

(12)

*year 2000  
then extended  
for 10 years.*

Recorded 6-18-1980 At 10:57 AM  
Recpt. No. 100652 Mary Ann Collan - - Recorder

INDEXED

DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND LIEN  
OF BLUE HORIZONS TOWNHOMES

THIS DECLARATION, made on the date hereinafter set forth  
by B. JERRY SORHAGE, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in  
the County of Archuleta, State of Colorado, which is more parti-  
cularly described as:

Lot 3, Block 12  
Pagosa in the Pines

NOW THEREFORE, Declarant hereby declares that all of the  
properties described above shall be held, sold and conveyed subject  
to the following easements, restrictions, covenants, and conditions,  
which are for the purpose of protecting the value and desirability  
of, and which shall run with, the real property and be binding on  
all parties having any right, title or interest in the described  
properties or any part thereof, their heirs, successors and assigns,  
and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to  
BLUE HORIZONS TOWNHOUSES HOMEOWNERS ASSOCIATION, INC., its suc-  
cessors and assigns.

Section 2. "Owner" shall mean and refer to the record  
owner, whether one or more persons or entities, of a fee simple  
title to any Lot and the improvement thereon which is a part of  
the Properties, and an undivided interest in the common area appur-  
tenant thereto as set forth on Exhibit A attached hereto and made  
a part hereof by reference, including contract sellers, but ex-  
cluding those having such interest merely as security for the  
performance of an obligation.

Section 3. "Properties" shall mean and refer to that  
certain real property hereinbefore described, and such additions  
thereto as may hereafter be brought within the jurisdiction of  
the Association.

BOOK 174 PAGE 502

*Att to: Pat Colton will pick up  
or Margie Swearingen*

20107353 08/21/2001 11:20A RESCOV  
2 of 12 R 60.00 D 0.00 N 0.00 ARCHULETA COUNTY

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Owners as tenants in common for the common use and enjoyment of the owners. The Common Area to be owned by the owners as tenants in common at the time of the conveyance of the first lot is as described on the recorded plat of the properties or any amendment thereof. All water and sewer lines are part of the common area to the extent that they are 1) over, under or through Common Areas or 2) they serve any lot other than the lot over, under or through which they pass.

Be it resolved, by the requisite majority of the owners of the Blue Horizons Townhomes Homeowners Association, (or by Resolution of the Board of Directors of Blue Horizons Townhomes Homeowners Association, Inc.) that the following amendments to the Declaration of Covenants, Conditions, Restrictions and Lien of Blue Horizons Townhomes, Recorded August 19, 1980 at Reception 100652, shall be immediately effective:

(a.) Additionally, for the limited purpose of the duty of the Association to provide liability, fire and extended coverage for the Common Areas, "Common Area" or "Insurable Common Property" shall mean all portions of the Units, Lots, premises or individual Townhomes beginning with the outside surface of the interior drywall, flooring and ceiling, and extending outward.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded plat of the Properties, or any amendment thereof, with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to BLUE HORIZONS TOWNHOMES, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Unit" shall mean and refer to a Lot and the undivided interest in the Common Area appurtenant thereto.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

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

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

(c) the right of the Association as attorney-in-fact for all the Owners to dedicate or transfer all or any part

100652

BOOK 174 PAGE 573

20107353 08/21/2001 11:20A RESCOV  
3 of 12 R 60.00 D 0.00 N 0.00 ARCHULETA COUNTY

of the Common Area to any public agency, conditions as may agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded.

(d) the right of the Association to adopt, enforce, and amend reasonable rules and regulations governing the Common Area. No Owner and no Owner's Guest shall obstruct, damage or commit waste to any of the Common Area. No Owner and no Owner's Guest shall change, alter, repair or store anything in or on any of the Common Area without prior written consent of the Association. Each Owner may use the Common Area in accordance with the purpose for which they were intended without hindering or encroaching on the lawful rights of the other Owners.

(e) No animals, livestock, reptiles or birds shall be kept on any part of the Property except that domesticated dogs, cats and birds may be kept on the Property subject to all animal ordinances of Eaton Development and the County of Archuleta, Colorado, and subject to the rules and regulations promulgated by the Association in regard thereto, provided that they are not kept for commercial purposes. An Owner is responsible for any damages caused by his animal(s). No animal shall be allowed to remain tied or chained to any balconies, patios or other parts of the Lot, and any such animal(s) may be removed by the Association or its agent. Any animal let loose outside needs to be on a leash at all times.

(f) The Owner of each unit shall have an exclusive easement on the driveway leading to his garage for the use of such Owner and his Guests. No other Owner nor such other Owner's Guests shall have the right to park on such driveway or in any way block or interfere with the use of such driveway by the Owner having exclusive easement over it.

Section 2. Easements on the Owners' Property. There shall be an easement upon the Property of each and every owner which shall run with the land as follows:

100652

BOOK 174 PAGE 574

20107353 08/21/2001 11:20A RESCOV  
4 of 12 R 60.00 D 0.00 N 0.00 ARCHULETA COUNTY

(a) For the benefit of the Association or its successors for the purposes of enforcing the provisions of this Declaration including, but not limited to, Article VI thereof.

(b) For the maintenance of all utility lines including those for water, sewer, telephone, gas, and electricity to the extent such utility lines run across, over or under any Common Area or under, over or thorough any lot to the extent such lines serve other units, and for the installation, reading and maintenance of utility meters for other properties to the extent such meters are originally or subsequently placed on such property.

(c) For the purpose of landscaping, and installing pavement on the Property.

Section 3. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

BOOK 174 PAGE 505

20107353 08/21/2001 11:20R RESCOV  
5 of 12 R 50.00 D 0.00 N 0.00 ARCHULETA COUNTY

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on January 1, 1986.

ARTICLE IV

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

See Section 9 (1) 0.1

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area including snow removal. This purpose shall include, but not be limited to, providing the following forms of insurance in amounts to be determined by the Association:

- (1) liability insurance for Common Areas; (2) fire and extended coverage for 100% of the insurable common property; (3) fidelity insurance for the Board of Directors of the Association and (4) snow removal.

(a) Additionally, for the limited purpose of the duty of the Association to provide liability, fire, and extended coverage for the Common Areas, "Common Area" or Insurable Common Property" shall mean all portions of the Units, Lots, interior drywall, flooring and ceiling, and extending outward.

20107353 08/21/2001 11:20A RESCOV  
6 of 12 R 60.00 D 0.00 N 0.00 ARCHULETA COUNTY

Section 3. Annual Assessment.

- (a) The Board of Directors may fix the annual assessment.
- (b) The Association may require an Owner to deposit with the Association up to an amount equal to 25% of the amount of the estimated annual assessment which sum shall be held without interest by the Association as a reserve to be used for paying such Owner's monthly assessment and for working capital. Such advance payments shall not relieve the Owner from making the regular payment of monthly common assessments as the same come due. Upon the transfer of his Townhouse, the Owner shall be entitled to a credit from his assignee or sublessee for any unused portion thereof.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 120 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

20107353 08/21/2001 11:20R RESCOV  
7 of 12 R 80.00 D 0.00 N 0.00 ARCHULETA COUNTY

Section 7. Date of Commencement of Annual Assessments:

Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments:

Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 12 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any purchase money loan evidenced by a first mortgage of record (including deed of trust). The lien of such assessments shall be superior to any homestead exemption as is now or may hereafter be provided by Colorado or United States law. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead exemption as against said assessment lien. Sale or transfer of any Lot shall not affect the liens for said charges except that sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding

20107353 08/21/2001 11:20A RESCOV  
8 of 12 R 60.00 D 0.00 N 0.00 ARCHULETA COUNTY

in lieu thereof, including deed in lieu of foreclosure or cancellation or forfeiture of an executory land sales contract shall extinguish the lien of such charges as to payments which became due prior to such sale, transfer or cancellation or forfeiture of executory land sales contract. No sale or transfer or cancellation or forfeiture of executory land sales contract shall relieve such Lot from liability for any such charges thereafter becoming due or from the lien thereof. All such first mortgages shall have the right to examine the books of the Association and shall be notified by the Association in the event of any loss or taking of more than \$10,000 of the Common Elements of the properties or damage of \$1,000 or more to a lot or the improvements thereon covered by a mortgage or deed of trust purchased by any such of the mortgagees listed above.

ARTICLE V

ARCHITECTURAL CONTROL

~~No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall~~ any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI

MAINTENANCE

Section 1. Maintenance. The Owner of a Lot shall be responsible for the maintenance, repair, alteration and remodeling of the improvements thereon. The Owner shall not be responsible

100652

BOOK 174 PAGE 589





*Handwritten note:*  
K  
used to  
included  
of owner.

except through common expenses, for the repair or maintenance of water and sewer lines, pipes, conduits, or systems (hereinafter collectively referred to as "utilities") running over, under or through his Lot which serve one or more other Lots. Such responsibility for the maintenance, repair, alteration, and remodeling shall carry with it the obligation to replace any finishing or other materials removed with similar materials. An Owner shall maintain the improvements on his Lot including fixtures, doors, windows and electric, gas and telephone lines, wires and systems thereof, paint and trim, and roofing and siding materials and the improvements affixed thereto and such other items as may be required by the By-Laws or the Board of Directors. The Owner shall maintain, in a neat and clean condition, all decks and patios appurtenant to his Lot which are not Common Areas. All facilities and equipment installed within the Lot commencing at a point where the utilities enter the Lot shall be maintained by the Owner thereof. Any expenses incurred by an Owner under this paragraph shall be the sole expense of said Owner.

Section 2. Common Areas. The Association shall have the responsibility to maintain the Common Areas utilities except as provided. The Association shall also have the responsibility of snow removal.

Section 3. Insurance. Notwithstanding the amendments made to this Declaration, recorded on the \_\_\_\_\_ day of \_\_\_\_\_, 2001.

Insurance. Each owner of a lot in the Properties shall have the affirmative obligation to maintain the premises and improvements thereon in a condition which is structurally sound, habitable, and consistent in physical appearance with the other premises and improvements within the Properties. Each owner shall, at all times, have in effect a policy of hazard and casualty insurance with any insurance company selected by the owner which is licensed in Colorado, upon which the Association shall be named an additional insured. The policy shall insure the premises, improvements and fixtures to the extent of their current replacement cost (as determined by the Association from time to time) and containing a provision that the proceeds of any claim shall not be used for any purpose other than repair and replacement of the improvements without the

BOOK 174 PAGE 570

\*  
express written consent of the Association and 100% of the first mortgagees. The insurance policy shall contain a provision requiring the insurance company to notify the Association of any cancellation, modification, lapse or termination of coverage at least 20 days before such lapse or termination. The Association may (but is not required to) take such action as is necessary to maintain insurance coverage on the premises as provided herein in which event all costs of such action shall be added to and become part of the assessment to which such lot is subject and a personal obligation of the owner of such lot. The insurance referred to herein shall insure against fire, vandalism, malicious mischief, storm, act of God, and, if appropriate, flood. Duplicate originals of the policies obtained by the owners shall be provided to the Association.

Section 4. Enforcement. In the event an Owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

#### ARTICLE VII

#### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots as shown on the plat shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be

shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

#### ARTICLE VIII

##### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

100652

BOOK 174 PAGE 512

20107353 08/21/2001 11:20A RESCOV  
11 of 12 P 60.00 D 0.00 ARCHULETA COUNTY

20107353 08/21/2001 11:20A RESCOV  
12 of 12 R 60.00 D 0.00 N 0.00 ARCHULETA COUNTY

STAN 4728

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended or terminated by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners, and 100% of the entities holding first mortgages or deeds of trust on the Properties. (Any amendment must be recorded.) In the absence of such an amendment, neither the Association nor any of the owners may abandon, terminate, partition or subdivide the properties, any lot, the improvement on any lot, or any common elements.

Section 4. Annexation. Additional land area described as Lots 2 and 4 inclusive, Block 12, Pagosa in the Pines, a subdivision of the County of Archuleta, Colorado, may be annexed by the Declarant without the consent of members within 6 years of the date of this instrument.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 12 day of August, 1980.

*B Jerry Sorhage*

*Acknowledged before me this 12th day of August, 1980, by B. Jerry Sorhage.*

*[Signature]*  
Notary Public

*My commission expires 4/26/82*



100652

BOOK 174 PAGE 573

Done and duly recorded this \_\_\_\_\_ of \_\_\_\_\_, 2001, (by the members or the Board of Directors of) Blue Horizons Townhomes Homeowners Association, Inc.