

140

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTION FOR HIGHLAND OAKS SUBDIVISION**

DATED \_\_\_\_\_  
RECORDED \_\_\_\_\_ at \_\_\_\_\_  
INSTRUMENT NO. \_\_\_\_\_

THIS DECLARATION made on the date hereinafter set forth by Sonderegger, Inc.,  
hereinafter referred to as "Declarant," for itself its successors, grantees, and assigns.

**WITNESSETH:**

WHEREAS, Declarant is the owner of that certain real property situated in San Juan  
County, Utah, City of Monticello, known as Highland Oaks Subdivision and more  
particularly described as follows:

Lots 1 through 20, Highland Oaks Subdivision, according to  
the official plat thereof.

#A00550000010 - A00550000200 AND

WHEREAS, it is the desire and intention of Declarant to subdivide the real property  
described above under a general plan or scheme of improvement for the benefit of each and all of  
the included lots;

NOW, THEREFORE, Declarant hereby declares that all of the real property described in  
this instrument is held and shall be held, sold, conveyed, used, occupied and improved subject to  
the following limitations, restrictions, covenants and conditions, all of which are declared and  
agreed to be in furtherance of the plan for the subdivision, improvement and sale of said real  
property and are established and agreed upon for the purpose of enhancing and perfecting the  
value, desirability and attractiveness of the real property and every part thereof. All of the

**SONDEREGGER, INC.**  
P.O. BOX 713 801-587-2035  
MONTICELLO, UT 84535

1

Entry No.	1K 006462
Date	9-30-98
Recorded	156 P.M. 9/30/98 139
Fee Paid	16100
Recorder	SAN JUAN COUNTY, UT.
By	L.B. Jones Deputy

139

139

limitations, easements, uses, obligations, covenants, restrictions and conditions stated herein shall run with the real property, shall be binding on all parties having or acquiring any right, title or interest in the described real property or any part thereof, and shall be for the benefit of each owner of any portion of said real property or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof. Each and all of the said limitations, easements, uses, obligations, covenants, conditions and restrictions shall be deemed to be, and shall be construed as equitable servitude, enforceable by any of the owners of any of the individual lots against any other owner, tenant or occupants of the property, or any portion thereof.

## ARTICLE I

### DEFINITIONS

- 1.1 The terms used herein shall have the meanings specified in this Article, unless the context otherwise requires.
  - A. **Association:** The term "Association" shall mean or refer to Highland Oaks Subdivision Homeowner's Association, an unincorporated association.
  - B. **Board:** The term "Board" shall mean the Board of Directors of the Association.
  - C. **By-Laws:** The term "By-Laws" shall mean the By-Laws of the Association which are or shall be adopted by the Board and the Association Members.
  - D. **Single Family Dwelling:** Single Family Dwelling shall mean that all the occupants of a particular dwelling are either related by blood or marriage or occupied by no more than four persons unrelated by blood or marriage, except that Board of Directors of the Association may make deviation from unreasonable accommodations for handicapped

persons as may be required by either Federal or State Law.

- E. **Declarant:** The term “Declarant” shall mean and refer to Sonderegger, Inc., and all successors and assigns of Declarant, if such successors and assigns acquire more than one Lot for the purpose of resale to another.
- F. **Declaration:** The term “Declaration” shall mean and refer to this instrument and all exhibits attached hereto.
- G. **Lot:** The term “Lot” shall mean and refer to any plot of land shown upon the recorded subdivision plat of the Property, with the exception of dedicated streets and roadways.
- H. **Home:** The term “Home” shall mean a structure built since August 1, 1998 that is designated to be used as a permanent dwelling and shall be wood frame construction, in compliance with the standards of the Uniform Building code for residential dwellings. Mobile homes, manufactured homes and the like are expressly prohibited.
- I. **Owner:** The term “Owner” refers to any person or entity, including Declarant, at any time owning a Lot. Such terms shall include a contract seller (vendor) under an installment land contract and shall exclude those persons having an interest in the Lot merely as security for performance of any obligation.
- J. **Plat:** The term “Plat” refers to the official plat for Highland Oaks Subdivision, filed or to be filed of record in the office of the County Recorder of San Juan County, Utah.
- K. **Property:** The term “Property” or “Project” refers to the land described herein, together with every building, improvement or structure thereon, and every easement or right appurtenant thereto.

## **ARTICLE II**

## USE AND OCCUPANCY RESTRICTIONS

2.1 **Lots:** Each lot and Home within the Property shall be used for single-family residential purposes only, whether such use is on an ownership, rental or lease basis.

No tent, trailer, recreational vehicle, shack, garage, accessory building or other outbuilding shall be used as a temporary or permanent residence. All Homes, buildings, and structures within the Property shall be limited to uses which are not or may not be, in the opinion of the Architectural Control Committee provided for in Article IV hereof, detrimental to the health, safety or welfare of the Owners and which will not be harmful to the Property.

2.2 **Minimum Standards for Homes:** Each Home erected, installed, or placed on any Lot within the proper shall meet the minimum structure requirements of the City of Monticello Building Code. Each such home shall, in addition, be of wood frame construction, and with an exterior surface of not less than 1/3 height of the main floor, finished in brick or rock construction on all sides, with the remaining exterior wall surfaces either stucco or siding. Every home's main floor interior shall be not less than 1600 square feet of living space, excluding garage or porches. Every home shall, at a minimum, have an enclosed garage, attached or detached, capable of containing two cars or more, in accordance with uniform building code standards. Absent extra ordinary weather conditions, all construction projects on every site shall be scheduled, approved, and completed within one year from the commencement thereof, whether same be new construction of a home, remodeling, expansion or outbuilding improvements. Due to existing ground water, no basement or subterranean living space shall be constructed

without (1) appropriate drainage system included and (2) building inspection approval thereof.

Any and all deviations from these requirements must be approved by the Architectural Control Committee.

- 2.3 **Temporary Structures:** No temporary building or structure shall be installed or maintained on any Lot without the specific prior written approval of the Architectural Control Committee. All applications for approval of any temporary building or structure will include provisions for its being dismantled and removed from the lot by a specified time.
- 2.4 **Setbacks:** No Home or other building or structure shall be located on a lot nearer to a lot line than the minimum building setbacks set forth on the Plat of the Property.
- 2.5 **Utilities:** Each Home shall be connected to the outlets of the Project's underground private sewer lines and community water supply system located within the Lot upon which the Home is located. The other permanent utilities and facilities for each lot shall also be located underground. No pipe, conduit, wire, cable or line for water, gas, electricity, telephone, television, sewerage or drainage or any other utility or service shall be installed or maintained upon any Lot above the surface of the ground, EXCEPT when located within an approved Home, building or structure or the foundation thereof. No cesspool, septic tank or sewage disposal plant shall be erected or maintained on the Property.
- 2.6 **Parking:** A minimum of two (2) automobile parking spaces shall be provided on each Lot. No automobile, truck, trailer, motor home, camper, boat or similar equipment or vehicle shall be stored on the lot of owner's property if the vehicles or similar equipment, are not

in working order.

- 2.7 **Animals:** No animals, other than dogs and cats; shall be kept on any lot. All dogs must be kept leashed upon the Home Owner's property and must not be allowed to wander around the Highland Oaks Subdivision area. No dogs, cats, or any other animals, may be kept on any lot for breeding or any commercial purposes.
- 2.8 **Signs:** No commercial billboard or advertising shall be displayed to the public view on or from any Home or Lot. Owners may advertise a Home and Lot for rent or for sale by displaying a single neat, reasonably sized vacancy sign or "for sale" sign on the Home or Lot.
- 2.9 **Trash:** All trash, debris, garbage and refuse shall be kept at all times in a covered container.
- 2.10 **Storage; Outside Activities:** No articles, goods, materials, machinery, equipment, animals or similar items(s) shall be stored, kept, or maintained within the area between the Lot line and the required setback area along the street within the adjacent to the property, nor shall same be kept in the open or exposed to the public view. Any articles, goods, materials, machinery, equipment, animals or similar item(s) to be stored other than in an enclosed, covered building shall be completely enclosed either with a visual screen or landscape planting, or both, as determined by the Architectural Control Committee. No outside operations, including but not limited to, automobile, truck, machinery, and equipment repairs and the hanging, drying, or airing of clothing or household fabrics, shall be permitted on any Lot, unless same is visually screened from public view. Any event or condition which, in the sole discretion of the Architectural Control Committee, is

unsightly shall be corrected, removed or obscured from public views as the case may be, notwithstanding the fact that said event or condition may not be specifically described and/or prohibited in this Declaration.

2.11 **Owner's Right to Lease:** An Owner shall be entitled to lease or rent his Home, provided that same is leased or rented for a period of not less than thirty (30) days. Any such lease or rental shall be subject to this Declaration and the By-Laws hereinafter adopted. Each lessee or tenant shall be provided with a copy of this Declaration by the Owner so leasing or renting. The Owner shall be responsible for his lessee's or tenant's compliance with all provisions of this Declaration and the By-Laws pertinent to the occupancy and use of the Home.

2.12 **Nuisances:** No use or practice which is either an annoyance to Owners or an interference with the peaceful possession and proper use of the Property by the Owners shall be allowed. No nuisance shall be allowed upon the Project, to include but not limited to the violation of any Federal, State, County, or Municipal law or ordinance by the occupants, owners, lessees of any home or dwelling within the community.

2.13 **Lawful Use:** All valid laws, zoning ordinances and regulations of all governments bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies for maintenance, modification, or repair of the Lots, including any Home, building or structure thereon, and any other property owned by the Association, shall be the same as the responsibility for maintenance and repair of the property concerned.

2.14 **Fencing:** Chain link or wood fencing, subject to frontage set back is approved for all lots,

only along the boundary of each lot. Many other fencing type or location requires Architectural Control Committee approval.

## ARTICLE III

### BOARD OF DIRECTORS AND ARCHITECTURAL CONTROL COMMITTEE

3.1 Homeowner's Association: The members of the Homeowner's Association shall elect, subject to paragraph 3.2 hereafter, not less than three persons to serve as the Board of Directors. Each Board Member must be a lot-homeowner within this subdivision. Each lot-homeowner is entitled to one vote per lot owned.

The term of office of a Board of Director shall not be less than one nor more than three years as the By-Laws of the Homeowner's Association may herein after designate. A member may serve more than one term, and upon election the names and addresses of the Board Members shall be recorded with the County Recorder's Office. There shall be no remuneration or fee paid for service on the Board of Directors of the Homeowner's Association. The Board of Directors, as elected or as initially set forth herein, shall also constitute the Architectural Control Committee.

#### Architectural Control Committee:

The architectural control of the Lots within the Property shall be managed by an Architectural Control Committee. The members of the Committee shall not be entitled to any compensation for services performed in connection with their responsibilities hereunder.

Site Plan: A Site Plan shall be submitted to the Committee showing the location of the Home, and any other structure improvement or addition proposed to be constructed, erected, altered, placed or maintained on the Lot, and all setbacks, driveways, and other pertinent information relating to the improvements to be constructed.

The Committee shall approve or disapprove plans, specifications, or details within fifteen (15) days from the receipt thereof, or shall notify the person submitting them that an additional period of time, not to exceed fifteen (15) days is required for such approval or disapproval. Plans, specifications and details not approved or disapproved within the time limits provided herein, shall be deemed approved as submitted. The approval of plans by the Committee shall not relieve the Owner of the necessity of obtaining building permit(s) from those governmental entities having jurisdiction and control over the Properties and otherwise complying with all laws, statutes, ordinances and regulations effecting the same. Notwithstanding the approval by the Committee, each Owner submitting such plans, specifications and details shall be solely responsible for the sufficiency thereof. Further, neither the Declarant nor the members of the Committee shall be liable for any loss or damage or claim thereof arising from any defect or alleged defect or the construction or use thereof.

3.2 Declarant, the Initial Board of Directors, and Architectural Committee: Until such time as 85% of the lots have been sold by the declarant to persons or entities other than the declarant, or his wholly controlled corporations, partnerships, or other legal entities, the declarant shall be the sole Board of Director of the Homeowner's Association and the Architectural Control Committee.

3.3 **The Organization:** The Association shall be a non-profit unincorporated association. The affairs of the unincorporated Association shall be governed by the laws of the State of Utah and, to the extent not inconsistent therewith, by any By-Laws of the Association and this Declaration.

3.4 **Membership:** Each Owner of a Lot, by virtue of being an Owner, shall be a member of the Association, provided that any person or entity who holds an interest in a Lot merely as security for the performance of an obligation shall not be a member. Each Home Owner shall be entitled to one (1) membership in the Association for each Lot owned. Upon termination of Lot ownership, the membership in the Association shall also terminate. Ownership of a Home shall be the sole qualification for membership in the association.

3.5 **All Owners Subject to Declaration:** Every Home owner, whether he has acquired his Ownership by purchase, gift, conveyance or transfer by operation of law, or otherwise shall be bound by any duly adopted By-Laws and by the provisions of this Declaration.

3.6 **Voting Rights:** All Home Owners, shall have one (!) vote per vacant Board Member position for each Lot owned. Fractional votes shall not be allowed and in no event shall more than one vote be cast with respect to any Home Owner. Said vote shall be cast by the designated "Voting Owner" for that Lot as hereinafter provided. When more than one (1) person owns a lot, there shall be one "Voting Owner" for such Lot.

3.7 **Election:** Upon sale of 85% of the lots by Declarant, there shall be an election. Election to the Board of Directors shall be by secret written ballot. At such election the Home Owner or their proxies may cast, one vote for each lot owned. The persons receiving at least 51% of votes for a Director or Directors shall be deemed elected.

3.8 **Disqualification and Resignation of Directors:** Any Director may resign at any time by sending a written notice to all homeowners, whereupon a special election shall be held to fill the vacancy.

The transfer of title of his Lot by a Director shall automatically constitute a resignation, effective upon transfer of title.

3.9 **Removal:**

A. **Removal Prior to Expiration of Term:** Unless the entire Board is removed from office, by the vote of Association Members, an individual director can be removed prior to the expiration of his term of office. Upon the receipt by the Board of a written petition for removal of a Director signed by not less than 15% of the voting power of Home Owners in good standing, a special meeting shall be called by the Board for the purpose of voting on such petition for removal of a Director. That at this special meeting, Board Member will be removed from office upon a majority vote of a quorum of Home Owners.

B. **Successor Elected by Remaining Board Members:** In the event of death, resignation or removal of a Director, his successor shall be selected by the other two Board Members and shall serve until a special election can be held.

3.10 **Compensation:** No Director shall receive compensation for any services rendered to the Association. However, a Director may be reimbursed for his/her reasonable expenses actually incurred in the performance of his/her duties as a Director of the Association as approved by the Board of Directors.

3.11 **Regular Meeting:** Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors.

Notice of regular meetings shall be given to each Director, personally, by mail or telephone, at least three (3) days prior to the date named for such meeting by the Secretary of the Association.

- 3.12 **Special Meetings.** Special meetings of the Directors may be called by the Board or by any member of the Board of Directors. Not less than three (3) days notice of the meeting shall be given personally, by mail or telephone, which notice shall state the time, place and purpose of the meeting.
- 3.13 **Notice to Members.** All meetings of the Board of Directors shall be open to all Home Owners and notices of meetings shall be sent at least 4 days in advance for the attention of Home Owners, unless the meeting is called for the purpose of resolving some emergency and the four day notice cannot be met.
- 3.14 **Waiver of Notice.** Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place of the meeting.
- 3.15 **Quorum.** A quorum at Directors' meetings shall consist of a majority of elected Board Members.
- 3.16 **Adjourned Meetings.** If at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting any business that might have been transacted at the meeting, as originally called, may be transacted without further notice.
- 3.17 **Order of Business.** The order of business at Directors' meetings shall be:

- (a) Calling of roll.
- (b) Proof of due notice of meeting.
- (c) Reading and disposal of any unapproved minutes.
- (d) Unfinished business.
- (e) New business.
- (f) Adjournment.

3.18 **Action without a Meeting.** On an emergency basis any Board Member shall have the right to take any action, without a meeting, as may be required for the efficient and expeditious operation and conduct of the Association's business and which it otherwise would have the power and authority to take at any meeting; provided, that written notice to the Association Members of the action so taken without a meeting shall be listed in the minutes of the next Board meeting. Any action so taken without a meeting shall have the same effect as though taken at a duly noticed meeting of the Board.

## **ARTICLE IV**

### **POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

4.1 **Powers.** The Board of Directors shall have the power to:

- (a). Enforce the provisions of the By-Laws and Covenants.
- (b). Exercise for the Association all powers, duties, and authority vested in or delegated to this Association and not reserved to the membership by other provisions set forth in the By-Laws, or this Declaration.

4.2 **Enforcement:** The Board shall have the power, obligation and duty to enforce the provisions of this Declaration, and any adopted By-Laws. In the event of a breach of any of the restrictions contained in this Declaration by a Home Owner, his family, guests, employees, invitee, licensees, or tenants, the Board, for and on behalf of all other Lot Owners, may enforce the obligations of each Owner to obey such restrictions in any

manner provided by law or in equity including but not limited to, appropriate legal action.

Not withstanding anything to the contrary herein contained, neither the Board nor the Association of Members shall have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his Home, including his right of ingress and egress to his Home on account of such Owner's failure to comply with the provisions of this Declaration or of the By-Laws adopted by the Association relating to the operation of the Property, except as the result of a judgment of a court or a decision arising out of arbitration. In the event legal action is instituted by the Board pursuant to this paragraph, any judgment rendered in any such action shall include costs of collection, court costs, and reasonable attorney fees.

4.3 **Books and Records.** The books, records, papers and current financial statement of the Association shall be at all times, during reasonable business hours, be subject to inspection by any Home Owner. The Declaration, and any By-Laws for the Project shall also be available for inspection by any Home Owner at the home of each Board Member or at a designated place where copies may be purchased at a reasonable cost.

## **ARTICLE V**

### **EASEMENTS**

There are hereby specifically reserved for the benefit of the Home Owners, in common and for each Home Owner severally, and the Association, as their respective interest shall obtain, the easements, reciprocal negative easements, secondary easements, and rights of way as particularly identified in this Article.

(A). There is reserved for the benefit of each Lot, as dominate tenement, an easement for

utility services over, under the through the Property, each other Lot, jointly, as the servient tenement.

(B). There is hereby reserved to the Association an easement appurtenant to all other Lots, as dominate tenements, through each Lot, as servient tenement, for the maintenance and repair of that portion comprising the Property's community domestic water system, private sewer lines, and private fire protection water-supply system including all pumps, pipes, conduits, hydrants and other utility installations relating thereto.

(C). There is hereby reserved to each Lot, as dominant tenement, a non-exclusive easement appurtenant to each Lot as servient tenement for ingress and egress.

(D). Each Home Owner shall have a non-exclusive easement, and such easement is hereby granted, subject to the limitations provided in this Declaration.

## **ARTICLE VI**

### **AMENDMENT OF DECLARATION**

Except as otherwise provided, this Declaration may be amended in the following manner:

6.1 Resolution. A resolution for the adoption of a proposed Amendment may be proposed by either the Board of Directors of the Association or by not less than twenty-five percent (25%) of the Voting Owners. Except as otherwise provided, approval of the Amendment must be either by:

- A. Not less than two-third (2/3's) of the entire membership of the Board of Directors and by not less than tow-thirds (2/3's) of the total voting members of the Association; or
- B. Not less than seventy-five percent (75%) of the total voting power of the Association.

6.2 Execution and Recording. A copy of each Amendment shall be attached to a certificate certifying that the Amendment was duly adopted, which certificate shall be executed by the officers of the Association with the formalities of a deed. The Amendment shall be effective when such certificate and copy of the Amendment are recorded in the public records of San Juan County, Utah.

## ARTICLE VII

### MISCELLANEOUS PROVISIONS

7.1 Term. The covenants, conditions, and restrictions of this Declaration shall run with and bind the property for a period of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive period of ten (10) years unless at least seventy-five percent (75%) of the Lot Owners, by an instrument or instruments duly signed and acknowledged by them, shall terminate this Declaration by filing such instrument or instruments for record in the Office of the Recorder of San Juan County, Utah. Nothing herein contained shall be construed to prevent the amendment of this Declaration in the manner provided above.

7.2 Construction of Provisions. The provisions of this Declaration shall be liberally construed to effect its purposes of creating a uniform plan for the development and operation of the Property. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

7.3 Notices. Whenever notices are required to be sent hereunder, the same may be delivered to Home Owners, either personally or by mail, addressed to such Home Owners at their place of residence, unless the Home Owners have, by written notice duly received for,

specified a different address. Notices to the Association shall be delivered by mail to any two Board Members or in case of the absence, any one member of the Board of Directors of the Association.

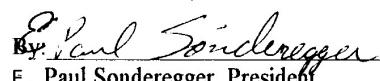
- 7.4 **Captions.** The captions used in this Declaration are inserted solely as a matter of convenience and shall not be relied upon and/or used in construing the effect or meaning of any of the text of this Declaration.
- 7.5 **Binding.** This Declaration shall be for the benefit of and be binding upon all Home Owners, their respective heirs, legatees, devisees, executors, administrators, guardians, conservators, successors, purchasers, lessees, encumbrances, donee, grantees, mortgagees, lienors and assignees.
- 7.6 **Severability of Provisions.** The provisions hereof shall be deemed independent and severable, and the invalidity or unenforceability of any one provisions shall not affect the validity or enforceability of any other provision hereof.
- 7.7 **Gender and Number.** As used herein, the singular shall include the plural and the masculine shall include the feminine.

IN WITNESS WHEREOF, the undersigned Declarant has executed the within Declaration the day and year first above written.

HIGHLAND OAKS SUBDIVISION  
SONDEREGGER, INC.

ATTEST:

  
\_\_\_\_\_  
Michelle Sonderegger, Secretary

  
\_\_\_\_\_  
E. Paul Sonderegger, President

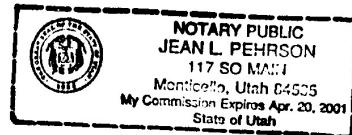
Subscribed and sworn to before me this 27 day of September, 1998.

STATE OF UTAH      )  
COUNTY OF SAN JUAN    )

On this 29th day of September, 1998, personally  
appeared before me, E. Paul Sonderegger and Michelle Sonderegger,  
acting in behalf of Sonderegger, Inc. in their capacities as the  
President and Secretary respectively.

*Jean L. Pehrson*  
Notary Public  
Residing at: Monticello, Utah

My Commission Expires: 04-20-01



18

156

156