

Department of Housing and Urban Development
Federal Housing Administration

EXHIBIT "D"

REGULATORY AGREEMENT

AGREEMENT dates this *25th* day of *August, 1970*, by and between *HOMEOWNERS ASSOCIATION OF BRIAN HEAD VILLAGE PHASE 1* ****(hereinafter called the Association) whose address is *BRIAN HEAD SKI RESORT, Utah*, party of the first part, and _____, as Federal Housing Commissioner (hereinafter called the Commissioner) acting pursuant to authority granted him by the National Housing Act, as amended, (hereinafter referred to as the Act), party of the second part.

WHEREAS, the Association has the responsibility for administering the _____ Condominium and desires to aid members in obtaining financing for the purchase of family units in the condominium; and

WHEREAS, mortgagees may be unwilling to lend sums to the members of the Association without FHA mortgage insurance; and

WHEREAS, the Commissioner is unwilling to endorse notes for mortgage insurance pursuant to Section 234 of Title II of the Act unless and until the Association shall be entering into the covenants and agreements set forth below, consent to be regulated and restricted by the Commissioner as provided in the Act:

NOW, THEREFORE, in consideration of One Dollar (\$1.00) in hand paid, and other good and valuable considerations by each party to the other, the receipt of which is hereby acknowledged, and in order to induce the Commissioner to endorse for mortgage insurance the notes secured by mortgages covering family units in the condominium, and in order that the Association may be regulated and restricted by the Commissioner as provided for in the Act and the applicable Regulations, the parties hereto agree as follows: that whenever a Contract of Mortgage Insurance for a mortgage covering a family unit in the condominium is in effect, or during any period of time as the Commissioner shall be the owner, holder, or reinsurer of any mortgage covering a family unit in the condominium, or during any time the Commissioner is the owner of a family unit in the condominium or is obligated to insure a mortgage covering any family unit in the condominium:

1. The Association shall establish and maintain a reserve fund for replacements by the allocation and payment monthly to such reserve fund an amount to be designated from time to time by the Commissioner. Such fund shall be deposited in a special account with a safe and responsible depository approved by the Commissioner and may be in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America. The reserve fund is for the purpose effecting replacements of structural elements and mechanical equipment of the condominium and for such other purposes as may be agreed to in writing by the Commissioner. Disbursements from such fund may be made only after receiving the consent in writing of the Commissioner.

* To be attached to the recorded Plan of Apartment Ownership and to be executed and dated as of the date recordation.

**Insert name of Association of Owners as designated in the By-Laws of the Condominium, or the name of the Corporation, if the Association is incorporated.

2. The Association shall establish and maintain a general operating reserve by allocation and payment thereto monthly of a sum equivalent to not less than 3 percent of the monthly assessment chargeable to the owners of family units in the condominium pursuant to the by-laws. Upon accrual in said General Operating Reserve Account, of an amount equal to 15 percent of the current annual amount of assessments chargeable to the owners of family units in the condominium pursuant to the by-laws, the rate of such monthly allocations may, by appropriate action of the Association, be reduced from 3 percent to 2 percent, provided, however, that in the event withdrawals from such account reduce it below said 15 percent accrual, the rate of such monthly deposits shall immediately be restored to 3 percent; at any time thereafter upon accrual in said General Operating Reserve Account of an amount equal to 25 percent of the current annual amount of assessments chargeable to the owners of family units in the condominium pursuant to the by-laws, such monthly deposits may, by appropriate action of the Association, be discontinued and no further deposits need be made into such General Operating Reserve so long as said 25 percent is maintained and provided, further, that upon reduction of such reserve below said 25 percent level, monthly deposits shall forthwith be made at the 3 percent rate until the 25 percent level is restored. This reserve shall remain in a special account and may be in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America, and shall at all times be under the control of the Association. This cumulative reserve is intended to provide a measure of financial stability during periods of special stress and may be used to meet deficiencies from time to time as a result of delinquent payments of assessments by owners of family units in the condominium and other contingencies. Disbursements totaling in excess of 20 percent of the total balance in the reserve as of the close of the preceding annual period may not be made during any annual period without the consent of the Commissioner. Reimbursements shall be made to the account upon payment of delinquencies for which funds were withdrawn from the reserve.
3. The Association will not employ a management agent for the buildings nor enter into a management contract nor undertake "self-management" unless the Commissioner has approved in writing the proposed management agent, form of management contract or other management arrangements.
4. The Association shall not without prior approval of the Commissioner , given in writing, remodel, reconstruct, demolish or subtract from the premises constituting the condominium.
5. The Association shall not without prior approval of the Commissioner given in writing:
 - a. amend or change the Plan of Apartment Ownership or the by-laws of the Association;
 - b. fail to establish and maintain the Fund for Replacement and general operating reserve as set forth herein;
 - c. fail to provide for the management of the condominium in a manner approved by the Commissioner;

- d. fail to keep in full force and effect an elevator contract satisfactory to the FHA covering the maintenance and replacement of parts of any elevator or related equipment, or, is such contract shall be allowed to expire, then fail to accrue an additional sum in such amount as shall be designated by the Commissioner to be sufficient to allow for deferred and future replacements as part of the annual Reserve for Replacement Fund collected by the Association so as to insure that Funds will be available for replacement of elevator parts and related equipment.
6. The Association shall maintain the common areas and facilities, and each owner of a family unit shall maintain the family unit, in good repair and in such condition as will preserve the health and safety of the members.
7. The books, contracts, records, documents and papers of the Association and all of the property of the condominium shall be subject to inspection and examination by the Commissioner or his duly authorized agent at all reasonable times.
8. The owner of a family unit shall not execute or file for record any instrument which imposes a restriction upon the sale, leasing or occupancy of his family unit on the basis of race, color, or creed.
9. The Association agrees that if at any time the owner of a family unit fails to pay his monthly assessment as provided in the by-laws, the Association will, upon direction of the Commissioner, initiate necessary legal action to collect the assessment.
10. Upon a violation of any of the above provisions of this Agreement by the Association, or by any owner of a family unit, or upon the failure of the Association to abide by and carry out the provisions of the Plan of Apartment Ownership and the By-laws, the Commissioner may give written notice thereof to the Association or to the owners of a family unit, by registered or certified mail. If such violation is not corrected to the satisfaction of the Commissioner within 15 days after the date such notice is mailed, or within such additional period of time as is set forth in the notice, without further notice the Commissioner may declare a default under this Agreement and upon such default the Commissioner may:
 - a. In the case of a default by the owner of a family unit:
 - i. If the Commissioner holds the note of the defaulting owner declare the whole of said indebtedness due and payable and then proceed with the foreclosure of the mortgage;
 - ii. If said note is held by an FHA-insured mortgage - notify the mortgagee of such default, and the mortgagee, with the prior written consent of the Commissioner, may declare the whole indebtedness due, and thereupon proceed with the foreclosure of the mortgage, or assign the note and mortgage to the Commissioner as provided in the Regulations.
 - b. In the case of a default by the Association or by the owner of a family unit:

Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of the Agreement, or for such other relief as may be appropriate, since the injury to the Commissioner arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.

11. The covenants and agreements herein set out shall be deemed to run with the land and the property described in the Plan of Apartment Ownership, and to bind all owners of family units, present and future.

12. As used in this Agreement the term:

- a. "Mortgage" shall include "Deed of Trust";
- b. "Note" shall include "Bond";
- c. "Mortgagee" shall include the "Beneficiary" under Mortgage or Deed of Trust however designated;
- d. "Default" means a default declared by the Commissioner when a violation of this Agreement is not corrected to his satisfaction within the time allowed by this Agreement or such further time as may be allowed by the Commissioner after written notice;
- e. "Plan of Apartment Ownership" shall include all legal documents, deeds, by-laws, plans and specifications, required by the laws of the jurisdiction to establish condominium ownership.

(The use of the plural shall include the singular; the singular the plural; and the use of any gender shall be deemed to include all genders.)

13. This instrument shall bind, and the benefits shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in office or interest, and assigns.

14. The invalidity of any clause, part or provision of this agreement shall not affect the validity of the remaining portions thereof.

15. The Association agrees and assumes the obligation to have this Agreement recorded in the appropriate land records in the jurisdiction in which the real property herein described is situated; and in the event of a failure to do so, it is agreed that the Commissioner may have the same recorded at the expense of the Association.

16. It is specifically agreed between the parties hereto that the breach of any of the terms of this Agreement by the Association or by an owner of a family unit will substantially damage and injure the Commissioner in the proper performance of his duties under the provisions of the Act, and will impede and injure the proper operations intended under such Act; that such damage will be irrespective of and in addition to any damage to the security of the mortgaged premises or to any financial damage the Commissioner may suffer as insurer, that, except for the

agreements herein contained, the Commissioner would not issue and would not be authorized to issue a Contract of Mortgage Insurance, and that mortgagees may not be willing to lend sums of money to owners of the family units on the security of mortgages covering such units, unless the same were insured by the Commissioner.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement the day and year first above written.

HIGH SKI LIMITED Acting for:
ASSOCIATION OF OWNERS OF CONDOMINIUM
BRIAN HEAD VILLAGE RESORT CONDOMINIUM PHASE I

(Signed) R. Terence Marten, General Partner
(Signed) Edgar J. Thompson, General Partner
(Signed) David A. Hutchinson, General Partner

(Signed) FEDERAL HOUSING COMMISSIONER
