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STATE OF COLORADO } ss
COUNTY OF SUMMIT }
I hereby certify that this instrument was
filed for record in my office at 11:13
o'clock P M 4/18 2002
Reception No. 681899
CHERI BRUNVAND
COUNTY CLERK AND RECORDER
By Quemellia Tukes Deputy
Quemellia Tukes



Cheri Brunvand-Summit County Recorder 4/18/2002 16:13 DF:



DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
VISTA POINT

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS, of
VISTA POINT, Summit County, Colorado, ("Declaration") is made this 17 day of April, 2002 by WSG
Breckenridge, LP, a Delaware limited partnership ("Declarant").

RECITALS

A. Declarant is the owner of certain real property located in Summit County, Colorado, more particularly
described as:

VISTA POINT SUBDIVISION, AMENDED FILING NO. 1, a resubdivision of Parcel 1
and Parcel 3, Vista Point Subdivision, Amended Filing No. 1, Town of Breckenridge,
County of Summit, State of Colorado, filed at Reception No. 681897 on
April 18, 2002 in the Summit County records.

B. Declarant desires to create a common interest community pursuant to the Colorado Common Interest
Ownership Act as set forth in Colorado Revised Statutes 38-33.3-101 et. seq. ("Act") on the Community, the name of
which is Vista Point.

C. Declarant also desires to protect and maintain the Community as a prime mountain residential area of high
quality and value to enhance and protect its desirability and attractiveness.

D. Declarant further desires to provide for the operation and maintenance of the Common Elements (as
defined below) and other related facilities serving the Community.

E. Declarant has deemed it necessary and desirable, for the welfare of the residents of Vista Point and the
preservation of the Community, to subject the Community to the covenants, restrictions, easements, charges,
assessments, and liens set forth below, which shall be burdens and benefits to the Declarant and the other Lot Owners (as
defined below) and their respective successors, heirs, executors, administrators, devisees, grantees, or assigns.

F. Declarant hereby desires to create certain agencies and to delegate and assign to said agencies the power
and duties of maintaining and administering the Common Elements, and administering and enforcing the covenants and
restrictions, and collecting and disbursing the assessments and charges created under this Declaration.

ARTICLE 1
DECLARATION AND SUBMISSION

Declarant hereby submits the Community to the provisions of the Act and declares that the Community shall be
held, sold, and conveyed subject to the following covenants, restrictions, and easements, which are for the purpose of
protecting the value and desirability of the Community, and which shall run with the land and be binding on all parties
and heirs, successors, and assigns of parties having any right, title, or interest in all or any part of the Community.

ARTICLE II
NAME, DESCRIPTION, LOT DESCRIPTION AND IDENTIFICATION

Section 2.1. Name. The name of the project is Vista Point, a Planned Common Interest Community
pursuant to the Act.

Section 2.2. **Description.** The entire Community is situated in the **County** of Summit, State of Colorado, and is located on the Community.

Section 2.3. **Association.** The name of the association is Vista Point **Owners'** Association. **Declarant** has caused the Association to be incorporated **under** the laws of the State of Colorado **as** a nonprofit corporation with the purpose of exercising the **functions as** herein set forth.

Section 2.4. **Identification of Lots.** The boundaries of each Lot are shown on the subdivision plat depicting the Community, recorded in the real property records of the Summit County Clerk and Recorder and such amended, additional, or supplemental plats or maps **as** may be filed for the Community ("Plat").

ARTICLE III DEFINITIONS

Section 3.1. **Definitions.** The following words when used in this Declaration, unless inconsistent with the context of this Declaration, shall have the following meanings:

A. **Act** means the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., Colorado Revised Statutes, as it may be amended **from** time to time.

B. **"Allocated Interests"** means the Common Expense liability and votes in the Association allocated to **Lots** in the Community. The Allocated Interests are described in Article **XVIII** of this Declaration.

C. **"Articles"** means the Articles of **Incorporation** for Vista Point Owners' Association which are on file with the Colorado **Secretary of State**, and any amendments which may be made to those Articles **from** time to time.

D. **"Assessments"** means the Annual, Special, and Default Assessments levied pursuant to Article IX of **this** Declaration. Assessments are further defined **as** a Common Expense Liability **as** defined under the Act.

E. **"Association"** means the Vista Point Owners' Association, a Colorado non-profit corporation. It is hereby **designated as the** Association of Lot Owners pursuant to C.R.S. §38-33.3-301.

F. **"Association Documents"** means this Declaration, the Articles of Incorporation, and the Bylaws of the Association, and any procedures, rules, regulations, or policies adopted under such documents by **the** Association.

G. **"Board of Directors"** means the governing **body** of the Association elected to perform the obligations of the Association relative to the operation, maintenance, and management of the Community and all improvements on the Community.

H. **"Bylaws"** means the Bylaws adopted by the Association, as amended **from** time to time.

I. **"Common Elements"** means all the real property and improvements thereon, if any, in which the Association owns an interest for the common use and enjoyment of all of **the** Owners on a nonexclusive basis. Such interest may include, without limitation, estates in fee, for terms of years, or easements.

J. **"Common Expense"** means (i) all expenses expressly declared to be common expenses by this Declaration, or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, **maintaining**, repairing, or replacing the Common Element.; (iii) all expenses of maintaining, repairing, or replacing the driveway and utility improvements benefiting more than one Lot Owner located within any private **access** and **utility easements(s)** shown on the Plat; (iv) insurance premiums for the insurance carried under Article VIII; and (v) all expenses lawfully determined to be common expenses by the Board of Directors of the Association.

K. **"Community"** means ~~the~~ Common Interest Community Property described in this Declaration with respect to which a Lot Owner, by virtue of his ownership of a Lot, is obligated to pay for real estate taxes insurance premiums, maintenance, or improvement of other real estate described in this Declaration.

L. **"Declarant"** means WSG Breckenridge, LP, a Delaware limited partnership, and its successors and assigns, as defined in C.R.S. §38-33.3-103(12).

M. **"Declaration"** means and refers to this Declaration of Covenants, Conditions, Restrictions, and Easements of Vista Point, a Planned Common Interest Community, including any amendments.

N. **"Dead Restricted Lot"** means those lots referred to in Exhibit B and any Lots so designated in any supplement to this Declaration for **future** phases of Vista Point .

O. **"Default Assessment"** means Assessments levied by the Association pursuant to Section 9.8 of Article IX of this Declaration.

P. **"Development Rights"** means the rights reserved by the Declarant under Article XVII of this Declaration.

Q. **"Director"** means a member of the Board of Directors.

R. **"Documents"** means this Declaration and the Plat recorded and filed **pursuant** to the provisions of the Act, the Articles of **Incorporation** of the Association, the Bylaws and the Rules as they may be amended from time to time. Any exhibit, schedule or certification accompanying a Document is a part of that Document.

S. **"Eligible Insurer"** means an insurer or **guarantor** of a first Security Interest in a Lot. An Eligible Insurer must **notify** the Association in writing of its name and **address** and inform the Association that it has insured or guaranteed a first Security Interest in a Lot. It must provide the Association with the Lot number **and** address of the Lot on which it is the insurer or **guarantor** of a Security Interest. Such notice shall be deemed to include a request that the Eligible Insurer be given the notices and other rights described in Articles XIII.

T. **"Eligible Mortgagee"** means the holder of a first Security Interest in a Lot, when the holder has notified the Association, in writing, of its name and address and that it holds a first Security Interest in a Lot. The notice must include the Lot number and address of the Lot on which it has a security interest. This notice shall be deemed to include a request that the Eligible Mortgagee be given the notices and other rights described in Articles XIII.

U. **"Front Yard"** means any part of a Lot that is closer to the adjacent street than **the** closest part of the house on that Lot.

V. **"Improvements"** means any **construction**, structure, equipment, fixture or **facilities** existing or to be **constructed** on the Community, including but not limited to buildings, outbuildings, trees and **shrubby** planted by the Declarant or the Association, paving, utility wires, pipes, and light poles.

W. **"Lot"** means the residential dwelling portion of the Community **that** is designed for separate ownership or occupancy, the boundaries of which are described on the Plat and in Article VI of this Declaration. Lot is **further** defined as a **"Unit"** under the Act.

X. **"Lot Owner" or "Owner"** means the Declarant or any other Person who owns a Lot by virtue of a fee simple deed. Lot Owner does not include a Person having only a Security **Interest** or any other interest in a Lot solely as security for an obligation. The Declarant is the initial owner of each and every Lot created and **defined** by this **Declaration** and the Plat. Lot Owner or Owner is **further** defined as a **"Unit Owner"** under the Act.

Y. "Manager" means a person or entity engaged by the Association to perform certain duties, powers, or functions of the Association, as the Board of Directors may authorize from time to time, for the Community and the Association.

Z. "~~Majority or Majority of Lot Owners~~" means the Owners of ~~more~~ than 50% of the votes in the Association.

AA. "~~Member~~" means every Person who holds membership in the Association.

BB. "Mortgage" means any mortgage, deed of trust, or other document pledging any Lot or interest therein as security for payment of a debt or obligation Mortgage is also defined as a Security Interest

CC. "~~Mortgagee~~" means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

DD. "~~Notice and Comment~~" means the right of a Lot Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to comment thereon. The procedures for Notice and Comment are set forth in Article XXII of this Declaration.

EE. "~~Notice and Hearing~~" means the right of a Lot Owner to receive notice of ~~an~~ action proposed to be taken by or on behalf of the Association, and the right to be heard thereon. The ~~procedures~~ for Notice and Hearing are set forth in Article XXII of this Declaration

FF. "_____nt" means the regular Assessment levied periodically, such as monthly or quarterly, pursuant to Article IX of this Declaration.

GG. "~~Person~~" means an individual, corporation, ~~trust~~, partnership, limited liability company, association, joint venture, government, government subdivision or agency or other legal or commercial entity.

HH. "~~Plat~~" means the subdivision map depicting the Community, recorded on _____, 2002, at Reception No. _____, together with such additional, supplemental, or amended plats or maps as may be filed for the Community in the records of the Summit County Clerk and Recorder.

II. "Records" means the real estate records in the Office of the Clerk and Recorder of Summit County, Colorado.

JJ. "~~Rules~~" means the regulations for the ~~use~~ of ~~Common~~ Elements and for ~~the~~ conduct of persons in connection therewith within the Community, ~~as~~ may be adopted by the Board of Directors ~~from~~ time to ~~the~~ pursuant to this Declaration

KK. "~~Security Interest~~" means an interest ~~in~~ and encumbrance upon real estate or personal property, created by ~~contract~~ or conveyance, which secures payment or performance of an obligation The term includes a lien created by a mortgage, deed of ~~trust~~, installment land contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien ~~intended as~~ security for an obligation. A ~~nonconsensual~~ lien does not create a Security Interest.

LL. "~~Special Assessments~~" means an assessment levied pursuant to Article IX on an irregular ~~basis~~.

MM. "~~Special Declarant Rights~~" means the rights reserved for the benefit of the Declarant under Article XVII of this Declaration.

NN. "~~Successor Declarant~~" means any party or entity to whom Declarant assigns any or all of its rights, obligations or interest as ~~Declarant~~, ~~as~~ evidenced by an assignment or deed of record in the office of the Summit County

Clerk and Recorder, designating such party as a Successor **Declarant**. Upon such recording, **Declarant's** rights and obligations under this Declaration shall cease and terminate to the extent provided in such documents.

OO. **"Trustee"** means the entity which may be designated by the Board of Directors as the Trustee for the receipt, administration and **disbursement** of funds derived from insured losses, condemnation awards, special **assessments** for uninsured losses and other sources as defined in the Bylaws. If no Trustee has been designated, the Trustee will be the Board of Directors acting by majority vote.

Each capitalized term as otherwise defined in this Declaration or in the Plat shall have the same meanings specified or used in the Act.

ARTICLE IV **MEMBERSHIP, VOTING RIGHTS; ASSOCIATION OPERATIONS**

Section 4.1. **The Association.** Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 4.2. **Class Membership.** The Association shall have one class of voting membership, which shall be all Owners, who, except as otherwise provided for in this Declaration, shall be entitled to vote in Association matters pursuant to this Declaration on the basis of 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 by one person or alternative person appointed by proxy in accordance with the Bylaws. In the absence of a proxy, the vote allocated to the Lot shall be suspended in the event more than one person or entity seeks to exercise the right to vote on any one matter. Any Owner of a Lot that is leased may assign his voting right to the tenant, provided that a copy of a proxy appointing the tenant is **furnished** to the Secretary of the Association prior to **any** meeting in which the tenant exercises the voting right. In no event shall more than one vote be cast with respect to any one Lot.

Section 4.3. **Period of Declarant Control.** **Declarant** and any successor of **Declarant**, who takes title to all or part of the Community for the purpose of development and sale of the Community and who is designated as Successor Declarant in a recorded instrument executed by the Declarant, shall have exclusive power to appoint and remove members of the Board of Directors and officers of the Association to the **fullest** extent permitted by C.R.S. §38-33.3-303 of the Colorado Revised Statutes. This period of Declarant control shall **terminate** no later than the earlier of

- A. 60 days **after** conveyance of 75% of the Lots that may be created in the Community to Lot Owners other than a Declarant; or
- B. two years after the last conveyance of a Lot by the Declarant in the ordinary course of business; or
- C. two years after any right to add new Lots **was** last exercised.

Declarant may voluntarily surrender the right to appoint and remove officers of the Association and Members of the Board of **Directors** before termination of the period described above. In that event, the Declarant may require, for the duration of the period of **Declarant** control, that specified actions of the Association or Board of Directors, as **described** in a recorded **instrument** executed by the Declarant, be approved by the Declarant before they become effective.

Not later than 60 days **after** conveyance of 25% of the Lots that may be created to Lot **Owners** other than Declarant, at least one Member and not less than 25% of the Members of the Board of Directors shall be elected by Lot Owners **other** than the Declarant. Not later than 60 days after conveyance of 50% of the **Lots** that may be created to Lot Owners other than a Declarant, not less than **33-1/3%** of the Members of the Board of **Directors** shall be elected by Lot Owners other than the Declarant.

Not later than the termination of any period of Declarant control, the Lot Owners shall elect a Board of Directors of at least three Members. The Board of Directors shall elect the officers. The officers and members of the

Board of **Directors** Members shall take office upon election. At all times, whether during or after the period of **Declarant control**, at least one Director shall be an owner of a Deed Restricted **Lot**, and at least one Director shall be an owner of a Lot other than a Deed Restricted Lot.

Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice pursuant to C.R.S., §38-33.3-308, the Lot Owners, by a vote of 67% of all Lot Owners present and entitled to vote at a meeting of the Lot Owners at which a **quorum** is present, may remove a member of the Board of Directors with or without cause, other than a member appointed by the **Declarant**.

Section 4.4. **Books and Records.** The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records, and **financial** statements of the Association prepared pursuant to **the** Bylaws. The Association may charge a reasonable fee for copying such materials.

Section 4.5. **Manager.** The Association may employ or contract for the services of a Manager to whom the Board of Directors may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association.

Section 4.6. **Implied Rights and Obligations.** The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, and every other **right** or privilege **reasonably** implied **from** the existence of any right or privilege given to the Association under the Association Documents or **reasonably** necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Association Documents and every other duty or obligation implied by the express provisions of the Association Documents or necessary to reasonably satisfy any such duty or obligation.

ARTICLE V POWERS OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

Section 5.1. **Association Records and Minutes of Board of Directors Meetings.** The Board of Directors shall permit any Lot Owner, or holder, insurer or guarantor of first mortgages secured by Lots, to inspect the records of the Association and the minutes of Board of Directors and committee meetings during **normal** business hours. The minutes shall be available for inspection within **fifteen** days after any such meeting.

Section 5.2. **Powers and Duties.** The Board of Directors may act in all instances on behalf of the Association, except as provided in this Declaration, the Bylaws or the Act. The Board of Directors shall have, subject to the limitations contained in this Declaration and the Act, the powers and duties necessary for the administration of the **affairs** of the Association and of the Community, which shall include, but not be limited to, the following:

A. administer and enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations, and all other provisions set forth in the Declaration, and supplements thereto;

B. adopt and amend Bylaws and Rules. The Owners may, in addition, either ~~at~~ any annual meeting or at a special meeting called for this purpose, amend the Rules or adopt new Rules. **Only** the Owners can alter Rules that were amended or adopted by the Owners. A copy of all Rules shall be delivered or mailed to each Member promptly upon adoption thereof, or upon becoming an Owner,

C. adopt and amend budgets for revenues, expenditures, and reserves;

D. collect Common Expenses Assessments **from** Lot Owners;

E. collect delinquent Assessments by suit or otherwise, and enjoin or **seek** damages **from** an Owner as is provided in the Declaration and the Bylaws;

- F. hire and discharge Managers;
- G. hire and discharge independent contractors, employees and agents other than Managers;
- H. institute, defend or intervene in litigation or administrative **proceedings** or **seek** injunctive relief for violations of or otherwise enforce the Association's Declaration, Bylaws or Rules in the Association's name, on behalf of the Association or two or more Lot Owners on matters affecting the Community;
- I. make contracts and incur liabilities;
- J. regulate the **use**, maintenance, repair, replacement and modification of the Common Elements;
- K. incur such costs and expenses to designate and remove personnel, and to enter contracts as may be necessary to keep in good order, condition, and repair all of the Common Elements and items of common personal property as provided in this Declaration; provided, however, there shall be no alterations, capital additions to, or capital improvements of the Common Elements requiring an expenditure in excess of \$5,000.00 without the prior approval of the Owners representing an aggregate ownership interest of 60% or more of the Common Elements. Any alteration, addition, or improvement to the Common Elements shall not change the percentage ownership, voting power, or Common Expense obligation of any Owner;
- L. establish a bank account or accounts for the common treasury and for all separate funds that are required or may be deemed advisable;
- M. keep and maintain **full** and accurate **books** and records showing all of the receipts and disbursements and to permit examination thereof at any reasonable time by each of the Owners and their mortgagees.
- N. meet at least annually;
- O. control and manage the use of the parking areas, including the reasonable allocation of parking spaces to **Owners** and their guests;
- P. cause additional improvements to **be** made as a part of the Common Elements;
- Q. acquire, hold, encumber and convey, in the Association's name, any right, title or interest to real estate or personal property, but Common Elements may be conveyed or subjected to a **security** interest only pursuant to this Declaration and Section 38-33.3-312, Colorado Revised Statutes;
- R. grant easements for any period of time, including permanent easements, leases, licenses and concessions through or over the Common Elements;
- S. impose and receive a payment, fee or charge for the use, rental or operation of the Common Elements and for services provided to **Lot** Owners;
- T. impose a reasonable charge for late payment of assessments and levy reasonable fines for violations of the Declaration, Bylaws, and Rules of the Association;
- U. impose a reasonable charge for the preparation and recording of amendments to the Declaration and for a statement of unpaid assessments;
- V. provide, at the option of the Board of **Directors**, for the indemnification of the Association's officers and Board of Directors and maintain Directors' and officers' liability insurance;

W. assign the Association's right to future income, including the right to receive Common Expense assessments;

X. exercise any other powers **conferred** by the Declaration, these Bylaws or the Act;

Y. exercise any other power that may be exercised in Colorado by a legal entity of the same type **as the** Association;

Z. exercise any other power necessary and proper for the governance and operation of the Association;

AA. by resolution, establish permanent and standing committees of Directors to perform any of the above **functions** under specifically delegated **administrative** standards, as designated in the resolution establishing the committee. **All** committees must maintain and publish notice of their actions to Lot Owners and the Board of Directors. However, actions taken by a committee may be appealed to the Board of Directors by any Lot Owner within 45 days of publication of the notice. If an appeal is made, the committee's action must be ratified, modified or rejected by the Board of Directors at ~~its~~ next regular meeting;

BB. adopt and publish rules and regulations governing the use of the Common Elements, including any recreational Facilities which may be constructed on such property and governing the personal conduct of the Members and their guests, and the Association may establish penalties, including, without limitation, the imposition of fines for the **infraction** of such rules and regulations;

CC. suspend the voting rights of a Member during any period in which such Member is in default on payment of any Assessment levied by the Association, **as** provided in Article IX. Such rights may also be suspended **after** Notice and Hearing for a period up to 90 days for **infraction** of Rules, unless such **infraction** is ongoing, in which case the rights may be suspended during the period of the infraction and for up to 90 days thereafter, and;

DD. exercise for the Association all powers, duties, and authority vested in or delegated to the Board of Directors and not reserved to the Members or **Declarant** by other provisions of this Declaration or the Articles or Bylaws of the Association or **as** provided by law.

Section 5.3. **Board of Directors Limitations.** The Board of Directors may not act on behalf of the Association to amend this **Declaration**, to terminate the Community, to elect Members of the Board of Directors, or to determine the qualifications, powers and duties or **terms** of office of Board of Directors Members, but the Board of **Directors** may fill vacancies in its membership for the unexpired portion of any term.

ARTICLE VI UNIT AND BOUNDARY DESCRIPTIONS

Section 6.1. **Boundaries.** Boundaries of each Lot created by the Declaration are shown on the **Plat**, and may hereafter be transferred by using the following legal description:

Lot Vista Point, Filing No. 2, according to the plat recorded at Reception No. _____ on _____, 2002, Summit County, Colorado.

A. Contiguous Lots. Where improvements have been built on both sides of a boundary that is contiguous to two Lots, the vertical perimeter boundary of each Lot is **defined** as the midpoint between party walls **common** to the improvements on the two Lots.

B. Inclusions. Each Lot will include the spaces and improvements lying within the boundaries described in this Section, and will also include the spaces and the improvements within those spaces containing any space heating, water heating and air conditioning apparatus, all electrical switches, wiring, pipes, ducts, conduits, smoke detector systems and television, telephone, electrical receptacles and light **fixtures** and boxes serving that Lot exclusively.

C. **Exclusions.** Except when **specifically** included by other provisions of this Section, the following are excluded from each Lot: the spaces and improvements lying outside of the boundaries described in this Section; and all chutes, pipes, flues, ducts, wires, conduits, and other facilities **running** through or within any interior **wall** or partition for the purpose of **furnishing** utility and similar services to other Lots and Common Elements or both.

D. **Inconsistency with Plat.** If this definition of the Lot boundaries is inconsistent with the Plat, then this definition will control.

E. **Town Approval.** No resubdivision or change in the lot lines shown on the recorded plat shall be done without the prior approval of the Town.

Section 6.2. **Additions, Alterations, and Improvements.** No Lot Owner shall make any structural addition, alteration or physical change to his Lot or to any portion of the Community or to the exterior appearance of any Improvement thereon without the prior written consent of the Board of Directors. If the modification or other improvement requires Town approval, it shall not be made or built until Town approval has been obtained. A Lot Owner may submit a written request to the Board of Directors for approval of any such proposal. The Board of Directors shall answer any request for approval within 60 days after the receipt of the request. Failure to answer the request within this time shall not constitute consent by the Board of Directors to the proposed action. The Board of Directors shall review requests in accordance with its rules. Subject to this Section, Lot Owners may make any other improvements or alterations to the interior of their Lots that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Community.

Section 6.3. **Application and Amendment.** Subject to approval of any structural changes and required permits pursuant to Section 6.2 above, the boundaries between adjoining Lots may be relocated by an amendment to the Declaration upon application to the Association by the Owners of the Lots affected by the relocation. If the Owners of the adjoining Lots have specified a reallocation between their Lots of their Allocated Interests, the application shall state the proposed reallocation. Unless the Board of Directors determines, within 60 days after receipt of the application, that the reallocations **are** unreasonable, the Association shall prepare an amendment that identifies the Lots involved, states the reallocations and indicates the Association's consent. The amendment must be executed by those Lot Owners **affected** and contain words of conveyance between them. The approval of all holders of Security Interests in the affected units shall be endorsed on the conveyance.

Section 6.4. **Recording Amendments.** The Association and appropriate Lot **Owners** shall prepare and record an amendment to the Plat to show the boundaries altered pursuant to Section 6.3, along with the Lot's dimensions and identifying numbers. The applicants will pay for the **costs** of preparation of the amendment and its recording, as well as the reasonable consultant fees incurred by the Association if the Board of Directors deems it necessary to employ a consultant.

ARTICLE VII MAINTENANCE OF THE COMMON INTEREST COMMUNITY

Section 7.1. **Maintenance of Lots**

A. Each Owner shall be solely responsible for all maintenance and repair of his Lot and of the interior of the improvements on his Lot, including all fixtures and improvements and all utility lines and equipment located therein or on, excluding **facilities** for the common use of all the Owners, which shall be a Common Expense, and is required to maintain the Lot and any improvements located thereon in a condition of good order and repair. No Owner shall unreasonably damage the value of other Lots by the shoddy upkeep of his **Lot**.

B. Utility or service connections, facilities, or other utility equipment and **property** located in, on, or upon a Lot used solely to supply a service or utility to such Lot shall be owned by the Lot Owner **using** such utility or **service**, and all expenses and liabilities for repair and maintenance shall be borne solely by the Lot Owner, who shall

have a perpetual easement in and to that part of such other Lots **containing** Such property for purposes of maintenance, repair, and inspection.

C. No Owner shall construct any structure or improvements or make or suffer any structural or design change (including a color scheme change), either permanent or temporary and of any type or **nature** whatsoever to the exterior of the improvement on his Lot or construct any addition or improvement to his Lot without first obtaining the prior written consent of the Association.

Section 7.2. **Maintenance of Party Walls**

A. Each wall that is built as a connection of two or more residences and that is constructed upon the **boundary** line between two Lots shall constitute a Party Wall, and to the extent not inconsistent with the provisions of this Section, the general rules of Colorado law regarding party walls and liability for property damage due to negligent or intentional acts or omissions shall apply thereto.

B. The **cost** of reasonable repair and maintenance of a Party Wall damaged or destroyed without the fault of an Owner shall be shared equally by the Owners of all residences of which such wall is a **part**. In such event, any such Owner may restore or reconstruct the **Party** Wall, and any other Owners whose residences contain the Party Wall shall contribute and share equally with such Owner in the cost of such restoration and reconstruction.

C. The cost of reasonable repair and maintenance of a **Party** Wall damaged or destroyed through the negligent or intentional act or omission of an Owner shall be **borne** exclusively by such Owner. Any other Owner of a residence of which the **Party** Wall is a part may cause the repair or reconstruction of the **Party** Wall, and the Owner whose negligence or intentional **acts** or omissions caused such damage or **destruction** shall promptly reimburse the other Owner for the reasonable costs of such repair.

Section 7.3. **Maintenance of Common Elements, Sidewalks, and Driveways.** The **Association** shall maintain and keep the Common Elements in good repair. This maintenance shall include, but shall not be limited to, upkeep, repair and replacement, subject to any insurance then in effect, of all landscaping, walls, gates, fences, **signage**, irrigation systems, driveways, and improvements, if any, located in the Common Elements. The cost of such maintenance shall be funded **as** provided in Article IX. Such maintenance shall include snow removal and trash pickup and shall be performed **at** such time and in such manner as the **Association** shall **determine**. In the event the Association does not maintain or repair the **Common** Elements, **Declarant** shall have the right, but not the obligation, to do so at the expense of the Association.

Section 7.4. **Maintenance Contract.** The Association or Board of Directors may employ or contract for the services of an individual or maintenance company to perform certain delegated powers, functions, or duties of the Association to maintain the Common Elements. The employed individual or maintenance company shall have the authority to make expenditures upon prior approval and direction of the Board of Directors. The Board of Directors shall not be liable for any omission or improper exercise by the employed individual or management company of any duty, power, or **function** so delegated by written instrument executed by or on behalf of the Board of Directors.

Section 7.5. **Owner's Failure to Maintain or Repair.** In the event that a Lot and the improvements thereupon, or the **Party** Wall for which such Lot Owner is responsible, are not properly maintained and repaired by such Owner, **or** in the event that the improvements on the Lot are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association, or the adjoining Lot Owner in the event of Party Wall damage, after 30 days prior written notice to the Owner and with the approval of the Board of Directors, shall have the right to enter the Lot to **perform** such work **as** is reasonably required to restore the Lot and the other improvements thereon to a condition of good order and repair. All costs incurred by the Association or the adjoining Lot Owner in connection with the restoration shall be reimbursed by the Owner of the Lot upon demand. All **unreimbursed** costs shall be a lien upon the Lot until reimbursement is made.

The lien may be enforced in the same manner **as** a lien for an unpaid assessment levied in accordance with Article IX Section 9.9.

ARTICLE VIII INSURANCE AND FIDELITY BONDS

Section 8.1. **Coverage.** To the extent reasonably available, the Association shall obtain and maintain insurance coverage **as** set forth in this Article. If such insurance is not reasonably available, and the Association determines that any insurance **described** in this Article will not be maintained, the Association shall cause notice of that fact to **be** hand delivered or sent prepaid by United States mail to all Lot Owners and at their last known addresses. The Association shall obtain and maintain:

A. **Property Insurance.** Property insurance that will cover the Common Elements, any personal property owned by the Association for broad form covered causes of loss. The property insurance will be for an amount equal to **100** percent of the actual cash value at the time the insurance is purchased and at each renewal date. The maximum **deductible** shall be one percent of the policy face amount.

B. **Liability Insurance.** The Association shall obtain and maintain commercial general liability insurance against claims and liabilities arising in connection with the ownership of the Common Elements in an amount to be determined by the Association, but in no event shall it **be** less than **\$1,000,000**. The insurance shall cover all occurrences commonly insured against for death, bodily injury, and property damage **arising** out of or in connection with the use, ownership, or maintenance of the Common Elements and the activities of the Association.

Insurance policies required by this Section shall provide that: (a) the insurer waives the right to **subrogation** under the policy against an Owner; (b) an act or omission of an Owner will not void the policy or be a condition of recovery under the policy; (c) if at the time of loss, there is other insurance in the name of an Owner which covers the same risk, the Association's policy provides primary insurance; (d) losses must be adjusted with the Association; (e) insurance proceeds shall be paid to the **Association**, or its designated Trustee, to be held in trust for each Owner; and (f) the insurer may not cancel or **refuse** to renew the policy until 30 days after notice of the proposed cancellation or **nonrenewal** has been mailed to the Association.

Section 8.2. **Fidelity Insurance.** A blanket fidelity bond may be provided at the option of the Association to protect against dishonest acts on the part of its **officers**, directors, **trustees**, and employees, and on the part of all others who handle or who are responsible for handling the **funds** belonging to or administered by the Association. In addition, if responsibility for handling funds is delegated to a Manager, such bond shall be obtained for the Manager and its **officers**, employees, and agents, **as** applicable. Such fidelity coverage shall name the Association as an obligee and shall be **written** in an amount equal to at least 150% of the estimated annual operating expenses of the Association, including reserves. Such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of **persons** serving without compensation **from** the definition of "employees", or similar terms or expressions.

Section 8.3. **Personal Liability Insurance of Officers and Directors.** To the extent obtainable at reasonable cost, appropriate personal liability insurance shall **be** maintained by the Association to protect the officers **and** directors **from** personal liability in relation to their duties and responsibilities in acting as such **officers** and directors on behalf of the Association.

Section 8.4. **Other Insurance.** The Association may obtain **insurance** against such other risks of a similar or dissimilar nature **as** it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 8.5. **Insurance Obtained by Owners.** Each Owner may obtain physical damage and liability **insurance** for such Owner's benefit, at such Owner's expense, covering the Owner's Lot and improvements, personal property, and personal liability (except to the extent any such Lot is encumbered by an easement conveyed to the Association as Common Elements). In addition, an Owner may obtain such other and additional insurance coverage on the Lot as such Owner, in the Owner's sole discretion, shall conclude to be desirable; provided, however, that none of

such insurance coverage obtained by the Owner shall operate to decrease the amount which the Association, on behalf of all Owners, may realize under any policy maintained by the Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or **termination** of that insurance coverage. **Any** insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant be the Owner of any Lot. No Owner shall obtain separate **insurance** policies on the Common Elements. The Association may require an Owner who purchases insurance coverage for the Owner's Lot (other than coverage for the Owner's personal property) to file copies of such policies with the Association within 30 days after purchase of the coverage to eliminate potential conflicts with any master policy carried by the Association.

Section 8.6. General Insurance Provisions. All insurance coverage obtained by the Association shall be governed **by** the following provisions:

A. As long **as** Declarant owns any Lots, Declarant shall be protected by all such policies as an Owner. The coverage provided to Declarant under the insurance policies obtained in compliance with this **Article** shall not be deemed to protect or be for the benefit of any general contractor engaged by Declarant.

B. The deductible **amount**, if any, on any insurance policy purchased by the Association may be treated as a Common Expense payable **from** Annual Assessments or Special Assessments, or as an item to be paid from working capital reserves established **by** the Association; or alternatively, the Association may treat the expense as an assessment against an Owner whose Lot is specifically affected by the damage or whose negligence or **willful** act resulted in damage. The Association may enforce payment of any amount due **from** a Lot Owner toward the deductible in accordance with Article IX Section 9.9.

C. The **insurance** coverage described in **this** Article shall be considered minimum coverage and the Association shall be obligated to secure and maintain such other or additional coverage as may be required by law.

D. Except **as** otherwise provided by the Association pursuant to this Article, insurance premiums shall be a **Common** Expense to be paid by regular Assessments levied by the Association.

E. The **named** insured under any such policies shall include **Declarant**, until all the **Lots** have been conveyed, and the Association, as a trustee for the Owners and their Mortgagees, as their interests may **appear**, or the authorized representative of the Association who shall have exclusive authority to negotiate losses and receive payments under such policies.

F. In no event shall the insurance coverage obtained and maintained pursuant to this Article **be** brought into contribution with insurance purchased by the Owners or their Mortgagees.

ARTICLE IX ASSESSMENTS FOR COMMON EXPENSES

Section 9.1. Obligation. Declarant, for each Lot that is owned by Declarant and has received a certificate of occupancy **from** the applicable **building** official for a residential structure, hereby covenants, and each Owner, by accepting a deed for a **Lot**, is deemed to covenant to pay to the Association (i) the Periodic Assessments imposed by the **Board** of Directors as necessary to meet the common Expenses of maintenance, operation, and management of the Common Elements and to perform the functions of the Association; (ii) Special Assessments for capital improvements and other purposes as stated in this Declaration, if permitted by law; and (iii) Default Assessments which may be **assessed** against a Lot for the Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents.

Section 9.2. Purpose of Assessments. The Assessments shall be used exclusively to promote the health, safety, and welfare of the Owners and occupants of the Community, and for the improvement and maintenance of the Common Elements, all as more **fully** set forth in this Declaration.

Section 9.3. **Budget.** Within 30 days after the adoption of any proposed budget for the Association, the Board of Directors shall **mail**, by ordinary first class mail, **or** otherwise deliver a summary of the budget to all Owners and **shall** set a date for a meeting of the Owners to consider ratification of the budget not less than 14 or more than 60 days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a **quorum** is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such **time** as the Owners **ratify** a subsequent budget proposed by the Board of Directors.

Section 9.4. **Periodic Assessments.** Periodic Assessments for Common Expenses shall be based upon the estimated cash requirements as the Board of Directors shall **from time to time** shall determine is necessary to be paid by all of the Owners. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Elements; expenses of management; taxes and special **governmental** assessments pertaining to the Common Elements; insurance premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping, care of grounds and improvements within the Common Elements; routine repairs and renovations within the Common Elements; wages; common water and utility charges for the Common Elements; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any default remaining **from** a previous assessment period; and the creation of a reasonable contingency or other reserve or surplus **fund** for general, routine maintenance, repairs, and replacement of improvements within the Common Elements on a periodic basis, as needed. Periodic Assessments shall be payable on a prorated basis each year in advance and shall be due on the first day of each year, or such other periods as the Board of Directors may determine. The omission or failure of the Association to fix the Periodic Assessments for any assessment period shall not be deemed a waiver, modification, or release of the Owners **from** their obligation to pay the **same**. The Association shall have the right, but not the obligation, to make prorated **refunds** of **any** Periodic Assessments in excess of the actual expenses incurred in any fiscal year.

Section 9.5. **Common Elements Working Fund.** **The** Association or **Declarant** shall require each initial Owner of a Lot (other than Declarant) to make a non-refundable payment to the Association in an amount equal to one quarter the regular annual **assessment**, which sum shall be held, without interest, by the Association as a working **fund**. The **working fund** shall be collected and transferred to the Association at the time of closing of the initial sale by Declarant of each Lot. No **refund** or proration of this working fund shall be made by the Association upon a subsequent sale of a Lot; it shall be the responsibility of each Owner to **determine** with a subsequent buyer of the Lot whether or not to take the working **fund** contribution into consideration in the sales agreement. The working fund shall be maintained for the use and benefit of the Association. Such payment shall not relieve an Owner **from making** regular payments of Assessments as they become due. The amount of the contribution to the working **fund** may be altered by the Board of **Directors** when the Declarant no longer appoints members of the Board of Directors as provided in Article IV.

Section 9.6. **Apportionment of ~~R~~ _____** Each Owner shall be responsible for that Owner's share of the Common Expenses, which shall be divided equally among the Lots, subject to the following provisions. All expenses (including, but not limited to, costs of maintenance, repair, and replacement) relating to fewer than all of the Lots **shall** be borne by the Owners of those affected Lots only.

Section 9.7. **Special Assessments.** In addition to the Periodic Assessments authorized by this Article, the Association may levy in any fiscal year one or more Special Assessments, if permitted by applicable law, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements, or for any other expense **incurred** or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to **prescribe** the manner of assessing expenses authorized by other sections of this Declaration and in acting under this Section, the Association shall make specific references to this Section. Any amounts assessed pursuant to this Section shall be assessed to Owners in the same proportion as provided for Periodic Assessments, subject to the requirements that **any** extraordinary maintenance, repair, or restoration work on fewer than all of the Lots shall be borne by the **Owners** of those **affected** Lots only; and any extraordinary insurance costs incurred as a result of the value of a particular Owner's residence or the

action of a particular Owner (or his agents, servants, guests, tenants, or **invitees**) shall be borne by that Owner. Notice in writing of the amount of such Special **Assessments** and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than 30 days after such notice shall have been given.

Section 9.8. **Default Assessments.** All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of **an** Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected **as** provided in this Declaration. Notice of the amount and due date **of such** Default Assessment shall be sent to the Owner subject to such Assessment at least 30 days prior to the due date.

Section 9.9. **Effect of Nonpayment; Assessment Lien.** **Any** Assessment, whether Periodic, Special, or Default, which is not paid within 30 days **after** its due date shall be delinquent. If an Assessment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- A. Assess a late charge for each delinquency in such amount as the Association deems appropriate;
- B. Assess an interest charge **from** the date of delinquency **at** the yearly rate established by the Board of Directors, not to exceed 21% per **annum**;
- C. Suspend the voting rights of the Owner during any period of delinquency;
- D. Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- E. Bring **an** action at law against any Owner personally obligated to pay the delinquent Assessments; and
- F. File a statement of lien with respect to the Lot and proceed with foreclosure **as** set forth in this subsection. Assessments chargeable to any Lot shall constitute a continuing lien on such Lot. To evidence the lien **created** under this Section, the Association may, but is not required **to**, prepare a written notice setting forth (i) the address of the Association, (ii) the amount of such unpaid indebtedness, **(iii)** the amount of accrued penalty on the indebtedness, (iv) the name of the Owner of the Lot, and **(v)** a description of the Lot. The notice shall be signed and acknowledged by the President or Vice President of the Association, the Association's attorney, or by the Manager, and the Association shall serve the notice upon the Owner by mail to the address of the Lot or to such other address **as** the Association may have in its files for such Owner. At least ten days **after** the Association mails the Owner such a notice, the Association may record the notice in the office of the Clerk and Recorder of Summit County, Colorado. Such lien for Assessments shall attach **from** the due date of the Assessment. Thirty days following the date the Association mails the notice, the Association may institute foreclosure proceedings against the defaulting Owner's Lot in the manner for foreclosing a mortgage on real property under Colorado law. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorneys' fees incurred in connection with the enforcement of the lien. The Association shall have the power to bid on the Lot at a foreclosure **sale** and to acquire and hold, lease, mortgage, and convey the same.

Section 9.10. **Personal Obligation.** The amount of any Assessment chargeable against any Lot shall be a personal and individual debt of the Owner of the Lot. No Owner may exempt himself **from** liability for the Assessment by abandonment of his Lot or by waiver of the use or enjoyment of all or part of the Common Elements. Suit to recover a money judgment for unpaid Assessments, any penalties and interest, thereon, the cost **and** expenses of such proceedings, and all reasonable attorneys' fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

Section 9.11. **Successor's Liability or Assessment.** In addition to the personal obligation of each Owner to pay all Assessments **and** the Association's perpetual lien for such Assessments, all successors to the fee simple title of

a Lot, except **as** provided below, shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, interest late charges, costs, expenses, and attorneys' fees against such Lot without prejudice to such successor's right to recover **from** any prior Owner any amounts paid by such successor. This liability of a successor shall be personal, and shall not terminate upon termination of such successor's fee simple interest in the Lot. In addition such successor shall be entitled to rely on the Statement of Status of Assessment Payment by or on behalf of the Association under this Article.

Section 9.12. **Priority of Lien.** The lien of the **Assessments** provided for in this Article is prior to **all** other liens except: (i) the lien of real estate taxes and special governmental assessments, (ii) liens and encumbrances recorded prior to the recordation of the Declaration, and (iii) a **first** Security Interest on the Lot recorded before the date on which the assessment sought to be enforced became delinquent, subject to the priority granted to the Association's lien under the Act. The lien of the Assessments shall be superior to and prior to any homestead exemption provided now or in the future by the laws of the State of Colorado. An **Owner's** transfer of any Lot shall not **affect** the Association's lien except that sale or transfer of any Lot pursuant to foreclosure of any **first** mortgage, or any proceeding in lieu thereof, or cancellation or forfeiture **shall** only extinguish the Association's liens as provided in the Act. The amount of such extinguished lien may be reallocated and **assessed** to all Lots **as** a Common Expense at the **direction** of the Board of Directors. No sale or transfer shall relieve the purchaser or transferee of a Lot **from** liability for, or the Lot from the lien of, any Assessments made after the sale or transfer.

Section 9.13. **Notice to Mortgagees.** The Association shall report to any Mortgagee any unpaid Assessments remaining unpaid for longer than 60 days after the same shall have become due, if such Mortgagee first shall have **furnished** to the Association written notice of the Mortgage and a request for notice of unpaid Assessments. Any Mortgagee holding a lien on a Lot may pay any unpaid Assessment payable with respect to such Lot, together with any and all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Lot for the amounts paid with the same priority as the lien of the Mortgage.

Section 9.14. **Statement of Status of Assessment Payment.** The Association shall **furnish** to an Owner or such Owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first class postage prepaid, **return** receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such Owner's Lot. The statement shall be **furnished** within 14 calendar days after receipt of the request and is binding on the Association, the Board of Directors and every Owner. If no statement is **furnished** after request to the Owner or holder of a security interest or their designee, delivered personally or by certified mail, **first** class postage prepaid, **return** receipt requested, to the inquiring party, the Association shall have no right to assert a lien upon the Lot for unpaid assessments which were due as of the date of the request.

ARTICLE X ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful **attorney-in-fact** to **deal** with any Improvements covered by insurance written in the name of the Association pursuant to Article VIII upon their damage or destruction as provided in Article XI. Acceptance by a grantee of a deed or other instrument of conveyance **from** Declarant or any other Owner conveying any portion of the Community shall constitute appointment of the Association **as** the grantee's **attorney-in-fact**, and the Association shall have **full** authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other **instrument** with **respect** to the interest of any Owner necessary to exercise the powers granted to the Association as attorney-in-fact.

ARTICLE XI DAMAGE OR DESTRUCTION

In the event of damage to or destruction of all or part of any Common Elements, or other **property** covered by **insurance** written in the Association's name under Article VIII, the Board of Directors shall determine the schedule and manner of repair or replacement.

ARTICLE XII CONDEMNATION

Section 12.1. Rights of Owners. Whenever all or any part of the Common Elements shall be taken by any authority having power of condemnation or eminent domain (a "taking"), or whenever all or any part of the Common Elements is conveyed in lieu of a taking by the Board of Directors acting as attorney-in-fact for all Owners under **instructions from** any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act **as** attorney-in-fact for all **Owners** in the proceeding incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 12.2. Partial Condemnation, Distribution of Award; Reconstruction. The award made for such **taking** shall be payable to the Association **as** trustee for those Owners for whom **use** of the Common Elements was conveyed, and the award shall be disbursed **as** follows:

If the taking involves a portion of the Common Elements on which Improvements have been constructed, then, unless within 60 days after such taking **Declarant** and Owners who represent at least 67% of the votes of all of the Owners shall otherwise agree, the Association shall restore or replace such Improvement so taken on the remaining land included in the Common Elements to the extent **lands** are available for such restoration or replacement in accordance with plans approved by the Board of Directors. If the taking does not involve any Improvements on the Common Elements, or if there is a decision made not to repair or restore, or if there are net funds **remaining** after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Lot among the Owners, first to the Mortgagees, if any, and then to the Owners, **as** their interests appear.

Section 12.3. Complete Condemnation. If all of the Community is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and **the portion of the** condemnation award attributable to the Common Elements shall be distributed **as** provided in Section 12.2 above.

ARTICLE XIII MORTGAGEE PROTECTION

The following provisions are for the benefit of holders, insurers, or guarantors of first mortgages on Lots. To the extent applicable, necessary, or proper, the provisions of this Article apply to this Declaration and also the Articles and Bylaws of the Association.

Section 13.1. Approval Requirement. Unless at least 51% of the Mortgagees holding first mortgages against any portion of the Community (based on one vote for each Mortgage owned), and at least 67% of the Owners (other than **Declarant**) have given their prior written approval, the Association shall not be entitled to:

A. By act or omission **seek** to abandon, partition, subdivide, sell, or transfer all or part of the Common Elements (**provided**, however, that the **granting** of easements for public utilities or for other public purposes consistent with the intended use of such Common Elements shall not be deemed a transfer within the meaning of this clause); or

B. Change the method of determining the obligations, Assessments, dues, or other charges that may be levied against an Owner (provided, however, that the Board of Directors and the Association shall retain the right to determine annually the amount of any surcharge to be charged to Owners for utility usage in accordance with Section 9.7 of this Declaration).

Section 13.2. Right to Pay Taxes and Charges. Mortgagees who hold first mortgages against Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance

coverage on the lapse of a policy for such Common area, and Mortgagees **making** such payments shall ~~be~~ owed immediate reimbursement therefore **from** the Association.

Section **13.3** Notice. Each Mortgagee who holds a first mortgage against a Lot, upon written request to the Association, shall be entitled to:

A. Receive copies of budgets, notices of Assessments, or any other notice or statement provided under this Declaration by the Association to the Owner of a Lot on which the Mortgagee holds a first mortgage;

B. Receive any audited or unaudited **financial** statement of the Association within ninety days following the end of any fiscal year that is prepared for distribution to the Owners;

C. Receive copies of notices of meetings of Owners;

D. Receive notice of the decision of the Declamnt or the Owners to make any material amendment to this Declaration, the Bylaws, or the Articles;

E. Receive notice of substantial damage to or destruction of any part of the Common Elements;

F. Receive notice of any default under this Declaration of the Owner of a Lot on which the Mortgagee holds a first mortgage;

G. Examine the **books** and records of the Association at any reasonable time; and

H. Receive any other notice or copy provided for elsewhere **in** this Declaration.

ARTICLE XIV AMENDMENT OF DECLARATION

Section **14.1**. Amendment. This Declaration, or any provision of it, may be amended at any time by an instrument signed by Owners holding no less than 67% of the votes possible to ~~be~~ cast under this Declaration and signed by **Declarant** (during period of **Declarant** control as **further** described in Article IV) and at least **51%** of the Mortgagees holding First Mortgages against any portion of the Community (based on one vote for each Mortgage owned). Any Amendment **must** be executed by the President of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying that signatures of a sufficient number of Owners approving the amendment are on file in the **office** of the Association. The procedure for amendment must follow the procedures of C.R.S. **§38-33.3-217**.

Section **14.2**. Revocation. This Declaration shall not be revoked, except as provided in Article XII regarding total condemnation, without the consent of all of the Owners evidenced by a **written instrument** duly recorded.

Section **14.3**. Limitation of Challenges. **An** action to challenge the validity of an amendment adopted by the Association pursuant to this Article may not be brought more than one year **after** the amendment is recorded.

Section **14.4**. Recordation of Amendments. Each amendment to the Declaration must be recorded in the Records, and the amendment is effective only upon recording.

Section **14.5**. Unanimous Consent. Except to the extent expressly permitted or required by other provisions of the **Act**, an amendment may not create or increase Special **Declarant** Rights, increase the number of **Lots**, change the boundaries of a Lot, the Allocated Interests of a Lot or the **uses** to which a Lot is restricted, except by unanimous consent of the Lot Owners.

Section 14.6. **Execution of Amendments.** ~~Amendments~~ amendment to the Declaration required by the Act to be recorded by the Association, which has been adopted in accordance with this Declaration and the Act, must be prepared, executed, recorded and certified on behalf of the Association by an officer of ~~the~~ Association designated for that purpose or, in the ~~absence~~ of designation, by the president of the Association.

Section 14.7. **Special Declarant Rights.** Provisions in this Declaration creating Special **Declarant** Rights may not be amended without the consent of the **Declarant**.

Section 14.8. **Consent of Holders of Security Interests.** Amendments to the Declaration are subject to the consent requirements of Article XIV.

Section 14.9. **Amendments To Exercise Development Rights.** To exercise any Development Right reserved under Article XVII of this Declaration the Declarant shall prepare, execute and record an amendment to the Declaration. The Declarant shall also record an amendment to the Plat as necessary to conform to the requirements of C.R.S. §38-33.3-209. The amendment to the Declaration shall assign an **identifying** number to each new Lot created.

Section 14.10. **Non-material Amendments by Declarant.** During the period of Declarant control, Declarant may amend, without the consent of the Owners, the Declaration, Plat, Articles or Bylaws to make non-material changes, such as the correction of typographical, clerical, or technical errors.

Section 14.11. **Town Approval for Certain Amendments.** In addition to the foregoing requirements for amending the Declaration, no amendment to Section 6.1E [Resubdivision], Article XIV [Amendment], Article ~~XVI~~ [Deed ~~Restricted~~ Lots], Section 19.5 [Emergency Easement], or Article XX [Termination] shall ~~be~~ effective unless and until approved by the Town.

ARTICLE XV PROTECTIVE COVENANTS

[**NOTE:** See Article ~~XVI~~ for additional covenants for Deed Restricted Lots.]

Section 15.1. **No improvement will be erected, placed, reconstructed, replaced, repaired or otherwise altered, nor will any construction, repair or reconstruction be commenced until plans for the Improvements shall have been approved by the Board of Directors.** Improvements that are completely within a dwelling structure may be undertaken without such approval. Any landscaping or vegetation with a **full** growth height of more than four feet must be approved by the Board of Directors.

Section 15.2. **Improvements Prohibited.** No used or second-hand structure, no building of a temporary character, mobile home, house trailer, tent, or shack shall be placed or ~~used~~ on the Community, either temporarily or permanently; except those items which are necessary for construction may be used during the period extending no later than (i) eighteen months **after** commencement of construction or (ii) the date of substantial completion of said improvement, whichever is earlier. The placement, appearance, and maintenance of such temporary **structures** may be subject to reasonable **rules** of the Association.

Section 15.3. **Signs.** No sign, billboards, **posterboard**, or advertising structure of any kind, including, but **not limited** to "For Sale", "For Rent", or similar real estate signs shall be erected or maintained for any **purpose** whatsoever except such signs as have been approved by the Association pursuant to its regulations. Any signs that are **permitted** under the foregoing restrictions shall be erected or maintained on the Community only with the prior written **approval** of the Association. In no event shall any signs advertising a home business or occupation be allowed.

Section 15.4. **Trash.** No trash, ashes, or other refuse or debris may be thrown or dumped on the Property. The burning of any **refuse** or debris outdoors shall ~~not be~~ permitted. No incinerators or other device for the burning of **refuse** indoors shall be constructed, installed, or used by any person except as approved by the Board of Directors. No Owner shall permit the outdoor storage of trash, whether in an enclosed container or not, except that an Owner may

place a closed trash receptacle on the Owner's driveway for a reasonable period of time before and after **commercial trash** disposal. The Association may adopt rules and regulations reasonably limiting the manner in which trash is disposed.

Section 15.5. Pets. Owners may keep up to a total of three domestic pets on a Lot, but no more than two dogs or two **cats**, except with the prior written permission of the Declarant or the Association. The Association shall adopt reasonable **rules** and regulation for the **registration** and keeping of dogs and **cats**. Pets may not be kept for any commercial purpose. Any pet causing or creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the Community upon three days written notice following Notice and Hearing from the Board of Directors. Owners shall hold the Association harmless **from** any **claim** resulting from any action of their pets. No equine, bovine, **ovine**, asinine, **caprine**, lupine, cervine, **strutious**, or porcine pets are permitted.

Section 15.6. Noxious or Offensive Activity. No noxious or offensive activity shall be conducted in any **lot**, nor shall anything be done or placed on a Lot or the Community that is or may become a nuisance or cause embarrassment, disturbance, or annoyance to others.

Section 15.7. Maintenance of Lots and Outside Storage. Every Lot (including the improvements thereon) shall be kept and maintained by the Owner thereof in a clean, safe, **attractive**, and sightly condition and in good **repair**; and no lumber, grass, shrub, or tree clippings or plant waste, metals, building materials, scrap, refuse or trash shall be kept, stored, or allowed to accumulate in or on any Lot. No clotheslines shall be permitted on any Lot.

Section 15.8. Annoying Lights, Sounds, or Odors. No lights shall be emitted from any Lot which are unreasonably bright or **cause** unreasonable glare; no sound shall be emitted **from** any Lot which is unreasonably loud or annoying; and no odor shall be emitted from any Lot which **is** noxious or unreasonably offensive to other Owners.

Section 15.9. Fences. No fences or other **barriers** shall be permitted in the Front Yard of any Lot.

Section 15.10. Recreational Equipment. No playground or other recreational equipment, whether portable or **permanent**, shall be kept in the Front Yard of any Lot.

Section 15.11. Natural State. No hunting, target practice, discharge of firearms, or **disturbance** of the natural state of the Community, including the removal of living trees, plants, shrubs, bushes, sagebrush, **grass**, or topsoil, is **permitted** without the consent in writing of the Association.

Section 15.12. Occupancy.

A. No Lot shall be occupied by more than two people per **bedroom**.

B. Owners shall be allowed to rent Lots. (The Deed Restricted Lots have additional rental **restrictions** as enumerated in Article **XVI**)

Section 15.13. House Number. Each dwelling shall have a house number with a design and at a location established by **Declarant**.

Section 15.14. Vehicles and Garages. Licensed and operable passenger automobiles and pickup trucks shall be parked in driveways or inside closed garages only. No trailers, motor homes, recreational vehicles, snowmobiles, **boats** or unlicensed or inoperable vehicles of any kind, shall be parked or stored within the Community, except inside a closed garage or **structure** approved by the Board of Directors. No snowmobiles or other recreational vehicles shall be operated **within** the Community.

Section 15.15. Conduct of Occupant. No improper, offensive or **unlawful use** may be made of the Community. Lot Owners shall comply with and conform to all applicable laws and regulations of the United States and of the State of Colorado and all ordinances, rules and regulations of the County of Summit. The violating Lot **Owner**

shall hold the Association and other Lot Owners harmless **from** all fines, penalties, costs and prosecutions for any violation or noncompliance.

Section 15.16. Exterior Walls & Windows.

A. No openings shall **be** made in any exterior walls without the approval and express consent of the Board of **Directors**

B. No television, radio or other antennas of any nature or description, including satellite dishes with a diameter of 24 inches or more, shall be affixed in any manner to exterior walls, nor shall they be permitted within the **Common** Elements.

C. No exterior blinds, awnings or other window treatments shall be permitted.

Section 15.17. Exterior Maintenance.

A. Owners shall cooperate in maintaining the Common Elements in a clean, neat, orderly, and **attractive** manner.

B. **All** trash, debris, brooms, ladders, building materials or similar items shall be kept out of sight.

C. No patio, deck and lawn **furniture**, grills, bicycles, tricycles, toys and recreational equipment shall be kept in the Front Yard of any Lot.

D. No **clotheslines** or hanging of laundry shall be permitted.

E. No landscaping of any portion of the Common Elements shall be permitted without the express consent of the Association.

Section 15.18. Lease Provisions. All leases of a Lot shall include a provision that the tenant will recognize the Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Documents against the tenant, provided the Association gives the Owner of such leased Lot notice of the Association's intent to so enforce and a reasonable opportunity to cure the violation directly, prior to the **commencement** of an enforcement action.

ARTICLE XVI COVENANTS FOR DEED RESTRICTED LOTS

Section 16.1. Identification of Deed Restricted Lots. The **Lots** in Vista Point listed on Exhibit B are Deed Restricted Lots and are subject to certain limitations on rental, occupancy, and resale price. In addition to the other provisions of this Declaration, which apply to all of Vista Point, the provisions of this ARTICLE XVI specify covenants and restrictions that apply to the Deed Restricted Lots. The covenants in this Article XVI may be enforced only by the Town of Breckenridge or its designee.

Section 16.2 Restrictions on Deed Restricted Lots. Each of the following restrictions and covenants applies to Deed Restricted Lots:

A. A Deed Restricted Lot must be owned by individuals only, and not by a partnership, corporation, or other legal entities.

B. Deed Restricted Lot must be occupied by its owner as his or her primary residence; provided, however, that an owner may (i) rent a Deed Restricted Lot for one twelve-month period or while the Deed Restricted

Lot is on the market for sale, and (ii) rent rooms in a Deed Restricted Lot to other occupants during any period that the owner is also occupying the Lot.

C. A Deed Restricted Lot be occupied by at least one person either (i) 18 years of age or older who, during the period of his or her occupancy, earns his or her living by working in Summit County, Colorado an average of at least thirty hours per week, or (ii) 55 years of age or older who, during the entire period of his or her occupancy, earns his or her living working in Summit County, Colorado an average of at least **fifteen** hours per week, together with such person's spouse and dependant children.

D. The resale price of a Deed Restricted Lot by any owner, whether the first buyer or any subsequent owner, is limited to the purchase price paid by that owner plus an additional amount equal to the sum of the following:

1. the selling owner's initial purchase price multiplied by the sum of the annual percent increases in the annual median income for a family of four in Summit County, as determined by HUD [the "AMI"] for the term of ownership. For any partial year of the term of ownership, the increase will be prorated based on the preceding year's **AMI** increase. If the annual **AMI** percentage increase is less than 3% in any year, the annual increase for that year shall be deemed to be 3%.

2. the collective amount of the Certificates of Improvement issued by the Town or its designee to the selling owner during his period of ownership. [see the following section for **information** on Certificates of Improvement]

3. the normal and customary closing costs incurred by sellers for similar sales in Summit County, excluding appraisal and inspections costs, but including an actual real estate commission paid by the selling owner [but not to exceed 7% of the selling price], plus the premium for an owner's title insurance policy.

Section 16.3 Approved Improvements. "Certificate of Improvement" means a certificate issued by the Town or its designee that certifies the value of any Approved Improvements made to a Deed Restricted Lot. "Approved Improvements" means all those improvements in and to Deed Restricted Lots made during the first five years after the Lot is conveyed to its **first** owner and that comply with this Declaration and have **been** approved in advance of installation by the Town or its designee pursuant to guidelines and procedures established by the Town. Approved Improvements mean non-luxury items and items that do not constitute normal maintenance, both inside and outside a home. Approved Improvements include, but are not limited to, finishing **unfinished** interior spaces, plumbing, heating, insulation, new fixtures, system improvements, improvements increasing household energy efficiency, and improvements to and additions of walkways, decks, porches and landscaping. In no event will the Town approve Certificates of Improvement for any one Lot that together exceed 15% of the initial purchase price of the Lot to its first owner. This section is for the benefit of the Town of **Breckenridge**, and the Town shall have the sole right to make these provisions less restrictive.

Section 16.4 Appreciating Limiting Promissory Note and ~~At the time~~ of each sale of a Deed Restricted Lot, beginning with the first such sale by **Declarant** to a Lot Owner, the **purchaser(s)** of each such Deed Restricted Lot shall execute an Appreciating Limiting Promissory Note in the form attached hereto as Exhibit B ("Note") and a form of Deed of Trust to a public trustee encumbering the Deed Restricted Lot to secure strict compliance with the terms of the Note, containing a strict due on sale provision and acceptable to the Town Attorney of the Town ("Deed of Trust"). The Deed of Trust shall be junior only to any purchase money mortgage. At the time of each closing of the transfer of title to a Deed Restricted Lot, a new Note shall be executed by the **purchaser(s)** and delivered to the Town and a Deed of Trust shall be executed by the **purchaser(s)** and recorded in the Summit County, Colorado real estate records. At the time of closing of each **transfer** of title to a Deed Restricted Lot subsequent to the first transfer by Developer, the maximum resale price shall be determined by the Town in accordance with this Article XVI. The Town shall mark each Note as paid and execute a request for release of deed of trust on verification to the Town, by the title company or other independent agent responsible for closing on the transfer of title to a Deed Restricted Lot, that the amount paid for the purchase of the Deed Restricted Lot does not

exceed the resale price limit set in this Article XVI or that, if the price exceeds such resale price limit, the amount of such excess will be paid to the Town. If title to a Deed Restricted Lot is transferred without obtaining the release of a Deed of Trust securing a Note in favor of the Town, the Town, among other rights available to it, shall have the right to foreclose said Deed of Trust.

Section 16.5 Certain Amendments to this Article. Amendments to this Article XVI may be made by a recorded **instrument** executed by the Declarant and the Town, and without requirement for approval by Lot Owners or Mortgagees, so long as the amendment is no more restrictive on either the Lot Owner or the Mortgagee.

ARTICLE XVII

DEVELOPMENT RIGHTS AND OTHER SPECIAL DECLARANT RIGHTS

Section 17.1. Reservation of Development Rights. The **Declarant** reserves the right to **construct** underground utility lines, pipes, wires, ducts, conduits and other facilities across any portion of the Community for the purpose of **furnishing** utility and other services to buildings and Improvements to be constructed on the Community. The Declarant also reserves the right to withdraw and grant **easements** and licenses to public utility companies and to convey Improvements within those easements anywhere in the Community not occupied by buildings, for the purposes mentioned above. The Declarant also reserves the right to create additional lots, streets, and common areas within the Tract Z of Vista Point, all subject to approval by the Town.

Section 17.2. Limitations on Development Rights. The Development Rights reserved in this Article are limited as follows:

A. the Development Rights may be exercised at any time, but not more than ten years **after** the recording of the initial Declaration;

B. the quality of construction of any buildings and Improvements to be created on the Community under the Development Rights shall be consistent with the quality of those **constructed** pursuant to this Declaration as initially **recorded**;

C. all Lots and Common Elements created pursuant to the Development Rights will be **restricted** to the **same** uses and to the same extent as the **Lots** created under this Declaration as initially recorded; and

D. no Development Rights may be exercised unless approved pursuant to this Declaration.

Section 17.3. Phasing of Development Rights. No **assurances** are made by the **Declarant** as to whether the Declarant will exercise its Development Rights or the order in which such Development Rights will be developed. The exercise of Development Rights as to some portions of the Community will not obligate the Declarant to exercise them as to other portions.

Section 17.4. Special Declarant Rights. The **Declarant** reserves the following Special **Declarant** Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Community:

A. to complete Improvements indicated on the Plat or on the site plan approved by the Town of **Breckenridge**;

B. to exercise a Development Right reserved in the Declaration;

C. to maintain sales **offices**, model units, management offices, and signs advertising the Community and **models**;

D. to **use** easements through the Common Elements and Lots for the purpose of making Improvements within the Community; and

E. to appoint or remove an **officer** of the Association or an Board of Directors member during a period of Declarant control subject to the provisions of Article IV of this Declaration.

Section 17.5. **Construction; Declarant's Easement.** The **Declarant** reserves the right to perform warranty work, repairs and construction work in Lots and Common Elements, to store **materials** in secure areas, and to control and have the right of access to work and repairs until completion. **All** work may be performed by the Declarant without the consent or approval of the Board of Directors. The Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the **Declarant's** obligations or exercising Special Declarant **Rights**, whether arising under the Act or reserved in this Declaration. This easement includes the right to convey **access**, utility and **drainage** easements to the County of Summit or the State of Colorado.

Section 17.6. **Interference with Special Declarant Rights.** Neither the Association nor any Lot Owner may take any action **or adopt** any Rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

ARTICLE XVIII ALLOCATED INTERESTS

Payment of dues shall commence when the Declarant transfers ownership of a Lot to a buyer, but no later than one year after a certificate of occupancy has been issued for improvements **constructed** on a Lot. The percentage of liability for Common Expenses allocated to each Lot is based on one share to each Lot compared with the total shares allocated to all the Lots in the Community. Nothing contained in this Subsection shall prohibit certain Common Expenses **from** being apportioned to particular Lots under Article IX or any other Article of this Declaration.

ARTICLE XIX EASEMENTS AND LICENSES

Section 19.1. **Existing Easements.** All easements or licenses to which the Community is presently subject are shown on the Plat.

Section 19.2. **Granting of Future Easements.** The Community may be subject to other easements or licenses granted by the Declarant pursuant to its powers under Article XVII of this Declaration.

Section 19.3. **Owner's Easement Across Common Elements.** Every **Owner** shall have a right and easement for ingress to and egress **from** such Owner's Lot over and across the Common Elements, which easement shall be appurtenant to and shall pass with the title to every Lot, subject to the right of the Declarant **and/or** the Association to dedicate or transfer all or part of the Common Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association. No such dedication or transfer by the Association shall be effective unless an instrument signed by 80% of the Lot Owners agreeing to such dedication or transfer has been **recorded** in the Records.

Section 19.4. **Easements Reserved and Restrictions on Drainage Easements.** Easements and rights of way are reserved on, over and under the Common Elements and the **Lots** as shown on the Plat, for construction, maintenance, repair, replacement and reconstruction of **poles, wires**, pipes and conduits for lighting, heating, **electricity**, gas, telephone, drainage and any other public or quasi-public utility service purposes, and for sewer and pipes of various kinds.

Section 19.5. **Emergency Easement.** A perpetual, non-exclusive easement is hereby grant to all police, sheriff, fire protection, ambulance, and similar agencies or persons to enter upon the Community in the **lawful** performance of their duties.

ARTICLE XX TERMINATION

Termination of the Community may be accomplished only in accordance with C.R.S., §38-33.3-218. No termination shall be effective until approved by the Town.

ARTICLE XXI INCIDENTS OF OWNERSHIP

Section 21.1. Inseparability. Every gift, devise, bequest, ~~transfer~~, encumbrance, conveyance, or other disposition of a Lot and improvements thereon shall be presumed to be a gift, devise, bequest, transfer, encumbrance, or conveyance respectively of the entire Lot, including each easement, license, and all other appurtenant rights created by this Declaration.

Section 21.2. No. The Common Elements shall ~~be~~ owned by the Association, and no Owner, group of Owners, or the Association shall bring any action for partition or division of the Common Elements or of any Lot.

Section 21.3. Residential Use. A Lot may ~~be~~ used for residential purposes only.

ARTICLE XXII PERSONS AND LOTS SUBJECT TO DOCUMENTS; ENFORCEMENT

Section 22.1. Compliance with Documents. All Lot Owners, tenants, mortgagees and occupants of Lots shall comply with the Documents. The acceptance of a deed or the exercise of ~~any~~ incident of Ownership or the entering into of a lease or the occupancy of a Lot constitutes agreement that the provisions of the Documents are accepted and ratified by that Lot Owner, tenant, mortgagee or occupant. All provisions recorded in the Records are covenants running with the land and shall bind any Persons having at any time any interest or estate in any Lot

Section 22.2. Enforcement. Except ~~as~~ otherwise provided in this Declaration, the Board of Directors, Declarant, or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Board of Directors of the Association, Declarant, or ~~by~~ any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Additionally, any such violation shall give the Declarant or the Board of Directors the right, in addition to any other ~~rights~~ set forth therein, (i) to enter the Lot or improvement thereon in which, or ~~as~~ to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, ~~thing~~, or condition that may exist therein in violation of the Declaration or rules adopted by the Association of Manager without being deemed guilty in any manner of trespass or any other civil or legal violation; and (ii) to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach, with each Owner or other person constructing improvements upon the Community hereby waiving the posting of a bond upon entry of such injunction. All reasonable attorney's fees and costs incurred by the Declarant or the Association in a suit to enforce the terms hereof shall, if said Declarant of the Association prevails in such action, be recoverable from the losing party.

Section 22.3. Adoption of Rules. The Board of ~~Directors~~ may adopt Rules regarding the use and occupancy of Lots ~~as~~ it affects the Common Elements and the activities of occupants, subject to Notice and Comment

Section 22.4. Right to Notice and Comment. Before the Board of Directors amends the Bylaws or the Rules, whenever the Documents require that an action be taken after "Notice and ~~Comment~~," and at any other time the Board of Directors determines, the Lot Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action either shall be given to each Lot Owner in writing,

delivered personally or by mail to all Lot Owners at such address as appears in the records of the Association, or it shall be published in a newsletter or similar publication which is routinely circulated to all Lot Owners. The notice shall be given not less than five days before the proposed action is to be taken. It shall invite comment to the Board of **Directors** orally or in writing before the scheduled time of the meeting. The right to Notice and Comment does not entitle a Lot Owner to **be** heard at a formally constituted meeting.

Section 22.5. **Right to Notice and Hearing.** Whenever the Documents require that an action be taken after "Notice and **Hearing**," the following procedure shall be observed: The party proposing to take the action (**e.g.**, the Board of Directors, a **committee**, an officer, the Manager, etc.) shall give written notice of the proposed action to all Lot Owners or occupants of Lots whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the **hearing**, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (**as** specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Any evidence shall be duly considered, but is not **binding** in making the decision. The affected **person** shall be notified of the decision in the **same** manner in which notice of the meeting was given.

Section 22.6. **Appeals.** Any **person** having a right to Notice and Hearing shall have the right to appeal to the Board of Directors **from** a decision of persons other than the Board of Directors by filing a written notice of appeal with the Board of Directors within ten days **after** being notified of the decision. The Board of Directors shall conduct a hearing within 30 days, giving the same notice and observing the same procedures as were required for the original meeting.

Section 22.7. **Access.** All meetings of the Board of Directors, at which action is to be taken by vote will be open to the Lot Owners, except as **hereafter** provided.

Section 22.8. **Notice.** Notice of every such meeting will be given not less than 24 hours prior to the time set for such meeting, by posting such notice in a conspicuous location in the Community, except that such notice will not be required if an emergency situation requires that the meeting be held without delay.

Section 22.9. **Executive Sessions.** Meetings of the Board of **Directors** may **be** held in executive **session**, without **giving** notice **and** without the requirement that they be open to Lot Owners, in either of the following situations only:

- A. if no action is taken at the executive session requiring the **affirmative** vote of **Directors**; or
- B. if the action taken at the executive session involves **personnel**, **pending** litigation, contract **negotiations**, enforcement actions, matters involving the invasion of privacy of individual Lot Owners, matters which are to remain confidential by request of the affected parties and agreement of the Board, or actions taken by unanimous consent of the Board.

ARTICLE XXIII GENERAL PROVISIONS

Section 23.1. **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which **shall** remain in full force and effect.

Section 23.2. **Conflicts.** In case of conflict between this Declaration and **the** Articles and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and Bylaws, the Articles shall control. The Documents are intended to comply with the requirement of the **Act**. If there is any conflict between the Documents and the provisions of the **Act**, the provisions of the Act shall control.

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EXHIBIT A
Deed **Restricted** Lots

The Lots in Vista Point listed on this page are Deed **Restricted Lots** and are subject to certain limitations on rental, occupancy, and resale price pursuant to the Annexation Agreement between **the** Town of Breckenridge and the **Declarant** dated February 19, 2001 and recorded on March 14, 2001 at Reception No. 647673 in the **Summit** County Clerk and Recorder's **office**. In addition to the other provisions of this Declaration, which apply to all of Vista **Point**, the provisions of **ARTICLE XVI** **specify** covenants and restrictions that apply to the Deed Restricted Lots. These covenants may be enforced by the **Declarant**, the Association, other Lot Owners, and the Town of Breckenridge or its designee.

Block 2, Lots 4, 5

Block 3, Lot 3

Block 4, None

Block 5, Lots 18, 19, 21 [six townhomes], **22, 23**

EXHIBIT B

Appreciation Limiting Promissory Note (the "Note")

For Amounts Collected by Marker in Excess of Adjusted Price Limit

Date: _____, 200__

_____ (the "Maker") after date, for value received promise to pay to the order of the **TOWN OF BRECKENRIDGE**, P O Box 168, Breckenridge, Colorado 80424, immediately upon any Sale of the Property **an** amount equal to the Gross Sales Price in excess of the maximum resale price, **as** set forth in Article XVI of the Declaration of Covenants, Conditions, Restrictions and Easements for Vista Point recorded on _____, 2002 **at** Reception No. _____

As used in this Note the terms set forth below shall have the meanings provided:

- a. "Lot" **means** the property subject to the Deed of Trust securing compliance with this Note.
- b. "Sale" means the sale or transfer of the Lot or any interest therein.
- c. "**Gross** Sales Price" means the total value of all consideration given Purchaser in connection with a Sale.
- d. "Maximum Resale Price" means an amount determined in accordance with the following:
 - i. the purchase price paid by that owner plus an additional amount equal to the sum of the following:
 - ii. the selling owner's initial purchase price multiplied by the sum of the annual percent increases in the annual median income for a family of four in Summit County, **as** determined by HUD [the "AMI"] for the term of ownership. For any partial year of the term of ownership, the increase will be prorated based on the preceding year's AMI increase. If the annual AMI percentage increase is less than 3% in any year, the annual increase for **that** year shall be deemed to be 3%;
 - iii. the collective amount of the Certificates of Improvement issued by the Town or its designee to the selling owner during his period of ownership. [see Article XVI of the Declaration for information on Certificates of Improvement];
 - iv. the normal and customary closing costs incurred by sellers for similar sales in Summit County, excluding appraisal and inspections costs, but including an actual real estate commission paid by the selling owner [but not to exceed 7% of the selling price], plus the premium for an owner's title insurance policy.

Purchaser may, at its election, reduce the amount of Gross Proceeds as to reduce any amounts owing hereunder.

The Note shall not bear interest and shall be due and payable upon Purchaser's Sale of the Property.

This Note shall be subordinate to a conventional first deed of trust where 100% of the proceeds are used in connection with purchasing the Lot. Maker may not subordinate this Note to **any** other deed of trust without the prior written approval of the Town.

It is agreed that if this Note is not paid when due or declared due hereunder, the amount due shall draw interest at the rate of 15% per annum, and **that** the failure to make any payment of principal or interest when due or any default under any encumbrance or agreement securing this Note shall cause the whole Note to become due at once, or the interest to be counted as principal, at **the** option of the holder of the Note. The makers and endorsers hereof severally waive presentment for payment, protest, notice of non-payment and of protest, and agree to any extension of time of payment and partial payments before, **at** or after maturity, and if this Note or interest thereon is not paid when due, or suit is brought, agree to pay all reasonable costs of collection including reasonable attorney fees, and if foreclosure is made by the Public Trustee, reasonable attorney fees to be added by the Public Trustee to the cost of foreclosure.

This Note is secured by a deed of trust on the Lot described **as** Lot _____, Vista **Point**, according to the Plat thereof filed in the Summit County, Colorado Real Estate Records on the ____ day of _____, 2002, **at** Reception No. _____, which deed of trust shall be subordinate to a first deed of trust securing payment of the balance of the purchase price for such Lot not paid in cash.

Maker

Maker