

STATE OF COLORADO, COUNTY OF MESA  
RECORDED AT 4:10 O'CLOCK P.M.  
RECEPTION NO. 1199057. EARL J. HERR, RECORDER

AUG 3 1879

694  
BOOK 1212 PAGE 694

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS

OF

INNSBRUCK TOWNHOMES ASSOCIATION

THIS DECLARATION, made on the date hereinafter set forth  
by D. E. Lovato and John C. Kirkham, hereinafter referred to as "Declarants;"

W I T N E S S E T H :

WHEREAS, Declarants are the owners of certain property in  
the County of Mesa, State of Colorado, which is more particularly described  
as follows:

Beginning at a point 288.00 feet west of the Southeast  
Corner of Lot 4 of Capitol Hill Subdivision, Section 11,  
Township 1 South, Range 1 West of the Ute Meridian,  
City of Grand Junction; thence West 75.0 feet; thence  
North 330.0 feet to the north line of said Lot 4;  
thence East along said north line of Said Lot 4 a  
distance of 75.0 feet; thence South 330.0 feet to  
the point of beginning, together with an easement  
for road and utility purposes as recorded in Book  
1205, page 685, Mesa County records, except the South  
30.0 feet thereof for road right of way purposes.

WHEREAS, Declarants will convey the said properties, subject  
to certain protective covenants, conditions, restrictions, reservations,  
liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarants hereby declare that all of the  
properties described above shall be held, sold and conveyed subject to the  
following easements, restrictions, covenants and conditions, all of which  
are for the purpose of enhancing and protecting the value, desirability  
and attractiveness of the real property. These easements, covenants,  
restrictions and conditions shall run with the real property and shall be  
binding upon all parties having or acquiring any right, title or interest  
in the described properties or any part thereof, and shall inure to the  
benefit of each owner thereof.

ARTICLE I

Definitions

Section 1. "Association" shall mean and refer to Innsbruck Townhomes Association, its successors and assigns.

Section 2. "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.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association is described as follows:

Lot 13 in Innsbruck Townhomes together with easement for road and utility purposes as recorded in Book 1205, page 685, Mesa County records, being all of the above described property excepting Lots 1 through 12, both inclusive.

Section 4. "Lot" shall mean and refer to a building site, together with the improvements thereon, constituting an individual residence, title to which is or will be conveyed in fee simple by reference to the numbered lots of land shown upon any recorded Townhome Location Map of the properties, with the exception of the Common Area.

Section 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Properties, including contract buyers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Declarants" shall mean and refer to D. E. Lovato and John C. Kirkham, their successors and assigns.

ARTICLE II

Membership

Every Owner as defined in Article I, Section 6, under this Declaration 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 by the Association. Ownership of such Lot shall be the sole qualification for membership.

## ARTICLE III

Voting Rights

Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article II. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

## ARTICLE IV

Property Rights

Section 1. Owners' Easements for Enjoyment. Every Owner shall have a right and easement for enjoyment in and to the Common Area, including a perpetual easement for the right of ingress and egress for vehicular and pedestrian traffic to his Lot, 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, in accordance with its Article and By-Laws, to borrow money for the purpose of improving the Common Areas and facilities and in aid thereof to mortgage said property; provided, however, that the rights of any mortgagee shall be subject to the rights of the Owners of the Association while any mortgage is current and not in default, and further, provided that no funds may be borrowed nor shall any mortgage be given unless an instrument signed by two-thirds (2/3) of the Members agreeing to such action has been recorded.

B. The right of the Association to suspend the voting rights and right to use of the recreational facilities, if any, by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations.

C. The right of the Association to dedicate or transfer all or any part of the Common Area, subject to ingress and egress

requirements of Article X (e), to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners and by persons holding mortgages on any portion of the subject property. No such dedication or transfer shall be effective unless an instrument signed by Owners entitled to cast two-thirds (2/3) of the votes has been recorded, agreeing to such dedication or transfer and unless written notice of the proposed action is sent to every Owner not less than thirty (30) days or more than sixty (60) days in advance.

Section 2. 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 contact purchasers who reside on the property.

Section 3. Title to the Common Area. The Declarants will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens.

#### ARTICLE V.

##### Carports, Storage Areas and Paving of Certain Portion of the Common Areas

Prior to the sale of the first Lot, Declarants shall, at their expense, erect on the Common Area a covered carport, one enclosed storage area and one open parking space for each Lot contained within the Properties and shall pave that portion of the Common Area to be devoted to these purposes. The Association shall designate one carport, one storage area and one open parking space to be granted to each Lot Owner for his sole and exclusive use.

#### ARTICLE VI

##### Easement

Declarants have obtained an easement for road and utility purposes over and across the South 24 feet of the real property adjoining the Properties on the North, which easement is recorded in Book 1205, page 685, Mesa County records, which easements provides that it shall be

for the joint use of the owners of the Properties included within this Declaration as well as the property adjoining same to the North and shall be jointly maintained by all users and shall be for private use only excepting that fire fighting equipment and emergency vehicles shall be permitted.

#### ARTICLE VII

##### Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarants for each Lot owned within the Properties hereby covenant, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, 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 fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, 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 such interests, 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. The personal obligation shall not pass to his successor in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association through its Board of Directors shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Properties, including but not limited to the following:

- A. The maintenance of the Common Area, including but not limited to, the maintenance of the carports, storage areas and paving described in Article V above and the maintenance of the easement described in Article VI above.

B. To provide adequate insurance of any and all types and amounts deemed necessary by the Board of Directors with respect to the Common Area.

C. To the payment of monthly city water, sewer and trash costs for all Lots located upon the Properties, for the accumulation of cash reserves for all exterior maintenance of the improvements on all Lots, including but not limited to, painting, replacement and maintenance of roofs, gutters, downspouts, exterior siding, trim and glass.

D. The maintenance of all present or proposed utility lines and systems located upon the Common Area.

E. For the payment of any maintenance or improvement obligations which may be incurred by virtue of any agreements with the City of Grand Junction or other governmental authorities having jurisdiction of the properties.

F. Any portion of any utility system, including air conditioners, located within the Lot shall be maintained, replaced and repaired by the Lot Owner and the same shall not be the responsibility of the Association.

Section 3. Basis and Payment of Annual Assessments.

A. The annual assessments with respect to each Lot shall be estimated by the Board of Directors prior to the conveyance of the first Lot and shall be payable in equal monthly, quarterly or other periodic installments as provided by the Board of Directors; provided, however, that until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Three Hundred Dollars (\$300.00) per Lot. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the annual assessment shall be fixed by the Board of Directors within thirty (30) days.

B. Installment payments of annual assessments shall be payable on or before the 10th day following each installment period.

but shall be and become a lien as of the date of the annual assessment as hereinafter provided. Written notice of the annual assessment shall be sent to every Owner immediately following the assessment date.

The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 5. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. Any such special assessment shall be payable in equal installments together with the regular assessment installment over such a period of time as the Board of Directors may deem in the best interest of the Owners.

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

Section 7. Effect of Nonpayment of Assessments - Remedies of the Association. Any assessment installment which is not paid when due shall be delinquent. If the assessment installment is not paid within thirty (30) days after the due date, the assessment installment shall bear interest from the date of delinquency at the rate of Ten (10) per cent per annum, and the Association may bring an action at law against the

Owner personally obligated to pay the same and/or foreclosure the lien against the property; and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment installment. The lien of the Association may be foreclosed in the same manner as a statutory mortgage foreclosure under the Statutes of the State of Colorado. 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 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot as a result of court foreclosure of a mortgage, foreclosure through the Public Trustee, or any proceeding in lieu of foreclosure, shall extinguish the lien of such assessments as to payment thereof which became due prior to such sale or transfer, but shall not relieve any former Owner of personal liability therefor. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 9. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- A. All Properties dedicated to an accepted by a local public authority.
- B. The Common Area.

#### ARTICLE VIII

##### Party Walls

Section 1. Party Wall Easements. Mutual reciprocal easements are hereby established, declared and granted for all party walls between improvements constructed or to be constructed on Lots, which reciprocal easements shall be for mutual support and shall be governed by this Declaration and more particularly the succeeding Sections of this



Article. Every deed, whether or not expressly so stating, shall be deemed to convey and to be subject to such reciprocal easements.

Section 2. 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 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 of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 3. 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 4. 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 Owner thereafter make use of the wall, he shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act caused the party wall to be exposed to the element shall bear the whole cost of furnishing the necessary protection against such elements.

Section 6. Right of 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 7. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, the Association, acting through its Board of Directors, shall arbitrate such dispute. Three directors appointed by the President, none of whom shall

be a party to the dispute, shall act as a Board of Arbitration, and the decision shall be by a majority vote of the Board of Arbitration after an arbitration proceeding. No legal action with respect to a party wall dispute shall be commenced or maintained unless and until the provisions of the arbitrators have been met. The appointment of arbitrators hereunder shall be made within twenty (20) days after notice by one party to the other party that a dispute exists.

ARTICLE IX

Architectual 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 alternation therein (including change of exterior colors) 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 a 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 control 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 X

Use Restrictions

A. The use of the Common Area shall be subject to the restrictions set forth in Article IV, Section 1, and to those restrictions hereinafter set forth.

B. No use shall be made of the Common Area which will in any manner violate the statutes, rules or regulations of any governmental authority having jurisdiction over the Common Area.

C. No Owner shall place any structure whatsoever upon the Common Area, nor shall any Owner engage in any activity which will temporarily or permanently deny free access to any part of the Common Area to all Members.

D. The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

E. No use shall ever be made of the Common Area which will deny ingress and egress to those Owners having access to lots only over Common Area, and the right of ingress and egress to said Lots by vehicle and otherwise is hereby expressly granted.

F. The Properties are hereby restricted to residential dwellings for residential use and uses related to the convenience and enjoyment of such residential use. All buildings or structures erected upon the Properties shall be of new construction and no buildings or structure shall be moved from other locations onto said premises. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any portion of the premises at any time as a residence either temporarily or permanently.

G. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose.

H. No advertising sign (except one of not more than five square feet "For Rent" or "For Sale" sign per parcel), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the premises, nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the owner of any Lot or any resident thereof. Further, no business activities of any kind whatever shall be conducted in any building or in in any portion of the property. Provided, further, however, the foregoing covenants shall not apply to the business activities, signs and

billboards, or the construction and maintenance building, if any, of the Declarants, their agents and assigns during the construction and sale period, and of the Association, its successors and assigns, in furtherance of its powers and purposes as hereinafter set forth.

I. All clotheslines, equipment, garbage cans, service yards, wood piles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring lots and streets. All rubbish, trash, or garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon. All clotheslines shall be confined to patio areas.

J. Except in the individual patio areas, no planting or gardening shall be done, and no fences, hedges, walls, balconies or additions shall be erected or maintained upon said premises, except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Board of Directors or their designated representatives. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all Owners of Lots and is necessary for the protection of said Owners.

K. The Association, or its duly delegated representative, shall maintain and otherwise manage all property up to the exterior building lines and patio enclosures, including, but not limited to, the landscaping, parking areas, streets and recreational facilities, and shall maintain and otherwise manage and be responsible for the rubbish removal from all areas within the above-described property.

L. No boat, camper, trailer, snowmobile or similar vehicle shall be parked upon any part of the individual premises or the Common Area for a period exceeding forty-eight (48) hours. The Association shall have the right and power to enforce this restriction by having offending vehicles towed away or impounded at the owner's expense.

ARTICLE XIOther Easements

The easements over and across the Common Area shall be those shown or provided for upon the recorded Innsbruck Townhomes Location Map and such other easements as may be established pursuant to the provisions of the Declaration of Covenants, Conditions and Restrictions.

ARTICLE XIIEncroachments

Each Lot and the Common Area shall be subject to an easement for encroachment of Townhomes onto adjoining Lots or the Common Area or encroachment of the Common Area onto any Lot; overhangs, as designed or constructed, by the Declarants; and for any encroachments occurring thereafter as a result of settling or shifting of any structure. A valid easement shall exist for said encroachments and overhangs and for their maintenance, repair and replacement. If any Townhome is partially or totally destroyed, and then rebuilt, the Owners of Lots agree that minor encroachments of parts of construction onto adjacent Lots or the Common Area due to the reconstruction shall be permitted and that a valid easement for such overhangs and encroachments and the maintenance thereof shall exist.

ARTICLE XIIIAnnexation

The following described real property, to-wit:

Beginning at a point 175 feet West of the Southeast Corner of Lot 4 of Capitol Hill Subdivision, thence West 113 feet, thence North 330 feet, more or less, to the North line of said Lot 4, thence East 88 feet, thence South 170 feet, thence East 25 feet, thence South 160 feet, more or less, to the point of beginning.

may be annexed by Declarants or either of them at any time prior to August 2, 1986. Such annexation shall occur when Declarants, or either of them, record a Certificate of Annexation, describing such real property, and on the date of recording of said Certificate said

real property shall be deemed a part of the Innsbruck Townhomes as defined herein, and shall be subject to all of the terms and conditions of this Declaration. Property in addition to the above-described property may be annexed upon the consent of the majority of the Members and lien holders.

ARTICLE XIV

Right of First Refusal

The Association and any Member or group of Members shall have the right of first refusal in the event that any Owner desires to sell his Lot. Any Owner shall communicate to the Association any bona fide offer to purchase his Lot which he is willing to accept. The Association shall within three (3) days following receipt thereof, communicate the same to all other Owners within ten (10) days thereafter. Any Owner, group of Owners, or the Association itself, shall have the right to purchase said Lot upon the same terms and conditions which the selling Owner is willing to sell. An individual Owner or group of Owners shall have preference over the right of the Association to purchase any Lot, and the first Owner or group thereof to communicate the desire to purchase shall be entitled to make the purchase. All Owners shall communicate their wishes to the Association which shall, in turn, notify the selling Owner. The failure of the Association to notify the selling Owner of a Member's, group of Members', or the Association's desire to exercise the right of first refusal within fifteen (15) days after the selling Owner has given notice to the Association of the proposed sale as hereinabove provided, shall be deemed conclusive evidence that the right of first refusal herein granted has not been exercised. The Association shall, at the request of any selling Owner, execute a document certifying the fact that the right of first refusal has not been exercised following such fifteen (15) day period and such certificate shall be binding on all concerned.

ARTICLE VIGeneral Provisions

Section 1. Enforcement. The Association, or any other 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.

Section 2. Membership Succession. Any person, firm, corporation, or other entity which shall succeed to the title of any Owner through foreclosure of a Deed of Trust or other type of security instrument or through other legal proceedings, shall upon issuance of the official deed to any Lot, become thereupon a member of the Association as Owner and shall succeed to the rights, duties and liabilities of the previous Owner as herein provided. Conveyance by such person, firm, corporation or other entity shall pass membership in the Association to the Buyer as herein provided.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (90) per cent of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75) per cent of the Lot Owners.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise effect any other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, being the Declarants herein, have hereunto set their hands and seals, this 2<sup>ND</sup> day of AUGUST, 1979

D. E. Lovato  
D. E. Lovato

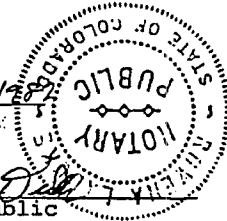
John C. Kirkham  
John C. Kirkham

STATE OF COLORADO     )  
                                  ) ss  
COUNTY OF MESA        )

The foregoing Declaration of Covenants, Conditions and Restrictions was acknowledged before me this 2<sup>ND</sup> day of AUGUST, 1979, by D. E. Lovato and John C. Kirkham.

Witness my hand and official seal

My commission expires: DECEMBER 14, 1980



Raymond LaDelle  
Notary Public

Ratification of the above Declaration is hereby given

MESA UNITED BANK OF GRAND JUNCTION

Dennis Simon



STATE OF COLORADO, COUNTY OF MESA  
RECORDED AT 2:04 P.M. OCT 10 1980  
RECEPTION NO. 1236970 EARL WEA, RECORDER

CORRECTION TO THE  
DECLARATION OF COVENANTS,  
CONDITIONS & RESTRICTIONS

of

Innsbruck Townhomes Association

In reference to Page 4 & 5, regarding Article VI  
"Easement", and as recorded in reception # 1199057, Book 1212, Page  
697 and Page 698, the following correction is made from that  
certain "Quit Claim" correction deed as recorded in Book 1279  
at Page 718 dated 10/8/80.

Article VI, "Easement" shall read:

ARTICLE VI

Easement

Declarants have obtained an easement for road and  
utility purposes over and across the West 24 feet of the real  
property adjoining the Properties on the East, which easement  
is recorded in Book 1205, Page 685, Mesa County records, which  
easements provides that it shall be for the joint use of the  
owners of the Properties included within this Declaration  
as well as the property adjoining same to the East and shall  
be jointly maintained by all users and shall be for private  
use only excepting that fire fighting equipment and emergency  
vehilcles shall be permitted.

INNSBRUCK HOMEOWNERS ASSOCIATION

by Pat Knight  
President