

ARTICLES OF INCORPORATION  
OF  
THE HIGHLANDS AT BRECKENRIDGE PROPERTY OWNERS'  
ASSOCIATION, INC.

The undersigned adult natural person, acting as incorporator, hereby establishes a nonprofit corporation pursuant to the Colorado Nonprofit Corporation Act and adopts the following articles of incorporation:

ARTICLE I  
NAME

The name of the corporation is The Highlands at Breckenridge Property Owners' Association, Inc.

ARTICLE II  
DURATION

The corporation shall have perpetual existence.

ARTICLE III  
REGISTERED OFFICE AND AGENT

The address of the initial registered office of the corporation is 100 South Main Street, P.O. Box 7, Breckenridge, Colorado 80424. The name of its initial registered agent at such address is Kenneth M. Adams.

ARTICLE IV  
DEFINITIONS

Any capitalized terms used in these Articles that are not defined in these Articles shall have the meanings given to them in the Declaration of Land Use Restrictions for The Highlands at Breckenridge Subdivision, recorded September 15, 1994, at Reception No. 476057 in the real property records of Summit County, Colorado (the "Declaration").

ARTICLE V  
MEMBERSHIP AND VOTING

5.01 Membership.

(a) There shall be one Membership appurtenant to each Lot. A Membership may not be separated from the ownership of the Lot to which it is appurtenant.

(b) Any Membership appurtenant to a Lot having more than one Owner shall be shared by such Owners, and each such Owner shall be a member of the Association.

(c) An Owner shall not sell, assign, transfer, convey, pledge or encumber the Owner's Membership in any way, except upon the sale or encumbrance of the Lot to which the Membership is appurtenant, and then only to the Purchaser or Mortgagee of a Lot. A transfer of ownership of a Lot may be made by deed, intestate succession, testamentary disposition, foreclosure of a deed of trust or mortgage of record or such other legal process as is now effective or may hereafter become effective under the laws of the State of Colorado. Any attempt to transfer a Membership in a manner other than those permitted by this paragraph 5.01(c) shall be null and void.

#### 5.02 Voting.

(a) The Owner of each Lot to which a Membership is appurtenant shall be entitled to one vote, except that the Association shall have no voting rights with respect to any Lot owned by it during the period of its ownership of such Lot.

(b) If a Lot to which a Membership is appurtenant is owned by more than one Person, such Owners shall be entitled to cast one collective vote; fractional voting shall not be allowed. If such Owners cannot agree as to how to cast their vote when they are required to cast their vote on a particular matter, they shall lose their right to vote on such matter. If any Owner casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that the Owner was acting with the authority and consent of all Owners with whom such Owner shares the Membership, unless objection thereto is made to the chairperson of the meeting at the time the vote is cast. If more than one vote is cast for any particular Membership, none of such votes shall be counted and all of such votes shall be deemed null and void.

(c) In any election of Directors to the Board of Directors, the Owner (or group of Owners) of each Lot to which a Membership is appurtenant shall have a number of votes equal to the number of Directors to be elected. Cumulative voting shall not be allowed in the election of Directors or for any other purpose.

**ARTICLE VI**  
**PURPOSES AND POWERS**

6.01 Purposes.

The Association's purposes are as follows:

(a) to manage, operate, construct, improve and maintain the Common Elements, as necessary or appropriate;

(b) to administer and enforce the covenants, conditions, restrictions, reservations and easements created by the Declaration;

(c) to levy, collect and enforce the assessments, liens, charges and penalties imposed pursuant to the Declaration;

(d) to create, manage and otherwise provide recreational and social activities for Owners and residents of The Highlands and their guests;

(e) to appoint a Design Review Board with the goal of ensuring that all improvements within The Highlands are constructed in accordance with design guidelines adopted by such Design Review Board;

(f) to take any action necessary or appropriate to protect the general welfare and safety of Owners and residents of The Highlands and their guests; and

(g) to regulate and manage The Highlands with the goal of enhancing and protecting its value.

6.02 Powers.

Unless expressly prohibited by law or any of the Association Documents, the Association may take any and all actions that it deems necessary or advisable to fulfill its purposes. Without in any way limiting the foregoing, the Association may:

(a) adopt and amend the Bylaws and the Rules and Regulations;

(b) adopt and amend budgets for revenues, expenditures and reserves and collect assessments levied by the Association;

(c) hire and fire managing agents and other employees, agents and contractors;

(d) institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting The Highlands;

(e) make contracts and incur liabilities;

(f) regulate the use, maintenance, repair, replacement and modification of the Common Elements;

(g) cause additional improvements to be made part of the Common Elements;

(h) acquire, hold, encumber and convey in its own name any right, title or interest in real or personal property;

(i) grant easements, leases, licenses and concessions across, through, under or over the Common Elements;

(j) impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements;

(k) impose charges for late payments of assessments, recover reasonable attorneys' fees and disbursements and other costs of collection for assessments and other actions to enforce the rights of the Association, regardless of whether suit was initiated, and, after notice and an opportunity to be heard, levy reasonable fines and impose reasonable penalties for violations of Association Documents or any of them;

(l) impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid assessments;

(m) provide for the indemnification of the Association's officers and Directors and maintain Directors' and officers' liability insurance;

(n) assign its right to future income, including its right to receive assessments;

(o) provide or procure any services necessary for the safety or security of the Property, Owners, guests or visitors;

(p) approve, install, maintain, repair and replace signage;

(q) provide or procure landscaping services within The Highlands;

(r) plan, arrange and hold recreational activities for the benefit of Owners, residents and their guests;

(s) become a member of another property owners' association or other similar associations;

(t) exercise any other powers expressly or implicitly conferred to it by the Association Documents;

(u) exercise all other powers that may be exercised in Colorado by nonprofit corporations; and

(v) exercise any other powers necessary and proper for the governance and operation of the Association.

#### 6.03 Restrictions on Purposes and Powers.

The purposes and powers of the Association described in Sections 6.01 and 6.02 above are subject to the following limitations:

(a) The Association shall be organized and operated exclusively for nonprofit purposes as set forth in Section 528 of the Internal Revenue Code of 1986, as amended, or in any corresponding provision of any future law of the United States of America providing for exemption of similar organizations from income taxation.

(b) No part of the net earnings of the Association shall inure to the benefit of any Owner, except as expressly permitted in paragraph 6.03(c) below with respect to the dissolution of the Association.

(c) The Association shall not pay any dividends. No distribution of the Association's assets to Owners shall be made until all of the Association's debts are paid, and then only upon the final dissolution of the Association as permitted in the Declaration. Upon payment of all of the Association's debts and final dissolution, any remaining assets of the Association shall be distributed among the Owners in accordance with the terms and conditions of Section 38-33.3-218(10) of the Colorado Common Interest Ownership Act.

**ARTICLE VII**  
**BOARD OF DIRECTORS**

**7.01 Board of Directors.**

(a) The business and affairs of the Association shall be controlled, conducted and managed by the Board of Directors, except as otherwise provided in the Colorado Nonprofit Corporation Act, the Declaration, these Articles or the Bylaws.

(b) Except as provided by law or in the Declaration, these Articles or the Bylaws, the Board of Directors may act on behalf of the Association in all instances. The Board of Directors may not however, act on behalf of the Association to (i) amend the Declaration; (ii) terminate the legal status of The Highlands; (iii) elect Directors, other than to fill a vacancy for the unexpired portion of the term of a Director; or (iv) determine the qualifications, powers and duties, or terms of office, of Directors.

(c) The Board of Directors shall consist of not less than three nor more than five Directors. Four Directors shall constitute the initial Board of Directors. Their names and addresses are as follows:

<u>Name</u>	<u>Address</u>
Kenneth M. Adams	100 South Main Street Breckenridge, Colorado 80424
Nick J. Hackstock	1401 17th Street, Suite 750 Denver, Colorado 80202
Jon A. Brownson	100 South Main Street Breckenridge, Colorado 80424
Randall L. Harkness	100 South Main Street Breckenridge, Colorado 80424

**7.02 Declarant Control Period.**

(a) Declarant shall have the exclusive right to appoint and remove all of the members of the Board of Directors of the Association during that portion of the Declarant Control Period (as such term is defined in paragraph (b) below) commencing on the date on which Declarant forms the

Association and ending on the date on which 95 percent of the Property and the Expansion Property has been sold to a Person or Persons other than Declarant.

(b) Subject to the terms and conditions of paragraphs 7.02(a) above and 7.02(c) below, but notwithstanding anything else to the contrary contained in these Articles or in any other Association Document, Declarant shall have the exclusive right to appoint and remove two-thirds (rounded upward to the nearest whole director) of the members of the Board of Directors of the Association during the Declarant Control Period. The term "Declarant Control Period" means the period commencing on the date on which Declarant forms the Association and ending on the date on which Declarant no longer owns any Lot or Tract.

(c) Declarant may voluntarily surrender its right to appoint and remove Directors, or any of them, prior to the expiration of the Declarant Control Period, by giving written notice to Association that Declarant relinquishes its right to appoint all Directors or any Director, which notice shall be accompanied by the written resignation of those Directors or that Director. In the event Declarant so relinquishes its right with respect to a Director or all Directors, Declarant may require, for the remainder of the Declarant Control Period, that specific actions of the Association or the Board of Directors, as described in a recorded instrument executed by Declarant, be approved by the Declarant before they become effective.

(d) All members of the Board of Directors not appointed by Declarant pursuant to its rights under this Article VII shall be elected by the Owners at their annual meeting, in accordance with the Bylaws.

(e) Not later than thirty days after the expiration of the Declarant Control Period, the Owners shall elect a Board of Directors of at least three Directors.

#### **ARTICLE VIII** **LIABILITY AND INDEMNIFICATION**

##### **8.01 Limits on Directors' Liability.**

To the fullest extent permitted by the Colorado Nonprofit Corporation Act, as the same exists or may hereafter be amended, a Director, officer, employee, agent or committee member of the Association shall not be liable to the Association or the Owners for monetary damages for breach of fiduciary duty or for any injury, damage, loss, cost or

expense suffered or incurred by reason of any act or omission of such Director, officer, employee, agent or committee member unless a court of competent jurisdiction finds that the act or omission of such Director was wanton and willful. Any repeal or modification of this Section 8.01 shall be prospective only and shall not adversely affect any right or protection of a Director existing at the time of such repeal or modification.

#### 8.02 Indemnification.

To the fullest extent permitted by the Colorado Nonprofit Corporation Act, as the same exists or may hereafter be amended, the Association shall indemnify each present or former Director and each officer, employee, agent or committee member of the Association; provided, however, that in no event shall the Association indemnify or hold harmless any such Director, officer, employee, agent or committee member to the extent that he or she is personally liable for an act or omission under Section 8.01 above.

### ARTICLE IX BYLAWS

The initial Bylaws of the Association shall be as adopted by the Board of Directors. The Board of Directors shall have the power to alter, amend or repeal the Bylaws from time to time in force and adopt new Bylaws. The Bylaws of the Association may contain any provisions for the regulation or management of the affairs of the Association that are not inconsistent with applicable law, the Declaration or these Articles. However, no Bylaw at any time in effect, and no amendment to these Articles, shall have the effect of giving any Director or officer of the Association any proprietary interest in the Association's property or assets, whether during the term of the Association's existence or as an incident to its dissolution.

### ARTICLE X AMENDMENT

The Association reserves the right to amend, alter, change or repeal any provision contained in these Articles by, unless a higher voting requirement is set forth herein with respect to any particular provisions, the vote of the holders of at least 67 percent of the votes of all members present in person or by proxy at any regular or special meeting called for that purpose at which a quorum shall be represented, or the written consent of the holders of at least 67 percent of the votes to which all members are entitled.

**ARTICLE XI**  
**INCORPORATOR**

The name and address of the incorporator is:

Name: Lisa Anne Hawkins  
Address: 1700 Lincoln, Suite 4100  
Denver, Colorado 80203

Dated: August \_\_, 1994

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Incorporator