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 GARY W. OTT  
 RECORDER, SALT LAKE COUNTY, UTAH  
 MERIDIAN TITLE  
 BY: ZJM, DEPUTY - WI 3 P.

When recorded return to:  
 Holmes Homes, Inc.  
 45 West 10000 South, Ste.206  
 Sandy, Utah 84070

P-103

## DECLARATION OF SIDEYARD EASEMENTS

This Declaration Agreement is made this 12<sup>th</sup> day of December, 2005, by Holmes Homes, Inc. (herein Holmes).

1. Holmes is the owner of the follow Lots in the Daybreak Phase II Amended subdivision situated in Salt Lake County, Utah:

Lots 105, 106, 107, 108, 109 and 110, KENNECOTT DAYBREAK PHASE II AMENDED SUBDIVISION, according to the official plat thereof as recorded in the office of the Salt Lake County Recorder. (Herein referred to as the Project.) Salt Lake County Tax Parcel Nos. 27-19-354-007; 27-19-354-008; 27-19-354-009; 27-19-354-005; 27-19-354-004; 27-19-354-003.

2. This Declaration is made in connection with each of the Lots referred to above.
3. Holmes has constructed or is in the process of constructing single family dwellings on each of said Lots and has determined that it is beneficial for the Project and for the use and maintenance of each of the individual Lots in the Project that each home have one sideyard to be used and maintained by the Owner of that Lot. This Declaration of Easement is made for the purpose of creating a Sideyard Easement for the Lots indicated below that will provide the following burdens and benefits with respect to each Sideyard which shall become a part of the hereinafter defined Dominant Lot.
4. That portion of each Sideyard which is a part of the adjoining (Servient) Lot shall constitute a "Sideyard Easement" as more specifically set forth below with respect to each of individual lots described herein. Each Sideyard Easement shall burden that portion of the Servient Lot situated between the lot boundary of the Dominant Lot and the wall or fence constructed on the Servient Lot. The Sideyard Easement is granted for the personal use by the Owner(s) of the Dominant Lot, including, but not limited to, for the purposes of general landscaping, recreational and garden use, drainage and other purposes related thereto subject to the following provisions:
  - a. The Owner of the Servient Lot shall have the right at all reasonable times to enter upon the Sideyard Easement, including the right to cross over the entire Sideyard including that portion of the Dominant Lot for such entry, in order to perform work related to the use and maintenance of the improvements on the Servient Lot; and

- b. The Owner of the Servient Lot shall have the right of drainage over, across and upon the Sideyard for water draining naturally from any structure upon the Servient Lot, the right to maintain eaves and appurtenances thereto and the portions of any structure upon the Servient Lot as originally constructed or as constructed pursuant to the CC&Rs of the Project; and
  - c. The Owner of the Dominant Lot shall not attach any object to a wall or dwelling belonging to the Servient Lot or disturb the grading of the Sideyard area or otherwise act with respect to the Sideyard in any manner which would damage the Servient Lot; and
  - d. In exercising the right of entry upon the Sideyard as provided above, the Owner of the Servient Lot agrees to utilize reasonable care not to damage any landscaping or other items existing in the Sideyard, provided, however, the Owner of the Servient Lot shall not be responsible for damage to such landscaping or other items to the extent such damage could not be reasonably avoided in connection with such entry upon the Sideyard for authorized purposes; and
  - e. Any damage caused by the Owner of the Dominant Lot to the Servient Lot or the structures located thereon shall be repaired and paid for by the owner of the Dominant Lot; and
  - f. The owner of the Dominant Lot which "possesses" the Sideyard shall have the right to enclose the Sideyard with an appropriate fence, to landscape and use the entire Sideyard the same as if it were owned by the Dominant Lot Owner. Further, the Dominant Lot Owner shall be responsible to landscape and maintain the entire Sideyard the same as if the Dominant Lot Owner owned it.
5. For good and valuable consideration, the receipt and adequacy of which is acknowledged Holmes declares that the Sideyard Easements declared and created hereunder are and shall be perpetual, shall run with the land for the benefit of and shall be appurtenant to each Dominant Lot. The following "Sideyard Easements" are declared under this Instrument and shall be a part of the Sideyard of the adjoining lot and shall constitute an Easement burden on the described portion of each Servient Lot as set forth below in accordance with the terms and conditions of this Instrument as follows:
- a. The Westerly 5 feet of (Servient) Lot 106 shall be a part of the side yard of Lot 105 (the Dominant Lot); and
  - b. The Westerly 4 feet of (Servient) Lot 107 shall be a part of the side yard of Lot 106 (the Dominant Lot); and
  - c. The Westerly 4 feet of (Servient) Lot 109 shall be a part of the side yard of Lot 110 (the Dominant Lot); and
  - d. The Westerly 4 feet of (Servient) Lot 108 shall be a part of the side yard of Lot 109 (the Dominant Lot).

6. By accepting title to the respective Lots referred to above, the owner(s) of said Lot(s) understand(s), acknowledge(s) and agree(s) as follows:
- a. Each Owner of a Servient Lot acknowledges that portion of the Sideyard described above is subject to the Sideyard Easement as described herein; and
  - b. Each Owner of a Dominant Lot acknowledges that he has the benefits of the Sideyard Easement subject to the terms and conditions of this Instrument.
  - c. The Sideyard Easements created under the terms of this Agreement, shall run with the land and shall be binding on and inure to the benefit of the parties hereto to whom the respective grants are made, their successors and assigns.

Holmes Homes, Inc.

By: [Signature]  
 Its: \_\_\_\_\_

STATE OF UTAH )  
 ) : ss.  
 COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 12th day of December, 2005 by Heidi Topham the Secretary of Holmes Homes, Inc., who duly acknowledged to me that said instrument was executed by authority.

[Signature]  
 NOTARY PUBLIC

