

**DECLARATION OF
PROTECTIVE COVENANTS FOR
RICHARDSON ESTATES**

9344281
04/08/2005 11:49 AM \$31.00
Book - 9115 Pg - 9528-9537
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
KENNETH HILLAM Kenneth
2688 E GRAND VISTA WY
SLC UT 84121
BY: ZJM, DEPUTY - WI 10 P.

THIS DECLARATION is made this 6th day of April, 2005, by Richardson Estates, Inc., a Utah corporation.

**ARTICLE I
PURPOSE OF COVENANTS**

1.1 It is the intention of the Declarant, expressed by its execution of this instrument, that the Private Road be developed and maintained as a highly desirable residential area within Richardson Estates. These covenants apply only to the Lots on the Private Road, each as defined herein. The Declarant hereby declares that the Lots and every part thereof is held and shall be held, conveyed, devised, leased, rented, encumbered, used, occupied and improved and otherwise affected in any manner subject to the provisions of the Declaration, each and all of which provisions are hereby declared to be in furtherance of the purposes described herein, and are further declared to be for the benefit of the Lots and every part thereof and for the benefit of each Owner thereof. All provisions hereof shall be deemed to run with the land as covenants running with the land or as equitable servitudes, as the case may be, and shall constitute benefits and burdens to the Declarant, its successors and assigns, and to all parties hereafter owning any interest in the Lots.

**ARTICLE II
DEFINITIONS**

Unless the context clearly requires otherwise, the following terms used in this Declaration shall have the following meanings:

“Association” means and refers to Duane Cove Homeowners Association, a nonprofit corporation, incorporated under the laws of the State of Utah, its successors and assigns.

“Association Rules” means rules adopted by the Association pursuant to the Article hereof entitled “Duties and Powers of the Association.”

“Board” means the Board of Directors of the Association.

“Common Expenses” means and refers to the actual and estimated costs of:

- (a) maintenance, management, operation, repair and replacement of the Private Road, and all other areas which are maintained by the Association;
- (b) unpaid Special, Reconstruction and Capital Improvement Assessments;

(c) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(d) the costs of utilities, landscaping and other services benefiting the Owners and their Lots to the extent such services are paid for by the Association;

(e) the costs of any other insurance obtained by the Association; and the costs of bonding of the members of the Board, any professional managing agent or any other person handling the funds of the Association;

(f) reasonable reserves as deemed appropriate by the Board;

(g) taxes paid by the Association;

(h) costs incurred by any committee of the Association; and

(j) 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 Private Road, this Declaration, the Articles or the Bylaws or in furtherance of the purposes of the Association or in the discharge of any obligations imposed on the Association by this Declaration.

“Declarant” means and refers to Richardson Estates, Inc., its successors and assigns.

“Declaration” means this Declaration of Protective Covenants, together with any subsequent amendments or additions.

“Lot” or **“Lots”** mean any one or more of Lot 28, 29, 30, and/or 31 as shown on the Plat.

“Owner” means the person or persons having title to any Lot subject to this Declaration. **Owner** shall mean the person holding fee simple title, including the Declarant, and buyers under any contract for deed, but shall exclude any person or entity holding title for purposes of securing performance of an obligation, including the trustee and/or beneficiary under a deed of trust or mortgagee under a mortgage.

“Plat” means the subdivision plat of Richardson Estates, as such plat is recorded in the records of Salt Lake County, State of Utah.

“Private Road” means all real property and the improvements thereon, including, without limitation, that road providing access to the Lots, shown on the Plat as “Duane Cove,” and any easements, open space, slopes, storm drainage systems and private utilities, shown on the Plat for the common use and enjoyment of the Owners.

ARTICLE III ASSOCIATION

3.1 **Management.** Every Owner shall be a Director of the Association subject to the terms of this Declaration, the Articles, Bylaws and Association Rules. The terms and provisions set forth in this Declaration are not exclusive, as Owners shall, in addition, be subject to the *terms and provisions of the Articles and the Bylaws of the Association to the extent the provisions thereof are not in conflict with this Declaration.* Membership of Owners on the Board shall be appurtenant to and may not be separated from the interest of such Owner in any Lot. Ownership of a Lot shall be the sole qualification for membership on the Board; provided, however, an Owner's voting rights may be regulated as provided in this Declaration, the Bylaws or the Association Rules.

3.2 **Transfer.** Membership on the Board shall not be transferred, pledged or alienated in any way, except upon the conveyance of an Owner's Lot and then only to the purchaser 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 should fail or refuse to transfer the membership registered in his name to the transferee of such Owner's interest in such Lot, the Association shall have the right to record the transfer upon the books of the Association.

3.3 **Voting Rights.** All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, Bylaws and Association Rules.

ARTICLE IV ASSESSMENTS

4.1 **Creation of the Lien and Personal Obligation of Assessments.** The Owners, for each Lot owned by them, respectively, hereby covenant and agree to pay, and each Owner of any Lot by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: Regular Assessments, Special Assessments and Capital Improvement Assessments, such Assessments to be established and collected as hereinafter provided. The Assessments, together with interest thereon, late charges, attorneys' fees, and other costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with such interest, late charges and costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment fell due. The personal obligation shall not pass to the successors in title of an Owner unless expressly assumed by such successors.

4.2 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety and welfare of the Owners and enhancing the quality of life and value of the Lots including, without limitation, the improvement and maintenance of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Private Road.

4.3 Regular Assessments. The amount and time of payment of Regular Assessments shall be determined by the Board pursuant to the Articles and Bylaws after giving consideration to the current maintenance, operational, and other costs and the future needs of the Association. Not later than thirty (30) days prior to the beginning of each fiscal year of the Association, the Board shall estimate the total Common Expenses to be incurred for the forthcoming fiscal year. The Board shall then determine the amount of the Regular Assessment to be paid by each Owner. Written notice of the annual Regular Assessments shall be sent to every Owner. Each Owner shall thereafter pay to the Association his Regular Assessment in installments as established by the Board. In the event the Board shall determine that the estimate of total charges for the current year is, or will become inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessment against each Owner, and the date or dates when due.

4.4 Special Assessments. Special Assessments shall be levied by the Board against a Lot to reimburse the Association for costs incurred in bringing an Owner and his Lot into compliance with the provisions of this Declaration, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration.

4.5 Capital Improvement Assessments. In addition to the Regular Assessments, the Association may levy in any calendar year, the Capital Improvement Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a described capital improvement related to the Private Road. All amounts collected as Capital Improvement Assessments may only be used for capital improvements and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Owners.

4.6 Rate of Assessment. Regular and Capital Improvement Assessments shall be fixed at an equal amount for each Lot and may be collected at intervals selected by the Board.

4.7 Date of Commencement of Assessments. The Regular Assessments shall commence immediately following the sale of a Lot by Declarant and shall be prorated for any partial year. Capital Improvement Assessments may not be assessed against any Lot until it has been sold by Declarant. In the event the amount budgeted to meet Common Expenses for the current year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of the Regular Assessment or may abate collection of Regular Assessments as it deems appropriate.

4.8 Initial Regular Assessments.

(a) The Regular Assessment as of the date of recording of this Declaration shall be One Hundred Dollars (\$100.00) per year. The Regular Assessment shall be subject to modification as provided in Section 4.3.

(b) To the extent the costs of capital improvements during any year shall exceed the sum of Ten Thousand Dollars (\$10,000.00), a Capital Improvement

Assessment shall have the written assent or vote of a majority of the Owner at a meeting duly called for this purpose, written notice of which shall be sent to all Owners in accordance with the procedures from time to time established in the Bylaws for the calling of special meetings of Owners. Any reserves collected by the Association for the future maintenance and repair of the Private Road, or any portion thereof, shall not be included in determining said annual capital improvement limitation.

4.9 Reserves. The Regular Assessments shall include reasonable amounts as determined by the Board collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Private Road. All amounts collected as reserves, whether pursuant to the preceding sentences of this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Owners.

4.10 Delinquency. Any Assessment provided for in this Declaration which is not paid when due shall be delinquent on said due date (the "Delinquency Date"). If any such Assessment is not paid within Fifteen (15) days after the Delinquency Date, a late charge of Fifteen Dollars (\$15.00) shall be levied and the Assessment shall bear interest from the Delinquency Date, at the rate of eighteen percent (18%) per annum. The Association may, at its option, and without waiving the right to foreclose its lien against the Lot, bring an action at law against the Owner personally obligated to pay the same, and/or upon compliance with the notice provisions set forth in Section 2 of this Article, to foreclose the lien against the Lot. If action is commenced, there shall be added to the amount of such Assessment the late charge, interest, the costs of preparing and filing the complaint in such action, and attorneys' fees incurred in connection with the commencement of such action and in the event a judgment is obtained, such judgment shall include said late charge, interest and a reasonable attorney's fee, together with the costs of action. Each Owner vests in the Association or its assigns, the right and power to bring all actions at law or lien foreclosure against such Owner or other Owners for the collection of such delinquent Assessments.

4.11 Notice of Lien. No action shall be brought to foreclose said Assessment lien or to proceed under the power of sale herein provided until thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the office of the County Recorder in Salt Lake County; said notice of claim of lien must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which shall include interest on the unpaid Assessment at the rate of eighteen percent (18%) per annum, a late charge pursuant to this Declaration, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant.

4.12 Foreclosure Sale. Said Assessment lien may be enforced by sale by the Association, its attorney or any other person authorized to make the sale after failure of the Owner to make the payments specified in the notice of claim of lien within said thirty (30) day period. Any such sale provided for above is to be conducted in accordance with the provisions of the statutes of the State of Utah as said statutes may from time to time be amended, applicable

to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted or provided by law. The Association, through its duly authorized agents, shall have the power to bid on the Lot, using Association funds, or funds borrowed for such purpose, at the sale, and to acquire and hold, lease, mortgage and convey the same.

4.13 Curing of Default. Upon the timely payment, or other satisfaction, of (i) all delinquent Assessments specified in the notice of claim of lien, (ii) all other Assessments which have become due and payable with respect to the Lot as to which such notice of claim of lien was recorded and (iii) interest, late charges and attorneys' fees pursuant to this Declaration and the notice of claim of lien which have accrued, officers of the Association or any other persons designated by the Board are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a fee, to be determined by the Association, to cover the costs of preparing and filing or recording such release.

4.14 Cumulative Remedies. The Assessment Lien and the rights to 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.

ARTICLE V DUTIES AND POWERS OF THE ASSOCIATION

5.1 General Duties and Powers of the Association. In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

- (a) enforce the provisions of this Declaration, the Articles and the Bylaws by appropriate means and carry out the obligations of the Association hereunder, including without limitation, the expenditure of funds of the Association, the employment of legal counsel, the commencement of actions, the promulgation of the Association Rules as provided in the Bylaws and Section 2 of this Article, which shall include the establishment of a system of fines or penalties enforceable as Special Assessments, also as provided for in the Bylaws;
- (b) acquire, maintain and otherwise manage the Private Road and all facilities, improvements and landscaping thereon, and all personal property acquired by the Association;
- (c) pay any real and personal property taxes and other charges assessed against the Private Road unless the same are separately assessed to the Owners;
- (d) contract for and maintain such policy or policies of insurance as may be required by the Declaration or as the Board deems necessary or desirable in furthering the purposes of and protecting the interest of the Association and the Owners;
- (e) delegate its powers to committees, officers, or employees as provided in the Bylaws, employ a manager or other persons and contract with independent

contractors or managing agents to perform all or any part of the duties and responsibilities of the Association;

(f) establish and maintain a working capital and contingency fund in an amount to be determined by the Board;

(g) maintain architectural control over the property;

(h) have the power of entry upon any Lot where necessary in connection with inspection, construction, maintenance or repair for the benefit of the Private Road or the Owners; and

(i) provide snowplowing service for the benefit of the Owners and their Lots. The Association may delegate such responsibility to a committee consisting of one or more of the Owners, at its election.

5.2 Association Rules. The Board shall also have the power pursuant to the procedures set forth in the Bylaws to adopt, amend, and repeal such rules and regulations as it deems reasonable (the "Association Rules").

5.3 Delegation of Powers. The Association shall have the right according to law, to delegate any of its powers under this Declaration, the Articles and Bylaws; provided, however, no such delegation, whether to a professional management company, any committee of the Association or otherwise shall relieve the Association of its obligation to perform such delegated duty.

ARTICLE VI RIGHT OF FIRST PURCHASE

6.1 Grant of Right of First Offer

. Each Owner (the "Selling Owner") grants to all other Owners (the "Remaining Owners") a right of first offer to purchase such Selling Owner's Lot and any improvements thereon (the "Property") according to the terms of this Section 6.1. If at any time during the term of this Declaration, a Selling Owner desires to sell, transfer or convey such Property to a third party, the Selling Owner shall first offer to sell the Property to the Remaining Owners. The Selling Owner shall give written notice to the Remaining Owners of its intent to sell, transfer or convey the Property, which written notice shall include the price and terms on which the Selling Owner is willing to sell the Property. The written notice shall be the Selling Owner's offer to sell the Property to any of the Remaining Owners for the price and terms contained in the offer (the "Selling Owner's Offer"). Upon receipt of the Selling Owner's Offer, any of the Remaining Owners shall have 30 days in which to accept the Selling Owner's Offer. The offer may only be accepted by the first Remaining Owner to give written notice to the Selling Owner of such Remaining Owner's acceptance of the offer, which notice must be given to the Selling Owner within said 30-day period. If written notice of any Remaining Owner's acceptance is not given to the Selling Owner within said 30-day period, the Selling Owner's Offer will be deemed to have been rejected by all Remaining Owners. If the Remaining Owners reject the Selling Owner's Offer, the Selling Owner shall be entitled to offer the Property for sale and sell the

Property to any third party free and clear of the Remaining Owners' rights hereunder so long as the sale of the Property to said third party is at a price not less than 100% of the price in the Selling Owner's Offer. If the Selling Owner receives an offer from a third party which is acceptable to the Selling Owner but is at a price less than 100% of the price in the Selling Owner's Offer, the Selling Owner must give notice to the Remaining Owners, which notice shall include the price and terms offered by the third party which are acceptable to the Selling Owner. The written notice shall be the Selling Owner's offer to sell the Property to any of the Remaining Owners for the price and on the terms contained in the offer from the third party ("Third Party Offer"). Upon receipt of the Third Party Offer, any of the Remaining Owners shall have 30 days in which to accept the Third Party Offer. The offer may only be accepted by the first Remaining Owner to give written notice to the Selling Owner of such Remaining Owner's acceptance of the Third Party Offer, which notice must be given to the Selling Owner within said 30-day period. If written notice of any Remaining Owner's acceptance is not received by the Selling Owner within the 30-day period, the Third Party Offer will be deemed to have been rejected by the Remaining Owners and the Selling Owner shall be entitled to proceed to sell the Property to said third party free and clear of the Remaining Owners' rights hereunder. If the Selling Owner conveys the Property to a third party after compliance with this Section 6.1, this right of first offer to purchase shall have no further force or effect and the Remaining Owners shall not have any right of first offer with respect to the Property.

6.2 Covenant to Run With the Land

The right of first offer which the Selling Owner has granted to the Remaining Owners herein shall run with the land and shall (i) bind and burden the Property and all of the Selling Owner's successors and assigns in title with respect to the Property, and (ii) benefit the Remaining Owners and all of the Remaining Owners' Lots and the Remaining Owners' successors and assigns in title with respect to the Remaining Owners' Lots.

ARTICLE VII GENERAL PROVISIONS

7.1 Violation Deemed a Nuisance. Any violation of these Covenants which is permitted to remain on the property is deemed a nuisance, and is subject to abatement by the Association or by any Owner.

7.2 Remedies.

(a) Any single or continuing violation of the Covenants contained in this Declaration may be enjoined in an action brought by the Declarant (for so long as the Declarant is the Owner of any Lot) or by any other Owner. In any action brought to enforce these Covenants, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including attorneys' fees and costs of court.

(b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. These

covenants, conditions and restrictions are to be construed as being in addition to those remedies available at law.

(c) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

(d) The failure to take enforcement action shall not be construed as a waiver of the Covenants contained in this Declaration in the future or against other similar violations.

7.3 Severability. Each of the covenants, conditions and restrictions contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

7.4 Amendment. At any time while this Declaration is in effect, the Owners of 75% of the Lots may amend the provisions of this Declaration. Any amendment must be in writing. No such amendment will be binding upon the holder of any mortgage or trust deed unless the holder joins in the amendment.

7.5 Constructive Notice. Every person who owns, occupies, or acquires any right, title or interest in any Lot is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the covenants, conditions, and restrictions contained herein against his Lot, whether or not there is any reference to this Declaration in the instrument by which he acquires his interest in any Lot.

7.6 Notices. All notices under this Declaration are deemed effective 72 hours after mailing, provided that any mailed notice must have postage prepaid and be sent to the last known address of the party to receive notice. Notices delivered by hand or by nationally recognized express courier are effective upon delivery.

7.7 Interpretation. Paragraph headings are inserted for convenience only and shall not be considered an interpretation of the provisions. The singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

7.8 Mortgagee Protection Provision. The breach of any of the foregoing covenants shall not defeat or render invalid the lien of any mortgage or deed of trust lien on any Lot that is made in good faith and for value; provided, however, that all of the covenants contained herein shall be binding upon and effective against any owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale or other foreclosure proceeding, from and after the date of such foreclosure, trustee's sale or other foreclosure proceeding. Any lien provided for in this Declaration shall be subordinate to the lien of any first mortgage or deed of trust which was recorded before any Notice of Lien became recorded.

7.9 Nonliability of Officials. To the fullest extent permitted by law, neither the Board, or any committee of the Association or any member of such Board or committee shall be liable to any Owner or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not

defective), course of action, act, omission, error, negligence or the like made in good faith within which such Declarant, Board, committees or persons reasonably believed to be the scope of their duties.

Executed as of the date stated above.

RICHARDSON ESTATES, INC.,

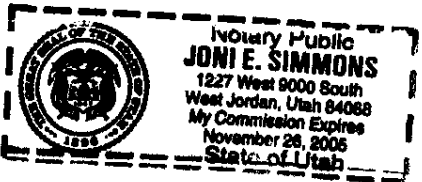
By Kenneth Hillam

Name: Kenneth Hillam

Its: Director

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

The foregoing instrument was acknowledged before me this 7th day of April, 2005, by Kenneth Hillam, Director of Richardson Estates, Inc.



[Signature]
Notary Public