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Cherl Brunvand-Summit County Recorder 9/26/2001 11:05 DF:

**DECLARATION** 

**FOR** 

HIGHLAND GREENS

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#### **DECLARATION**

#### FOR

#### HIGHLAND GREENS

THIS DECLARATION FOR HIGHLAND GREENS (this "<u>Declaration</u>") is executed as of the 27th day of February, 2001, by HIGHLAND GREENS LLC, a Colorado limited liability company (the "<u>Declarant</u>").

#### WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property situated in the County of Summit, State of Colorado, being more particularly described on <u>Exhibit A</u> attached hereto (the "<u>Property</u>");

WHEREAS, Declarant desires to develop townhouses and other improvements established as a "planned community" as that term is defined under the Colorado Common Interest Ownership Act ("Act");

WHEREAS, Declarant is also the owner of the real property, described on <u>Exhibit B</u> attached hereto and incorporated herein by this reference ("<u>Additional Property</u>");

WHEREAS, the plat for Highland Greens First Filing that will be recorded contemporaneously with the recording of this Declaration describes the location of each Unit created pursuant to this Declaration; and

WHEREAS, Declarant desires to subject and place upon the Property certain covenants, conditions, restrictions, easements, reservations, rights-of-way, and other charges set forth herein for the purposes of (a) protecting the value and desirability of the Property; (b) furthering a plan for the improvement, sale, and common ownership of the Property; (c) establishing a harmonious and attractive development of the Property; and (d) providing for the health, comfort, safety, convenience, and general welfare of the Declarant, all subsequent owners of the Units created pursuant to the provisions of this Declaration and their respective heirs, personal representatives, successors, and assigns in the Property;

NOW, THEREFORE, the Declarant hereby submits the Property, together with all improvements, appurtenances, and facilities thereto and now or hereafter thereon, to ownership under the Act, as the same may be amended from time to time, and hereby imposes upon all of the Property the following terms, provisions, covenants, conditions, restrictions, casements, reservations, uses, limitations, and obligations, all of which shall be deemed to run with the Property and shall be a burden and a benefit to the Declarant, its heirs, personal representatives, successors, assigns and any person acquiring or owning an interest in the Property, their grantees, successors, heirs, executors, administrators, devisees, or assigns.

### ARTICLE I DEFINITIONS

- 1.1 Act. "Act" shall mean and refer to the Colorado Common Interest Ownership Act, codified as Article 33.3 of Title 38, Colorado Revised Statutes, as it may be amended from time to time.
- 1.2 <u>Additional Property</u>. "<u>Additional Property</u>" shall mean the real property described in <u>Exhibit B</u> attached hereto.
- 1.3 Agencies. "Agencies" shall mean and collectively refer to, the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Department of Housing and Urban Development ("HUD"), the Veterans Administration ("VA"), or any other governmental or quasi-governmental agency, or any, other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by such entities.
- 1.4 <u>Assessment Percentage</u>. "<u>Assessment Percentage</u>" shall mean and refer to the percentage of the Association expenses to be paid by the Owner(s) of each Unit that has been calculated for each Unit by dividing 100% by the total number of Units then in the Project. The Assessment Percentage for each Unit will be set forth in each supplement to this Declaration.
- 1.5 <u>Association</u>. "<u>Association</u>" shall mean and refer to the Highland Greens Homeowners Association, Inc., a Colorado non-profit corporation, its successors and assigns. The Association shall act by and through its Board of Directors and officers.
- 1.6 <u>Common Elements</u>. "Common Elements" shall mean and refer to the portion of the Property owned by the Association and described in <u>Exhibit C</u> attached hereto and incorporated herein by this reference and any Common Elements that may hereafter be conveyed to the Association pursuant to Section 2.5 of this Declaration, together with the landscaping, sidewalks, private drive, and other improvements located thereon, and, in general, all other parts of the Property existing for the common uses of the owners, and all other parts of the Property necessary or convenient to its existence, maintenance or safety, or normally used in common, but not including the Units or the land upon which the Units are located as shown on the Plat.
- 1.7 <u>Declarant</u>. "<u>Declarant</u>" shall mean and refer to Highland Greens LLC, a Colorado limited liability company, its successors and assigns, provided that such successors and assigns shall first be designated by the current Declarant hereunder as a Declarant for one or more purposes by a written instrument duly recorded in the office of the Clerk and Recorder of the County of Summit, State of Colorado.
- 1.8 <u>Declaration</u>. "<u>Declaration</u>" shall mean and refer to this Declaration, as it may be amended from time to time.
- 1.9 <u>First Mortgage</u>. "<u>First Mortgage</u>" shall mean and refer to any unpaid and outstanding mortgage, deed of trust, or other security instrument recorded in the records of the office of the Clerk

and Recorder of the County of Summit, State of Colorado, having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments) and those assessments that may be imposed by this Declaration, a lien of which is made superior by the Act. "First Mortgage," for purposes of Sections 7.10, 7.11, 7.12 of this Declaration and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 8.1 hereof, shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America, is the original seller, whether such contract is recorded or not and whether such contract is owned by said Administrator or has been assigned by said Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the Office of the Clerk and Recorder of the County of Summit, State of Colorado, show the said Administrator as having the record title to the Unit.

- 1.10 First Mortgagee. "First Mortgagee" shall mean and refer to any person named as a mortgagee or beneficiary under any First Mortgage (including, for purposes of Sections 7.10, 7.11, 7.12 and with respect to notice of cancellation or substantial modification of certain insurance policies, Section 8.1 hereof, the Administrator of Veterans Affairs, an Officer of the United States of America or its assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not, and the land records in the Office of the Clerk and Recorder of the County of Summit, State of Colorado, show the said Administrator as having the record title to the Unit), or any successor to the interest of any such person under such First Mortgage.
- 1.11 <u>Improvement</u>. "<u>Improvement</u>" shall mean all structures and any appurtenances thereto of every type or kind including, but not limited to, buildings, outbuildings, swimming pools, patio covers, awnings, painting of any exterior surfaces of any visible structure, additions, walkways, outdoor sculptures or artwork, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks and fixtures, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, solar equipment, exterior air conditioning and water softener fixtures, and landscaping.
- 1.12 Owner. "Owner" shall mean and refer to any record owner (including Declarant and including a contract seller), whether one or more persons or entities, of a fee simple title interest to any Unit; but excluding, however, any such record owner having such an interest merely as security for the performance of an obligation (unless such person has acquired fee simple title interest therein pursuant to foreclosure or any proceedings in lieu thereof).
- 1.13 Party Wall. "Party Wall" shall mean and refer to, the entire wall from front to rear, all or a portion of which is used for support or firewall protection between the joined Units, situated or intended to be situated on the boundary line between the joining Units.
- 1.14 <u>Plat</u>. "<u>Plat</u>" shall mean and refer to the land survey plat of the Property entitled "Highland Greens First Filing" recorded contemporaneously with the recording of this Declaration in the records of the Clerk and Recorder of the County of Summit, State of Colorado, that contains the information pertaining to the Property required to be set forth on a plat under the Act.

- 1.15 <u>Project.</u> "<u>Project</u>" shall mean and refer to the totality of all the Property, the Units, and the Common Elements. The Project shall be known as Highland Greens and is hereby declared to be a planned community and not a condominium or cooperative.
- 1.16 <u>Property</u> "Property" shall mean and refer to that certain property described on Exhibit A attached hereto.
- 1.17 <u>Unit</u>. "<u>Unit</u>" shall mean and refer to each lot designated for separate ownership by each Owner as described on the Plat, together with all Improvements now or hereafter constructed thereon.

# ARTICLE 2 DIVISION OF PROJECT INTO PLANNED COMMUNITY OWNERSHIP

- 2.1 <u>Division Into Units</u>. Initially, none of the Property shown on the Plat shall be part of the Project. Rather, the Property shown on the Plat shall become part of the Project either (i) as it is annexed by the Declarant or (ii) automatically by a deed conveying a Lot to a Unit Owner (other than the Declarant or a successor to the declarant), if such deed describes the Lot to be annexed and refers to the Declaration. The Declarant may annex any Lots or Common Elements shown on the Plat or any portion of the Additional Property into the Project at any time until that date which is ten (10) years after the date of recording of this Declaration in Summit County, Colorado, without consent of the Members or any other Unit Owners, Security Interest Holders, or any other Person. Lots or Common Elements may be annexed by the Declarant by execution of a Declaration of Annexation or Supplement to the Declaration and recordation of such Declaration in the Records.
- 2.2 <u>Right to Combine Units</u>. Declarant and all Owners hereby reserve the right to combine physically the area or space of one Unit with area or space of one or more adjoining Units; provided, however, that Declarant and any Owner shall not exercise said right without obtaining all necessary governmental approvals and the written consent of any First Mortgagee having an interest in said Units. In the event of any such physical combining of Units to create a combined Unit, such combined Unit shall also include the combining of fixtures and improvements and of the undivided interests in Common Elements appurtenant to the Units so combined. No Unit may be subdivided.
- 2.3 <u>Inseparability</u>. Each Unit, as well other appurtenances, rights, and burdens connected therewith, shall be inseparable and may be transferred, conveyed, leased, devised, encumbered, or otherwise disposed of only as a Unit. Every, conveyance, transfer, devise, encumbrance, or other disposition of a Unit shall be deemed to be a conveyance, transfer, devise, lease, encumbrance, or other disposition, as the case may be, of the entire Unit, together with all appurtenant rights, interests, duties, and obligations created by law or by this Declaration.
- 2.4 <u>Non-Partitionability</u>. The Common Elements shall be owned by the Association and shall remain undivided. By the acceptance of its deed or other instrument of conveyance or assignment, each Owner specifically waives its right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements. Furthermore, each Owner agrees that this Section 2.4 may be pleaded as a bar to the maintenance of such an action. Any violation of this Section shall entitle the Association to collect, jointly and severally, from the parties

violating the same, the actual attorneys' fees, costs, expenses, and damages that the Association incurs in connection therewith.

Declarant's Special Rights. Declarant hereby reserves the development rights and other special Declarant's rights specified in this Section in addition to those set forth elsewhere in this Declaration. Declarant shall have the right at any time and from time to time to subject all or any portion of the Additional Property to the provisions of this Declaration. The development right may be exercised with respect to different portions of the Additional Property at different times and there is no assurance as to the boundaries of the portions of the Additional Property that will be added at any time or the order in which such portions will be added. Declarant shall also have the right at any time and from time to time to convey portions of the Additional Property to the Association as Common Elements. Declarant has no obligation to subject all or any portion of the Additional Property to the provisions of this Declaration or to convey all or any portion of the Additional Property to the Association. If Declarant exercises its development right with respect to any portion of the Additional property, it has no obligation to exercise that development right in all or any other portion of the Additional Property. All improvements to be constructed on property that Declarant subjects to the provisions of this Declaration shall be substantially complete at the time they are so added. The maximum number of Units that may be subject to this Declaration, including those initially subject hereto and those subsequently created upon exercise of Declarant's development rights and other special Declarant rights shall not exceed 200 Units. The minimum number of Units that may exist in the Project if Declarant does not exercise its development rights is nine Units. In order to subject any portion of the Additional Property to the provisions of this Declaration pursuant to this Section, Declarant shall file a supplement to this Declaration and a supplement to the Plat in accordance with the Act, which supplement can be executed by the Declarant owning such portion of the Additional Property without the consent of any other person. Declarant shall have all special Declarant rights with respect to property added to this Declaration that Declarant has reserved with respect to the Property initially subject to this Declaration. In addition, at the time of filing a supplement to this Declaration, Declarant may specify additional development rights or other special Declarant rights reserved with respect to the property so added. A supplement to this Declaration adding portions of the Additional Property and/or the supplement to the Plat shall assign an identifying number to each new Unit created by the supplement and shall reallocate the votes and Assessment Percentages among all Units effective as of the date the supplement is recorded, which allocation shall be done in the manner such that each Unit subject to this Declaration has one vote and an Assessment Percentage computed by dividing 100% by the total number of Units then in the Project. The rights reserved for the Declarant under this Section shall expire seven years after the date of recording of this Declaration provided that Declarant may terminate all or a portion of its rights earlier in accordance with the Act. To the extent required by any Agency that holds, insures, or guarantees a First Mortgage, Declarant will not add any of the Additional Property to the provisions of this Declaration without the prior written consent of each such Agency; provided that the consent of such Agencies will not be withheld if the portion of the Additional Property to be added substantially conforms to the provisions of this section. Upon the recording of a supplement to this Declaration subjecting portions of the Additional Property hereto, the term "Property" shall be deemed to include all real property then subject hereto and the term "Common Elements" shall include all real property then owned by the Association. Declarant also reserves the right to make the Project subject to a master association.

#### ARTICLE 3 PLAT

- 3.1 Recording. The Plat and the amendments thereto, if any, covering the Property shall be recorded in the Office of the Clerk and Recorder of the County of Summit, State of Colorado, prior to conveyance of the first Unit shown on such Plat.
- 3.2 Content. The Plat shall depict and show all information required under the Act, including the following: the name of the Project and a general schematic map of the entire Project; the legal description of the land and a survey thereof prepared in accordance with the requirements for a land survey plat set forth in C.R.S. § 36-51-102, as amended; the location of the Units; the Unit designations; and any existing or proposed easements across the Project and any existing encroachments on the Project. The Plat shall contain the certificate of a registered land surveyor certifying that the Plat substantially depicts the location and the horizontal measurements of the aforesaid information, and an affirmation that the Plat was prepared subsequent to substantial completion of the Improvements shown thereon. In interpreting the Plat, the existing physical boundaries of each separate Unit, as constructed, shall be conclusively presumed to be its boundaries.
- 3.3 Amendments. Declarant hereby reserves unto itself the right, from time to time, without obtaining the consent or approval of any Owner or First Mortgagee, to amend the Plat in order to conform such Plat to the actual location of any Improvement(s) constructed, installed, or erected on the Property. Declarant further reserves the right to construct additional Improvements on the Common Elements for the use of the Owners or an Owner. The rights accorded to Declarant in this Section 3.3 shall expire upon the conveyance by Declarant of the last Unit to the first Owner thereof (other than Declarant).

# ARTICLE 4 OWNER'S PROPERTY RIGHTS IN COMMON ELEMENTS

- 4.1 <u>Rights of Owner's Easements of Enjoyment and Rights of Ingress and Egress</u>. Every Owner and his or her family members, guests, and licensees shall have a right and easement of enjoyment in and to the Common Elements plus a right and easement of ingress and egress over, across, and upon the Common Elements for the purpose of getting to and from his or her Unit, public ways, and private roads for pedestrian and vehicular travel, which rights and easements shall be appurtenant to and pass with the transfer of title to the Owner's Unit; provided, however, that such rights and easements shall be subject to the following:
- (a) the terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations, and obligations contained in this Declaration and the Plat;
- (b) the right of the Association to suspend the voting rights of any Owner for any period during which any Association assessment against such Owner or against such Owner's Unit remains unpaid, and, for any period not to exceed 60 days as a result of such Owner's infraction, or the infraction by any member of such Owner's family or such Owner's guests or invitees, of any rule or regulation of the Association or any provision of this Declaration;

- (c) the right of the Association to adopt such rules and regulations concerning the Common Elements and any facilities located thereon as the Association may determine are necessary or prudent;
- (d) the right of the Association to grant permits, licenses, and easements over the Common Elements for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project; and
- (e) after conveyance by Declarant of the last Unit to the first Owner thereof (other than Declarant) or seven years from the date this Declaration is recorded, whichever occurs first, the right, but not the obligation, of the Association to hire an on-site manager.

# ARTICLE 5 MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

- 5.1 <u>Membership</u>. Every Owner of a Unit that is subject to assessment hereunder shall be a member of the Association and shall remain a member for the period of its ownership of a Unit; provided, however, that in no event shall the total number of, Association votes that are east with respect to such Unit exceed one (or more for a combined Unit, as provided below). Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit.
- membership. All Owners, including the Declarant, shall be members of the Association and shall be entitled to one vote for each Unit owned. A Unit resulting from combining two Units shall have two votes, and a Unit resulting from combining three Units shall have three votes. When more than one Owner holds an interest in the same Unit, all such Owners shall be members and the vote for such Unit shall be cast as the Owners thereof agree, but in no event shall more than one vote per question be cast with respect to such Unit, except for combined Units, in which case no more than two or three votes may be cast, as applicable, for each such combined Unit. If the Owners of such Unit do not agree as to the manner in which their vote should be cast when called upon to vote, then they shall be treated as having abstained. Cumulative voting for the Board of Directors shall not be permitted.
- Section Notwithstanding any provision to the contrary contained in this Declaration, the Articles of Incorporation, Bylaws, or rules and regulations of the Association, Declarant hereby reserves unto itself the right to appoint the Board of Directors and officers of the Association until 60 days following the date upon which Declarant has conveyed 75% of the Units to other Owners, or seven years from the date this Declaration is recorded in the office of the Clerk and Recorder of the County of Summit, State of Colorado, whichever first occurs, except that the Owners, other than the Declarant, shall have the right to elect 25% of the Directors of the Association not later than 60 days after conveyance of 25% of the Units that may be submitted to this Declaration to the Owners other than Declarant and shall have the right to elect one-third of the Directors of the Association within 60 days after conveyance of 50% of the Units that may be submitted to this Declaration to Owners other than Declarant. All references in this Section to a percentage of Units shall refer to a percentage of the maximum number of Units that can be created in the Project until Declarant's right to subject Additional Property hereto has expired, at which time the references to a percentage of Units shall mean a percentage of the actual number of Units then in the Project. This

Section 5.3 shall not be amended without Declarant's written consent until (a) after Declarant has subjected all of the Additional Property to this Declaration or its right to do so has expired and has conveyed 75% of the Units to other Owners; or (b) seven years from the date this Declaration is recorded, whichever occurs first.

# ARTICLE 6 OBLIGATIONS OF THE ASSOCIATION AND THE OWNERS

- 6.1 <u>Management and Maintenance Duties of the Association</u>. Subject to the rights and obligations of Owners as set forth in this Declaration, the Association shall:
- (a) be responsible for the management, control, maintenance, repair, replacement and improvement of the Common Elements (including furnishings and equipment, if any, related thereto), and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair, including without limitation all utility, heating, and plumbing lines and appurtenances that are part of any central system providing utility services to the Units and including those portions of all utility, heating, and plumbing lines and appurtenances that service more than one Unit except as provided in Section 6.2 below; and
- (b) maintain any and all playground equipment, private roads, sidewalks, other exterior improvements and all grass, trees, shrubbery, flowers, and similar landscaping constituting part of the Common Elements.

The expenses, costs and fees of such management, operation, maintenance, repair, replacement, and improvement by the Association shall be part of the annual common expense assessment levied by the Association, and the prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees, regardless of the amounts thereof.

- 6.2 <u>Maintenance Duties of the Owners</u>. Each Owner shall be responsible for all interior and exterior maintenance of his Unit and shall maintain his or her Unit in a good, clean, attractive, and sanitary condition, order, and repair (free from debris and weeds) at all times. Without limiting the generality of the foregoing, each Owner shall be responsible for the following:
- (a) maintenance, repair, replacement, and cleaning of the exterior of the Unit including but not limited to roofs, exterior steps, fences, exterior balconics, exterior walls, trim, caulking, and glass;
  - (b) painting, repainting, staining, and resurfacing of the exterior of his Unit;
- (c) maintaining, repairing and replacing the Party Wall between the Unit and an adjoining Unit;
- (d) landscaping, maintenance, and irrigation of landscaping on those portions of his Unit upon which no structure is erected and that are not paved or graveled;

- (e) maintenance, repair, resurfacing, and snow removal from driveways and walkways within his Unit; and
- (f) maintenance, repair, and replacement of all utilities, plumbing fixtures, electrical outlets and switches, domestic hot water equipment, and appurtenances that service only such Owner's Unit commencing at the point where such fixtures and, equipment leave the central or common system to service only such Owner's Unit, including portions thereof that may be located on the Common Elements.

#### 6.3 Owner's Negligence or Default.

- (a) Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair, or replacement of the Common Elements or any portion thereof is caused through or by the negligent or willful act or omission of an Owner, any member of an Owner's family, or an Owner's guests or invitees (such determination of negligence or willful act or omission, and the amount of the Owner's liability therefor, having been determined by the Association by a hearing after notice to the Owner), then the expenses incurred by the Association for such maintenance, repair, or replacement shall be the personal obligation of such Owner. If such personal obligation is not repaid to the Association within ten days after the Association has given notice to the Owner of the total amount of such expenses or any portions thereof, then the failure to so repay shall automatically become a default assessment determined and levied against such Unit and Owner, and the Association may proceed in accordance with Section 7.9 hereof.
- (b) If an Owner fails to perform any maintenance, repair, replacement, cleaning, or irrigation obligations under this Declaration, the Association may give the Owner written notice of such failure and if such failure has not been cured within 15 days after receipt of such notice (or such shorter period of time provided for in such notice if it is reasonably anticipated that damage may occur or a dangerous condition exists), the Association shall have the right to perform or arrange for the performance of the maintenance, repair, replacement, cleaning, or irrigation responsibility of such Owner, and all costs incurred in connection therewith will constitute a default assessment against such Owner's Unit. The Association will have no right to pursue any remedies with respect to the interior portions of a Unit, unless the problem resulting from such failure is visible from the outside of the Unit, endangers the structure of the Unit, or endangers another Unit.
- 6.4 Prohibition of Certain Activities. Nothing shall be done or kept in any Unit or on the Common Elements that would be in violation of any law, regulation, permit, or other imposed requirement of any governmental body having jurisdiction over the same. No damage to, or waste of, the Common Elements or any part thereof shall be committed by any Owner, any member of an Owner's family, or by a guest, invitee, or contract purchaser of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by it, the members of its family, or its guests, invitees, or contract purchasers that is in violation of this Section 6.4. The Association, at its discretion, shall enforce the foregoing indemnity in the same manner as provided in Section 10.2 hereof with respect to an Owner's indemnity against mechanic's liens.

#### 6.5 Management Agreements and Other Contracts.

- (a) Any agreement for professional management of the Association's business or any contract providing for the services of Declarant shall have a maximum term of three years, and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon 30 days' prior written notice.
- (b) Any contracts or leases entered into by the Association (except contracts or agreements governed by Subsection (a) of this Section 6.5 and any other contracts, licenses, and agreements governed by Section 6.9 hereof) shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon 90 days prior written notice.
- (c) Notwithstanding anything to the contrary contained in this Section 6.5, the Association may enter into contracts and leases in violation of this Section 6.5 upon a waiver by HUD, VA, FNMA, and/or FHLMC of any provisions of any of such agencies, the legal requirements of which are violated by any such contracts and leases, provided that the Act is not also violated thereby.
- 6.6 Acquiring and Disposing of Personal Property. The Association may acquire, own, and hold tangible and intangible personal property for the use and benefit of all Owners and may dispose of the same by sale or otherwise. The Association may permit Owners to use such personal property in accordance with the purposes for which it is intended. Such use shall not hinder or encroach upon the right of the Association and any right of the other Owners to use such property.
- 6.7 <u>Promulgation of Rules and Regulations</u>. The Board of Directors of the Association may promulgate and enforce reasonable rules and regulations governing the use of the Units and the Common Elements, including without limitation, enforcement of the same by levying and collecting fines for the violation thereof, which rules and regulations shall be consistent with the rights and duties established in this Declaration. A list of the initial rules and regulations governing use of the Units and the Common Elements are attached hereto as <u>Exhibit D</u>.
- 6.8 <u>New Additions to Common Elements</u>. Subject to the other provisions of this Declaration, the Association shall have the right to construct, purchase, or otherwise acquire new property or improvements to the Property that will constitute new additions to the Common Elements.
- 6.9 Contracts, Licenses, and Agreements. The Association, through its Board of Directors, shall have the right to enter into contracts, leases, licenses, agreements, easements, and/or rights-of-way for pedestrian and vehicular access, ingress, and egress to and from the Project, or any portion thereof, for vehicular parking, for on-site residential management, or for recreational use. The Association, through its Board of Directors shall have the right to enter into contracts, licenses, leases, or other agreements for the provision of cable or satellite television service to the Property, or any portion thereof, so long as such contracts, licenses, or agreements do not exceed five years in duration from the commencement of such satellite or cable television service. Any of such contracts, leases, licenses, agreements, rights-of-way, or easements shall be upon such terms and conditions as agreed to by the Board of Directors and may include provisions by which the

Association covenants and agrees that it shall pay part or all of the costs and expenses of: maintaining such real property and the improvements thereto and thereon that provide such cable or satellite television service, and any other amounts that the Board determines are necessary to secure such contracts, licenses, and agreements. All such expenses shall be treated by the Association as common expenses pursuant to Article 7 hereof.

### ARTICLE 7 ASSESSMENTS

- Personal Obligation for Assessments. All Owners, including Declarant and including 7.1 any purchaser or its assigns under an executory land sales contract wherein the Administrator of Veterans Affairs is identified as the seller, covenant, agree, and shall be personally obligated to pay to the Association: (a) annual common expense assessments imposed by the Association to meet the common expense and reserve requirements of the Association; (b) special assessments, pursuant to Section 7.6 of this Declaration; and (c) other charges, fees, and assessments, including default assessments and insurance assessments, as provided in this Declaration. All assessments for each Unit shall be calculated by multiplying such Unit's Assessment Percentage by the total annual amount of the assessment due, determined pursuant to Section 7.2 and Section 7.6 (as the case may be). All Owners of each Unit shall be jointly and severally liable to the Association for the payment of all assessments, fees, and charges attributable to their Unit. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the assessments, charges, and fees provided for herein by non-use of the Common Elements or any facilities contained therein or by abandonment or leasing of its Unit. In addition to the foregoing assessments, charges, and fees, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against its Unit, as well as all charges for separately metered utilities servicing its Unit. The charges for utilities that are not separately metered shall be included in the annual common expense assessments levied by the Association.
- Amount of Maximum Annual Common Expense Assessments. The maximum annual 7.2 common expense assessment shall be based upon the Association's advance budget of all cash requirements that may be needed by the Association to provide for the payment of all estimated expenses related to or connected with the administration, maintenance, ownership, repair, operation, addition, alteration, and improvement of the Property, the Common Elements, and any personal property owned by the Association, except as otherwise provided in this Declaration. The maximum annual common expense assessment against each Unit shall be calculated by multiplying such Unit's Assessment Percentage by the total amount of the aforesaid Association budget. The maximum annual common expense assessment against each Unit shall not be increased more than 15% over the amount of such assessment for the immediately preceding assessment year. The amount of said advance budget may include, but shall not be limited to: expenses of management; premiums for insurance on the Common Elements and Units; landscaping and care of common grounds; common lighting and heating; maintenance, repairs and renovations of Common Elements; any other maintenance, repair, and replacement obligations of the Association; trash collection; wages; common water and sewer charges; taxes; legal, accounting, and management fees; costs, expenses, and liabilities incurred by the Board of Directors on behalf of the Owners under or by reason of this

Declaration, the Articles of Incorporation, or Bylaws of the Association; the creation of reasonable reserves, working capital, and/or sinking funds; and any and all other costs and expenses relating to the Common Elements and/or the Project. To the extent practicable, the Association shall segregate and separately bill Owners for any portion of the common expense assessment attributable to the premiums for hazard insurance covering the Units.

- 7.3 Reserves. The Association shall establish an adequate reserve fund for the maintenance, repair, and replacement of those Common Elements that must be periodically maintained, repaired, or replaced. Such reserve fund shall be funded through the monthly payments of the annual common expense assessments.
- 7.4 Date of Commencement of Annual Common Expense Assessments. The initial annual common expense assessment shall commence on the date of conveyance by Declarant of the first Unit, and the second and each subsequent annual common expense assessment period shall correspond with the fiscal year of the Association. The annual common expense assessments shall be made due and payable in 12 consecutive monthly installments per annum on such dates as determined by the Board, provided that the first annual common expense assessment shall be adjusted according to the number of months in the first annual common expense assessment year. Any Owner purchasing a Unit between installment due dates shall pay a pro rata share of the last installment due.
- 7.5 <u>Rate of Assessment</u>. Both annual common expense and special assessments shall be set against all Units sufficient to meet the Association's advance budget, in accordance with the principle set forth in Section 7.1 hereof, subject to the right to establish separate assessments against individual Units.
- Special Assessments. In addition to the assessments authorized above, the Association 7.6 may from time to time determine, levy, and assess a special assessment applicable to that particular assessment year for the purpose of defraying, in whole or in part, payments for any operating deficit and/or unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolition, replacement, or maintenance of the Common Elements, specifically including without limitation any fixtures and personal property related thereto. The Board of Directors shall first obtain the consent of two thirds of the members present in person or by proxy at a meeting duly called for that purpose at which a quorum is present. Each such special assessment shall be set against each Unit in accordance with the provisions set forth in Section 7.1 hereof and shall be due and payable as determined by the Association's Board of Directors. Prior to the conveyance by Declarant of the last Unit to the first Owner thereof other than Declarant (after Declarant has subjected all of the Additional Property to this Declaration or its right to do so has expired) or seven years from the date this Declaration is recorded, whichever occurs first, any special assessment for "Capital Improvements" shall also require the written approval of Declarant and any Agencies that have insured or purchased a First Mortgage if such approval is requested by the Agencies. "Capital Improvements," as used in the preceding sentence, shall mean the construction, erection, or installation of substantial structure(s) or other substantial improvements on the Property, but shall not include the construction, reconstruction, erection, installation, maintenance, repair, or replacement of Common Elements presently located on the Property or that may hereafter be constructed, erected, or installed on the Property by Declarant in its development of the Project. Notice in writing setting

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forth the amount of such special assessment per Unit and the due date for payment thereof shall be given to the Owners not less than 30 days prior to such due date.

- 7.7 Notice of Quorum for Action Authorized Under Section 7.6. Written notice of any meeting called for the purpose of voting on a special assessment pursuant to Section 7.6 shall be sent to all members not less than ten days nor more than 50 days in advance of the meeting. At the meeting, the presence of members or of proxies entitled to cast 20% of the membership votes shall constitute a quorum.
- 7.8 <u>Lien for Assessments</u>. The assessments, charges, and fees, including any default assessment, as well as any monthly or other installments thereof, provided for in this Declaration (together with any and all interest, costs, late charges, expenses, and reasonable attorneys' fees that may arise under the provisions of this Declaration), shall be burdens running with the respective Units, and a perpetual lien in favor of the Association upon the specific Unit to which such assessments apply, as provided in the Act.
- 7.9 Effect of Non-Payment of Assessments. Any assessment, charge, or fee provided for in this Declaration, including any default assessment, or any monthly or other installment thereof, that is not fully paid within ten days after the due date thereof, shall bear interest at the rate of 21% per annum from the due date or at such lesser rate as may be set by the Board of Directors from time to time. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue assessments, charges, or fees or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Unit. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid assessments, charges, or fees or any monthly or other installment thereof may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien therefor. If any such assessment, charge, or fee or monthly or other installment thereof is not fully paid when due, and the Association commences such an action (or counterclaims or crossclaims for such relief in any action) against any Owner personally obligated to pay the same or proceeds to foreclose its lien against the particular Unit, then the following charges shall be taxed by the court as a part of the costs of any such action or foreclosure proceeding and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds of the foreclosure sale of such Owner's Unit: (a) all unpaid assessments, charges, and fees and all unpaid monthly or other installments thereof; (b) any and all late charges and accrued interest under this Section 7.9; and (c) the Association's costs, expenses, and reasonable attorney's fees incurred for any such action and/or foreclosure proceedings. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessments, charges, or fees or monthly or other installments thereof that are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale and the right to acquire and hold. lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey, or otherwise deal with the same.
- 7.10 <u>Successor's Liability for Assessments</u>. Notwithstanding any terms and provisions of this Declaration to the contrary, the sale or transfer of any Unit shall not affect a lien for assessments, charges, or fees levied hereunder except that in the case of a sale or transfer of a Unit pursuant to

foreclosure of a First Mortgage or any proceeding in lieu thereof, including deed in lieu of foreclosure, the priority of the lien of the Association for assessments over the lien of the First Mortgage shall be determined in accordance with the provisions of the Act, as amended from time to time, including amendments enacted after the date hereof.

- 7.11 Subordination of Association's Lien for Assessments. The Association's lien on a Unit for assessments, charges, and fees shall be superior to any homestead exemption as is now or may hereafter be provided by state or federal law. The acceptance of a deed to a Unit subject to this Declaration shall constitute a waiver of the homestead exemption against all such assessments, charges, or fees. Said assessment lien shall also be superior to all other liens and encumbrances except: (a) real property ad valorem tax and special assessment liens duly imposed by a Colorado governmental subdivision; and (b) except to the extent provided otherwise in the Act, the lien of any First Mortgage encumbering any Unit and recorded in the records of the office of the Clerk and Recorder of the County of Summit, State of Colorado, prior to the date such assessment became due, including any and all advances made by a First Mortgagee and notwithstanding that any of such advances may have been made subsequent to the date of the attachment of the Association's lien.
- 7.12 <u>Certificate of Status of Assessments</u>. Within 14 days after receipt of a written request from an Owner, prospective purchaser, First Mortgagee, prospective First Mortgagee, junior mortgagee, or prospective junior mortgagee of the subject Unit and upon payment of a reasonable fee, but in no event less than \$25.00, the Association, through its Board of Directors or by its managing agent, shall issue a written statement setting forth the amount of any unpaid Association assessments, charges, fees, or portions thereof, if any, with respect to the subject Unit: the amount of the current monthly common expense assessment and the date that such assessment becomes due; the due date of any special assessment then existing against the Unit; the amount of any credit for any advance payments of assessments for prepaid items (such as insurance premiums) and for funds remaining in the working capital fund to which the Owner would be entitled from its transferee upon the sale of the subject condominium Unit; and any other information deemed appropriate by the Association. Said written statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith.
- 7.13 Contributions to the Working Capital Fund. The Association or Declarant shall require the first Owner of each Unit to make at the closing thereof a non-refundable contribution to capital in an amount equal to three times the monthly installment of the maximum annual common expense assessment effective at the time of conveyance of the Unit, which sum shall be held by the Association in a segregated account for the use and benefit of the Association, including, without limitation, to insure that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Association's Board of Directors. Such contribution to capital shall not relieve an Owner from making regular payments of assessments as the same become due. Upon the transfer of his Unit, an Owner shall be entitled to a credit from his transferee for the aforesaid payment to working capital, such credit to be in an amount equal to the product of the first private Owner's payment into the working capital fund multiplied by a fraction, the numerator of which is equal to the amount in the working capital fund as of the Association's last financial statement (or, if readily available, such, amount as of a more current date) and the denominator of which is equal to the total amount which would have been in the working capital fund if there been no expenditures as of such date.

- 7.14 Mortgagees May Pay Assessments and Cure Defaults. If assessment or monthly or other installment thereof on any Unit has not been paid by the Owner thereof within 30 days after the same is due, or if a default by any Owner of any provision of this Declaration, the Articles of Incorporation, or the Bylaws of the Association has not be cured within 30 days after written notice thereof is given to such Owner, then the Owner or holder of any mortgage or deed of trust encumbering such Unit may (but shall not be required to) pay such assessment or monthly or other installment thereof together with any other amounts secured by the Association's lien created by this Article 7 and may (but shall not be required to) cure any such default.
- 7.15 <u>Liens</u>. In accordance with the requirements of the Act as amended, Declarant hereby states that it is possible that additional liens other than mechanic's liens, assessment liens, or tax liens may be obtained against the Common Elements.
- 7.16 <u>Master Association Assessments</u>. The Units may be subject to assessments by a master association pursuant to a master declaration of covenants, conditions, and restrictions if Declarant exercises its special declarant right to subject the Project to a master association pursuant to Section 2.5 of this Declaration.

# ARTICLE 8 INSURANCE

- 8.1 <u>Duty to Obtain and Maintain Insurance</u>. To the extent that the Association determines that obtaining insurance coverage is prudent based on the relative cost and risk coverage provided by such insurance and to the extent required under the Act, the Association shall obtain and maintain at all times the following types of insurance:
- (a) A multi-peril policy with extended coverage and standard all-risk endorsements, including coverage for fire, vandalism, and malicious mischief as well as such other risks as shall customarily be covered with respect to projects similar in construction, location, and use, insuring the Project and all Common Elements, other than land, excavations, foundations, and other items normally excluded from such policies. Said policy shall not cover furniture, furnishings, or other personal property supplied or installed by an Owner. Said policy shall provide coverage in an amount equal to 100% of full replacement cost without deduction for depreciation. Such policy shall contain a standard non-contributory mortgagee clause in favor of each First Mortgagee of a Unit, which shall provide that any loss thereunder shall be payable to the Association for the use and benefit of First Mortgagees and Owners as their interests may appear. Distribution of the proceeds of all policies shall be made as provided in the Act.
- (b) If the Project is located in an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage has been available under the National Flood Insurance Program ("NFIP"), a "master" or "blanket" policy of flood insurance on the Common Elements and any other property covered by the required form of policy (herein "insurable property") in an amount deemed appropriate, but not less than the lesser of:

- (i) the maximum coverage available under the NFIP for the Common Elements and other insurable property within any portion of the Project located within a designated flood hazard area; or
- (ii) 100% of current "replacement cost" of the Common Elements and other insurable property within any portion of the Project located within a designated flood hazard area.

Any policy of insurance carried by the Association, pursuant to this Section 8.1(b) shall be in a form that meets the criteria set forth in the most current guidelines on the subject issued by the Federal Insurance Administrator.

- (c) Public liability and property damage insurance providing coverage in an amount not less than \$1,000,000.00 per occurrence covering claims for bodily injury, personal injury, and property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance, management, and other use of the Project as well as such other risks that are customarily covered with respect to projects similar in construction, location, and use.
- (d) Worker's compensation insurance, employer's liability insurance, and all other similar insurance with respect to employees of the Association in the amounts and in the forms as may now or hereafter be required by law.
- (e) A policy providing adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees, and employees of the Association and all others who handle or are responsible for handling funds of the Association, which fidelity coverage or fidelity bonds shall be in such amounts as set forth in the Bylaws. Such fidelity coverage or bonds shall name the Association as an obligee and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.
- (f) The Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Project, to the extent that such coverage is reasonably available, including but not limited to personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association and, if appropriate, coverage for loss or damage resulting from steam boiler equipment or air conditioning equipment accidents in an amount not less than \$100,000.00 per accident per location or such greater amount as may be deemed prudent by the Association based on the nature of the Property.

All policies of insurance carried by the Association shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a member of the Association, shall provide that the Association's policy shall provide primary coverage if a loss is also covered by a Unit Owner's policy, and shall provide that the policies may not be canceled or substantially modified without at least 30 days prior written notice to the insured. Duplicate originals of all policies and renewals thereof, together with proof of payment of premiums, shall be delivered

to any First Mortgagee of a Unit upon written request. The insurance shall be carried in blanket form naming the Association as the insured and as attorney-in-fact for all of the Owners, which policy or policies shall identify the interest of each Owner (by name and Unit number designation), the Declarant, the Board of Directors, the manager of the Property (if any), and any First Mortgagee and their respective agents and employees. Further, the Association may require the insurance company or companies providing the insurance coverages described herein to supply each Owner and First Mortgagee with a certificate of Insurance in regard to such Owner's Unit.

- 8.2 <u>Insurance Obtained by Owners.</u> Insurance coverage on furnishings, including carpet, draperies, oven, range, refrigerator, wallpaper, and other items of personal property belonging to an Owner, and public liability coverage within each Unit, shall be the sole and direct responsibility of the Owner(s) thereof. The Association, the Board of Directors, and/or the managing agent of the Association shall have no responsibility therefor. Owners may carry other insurance for their benefit and at their expense, provided that all such policies shall contain waivers of subrogation, and provided further that no liability of the carriers issuing insurance obtained by the Association shall be affected or diminished by reason of any such additional insurance carried by any Owner.
- 8.3 <u>Annual Review of Insurance Policies</u>. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association.
- written approval of the Association, nothing shall be done or kept in any Unit or in or on the Common Elements, or any part thereof, that would cause the cancellation of any insurance on the Project, or any part thereof, or increase the rate of any insurance on the Project, or any part thereof, over what the Association, but for such activity, would pay. Each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by such Owner and/or its family, guests, invitees, or contract purchasers that is in violation of this Section 8.4. At its own initiative or upon the written request of any Owner (and, if the Association determines that further action by it is proper), then after notice and a hearing, the Association shall enforce the foregoing indemnity in the same manner as provided in Section 10.2 hereof with respect to an Owner's indemnity against mechanic's liens.

# ARTICLE 9 CONVEYANCES AND TAXATION OF UNITS

9.1 Contracts Entered into Prior to Recording of Plat and Declaration. A contract or other agreement for the sale of a Unit entered into prior to the filing for record of the Plat and/or this Declaration in the office of the Clerk and Recorder of the County of Summit, State of Colorado, may legally describe such Unit in the manner set forth in Section 9.2 hereof and may indicate that the Plat and/or this Declaration are to be recorded. Upon recording the Plat and this Declaration in the County of Summit, State of Colorado, such description shall be conclusively presumed to describe the corresponding Unit shown on the Plat, and such Unit shall be subject in all respects to this Declaration.

9.2 <u>Contracts Entered into Subsequent to Recording of Plat and Declaration</u>. Subsequent to the recording of the Plat and this Declaration, every contract, deed, lease, mortgage, deed of trust, will, and every other instrument affecting title to a Unit may legally describe that Unit as follows:

Unit Highland Greens First Filing, seconding to the Plat thereof

Unit, I	Highland Greens First Filing,	according to the Plat the	reof,
recorded on	, 2001, Book	at Page	in
the records of the	Office of the Clerk and Record	der for the County of Sun	 amit,
State of Colorad	lo, and as defined and descr	ribed in the Declaration	ı for
Highland Greens	recorded on	, 2001, in Book	
at Page, i	n said records.		

- 9.3 <u>Legal Effect of Description</u>. Every contract, deed, lease, mortgage, deed of trust, will, and every other instrument affecting title to a Unit that legally describes said Unit in the manner set forth in Section 9.2 hereof shall be good and sufficient to sell, convey, transfer, encumber, or otherwise affect the Unit and all appurtenances and property rights thereto and to incorporate all of the rights, limitations, and burdens incident to ownership of a Unit as described in this Declaration and the Plat. Each such description shall be construed to include a non-exclusive easement for ingress and egress and to and from each Unit and the use of all the Common Elements, all as more fully provided in this Declaration.
- 9.4 <u>Taxation</u>. Each Unit shall be assessed separately for all taxes, assessments, and other charges of the State of Colorado, any political subdivision thereof, any special improvement district, and any other taxing or assessing authority in accordance with the Act, as amended. For the purpose of such assessments, the valuation of the Common Elements shall be apportioned among the Units in proportion to the undivided interest in Common Elements appurtenant thereto. The Association shall furnish to the Tax Assessor of the County of Summit, State of Colorado, and to all other appropriate persons and authorities, all necessary information with respect to such apportionment. No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Unit.

## ARTICLE 10 MECHANICS AND OTHER LIENS

- Mechanic's and Other Liens. No labor performed or materials furnished for use and incorporated in any Unit with the consent or at the request of the Owner thereof, its agent, contractor, or subcontractor shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Unit of the Owner for whom such labor has been performed or such materials furnished. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Unit of any other Owner, the Common Elements, or any part thereof, for labor performed or for materials furnished in work on the first Owner's Unit.
- 10.2 <u>Enforcement by the Association</u>. At its own initiative or upon the written request of any Owner, if the Association determines that further action by it is proper, and the mechanic's lien(s) or other liens are not disputed claims with a reasonable basis for such dispute, the Association, after

notice and hearing, shall obtain a discharge of such lien and enforce the indemnity provided for in Section 10.1 hereof by collecting from the Owner of the Unit on which the labor was performed or materials or utilities furnished the amount necessary to discharge any such mechanic's lien or pay such utility charges, including all costs and reasonable attorneys, fees incidental thereto. If the Owner of the Unit on which the labor was performed or materials or utilities furnished refuses or fails to so indemnify within seven days after the Association has given notice to such Owner of the total amount or any portions thereof to be indemnified, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section 10.2, and such amount to be indemnified shall automatically become a lien against such Unit. The Association may proceed to foreclose such lien in accordance with the procedures set forth in Section 7.9 hereof.

10.3 Effective of Part Payment. If a lien attributable to labor performed and/or materials furnished on the Project, or any portion thereof, is recorded against two or more Units, the Owner(s) of any of the affected Units may pay to the lienholder the amount of the lien attributable to such Owner's Unit, and the lienholder shall release such Unit from the lien. The amount required to be paid by any such Owners in order to obtain release of its Unit from any such lien shall be equal to the quotient of (i) the amount of the lien divided by (ii) the total number of Units affected by the lien. Partial payment and release of any such lien with respect to any Unit(s) shall not prevent the lienholder from enforcing its rights against any Unit for which payment has not been received.

### ARTICLE 11 ARCHITECTURAL CONTROL

- Restrictions on Construction. No building, fence, wall, solar panels and associated equipment, mailbox, or other Improvements shall be erected, placed, or altered on any Unit until the construction plans and specifications showing the kind, shape, height, materials, floor plans, exterior color scheme, a finish grade elevation of the Improvements, a landscaping and grading plan, and a plot plan with the location on the Unit (collectively "Plans and Specifications") have been submitted to and approved in writing by the Architectural Control Committee. Further, no modification, including any modification that changes the color of all or any part of a Unit, or reconstruction of any Improvements may be undertaken without the prior written approval of the Architectural Control Committee (the "Committee").
- 11.2 <u>The Architectural Control Committee</u>. The Committee shall consist of those persons who, at the time the approval is being sought, comprise the Board of Directors.
- 11.3 Approval by Committee. Whenever in this Declaration the approval of the Committee is required, it shall have the right to consider all of the Plans and Specifications for the Improvements or proposal in question and all other facts that, in its sole discretion, it deems to be relevant. Prior to commencement of any construction of any Improvements, two sets of the Plans and Specifications shall be submitted to the Committee. After approval or rejection of said Plans and Specifications, one set of the Plans and Specifications shall be returned to the party who submitted them, and one set thereof shall be retained by the Committee. Construction of Improvements may not be commenced unless and until the Committee has approved such Plans and Specifications in writing. The Committee shall consider and act upon any and all Plans and specifications submitted for its approval pursuant to this Declaration within 45 days after receipt thereof, provided; however, that failure to

so act within said period shall be deemed to be the Committee's approval of the request submitted. The Committee shall approve Plans and Specifications submitted for its approval only if it deems (a) that the construction, alterations, or additions contemplated thereby, at the locations indicated, will not be detrimental to the Property as a whole; (b) that the appearance, exterior design, materials, and colors of the proposed Improvement will be in harmony with the surrounding areas of the Property; (c) that the Improvement will not detract from the beauty, wholesomeness, and attractiveness of the Property or the enjoyment thereof by the Owners; (d) that any proposed changes in topography properly relate to adjacent Units and Common Elements and the Property as a whole and do not adversely effect drainage; and (e) that the Association's maintenance, repair, and replacement obligation hereunder will not become more burdensome or result in additional costs as a result of the proposed Improvement. The Committee may condition its approval of any proposed Improvement upon the making of such changes therein, the satisfaction of such conditions, or the assumption such obligations by the Owner as the Committee may deem appropriate. The Committee may also issue rules or guidelines regarding its function, including but not limited to minimum standards and procedures for the submission of Plans and Specifications for approval. The Committee may require a reasonable fee to accompany each application for approval. The Committee may require such detail in Plans and Specifications submitted for its review and such other information as it deems reasonably appropriate. Until receipt by the Committee of all required Plans and Specifications, other information, and the required fee, the 45 day period allowed for action by the Committee will not begin.

- 11.4 Meetings of Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time, by resolution unanimously adopted in writing, designate one of its members to take any action or perform any duties for and/or on behalf of the Committee. In the absence of such designation, the vote of a majority of all of the members of the Committee or the written consent of a majority of all of the members of the Committee taken with or without a meeting shall constitute an act of the Committee.
- 11.5 Approval not to Constitute Waiver. The approval or consent of the Committee to any Plans and Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans and Specifications or other matter subsequently or additionally submitted for approval or consent to the same for a different person.

#### 11.6 Completion of Improvements.

- (a) Upon the completion of any Improvement for which Plans and Specifications were approved, the Owner of the Unit will give written notice of completion to the Committee.
- (b) Within such reasonable time as the Committee may set, but not to exceed 15 days thereafter, the Committee or its duly authorized representative may inspect such Improvement. If the Committee finds that the work was not done substantially in compliance with all approved Plans and Specifications submitted, it shall notify the Owner as provided herein in writing on such noncompliance within such period, specifying in reasonable detail the particulars of noncompliance, and shall require the Owner to remedy the same. If, upon the expiration of 45 days following the date of such notification, the Owner of the Unit has failed to remedy such noncompliance, the Committee

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may commence an action at law or in equity to require the removal or reconstruction of the noncomplying Improvement. The Committee may inspect all work in progress and give notice of noncompliance. No further work shall be done, pending resolution of the dispute, that would hamper the correction of the noncomplying item if the Committee shall find such non-compliance exists.

(c) Neither the Committee nor any member thereof shall be liable to any Owner or to any other person or entity for any loss, damage, or injury arising out of or in any way connected with the performance of the Committee's duties under this Declaration unless due to the willful misconduct or bad faith of the Committee or its members, as the case may be. The Committee shall not be responsible for reviewing, nor shall its approval of any Plans and Specifications be deemed approval of, the structural safety of such Improvements or conformance with building or other codes.

#### ARTICLE 12 PARTY WALLS

- 12.1 General Rules of Law to Apply. Each Owner shall own in fee simple subject to the provisions of this section a portion of the Party Wall lying within his Unit, and to the extent not inconsistent with this Declaration, the general rules of law regarding party walls and liability for property damage thereto shall apply to each Party Wall. Each Owner having a Party Wall is hereby granted mutual reciprocal easements for support, repair, and maintenance of the Party Wall. If any Party Wall originally constructed by Declarant protrudes over an adjoining Unit, such structure shall not be deemed to be an encroachment upon the adjoining Unit, and no Owner shall either maintain any action for removal of a Party Wall or any action for any damage because of such protrusion. If there is such a protrusion, it shall be deemed that said Owner has granted perpetual easements to the adjoining Owner for continuing use, repair, and maintenance of the Party Wall or such projection. The foregoing shall also apply to any replacement of any Party Wall if the same is constructed substantially in conformity with original Party Wall constructed by Declarant.
- 12.2 <u>Damage</u>, <u>Repair</u>, <u>and Maintenance</u>. Maintenance, repair, and replacement responsibilities with respect to Party Walls shall be as described in Section 6.2. If a Party Wall is destroyed or damaged by fire or other casualty, such destruction or damage shall not terminate any rights of the adjoining Owners thereto, and the Association shall restore it (except the finished surface) to substantially its original condition.

### ARTICLE 13 RESTRICTIVE COVENANTS

- 13.1 Residential Use. Units shall be used for residential purposes only, including uses related to the convenience and enjoyment of such residential use, and no structures of a temporary character, trailer, shack, barn, or other outbuilding shall be used or permitted to be kept or stored on any portion of the Project at any time. Notwithstanding the foregoing, any managing agent hired by the Association to manage the Project may conduct such management activities from within a Unit.
- 13.2 <u>Use of Common Elements</u>. There shall be no obstruction of the Common Elements, nor shall anything be kept stored on any part of the Common Elements without the prior written

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approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Board of Directors.

- 13.3 <u>Leases</u>. The term "lease," as used herein, shall include any agreement for the leasing or rental of a Unit and shall specifically include, without limitation, a month-to-month rental. The Owner of a Unit shall have the right to lease its Unit under the following conditions:
  - (a) All leases shall be in writing.
- (b) All leases shall provide that the terms of the lease and the lessee's occupancy of the Unit shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation and Bylaws, and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease.
- 13.4 <u>Nuisances</u>. No nuisance shall be allowed on the Project, nor any use or practice that is the source of annoyance to residents or that interferes with the peaceful enjoyment or possession and proper use of the Project by its residents. As used herein, the term "nuisance" shall not include any activities of Declarant in regard to the development and construction of the Project. All parts of the Project shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate, nor any fire hazard to exist. Further, no immoral, improper, offensive, or unlawful use shall be permitted or made of the Project or any part thereof. All valid laws, ordinances, and regulations of all governmental bodies having jurisdiction over the Project, or any portion thereof, shall be observed.
- 13.5 <u>Garbage Collection</u>. Each Owner shall dispose of the garbage collected within its Unit into containers of such dimensions and at such locations as the Association shall from time to time designate.
- Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant and its employees, agents, and contractors to perform such reasonable activities and to maintain on portions of the Project such facilities as the Declarant deems reasonably necessary, desirable, or incidental to the construction and sale of the Units and the exercise of the Declarant's development rights, specifically including without limiting the generality of the foregoing, maintaining business offices, storage areas, signs, model Units, sales offices, parking areas, construction offices, and lighting facilities. The rights to be retained by Declarant under this Section shall terminate upon conveyance by Declarant of all Units (after Declarant has subjected all of the Additional Property to the provisions of this Declaration or its right to do so has expired) to Owners other than a Declarant or seven years after the recording of this Declaration, whichever occurs first.

#### ARTICLE 14 EASEMENTS

- 14.1 <u>Recorded Easements</u>. In addition to all easements and rights-of-way of record at or before the recording of this Declaration, the Property and all portions thereof shall be subject to the easements as shown on any recorded plat of the Property, or any portion thereof, and as shown on the recorded Plat.
- Encroachments. If any portion of the Common Elements encroaches upon any Unit(s) 14.2 or if any portion of a Unit encreaches upon any other Unit(s) or upon any portion of the Common Elements, or if any encroachment shall occur in the future as a result of: (i) settling of the Units, or (ii) alteration or repair to the Common Elements, or (iii) repair or restoration of any Unit after damage by fire or other casualty, or condemnation or eminent domain proceedings then, in any of said events, a valid easement shall exist for the encroachment and for the maintenance of the same, as long as the encroachment exists. If any one or more of the Units or other improvements comprising part of the Common Elements are partially or totally destroyed and are subsequently rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding or reconstruction. any portion thereof encroaches as provided in the preceding sentence, a valid easement for such encroachment shall then exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or on the Units for purposes of marketability of title or other purposes. In interpreting any and all provisions of this Declaration, subsequent deeds, mortgages, deeds of trust, or other security instruments relating to Units, the actual location of a Unit shall be deemed conclusively to be the property intended to be conveyed, reserved, or encumbered notwithstanding any minor deviations either horizontally, vertically, or laterally from the location of such Unit as depicted on the Plat.
- <u>Utility Easements</u>. There is hereby created a general easement upon, across, over, in, and under all of the Property for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including but not limited to water, sewer, gas, telephone, electrical, and satellite or cable television. By virtue of this easement, it shall be expressly permissible and proper for the companies providing electrical, telephone, cable television, and television services to erect and maintain the necessary poles and other necessary telephone, cable, television and television wires, cables, circuits, conduits, equipment, and apparatus on, above, across, and under the roofs and exterior walls of the Units. Should any utility company furnishing a service covered by the general easement herein created request a specific easement by separate recordable document, Declarant shall have, and hereby reserves, the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms hereof; provided, however, that Declarant's right to do so shall cease upon conveyance of the last Unit (after Declarant has subjected all of the Additional Property to this Declaration or its right to do so has expired) by Declarant to the first Owner thereof (other than Declarant), and the Association shall therewith have all rights with respect thereto. The easement provided for in this Section 14.3 shall in no way affect, avoid, extinguish, or modify any other recorded easement(s) on the Property.
- 14.4 <u>Emergency Easement</u>. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets and upon the Common Elements in the proper performance of their duties.

- Maintenance Easement. An easement is hereby granted to the Association and its officers, agents, employees, and assigns upon, across, over, in, and under the Common Elements as may be necessary or appropriate to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain on the Common Elements maintenance and storage facilities for use by the Association.
- 14.6 <u>Drainage Easement</u>. An easement is hereby granted to the Association and its officers, agents, employees, successors, and assigns to enter upon, across, over, in, and under any portion of the Property for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water on the Property.
- Easements of Access for Repair, Maintenance, and Emergencies. Some of the Common Elements are or may be located within Units or may be conveniently accessible only through Units. The Owners of other Units shall have the irrevocable right, to be exercised by the Association as their agent, to have access to each Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal, or replacement of any of the Common Elements located therein or accessible therefrom, or for making emergency repairs therein as necessary to prevent damage to the Common Elements or to any Unit. The Association shall also have such right independent of any agency relationship. Subject to the provisions of Section 6.3 hereof, damage to the interior of any part of any Unit resulting from the maintenance, repair, emergency repair, removal, or replacement of any of the Common Elements or as a result of emergency repairs within any Unit at the instigation of the Association or any Owner, shall be an expense of all the Owners. Non-emergency repairs shall be made only during regular business hours on business days after 24 hours notice to the occupants of the Unit wherein such repairs are to be made, except where the occupants have no objections to earlier entry for repairs. In emergency situations the occupants of the affected Unit shall be warned of impending entry as early as is reasonably possible.
- 14.8 Declarant's Rights Incident to Completion of the Project. Declarant, for itself and its successors and assigns, shall have and hereby retains or is granted a right and easement of ingress and egress over, in, upon, under, and across the Common Elements and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to the completion of the Project, the sale of the Units, the exercise of special declarant rights under Sections 2.5 and 13.6 and the exercise of Declarant's development rights; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner, his family members, guests, or invitees to or from his Unit or the Common Elements. The rights of Declarant under this Section shall terminate upon conveyance by a Declarant of all Units (after Declarant has subjected all of the Additional Property to this Declaration or its right to do so has expired) to Owners other than a Declarant or seven years after the recording of this Declaration, whichever occurs first.
- 14.9 Easements for the Benefit of Additional Property. Declarant shall have and is hereby granted an easement for vehicular ingress and egress (including without limitation ingress and egress for construction vehicles) over any private roads on the Property for access to and construction of Improvements on the Additional Property and for the sale, occupancy, and use of such Improvements. Declarant shall have and is hereby granted an easement for parking (which parking

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shall be shared with the Owners) in all parking areas (if any) located on the Property except those located within the boundaries of Units in connection with the sale, occupancy, and use of Improvements on the Additional Property. Declarant shall also have and is hereby granted the right to pedestrian ingress and egress over all roadways and pedestrian walkways on the Common Elements. Declarant is granted a blanket easement upon, across, and through the Common Elements for the installation, replacement, repair, and maintenance of utilities, including but not limited to, water, sewer, gas, telephone, electricity, computer, cable, and master television antennae or cable or satellite television systems, if any, serving the Additional Property; provided that Declarant will repair or pay for any damage to the surface resulting from work done by it prior to the time the Additional Property is submitted to the provisions of this Declaration. If any utility or quasi-utility company furnishing services covered by the general easement created herein requests a specific easement by separate recorded document, Declarant reserves and is hereby given the right and authority to grant such easements reserved or granted to Declarant hereunder upon, across, over, and under any part or all of the Common Elements to the owners of Improvements constructed on the Additional Property whether or not the Additional Property is subjected to the terms of this Declaration. Declarant shall also have the right, after obtaining any necessary consent from the applicable utility company, to connect to utility lines on the Property in connection with the development, sale, and use of the Additional Property and the Improvements thereon. The rights granted to Declarant and the Additional Property under this Section shall run with the land and be a burden upon the Property and benefit to the Additional Property, Declarant, its successors and assigns, and all subsequent owners of the Additional Property (or any part thereof or any interest therein) and shall remain in full force and effect whether or not the Additional Property (or any portion thereof) becomes subject to this Declaration.

14.10 <u>Easements Deemed Created</u>. All conveyances of Units hereafter made, whether by a Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easements or to this Article appears in the instrument for such conveyance.

# ARTICLE 15 DAMAGE, DESTRUCTION, OBSOLESCENCE OR CONDEMNATION

Association as Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Project in the event of its destruction, damage, obsolescence, or condemnation including the repair, replacement, and improvement of any Units, Common Elements, or other portions of the Project that have been destroyed, damaged, condemned, or become obsolete. Title to any Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association as their true and lawful attorney in their name, place, and stead for the purpose of dealing with the Project upon its damage, destruction, obsolescence, or condemnation as is hereinafter provided. As attorney-in-fact, the Association by its President and Secretary or Assistant Secretary, or its other duly authorized officers and agents, shall have full and complete authorization, right, and power to make, execute, and deliver any contract, deed, or other instruments with respect to the interest of an Owner that are necessary and appropriate to exercise the powers herein granted. If the

Association is dissolved or becomes defunct, a meeting of the Owners shall be held within 30 days after either such event. At such meeting a new attorney-in-fact shall be appointed to deal with the Project upon its construction, damage, obsolescence, or condemnation. Such appointment must be approved by the Owners representing an aggregate ownership interest of 67% or more of the Common Elements and at least 67% of the First Mortgagees of Units based upon one vote for each First Mortgage held.

- 15.2 <u>Damage or Destruction</u>. "Repair and reconstruction" of the Improvements, as used in the succeeding subparagraphs, means restoring the Improvement(s) to substantially the same condition in which they existed prior to their damage or destruction, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before, and all Improvements being reconstructed or repaired in substantial conformance with the Project's original architectural plan and scheme to the extent then reasonably and economically feasible. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, reconstruction, restoration, or replacement in accordance with the provisions hereinafter set forth:
- (a) Notwithstanding the provisions of Article 19 hereof relating to the percentage required for consent or approval of Owners and First Mortgagees, in the event of damage or destruction due to fire or other adversity or disaster, the insurance proceeds, if sufficient to repair or reconstruct the Improvement(s), shall be applied by the Association to such repair and reconstruction, and the Improvement(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 reconstruction of the Improvement(s). Assessments for common expenses shall not be abated during the period of insurance adjustments and repair and construction.
- (b) If the insurance proceeds are insufficient to repair and reconstruct the Improvement(s), such damage or destruction shall be promptly repaired and reconstructed by the Association using the proceeds of insurance and the proceeds of a special assessment that, notwithstanding anything to the contrary contained in Section 7.6 hereof, shall be made without a vote of the Owners against all of the Owners and their Units. Such special assessment shall be assessed in accordance with the provisions of Section 7.6 hereof and shall be due and payable not sooner than 30 days after written notice thereof. The Association shall have full authority, right, and power as attorney-in-fact to cause the repair, replacement, or restoration of the Improvement(s), using all of the insurance proceeds for such purpose, notwithstanding failure of an Owner to pay the aforesaid special assessment. The special assessment provided for herein shall be a debt of each Owner and a lien on its Unit and may be enforced and collected as provided in Section 7.9 hereof. Assessments for common expenses shall not be abated during the period of insurance adjustment and repair and reconstruction.
- (c) Notwithstanding subsection (b) of this Section 15.2 and subject to the approval of 80% of the Owners and 67% of First Mortgagees and insurers and guaranters of First Mortgages, if applicable, if such casualty results in damage to 67% or more of the Units in the Project, or if the proceeds of insurance are insufficient to repair or reconstruct the Units, then the Owners may agree not to repair or reconstruct the Improvements. In such event, the Association shall forthwith record a notice in the office of the Clerk and Recorder of the County of Summit, State of Colorado, setting forth such facts, and upon recording such notice executed by the Association's President and

Secretary or Assistant Secretary, the entire Project shall be sold by the Association on behalf of the Owners, pursuant to the provisions of this Section, free and clear of the provisions contained in this Declaration, the Plat, and the Articles of Incorporation, and the Bylaws. Assessments for common expenses shall not be abated during the period prior to sale. The insurance settlement proceeds shall be collected by the Association and combined with all sale proceeds. The combined proceeds shall be divided into portions by the Association, each portion representing one Unit, with the amount of each portion to be allocated to each Unit by the Board of Directors based on the prorated fair market value of the Units as they existed immediately prior to the damage and destruction, based upon appraisals of the Property prepared by an appraiser certified by the MAI or the reasonable equivalent of such certification. The appraisals shall be distributed to the Owners and shall become final 30 days after distribution unless disapproved in writing by Owners of Units to which at least 25% of the votes in the Association were allocated prior to the expiration of said 30 days. Each Owner's prorated share of the proceeds shall be determined by dividing the fair market value of such Owner's Unit by the fair market value of all of the Units. If fair market value of the Units cannot be appraised because of the amount of damage or destruction, each Owner's prorated share of the proceeds shall be based upon each Unit's Assessment Percentage.

- (d) Such divided proceeds shall be paid into separate accounts. Each such account shall be in the name of the Association and shall be further identified by the Unit designation and the name of the Owner(s) and First Mortgagees thereof. From each separate account, the Association shall forthwith use and disburse the total amount of each such account, without contribution from one account to another, toward the payment of the liens encumbering the Unit represented by such separate account, as follows:
- (i) for payment of taxes and special assessment liens in favor of any assessing entity;
  - (ii) for payment of the lien of any First Mortgage;
- (iii) for payment of unpaid Association common expense assessments, other assessments, charges, fees, and costs incurred by the Association;
  - (iv) for payment of the customary expenses of sale;
- (v) for payment of junior liens and encumbrances in the order of and to the extent of their priority;
  - (vi) for payment to creditors of the Association as provided in the Act; and
  - (vii) the balance remaining, if any, shall be paid to the Owner(s) of the Unit.

#### 15.3 Obsolescence.

(a) The Owners representing an aggregate ownership interest of 67% or more of the Units may agree that the Common Elements are obsolete and may adopt a plan for the renewal and reconstruction thereof. If a plan for the renewal or reconstruction is adopted, notice of such plan

shall be recorded in the County of Summit, State of Colorado, and the expenses of renewal and reconstruction shall be payable by all of the Owners as a common expense, whether or not they have previously consented to the plan of renewal and reconstruction. The aforesaid common expense assessment for the renewal and reconstruction of the Common Elements shall be a debt of each Owner and a lien on its Unit that may be enforced and collected as provided in Section 7.9 hereof.

- (b) Subject to the provisions of Article 19, if applicable, the Owners may agree that the Units are obsolete and that the same should be sold. In such instance, the Association shall forthwith record in the office of the Clerk and Recorder for the County of Summit, State of Colorado, a notice setting forth such facts, and upon recording such notice executed by the Association's President and Secretary or Assistant Secretary, the entire Project shall be sold by the Association on behalf of the Owners, free and clear of the provisions contained in this Declaration, the Plat, the Articles of Incorporation, and the Bylaws. The sale proceeds shall be paid into separate accounts, each such account representing the Unit as more fully provided in Section 15.2(c) hereof. Each such account shall be in the name of the Association and shall be further identified by the Unit designation and the name of the Owner(s) thereof. From each separate account the Association shall use and disburse the total amount of each such account, without contribution from one account to another, for the same purposes and in the same order as provided in Section 15.2(c) hereof.
- 15.4 <u>Condemnation</u>. If at any time or times during the continuance of planned community ownership pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public authority, or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Section 15.4 shall apply:
- (a) All compensation, damages, or other proceeds therefrom, the sum of which is hereafter called the "Condemnation Award," shall be payable to the Association.
- (b) If the entire Project is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance thereof, the planned community ownership created pursuant hereto shall terminate. The Condemnation Award shall be apportioned among the Owners by the Board of Directors in accordance with the procedure set forth in Section 15.2(c) hereof. If a standard different from the value of the Project as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree, or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable. The Association shall, as soon as practicable, determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed, as soon as practicable, in the same manner as provided in Section 15.2(c).hereof.
- (c) Subject to the provisions of Article 19 hereof, if less than the entire Project is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance thereof, the planned community ownership created hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award. As soon as practicable, subject to the following sentence, 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 among the Owners, as follows: (i) the total amount allocated to taking of or injury to the Common Elements shall be apportioned among the Owners on the basis of the Assessment Percentage of each Unit; (ii)

the total amount allocated to severance damages shall be apportioned to those Units that were not taken or condemned; (iii) the respective amounts allocated to the taking of or damage to a particular Unit and to the Improvements an Owner has made within its Unit shall be apportioned to the particular Unit involved; and (iv) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances or as determined judicial decree. Notwithstanding anything to the contrary contained in this Declaration, the allocation of the Condemnation Award to each affected Unit shall be based on the comparative values of the affected Units as they existed immediately prior to the condemnation, using the appraisal procedures described in Section 15.2(c) hereof. If the allocation of the Condemnation Award is already established in negotiations, judicial decree, or otherwise, then in allocating the Condemnation Award, the Association shall employ such allocation to the extent it is relevant and applicable. Apportioned proceeds shall be disbursed, as soon as practicable, in the same manner as provided in Section 15.2(c) hereof.

- (d) Subject to the provisions of Article 19 hereof, if a partial taking results in the taking of a complete Unit, the Owner(s) thereof shall automatically cease to be owners and member(s) of the Association hereunder. Thereafter, the Association shall reallocate the voting rights and assessment ratio according to the principles employed in this Declaration at its inception, and shall submit such reallocation to the Owners and to the First Mortgagees of all remaining Units for amendment of this Declaration as provided in Article 17 hereof. The Condemnation Award as to each such completely taken Unit shall be paid into a separate account and disbursed, as soon as practicable, in the same manner, as provided in Section 15.2 (c) hereof, except that creditors of the Association shall not receive any share of the proceeds.
- (e) Any reconstruction and repair necessitated by condemnation shall be governed by the procedures of Section 15.2 hereof.

# ARTICLE 16 BURDENS AND BENEFITS OF DECLARATION

- 16.1 Covenants Running With Property. The benefits, burdens, and all other provisions contained in this Declaration shall be covenants running with and binding upon the Property.
- 16.2 <u>Binding Upon and Inure to the Successors</u>. The benefits, burdens, and all other provisions contained in this Declaration shall be binding upon and inure to the benefit of the Declarant, the Association, and all Owners and their respective heirs, executors, administrators, personal representatives, successors, and assigns. Any right or any interest reserved or contained in this Declaration to or for the benefit of the Declarant may be transferred or assigned by the Declarant, either separately or with one or more of such rights or interests, to any person, corporation, partnership, association, or other entity.

### ARTICLE 17 AMENDMENT OF DECLARATION

17.1 <u>Amendment</u>. Except for those matters governed by Section 19.2 hereof, the provisions of this Declaration may be amended, in whole or in part, at any time and from time to time,

by instrument approved in writing by not less than 67% of the members; provided, however, that until the Declarant has conveyed all Units (after Declarant has subjected all of the Additional Property to this Declaration or its right to do so has expired) to the first Owners hereof (other than Declarant), any amendment of Sections 2.5, 5.3, 7.5, 13.6 or 17.2 shall require the prior written approval of the Declarant; and the provisions of Section 14.9 cannot be amended at any time (unless all of the Additional Property has been subjected to this Declaration) without the prior written consent of the Owner of the Additional Property.

- Amendment by Declarant. Notwithstanding the provisions of Section 17.1, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws shall be necessary in order for existing or future mortgages to be acceptable to any of the Agencies, then subject to the following sentence of this Section 17.2, Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of any Owners or First Mortgagees. Each such amendment of this Declaration or of the Articles of Incorporation or Bylaws shall be made, if at all, by Declarant prior to (a) conveyance of the last Unit (after Declarant has subjected all of the Additional Property, to this Declaration or its right to do so has expired) by Declarant to the first Owner thereof (other than Declarant); or (b) seven years from the date upon which this Declaration is recorded in the records of the County of Summit, State of Colorado, whichever shall first occur.
- 17.3 <u>Technical Amendment</u>. Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration at any time prior to the termination of its right to appoint the Board of Directors for the purposes of correcting spelling, grammar, dates, or as is otherwise necessary to clarify the meaning of the provisions of this Declaration.
- 17.4 <u>Recording of Amendments</u>. To be effective, all amendments to this Declaration must be recorded in the office of the Clerk and Recorder of the County of Summit, State of Colorado, and must contain evidence of approval thereof showing the acknowledged and notarized signatures of all the necessary approving parties.

#### ARTICLE 18 VA/HUD APPROVAL

- Amendments, Special Assessments Dissolutions, Mergers, Dedications, Etc. Until 75% of the Units (after Declarant has subjected all of the Additional Property to this Declaration or its right to do so has expired) on the Property have been conveyed by Declarant or seven years from the recording date of this Declaration, whichever first occurs, the prior written approval of Declarant and the VA or HUD shall be required for the following, if either of such agencies have agreed to insure or guarantee First Mortgages in all or any part of this Project:
  - (a) amendment of this Declaration;
  - (b) amendment of the Articles of Incorporation or Bylaws;
  - (c) levying of special assessments;

- (d) dedication or mortgaging of all or any part of the Common Elements by the Declarant; or
  - (e) merger, consolidation, or dissolution of the Association.

## ARTICLE 19 FIRST MORTGAGEES

- 19.1 <u>Member and First Mortgagee Approval</u>. Subject to Section 17.2 hereof, but notwithstanding any other provisions of this Declaration to the contrary, the Association shall not:
- (a) unless it has obtained the prior written consent of at least 67% of the members and the consent, as provided in Section 19.3 below, of 67% of the First Mortgagees of Units (based on one vote for each First Mortgage held):
  - (i) seek to abandon or terminate the Project, whether by act or omission;
- (ii) change the pro rata, interest or obligations of any individual unit for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;
- (iii) by act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements (excluding the granting of permits, licenses, and easements for public utilities, roads, or other purposes reasonably necessary or useful for the proper maintenance or operation of the Project);
  - (iv) partition or subdivide any Unit; or
- (v) use hazard insurance proceeds for losses to any part of the Property (whether to Units or Common Elements) for other than the repair, replacement, or reconstruction of such part of the Property in accordance with the procedures set forth in Section 15.2 hereof, except as may be provided by the Act in the case of substantial loss to such Units and/or Common Elements;
- (b) unless it has obtained the prior written consent of at least 67% of, the Members and the consent, as provided in Section 19.3 below, of 51% of the First Mortgagees of Units (based upon one vote for each First Mortgage owned):
- (i) add or amend any material provisions of this Declaration, the Articles of incorporation, or Bylaws that establish, provide for, govern, or regulate any of the following, provided that such additions or amendments shall not be considered material if they are for the purpose of correcting technical errors or for clarification only:
  - $(\Lambda)$  voting rights;
  - (B) assessments, assessment liens, or priority of such liens;

- (C) reserves for maintenance, repair, and replacement of those elements of the Common Elements that must be maintained, repaired, or replaced on a periodic basis;
  - (D) insurance, including but not limited to fidelity bonds;
  - (E) modification of rights to use of the Common Elements;
- (F) responsibility for maintenance and repair of any portion of the Project;
- (G) expansion or contraction of the Project or the addition, annexation, or withdrawal of property to or from the Project;
  - (H) boundaries of any Unit;
- (I) any action to terminate the legal status of the Project after substantial destruction or condemnation occurs;
- (J) convertibility of Units into Common Elements or of Common Elements into Units;
  - (K) leasing of Units;
- (L) imposition of any right of first refusal or similar restriction on the right of any Owner to sell, transfer, or otherwise convey its unit;
- (M) any provisions which are for the express benefit of First Mortgagees, or insurers or guarantors of First Mortgages; or
- (ii) carry out any decision to terminate management of the professional management and assume self Association, when professional management has previously been required by any First Mortgagee or any insurer or guarantor of a First Mortgage;
- (c) unless it has obtained the consent, as provided in Section 19.3 below, of at least 51% of the First Mortgagees of Units (based upon one vote for each First Mortgage owned):
- (i) restore or repair the Project, or any portion thereof, including but not limited to Improvements located thereon, after a partial condemnation or damage due to an insurable hazard, other than substantially in accordance with this Declaration and the most recent plans and specifications for the Project and the construction of Improvements thereon; or
- (ii) terminate the legal status of the Project after substantial destruction or a substantial taking in condemnation of the Project.

### 19.2 Notice of Action.

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- (a) A First Mortgagee or insurer or guarantor of a First Mortgage shall be entitled to timely written notice of:
- (i) any condemnation loss or casualty loss that affects a material portion of the Project or any Unit subject to a First Mortgage held, insured, or guaranteed by such First Mortgagee, insurer, or guaranter of a First Mortgage;
- (ii) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (iii) any proposed action that would require the consent of a specified percentage of First Mortgagees as provided in this Article 19 or elsewhere in this Declaration.
- (b) Upon written request therefor, a First Mortgagee or insurer or guarantor of a First Mortgage shall be entitled to timely written notice of any delinquency in the payment of assessments or charges owed to the Association by the Owner of the Unit subject to a First Mortgage held, insured, or guaranteed by such First Mortgagee, insurer, or guarantor, or any default by such in any obligation under the Declaration, Articles of Incorporation, or the Bylaws, and the Board of Directors has actual knowledge of such default when such delinquency and/or default remains uncured for a period of 60 days.
- 19.3 <u>First Mortgagee Approval Deemed Obtained</u>. Unless within 30 days after the mailing of a written request for approval to a First Mortgagee by prepaid certified mail, return receipt requested, a First Mortgagee, or insurer or guarantor of a First Mortgage notifies the Association of its disapproval of any of the matters requiring their approval as provided herein, the approval of such First Mortgagee or insurer or guarantor of a First Mortgage shall be deemed to have been given.
- 19.4 <u>Audit</u>. The Association shall provide an audited financial statement for the immediately preceding fiscal year, free of charge to the party so requesting, to any First Mortgagee of a Unit, or any insurer or guarantor of such a First Mortgage within a reasonable time after written request therefor made by any such First Mortgagee, insurer, or guarantor of such a First Mortgage.
- 19.5 <u>Association Books and Records</u>. The Association shall make available to Owners, First Mortgagees of Units, and insurers or guarantors of any such First Mortgage current copies of this Declaration, and the Articles of Incorporation, Bylaws, rules and regulations, books, records, and financial statements of the Association. The Association shall make available to prospective purchasers of Units current copies of this Declaration, and the Articles of Incorporation, Bylaws, rules and regulations, and the most recent annual audited financial statement of the Association. "Available" shall mean available for inspection, upon request, during normal weekday business hours or under other reasonable circumstances.
- 19.6 <u>Statement of Unpaid Assessments</u>. The Association shall provide to an Owner or its designee or to a holder of a security interest or its designee, upon written request delivered in accordance with the requirements of the Act, a statement setting forth the amount of unpaid assessments currently levied against such Owner's Unit. The statement shall be furnished within 14

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days of receipt of the request and shall be binding on the Association to the extent provided in the Act.

19.7 <u>Exercise of Rights</u>. No First Mortgagee, insurer, or guarantor of a First Mortgage shall be denied any of the rights granted in this Article 19 because of a failure to comply with the registration requirements of Section 20.5 hereof. It is the intent of this Declaration that the registration rights contained in Section 20.5 are voluntary.

## ARTICLE 20 MISCELLANEOUS

- 20.1 <u>Period of Planned Community Ownership</u>. The planned community ownership created by this Declaration and the Plat shall continue until this Declaration is terminated in any, manner provided in this Declaration.
- 20.2 <u>Supplement to Common Interest Ownership Act</u>. The provisions of this Declaration shall be in addition and supplemental to the Act, as it may be amended from time to time, and to all other applicable provisions of law.
- 20.3 <u>Conveyance of Units</u>. All Units, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way, and all other terms and provisions contained in this Declaration as it may be amended from time to time.
- 20.4 <u>Enforcement</u>. Enforcement of this Declaration, the Articles of Incorporation, or the Bylaws, as amended, shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any provision therein. The Association and any aggrieved Owner shall have the right to institute, maintain, and/or prosecute any such proceedings. In any such action, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto.
- 20.5 <u>Registration of Mailing Address</u>. Each Owner, First Mortgagee, insurer, and guarantor of a First Mortgage shall register its mailing address with the Association, and notices or demands intended to be served upon any Owner, First Mortgagee, insurer, or guarantor of a First Mortgage shall be delivered by messenger or sent by mail, postage prepaid, addressed in the name of such person or entity at such registered address.
- 20.6 <u>Non-Waiver</u>. Failure by the Declarant, the Association, any Owner, First Mortgagee, or other person or entity to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.
- 20.7 <u>Severability</u>. The provisions of this Declaration shall be deemed to be independent and severable, and the invalidation of any one or more of the provisions hereof, or any portion thereof, by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which other provisions shall remain in full force and effect.

- 20.8 <u>Number and Gender</u>. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.
- 20.9 <u>Captions</u>. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted herein only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of this Declaration or the intent of any provision hereof.
- 20.10 <u>Conflicts in Documents</u>. In case of any conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.
- 20.11 <u>Counterparts</u>. This Declaration, and any amendments hereto, may be executed in several counterparts, and all counterparts so executed shall constitute one document binding on all signatories thereof, notwithstanding that all signatories have not executed the original or the same counterpart. If any such document is executed in counterparts, those pages from the counterparts on which original signatures and/or certificates of notaries public appear may be attached to the original instrument for the recording thereof, provided that such recorded document shall also contain a certification of the Secretary of the Association that all counterparts, as executed, are identical.
- 20.12 <u>Special Declarant Rights</u>. If any right reserved herein by Declarant for the benefit of Declarant is a "development right" or a "special declarant right" as such terms are used in the Act, then such right shall expire (unless it expires earlier under any other provision of this Declaration) seven years from the date this Declaration is recorded and shall be deemed to affect the entire Project.

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IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand this 27th day of February, 2001.

HIGHLAND GREENS LLC, a Colorado limited liability company

By: Charles L. Biederman

STATE OF COLORADO )	
) ss.	
COUNTY OF Forf	
The above and foregoing Declaration	on for Highland Greens was subscribed and sworn to
before me this 20th day of March	, 2001, by Charles L. Biederman, as Manager of
Highland Greens 12 Colorado limited I	iability company.
WINTH-OLD AND	• • •

Notary Public

# EXHIBIT A

TO

# DECLARATION

**FOR** 

# HIGHLAND GREENS

# Description of Property

There is no property initially submitted to the terms of this Declaration.

## EXHIBIT B

TO

# DECLARATION

# **FOR**

## HIGHLAND GREENS

Description of Additional Property

Block 1 and Block 2, Highland Greens - Filing No. 1 Summit County, Colorado.

# **EXHIBIT C**

TO

# DECLARATION

FOR

# HIGHLAND GREENS

# **Description of Common Elements**

There are no Common Elements initially submitted to this Declaration.

#### EXHIBIT D

TO

### DECLARATION

#### FOR

#### HIGHLAND GREENS

## Initial Rules and Regulations

- 1. <u>Signs and Advertising</u>. Except as hereinafter provided, no signs, advertising, billboards, unsightly objects, or nuisances of any kind shall be placed, erected, or permitted to remain in or on any Unit, nor shall any sign(s) be permitted in or on the Common Elements without the prior written approval of the Association. Notwithstanding the foregoing, reasonable signs, advertising, or billboards used by Declarant in connection with its sale or rental of Units shall be permissible, provided that such use by the Declarant shall not interfere with the Owners' use and enjoyment of the Common Elements, their Units, or their ingress and egress to and from a public way to the common Elements or their Units.
- 2. <u>Commercial Vehicles</u>. No commercial vehicles, motor homes, or trucks shall be parked within the Project except while temporarily engaged in transport to or from a Unit. For the purposes of this Paragraph, a 3/4 ton or smaller vehicle, commonly known as a pickup truck, shall not be deemed to be a commercial vehicle or truck.
- Abandoned or Inoperable Vehicles. No "abandoned or inoperable automobiles or vehicles" of any kind, except as hereinafter provided, shall be stored or parked on any portion of the Project. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, boat, trailer, camper, house-trailer, self-contained motorized recreational vehicle, or other similar vehicle that has not been driven under its own propulsion for a period of one week or longer, or any vehicle that does not have an operable propulsion system installed therein. The foregoing restrictions shall not include otherwise permitted vehicles parked by owners while on vacation or during a period of illness. If the Association determines that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the abandoned or inoperable vehicle is not removed within 72 hours thereafter, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.
- 4. <u>Maintenance of Interiors</u>. Each Owner shall keep the interior of its Unit, including, without limitation, interior walls, windows, glass, ceilings, floors, and permanent fixtures and appurtenances thereto, in a clean, sanitary, and attractive condition and in a good state of repair.

- 5. <u>Maintenance of Porches</u>. Each Owner shall keep its porch, yard area, and other exterior portions of its Unit in a clean and sanitary condition, free from rubbish, refuse, and garbage. No owner shall use its porch, yard area, or other exterior portion of its Unit as a storage area.
- 6. <u>Household Pets</u>. No animals, livestock, poultry, or insects of any kind shall be raised, bred, kept, or boarded in or on the Project, except for household pets that remain inside the Unit in such number as will not cause a nuisance to other Owners or Units.