

27603



Cheri Brunvand-Summit County Recorder 2/3/2003 15:19 DF:

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

This Amendment to Declaration of Covenants, Conditions, Restrictions and Easements For Vista Point is made and entered into this 27 day of Jan, 2003 by and between WSG BRECKENRIDGE, LP, a Delaware limited partnership ("Declarant") and the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town")-

WHEREAS, the Declarant executed that certain Declaration of Covenants, Conditions, Restrictions, and Easements for Vista Point, which document is dated April 17, 2002 and was recorded April 18, 2002 under Reception No. 681899 of the records of the Clerk and Recorder of Summit County, Colorado ("Declaration"); and

WHEREAS, Article XVI of the Declaration contain certain covenants which were made for the benefit of the Town; and

WHEREAS, Section 16.5 provides that Article XVI of the Declaration may be amended with the written consent of the Declarant and the Town, without the requirement for approval by the Lot Owners or Mortgagees, so long as the amendment is no more restrictive on either the Lot Owners or the Mortgagees; and

WHEREAS, the Declarant and the Town desire to amend the Article XVI of the Declaration as hereafter set forth; and

WHEREAS, the amendments to Article XVI of the Declaration set forth herein are found and determined to be no more restrictive on either the Lot Owners or the Mortgagees.

NOW, THEREFORE, for an inconsideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged and confessed, the Declarant and the Town agree as follows:

- 1. Article XVI of the Declaration is hereby amended by the addition of new Sections 16.4.5 and 16.4.6, which shall read in their entirety as follows:

Section 16.4.5 FHA, Federal Government, or Federal Governmental Sponsored Entity Exception. Notwithstanding any other provision of this Article XVI to the contrary, if any Deed Restricted Lot encumbered by this Declaration is subject to foreclosure or a deed in lieu of a foreclosure under a FHA loan or any loan insured, guaranteed, or owned by a federal government agency or federal governmental sponsored entity at any point in time, this Article XVI and all such limitations upon the property as set forth herein shall terminate and cease to have any affect on said property at the time of the issuance of a Public Trustee's Deed or the acceptance of a Deed in Lieu of Foreclosure. Such termination shall in no way ameliorate any personal responsibility assumed by the individual unit owner



STATE OF COLORADO COUNTY OF SUMMIT I hereby certify that this instrument was filed for record in my office at 15:19 o'clock P.M. 2/3/2003 Reception No. 709837 CHERI BRUNVAND COUNTY CLERK AND RECORDER By: Guadalupe Tule Deputy Guadalupe Tule

acting as signatory party below under the terms of this Declaration. This provision is drafted to in compliment with and not in abrogation of all laws and regulations regarding such FHA, federal government agency, or federal **governmental** sponsored entity loans as presently govern the administration of such loans.

Section 16.4.6 Town Option to Purchase Deed Restricted Lot Following Foreclosure. The Town shall have sole, exclusive and irrevocable option and right to purchase a Deed Restricted Lot **after** foreclosure in accordance with the following terms and conditions:

1. **When Option Triggered**. The option herein granted shall apply only in the event that legal title to a Deed Restricted Lot is **transferred** in connection with: (i) the foreclosure of a deed of trust which encumbers the Deed Restricted Lot (either through a judicial foreclosure or a foreclosure by the Public Trustee); (ii) the judicial foreclosure of a mortgage which encumbers the Deed Restricted Lot; or (iii) the judicial foreclosure of any lien which encumbers the Deed Restricted Lot, including, but not limited to, a mechanics or **materialmans** lien, other statutory lien, or any lien created by this Declaration.

2. **Manner of Exercising The Option**. **If the** Town elects to exercise the option herein granted, the Town shall give written notice thereof to the party who purchased or otherwise acquired the subject Deed Restricted Lot in connection with the foreclosure ("Optionor") within ten (10) days after the date of the recording of the deed by which the **Optionor** acquired legal title to such Deed Restricted Lot. **If mailed**, the notice to the **Optionor** shall be **sent** to the address **set** forth in the recorded deed by which the **Optionor** acquired legal title to the Deed Restricted Lot. The Town's notice shall be deemed to be sufficient and timely given if mailed by certified mail, return receipt requested, or if personally delivered to such party, within the ten (10) day period. The failure of the Town to give the required notice within the ten (10) day period shall be deemed conclusive evidence that the Town has elected not to exercise the option herein granted, and the Town shall have no **further** interest in such Deed Restricted Lot pursuant to this Section 16.4.6.

3. **Date of Closing**. Closing of the Town's purchase of the Deed Restricted Lot shall be held at a date, time and location mutually agreeable to Town and the **Optionor**, but in default **thereof**, the date, time and location shall be determined by Town. The date for such closing shall be **not** less than fifteen (15) nor more than sixty (60) days following the giving of the Town's notice of the exercise of the option as provided in **Paragraph 2**, above.

4. **Closing**. At closing the Town shall deliver to the **Optionor** the purchase price (**as** established pursuant to Paragraph 5, below) in **good** funds which comply with Colorado law. The **Optionor** party shall execute and deliver to Town a special warranty deed conveying the Deed Restricted Lot, **free** and clear of all liens and

encumbrances, except the **lien** of the general property taxes for the year of closing and such other title exceptions as may be acceptable to Town. The parties shall execute such other usual and customary closing documents as may be required to accomplish the closing. The Town shall obtain and pay for any title insurance which it desires. The Town shall pay for the services of any closing agent employed by Town to assist with the closing.

5. **Purchase Price.** The purchase price to be paid by Town to the **Optionor** for the Deed Restricted Lot **shall** be equal to the total of: (i) the actual monetary consideration paid for the Deed Restricted **Lot** by the **Optionor** (as determined by the recitals in the deed by which title to the Deed Restricted Lot was acquired by the Optionor); (ii) interest on the Optionor's acquisition **cost** (as described in (i), above) at the legal rate of interest from the date of the Optionor's acquisition of the Deed Restricted Lot until the date of closing; and (iii) any out-of-pocket expenses incurred by the **Optionor** to protect and preserve the Lot after the Optionor's acquisition thereof.


6. **Specific Performance.** The obligation of a party who purchases or otherwise acquires a Deed Restricted Lot in connection with a foreclosure action as described in Paragraph 1, above, to sell such Deed Restricted Lot to the Town in accordance with this Section shall be specifically enforceable. In connection therewith, the prevailing party shall be entitled to recover its reasonable attorneys fees, court costs and expert witness fees **from** the other party.

7. **Continued Application of Article XVI.** Unless otherwise expressly **agreed** to by the Town in writing, all of the provisions of this Article XVI shall continue to apply to **any** Deed Restricted Lot which is acquired by the Town pursuant to the option herein granted.

2. Except as expressly amended hereby, the Declaration shall continue in full force and effect.

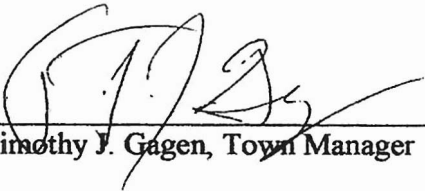
Executed as of the date first set forth above.

**WSG Breckenridge, LP, a Delaware
limited partnership**

By: 

Title: Attorney in fact

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By  _____
Timothy J. Gagen, Town Manager

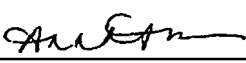
ATTEST:


~~Mary Jean Loufek, CMC,~~ Wanda T. Creen (Deputy)
Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 28 day of
JANUARY, 2003, by Lance Rader, as,
Attorney-In-Fact. of WSG Breckenridge, LP, a Delaware
limited partnership.

WITNESS my hand and official seal.
My commission expires: 11/06/04



Notary Public ANNETTURIANO

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 27 day ^{Wanda T. Green} of ~~JANUARY~~, 2003, by ~~Timothy J. Gagen~~, Town Manager, and ~~Mary Jean Loufek~~, CMC, ^{Deputy} ~~Town Clerk~~, of the Town of Breckenridge, a Colorado municipal corporation.

WITNESS my hand and official seal.

My commission expires: 2/15/04



Patricia A. Butler
Notary Public