

**DECLARATION OF RESTRICTIONS
FOR COMMERCIAL UNIT 1, HERITAGE CROSSING AT THE GONDOLA CONDOMINIUMS**

THIS DECLARATION OF RESTRICTIONS FOR COMMERCIAL UNIT 1, HERITAGE CROSSING AT THE GONDOLA CONDOMINIUMS (referred to, as it may be amended or supplemented from time to time, as the "Declaration") shall be effective (the "Effective Date") upon recordation in the Official Records (as hereinafter defined) and is made by Wildair, LP, a Texas limited partnership ("Declarant").

RECITALS

A. Declarant is the fee simple owner of Commercial Unit 1, Heritage Crossing at the Gondola Condominiums, which property is more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Property").

B. Declarant and TD Duddles (successor in interest by assignment to Dennis and Terri Duddles) ("Duddles") have entered into that certain Contract to Buy and Sell Real Estate (Commercial) (New Loan) dated as of January 29, 2003, as amended (the "Contract") pursuant to which Declarant has agreed to sell, and Duddles has agreed to purchase, the Property.

C. As a condition of sale of the Property to Duddles pursuant to the Contract, Declarant requires Property use to be restricted.

D. The purpose of this Declaration is to subject the Property to the covenants, conditions and restrictions set forth in this Declaration.

In consideration of the Contract and the foregoing, Declarant hereby declares as follows:

**ARTICLE I
IMPOSITION OF COVENANTS**

1.1. Intention of Declarant. Declarant desires to (i) protect the value and desirability of Heritage Crossing at the Gondola Condominiums, a Colorado common interest ownership community more particularly described in Exhibit B attached hereto and incorporated herein by reference (the "Project"), of which the Property is a part, (ii) further a plan for the improvement, sale, ownership and use of the Property, and (iii) promote and safeguard the health, comfort, safety, convenience and welfare of the Owners.

1.2. Condominium Declaration. To accomplish the purposes and intentions recited above, Declarant hereby imposes upon the Property the covenants, conditions and restrictions set forth herein and declares that the Property shall be held, sold, conveyed, encumbered, leased, rented, occupied, improved and used subject to the provisions of this Declaration.

1.3. Covenants Running with the Land. All covenants, conditions, restrictions and other provisions of this Declaration shall be deemed to be covenants running with the Property or shall constitute equitable servitudes with respect to the Property, as the case may be. The obligations, benefits, burdens and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, each Owner, the Association and their respective heirs, devisees, executors, administrators, personal representatives, successors and assigns.

**ARTICLE II
DEFINITIONS**

2.1. Basic Definitions. Unless defined herein, capitalized terms used herein shall have the meanings ascribed in that certain Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums filed on March 26, 2002, under Reception No. 347962 of the Official Records, as amended (the "Project Declaration").

JOB 18298AR3
36.00

7

ARTICLE III USE RESTRICTIONS

3.1. Authorized Use. Subject to compliance with the Project Declaration and this Declaration, the Property may be used for a restaurant and associated bar. At no time shall the Property be used primarily or solely for the operation of a business which sells or serves alcoholic beverages, and bar seating shall be limited to an aggregate of fifteen (15) seats (determined on the basis of one seat per customer). Further: (i) the interior décor of the restaurant and bar shall be "mining era"; (ii) the restaurant may provide "self service" food amenities, including an automated espresso bar; (iii) all seating shall be at counter height; (iv) the facility shall have at least one (1) flat screen television; and (v) subject to receipt of (a) all required regulatory approvals, including, without limitation, approval of the Town of Mountain Village, (b) Declarant's written approval of the encumbered area, and (c) compliance with the restrictions set forth herein, Limited Common Area exterior of the Property may be used for outdoor seating of restaurant customers (such area herein the "Exterior LCA")

3.2. Hours of Operation.

3.2.1. Business may be conducted at the Property only between the hours of 7:00 a.m. and 10:00 p.m.; provided, the playing of recorded, ambient music and live musical performances shall be limited as set forth in Section 3.3 below.

3.2.2. Business shall not be conducted at the Property after 10:00 p.m., at which time the Property shall be vacated by all patrons, all noise emanating from the Property shall cease and all exterior lights shall be turned off.

3.2.3. Restaurant and beverage service at the Property, inclusive of the Exterior LCA, shall be discontinued a reasonable time prior to closing of the business, and in all events at least thirty (30) minutes prior to closing.

3.3. Acoustical Evaluation and Noise Restrictions.

3.3.1. The Sound Transmission Class ("STC") study of the Property attached hereto as Exhibit B and incorporated herein by reference (the "Study") includes certain recommendations relating to construction of improvements to the Property, and interior construction shall be undertaken in compliance with the minimum standards set forth in the Study.

3.3.2. Notwithstanding any other provision of this Declaration, irrespective of the existence or non-existence of the Study, use or operation of the Property which results in sound emanating from or at the Property in excess of Acceptable Levels is prohibited and, if at any time sound emanating from or at the Property exceeds Acceptable Levels, Declarant, each Owner and the Association, as applicable, shall have the rights and remedies set forth in Article XXVI of the Project Declaration and this Declaration.

3.3.3. As used herein, "Acceptable Levels" means (i) initially, a STC rating of STC-50, and (ii) in the event the Study or any study hereafter commissioned by Declarant, an Owner or the Association indicates that sound emanating from or at the Property, including, without limitation, bass levels, adversely affects the use and enjoyment of the Unit(s) located above the Property, the STC rating which will insure that sound emanating from or at the Property, including, without limitation, bass levels, does not adversely affect the use and enjoyment of the Unit(s) located above the Property. Further, in connection with any such future study, noise emanating from the Property may be regulated via hours of operation, "noise form" and decibel level as recommended therein.

3.3.4. Notwithstanding any other provision of this Declaration, there shall be no live music performances interior of the Property, and only recorded ambient music will be permitted therein. Speakers which play such music may be installed or located in areas within the Exterior LCA approved by the Association and the Town of Mountain Village pursuant to Subsection 3.1(v) above; however, the playing of ambient music in such areas is limited to the times and restrictions set forth herein. Stereo and other equipment located or installed in the Property, inclusive of the Exterior LCA, shall be installed in accordance with applicable provisions of the Study or any related approvals, and at no time shall the playing of recorded music at the Property exceed Acceptable Levels.

3.3.5. Except for the Winter Period (as hereinafter defined), ambient music may be played in the Exterior LCA between the hours of 12:00 p.m. and 9:00 p.m. During the Winter Period, recorded, ambient music may be played in the Exterior LCA between the hours of 12:00 p.m. and 6:00 p.m. Live music performances are permitted in the Exterior LCA on Fridays, Saturdays and Sundays between the hours of (i) 12:00 p.m. and 6:00 p.m. during the Winter Period; and (ii) 12:00 p.m. and 8:00 p.m. during the Summer Period (as hereinafter defined); provided, live music is limited to a maximum of twelve (12) weekends per calendar year. Notwithstanding the foregoing, live music may be permitted in the Exterior LCA for special events and in addition to the foregoing twelve (12) weekends per calendar year upon written approval of the Association. For the purposes of this Subsection: (a) "Winter Period" means and refers to the period through the last day that the Telluride Ski Area is open, and (b) "Summer Period" means and refers to the period from May 21 to September 15.

3.4. Odor Mitigation.

3.4.1. The only cooking permitted within the Property will be Par (as hereinafter defined) and, in the event Declarant, the Association or any regulatory authority with jurisdiction over the Property hereafter reasonably determines that food preparation adversely impacts the use and enjoyment of other property within the Project or of occupants of or visitors to the Project (including, without limitation, by the seepage of food odors into adjacent or nearby properties or areas), then food preparation at the Property may be prohibited until such time as appropriate mitigation has been undertaken and approved by Declarant, the Association and, if applicable, regulatory authorities with jurisdiction over the Property. As used herein, "mitigation" includes, by way of example and not limitation, the installation of Class II venting or charcoal filtering systems designed to filter/capture food smells and prevent the same from being emitted from the Property. For the purposes of this Agreement, "Par Baking" means and refers to the final baking of pre-prepared, partially cooked or partially baked breads and pastries.

3.4.2. In the event mitigation is required pursuant to Subsection 3.4.1 above and such mitigation requires construction at the Property, the Property owner shall first obtain the approval of Declarant, the Association and all regulatory authorities with jurisdiction over the Property.

3.5. Signage. Prior to the commencement of construction or installation of any signage and/or lighting at the Property, the Property owner shall submit plans therefor and receive all required approvals, including, without limitation, approval of the Association and the Town of Mountain Village.

ARTICLE IV MISCELLANEOUS

4.1. Severability. If any of the provisions of this Declaration 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 Declaration and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

4.2. 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.

4.3. Applicable Law. This Declaration 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 Declaration shall be in the District Court of San Miguel County, Colorado.

4.4. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the creation of a uniform plan for the development of the Units and to promote and effectuate the fundamental concepts set forth in the Recitals of this Declaration. This Declaration shall be construed and governed under the Laws of the State of Colorado.

4.5. Captions. All captions and titles used in this Declaration 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.

4.6. **Successors and Assigns of Declarant.** Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers.

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

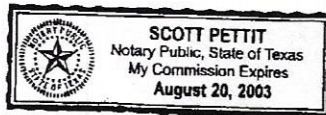
IN WITNESS WHEREOF, Declarant has executed this Declaration effective as of this 28th day of March, 2003.

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

By: Trish Kunz
Trish Kunz, Vice President

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 27th day of March, 2003, by Trish Kunz, Vice President 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.



Scott Pettit
Notary Public in and for the State of Texas

SCOTT PETTIT
(Printed Name of Notary)

My Commission Expires: 8-20-03

JOINDER AND CONSENT

Heritage Crossing at the Gondola Condominium Owners Association, Inc., a Colorado nonprofit corporation, hereby joins in the foregoing Declaration of Restrictions for the purpose of evidencing its consent to the same.

WILDAIR, LP, a limited partnership

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

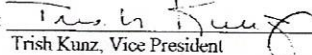
By: 
Trish Kunz, Vice President

EXHIBIT A

Legal Description of the Property

Commercial Unit 1 and Parking Unit 38, Heritage Crossing at the Gondola Condominiums, according to the Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded March 26, 2002, at Reception No. 347962 of the records of the Office of the Clerk and Recorder of San Miguel County, State of Colorado (the "Official Records"), as amended by that certain First Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded April 19, 2002, at Reception No. 348542 of the Official Records, that certain Second Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded May 30, 2002, at Reception No. 349375 of the Official Records, that certain Third Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded July 3, 2002, at Reception No. 350115 of the Official Records, that certain Fourth Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded October 29, 2002, at Reception No. 352669 of the Official Records, that certain Fifth Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded November 22, 2002, at Reception No. 353289 of the Official Records, that certain Sixth Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded December 6, 2002, at Reception No. 353563 of the Official Records, that certain Seventh Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded December 23, 2002, at Reception No. 353965 of the Official Records, that certain Eighth Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded January 29, 2003, at Reception No. 354749 of the Official Records, and that certain Ninth Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded March 17, 2003, at Reception No. 355846 of the Official Records, and the Condominium Map of Heritage Crossing at the Gondola Condominiums recorded March 26, 2002, in Plat Book 1 at Page 2996 of the Official Records, as amended by First Amendment thereto recorded April 19, 2002, in Plat Book 1 at Page 3015 of the Official Records, Second Amendment thereto recorded May 30, 2002, in Plat Book 1 at Page 3021 of the Official Records, Third Amendment thereto recorded October 29, 2002, in Plat Book 1 at Pages 3069-3071 of the Official Records, and Fourth Amendment thereto recorded January 29, 2003, in Plat Book 1 at Page 3098 of the Official Records.

EXHIBIT B

Legal Description of the Project

Heritage Crossing at the Gondola Condominiums, according to the Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded March 26, 2002, at Reception No. 347962 of the records of the Office of the Clerk and Recorder of San Miguel County, State of Colorado (the "Official Records"), as amended by that certain First Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded April 19, 2002, at Reception No. 348542 of the Official Records, that certain Second Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded May 30, 2002, at Reception No. 349375 of the Official Records, that certain Third Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded July 3, 2002, at Reception No. 350115 of the Official Records, that certain Fourth Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded October 29, 2002, at Reception No. 352669 of the Official Records, that certain Fifth Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded November 22, 2002, at Reception No. 353289 of the Official Records, that certain Sixth Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded December 6, 2002, at Reception No. 353563 of the Official Records, that certain Seventh Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded December 23, 2002, at Reception No. 353965 of the Official Records, that certain Eighth Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded January 29, 2003, at Reception No. 354749 of the Official Records, and that certain Ninth Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded March 17, 2003, at Reception No. 355846 of the Official Records, and the Condominium Map of Heritage Crossing at the Gondola Condominiums recorded March 26, 2002, in Plat Book 1 at Page 2996 of the Official Records, as amended by First Amendment thereto recorded April 19, 2002, in Plat Book 1 at Page 3015 of the Official Records, Second Amendment thereto recorded May 30, 2002, in Plat Book 1 at Page 3021 of the Official Records, Third Amendment thereto recorded October 29, 2002, in Plat Book 1 at Pages 3069-3071 of the Official Records, and Fourth Amendment thereto recorded January 29, 2003, in Plat Book 1 at Page 3098 of the Official Records.