

**FIFTH AMENDMENT TO
DECLARATION OF GRANTS, COVENANTS, CONDITIONS AND RESTRICTIONS
FOR HERITAGE CROSSING AT THE GONDOLA CONDOMINIUMS**

THIS FIFTH AMENDMENT TO DECLARATION OF GRANTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR HERITAGE CROSSING AT THE GONDOLA CONDOMINIUMS (the "Amendment") shall be effective (the "Effective Date") upon recordation in the office of the Clerk and Recorder of San Miguel County, State of Colorado (the "Official Records"). Unless otherwise defined herein, all capitalized words shall have the meaning ascribed in the Declaration (as hereinafter defined).

RECITALS

A. Wildair, LP, a Texas limited partnership ("Declarant") previously filed that certain Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums on March 26, 2002, under Reception No. 347962 of the Official Records, First Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums on April 19, 2002, under Reception No. 348542 of the Official Records, Second Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums on May 30, 2002, under Reception No. 349375 of the Official Records, Third Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums on July 2, 2002, under Reception No. 350115, and Fourth Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums on October 29, 2002, under Reception No. 352669 (collectively, the "Declaration").

B. Declarant desires to amend the Declaration to amend (i) Sections 4.2.1, 4.2.3 and 4.2.4 and Subsection 17.5.C, and (ii) Exhibits C-2 and D-2 to the Declaration.

C. Pursuant to the Rights Reserved by Declarant, Declarant has the right to amend the Declaration for the purposes stated herein.

AMENDMENT

1. **Amended and Restated Sections 4.2.1 and 4.2.2.** Sections 4.2.1 and 4.2.2 of the Declaration are hereby deleted in their entirety and the following substituted therefor:

4.2.1. Undivided Interest in the General Common Elements. The interest in General Common Elements appurtenant to each of the Commercial Units and Residential Units of the Project is set forth on Exhibit C-3 attached hereto. The percentages specified on Exhibit C-3 with respect to such Units have been derived by the application of the formula described in Subsection 4.2.2 below to the projected Area of each such Unit based on as-built plans for the Project, and will be used by the Association in calculating Assessments made pursuant to this Declaration. If by reason of any reconfiguration of the Project, including, without limitation, resulting from a practical or legal inability to make a full restoration of the Project following a casualty or a partial condemnation, or the addition or withdrawal of Units from the Project, or if the Area of one or more Units is increased or decreased, the interest in General Common Elements for all like Units (i.e., all Residential Units if the Unit is a Residential Unit) within the Project after such change shall be recalculated in accordance with the following formula. An interest in the General Common Elements is not stated for the Parking Units or the Storage Units. The Association shall establish Parking Unit Assessments

and Storage Unit Assessments by reasonably calculating the annual costs of repair, taxes, maintenance, insurance and other expenses relating to the Parking Units and Storage Units, and the Owners of such Units shall pay their pro rata cost thereof (provided, except as provided in Subsection 11.7 below, the CTOA Parking Spaces shall not be subject to such annual fee).

4.2.2. Formula.

$$\begin{array}{l} \text{Interest in General} \\ \text{Common Elements} \end{array} = \frac{(\text{Area of the Unit*}) \times 100\%**}{(\text{Total Area of all Units*})}$$

*Commercial Unit or Residential Unit
 **less the percentage allocated to other like Units

2. **Amended and Restated Section 4.2.4.** Section 4.2.4 of the Declaration is hereby deleted in its entirety and the following substituted therefor:

4.2.4. Voting. The vote allocated to each Unit is set forth on Exhibit C-3 hereto. Any specified percentage, portion or fraction of Unit Owners, unless otherwise stated in the Condominium Documents, means the specified percentage, portion or fraction of all of the votes as allocated in Exhibit C-3 hereto.

3. **Amended and Restated Subsection 17.5.C.** Subsection C of Section 17.5 of the Declaration is hereby deleted in its entirety and the following substituted therefor:

C. Except as expressly provided otherwise herein, in the first calendar year in which the Association levies an Assessment, each (i) Parking Unit shall bear a General Assessment at an annual rate of \$750.00 (prorated for a partial year), and each Owner of a tandem Parking Unit shall pay two times such rate; and Storage Unit shall bear a General Assessment at an annual rate of \$250.00 (prorated for a partial year).

4. **Allocated Interests; Restricted Parking.** Exhibits C-2 and D-2 to the Declaration are hereby deleted in their entirety and the attached Exhibits C-3 and D-3 are substituted therefor.

5. **No Other Amendments.** Except as otherwise provided herein, all other terms and provisions of the Declaration shall remain in full force and effect.

6. **Severability.** If any of the provisions of this Amendment or any paragraph, sentence, clause, phrase or word or the application thereof in any circumstances be invalidated, such invalidity shall not affect the validity of the remainder of this Amendment and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

7. **Conflicts.** In the event of any conflict between the terms and provisions of this Amendment and the Declaration, the terms and provisions of this Amendment shall control.

8. **Number and Gender.** Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and the use of any gender shall include all genders.

9. **Applicable Law.** This Amendment is filed in the Official Records, and it is agreed that the proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Amendment shall be in the District Court of San Miguel County, Colorado.

10. **Interpretation.** The provisions of this Amendment shall be liberally construed to effectuate the purposes set forth in the Recitals hereof. This Amendment shall be construed and governed under the Laws of the State of Colorado.

11. **Captions.** All captions and titles used in this Amendment are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect the meaning of the text set forth in any paragraph, section or article hereof.

12. **Binding Agreement.** The provisions of this Amendment shall run with the Project and shall be binding on Declarant, its successors and assigns.

12. **Exhibits.** All exhibits attached to this Amendment are a part of, and are hereby incorporated into, this Amendment.

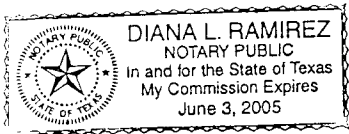
IN WITNESS WHEREOF, Declarant has executed this Declaration effective as of this 19th day of November, 2002.

WILDAIR, LP,
a Texas limited partnership
By: Wildair Management, LLC,
a Texas limited liability company, General Partner

By: Trish Kunz
Trish Kunz, Authorized Agent

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 19th day of November, 2002, by Trish Kunz, Authorized Agent of Wildair Management, LLC, a Texas limited liability company, General Partner of Wildair, LP, a Texas limited partnership, known to me by her Texas drivers license, on behalf of said partnership.



Diana L. Ramirez
Notary Public in and for the State of Texas
Diana L. Ramirez
(Printed Name of Notary)
My Commission Expires: 6/3/2005

EXHIBIT C-3TABLE OF ALLOCATED INTERESTS

Condominium Unit Designation	Condominium Unit percentage share of Common Elements and Common Expenses +	Residential Unit percentage share of Limited Common Elements and Common Expenses	Condominium Unit percentage share of Building Square Feet	Unit Vote in the affairs of the Class/ Association
R-1	7 %	10 %	7.61 %	1 R.U. / 2 P.U.
R-2	8 %	8 %	7.80 %	1 R.U. / 2 P.U.
R-3	7 %	8 %	7.37 %	1 R.U. / 2 P.U.
R-4	7 %	10 %	7.58 %	1 R.U. / 2 P.U.
R-5	8 %	8 %	7.88 %	1 R.U. / 2 P.U.
R-6	8 %	8 %	7.43 %	1 R.U. / 2 P.U.
R-7	8 %	13 %	8.72 %	1 R.U. / 2 P.U.
R-8	8 %	12 %	8.14 %	1 R.U. / 2 P.U.
R-9	8 %	13 %	8.27 %	1 R.U. / 2 P.U.
R-10	8 %	8 %	8.16 %	1 R.U. / 2 P.U.
C-1	4 %	N/A	3.52 %	1 C.U. / 2 P.U.
C-2	5 %	N/A	4.24 %	1 C.U. / 2 P.U.
C-3	1 %	N/A	1.22 %	1 C.U. / 4 P.U.
C-4	5 %	N/A	4.92 %	1 C.U. / 3 P.U.
C-5	8 %	N/A	7.15 %	1 C.U. / 4 P.U.
P-1	N/A	N/A	N/A	N/A
P-2	N/A	N/A	N/A	N/A
P-3	N/A	N/A	N/A	N/A
P-4	N/A	N/A	N/A	N/A
P-5	N/A	N/A	N/A	N/A
P-6	N/A	N/A	N/A	N/A
P-7	N/A	N/A	N/A	N/A
P-8	N/A	N/A	N/A	1 P.U.
P-9	N/A	N/A	N/A	1 P.U.
P-10	N/A	N/A	N/A	1 P.U.
P-11	N/A	N/A	N/A	N/A
P-12	N/A	N/A	N/A	1 P.U.
P-13	N/A	N/A	N/A	1 P.U.
P-14	N/A	N/A	N/A	N/A
P-15	N/A	N/A	N/A	N/A
P-16	N/A	N/A	N/A	N/A
P-17	N/A	N/A	N/A	N/A
P-18	N/A	N/A	N/A	N/A
P-19	N/A	N/A	N/A	N/A
P-20	N/A	N/A	N/A	N/A
P-21	N/A	N/A	N/A	N/A

P-22	N/A	N/A	N/A	N/A
P-23	N/A	N/A	N/A	N/A
P-24	N/A	N/A	N/A	N/A
P-25	N/A	N/A	N/A	N/A
P-26	N/A	N/A	N/A	N/A
P-27	N/A	N/A	N/A	N/A
P-28	N/A	N/A	N/A	N/A
P-29	N/A	N/A	N/A	N/A
P-30	N/A	N/A	N/A	N/A
P-31	N/A	N/A	N/A	N/A
P-32	N/A	N/A	N/A	N/A
P-33	N/A	N/A	N/A	N/A
P-34	N/A	N/A	N/A	N/A
P-35	N/A	N/A	N/A	N/A
P-36	N/A	N/A	N/A	N/A
P-37	N/A	N/A	N/A	N/A
P-38	N/A	N/A	N/A	N/A
P-39	N/A	N/A	N/A	N/A
P-40	N/A	N/A	N/A	N/A
S-1	N/A	N/A	N/A	1 S.U.
S-2	N/A	N/A	N/A	1 S.U.
S-3	N/A	N/A	N/A	1 S.U.
S-4	N/A	N/A	N/A	1 S.U.
S-5	N/A	N/A	N/A	1 S.U.
S-6	N/A	N/A	N/A	1 S.U.
S-7	N/A	N/A	N/A	1 S.U.

+Inclusive of Common Elements, if any, included.

EXHIBIT D-3**List of Restricted Parking Units**

<u>Subject Parking Units</u>	<u>Corresponding Unit Ownership Requirement</u>
P-37 and P-38	C-1
P-1 and P-2	C-2
N/A	C-3
P-3, P-4, P-5, P-6, P-7, P-11 & P-14	C-4
P-6, P-7, P-11 and P-14	C-5
P-15 and P-26	R-1
P-16 and P-27	R-2
P-17 and P-28	R-3
P-18 and P-29	R-4
P-19 and P-30	R-5
P-20 and P-31	R-6
P-21 and P-32	R-7
P-22 and P-33	R-8
P-23 and P-34	R-9
P-24 and P-35	R-10