

ENT 740136 Bk 949 Pg 150  
DATE 13-JUN-2000 12:10PM FEE 68.00  
MICHAEL L GLEED, RECORDER - FILED BY KM  
CACHE COUNTY, UTAH  
FOR CONTINENTAL CONSTRUCTION

# **DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

**FOR**

***HIGHLAND ESTATES P.U.D.,***  
**A Planned Unit Development**

June 13, 2000

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## DECLARATION

### Recitals

Section 1: Declarant is the Owner of that certain parcel of real property located in the City of Smithfield, County of Cache, State of Utah, legally described as set forth in Exhibit "A" attached hereto and incorporated herein by this reference ("the Land").

Section 2: Declarant desires to create on the Land a residential planned unit development with condominiums pursuant to § 57-8-1, Utah Code Annotated (1953 as amended) (Act), and the Planned Unit Development Ordinances of Smithfield City, Utah, and desires to provide for the preservation of the amenities of said development. To this end, and for the benefit of the Land and the Owners thereof, Declarant desires to subject the Land to the covenants, conditions, restrictions, charges, easements and liens hereinafter set forth.

Section 3: The Land is hereby made subject to the following covenants, conditions, restrictions, charges, easements and liens, all of which shall be deemed to run with the Land and each and every portion thereof, to ensure the proper use and appropriate development and improvement of the Land so as to:

A. Protect the Owners of Units against such improper development and use of Units as will depreciate the value and use of Units and the Land.

B. Prevent the erection on the Land of structures constructed of improper or unsuitable materials or with improper quality and methods of construction.

C. Ensure adequate and reasonably consistent use and development of the Land.

D. Encourage and ensure the erection of attractively designed permanent improvements appropriately located within the Land, in order to achieve harmonious appearance and function.

E. Ensure the provision of adequate and suitable Landscaping.

F. Provide for proper operation and maintenance of the Property, including without limitation, all Units, Common Areas, and Limited Common Areas.

H. Generally promote the welfare and safety of the Owners of the Units and Property.

NOW, THEREFORE, for such purposes, Declarant hereby makes the following Declaration containing covenants, conditions and restrictions relating to this Planned Unit Development which,

pursuant to the Act of the State of Utah, shall be an enforceable equitable servitude, where reasonable, and shall run with the land:

1. **Name:** The name by which the Planned Unit Development shall be known is the Highland Estates P.U.D.
2. **Definitions:** The terms used in this Declaration including Exhibits attached hereto shall have the meaning stated herein unless the context otherwise requires.
  - (a) "Assessment" shall mean and refer to any amounts levied, charged or assessed against an Owner and/or such Owner's Unit in accordance with the provisions of this Declaration.
  - (b) "Association" shall mean Highland Estates Home Owners' Association, a corporation formed under the Utah Non-profit Corporation and/or Cooperative Association, its successors and assigns, of which all of the Unit Owners are members. A Board of Trustees shall be the governing body of the Association and shall have such authority as its Articles of Incorporation (Articles) and Bylaws shall provide.
  - (c) "Board of Trustees" shall mean the Board of Trustees of the Association elected in accordance with the Articles and Bylaws of the Association.
  - (d) "Building" shall mean and include, but not be limited to, the main portion of all structures built for permanent use and all projections or extensions thereof, including, but not limited to, garages, storage facilities, canopies, porches and courtyards (to the extent permitted, if at all, by this Declaration).
  - (e) "Building Site" or "Building Area" shall mean and refer to the areas shown as such on any recorded Plat with respect to any portion of the Property, or as otherwise approved in writing by the Declarant or the Committee, which writing shall be placed of record in the Cache County Utah real estate records or in a plat, site plan or other P.U.D. document approved by the City of Smithfield. In the absence of any such specific designation, the "Building Site" shall consist of the actual Building footprint, as constructed, and not included in the Common Area or Limited Common Area.
  - (f) "Common Areas and Facilities" shall mean and refer to:
    - (1) The Land;
    - (2) That portion of the Property not specifically included in the respective Units as herein defined;
    - (3) All foundations, columns, girders, beams, supports, main walls (excluding only nonbearing interior partitions of units), roofs, stairways, exterior walkways, driveways, such recreational areas and facilities as may be provided, yards, fences, service and parking areas, and in general all other apparatus, installations and other parts of the Property necessary or convenient to the existence, maintenance and

- safety of the Common Areas, Limited Common Areas, and Facilities or normally in common use;
- (4) Those areas specifically set forth and designated in the Map attached and incorporated as Exhibit "B" as "Common Area", and
  - (5) All Common Areas, Limited Common Areas, and Facilities, whether or not expressly listed herein.
  - (6) All other parts of the Property necessary or convenient to its existence, maintenance, and safety or normally in common use.
  - (7) Certain items which could ordinarily be considered common areas such as but not limited to, window screens, awnings, storm windows, and the like, may, pursuant to decision of a majority of owners and specifications in the By laws or administrative rules, be designated as items to be furnished and maintained by Unit Owners at their individual expense, in good order, according to standards and requirements set by the Board by rule, regulation or Bylaws.
- (g) "Common Expenses" shall mean and refer to all expenses of administration, maintenance, repair or replacement of the Common Areas, Limited Common Areas, and Facilities, except as expressly limited herein, to all items, things and sums which are assessed against the Unit Owners in accordance with the provisions of this Declaration, the Articles, and the Bylaws, such rules and regulations which the Association may from time to time adopt, and such other determinations and agreements lawfully made and /or entered into by the Association.
  - (h) "Declarant" shall mean and refer to their successors and assigns if such successors and assigns are Owners of all or any portion of the Land and are designated by the Declarant to perform the obligations or succeed to the rights of Declarant hereunder.
  - (i) "Declaration" shall mean this instrument by which Highland Estates P.U.D. is established as a Planned Unit Development, and as a Condominium Project as defined in the Utah Code and as it may hereafter be modified or amended.
  - (j) "Land" shall mean and refer to the real property described on Exhibit "A".
  - (k) "Lienholder" (lienholder) shall mean the beneficiary of a recorded trust deed or the mortgagee of a recorded mortgage under which the interest of a Unit Owner in a Unit is pledged.
  - (l) "Limited Common Areas and Facilities" or "Limited Common Areas" shall mean and refer to those Common Areas and Facilities designated herein or on the Map as reserved for use of a certain Unit to the exclusion of the other Units including patios, entrances and walkways assigned by the association with each Unit.
  - (m) "Manager" shall mean and refer to the person, persons or corporation elected by the Association to manage the affairs of the Association and the Property.

- (n) "Map" shall mean and refer to the Record of Survey Map of the Final Plat of Highland Estates, a Planned Unit Development, as on file in the office of the Recorder of Cache County, Utah.
- (o) "Member" shall mean each Unit Owner who automatically is a member in the Association as provided herein.
- (p) "Owner" shall mean and refer to the record Owner, whether one (1) or more persons or entities, of fee simple title to any Unit, but excluding those having such interest solely as security for the performance of any obligation, in which event the equitable Owner of such fee simple title shall be deemed to be the Owner thereof.
- (q) "Planned Unit Development" or sometimes the "Project" shall mean and refer to the entire Property, as defined, together with all rights, obligations and organizations established by this Declaration.
- (r) "Property" shall mean and include the land, the buildings, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.
- (s) "Unit" shall mean and refer to one of the Units designated as a Unit of the Map and hereinafter shall be jointly described as "Unit". Mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, furnaces, stoves, fixtures and the like, shall be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim, consisting of, as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the Unit and serving only the Unit, and any structural members other than bearing walls and structural members of any other property of any kind, including fixtures and appliances within any Unit, which are removable without jeopardizing the soundness, safety or usefulness of the remainder of the Building within which the Unit is situated shall be considered part of the Unit. No Unit may be assessed until constructed and a certificate of occupancy issued, and there shall be no assessment to such newly-constructed Unit for prior Common Area costs and expenses. Each Unit shall have an exclusive easement for ingress and egress and parking on the driveway which is part of the Common Area from the public street to the garage within that Unit.

3. Submission to Ownership. Declarant hereby submits the Land, buildings, and other improvements constructed thereon or hereafter to be constructed, together with all appurtenances thereto, to the provision of the Act as a planned unit development with condominiums, and this Declaration is submitted in accordance with the terms and

the provisions of the Act and shall be construed in accordance therewith. It is the intention of Declarant that the provision of the Act shall apply to the Property.

4. Covenants to Run with the Land. This Declaration containing covenants, conditions and restrictions relating to the Project shall be enforceable equitable servitudes which shall run with the land and this Declaration and its servitudes shall be binding upon Declarant, its successors and assigns and upon all Unit Owners or subsequent Unit Owners, their grantees, mortgages, successors, heirs, executors, administrators, devisees and assigns.

5. Description of Land.

- (a) Description of Land. The Land is that tract or parcel, more particularly described in Exhibit "A" attached hereto.

- (b) Description of Improvements. The significant improvements contained or to be contained in the Project include eleven (11) two story buildings containing four (4) or six (6) Units each for a total of fifty-two (52) Units constructed principally of concrete foundation with exterior walls of brick and siding, asphalt shingle roofing, interior walls of wood studs, plywood and dry wall plaster. Each Unit has a garage. The Project also includes landscaping, guest parking and other facilities located substantially as shown in the Map and will be subject to easements which are reserved through the Project as may be required for utility services.

- (c) Description and Legal Status of Units. The Map shows the Unit Number of each Unit, its location, those Limited Common Areas and Facilities which are reserved for its use, and the Common Areas and Facilities to which it has immediate access. All Units, of whatever type, shall be capable of being independently owned, encumbered and conveyed and shall each own 1.923076% of the Common Areas.

- (1) Each Unit has immediate access to the outside and shall include that part of the Building containing the Unit which lies within the boundaries of the Unit, which boundary lines of each Unit are the undecorated and/or unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floor, uppermost ceiling, all window panes, interior surfaces of doors, window frames and door frames and trim. Each Unit shall include both the portions of the building that are not common areas and facilities within such boundary lines and the space so encompassed. Without limitations, a Unit shall include any finishing material applied or affixed to the interior surfaces of the interior walls and all utility pipes, lines, systems, fixtures, or appliances found within the boundary lines of the Unit and servicing only that Unit.



- (d) Common Areas and Facilities. Except as otherwise provided in the Declaration, the Common Areas, Limited Common Areas, and Facilities shall consist of the areas and facilities described in the definitions and constitute in general all of the parts of the Property except the Units. Without limiting the generality of the foregoing, the Common Areas, Limited Common Areas, and Facilities shall include the following, whether located within the bounds of a Unit or not;
- (1) All structural parts of the buildings including, without limitation, foundations, columns, joists, beams, supports, supporting walls, floors, ceilings and roofs;
  - (2) Driveways, parking areas, lawns, shrubs, and gardens, and recreational areas. The driveway accessing the garage for each Unit is for the exclusive use and parking of that Unit Owner, even though designated as part of the Common Area;
  - (3) Any utility pipe or line or system servicing more than a single Unit, and not located in the roadway dedicated to Smithfield City, and all ducts, wire, conduits, and other accessories used therewith;
  - (4) All other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Areas and Facilities in the Map;
  - (5) Nothing shall be done or kept in any Unit or in the Common Areas, Limited Common Areas, and Facilities which will increase the rate of insurance on the garage, buildings, or contents thereof beyond that customarily applicable for residential use, or will result in the cancellation of insurance on the Buildings, or the contents thereof, without the prior written consent of the Management or the Association. No Unit Owner shall permit anything to be done or kept in his Unit garage or in the Common Areas, Limited Common Areas, and Facilities which is in violation of any law, ordinance or regulation of any governmental authority or in violation of this Declaration.
  - (6) No Unit Owner shall cause or permit anything, including, without limitation, a sign, awning, canopy, shutter, radio, television antenna, or satellite dish, clothes lines, pots, plants, wind chimes or other decorative items to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the inside or outside of windows or doors, without the proper written consent of the Management or the Association. Temporary open house signs may be placed subject to written approval of the Management or the Association as to location, duration, size and design. If signs are placed without written approval, the Management or the Association retains the right to remove them. No signs for the sale of a motor vehicle may be placed in or upon any vehicle.

- (7) Horizontal levelor type window blinds are allowed subject to Management or Association approval of the color. No Plastic, sun screen or reflective type material shall be used on the interior or exterior of the windows.
- (8) No noxious or offensive activity shall be carried on or permitted in any Unit or in the Common Areas, Limited Common Areas, and Facilities, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or occupants.
- (9) Nothing shall be done in any Unit garage or in, on, or to the Common Areas, Limited Common Areas and Facilities which will impair the structural integrity of the Buildings or any part thereof or which would structurally change the Buildings or any part thereof except as is otherwise provided herein.
- (10) No animals or pets of any kind are to be raised, bred or kept in any garage or in the Common Areas or Limited Common Areas without the proper written approval of the Management or the Association with respect to the specific pet. Unit Owners shall keep pets off the Common Areas. If a pet becomes a nuisance to other Unit Owners, the pet owner shall remove the pet from the Project upon written notice by the Management or the Association or its representative.
- (11) No Boats, R.V.'s, 4-wheelers, snowmobiles, trailers, junk vehicles or vehicles that are being restored or repaired are to be stored on the Common Areas, Limited Areas, Units, Property, streets, parking lots, driveways or garages of the Highland Estates P.U.D.
- (12) The Common Areas, Limited Common areas, and Facilities shall be kept free and clear of all rubbish, debris and other unsightly material.
- (13) No Owner shall violate the rules and regulations regarding use of the Units and of the Common Areas and Limited Common Areas as adopted from time to time by the Management or the Association.
- (14) Each Owner and the Association recognizes that there are existing businesses west of the Property and the Property will be subject to reasonable amounts of noise, lighting, trucking, or related operations of the business properties as currently existing and neither any Owner nor the Association shall have a basis to object or complain to Smithfield City and adjacent businesses or otherwise regarding the same.
- (15) There shall be no direct access onto the businesses adjoining the Property. Ingress and egress to adjacent businesses shall be through the use of public roads and sidewalks.
- (16) Fences will be constructed by the Declarant and maintained by the Association surrounding the Property for aesthetics, safety, reducing risks of trespass and for the diversion of noise levels related to nearby

businesses. Declarant will construct and install a three-rail vinyl fence along the south and east boundaries of the Property and a chain link fence with privacy slats on the south half of the west boundary of the Property. There is no fencing required on the north half of the west boundary or on the north boundary of the Property.

6. Person to Receive Service of Process. The person to receive service of process until such time as the Association is organized and a different resident designated is:

Continental Homes  
Attn: Troy Kartchner, President  
601 West 1700 South, Suite A  
Logan, Utah 84321-8247

7. Ownership and Use.

- (a) Ownership of a Unit and Garage. Except with respect to any of the Common Areas, Limited Common Areas, and Facilities located within the bounds of a Unit, each Unit Owner shall be entitled to the exclusive ownership and possession of his Unit and membership in the Highland Estates Home Owners' Association.
- (b) Nature of and Restrictions on Ownership and Use. Each Unit Owner shall have and enjoy the rights and privileges of fee simple ownership of that Unit. There shall be no requirements concerning who may own Units, it being intended that they may and shall be owned as any other property right by persons, corporations, partnerships, or trusts and in the form of common tenancy. Each Unit Owner may lease or rent a Unit with its appurtenant rights subject to the terms and conditions of this Declaration. All Unit Owners, their tenants and other occupants or users of the Project, shall be subject to this Declaration, Articles, Bylaws, and all rules and regulations of the Association.
- (c) Prohibition Against Subdivision of Unit. No Unit Owner, by deed, plat or otherwise, shall subdivide or in any manner cause the ownership of a Unit to be separated into physical tracts or parcels smaller than the whole Unit as shown on the Map and no garage may be conveyed separately or severed from such Unit.
- (d) Ownership of Common Areas and Facilities. The Common Areas, Limited Common Areas, and Facilities contained in the Project are described and identified in this Declaration. Said Common Areas, Limited Common Areas, and Facilities shall be owned by and are hereby transferred, conveyed, and deeded by Declarant to the Highland Estates Home Owners' Association. The Common Areas, Limited Common Areas, and Facilities shall be used

only in a manner which is consistent with their community nature and with the use restrictions applicable to the Units contained in the Project.

- (e) Use of Common Areas and Facilities. Except with respect to Limited Common areas each Unit Owner may use the Common Areas and Facilities in accordance with the purpose for which they are intended, but subject to this Declaration, Articles, Bylaws, and the rules and regulations of the Association. This right of use shall be appurtenant to and run with each Unit.
  - (f) Driveway Easement. Each Unit shall have an exclusive easement for ingress and egress and parking on the driveway which is part of the Common Area from the public street to the garage within that Unit. Each Unit has two (2) parking stalls: one (1) in the garage and one (1) in the driveway accessing the garage. No more than one (1) vehicle may be parked in any Unit's driveway.
  - (g) Limit on Vehicles. No Unit may have more than two (2) vehicles on the Property; one (1) of which must be parked in the garage, and one (1) of which must be parked in the driveway for the exclusive use of the Unit Owner. All parking in Common Areas is for visitors only.
8. Use of Limited Common Areas and Facilities. A Unit Owner's exclusive right of use and occupancy of the Limited Common Areas and Facilities reserved for each Unit shall be subject to and in accordance with this Declaration, Articles, and Bylaws. Any Limited Common Area appurtenant to a Unit may not be leased to persons other than those occupying the Unit and may not be severed from the Unit.
9. Voting-Multiple Ownership. Each Owner of a Unit shall be a member of the Association. The vote attributable to and exercisable in connection with a member of the Association shall be one vote for each Unit owned. In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any meeting of the Association shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.
10. Association.
- (a) Association. The Association shall have, and is hereby granted, the following authority and powers:
    - (1) The authority to grant or create, on such terms as it deems advisable, utility and similar easements, over, under, across and through the Common Areas, Limited Common Areas, and Facilities; and work performed pursuant to such easements must be done in a workmanlike manner and any damage to the interior structure or decor of a Unit must be repaired;

- (2) The authority to execute and record, on behalf of all members of the Association, any amendment to the Declaration or Map which has been approved by a 66% vote of Members at a meeting to authorize such amendment; provided no such amendment shall impair or negatively impact the rights of any lienholder of any Unit unless all lienholders of Units consent to the same;
  - (3) The authority to enter into contracts for the Project;
  - (4) The power and authority to convey or transfer any interest in real property, so long as a 66% vote of Members at a meeting and the consent of all lienholders has been obtained;
  - (5) The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as such action has been authorized by a majority vote of Members at a meeting;
  - (6) The power and authority to add any interest in real property so long as such action has been authorized by a majority vote of Members at a meeting;
  - (7) The power to sue and be sued;
  - (8) The power and authority to borrow money, provided that no indebtedness for borrowed funds shall exceed in the aggregate at any given time the sum of \$5,000.00 without the prior vote or approval of a majority vote of Members at a meeting;
  - (9) The authority to promulgate such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Management in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with the interest of the Members of the Association; and
  - (10) The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Association to perform its functions for the Members of the Association.
- (b) **Manager.** The Association may carry out through a Professional Property Manager or other agent any of its functions which are properly the subject of delegation. Any Manager so engaged may be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Project for the benefit of the Association and the Unit Owners, and shall, to the extent permitted by law, have authority to conduct the functions or acts required or permitted to be performed by the Association itself. Any agreement for professional management of the project which may be entered into by the Association shall have a term not exceeding one (1) year, renewable by agreement of the parties for successive one-year periods. The initial managing agent of the Project until changed by the Association will be Continental Property Management, Inc., Attn: Scott Freeman, 601 West 1700 South, Suite A, Logan, Utah 84321-8247.

11. Membership in the Association.

- (a) Membership. Every Owner of a Unit shall be a member of the Association. Memberships in the Association shall not be assignable, except to the successor in interest of the Member, and every membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Unit.
- (b) Transfer. The Association membership held by any Owner of a Unit shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of such Unit and then only to the purchaser or lienholder of such Unit. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the Owner of any Unit shall fail or refuse to transfer the membership registered in the Owner's name to the purchaser of such Unit upon transfer of fee title thereto, the Board of Trustees shall have the right to record the transfer upon the books of the Association. The Board of Trustees shall have the right to charge a reasonable Special Assessment against any Owner and his Unit, equal to the cost to the Association of effectuating any such transfer of that Owner's membership upon the books of the Association.

12. Easements.

- (a) Each Unit shall be subject to such easements as may be necessary for the installation, maintenance, repair or replacement of any Common Areas, Limited Common Areas and Facilities located within the boundaries of such Unit.
- (b) In the event that, by reason of the construction, reconstruction, repair, settlement, movement or shifting of any part of the building, any part of the Common Areas, Limited Common Areas and Facilities encroaches or shall hereafter encroach upon any part of any Unit or any part of the Common Areas, Limited Common Areas and Facilities or any other Unit, valid easements for such encroachment and the maintenance of such encroachment are hereby established and shall exist for the benefit of such Unit and the Common Areas, Limited Common Areas and Facilities, as the case may be, so long as all or any part of the Building containing any such Unit shall remain standing; provided, however, that in no event shall a valid easement or any encroachment be created in favor of any Unit Owner or Unit if such encroachment occurred due to the negligent or willful conduct of such Unit Owner.
- (c) Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the units. The Owners of the other Units shall have the irrevocable right, to be exercised by the Association as its agent, to have access to each Unit and to all Common Areas, Limited

Common Areas and Facilities from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas, Limited Common Areas and Facilities located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas, Limited Common Areas and Facilities or to another Unit or Units. The Association shall also have such right. Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas, Limited Common Areas and Facilities or as a result of emergency repairs within another Unit at the instance of the Association or of Unit Owners shall be caused by the negligence of the Owner of a Unit, then such Owner shall be financially responsible for all such damage to the extent the Association does not have insurance to cover the same. Such damage shall be repaired and the property shall be restored substantially to the same condition as existed prior to damage. Amounts owing by Owners pursuant hereto shall be collected by the Association by assessment.

- (d) Declarant hereby dedicates for the mutual and reciprocal benefit of the Association, all Units and the Owners thereof, and employees, agents and contractors, the right and license to enter upon the Common Areas, Limited Common Areas and Facilities and the Property, for the purposes of construction and remodeling of any Building or improvement upon the Property. In connection with any such work or construction, incidental encroachment upon the Common Area may occur as a result of the use of ladders, scaffolding, safety barricades, and similar facilities resulting in temporary obstruction of portions of the Common Area and Limited Common Area, all of which shall be permitted hereunder so long as their use is kept within reasonable requirements of the construction work being expeditiously pursued. Common Area and Limited Common Area may be utilized for ingress and egress of vehicles transporting construction materials and equipment and persons employed in connection with any such work provided for herein, and temporary storage of materials and vehicles being utilized in connection with such construction provided that same do not unreasonably interfere with access, ingress, egress or other rights of any other Owner or the Association.
- (e) All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any Building, Common Area, Limited Common Area or Facilities shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay vehicular or pedestrian access to or from the Property, or any part thereof, to or from any public right-of-way or driveway located within the improved Common Area. Staging for the construction of any Building located on the Property including, without limitation, the location of any temporary Buildings or construction sheds, the storage of building materials and the parking of

construction vehicles and equipment shall be as reasonably needed upon Limited Common Areas and Common Areas. The person performing such work shall, at its sole cost and expense, promptly repair and restore to its prior condition all Buildings, Landscaping and other improvements damaged in the performance of such work. The person or persons undertaking such work shall pay all costs and expenses associated therewith and shall indemnify and hold harmless the Association and the Owners of the Units from any and all liability, claims, damages, expenses (including reasonable attorneys' fees), judgments, proceedings and causes of action arising out of or in any way connected with the performance of such work, unless caused by the negligent or willful act or omission of the indemnified person, its agents, representatives or employees. Incidental encroachments may occur as a result of the use of ladders, scaffolds, safety barricades and similar facilities resulting in temporary obstruction of portions of the Property, all of which are permitted hereunder so long as all construction requiring the use of such facilities is expeditiously pursued to completion and is performed in such a manner as to minimize any interference with the use and enjoyment of all other Units or other portions of the Property.

13. Change in Ownership. The Association shall maintain up-to-date records showing the name of each person who is an Owner, the address of such person, and the Unit which is owned. In the event of any transfer of a fee or undivided fee interest in a Unit either the transferor or transferee shall furnish the Association with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Cache County, Utah. The Association may for all purposes act and rely on the information concerning Unit Owners which is thus acquired by it or, at its option, the Association may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder of Cache County, Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Association is otherwise advised in writing.
14. Association Assessments. Every Unit Owner shall pay an equal share of the Common Expenses. Payment thereof shall be in such amounts and at such times as the Association determines in accordance with the Declaration, Articles, and Bylaws. No assessment for a single improvement in the nature of a capital expenditure which exceeds the sum of \$5,000.00 shall be made without the same having been first voted on and approved by a majority of the Members of the Association. This shall not limit the Association from taking reasonable emergency actions to preserve and protect the Property.
15. Destruction or Damage. In the event of destruction or damage of part or all of the improvements in the Project, the procedures of this section shall apply.



- (a) If proceeds of the insurance maintained by the Association are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out.
  - (b) If less than 75% of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all of the Units shall be assessed for any deficiency.
  - (c) Any reconstruction or repair which is required to be carried out by this section shall be accomplished at the instance and direction of the Association. Any question regarding the extent of damage to or destruction of Project improvements shall be made by an MAI appraiser selected by the Association who shall determine the figure representing the percentage of project improvements which have been destroyed or substantially damaged.
16. Taxes. It is understood that each Unit is subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law. Each Unit Owner will, accordingly, pay and discharge any and all taxes which may be assessed against a Unit.
17. Insurance.
- (a) Hazard Insurance. The Association shall at all times maintain in force hazard insurance meeting the following requirements:
    - (1) A multi-peril type "master" or "blanket" policy covering the entire Project (both Units, Common Areas, Limited Common Areas, and Facilities) shall be maintained. Such policy shall provide coverage against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as customarily are covered with respect to developments similar to the Project in construction, location, and use. As a minimum, such policy shall provide coverage on a replacement cost basis in an amount not less than that necessary to comply with any coinsurance percentage specified in the policy, but not less than one hundred percent (100%) of the full insurable value. (Based upon replacement cost). Such policy shall include an "Agreed Amount Endorsement" or its equivalent, a "Demolition Endorsement" or its equivalent, and, if necessary or appropriate, an "Increased cost of Construction Endorsement" and a "Contingent Liability from Operation of building Laws Endorsement" or its equivalent, if such coverages are obtainable for a reasonable cost.
    - (2) The named insured under each policy required to be maintained by the foregoing item (1) shall be in form and substance essentially as

follows: Highland Estates Home Owners' Association, or its authorized representative.

- (3) Each such policy shall include the standard mortgage clause (without contribution) which either shall be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of lienholders as their interests may appear or shall be otherwise endorsed to fully protect the interests of lienholders. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each lienholder at least thirty (30) days in advance of the effective date of any reduction in or cancellation of the policy.
- (4) Each such policy shall provide that notwithstanding any provision thereof which gives the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable if it is in conflict with any requirement of law or without the prior written approval of the Association.
  - (a) Fidelity Insurance. The Association shall or shall cause its Manager to at all times maintain in force fidelity coverage against dishonest acts on the part of managers (and employees of managers), trustees, employees, officers, Association members, or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance shall name the Association as the obligee or additional insured and shall be written in an amount sufficient to afford the protection reasonably necessary, but in no event less than one hundred fifty percent (150%) of the estimated annual operating expenses of the Association including reserve funds, unless a greater amount is required by a majority of the lienholders or their designees. Such fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each lienholder at least thirty (30) days in advance of the effective date of any reduction in or cancellation of the policy.
  - (b) Liability Insurance. The Association shall at all times maintain in force a Comprehensive policy of public liability insurance covering all of the Common Areas, Limited Common Areas and Facilities. Such insurance shall include a "Severability of Interest Endorsement" or its equivalent which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of other Owners, or the Association. The coverage afforded by such public liability

insurance shall include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and such other risks as customarily are covered with respect to developments similar to the Project in construction, location and use. The limit of liability under such insurance shall not be less than \$1,000,000 for all claims for personal injury and/or property damage arising out of a single occurrence.

- (c) General Requirements Concerning Insurance. Each insurance policy or fidelity bond maintained pursuant to the foregoing Sections 17(a) through 17(c) shall be written by an insurance carrier which is licensed to transact business in the State of Utah. No such policy or fidelity bond shall be maintained where; (1) under the terms of the carrier's charter, bylaws, bond or policy, contributions may be required from , or assessments may be made against, a Unit Owner, a lienholder, the Association, a Unit, the Common Areas, or the Project; (2) by the terms of the carrier's charter, bylaws, bond or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members; (3) the bond or policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled from collecting insurance proceeds; or (4) the bond or policy provides that the insurance thereunder shall be brought into contribution with insurance purchased by the individual Unit Owners or their lienholders. Each such fidelity bond or policy shall provide that: (a) coverage shall not be prejudiced by any act or neglect of the Unit Owners when such act or neglect is not within the control of the Association; (b) coverage shall not be prejudiced by any failure by the Association to comply with any warranty or condition with regard to any portion of the Project over which the Association has no control; and (c) coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty(30) days prior written notice to any and all insureds named therein, including any lienholder named as an insured. If due to changed circumstances, excessive cost, or any other reason, any of the insurance coverage required to be obtained and maintained under sections 17(a) through 17(c) hereof cannot reasonably be secured, with respect to such coverage the Association shall obtain and maintain such substitute, different or other coverage as may be reasonable

and prudent under the circumstances as they then exist. However, the Association shall not self insure.

(d) Additional Provisions. The following additional provisions shall apply with respect to insurance:

- (i) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Project in construction, nature, and use.
- (ii) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Unit Owners or their lienholders.
- (iii) Each policy of insurance obtained by the Association shall, if possible, provide: That it cannot be canceled, suspended, or invalidated due to the conduct of any member, officer, or employee of the Association or of the Manager without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Unit Owners.
- (iv) Any Unit Owner may obtain additional insurance at the Owner's own expense, so long as such additional insurance does not have the effect of decreasing the amount which may be realized under any policy maintained by the Association. Any Unit Owner who individually obtains insurance covering any portion of the Project shall supply the Association with a copy of the policy within thirty (30) days after acquired.

18. Payment of Common Expenses.

- (a) Each Unit Owner shall pay the Association the allocated portion, past, present, and future, of the Common Expenses deemed necessary by the Association to manage and operate the Project, upon the terms, at the time, and in the manner herein provided without any deduction on account of any set-off or claim which the Owner may have against the Association. Each installment shall be due on or before the first day of each month. If the Unit Owner shall fail to pay any installment within ten (10) days of the time when the same becomes due, the Owner shall pay a ten dollar (\$10.00) late fee or such amount as the Association may otherwise establish and shall pay interest on the installment at the rate of eighteen percent (18%) per annum from the