

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
HIGHLANDER TOWNHOMES

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DEWIS L. BRILL

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to
Declaration
of
Covenants, Conditions and Restrictions
of
Highlander Townhomes

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DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
HIGHLANDER TOWNHOMES

THIS DECLARATION is made this 16th day of September 1994 by Highlander Construction LLC (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the Owner of certain property in the County of Summit, State of Colorado, which is more particularly described as:

Lot 24, FOUR SEASONS OF BRECKENRIDGE VILLAGE,
FILING NO. 2, according to the amended Plat
thereof filed February 23, 1972 at Reception
No. 124904.

Address: 300 Kings Crown Rd.
Breckenridge, Colorado.

hereinafter referred to as the Property;

WHEREAS, Declarant desires to establish a planned community townhome project with 19 townhomes and to subject the project and the Property to certain covenants, conditions, and restrictions;

WHEREAS, Declarant has caused to be incorporated under the laws of the State of Colorado, Highlander Townhome Association, Inc., a nonprofit corporation for the purposes of exercising the functions as herein set forth.

NOW, THEREFORE, Declarant hereby submits the Property to the provisions of the Colorado Common Interest Ownership Act, Sections 38-33.33-101, et seq., Colorado Revised Statutes, as it may be further amended from time to time (the "Act"); in the event the Act is repealed, the Act, on the effective date of the Declaration, shall remain applicable; and

Further, Declarant hereby declares that the Property described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title, or interest in said real property, or any

part thereof, and their heirs, successors, and assigns, and shall inure for the benefit of each Owner thereof.

ARTICLE I DEFINITIONS

Section 1.1 "Association" shall mean and refer to Highlander Townhome Association, Inc., a Colorado nonprofit corporation, its successors and assigns.

Section 1.2 "Board of Directors" or "Board" shall mean and refer to the duly elected and qualified members of the Board of Directors of the Association acting in an official capacity.

Section 1.3 "Building" shall mean and refer to all structures containing one or more Units now or hereafter constructed on the Property.

Section 1.4 "Common Area" shall mean the General Common Area as herein defined.

Section 1.5 "Declarant" shall mean and refer to Highlander Construction LLC, its successors and assigns.

Section 1.6 "General Common Area" shall mean all real property and any improvements thereon or thereto owned by the Association for the common use and enjoyment of the Owners. The General Common Area owned by the Association at the time of the recording of this Declaration includes those areas identified as such on the Plat for the Property recorded at approximately the same time as this Declaration is recorded, and shall include any portion of the Property designated as General Common Area on any amendments or supplements to the Plat for the Property, any and all real and personal property owned or controlled by the Association for the common use and benefit of all of the Owners and the townhome project, together with all improvements thereon, if any. Every Owner, and the successors and assigns thereof, shall be deemed to have consented to the use and control of said General Common Area by the Association for the benefit and enjoyment of all Owners in accordance with the provisions of this Declaration, the Articles of Incorporation, the Bylaws and any rules and regulations of the Association.

Section 1.7 "IMPROVEMENTS", when that word is capitalized, shall mean and refer to all improvements now or hereafter constructed on the General Common Area.

Section 1.8 "Mortgage" shall mean and include all mortgages or deeds of trust which represent a first security interest on or in one or more Lots, but shall not include mortgages or deeds of trust junior to a first mortgage or first deed of trust or involuntary liens, such as mechanic's liens and judgments.

Section 1.9 "Mortgagee" shall mean and include the holder of any mortgage representing a first security interest in one or more Lots or the beneficiary of any deed of trust representing a first security interest in one or more Lots, but shall not include the holders of mortgages or beneficiaries of deeds of trust junior to a first mortgage or deed of trust or any claimant of an involuntary lien, such as a mechanic's lien or judgment lien.

Section 1.10 "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. The term "Owner" shall also include the Declarant, or its successors and assigns, with respect to all Lots held in the name of Declarant.

Section 1.11 "Project" means all of the Property and IMPROVEMENTS, including Lots, and all Buildings located thereon, submitted to this Declaration.

Section 1.12 "Property" shall mean and refer to not only Lot 24, as described above, but also to such additions thereto as may hereafter be subjected to this Declaration and brought within the jurisdiction of the Association.

Section 1.13 "Unit" shall mean and refer to any individual residence constructed on any Lot.

Section 1.14 "Lot" shall mean and refer to any individual Lot shown on the Plat for Highlander Townhomes, together with all improvements and appurtenances constructed or located thereon.

ARTICLE II THE ASSOCIATION AND THE MASTER ASSOCIATION

Section 2.1 Authority. The business and affairs of the Project shall be managed by the Association, a Colorado non-profit corporation. The Association shall be governed by its Bylaws, as amended from time to time.

Section 2.2 Powers.

(a) The Association shall have all of the powers, authority and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of the Project. The Association shall further have the power and authority to establish and enforce a system and schedule of monetary fines to be imposed against Owners for violations of the terms and provisions of this Declaration, the Articles of Incorporation, the By-Laws or any Rules and Regulations of the Association. Such fines shall be in such amounts as are determined reasonable by the Board of Directors, taking into account the impact of the violation on the Project, the Owners, and the administrative time and effort necessary to deal with the

violation, and may, if deemed appropriate by the Board of Directors, provide for fines in increasing amounts for repeated offenses, and further, may provide for a repeated fine for each day of a violation, and shall be published for a period of thirty (30) days before taking effect. In the event that a fine is imposed against any Owner pursuant hereto such Owner shall be liable to the Association for the amount of such fine or fines and for all costs and expenses incurred by the Association in collecting such fine or fines, including attorney's fees, and the Association shall have a lien on the Lot of said Owner for the full amount due the Association hereunder, which lien shall be superior to any and all other liens and encumbrances against said Lot, except the lien for general taxes, and said lien may be foreclosed in the same manner as is provided by in Section 5.10 hereof.

(b) The Association may assign its future income, including its right to receive annual, supplementary and special assessments, only by the affirmative vote of the Owners of Lots to which at least 51 percent (51%) of the votes in the Association are allocated, at a meeting called for that purpose.

Section 2.3 Declarant Control. The Declarant shall have, for a period of five years from the date of the recording of this Declaration, unless otherwise terminated by law, all the powers reserved in Section 38-33.3-303(5) of the Act to appoint and remove officers and members of the Board of Directors.

Section 2.4 Master Association. In addition to the easements, restrictions, reservations, covenants, conditions, terms, and provisions set forth herein, those restrictions, covenants, easements, reservations, architectural controls, and other encumbrances set forth in the Declaration of Restrictions, Covenants, Easements, Reservations, and Architectural Control for Four Seasons of Breckenridge Village Filing No. 2, recorded in the records of Summit County, Colorado, on September 29, 1972, in Book 225, at Pages 93-121, at Reception No. 128826, as well as the Articles of Incorporation and Bylaws of the Upper Village Homeowners Association, Inc., shall continue to apply to the Property, and every Owner shall, in addition to being a member of the Association, also be a member of the Upper Village Homeowners Association, Inc.

ARTICLE III LOTS AND PROPERTY RIGHTS

Section 3.1 Lots.

(a) The number of Lots in the Project is nineteen (19);

(b) The identification number of each Lot is shown on the Plat; and

(c) Every deed, lease, mortgage, deed of trust or other instrument shall legally describe a Lot in the following manner:

"Lot _____, Highlander Townhomes, according to the Plat thereof and subject to the Declaration of Covenants, Conditions and Restrictions of Highlander Townhomes on file in the Office of the Clerk and Recorder, County of Summit, State of Colorado."

Section 3.2 Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the General Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the General Common Area, if such are constructed;

(b) the right of the Association to suspend the voting rights and right to use of any recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the General Common Area to any governmental entity or public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by two-thirds of the Owners. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by sixty seven percent of the Owners has been recorded.

(d) The right of the Association to borrow money for the purpose of improving the General Common Areas, and in aid thereof to mortgage said General Common Areas, and to take such steps as may be reasonably necessary to protect the General Common Areas from foreclosure; no such action shall be effective unless an instrument agreeing to such action signed by sixty seven percent of the Owners has been recorded; and

(e) The right of the Association to close or limit the use of the General Common Areas while maintaining, improving, or making replacements therein or thereto.

Section 3.3 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, or the Rules and Regulations of the Association, his rights of enjoyment to the General Common Area and facilities to the members of his family, his guests, his invitees, his tenants, or contract purchasers of his Lot.

ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS

Section 4.1 Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 4.2 The Association shall have one class of voting membership. Members shall be all Owners and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members, provided, however, that there shall be no more than one vote cast, with no fractional votes, for or with respect to any Lot and such vote shall be cast as the persons owning any Lot shall determine.

ARTICLE V
COVENANTS FOR ASSESSMENTS

Section 5.1 Creation of the Lien and Personal Obligation for Assessments.

(a) Declarant, for each Lot owned within the Property, 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 assessments or charges, (2) supplementary assessments, (3) special assessments, and (4) fines, such assessments and fines to be established and collected as herein provided.

(b) All annual, supplementary and special assessments, together with interest, at the highest lawful rate as provided by the Act as may be further amended from time to time, late charges, costs, and reasonable attorney's fees:

(1) General Lien. shall be a charge on the land and shall be a continuing lien in favor of the Association against the Lot against which each such assessment is made. The Association's lien resulting from this paragraph shall be prior to any other lien or claim against a Lot, except for a lien for ad valorem taxes, purchase money Mortgage, liens and encumbrances recorded before the recordation of this Declaration and except as otherwise provided in this Declaration. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person, or entity, who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them; and

(2) Super-Priority Lien. shall be a charge on the land and shall be a continuing lien in favor of the Association against the Lot against which each such assessment is made to the extent provided by the Act, (C.R.S. § 38-33.3-316 (2) (b)), as may be further amended from time to time. The Association's lien resulting from this paragraph shall be prior to any other lien or claim against a Lot, except for a lien for ad valorem taxes, liens and encumbrances recorded before the recordation of this Declaration and except as otherwise provided in this Declaration. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person, or entity, who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 5.2 Purpose of Assessments. The assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Property and for the improvement, maintenance and repair of the Common Area and the exterior of the Buildings and other IMPROVEMENTS situated upon the Property.

Section 5.3 Annual Assessments.

(a) Annual assessments shall be made for the purposes of providing funds for the normal operations of the Association including, but not limited to, maintenance and repair of the Common Areas, IMPROVEMENTS, and exterior of the Buildings, salaries, costs of operating the Association, and insurance coverage provided for in Article VII, management fees, office costs, and adequate reserve funds for maintenance, repairs, replacements of the exterior of Buildings, IMPROVEMENTS, and those portions of the Common Areas that must be replaced on a periodic basis, improvements to the Common Areas, amounts necessary to pay deficits or debts incurred by the Association, Common Area water and sewer rents, and trash collection fees, snow removal, real estate taxes and betterment or other special assessments, if any, assessments against the Property imposed by the Upper Village Homeowners Association, Inc., pursuant to the terms and conditions of the Declaration of Restrictions, Covenants, Easements, Reservations, and Architectural Control filed in the records of Summit County, Colorado, on September 29, 1972, in Book 225, at Pages 93-121, Reception No. 128826, as amended, and funds for any other purpose or purposes of the Association provided for herein. The total amount of money required to be raised by annual assessments for each fiscal year shall be the amount, as determined by the Board, necessary to satisfy the costs and expenses of fulfilling such functions and obligations of the Association in such fiscal year, including the payment of reserves, and providing a reasonable carry-over

reserve for subsequent fiscal years. To determine the amount required to be raised by annual assessments for any fiscal year, the Board shall prepare an annual budget for such fiscal year showing, in reasonable detail, the various matters proposed to be covered by the budget, the estimated income and other funds which will be available in that fiscal year, and the estimated total amount of money required to be raised by annual assessments to cover such costs and expenses and to provide a reasonable reserve. The Board of Directors shall furnish a summary of such budget to the Lot Owners and shall set a date for a meeting of the Lot Owners to consider the ratification of such budget as required by the Act, as may be further amended from time to time. Upon request, the Board will furnish a summary of the most recently adopted budget to any Mortgagee. Based on such budget, the Board of Directors shall determine the amount of the annual assessment per Lot for such fiscal period.

(b) If the Board shall fail to establish an annual assessment for any year, the annual assessment for such year shall remain the same as for the year immediately preceding; except that, upon approval by majority vote of the entire membership of the Association, such annual assessment may be increased or decreased for the remainder of the assessment year as of the first day of the month following such vote.

(c) Annual assessments shall apply only to Lots now or hereafter subjected to this Declaration and included within the jurisdiction of the Association.

(d) Annual assessments shall be payable in twelve equal monthly installments, due and payable on the first day of each month, during each fiscal year.

Section 5.4 Supplementary Assessments. In the event that the Board shall determine, at any time or from time to time, that the amount of the annual assessments is not adequate to pay for the costs and expenses of fulfilling the Association's obligations hereunder, one or more supplementary assessments may be made for the purpose of providing the additional funds required. To determine the amount required to be raised by each supplementary assessment, the Board shall revise the annual budget for such fiscal year as provided in Article V, Section 5.3, or prepare a new budget, a summary of which shall be furnished to each Owner, and shall set a date for a meeting of the Lot Owners to consider the ratification of such budget as required by the Act. Upon request, the board will deliver a summary of the revised or new budget to any Mortgagee. Based on such revised or new budget, the Board may make a supplementary assessment for such fiscal year against each Lot.

Section 5.5 Special Assessments. A special assessment for purposes of large or unexpected expenditures that are (capital) in nature shall be made only upon resolution of the Association's

Board of Directors. The Board will deliver to all Lot Owners, by first class mail or otherwise, a summary of the special assessment and shall set a date for a meeting of the Lot Owners for purposes of ratification of the special assessment as required by the Act as may be further amended from time to time.

Section 5.6 Assessment Reserves. Each Owner, other than Declarant, shall be required to deposit and maintain continuously with the Association an amount equal to up to three (3) times the amount of the monthly installments of the annual assessment, as determined appropriate by the Board, such reserve amount to be held without interest accruing to the Lot Owner. This sum shall be used by the Association as a reserve for payment of each Owner's assessments and for working capital of the Association. The advance payment shall not relieve an Owner from making the regular payments of the annual assessments, or any portion thereof, as same become due, nor shall the Association be required to deduct from such advance payment sums due for annual assessments by an Owner prior to instituting any proceedings against the Owner for delinquent assessments. In the event the Association shall, pursuant to the purposes of this Paragraph, draw delinquent assessments from the reserve created by such advance payment applicable to an Owner, the Owner expressly agrees, following ten (10) days prior written notice from the Association, to repay such amounts to the Association in order to properly maintain the reserve account, and such amount to be repaid shall have the same status as an annual, supplementary or special assessment for purposes of Article V of this Declaration. Upon the sale of a Lot, an Owner shall be entitled to a credit from his grantee for the remaining balance of such reserve account applicable to the Owner's Lot.

originally
\$412.71
per unit

11
secs

Section 5.7 Uniform Rate of Assessment. Annual, supplementary and special assessments for each Lot shall be uniform and shall be determined by dividing the total assessment by the total number of Lots, so that the assessment will be the same for each Lot. No assessment shall be attributed to a Lot until such Lot has been conveyed to an Owner other than Declarant.

Section 5.8 Date of Commencement of Annual Assessments; Due Dates. The Annual Assessments provided for herein shall commence as to each Lot on the day following the delivery of a deed for such Lot from Declarant to an Owner other than Declarant. Written notice of assessments shall be sent to every Owner.

Section 5.9 Certificate of Status of Assessment. The Association shall, upon written demand by a Lot Owner or such Lot Owner's designee or by the holder of a Mortgage or its designee, delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association's registered agent and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth the amount of unpaid assessments currently levied against the Owner's Lot. The statement shall be furnished as provided in the Act, which may be further amended from

time to time. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 5.10 Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment or installment not paid within fifteen (15) days after the due date shall bear interest from the due date at the highest rate allowed by the Act, as may be further amended from time to time. In addition, the Board may establish by resolution a reasonable delinquent or late charge for any assessment not paid when due. In the event any assessment or installment is not paid within forty five (45) days after the due date, the Association, upon an affirmative vote of the Board of Directors, and after ten (10) days written notice to the Lot Owner, which written notice shall be sent both via regular first class mail and by certified mail, return receipt requested, may terminate any snow removal service provided by the Association to and for the Lot, with the cost of such termination, as well as the cost of re-establishing service upon the payment of all past due assessments, to be an additional assessment against the Lot. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the Association's lien against the Lot, or both. 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. In addition to any other remedies herein or by law provided, the lien herein established may be foreclosed by an action in the court having jurisdiction over the Property in the manner of foreclosure of common law mortgages, pursuant to the law and statutes of the State of Colorado, and subject to all the rights and duties therein provided, including redemption. In any civil action to enforce or recover unpaid assessments, the Association shall be entitled to an award of reasonable attorneys' fees and all costs of collection or foreclosure, all of which shall be included in the lien against the Lot.

Section 5.11 Subordination of the Lien Mortgages. Except as provided in Section 5.1(b)(2), the lien for assessments provided for herein shall be subordinate to the lien of any purchase money loan evidenced by a purchase money Mortgage of record. Sale or transfer of any Lot shall not affect the lien for said assessments, however, except as is provided in Section 5.1(b)(2), the sale or transfer of any Lot pursuant to foreclosure of any such Mortgage shall extinguish the lien of assessment charges which became due prior to any such foreclosure. No sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture of any such executory land sales contract shall relieve the Lot from liability for any assessment charges thereafter becoming due, nor from the lien thereof. Nothing herein shall be deemed to release any Owner from his personal obligation to pay any assessment.

Section 5.12 Homestead. The lien of the Association for unpaid assessments shall be superior to any homestead exemption as is now or may hereafter be provided by Colorado or Federal law.

The acceptance of a deed to any Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against said assessment lien.

Section 5.13 Recording of Liens. The board shall immediately record a lien against all Lots owned by an Owner who fails to pay any assessment installment within sixty (60) days of becoming due.

Section 5.14 Notice to Lot Owners. Notice by the Board and other Lot Owners of matters affecting the Project shall be via first class mail or personal delivery to the Lot Owners and the Association.

ARTICLE VI GENERAL RESPONSIBILITIES AND RESTRICTIONS

Section 6.1 Common Areas. The Association is herewith charged with the direct and continuing responsibility for maintenance, repair, replacement, operation, protection, extension and improvement of the General Common Areas. The obligations of the Association as set forth herein shall include, but shall not be limited to, all maintenance, including snow removal, of the main private driveway serving the Property, which main private driveway is shown on the Plat as General Common Area.

Section 6.2 Exterior Maintenance.

(a) In addition to maintenance of and improvements to the General Common Areas the Association shall provide exterior surface maintenance of each Building which is subject to assessment hereunder, including, but not limited to the following: paint, repair, replacement, maintenance and care of roofs, gutters, downspouts, porches, decks, and steps. The Association shall also provide snowplowing and snow removal from the private driveways located on each Lot. All other maintenance of such driveways shall be by the Lot Owner. Association exterior maintenance responsibility shall not include cleaning or replacement of glass surfaces or snow removal from or cleaning of walks, porches, decks or steps of each Lot. These areas excluded from maintenance responsibility by the Association shall be the responsibility of each Lot Owner.

(b) In the event that the need for maintenance or repair of the exterior of any Building or any Common Area is caused through the willful or negligent acts of the family, tenants, guests or invitees of an Owner, the cost of such maintenance or repair shall be added to and become part of the assessment for the Lot owned by said Owner.

Section 6.3 Party Walls.

(a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of any of the

Units subject to this Declaration and is located or placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners of the Lots on either side of such party wall.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, either Owner of the Lots on either side of the wall may restore it, and the Owner of the Lot on the other side of the wall shall contribute one-half of the cost of restoration thereof, without prejudice, however, to the right of any such Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs with Land. The right of any Owner to contributions from any other Owner under this Article shall be appurtenant to the land and shall pass to each such Owner's successors in title.

Section 6.4 Architectural Control.

(a) General Rules. Owners may, upon receipt of written approval of the Board of Directors, make minor modifications or minor additions to the exterior of their Unit if the modifications or additions are minor and are in harmony with the external design of the development and have no negative impact on other Lot Owners, Buildings, or Units in the development or on the Association. No building, fence, wall, or other structure or improvement shall be commenced, erected, or maintained upon the Property, nor shall any exterior addition, change, decoration or alteration therein or thereto 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 location in relation to surrounding structures and topography by the Board of Directors, which approval may be withheld for any reason that is not arbitrary, capricious, or discriminatory.

(b) Exception. The provisions of Section 6.4 shall not apply to Declarant.

Section 6.5 Declarant's Use. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Highlander Construction LLC, its successors and assigns, or any agent, contractor, subcontractor or employee of the Highlander

Construction LLC, to maintain during the period of construction and sale upon such portion of the Property as Highlander Construction LLC deems necessary, facilities incidental to said construction and sale, including, but without limitation, a business or sales office or storage area constructed or converted for a use other than a single family dwelling. All uses undertaken shall be wholly compatible with the structure of the residential building, the site, the surroundings, and the topography of the land, as well as the legitimate and proper uses of the Property.

Section 6.6 Use Restrictions.

(a) No residence or residential building site shall be used, and no Lot or Unit shall be hereafter constructed or converted for a use other than a single family dwelling. No secondary unit or apartment may be created in any Unit or on any Lot. All uses undertaken shall be wholly compatible with the structure of the residential building, the site, the surroundings, and the topography of the land, as well as the legitimate and proper uses of the Property.

(b) No planting or gardening shall be done, and no fences, hedges, walls, or other improvements or structures shall be erected or maintained in or upon the Common Areas except such as are installed in accordance with the initial construction of the building located thereon or as approved by the Association's Board of Directors. Except for the right of ingress and egress, the Owners are hereby prohibited and restricted from using any of the property outside the exterior boundary lines of their respective Lots, except as may be allowed by the Association's Board of Directors and this Declaration. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all Owners and is necessary for their protection.

(c) Maintenance, upkeep and repairs of any Unit or other improvements on or to each Lot, and the Building located thereon, except as to certain exterior maintenance more fully described in Section 6.2 of this Article, shall be the sole responsibility of the Owner thereof and not of the Association. However, the Board may, in its discretion, undertake and make assessments for any cooperative action appropriate to the Property maintenance, utilization, beautification or upkeep of said Lots, Units and IMPROVEMENTS. In the event an Owner of any Lot shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Unit and the exterior of the Unit and any other improvements erected thereon. In those instances where such maintenance is not the responsibility of the Association, the cost of such maintenance shall be added to and become part of the assessment to which such Lot is subject.

(d) Except as otherwise stated herein, all utilities, fixtures and equipment installed within any Unit, or upon any Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter upon the Lot, shall be maintained and kept in repair by the Owner thereof. An Owner shall not do any act or work that will impair any easement or hereditament, nor perform any act nor allow any condition to exist which will adversely affect the other Lots or the Owners thereof. The foregoing notwithstanding, the waste water service line (sewer line) from each Lot to that point where such line connects to a collector line (a sewer line serving more than one Lot), shall be owned and maintained by the Owner of the Lot which is served by such line. All sewer lines which serve more than one Lot, but which do not consist of a main line owned and maintained by the Breckenridge Sanitation District, shall be considered Common Area and shall be owned and maintained by the Association.

(e) By way of enumeration, and not limitation, the use of all the Property and Lots located thereon shall be subject to the following restrictions and limitations:

(i) No exterior television or radio antennas of any sort shall be placed, allowed or maintained upon the Property without prior written approval and authorization by the Board of Directors, and any such antenna allowed shall be placed in such a manner as to be hidden from view, as much as is possible, from all Lots which it does not serve;

(ii) No fireplace or other similar device installed in any Unit shall be used to burn wood or any other solid fuel. Fireplaces and other similar devices (producing a flame) shall use and burn only natural gas.

(iii) Refuse piles or other unsightly objects or materials shall not be allowed to be placed or to remain upon the Property. The Association shall have the right to remove such refusal piles or other unsightly objects or materials at the expense of the Owner responsible therefor, and any entry upon or into an Owner's Lot for the purpose of enforcing this provision shall not be deemed a trespass provided three (3) days prior notice has been given to the Owner and the Owner failed to remove same during said three (3) day period;

(iv) No free-standing mailbox or newspaper box shall be erected unless approved by the Board of Directors;

(v) Trash, garbage or other waste shall be disposed of in a sanitary manner, pursuant to rules and regulations adopted by the Association. In the event there is no common trash dumpster or removal of trash provided for

the Project, each Lot Owner shall be responsible for removal of trash generated within that Owner's Lot and shall be required to independently contract for and have trash removed. All trash containers must be kept indoors at all times except on trash pickup day. All containers must have lids securely in place when outside. The foregoing notwithstanding, the Association may contract with one company for trash removal for all Lots, in which event the Board of Directors shall promulgate rules and regulations pertaining to trash removal which rules and regulations shall be binding upon all Lot Owners.

(vi) No tanks of any kind, either elevated or buried shall be erected, placed or permitted upon the Property;

(vii) No exterior clotheslines shall be attached to any tree, Building, or other structure, or permitted or maintained on the Property;

(viii) All furniture, tools, and other personal property shall be kept and maintained in neat condition and in such a manner so that, to the extent possible, the same are concealed from view from any other Lot;

(ix) No house trailer, motor home, recreational vehicle, boat, trailer, snowmobile, motorcycle, commercial vehicle, tent, shack, detached garage, barn, or outbuilding of any kind shall be permitted to be placed on the Property, unless stored completely out of sight from the General Common Areas and from all other Lots;

(x) No junk car, inoperative car or car under repair shall be parked, stored or maintained on the Property for more than three (3) days; and

(f) The Board of Directors is authorized to adopt rules and regulations relating to the parking of vehicles on the Common Areas or any other easements for parking or access, which rules and regulations may include the designation of parking spaces for the exclusive use of the Owner or occupants of each Lot. Such rules shall assure the utilization of the Common Areas for parking by all Owners and occupants of the Lots in a fair and equitable manner. No storage of vehicles, no parking for over two (2) weeks, no parking of recreational vehicles, trailers, motor homes, or commercial vehicles (other than those present in conjunction with work performed on the Property) is permitted in General Common Areas.

(g) Owners, but not guests or tenants, may keep no more than two (2) domesticated pets (either two dogs, two cats or one dog and one cat). All pets must be primarily indoors and must be kept on a leash whenever outdoors. No kennels or commercial pet operations are permitted. No pets shall be

left outdoors without being supervised by a person of at least eight years of age who is also outdoors and in line of sight with such pet. Fish and birds are permitted, but must not be noisy or obnoxious. If an Owner fails to clean up after a pet or if an Owner allows a pet to run free, or if a pet is noisy or obnoxious, the Board may order removal of such pet or pets on a permanent basis and the Owner of the Lot to whom such order is directed shall comply.

Section 6.7 Easements.

(a) Each Lot and the Common Areas shall be subject to all easements and rights of way as shown on the Plat recorded at approximately the same time as this Declaration is recorded; easements and encroachments created by construction, including those for the placement of common walls on either side of a Lot line, and those for overhangs, roofs, patios and fences; easements for utility and utility services as designed or constructed by the Declarant; easements for maintenance of all improvements and utility services; and easement for access by the Association to effect the purposes set forth in these Declarations, including, but not limited to, the promotion of the health, safety, and welfare of the residents of the Property.

(b) Declarant shall have an easement over the Common Areas for the purpose of completing the full and final development and improvement of the Property.

(c) The Association, the Board of Directors, and their agents shall have a non-exclusive right and easement to make such use of and to enter into or upon the General Common Areas and the Lots as may be necessary or appropriate for the performance of the duties and functions which they are obligated or permitted to perform under this Declaration and under the Act.

(d) The easements, uses and rights herein created for an Owner shall be appurtenant to the Lot of that Owner and all conveyances of and other instruments affecting title to a Lot shall be deemed to grant and reserve the easements, uses and rights as are provided for herein, even though no specific reference to such easements, uses and rights appears in any such conveyance.

ARTICLE VII INSURANCE AND INDEMNIFICATION

Section 7.1 Insurance. All insurance, other than title insurance, carried in connection with the Lots, Buildings, Property, Common Areas or improvements thereon or thereto shall be governed by the provisions of this Article VII.

Section 7.2 Insurance Requirements Generally.

(a) The Association shall obtain and maintain in full force and effect at all times certain casualty, liability, and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized and licensed to do business in the State of Colorado.

(b) To the extent possible, the casualty, property, and liability insurance shall: (i) provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees, agents, and members; (ii) provide that the insurance cannot be canceled, invalidated or suspended on account of the conduct of the Association, its officers, directors, employees, and agents; and (iii) provide that the policy of insurance shall not be terminated, canceled or substantially modified without at least thirty (30) days prior written notice to the Association; and provide as required by Section 313 of the Act as may be amended from time to time.

(c) Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice and which shall be consistent with the requirements of the holders of any first mortgage or deeds of trust. Any loss falling within the deductible portion of a policy shall be borne by the Association. The cost and expense of all insurance obtained by the Association shall be paid out of Association funds collected by assessments and otherwise as elsewhere provided in this Declaration.

Section 7.3 Casualty Insurance.

(a) The Association or its agents shall obtain and maintain at all times insurance coverage providing all risk coverage or the nearest equivalent available for the full replacement cost of the IMPROVEMENTS, and any personal property of the Association. The insurance shall name the Association as the insured, and shall provide that it cannot be canceled by the insurance company until after at least thirty (30) days' prior written notice is given to the Association.

(b) The insurance described in this paragraph shall be inflation coverage insurance, if such insurance is available, which insurance at all times represents one hundred percent (100%) of the replacement value of the IMPROVEMENTS except land, foundation, excavation, and other items normally excluded.

Section 7.4 Public Liability and Property Damage Insurance.

The Association shall obtain and maintain comprehensive general liability insurance including non-owned and hired automobile liability coverage, owned automobile liability coverage (if there are any owned automobiles), personal injury liability coverage

covering liabilities of the Association, its officers, directors, employees, agents, and members arising in connection with ownership, operation, maintenance, occupancy, or use of the Units and any other area the Association is required to restore, repair, or maintain pursuant to this Declaration with bodily injury liability limits not less than One Million Dollars (\$1,000,000.00) for each occurrence and property damage liability limits of not less than One Million Dollars (\$1,000,000.00) aggregate. Each policy shall include a "severability of interest" endorsement.

Section 7.5 Insurance by Owners. Each Owner shall obtain and maintain, at such Owner's cost and expense, casualty, hazard, and liability insurance for that Owner's Lot and all of the improvements located thereon, including such Owner's Unit, in an amount deemed adequate by the Association, which amount for such casualty insurance shall be equal to one hundred percent of the replacement cost of that portion of any Building located upon such Owner's Lot, all of the Owner's personal property and furnishings, and, except as provided by this Article, the Association shall not be responsible for providing any such insurance. The Association shall be named as an additional insured on every policy of casualty insurance carried by any Owner covering any Unit or Building, or any portion thereof, and shall be a payee of all sums payable under each such policy which sums are paid for a casualty claim due to loss or damage to any Building. The Association may require that each Owner provide to the Association the name and address of such Owner's insurance carrier and the policy number of each policy providing insurance coverage on such Owner's Lot or Unit. The failure of any Owner to carry casualty insurance on such Owner's Lot and/or Unit shall render that Owner liable to the Association in an amount equal to any and all payments for claims which would have, had such insurance been in force and effect at the time of any loss, been made payable in full or in part to the Association, or in an amount equal to the loss or damage which would have been covered by such insurance, whichever is greater, plus all reasonable costs of collection thereof.

Section 7.6 Fidelity Insurance. The Association may maintain adequate fidelity coverage, if available, to protect against dishonest acts on the part of the Directors, Officers, Trustees, and employees of the Association and all others who handle, or are responsible for handling, funds of the Association. Such fidelity bonds shall (i) name the Association as obligee, (ii) be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, including reserves, (iii) contain waivers of any defense based upon the exclusion of persons who serve without compensation, and from and definition of "employee" or similar expression, and (iv) provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least fifteen (15) days written notice to the Association.

Section 7.7 Notice Upon Loss. In the event of any damage or destruction to, or loss to, a Unit or Building, written notice of

such damage or loss shall be given by the Owner to the Association within ten (10) days after the later of the occurrence of such event or receipt of notice by the Owner of such event. In the event that there shall be any damage or destruction to, or loss to a Unit or Building which exceeds Five Thousand Dollars (\$5,000.00), then written notice of such damage or loss shall be given by the Owner to the Association and to the holder of the first mortgage or deed of trust on the Lot upon which Unit or Building is located within ten (10) days after the later of the occurrence of such event or receipt of notice by the Owner of such event.

Section 7.8 Other Insurance. The Association may obtain such additional insurance coverage against such additional risks as it shall determine to be appropriate.

Section 7.9 Indemnification.

(a) Indemnification. The Association shall indemnify each Director, officer, property manager, their respective successors, personal representatives and heirs, against all losses, costs and expenses, including attorney's fees, reasonably incurred by them in connection with any action, suit or proceeding to which they may be made a party by reason of their position with or employment by the Association, except as to matters as to which such person(s) shall be finally adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct. In the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been guilty of gross negligence or willful misconduct in the performance of his duty as such Director, officer or property manager in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which such Director, officer or property manager is entitled. All liability, loss, damage, cost and expense incurred or suffered by the Association by reason of or arising out of or in connection with the foregoing indemnification provisions shall be treated and handled by the Association as a common expense, provided, however, that nothing in this Section 7.9 contained hereto shall be deemed to obligate the Association to indemnify any member or Owner who is or has been a Director, officer or property manager of the Association with respect to any duties or obligations assumed or liabilities incurred by him as a member or Owner under and by virtue of this Declaration.

(b) No independent contractor, including a Director, officer, member or Owner providing services to the Association as an independent contractor, shall be protected by this indemnification provision, any indemnification provision provided for in the Bylaws of the Association or any insurance policy obtained by the Association in relating to any such indemnification provision.

ARTICLE VIII
DAMAGE AND DESTRUCTION OF UNITS

Section 8.1 Association as Attorney-In-Fact.

(a) This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Property upon its total or partial destruction.

(b) Title to any Lot is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Highlander Construction LLC or from any subsequent Owner shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association, in their names, place, and stead for the purpose of dealing with the Property upon the total or partial destruction of the Buildings as hereinafter provided. As attorney-in-fact, the Association, by its officers, shall have full and complete authorization, right and power to make, execute, and deliver any contract, deed or any other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the power herein granted. Repair and reconstruction of the Building(s) means restoring the Buildings to substantially the same condition in which it existed prior to the damage, with each Building and Unit having substantially the same vertical and horizontal boundaries as before. Except as otherwise herein provided, the proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration, or replacements unless the Owners and all Mortgagees agree not to rebuild in accordance with the provisions set forth herein.

(c) Assessments by the Association for those purposes stated herein shall not be abated during the period of insurance adjustment and repair and reconstruction.

Section 8.2 Reconstruction. In the event of damage or destruction to any Building or Unit, the insurance proceeds, if sufficient to reconstruct the Building or Unit(s) shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the Building or Unit(s) shall be promptly repaired and reconstructed. The Association shall have full authority, right, and power, as attorney-in-fact, to cause the repair and restoration of the Buildings or Units.

Section 8.3 Deficiency of Insurance. If the insurance proceeds are insufficient to repair and reconstruct the Buildings or Units, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of an assessment to be made by the Association against each of the Lots containing Units which have been damaged or destroyed, and their Owners. Such deficiency assessments shall be a Common Expense and made pro rata according

to the number of Units which have sustained damage or destruction, and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the Units using all of the insurance proceeds and such assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Lot and be enforced and collected as is provided in Article V.

Section 8.4 Extended Destruction. In the event that insurance proceeds are insufficient to repair the Buildings or Unit(s), and if such damage is more than sixty-six and two thirds percent ($66 \frac{2}{3}\%$) of the total replacement cost of all the Buildings or Units constructed on the Property, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, as provided in Section 8.3 hereof, except that the Owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the Lots and all of the holders of Mortgages of record may agree not to repair or reconstruct the Buildings or Unit(s). In such an event, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association the Property and all remaining improvements thereon shall be sold by the Association pursuant to the provisions of this paragraph as attorney-in-fact, for all of the Owners, free and clear of the provisions contained in this Declaration, the Plat of the Property, the Articles of Incorporation, and Bylaws. Assessments shall not be abated during the period prior to sale. The insurance settlement proceeds shall be collected by the Association, such proceeds shall be divided by the Association equally, and such divided proceeds shall be paid into separate accounts, each such account representing one of the Lots. Each such account shall be in the name of the Association, and shall be further identified in the name of the Association, and shall be further identified by Lot designation and the name of the Owner. From each separate account, the Association, as attorney-in-fact shall use and disburse the total amount of each such account without contribution from the account to another toward the partial or full payment of the lien of any Mortgage encumbering the Lot represented by such separate account. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire property. Such apportionment shall be used and disbursed, without contribution, from one account to another by the Association, as attorney-in-fact, in the following order:

- (a) for payment of the balance of the lien of any first mortgage or deed of trust;
- (b) for payment of taxes and special assessment liens in favor of any assessing entity;
- (c) for payment of unpaid Assessments;

(d) for payment of junior mortgages, deeds of trust and other encumbrances in the order of and to the extent of their priority; and

(e) the balance remaining, if any, shall be paid to the Lot Owner.

ARTICLE IX CONDEMNATION

Section 9.1 Consequences of Condemnation. If at any time or times pursuant to this Declaration, all or any part of the Property shall be taken or condemned by any public authority, or sold or otherwise disposed of in lieu or in avoidance of such condemnation, the provisions of this Article shall apply.

Section 9.2 Proceeds. All compensation, damages, or other proceeds therefrom, the sum of which is hereafter called the "Condemnation Award", shall be payable to the Association.

Section 9.3 Complete Taking.

(a) In the event that the entire Project is taken or condemned, or sold, or otherwise disposed of in lieu of or in avoidance of a condemnation, ownership pursuant to this Declaration shall terminate. The condemnation award shall be apportioned equally among the Owners, provided that if a standard different from the value of the Property as a whole is employed to measure the condemnation award in the negotiation, judicial decree, or otherwise, the same standard shall be employed to the extent it is relevant and applicable, in determining the share of each individual Lot Owner.

(b) The Association shall disburse any condemnation award as soon as practicable in the same manner provided for the distribution of sales proceeds in Article VIII, Section 8.4.

Section 9.4 Partial Taking. In the event that less than the entire Project is taken or condemned, or sold, or otherwise disposed of in lieu of or in avoidance thereof, ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the condemnation award to be determined as herein provided. As soon as practicable, the Association shall, reasonably and in good faith, allocate the condemnation award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated to taking of or injury as follows: (i) the respective amount allocated to the taking or injury to a particular Lot shall be apportioned to that particular Lot, (ii) the total amount allocated as severance damages shall be apportioned to those Lots which were not taken or condemned, (iii) the amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the condemnation award is

already established in negotiation, judicial decree, or otherwise, then in allocating the condemnation award the Association shall employ such allocation to the extent it is relevant and applicable. Disbursement of apportioned proceeds shall be made by checks payable jointly to the respective Owners and their respective Mortgagees.

Section 9.5 Reorganization. In the event a partial taking results in the taking of a complete Lot, the Owner thereof automatically shall cease to be a member of the Association, and such Owner's interest shall thereupon terminate, and the Association, as attorney-in-fact for such Owner, may take whatever action is necessary and execute such documents as are necessary to reflect such termination. Thereafter, the Association shall reallocate the ownership, voting rights, and assessment ratio determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and such reallocation for amendment of this Declaration.

ARTICLE X SPECIAL CONSIDERATIONS

Section 10.1 Two-Thirds Vote. Except as otherwise provided herein, unless at least sixty seven percent of the Owners of the Lots (based upon one vote for each Lot) on the Property have given their prior written approval, the Association shall not:

(a) by act or omission seek to abandon, partition, encumber, sell or transfer the General Common Areas owned, directly or indirectly, by the Association for the benefit of the Lots, provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of such General Common Areas shall not be deemed a transfer within the meaning of this clause;

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot or an Owner;

(c) 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 Buildings, the exterior maintenance of Buildings, the maintenance of the Common Areas;

(d) fail to maintain fire and extended coverage on insurable Common Areas, and other property of the Association on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement costs; and

(e) use hazard insurance proceeds for losses to any Common Areas, Buildings or other property for other than the repair, replacement or reconstruction of such property.

Section 10.2 Majority Vote. In all other respects, the affirmative vote of a majority of the membership represented at a meeting of the Association and entitled to vote on the subject matter shall be the act of the Association unless another number is specifically designated as the required affirmative vote by the specific provision of this Declaration under consideration.

ARTICLE XI RIGHTS OF FIRST MORTGAGEES

Section 11.1 Payment of Taxes. Mortgagees of Lots 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 and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such Common Areas and the first mortgagees making such payment shall be owed immediate reimbursement therefor from the Association. Upon request, the Association shall execute an agreement with a Mortgagee of any Lot evidencing their entitlement to such reimbursement.

Section 11.2 Priority to Proceeds. Neither the Owner, or any other party shall have priority over any rights of the Mortgagee of a Lot in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Areas.

Section 11.3 Notification of Default. A Mortgagee is entitled, upon request, to written notification of any default in the performance by an individual Owner of any obligation under this Declaration which is not cured within sixty (60) days.

ARTICLE XII GENERAL PROVISIONS

Section 12.1 Enforcement. The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any provision, covenant, or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In any civil action to enforce any provision, covenant, or restriction, the prevailing party shall be entitled to an award of reasonable attorney's fees.

Section 12.2 Severability. Invalidity of any one or more of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 12.3 Amendment. The covenants, conditions, restrictions and liens of the Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declara-

tion is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by not less than sixty seven percent of the Owners, or by Declarant or its successors as long as Declarant or any successors owns any portion of the Property or any Units; PROVIDED, that no amendment to Section 6.6(e)(ii) of this Declaration shall be effective until it shall have been approved by the Town of Breckenridge. Any and all amendments shall be recorded in the Office of the Summit County Clerk and Recorder.

Section 12.4 Assignability. Highlander Construction LLC's rights hereunder shall be freely assignable.

Section 12.5 No Partition or Subdivision. The General Common Areas shall remain undivided, and no Owner, other person, or other entity shall bring any action for partition, division, or subdivision of the General Common Areas. Similarly, no action shall be brought for partition or subdivision of a Lot between or among the Owners thereof. Each Owner hereby expressly waives any and all such rights of partition or subdivision he may have by virtue of his ownership of a Lot.

IN WITNESS WHEREOF, Highlander Construction LLC has caused its company name and seal to be hereunto signed and affixed by its duly authorized officers this 16th day of September 1994.

HIGHLANDER CONSTRUCTION LLC


By 
Wieslaw J. Chlipala, Manager

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 16th day of September 1994 by Wieslaw J. Chlipala, as Manager of Highlander Construction LLC, Declarant.

Witness my hand and official seal.

My commission expires: 6/2/96


Notary Public

\\rls\docs.dwb\highland.br
[9/16/94 #9]



**FIRST
AMENDMENT
TO THE
DECLARATION
OF
COVENANTS, CONDITIONS AND
RESTRICTIONS OF HIGHLANDER
TOWNHOMES**

THIS FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF HIGHLANDER TOWNHOMES (this "First Amendment") is made as of February 15, 2018, by the Highlander Townhome Association, Inc., a Colorado nonprofit corporation (the "Association").

RECITALS

- A. The Declarant executed and caused to be recorded the Declaration of Covenants, Conditions and Restrictions of Highlander Townhomes with the Clerk and Recorder of Summit County, Colorado on September 16, 1994, under Reception No. 476165 ("Declaration"). All capitalized terms used in this First Amendment that are not defined in this First Amendment have the meanings given to them in the Declaration.
- B. Section 12.3 of the Declaration permits the amendment of the Declaration by an instrument signed by not less than sixty-seven percent (67%) of the Owners.
- C. Except as modified by this First Amendment, the Declaration shall remain in full force and effect. In the event of a conflict between the terms of this First Amendment and the Declaration, the terms of the First Amendment shall prevail. In the event that a court finds that any provision of this First Amendment is unenforceable, the court shall reform the terms of this First Amendment to the least amount necessary to make the First Amendment enforceable.

AMENDMENT

1. Section 7.4 of the Declaration, is hereby replaced in its entirety by the following:

Section 7.4 Public Liability and Property Damage Insurance. The Association shall obtain and maintain comprehensive general liability insurance including non-owned and hired automobile liability coverage, owned automobile liability coverage (if there are any owned automobiles) personal injury liability coverage covering liabilities of the Association, its officers, directors, employees, agents, and members with bodily injury liability limits of not less than \$1,000,000.00 for each occurrence. The Association shall also maintain property insurance on the Common Area and improvements thereon in an amount not less than 100% of the insurable value based on current replacement costs.

2. Section 7.5 of the Declaration, is hereby replaced in its entirety by the following:

Section 7.5 Insurance by Owners.

- (a) Each Owner shall obtain and maintain, at such Owner's cost and expense, property, hazard, and liability insurance for that Owner's Lot and all of the improvements located thereon, including such Owner's Unit, in amounts deemed adequate by the Owner, which amount for such property insurance shall be equal to one hundred percent (100%) of the replacement cost, along with ordinance and law (code upgrade) coverage, together with of that portion of any Building located on such Owner's Lot, including but not limited to the roofs, gutters, downspouts, porches, decks, patios, steps, driveways, fences, rock walls, hedges, landscaping and all other improvements upon the Lot. Owners are also encouraged to carry property insurance on their personal property.
- (b) The Association may require that each Owner provide to the Association proof of insurance, which may include but is not limited to (i) the name and address of such Owner's insurance carrier, (ii) the policy number and (iii) the insurance policy of each policy providing insurance on any Building located on Owner's Lot. An Owner shall furnish proof of such insurance to the Association annually on the anniversary date of the policy as well as every time a change is made to the policy. In addition, an Owner shall furnish proof of insurance to the Association within fifteen (15) days of the Association sending the Owner written request of proof of insurance. Upon an Owner's failure to provide adequate proof of property insurance on a Building, the Association may, but is not required, to obtain a policy of property insurance coverage in the Association's name covering the Building or any portion thereof, the cost of which shall be payable by the Owner and shall be collectible as an assessment. This provision of the Declaration shall be sufficient to create an insurable interest in the subject Building or Buildings that may be insured by the Association upon the Owner's failure to provide adequate evidence of property insurance.
- (c) If an Owner fails to carry property insurance as required by Section 7.5(a), the Owner shall be liable to the Association and any other affected Owner for the damages and expenses incurred by them as a result of such failure.

3. Article VIII of the Declaration, is hereby replaced in its entirety by the

following:

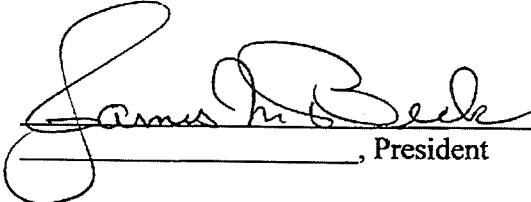
Section 8.1 Reconstruction. In the event of damage or destruction to any Building or Unit, Owner shall promptly reconstruct the damaged improvements at the Owner's sole cost and expense. In the event that a party wall is damaged, reconstruction of the party wall shall be made in accordance with Section 6.3. Assessments payable to the Association shall not be abated during any period of damage, destruction or reconstruction.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this First Amendment to the Declaration of Covenants, Conditions and Restrictions of Highlander Townhomes, has been duly consented and agreed to by at least sixty-seven percent (67%) of the Owners.


HIGHLANDER TOWNHOME ASSOCIATION, INC.

By: , President

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this 15 day of February, 2018, by James Beck, President of the Board of Directors of Highlander Townhome Association, Inc.

My Commission Expires: 3-18-2020


Notary Public

