

22270

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS FOR  
THE HIGHLANDS  
A PLANNED UNIT DEVELOPMENT

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THIS DECLARATION, made on this 8<sup>th</sup> day of  
June, 1979, by ALPINE PARK REALTY  
INCORPORATED, a Utah corporation:

R E C I T A L S:

A. Declarant is the owner of certain property in Utah County, State of Utah, which is more particularly described as follows:

Commencing at a point 33.0' East and 30.43' North of the Southwest Corner of Section 31 Township 4 South, Range 2 East, S.L.B.&M., North 2°01'08" East 208.76' along East side of 4800 West street thence North 89°57'05" East 1280.48' Thence North 0°27'16" East 1093.46' Thence North 89°57'49" East 1327.00' Thence South 0°01'25" West 1331.91' Thence South 89°57'49" West 1336.75' Thence North 0°25'10" West 29.94' Thence South 89°56'53" West 1286.00 to the point of beginning.

B. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the real property described above (The Highlands Planned Unit Development) and in any additional properties which may be annexed thereto pursuant to the provisions of this declaration, to create a non-profit corporation under the Utah Non-Profit Corporation and Cooperative Association Act to which should be delegated and assigned the powers of owning, maintaining and administering the Common Area and administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created.

C. Declarant will or has caused such corporation, the Members of which shall be the respective Owners of Lots in the Highland Planned Unit Development, and Owners of the Lots in real property annexed pursuant to this Declaration, to be formed for the purpose of exercising the functions aforesaid.

D. Declarant will develop and convey all of the Lots contained in the Highlands Planned Unit Development (as hereinafter defined), pursuant to a general plan and subject to certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all running with the Highlands Planned Unit Development hereinafter set forth.

E. Declarant hereby declares that all of the Lots shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of all Lots in the Highlands Planned Unit Development, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Highlands Planned Unit Development, or any portion thereof. The covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth herein shall run with the Lots and shall be binding upon all persons having any right, title or interest in any Lot or Lots, their heirs, successors and assigns; shall inure to the benefit of each and every Lot and any interest therein; and shall inure to the benefit of and be binding upon Declarant, its successors-in-interest and each Owner and his respective successors in interest; and may be enforced by any Owner and his successors in interest, and by the Association.

Notwithstanding the foregoing, no provisions of this Declaration shall be construed as to prevent or limit Declarant's rights to complete development of the Highlands Planned Unit Development and improvements thereon, nor Declarant's rights to maintain model homes, construction, sales or leasing offices or similar facilities on any Lot on any Property owned by Declarant or the Association, nor Declarant's right to post signs incidental to construction, sales or leasing.

## ARTICLE I

Definitions

Unless otherwise expressly provided, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

Section 1. "Architectural Committee" shall mean the committee created pursuant to Article VII hereof.

Section 2. "Articles" shall mean the Articles of Incorporation of The Highlands Owners Association which is attached hereto as Exhibit "B" and incorporated herein by reference, as such articles may be amended from time to time.

Section 3. "Common Assessment" shall mean the charge against each Owner and his Lot, representing a portion of the total costs of the Association of maintaining, improving, repairing, replacing, managing and operating the Common Area, which are to be paid uniformly and equally by each Owner to the Association, as provided herein.

Section 4. "Special Assessments" shall mean a charge against a particular Owner and his Lot, directly attributable to the Owner, equal to the costs incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

Section 5. "Reconstruction Assessment" shall mean a charge against each Owner and his Lot, representing a portion of the costs of the Association for reconstruction of any portion or portions of the improvements of the Common Area pursuant to the provisions of this Declaration.

Section 6. "Capital Improvement Assessment" shall mean a charge against each Lot Owner and his Lot, representing a portion of the costs of the Association for the installation or construction of any improvements on any portion of the Common Area which the Association may from time to time authorize.

Section 7. "Association" shall mean The Highlands

Owners Association, a corporation formed under the Utah Non-Profit Corporation and Cooperative Association Act, and its successors and assigns.

Section 8. "Beneficiary" shall mean a mortgagee under a mortgage or beneficiary or holder under a deed of trust, as the case may be, and the assignees of such mortgage, beneficiary or holder.

Section 9. "Board" shall mean the Board of Trustees of the Association, elected in accordance with the bylaws of the Association.

Section 10. "Bylaws" shall mean the Bylaws of the Association, which have been or shall be adopted by the Board substantially in the form of Exhibit "C" attached hereto and incorporated herein by this reference, as such Bylaws may be amended from time to time.

Section 11. "Common Area" shall mean all the real property and improvements, including without limitation, any recreation facilities, landscaped areas and private roadways and walkways, which are owned by the Association for the common use and enjoyment of all of the Owners. The Common Area to be so owned by the Association at the time of the conveyance of the first Lot is contained in property described in the Legal Description on page one of this Declaration and consists of that common area identified as such on the "plat map", as hereinafter defined. Additional Common Area may be transferred to the Association in the future pursuant to the terms of Article XIV. (annexation of Additional Property)

Section 12. "Common Expenses" shall mean the actual and estimated costs of: maintenance, management, replacement, operation, and repair of the Common Area (including unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments), including those costs not paid by the owner responsible for payment; costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other

employees; the costs of all utilities of Common Area, and all recreational facilities thereon; the costs of fire, casualty and liability insurance, workman's compensation insurance, and other insurance covering the property; and the costs of bonding of the members of the management body; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Highlands PUD, or portions thereof; and the costs of any other item or items designated by, or in accordance with other expenses incurred by, the Association for any reason whatsoever in connection with the Highlands PUD for the benefit of all of the Owners.

Section 13. "Declarant" shall mean and refer to Alpine Park Realty, Incorporated, a Utah corporation, its successors and assigns so long as Declarant assigns such rights of Declarant hereunder to any such person by an express written assignment.

Section 14. "Declaration" shall mean this instrument as it may be amended from time to time.

Section 15. "Deed of Trust" shall mean and refer to a mortgage or a deed of trust, as the case may be.

Section 16. "Dwelling Unit" shall mean and refer to a building located on a single Lot designed and intended for use and occupancy as a residence by a single family unit.

Section 17. "Family" shall mean (1) group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (2) a group of not more than three (3) persons not all so related, inclusive of their domestic servant, who maintained a common household in a residence on a lot.

Section 17. "Improvement" shall mean all structures and appurtenances thereto of every type and kind, including but not limited to buildings, out buildings, walkways, sprinkler pipes, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping,

hedges, windbreaks, planting, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures or equipment.

Section 19. "Properties" shall mean and refer to all of the real Property described in Paragraph A of the Recitals to this Declaration, together with any additional real Property to which a Notice of Addition of Territory may be recorded subjecting it to this Declaration and to the jurisdiction of the Association as provided herein.

Section 20. "Lot" shall mean and refer to any residential Lot shown upon any recorded plat of the Highlands planned unit development. No Lot or Lots are included in the Common Area.

Section 21. "The Highlands Maintenance Funds" shall mean the accounts created for the receipts and disbursements of the Association, pursuant to Article V hereof.

Section 22. "Member" shall mean any person or entity holding a membership in the Association as provided herein.

Section 23. "Manager" shall mean the person, firm or corporation which is or may be appointed by the Association hereunder as its agents and delegated certain duties, powers or function of the Association.

Section 24. "Mortgage" shall mean any mortgage or deed of trust or other conveyance of a Lot to secure the performance of an obligation, which will be void and reconveyed upon the completion of such performance. The term "deed of trust" or "trust deed" when used herein shall be synonymous with the term "mortgage." The term "Mortgagee" shall mean a person or entity to whom a mortgage is made and shall include the beneficiary of a deed of trust; "Mortgagor" shall mean a personal entity who mortgages his or its property to another (i.e., the maker of a mortgage), and shall include the trustor of a deed or trust. The term "Trustor" shall be synonymous with the term "Mortgagor," and the term "beneficiary" shall be synonymous with the term "Mortgagee." The term "first mortgagee"

shall include any Mortgagee or the beneficiary under any deed of trust who, by virtue of his mortgage or deed of trust, holds a first and prior lien upon any Lot to that of any other mortgagee.

Section 25. "Owner" shall mean and refer to the person or persons or other legal entity or entities, including Declarant, holding fee simple interest of record to any Lot, including sellers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation.

Section 26. "Person" shall mean a natural individual or any other entity with the legal right to hold title to real Property.

Section 27. "Notice and Hearing" shall mean written notice and a public hearing before a tribunal appointed by the Board, at which the Owner concerned shall have an opportunity to be heard in person or by counsel at Owner's expense, in the manner further provided in the Bylaws.

Section 28. "Record, Recorded, Filed and Recordation" shall mean, with respect to any document, the recordation of such document in the office of the County Recorder of the County of Utah, State of Utah.

Section 29. "Subdivision" shall mean a parcel of real Property which has been divided or separated into lots, shown on a recorded Subdivision map.

Section 30. "Plat Map" shall mean and refer to that plat of the project entitled "The Highlands, A Planned Unit Development," which has or will be recorded in the official records of the Utah County Recorder.

Section 31. "Structural Maintenance Areas" shall mean, as the same may from time to time exist, any commonly owned Irrigation System, Utilities or other Improvements which are constructed or maintained on certain defined private areas.



Section 32. "Supplemental Declaration" shall mean any declaration of covenants, conditions and restrictions which may be recorded by Declarant pursuant to Article XIV of this Declaration.

The foregoing definitions shall be applicable to this Declaration and also to any Notice of Addition of Territory, Supplemental Declaration or Declaration of Amendment, unless otherwise expressly provided, recorded pursuant to the provisions of this Declaration.

## ARTICLE II

### Membership in Association

Section 1. Membership: Every Owner of a Lot shall be a member of the Association, and no Owner shall have more than one membership in the Association. Memberships in the Association shall not be assignable, except to the successor-in-interest of the Owner and the Owner's Lot, and every membership in the Association shall be pertinent to and may not be separated from the fee Ownership of such Lot. Ownership of a Lot shall be the sole qualification for membership in the Association.

Section 2. Transfer of Membership: The Association membership hold by any Owner of a Lot shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of the Lot giving rise to such membership, and then only to the purchaser or mortgagee of such Lot. 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 an Owner of a Lot shall fail or refuse to transfer the membership registered in his name to the purchaser of his Lot upon transfer of fee title thereto, the Board of Trustees of the Association shall have the right to record the transfer upon the books of the Association. The Board of Trustees of the Association shall have the right to charge a reasonable special assessment against any Owner, and his

Lot, equal to the cost to the Association of effectuating any such transfer of his membership upon the books of the Association.

### ARTICLE III

#### Owners' Property Rights

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of ingress and egress and of enjoyment in, to and over the Common Area which shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

(a) The right of Declarant to annex additional Common Area thereto pursuant to the terms of Article XIV.

(b) The right of the Association to reasonably limit the number of guests of Owners using the Common Area facilities.

(c) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area and the recreational facilities thereof, whether heretofore or hereafter constructed, including, but not limited to, the right and obligation of the Association to enforce all parking restrictions within the Common Area.

(d) The right of the Association to charge uniform and reasonable admission and other fees for the use of the recreational facilities, if any, situated upon a portion of the Common Area; provided, however, that none of the Common Area facilities, recreational facilities, parking spaces or other amenities shall be leased to the Owners.

(e) The right of the Association in accordance with its Articles of Incorporation, its Bylaws and this Declaration, with the vote of or written assent to two-thirds (2/3) of the members, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof, and, subject to the provisions of Article XIII of this Declaration, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or

debts incurred, provided that the rights of such Mortgagee shall be subordinated to the rights of the Owners.

(f) The right of the Association to suspend the voting rights and right to use the Common Area facilities except for ingress and egress to the Owners Lot, by an Owner of any period during which any assessment against his Lot remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any single infraction of the published rules and regulations of the Association, provided that any suspension of such voting rights or right to use the Common Area facilities, shall be made only by the Board of Trustees of the Association, after notice and an opportunity for hearing as provided in the Bylaws of the Association.

(g) Subject to the provisions of Article XIII of this Declaration, the right of the Association to dedicate, release, alienate 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. No such dedication, release, alienation or transfer shall be effective, unless an instrument signed by Members entitled to cast two-thirds (2/3) of the voting power of the Members, agreeing to such dedication, release, alienation or transfer has been recorded.

(h) The right of the Declarant (and its sales agents, customers and representatives) to the non-exclusive use of the Common Area and the facilities thereof, without charge, for sales, display, access, ingress, egress, and exhibit purposes, which right Declarant hereby reserves; provided, however, that such use shall not be for a period of more than five (5) years after the date of recording this Declaration. Upon the request of Declarant and upon the vote of fifty-one (51%) percent of the Members, this term may be extended for an additional period of time.

(i) The right of the Association (by action of the Board) to reconstruct, replace or refinish any improvement or portion thereof upon the Common Area, in accordance with the

original design, finish or standard of construction only with the vote or written consent of the Owners holding seventy-five (75%) percent of the voting power of the Association.

(j) The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Area.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside in his dwelling unit, subject to reasonable regulation by the Board.

Section 3. Easements for Parking. Temporary guest or recreational parking shall be permitted within the Common Area only within spaces and areas clearly marked for this purpose. Spaces shall be shown by signs or markings on the paved area. The Association, through its officers, committees and agents is hereby empowered to establish "parking" and "no parking" areas within the Common Area, as well as to enforce these parking limitations by all means lawful for such enforcement including the removal of any violating vehicle by those so empowered.

Section 4. Easements for Vehicular Traffic. In Addition to the general easements for use of the Common Area reserved herein, there shall be and Declarant hereby reserves and covenants for itself and all future Owners a non-exclusive easement appurtenant for vehicular traffic over all private streets within the Highlands, subject to the parking provisions set forth in Section 3 of Article II hereof. Declarant reserves the right to grant similar easements to Owners of property in subdivisions annexed hereto pursuant to Article XIV.

Section 5. Easements for City and County Public Service Use. In addition to the foregoing easements over the Common Area, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within The Highlands, easements for city, county and federal public

services, including but not limited to, the right of the police to enter upon any part of the Common Area for the purpose of enforcing the law.

Section 6. No Exemption from Liability. No Owner may exempt himself from personal liability for assessments to be levied by the Association, nor release the Lot or other property owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his Lot or Lots.

Section 7. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns that it will convey fee simple title to the Common Area described in Article I, Section 11 of this Declaration to the Association, free and clear of all encumbrances and liens, except easements, conditions and reservations set forth in this Declaration. Said conveyance shall be made prior to the conveyance of the first Lot to a purchaser from Declarant. Declarant shall similarly convey the Common Area of any property annexed hereto.

Section 8. Taxes. Each Owner shall execute such instruments and take such action as may be reasonably specified by the Association to obtain separate real estate tax assessments on each Lot. If any taxes or assessments may, in the opinion of the Association, nevertheless be a lien on more than one Lot, not under common ownership, or any part thereof, they may be paid by the Association, and each Owner shall be obligated to pay or reimburse the Association for, as the case may be, the taxes and assessments assessed by the County Assessor or other taxing authority against his Lot and interest, if any, in the Common Area. Each Lot Owner who has a portion of his Lot encumbered by a Common Area easement hereto shall pay the full tax on his Lot and shall not be reimbursed from the Association for any tax on his Lot that may be attributable to the portion of his Lot encumbered by the Common Area easement unless the taxing authority

establishes a separate tax identification number for the specific portions of the properties covered by the easements, in which event the Association shall pay such taxes and levy an equal and pro rata assessment against each Owner to pay such Common Area taxes.

Section 9. Vote Distribution. Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any Lot ("co-owner"), all such co-owners shall be Members and may attend any meetings of the Association, but only one such co-owner shall be entitled to exercise the vote to which the Lot is entitled. Such co-owners may from time to time all designate in writing one of their number to vote. Fractional votes shall not be allowed, and the vote for each Lot shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if such designation has been revoked, the vote for such Lot shall be exercised as the majority of the co-owners of the Lot mutually agree. Unless the Board receives a written objection from a co-owner, it shall be presumed that the corresponding voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for any Lot where the majority of the co-owners present in person or by proxy and representing such Lot cannot agree to said vote or other action. The non-voting co-owner or co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or by the Bylaws of the Association, shall be deemed to be binding on all Owners, their successors and assigns. Said voting rights shall be subject to the restrictions and limitations provided in this Declaration and in the Articles of Incorporation and Bylaws of the Association.

## ARTICLE IV

Duties and Powers of Association

The Association, acting through the Board of Directors, shall also have the power and duty to:

(a) Maintain, and repair the Common Area and replace those elements of the Common Area that must be replaced on a periodic basis, and otherwise manage the Common Area and all facilities, improvements and landscaping thereon in accordance with the provisions of Article V of this Declaration.

(b) Maintain all private streets and culverts the Common Area, including, but not limited to, cleaning and periodic resurfacing, the placement of such entry gates and signs as the Association shall deem appropriate, and maintenance of the same, and the placement of such fences separating the Highlands Project from publicly dedicated roads and highways as the Association deems appropriate, and the proper maintenance of such fences.

(c) Maintain any and all private sewer systems within any Common Area, water lines, irrigation systems, or other improvements.

(d) Grant any easements or rights-of-way for utilities, irrigation systems, and sewer facilities over any Common Area to serve the Common Area and the Lots.

(e) Maintain such policy or policies of liability and fire insurance with respect to the Common Area and personal property, if any, owned by the Association as provided herein in furthering the purposes of and protecting the interests of the Association and Members and as directed by this Declaration and/or the Articles of Incorporation or Bylaws of the Association.

(f) The Association may, but shall not be obliged to, employ or contract with a professional manager to perform all or any part of the duties and responsibilities of the Association, and shall have the power to delegate its powers to committees, officers and employees. Any such agreement shall be for a term not in excess of three (3) years, subject

to cancellation by either party without cause or payment of a termination fee upon ninety (90) days or less written notice.

(g) After fifteen (15) days' written notice, without being liable to any Owner, enter upon any Lot, for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining or repairing any such area if for any reason whatsoever the Owner thereof fails to maintain or repair any such area as required by this Declaration, institute any and all proceedings necessary to enforce this Declaration.

(h) Provide necessary spraying and cutting of weeds in the Common Area to reduce fire hazards and take other necessary measures, such as removal of brush and fire hazards in the Common Area.

(i) After fifteen (15) days' written notice, without being liable to any Owner, enter upon any Lot, for the purpose of removing any fire hazard in any Owner's Lot which Lot Owner refuses to remove immediately. Costs for the Association removing such a hazard shall be immediately reimbursed by the Lot Owner and shall constitute a lien upon the Lot until reimbursed; such costs advanced shall be reflected by a Special Assessment and enforced as such as provided in Article VI hereof.

(j) Provide fire and erosion control with respect to Highlands project.

(k) Maintain and repair any drainage or irrigation ditch and other structural maintenance areas situated on any Lot in accordance with the directions of the Association.

(l) Levy and collect all assessments as provided herein in sufficient quantity to enable the Association to adequately perform its duties hereunder.

(m) Such additional powers as shall be reasonable and necessary for the Association to accomplish the purposes of its creation as set forth in its Articles of Incorporation, its Bylaws and this Declaration.



## ARTICLE V

Covenant for Maintenance AssessmentsSection 1. Creation of the Lien and Personal

Obligation of Assessments. Declarant, for each Lot owned, 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 Common Assessments for common expenses, (2) Capital Improvements Assessments, (3) Special Assessments, and (4) Reconstruction Assessments; such assessments to be established and collected as herein provided. Such assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. Subject to provisions of this Declaration protecting first mortgagees, the personal obligation for delinquent assessments shall pass to the successors-in-interest of such Owner. The Board of Trustees shall establish no fewer than two (2) such separate accounts (the "Highlands Maintenance Funds") into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration. Each of the Highlands Maintenance Funds shall include: (1) an Operating Fund for current expenses, of the Association, and (2) a Common Area Reserve Fund for replacements, painting and repairs (which would not reasonably be expected to recur on an annual or less frequent basis) of the Common Area facilities to the extent necessary under the provisions of this Declaration. The Board of Trustees shall not commingle any amounts deposited into any of the Highlands Maintenance Funds with one another.

Section 2. Purpose of Common Assessments. The Assessments levied by the Association shall be used to promote the common health, safety, benefit, recreation and welfare of the Owners and for the improvement and maintenance of the Common Area. The assessments shall also be for an adequate reserve to be used as appropriate for maintenance and repairs of the common area and replacement of those elements of the common area that must be replaced on a periodic basis and are payable in regular installments rather than by special assessments. Structural maintenance area disbursements from the Operating Fund shall be made by the Board of Trustees for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all of the Owners, other than those purposes for which disbursements from the Common Area Reserve Fund are to be used. Nothing in the Declaration shall be construed in such a way as to permit the Association to use any Assessments to abate any nuisance or annoyance emanating from outside the boundaries of the Highlands. Nothing contained herein shall limit, preclude or impair the establishment of additional Highlands Maintenance Funds by the Association, so long as the amounts deposited into any such Fund are earmarked for specified purposes authorized by the Declaration.

Section 3. Damage to Common Area by Owners. The foregoing maintenance, repairs or replacements within the Common Area arising out of or caused by the willful or negligent act of the Owner, his family, guests or invitees shall be done at said Owner's expense or a Special Assessment therefor shall be made against his Lot; provided, however, that the liability of an individual Owner for such damage to the Common Area shall not be absolute, but shall only be that for which the Owner is legally responsible under State law.

Section 4. Basis of Maximum Common Assessment. Until January 1, of the year immediately following the conveyance of the first improved Lot in the Highlands Planned Unit Development to an Owner, the maximum Common Assessment under this

Article V shall be THREE HUNDRED AND NO/100 DOLLARS (\$300.00) per Lot per year.

(a) From and after January 1 of the year immediately following the conveyance of the first improved Lot to an Owner, the maximum annual Common Assessment may be increased by the Board effective January 1 of each year not more than the greater of (1) twenty percent (20%), or (2) the percentage by which the U.S. Bureau of Labor Statistics for the Northern Utah area, all items Consumer Price Index has increased as of the date of the increase over the level of said index as of the date the Common Assessment was last established, above the maximum annual common assessment for the previous year, without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first improved Lot to an Owner, the maximum annual Common Assessment may be increased above the greater of (1) twenty percent (20%), or (2) said percentage by which said Index has so increased, by the vote or written assent of fifty-one percent (51%) of each class of Members.

Section 5. Capital Improvement and Reconstruction Assessments. In addition to the Common Assessment authorized above, the Board of Directors of the Association may levy, in any assessment year, a Capital Improvement Assessment or Reconstruction 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 or other such addition upon the Common Area, including fixtures and personal property related thereto; provided that any such assessment in excess of Five Thousand Dollars (\$5,000.00) shall have the vote or written assent of a

majority of the votes of Members who are subject to such assessments.

Section 6. Notice and Quorum for any Action Authorizing Under Section 4 and 5. Written notice of any meeting called for the purpose of taking any action by the Members authorized under Sections 4 and 5 shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of the Members or of proxies entitled to cast fifty-one percent (51%) of all 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 twenty-five percent (25%) of the voting power of the Association. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Common Assessments, Capital Improvement Assessments and Reconstruction Assessments provided for in this Article V must be fixed at an equal amount for each Lot within the Highland Planned Unit Development. The total amount of each assessment shall be determined by dividing the total annual expenses by the number of Lots in the Highlands PUD. All Common Assessments shall be collected on a regular monthly basis by the Board of Trustees.

Section 8. Date of Commencement of Common Assessments:  
Due Date. The annual Common Assessments provided for the owners shall commence as to all Lots on the first day of the month following the conveyance of the Common Area which shall take place prior to the conveyance of the first lot by Declarant to any person or entity. The first annual Common Assessment shall be adjusted according to the number of months remaining in the fiscal year as set forth in the Bylaws. The Board of Trustees shall fix the amount of the annual Common Assessment against each Lot at least thirty (30) days in advance of each Common Assessment period. Written notice of any change in the amount of the annual Common Assessment shall be sent to every

Owner subject thereto, at least thirty (30) days prior to the effective date of such change. The due dates shall be established by the Board of Trustees. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent 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 assessments against a Lot is binding upon the Association as of the date of its issuance.

The Board of Trustees shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year, including expenditures of the Association for each fiscal year, including deposits in and withdrawals from the Common Area Reserve Fund and the Operating Fund, and shall cause to be distributed a copy of each such statement to each member, and to each first Mortgagee who has filed a written request for copies of the same with the Board of Trustees, in the manner provided in the Bylaws of the Association. At least sixty (60) days prior to the beginning of such fiscal year, the Board of Trustees shall prepare and distribute to the membership of the Association, a written, itemized estimate (budget) of the expenses to be incurred by the Association during such year in performing its functions under this Declaration (including a reasonable provision for contingencies and deposits into the Common Area Reserve Fund, less any expected income and accounting for any surplus from the prior year's respective The Highlands Maintenance Fund).

Each annual common assessment shall constitute an aggregate of separate assessments for each of The Highlands Maintenance Funds, reflecting an itemization of the amounts assessed and attributable to prospective deposits into the Common Area Reserve Fund, the Operating Fund and any other Highlands Maintenance Fund established by the Association. If the estimated sums prove inadequate for any reason, including

nonpayment of any Owner's annual Common Assessment, the Board may, at any time, levy supplemental Common Assessments, for any of the Highlands Maintenance Funds which shall be assessed equally against the Owner of each Lot.

Each annual Common Assessment may be paid by the Owner to the Association in one check or payment or in separate checks, as payments attributable to deposits into specified The Highlands Maintenance Funds. In the event that any installment of a Common Assessment payment is less than the amount assessed and the payment does not specify the Highlands Maintenance Fund or Funds into which it should be deposited, the receipt by the Association from that Owner shall be credited in order of the priority first the Operating Fund, until that portion of the Common Assessment has been satisfied, and second to the Common Area Reserve Fund.

At the end of any fiscal year of the Association, the Owners may determine that all excess funds remaining in the Operating Fund, over and above the amounts used for operation, may be returned to the Members proportionately, or may be retained by the Association and used to reduce the following year's Common Assessments. Notwithstanding anything contained in the Articles or Bylaws to the contrary, if prior to dissolution, the Association has not obtained tax exempt status from both the Federal and State government, then upon such dissolution of the Association, any amounts remaining in the Common Area Reserve Funds shall be distributed to or for the benefit of the Members in a proportion equal to their individual, respective contributions.

Section 9. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments herein:

- (a) All properties dedicated to and accepted by a local public authority; and
- (b) The Common Area.

## ARTICLE VI

Effect of Non-Payment of Assessments Remedies  
of the AssociationSection 1. Effect of Non-payment of Assessments:

Remedies of the Association. Any installment of a Common Assessment, Capital Improvement Assessment, Special Assessment of Reconstruction Assessment not paid within thirty (30) days after the due date shall bear interest from the due date such installment at the rate of 12 percent (12%) per annum. If any installment of an assessment is not paid within thirty (30) days after it is due, the Owner responsible therefor may be required further by the Board of Trustees to pay a late charge of Five Dollars (\$5.00) or five percent (5%) of the amount of the delinquent installment, whichever is greater. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. 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. If any installment of a Common Assessment is not paid within thirty (30) days after its due date, the Board shall mail an acceleration notice to the Owner and to each First Mortgagee of a Lot which has requested a copy of the notice. The notice shall specify (1) the fact that the installment is delinquent, (2) the action required to cure the default, (3) a date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured, and (4) that failure to cure the default on or before the date specified in notice may result in acceleration of the balance of the installments of the Common Assessment for the then current fiscal year and sale of the Lot. The notice shall further inform the owner of his right to cure after acceleration and to bring a court action to assert the nonexistence of a default or any other defense of the Owner to acceleration and sale. If the delinquent installments of Common Assessments and

any charges thereon are not paid in full on or before the date specified in the notice, the Board at its option may declare all of the unpaid balance of the annual Common Assessment to be immediately due and payable without further demand and may enforce the collection of the full Common Assessment and all charges thereon in any manner authorized by law and this Declaration.

Section 2. Notice of Assessment. No action shall be brought to enforce any assessment lien herein, unless at least thirty (30) days has expired following the date a Notice of Assessment is deposited in the United States mail, postage prepaid, to the Owner of the Lot, and a copy thereof has been recorded by the Association in the office of the County Recorder in which the Properties are located; said Notice of Assessment must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which may at the Association's option include interest on the unpaid assessment at twelve percent (12%) per annum, plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant. Such Notice of Assessment shall be signed and acknowledged by an officer of the Association, and said lien shall be prior to any declaration of homestead recorded after the date on which this Declaration is recorded. The lien shall continue until fully paid or otherwise satisfied.

Section 3. Foreclosure Sale. Any such sale provided for above may be conducted by the Board of Trustees, its attorneys or other persons authorized by the Board in accordance with the provisions of the Utah Code Annotated, 1953 as Amended, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.



Section 4. Curing of Default. Upon the timely curing of any default for which a Notice of Assessment was filed by the Association, the officers thereof shall record an appropriate Release of Lien, upon payment by the defaulting Owner of a fee, to be determined by the Association, but not to exceed Fifty Dollars (\$50.00), to cover the cost of preparing and recording such release. A certificate executed and acknowledged by any two (2) members of the Board stating the indebtedness secured by the liens upon any Lot created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, not to exceed Ten Dollars (\$10.00).

Section 5. Cumulative Remedies. The assessment liens and the rights of foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

Section 6. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage (meaning any recorded mortgage with first lien priority over all other mortgages encumbering the Properties), on which the assessment came due. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure, trustee sale, or deed in lieu thereof, shall extinguish the lien of such assessments as to installments which came due prior to such sale or transfer. However, no sale or transfer shall relieve such Lot from liability for any installments of assessments thereafter becoming due or from the lien thereon.

## ARTICLE VII

Architectural Control

Section 1. Members of Committee. The Architectural Committee, sometimes referred to in this Declaration as the "Committee," shall consist of three (3) members. The initial members of the Committee shall consist of representatives of Declarant. Each of said persons shall hold office until the election of the first Board of Trustees by the membership of the Association. Thereafter, new members of the Committee shall be appointed by the Board of Trustees and shall hold office until such times as he has resigned or has been removed or his successor has been appointed, as provided herein. Members of the Committee may be removed at any time without cause. The Board of Trustees shall have the right to appoint and remove all members of the Committee.

Section 2. Review of Proposed Construction. Subject to Article X, Section 12, of this Declaration, no building, fence, wall, or other structure shall be commenced, or erected upon any Lot, 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 color and location in relation to surrounding residences and topography by the Architectural Committee. The Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding residences and common area as a whole, that the appearance of any structures, will not become a burden on the Association. The Committee may condition its approval of proposals or plans and specifications on such changes therein as it deems appropriate. The owner may be required to submit additional plans and specifications or other information prior to the committee approving

or disapproving material submitted. The Committee may also issue rules or guidelines setting forth procedures for the submissions of plans for approval, requiring a fee payable to the Association to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Committee may provide that the amount of such fee shall be uniform, or that it be determined in any other reasonable manner, such as by the reasonable cost of the construction, alterations or additions contemplated, provided that in no event shall such fee exceed One Hundred Dollars (\$100.00). The Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of exterior material and colors. Until receipt by the Committee of any required plans and specifications, the Committee may postpone review of any plans submitted for approval.

Section 3. Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time, by resolution unanimously adopted in writing, designate a Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Section 8 hereof. In the absence of such designation, the vote of any two (2) members of the Committee taken without a meeting, shall constitute an act of the Committee.

Section 4. No Waiver of Future Approvals. The approval of the Committee to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently to additionally submitted for approval or consent.

Section 5. Compensation of Members. The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

Section 6. Inspection of Work. Inspection of work and correction defects therein shall proceed as follows:

(a) Upon the completion of any work for which approved plans are required under this Article VII, the Owner shall give written notice of completion to the Committee.

(b) Within sixty (60) days thereafter, the Committee or its duly authorized representative may inspect such improvement, if the Committee find that such work was not done in substantial compliance with the approved plans it shall notify the Owner in writing of such noncompliance within such sixty-day period, specifying the particulars of noncompliance, and shall require the Owner to remedy the same.

(c) If upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy such noncompliance, the Committee shall notify the board in writing of such failure. Upon notice and hearing, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may either remove the noncomplying improvement or remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not

promptly repaid by the Owner to the Association, The Board shall levy a Special Assessment against such Owner for reimbursement.

(d) If for any reason the Committee fails to notify the Owner of any noncompliance within sixty days (60) after receipt of said written notice of completion from the Owner, the Improvement shall be deemed to be in accordance with said approved plans.

Section 7. Non-Liability of Committee Members.

Neither the Committee nor any member thereof, nor its duly authorized Committee representative shall be liable to the Association, or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder unless due to the willful misconduct or bad faith of the Committee. The Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis or aesthetic considerations and the overall benefit or detriment which would result on the immediate vicinity and the Highlands Planned Unit Development generally. The Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. This clause shall be inapplicable to the extent necessary if any, to actually obtain Insurance Coverage required by Article XII.

Section 8. Variance. The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances

such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Board of Adjustment of the Highlands. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declarations shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or of any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the premises, including but not limited to zoning ordinances and Lot set-back lines or requirements imposed by any governmental or municipal authority.

#### ARTICLE VIII

##### Maintenance and Repair Obligations

Section 1. Structural Maintenance Areas. No improvement, excavation or work which in any way alters the Structural Maintenance Areas or street improvements from their natural or existing state on the date any Lot is conveyed by Declarant to a purchaser of a Lot shall be made or done by any person other than the Association or its authorized agents. The Association shall maintain, or provide for the maintenance in good order and repair of, and shall reconstruct, replace or refinish the improvements within the Structural Maintenance Areas.

##### Section 2. Maintenance Obligations of Owners.

Subject to the duty of the Association to provide for maintenance as provided in this Article VIII, Section 3, of this Declaration, it shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration regarding Architectural Committee approval, to maintain, repair, replace

and restore his residence and Lot in a neat, sanitary and attractive condition. In the event that any Owner shall permit any improvement, which is the responsibility of such Owner to maintain, to fall into disrepair or not to be so maintained so as to create a dangerous, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration, the Architectural Committee shall have the right, but not the duty, upon fifteen (15) days' prior written notice to the Owner of such Lot, to correct such condition and to enter upon such Owner's Lot to correct such condition and to enter upon such Owner's Lot to make such repairs or to perform such maintenance and the cost thereof shall be charged to the Owner. Said cost shall be a Special Assessment and shall create a lien enforceable in the same manner as other assessments as set forth in this Declaration. The Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection may be added, at the option of the Board of Trustees, to the amounts payable by each Owner as Common Assessments.

Section 3. Maintenance Obligations of Association.

The Association shall maintain, or provide for the maintenance of all of the common area and all improvements thereon, including recreational facilities, in good order and repair, and shall likewise provide for the painting and minor repair and replacement as necessary of the Structural Maintenance Areas, commonly metered utilities, the interior and exterior of the recreation building, and any and all utility laterals and buildings. In addition to building maintenance, the Association shall provide all necessary landscaping and gardening to properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation which is on the Common Area at the time that it is conveyed to the Association. The Association shall further maintain, reconstruct, replace and refinish any paved surface in the Common Area. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board of Trustees of the Association shall determine in their judgement to be appropriate.

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Section 4. Damage and Destruction Affecting Residences

--Duty to Rebuild. Subject to the provisions of any first mortgages, if all of or any portion of any Lot or residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of said Lot or residence to rebuild, repair or reconstruct said residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

Section 5. Variance in Exterior Appearance and Design.

Any Owner who has suffered damage may apply for approval to the Architectural Committee for reconstruction, rebuilding or repair of his residence in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing together with full and complete plans and specifications, working drawings and elevations showing the proposed reconstructions and the end result thereof. The Architectural Committee shall grant such approval only if the design proposed by the Owner should result in a finished residence in harmony with exterior design of other residences on the properties. Failure of the Architectural Committee to act within thirty (30) days after receipt of such a request in writing coupled with the drawings and plot plans showing the full and complete nature of the proposed changes shall constitute approval thereof.

Section 6. Time Limitation. The Owner or Owners of any damaged residence, the Association and the Architectural Committee shall be obligated to proceed with all due diligence hereunder, and the owner shall commence reconstruction within six (6) months after the damage occurs and complete reconstruction within one (1) year after damage occurs, unless prevented by causes beyond their reasonable control.

ARTICLE IX

Party Fences

Section 1. Non-Party Fences. Each fence which is



built as part of the original construction of the improvements upon the Highlands Planned Unit Development may be placed on the Lots of the respective Owners, and in the Common Area. The Association shall be responsible for reasonable maintenance thereof, as provided herein. Such fences shall not be considered to be Party Fences as herein used.

Section 2. General Rules of Law to Apply to Party Fences. The Owners shall be at liberty to build fences, by agreement among themselves, on the Lot line between adjoining Lots, with the prior approval of the Architectural Committee. These fences shall be called "Party Fences" and shall be subject to this Article IX. To the extent not inconsistent with the provisions of this Article IX, the general rules of law regarding Party Fences and liability for property damage due to negligence or willful acts or omissions shall apply thereto. The Owner of each Lot adjoining a Party Fence shall be an "Owner" of the fence for purposes of this Article.

Section 3. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Fence shall be shared by the Owners in proportion to their ownership thereto.

Section 4. Destruction by Fire or Other Casualty. If a Party Fence is destroyed or damaged by fire or other casualty, any Owner thereof may restore it, and the other Owners thereof shall contribute to the cost of restoration thereof in proportion to such ownership 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 of omissions.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article IX shall be appurtenant to the land and shall pass to such Owner's successors-in-interest.

Section 6. Arbitration. In the event any dispute arises concerning a Party Fence or under the provisions of this Article, each party shall choose one arbitrator, and such

arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Any first mortgagor taking possession or taking title to a Lot shall be exempt from the requirements of this paragraph 6.

#### ARTICLE X

##### Use Restrictions

All Real Property within the Highlands Planned Unit Development shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemption of Declarant in Section 12 hereof:

Section 1. Single Family Residence. Subject to Section 3 of this Article X, each Lot shall be used as a residence for a single family and for no other purpose.

Section 2. Business or Commercial Activity. Subject to Section 3 of this Article X, no part of the Properties shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purposes; except Declarant, its successors or assign, may use any portion of the properties for a model home site, and display and sales office during the improvement and sales period in accordance with Article III, Section 1(h), of this Declaration, and excepting professional and administrative occupations without external evidence thereof for so long as such occupations are in conformance with Highland City ordinances and are merely incidental to the use of the residence as a single family home.

Section 3. Real Estate Business. No dwelling unit, lot, improvement or portion of the common area shall be used in the conduct of any real estate business, gainful occupation, profession, trade office or other non-residential activity; PROVIDED, HOWEVER, that Declarant, or its designees, shall have the non-exclusive right, subject to the provisions of Article III, Section 1(h), of this Declaration, to use without additional cost the portions of any recreational building constructed on the Common Area for purposes of sales of Lots, pro-

vided that such use does not unreasonably interfere with the use of any recreation facilities by the members of the Association. Furthermore, as to any Lots owned by Declarant, Declarant shall have the unrestricted right to maintain model homes thereon for sales purposes.

Section 4. Nuisances. No noxious or offensive activity (including but not limited to the repair of motor vehicles) shall be carried on, in or upon any Lot or the Common Area, nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any other Owner. No loud noises or noxious odors shall be permitted on any Lot and the Board of Trustees shall have the right to determine in accordance with the Bylaws if any noise, odor or activity producing such noise, odor or interference constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably interfere with television or radio reception of any Owner, shall be located, used or placed on any portion of the Highlands Planned Unit Development, or exposed to the view of other Owners without the prior written approval of the Architectural Committee.

Section 5. Signs. No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portions of the Highlands Planned Unit Development or any Lot, without the prior written consent of the Architectural Committee, except on sign for each Lot of not more than three (3) feet by two (2) feet, advertising the property for sale or except signs, regardless of size, used by Declarant, its successors or assigns, to advertise the property during construction and sale period. All signs or billboards and the conditions promulgated for the regulation thereof shall conform to the requirements of the Utah County

ordinances.

Section 6. Parking and Vehicular Restrictions. No Owner shall park, store or keep on any property or street (public or private) within the Highlands Planned Unit Development any large commercial-type vehicle (dump truck, cement-mixer truck, oil or gas truck, delivery truck and any other vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board), upon any uncovered parking space, so as to be visible from anywhere in the Highlands Planned Unit Development, except as otherwise provided by the Board. The above excludes camper trucks up to and including three-quarter (3/4) ton when used for everyday-type transportation and subject to approval by the Board of Trustees. No Owner of a Lot shall conduct major repairs or major restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of any Lot or upon the Common Area. Any inoperable vehicle shall be stored only in covered areas within the Owner's Lot.

Section 7. Animal Restriction. No animals, live-stock, reptiles or poultry of any kind shall be raised, bred or kept on any Lot or the Common Area, except usual and ordinary dogs, cats, fish, birds and other household pets may be kept on Lots subject to rules and regulations adopted by the Association, provided that they are not kept, bred or maintained for commercial purposes or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per household, provided, however, that the Association (or Architectural Committee or such other person or entity as the Association may from time to time designate) may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board of Trustees, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to any other Owner. Animals belonging to Owners, occupants or their licensees, tenants or invitees must be either kept within an enclosure, an enclosed patio or on a

leash being held by a person capable of controlling the animal. The enclosure must be so maintained that the animal cannot escape therefrom and shall be subject to the approval of the Architectural Committee. Should any animal belonging to an Owner be found unattended out of the enclosure and not being held on a leash by a person capable of controlling the animal, such animal may be removed by Declarant (for so long as it owns any interest in the Highlands Planned Unit Development) or a person designated by Declarant to do so, to a pound under the jurisdiction of the local municipality and subject to the laws and rules governing said pound, or to a comparable animal shelter. Furthermore, any Owner shall be absolutely liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Highlands Planned Unit Development by an Owner or by members of his family, his tenants or his guests; and it shall be the absolute duty and responsibility of each such Owner to clean up after such animals which have used any portion of the Common Area.

Section 8. Trash. No rubbish, trash or garbage or other waste material shall be kept or permitted upon any Lot or Common Area, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Highlands Planned Unit Development or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles therefore and fire pits designed in such a manner that they do not create a fire hazard. No lumber, metals, bulk material or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any portion of any Lot except within an enclosed structure or appropriately screened from view.

Section 9. View Obstructions. No fence, hedge, wall or other dividing instrumentality over six feet (6') in height measured from the ground on which it stands shall be constructed or maintained on any Lot, except that Declarant may vary or exceed said height or location of any fence in accordance with its architectural plans. Each Owner by accepting a deed to a Lot hereby acknowledges that any construction by Declarant may impair the view of such Owner and hereby consents to such impairment.

Section 10. Temporary Buildings. No outbuilding, basement, tent, shack, shed or other temporary building or improvement of any kind shall be placed upon any portion of any Lot or Common Area either temporarily or permanently. No garage, trailer, camper, motor home or recreation vehicle shall be used as a residence in the Highlands Planned Unit Development, either temporarily or permanently.

Section 11. Common Area Facilities. Nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Association.

Section 12. Declarant Exemption. Declarant or its successor or assigns will undertake the work of developing all of the Lots included within the Highlands Planned Unit Development and any annexation thereto. The completion of that work and sale or other disposal of Lots is essential to the establishment and welfare of the Highlands Planned Unit Development as a residential community. As used in this Section and its subparagraphs, the words "its successors or assigns" specifically do not include purchasers of improved Lots. In order that said work may be completed and The Highland Planned Unit Development be established as a fully occupied residential community as rapidly as possible, no Owner nor the Association shall do anything to interfere with, and nothing in this Declaration shall be understood or construed to:

- (a) For a period of five (5) years from the date of sale of the first Lot to an owner, prevent

Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing on any Lot owned by Declarant whatever reasonably necessary or advisable in connection with the completion of said work, including without limitation the alteration of its construction plans and designs as Declarant deems advisable in the course of development; or

(b) Prevent Declarant, its successors or assigns, or its or their representatives, from erecting, constructing and maintaining on any Lot, or portion thereof, owned or controlled by Declarant, or its successors or assigns or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing said work and establishing the Highlands Planned Unit Development as a residential community and disposing of the same by sale, contract, or otherwise; or

(c) Prevent Declarant, its successors and/or assigns, or its or their contractors or subcontractors, from conducting on any Lot, owned or controlled by Declarant, or its successors or assigns, its business of developing, subdividing, grading and constructing single family houses and other improvements in the Highlands Planned Unit Development as a residential community and of disposing of houses or Lots therein by sale, lease or otherwise; or

(d) Prevent Declarant, its successors and/or assigns or its contractors or subcontractors, from maintaining such sign or signs on any Lot owned by or controlled by it as may be necessary in connection with the sale, lease or other marketing of Lots or houses in the Highlands Planned Unit Development; or

(e) Prevent Declarant, at any time prior to

acquisition of title to a Lot by a purchaser from Declarant, to establish additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Lots.

Section 13. Outside Installations. No radio station or shortwave operators of any kind shall operate from any Lot or residence unless approved by the Board of Trustees. Exterior radio antenna, television antenna, or other antenna may be erected or maintained in the Highlands Planned Unit Development subject to the approval of the Architectural Committee.

Section 14. Insurance Rates. Nothing shall be done or kept on any Lot which will increase the rate of insurance on any Property insured by the Association without the approval of the Board, nor shall anything be done or kept on any Lot which would result in the cancellation of insurance on any Property insured by the Association or which would be in violation of any law.

Section 15. Drilling. No oil drilling, oil development operations oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels for mineral excavations or shafts be permitted upon the surface of any Lot or within five hundred feet (500') below the surface of the land. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 16. Further Subdivision. No owner shall further partition or subdivide his Lot; provided however, that this provision shall not be construed to limit the right of an Owner (1) to rent or lease all or any portion of his Lot by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Lot is not leased for transient or hotel purposes; (2) to sell his Lot;



or (3) to transfer or sell any Lot to more than one person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. The terms of any such lease or rental agreement shall be subject in all respect to the provisions of this Declaration and Bylaws of the Association, and any failure by the Lessee of such Lot to comply with the terms of this Declaration or the Bylaws of the Association shall constitute a default under the lease.

Section 17. Drainage. There shall be no interference with the established drainage or irrigation pattern over any Lot unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Architectural Committee. For the purposes hereof, "established" drainage is defined as the drainage which exists at the time the overall grading of any Subdivision is completed by Declarant, or that which is shown on any plans approved by the Architectural Committee, which may include drainage from the Common Area over any Lot or Lots in the Highlands Planned Unit Development.

Section 18. Water Supply Systems. No individual water supply, sewage disposal system, or water softener system shall be permitted on any Lot unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of the Utah County Health Department, the Architectural Committee, and all other applicable governmental authorities.

#### ARTICLE XI

##### Damage or Destruction to Common Area

Damage to or destruction of all or any portion of the Common Area shall be handled in the following manner, notwithstanding any provision in this Declaration to the contrary:

- (a) In the event of damage or destruction to the Common Area, and the insurance proceeds are sufficient to effect total restoration, then the Asso-

ciation shall cause such Common Area to be repaired and reconstructed substantially as it previously existed.

(b) If the insurance proceeds are within Five Thousand Dollars (\$5,000.00) or less of being sufficient to effect total restoration, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Reconstruction Assessment equally against each of the Lot Owners, in accordance with the provisions of this Declaration.

(c) If the insurance proceeds are insufficient by more than Five Thousand Dollars (\$5,000.00) to effect total restoration to the Common Area, then by written consent or vote of a majority of the Owners, they shall determine whether (1) to rebuild and restore in substantially the same manner as the improvements existed prior to damage and to raise the necessary funds over the insurance proceeds by levying equal Reconstruction Assessments against all Lots, (2) to rebuild and restore in a way which utilizes all available insurance proceeds and an additional amount not in excess of Five Thousand Dollars (\$5,000.00), and which is assessable equally to all Owners but which is less expensive than replacing these Improvements in substantially the same manner as they existed prior to being damaged, or (3) subject to the provisions of Article XII, to not rebuild and to distribute the available insurance proceeds equally to the Owners and Mortgagees of the Lots as their interest may appear.

(d) Each Owner shall be liable to the Association for any damage to the common area not fully covered by insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family and guests, both minor and adult. Notwithstanding the foregoing, the Association reserves the right to charge a Special Assessment equal to the increase, if any, in the insurance premium directly attributable to the damage caused by such Owner. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint owners to the contrary. The cost of correcting such damage shall be a Special Assessment against the Lot and may be collected as provided herein for the collection of Special Assessments.

#### ARTICLE XII

##### Insurance

Section 1. Common Area. The Association must keep fire and extended coverage insurance for no less than one hundred percent (100%) of replacement cost of insurable PUD common property. The insurance coverage must name as the insured the Highlands Owners Association for the Benefit of the owners in the PUD. Premiums for all insurance carried by the association are Common Expenses included in the Common Assessment made by the Association.

Section 2. Fidelity Coverage. The association must have fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds collected and held for the benefit of unit owners in the Highlands PUD. The fidelity bond or insurance must name the Highlands Owners Association, Inc. as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the insured's estimated annual oper-

ating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

Section 3. Waiver of Subrogation. Only to the extent possible without jeopardizing the Association's ability to obtain the insurance required by the provisions of this Declaration, the Association hereby waives and releases all claims against the Board, the Owners, the Manager, Declarant, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

Section 4. Liability Insurance. The Association must have a comprehensive policy of public liability insurance covering all of the common property. Such insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of a unit owner in a PUD because of negligent acts of the homeowners association, or other unit owners. The scope of coverage must include all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use. Coverage shall be for at least \$1,000,000 per occurrence for personal injury and/or property damage.

Section 5. Other Insurance and General. The Association may also obtain, through the Board, Workmen's Compensation Insurance and other liability insurance as it may deem desirable, insuring each Lot Owner and the Association, Board of Trustees and Manager, from liability in connection with the Common Area, the premiums for which are common expenses included in the Common Assessments made against the Owners. Such insurance policies shall have severability of interest clauses or endorsements which shall preclude the insurer from denying the claim of a Lot Owner because of the negligent acts of the Association or other Lot Owners.

Section 6. Minimum Financial Rating of Carrier:

No Assessments; Other Requirements. Each hazard insurance policy must be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class VI or better. Hazard insurance policies are also acceptable from an insurance carrier which has a financial rating by Best's Insurance Report of Class V, provided it has a general policy holder's rating of at least A. Each carrier must be specifically licensed or authorized by law to transact business within the state or territory where the Mortgaged Premises are located.

Policies are unacceptable where: (1) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against an owner of any lot or any first mortgagee or its designee or FHLMC or FHLMC's designee; or (2) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent a lot owner or a first mortgagee or its successors and assignees from collecting insurance proceeds.

Mortgagee Clause; Endorsement. All policies of hazard insurance must contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Mortgaged Premises are located. The mortgagee clause must provide that the insurance carrier shall notify the first mortgagee (or trustee) named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

All policies shall be reviewed at least annually by the Board of Trustees and the limits increased at its direction.

Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability and bonds and other insurance meeting the requirements for planned unit developments established by the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), and the Federal Home Loan Mortgage Corporation (FHLMC), so long as there are any mortgages on any of the properties.

ARTICLE XIII

Mortgage Protection Clause

Notwithstanding any and all provisions of this Declaration, the Articles, or the Bylaws to the contrary (and to the extent the provisions of this Article XIII, conflict with other Provisions of this Declaration, the Articles or the Bylaws, this Article XIII shall control).

(a) Each first Mortgagee of a mortgage encumbering any Lot, at his written request, is entitled to written notification from the Association of any default by the Mortgagor of such Lot in the performance of such Mortgagor's obligations under this Declaration, the Articles of Incorporation of the Association or the Bylaws of the Association, which default is not cured within sixty (60) days.

(b) Each Owner, including every first Mortgagee of a Mortgage encumbering any Lot which obtains title to such Lot pursuant to the remedies provided in such Mortgage, or by foreclosure, shall be exempt from any "right of first refusal". In addition, any "right of first refusal" contained in the constituent documents, whether presently contained therein or hereafter added by amendment, shall not impair the rights of a first mortgagee to:

- (1) Foreclose or take title to a Lot pursuant to the remedies provided in the mortgage, or
- (2) accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or

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(3) interfere with a subsequent sale or lease of a Lot so acquired by the mortgagee.

(c) Each first Mortgagee of a mortgage encumbering any lot, together with such mortgagee's successors and assigns, (including a purchaser of a lot from or through a mortgagee), which obtains title to such lot pursuant to the remedies provided in such mortgage, or by foreclosure of such Mortgage, or by deed in lieu of foreclosure shall take title to such Lot free and clear and shall not be liable for any claims of unpaid assessments or charges against such Lot which accrued prior to the acquisition of title to such Lot by the Mortgagee.

(d) Unless one hundred percent (100%) of first Mortgagees (based upon one vote for each mortgage owned), and Members holding seventy-five percent (75%) of the voting rights in the Association have given their prior written approval, neither the Association nor the Owners shall:

(1) by act or omission seek to abandon, partition, alienate, subdivide, release, hypothecate, encumber, sell or transfer, directly or indirectly, the Common Area or any of the improvements thereon which are owned by the Association; (The granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association shall not be deemed a transfer within the meaning of this clause.

(2) Change the method of determining the obligations, assessments, due or other charges which may be levied against a Lot Owner;

(3) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof pertaining to the architectural design or the exterior appearance of dwelling units and lots, the exterior maintenance of dwelling units, the maintenance of the common property

party walks or common fences and driveways, the upkeep of lawns and plantings in the Highlands PUD, or other maintenance of the Common Area.

(4) fail to maintain fire and extended coverage on insurable common area property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on replacement cost).

(5) Use hazard insurance proceeds for losses to any common area for other than the repair, replacement or reconstruction of such common area property.

(e) First Mortgagees shall have the right to examine the books and records of the Association during normal business hours.

(f) All first Mortgagees who have requested the same shall be given (1) thirty (30) days' written notice prior to the effective date of any proposed, material amendment to this Declaration or the Articles of Incorporation or Bylaws of the Association; and (2) immediate notice following any damage to the Common Area whenever the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000.00).

(g) First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such property. The First Mortgagees making such payments shall be reimbursed immediately by the Association. The Association shall, upon request of any first mortgagee, issue an agreement to make reimbursement in full to all first mortgagees.

(h) First Mortgagees, pursuant to their mortgages shall have priority over Owners in case of a distribution of insurance proceeds or condemnation awards for losses to or taking of Common Area property.



In addition to the foregoing, the Board of Trustees may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, the FHA, the FHLMC, the FNMA or GNMA or any similar entity, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of first Mortgages encumbering Lots and improvements thereon. Each Owner hereby agrees that it will benefit the Association, as potential Mortgage borrowers and potential sellers of their residences if such agencies approve the Highlands Planned Unit Development as a qualifying Subdivision under their respective policies, rules and regulations, as adopted from time to time.

(i) Neither this Declaration nor the Articles of Incorporation nor Bylaws of the Association will be amended in such a manner that the rights of any Mortgagee will be adversely affected.

(j) Neither Article XII, this Article (Article XIII), nor the subordination of assessments in favor of mortgages provisions earlier in the Declaration can be amended without the consent of all first mortgagees.

(k) Homeowners association dues or charges shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the common property that must be replaced on a periodic basis and are payable in regular installments rather than by special assessments.

(l) Any agreement for professional management of the common area or common area funds, or any other contract providing for services of the Declarant, may not exceed 3 years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

(m) Declarant hereby warrants and represents that it will install and complete, at its expense, the improvements shown on the map.

## ARTICLE XIV

Annexation of Additional Property

Section 1. Additions. Additional real property may be annexed to the Highland Planned Unit Development by Declarant and brought within the general plan and scheme of this Declaration upon the approval by vote or written consent no less than seventy-five percent (75%) of the voting power of the Members of the Association, including the votes of Declarant.

Section 2. Title to Common Area. Prior to or simultaneous with the conveyance of any lot within any annexed additional property, there shall be an approved supplemental declaration and supplemental plat filed with the notice of annexation of territory; and the definitions of this declaration shall be amended to include appropriate references to the additional common areas and additional lots, if any. Title to the Common Area, within said annexed property shall be conveyed to the Association, free and clear of any and all encumbrances and liens, subject to reservations, easements, conditions and restrictions then of record, including those set forth in this Declaration simultaneously with the annexation of additional territory.

Section 3. Notice of Addition of Territory. The additions authorized under Section 1 of this Article XIV shall be made by filing of record a Notice of Addition of Territory, or other similar instrument (which Notice or Instrument may contain the Supplemental Declaration, if any, affecting each subdivision), with respect to the additional property which shall be executed by Declarant or the Owner thereof and shall extend the general plan and filing or record of said Notice of Addition shall constitute and effectuate the annexation of the annexed property described therein, and thereupon said annexed property shall become and constitute a part of the Highlands Planned Unit Development, become subject to this Declaration and encompassed within the

general plan and scheme of covenants, conditions, restrictions, reservation of easements and equitable servitude contained herein, and become subject to the functions, powers and jurisdiction of the Association; and the Owners of Lots in said annexed property shall automatically become members of the Association. Such Notice of Addition may contain such additions and modifications of the covenants, conditions, restrictions, reservation of easements and equitable servitudes contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property, or as Declarant may deem appropriate in the development of the annexed property, and as are not inconsistent with the general plan and scheme of this Declaration. In no event, however, shall such Notice of Addition revoke, modify or add to the covenants, conditions, restrictions, reservation of easements, or equitable servitude established by this Declaration as the same shall pertain to the real property originally covered by this Declaration. No addition of territory shall substantially increase assessments or substantially increase the burden upon the Common Area facilities. Only property contiguous to the Highland PUD and within the city limits of Highland City Inc., may be annexed within the provisions of this Declaration.

#### ARTICLE XV

##### Rights of Partners of Declarant

All rights reserved in this Declaration with respect to the nonexclusive use of the Common Area and facilities for sales, display, access, ingress, egress, and exhibit purposes and similar rights shall inure to the benefit of each individual partner of Declarant acting alone or in conjunction with other partners or persons, whether such partner shall be acting, in exercising such rights, in behalf of the Declarant or in favor of the partner, himself or in behalf of himself and others.

## ARTICLE XVI

General Provisions

Section 1. Enforcement. This Declaration, the Articles of Incorporation and the Bylaws may be enforced by the Association as follows:

(a) Breach of any of the covenants contained in the Declaration or the Bylaws and the continuation of any such breach may be enjoined, by an Owner or by the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorney's fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

(b) The result of every act or omission whereby any of the covenants contained in this Declaration or the Bylaws are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association or its successors-in-interest.

(c) The remedies herein provided for breach of the covenants contained in this Declaration or in the Bylaws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) The failure of the Association to enforce any of the covenants contained in this Declaration or in the Bylaws shall not constitute a waiver of the right to enforce the same hereafter.

(e) A breach of the covenants, conditions or restrictions contained in this Declaration or in the Bylaws shall not affect or impair the lien

or charge of any bona fide first Mortgage or Deed of Trust made in good faith and for value on any residential Lot or the improvements thereon, provided, however, that any subsequent Owner of such property shall be bound by said covenants, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise, but shall not be liable for prior breach.

Section 2. 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.

Section 3. Term. The covenants and restrictions of this Declaration shall run with and bind all Lots and the Highlands Planned Unit Development and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, perpetually so long as there are purchase money first mortgages against any Lot. Thereafter, the Owners of a majority of the Lots may sign and have recorded an instrument in writing agreeing to change such covenants and restrictions in whole or in part.

Section 4. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of community recreational facilities in the Common Area. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

Section 5. Amendments. Subject to any rights of the VA or the FHA hereunder, and the provisions of Article XIII hereof, this Declaration may be amended only by the affirmative vote or written consent of the Owners holding not less than seventy-five (75%) of the voting power of the members. For purposes of this Declaration, the sale shall be deemed to be the date upon which a deed conveying a Lot is recorded in the office of the Utah County Recorder.

Provided further, however, this Declaration shall not be amended in such a manner that the rights of any first Mortgagee will be adversely affected. ,

Section 6. No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Highlands Planned Unit Development to the public, or for any public use.

Section 7. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in any Lot in the Highlands Planned Unit Development does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the properties, or any portion hereof.

Section 8. Reservation of Easements. Declarant expressly reserves for the benefit of all the Owners, easements of access, ingress and egress over all Lots, and over the Common Area, for the use and enjoyment of the Lots in accordance with this Declaration, including, the installation and repair of utility services, for drainage over, across and upon adjacent Lots for water from normal use of adjoining Lots, and for maintenance and repair of Common Area

structures and improvements. Such easements may be used by Declarant, its successors, and the Association for such purposes reasonably necessary for the use and enjoyment of the Lots and the Common Area. No Owner of a Lot shall interfere with the established drainage pattern over his Lot. For purposes of this Declaration, "established drainage" on any Lot is defined as the drainage pattern and facilities in existence at the time that such Lot is conveyed to a purchaser from Declarant. Declarant reserves the right to grant exclusive easements over certain limited portions of the Common Area, if necessary, to cergain Lot Owners for yard purposes, as required by the Federal Housing Administration or other government agency. Declarant further expressly reserves for the benefit of the Association (for a period not to exceed five (5) years after conveyance of the first Lot), its agents and employees, easements of access, ingress and egress, over the Lots and the Common Area, for the purposes of maintaining, repairing and installing sewer pipelines and laterals if necessary, in accordance with the provisions of this Declaration, and as otherwise provided by law.

Section 9. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

Section 10. No Representations or Warranties. No

representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with the Highlands Planned Unit Development or any portion thereof, or any improvement thereon, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a planned unit development, except as specifically and expressly set forth in this Declaration and except as may be filed by Declarant from time to time with the Utah Land Sales Practices Act, the Veterans' Administration, the Federal Housing Administration or the City of Highland.

Declarant has executed this Declaration on the date first above written.

Alpine Park Realty, Incorporated

By 

Clyde T. Anderson



ATTEST:

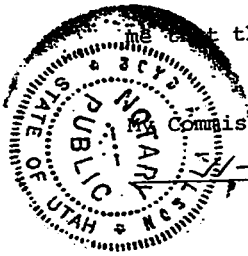
BY Nadeene L. Anderson  
1st Secretary

STATE OF UTAH )

: ss.

COUNTY OF UTAH

On the 8th day of JUNE, 1979, personally,  
appeared before me CLYDE T. ANDERSON and Nadeene L. Anderson,  
the President and Secretary of ALPINE PARK REALTY INCORPORATED,  
a corporation of the State of Utah, who being by me duly sworn,  
did say that said instrument was signed in behalf of said  
corporation by authority of a resolution of its Board of  
Directors and the said Clyde T. Anderson acknowledged to  
at the said corporation executed the same.



Commission Expires:

7/30-82

Boyd A. Wilson

Notary Public

Residing at: Highland, ~~Alpine~~, Utah

22270

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AT THE REQUEST OF  
Highland Park

1979 JUN 11 AM 10:01

NINA B. REID  
UTAH COUNTY CLERK  
DEPT. OF COMM. & LAB.  
SALT LAKE CITY, UT 84143

J. D. Boyd 1288  
Quinn, Utah