and specifications shall not be unreasonably withheld by the Association. The Committee shall, however, have the sole and absolute discretion to evaluate plans and specifications for the

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purpose of assuring that the proposed buildings and fences are consistent with the use contemplated by these Restrictive Covenants, that the plans and specifications are in all particulars consistent with applicable laws and ordinances and that the proposed construction is aesthetically consistent with the objectives herein set forth. Any owner or builder may not, however, rely on the opinion of the Architectural Control Committee as to whether the plans meet the applicable laws and municipal ordinances in place at the time of construction. It shall be the sole and exclusive responsibility of the owners of the lots within the Subdivision to be sure that all laws and ordinances are complied with in connection with their construction.

4. Membership. Each person who purchases a lot within any unit of Mesa Hills Subdivision shall be entitled and required, and shall automatically become, a member of the Association.

5. Association's Enforcement Authority. In addition to the enforcement rights set forth in Section VI, below, the Association shall have the right independently to enforce these restrictive covenants against any owner who is in violation thereof. If any enforcement action is necessary, the Association shall be entitled to injunctive relief, damages and such other remedies as the law allows, and shall be entitled to recover from the owner or other person in violation all of its costs, expenses and a reasonable attorney's fee.

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6. Community Open-Space and Amenities.

A. It is anticipated by Mesa Hills that it will create additional subdivisions adjacent to or in the immediate area of Mesa Hills Subdivision #'s 1 & 2, which additional subdivisions may contain open-space tracts as the developer shall create. Such open-space tracts as well as all open-space easements created or arising out of the subdivision development shall be for the benefit of all properties in the subdivision, now or as hereafter created by Mesa Hills, and shall thereafter be developed, paid for, and maintained by the Association, as provided in this Declaration.

B. On the filing of the final subdivision map for the future subdivisions, the mentioned open-space located in the subdivision shall be conveyed to and accepted by the Association.

C. Maintenance of the open-space tracts, open-space easements, and/or any amenities located thereon shall be at the cost and expense of the Home Owners within Mesa Hills Subdivision #'s 1 & 2, as amended, or future subdivisions created by Mesa Hills. All such costs, including, but not limited to maintenance expenses, insurance, and real property taxes, shall be borne by the Association created hereunder.

7. Mesa Hills Development, Inc.'s Temporary Authority.

Until such time as seventy-five percent of the Mesa Hills #2, as

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amended, Subdivision is sold (calculated on a pro-rata percentage of the total subdivision acreage), Mesa Hills shall be entitled to perform all functions of the owners' association set forth herein, and even thereafter until the association is incorporated and the officers and trustees thereof have been elected. Mesa Hills Development, Inc. shall have the right to assign its duties as the Architectural Control Committee during any period of time it is vested with that authority. Upon the formation of the Homeowners Association by incorporation, Mesa Hills shall have no further involvement nor responsibility in connection with the association or its responsibilities and duties as herein set forth, except as a property owner with all rights arising from the same, including the right to vote as herein defined.

#### SECTION VII

#### ENFORCEMENT

1. The restrictions set forth in this document shall operate as covenants running with the land for the benefit of any and all persons who now may own, or who may hereafter own, property in the Mesa Hills Subdivision Unit II, and such persons are specifically given the right to enforce these restrictions through any proceeding, at law or in equity, against any person or persons violating or threatening to violate such restrictions and to recover any damages suffered by them from any violation thereof.

2. In the event any enforcement action is necessary, the person or persons seeking enforcement shall be entitled to enjoin

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the violation of these covenants, and to recover any and all damages of any kind suffered by them because of the violation. In addition, the prevailing party in any action to enforce these restrictive covenants shall be entitled to recover from the other all costs, reasonable attorney's fees and expenses incurred in the enforcement action.

3. The Mesa Hills Subdivision Home Owners Association is hereby given a right of enforcement for any violations of these restrictive covenants, and shall have the same rights as the owners which are set forth herein. The Articles of Incorporation or by-laws of the non-profit corporation shall specify that among its purposes and duties is the enforcement of all of the restrictions, covenants and conditions contained in this document and the maintenance, preservation and improvement of the Property.

#### SECTION VII

##### MISCELLANEOUS COVENANTS

1. Amendment. The restrictions, covenants and conditions set forth herein may be amended by a majority vote of three-fourths of the lot Owners; provided, however, that Section III and Section IV of these restrictive covenants shall not be amended except upon unanimous vote of the lot owners. The amendment shall not be enforceable nor effective until an instrument is recorded in the Iron County Recorder's office indicating that a vote has been duly and properly taken on the proposed amendment, that it has been approved by the requisite

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percentage of owners within the subdivision, and is signed and acknowledged by each Owner in favor of the modification.

2. Powers Prior to Formation of H0meowners Association.

Prior to the actual organization or incorporation of the Association contemplated by the terms of this Declaration, Mesa Hills shall have the right, at its option, to perform the duties and assume the obligations, levy and collect the assessments and charges, and otherwise exercise the powers herein conferred on the Association in the same way and in the same manner as though all such powers and duties were herein given to Mesa Hills directly. Mesa Hills shall also have the right to modify, amend, repeal, or change any of the terms of this Declaration prior to the actual organization or incorporation of the Association.

3. Liberal Construction. The provisions of these Restrictive Covenants shall be liberally construed to achieve the goal and intent of the provisions hereof.

4. Mailing Addresses. Each owner shall register with the Association his current mailing address. All notices or demands intended to be served upon any owner may be sent by first-class U.S. Mail, postage prepaid, addressed to the owner at his registered mailing address and shall be effective when so mailed.

5. Right of Inspection. At any reasonable time, upon appointment and at his own expense, any owner may audit or inspect the books and records maintained by the Association.

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6. Legal Proceedings. Any Lot Owner, or the Association, may maintain any legal proceedings to compel or enforce any of the terms and conditions of this Declaration.

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

8. Failure to Enforce Not a Waiver. Failure by declarant, 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.

9. Subordination. No breach of any of the conditions herein contained or reentry by reason of such breach shall defeat or render invalid the lien of any mortgage made in good faith and for the value as to the subdivision of any lot therein; provided, however, that such conditions shall be binding on any owner whose title is acquired by foreclosure, trustee's sale, or otherwise.

DATED this 29<sup>TH</sup> day of APRIL, 1992.

MESA HILLS DEVELOPMENT, INC.

By: Robert Church  
ROBERT CHURCH, President

Barry Church  
BARRY CHURCH, Secretary/  
Treasurer

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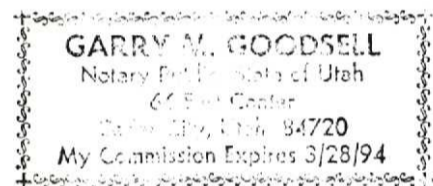
STATE OF UTAH )  
 ) : ss.  
COUNTY OF Idaho )

On the 29TH day of APRIL, 1992, personally appeared before me ROBERT CHURCH, who being first duly sworn did say that he, Robert Church, is the President of MESA HILLS DEVELOPMENT, INC., a Utah corporation and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and that the said ROBERT CHURCH acknowledged to me that said corporation executed the same.

Garry M. Goodsell  
Notary Public

Residing at CEAR CITY UT

My Commission Expires: 3/28/94



STATE OF UTAH )  
 ) : ss.  
COUNTY OF Idaho )

On the 29TH day of APRIL, 1992, personally appeared before me BARRY CHURCH, who being first duly sworn did say that he, BARRY CHURCH, is the Secretary/Treasurer of MESA HILLS DEVELOPMENT, INC., a Utah corporation and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and that the

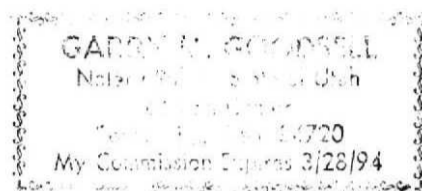
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said BARRY CHURCH acknowledged to me that said corporation  
executed the same.

*Gary E. Goodsell*  
Notary Public

Residing at CEGAR CITY, UTAH

My Commission Expires: 3/28/94



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EXHIBIT A

Lot 31 to and including Lot 58, of MESA HILLS  
SUBDIVISION #2, as amended, as per map on file  
with the office of the Iron County Recorder.

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