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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE VINEYARDS AT
VISTA SAN JUAN

THIS DECLARATION, made on the date hereinafter set forth by THE B.E.S., INC., a Colorado Corporation, hereinafter referred to as Declarant.

WITNESSETH:

WHEREAS, Declarant is owner of certain property in the County of Montrose, State of Colorado, which is more particularly described as:

A tract of land situated in U.S. Government Lots 1, 2, 7 and 8, Section 4, Township 48 North, Range 9 West, N.M.P.M., and being more particularly described as follows: Beginning at a point on the east line of said Section 4 from whence the northeast corner of said U.S. Government Lot 1 bears N00°17'53"W, 56.21 ft.; thence S00°17'53"E along said east line, 742.13 ft.; thence West, 19.32 ft.; thence S47°05'55"W, 69.54 ft.; thence S89°36'17"W, 432.14 ft.; thence N80°10'52"W, 20.16 ft.; thence South, 106.09 ft.; thence 117.81 ft. along the arc of a curve to the right having a radius of 75.00 ft., a central angle of 90°00'00" and a long chord which bears S45°00'00"W, 106.07 ft.; thence West, 143.35 ft.; thence 31.42 ft. along the arc of a curve to the left having a radius of 20.00 ft., a central angle of 90°00'00" and a long chord which bears S45°00'00"W, 28.28 ft.; thence North, 95.84 ft.; thence 68.54 ft. along the arc of a curve to the left having a radius of 125.00 ft., a central angle of 31°24'59" and a long chord which bears N15°42'29"W, 67.68 ft.; thence N05°50'59"E, 175.42 ft.; thence N85°23'42"W, 120.00 ft.; thence N88°23'42"W, 221.33 ft.; thence N86°35'50"W, 50.42 ft.; thence N87°30'24"W, 114.99 ft.; thence S88°19'29"W, 114.29 ft.; thence S79°45'00"W, 203.00 ft.; thence S09°38'15"E, 145.00 ft.; thence S80°21'45"W, 20.00 ft.; thence N09°38'16"W, 129.11 ft.; thence N00°23'36"W, 684.25 ft.; thence S89°59'55"E, 870.61 ft.; thence N89°36'17"E, 728.41 ft. to the point of beginning, containing 27.058 acres.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE IDEFINITIONS

Section 1. "Association" shall mean and refer to THE VINEYARDS AT VISTA SAN JUAN HOME OWNERS ASSOCIATION, its successors and assigns. Any successor Association may be an entity permitted by the laws of the State of Colorado, including, but not limited to, a corporation, cooperative association, general partnership, or unincorporated association.

Section 2. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any unit which is part of the Property, including contract buyers, but excluding those having an interest in all or any part of the Property as security for the performance of an obligation.

Section 4. "Common Area" shall mean all of the Property included within any subdivision plat except the Units as hereinafter defined.

Section 5. "Unit" shall mean a building site including the land on which the building is located, together with the improvements thereon and all rights and easements appurtenant thereto, constituting an individual residence, title to which has been or hereafter may be conveyed in fee simple by reference to the numerically designated or alphabetically lettered plots of land within the Property as shown and described on all subdivision plats of said property or portions thereof as they are filed of record.

Section 6. "Member" shall mean every person or entity who holds membership in the Association.

Section 7. "Declarant" shall mean B.E.S., INC., its successors and assigns if such successors or assigns acquire all unsold Units and undeveloped land of the Declarant for the purpose of development.

Section 8. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions.

Section 9. "Encumbrancer" shall mean the beneficiary of a first Deed of Trust of Real Estate Mortgage.

ARTICLE IIASSOCIATION

Section 1. - Membership. Every Owner, as defined in Article 1, Section 3 shall be deemed to have a membership in the Association. No Owner, whether one or more Persons, shall have more than one (1) membership per Unit owned. In the event the Owner of a Unit is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the Bylaws. The membership rights of a Unit owned by a corporation, partnership or trust shall be exercised by the individual designated by the Owner in a written instrument provide to the Secretary of the Association, subject to the provisions of this Declaration and the Bylaws.

Section 2. - Voting The association shall have two (2) classes of membership, Class A and Class B, as follows:

Class A. Class A Members shall be all Owners with the exception of the Declarant, and shall be entitled to one (1) vote for each Unit owned. When more than one (1) Person holds an interest in any Unit, all such Persons shall be Members. The vote for such Unit shall be exercised as those Persons determine among themselves and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the Unit's vote shall be suspended if more than one (1) Person seeks to exercise it.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to four (4) votes per unit owned and, in addition, shall be entitled to appoint a majority of the members of the Board of Directors during the Class B control Period, as specified in Section (3)(b) of Article II. The Class B membership shall terminate and become converted to Class A membership upon the earlier of:

- (a) upon the completion of one hundred (100) Units
- (b) when, in its discretion, the Declarant so determines; or
- (c) on January 1, 2003

Section 3. - Number of Directors, Election and Term of Office.
The number of directors, their election and term of office shall be as follows:

- (a) The number of Directors constituting the initial Board of Directors shall be three. Upon the completion of 28 Units, the number of Directors shall be increased to five.

(b) Declarant shall appoint the initial Board of Directors. The Class B member shall be entitled to elect all three members of the Board of Directors until the completion of fourteen Units at which time the Class A Members shall be entitled to elect one director and the Class B Member shall be entitled to elect two directors. Upon the completion of twenty-eight Units, the Class A Members shall be entitled to elect two directors and the Class B Member shall be entitled to elect three directors. Upon the termination of Class B Membership, the Class A Members shall be entitled to elect all of the Directors.

(c) All Directors shall be elected at the annual meeting of the Association for a term of one year and shall hold office until a successor shall have been elected and qualified. All Directors elected by Class A Members shall be members of the Association.

(d) Directors elected by the Class A Members may be removed only by the Class A Members, and Directors elected by the Class B Member may be removed only by the Class B Member.

Section 4. - Assumption of Obligations of Declarant. The Association shall assume all obligations of Declarant which are for the general benefit of the Association or the property.

ARTICLE III

PROPERTY RIGHTS IN THE COMMON AREA

Section 1. - Owner's Easements of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Unit subject to the following provisions:

(a) The right of the Association to limit the number of guests of Owners that may be admitted to the Common Area;

(b) The right of the Association to charge reasonable amounts for the use of any recreational facility situated upon the Common Area;

(c) The right of the Association, in accordance with the Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage or grant other security interests in the Common Area; Provided, however, that the rights of any mortgage shall be subject to the rights of the Members of the Association while and mortgage is current and not in default, provided further that the Common Area shall not be mortgaged without the written consent of two-thirds (2/3) of all Encumbrancer.

(d) The right of the Association to suspend the voting rights and right to use of the Association facilities by a Member for any period during which and assessment against his Unit remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations. This provision shall not apply to the voting rights assigned to any Encumbrancer;

(e) The right of the Association to dedicate or transfer all or any part of the Common Area, to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members and by persons holding mortgages on any portion of the subject property. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of all Units agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member not less than thirty (30) days in advance. Declarant shall have the right at any time to use so much Common Area as it may reasonably deem necessary or advisable for the purpose of aiding in the construction and development of the Units, provided, however, that Declarant shall repair and pay for any damage to improvements which have been installed upon the Common Area and resulting from his construction and development.

Section 2. - Delegation of Use. Any member may delegate in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, guests or contract purchasers who reside on any Unit owned by him.

Section 3 - Title to the Common Area. The declarant hereby covenants for itself, its successors and assigns, to convey title to the Common Area to the Association simultaneously with the filing of all subdivision plats specifying such common areas.

Section 4. - Development of Common Area. Declarant shall be responsible for the following development of the Common Area: (1) Installation of valley pan and paving of parking area; (2) Installation of grass seed and miscellaneous landscaping; (3) Installation of sprinkler systems. Upon completion of these designated improvements the Association shall assume all responsibility for further development of the Common Area and maintenance thereof.

ARTICLE IVEASEMENTS

Section 1. - Encroachments. Each Unit and the Common Area shall be subject to an easement for encroachments of buildings onto adjoining Units or the Common Area or encroachment of the Common Area onto any Unit, overhangs, and for stairs for egress and ingress to any Unit, as designed or constructed by the Declarant. A valid easement shall exist for said encroachments, overhangs and stairways, and for their maintenance, repair and replacement. If any structure is partially or totally destroyed, and then rebuilt, the Owners of Units agree that minor encroachments of parts of construction onto adjacent Units or the Common Area due to construction shall be permitted and that a valid easement for such overhangs and encroachments and the maintenance thereof shall exist.

Section 2. - Utilities. There is hereby created a blanket easement upon, across, over and under the Units and Common Area for installation, replacing, repairing and maintaining all utilities, including but not limited to, water, sewers, gas, telephones and electricity. By virtue of this easement, it shall be expressly permissible for the utility companies to erect and maintain the necessary equipment on said property and to affix and maintain water and sewer pipes, electrical and telephone wires, circuits, conduits and meters on, in, above, across, through and under the roofs, walls and floors of structures on the Units.

Section 3. - Easement for Maintenance. Each Unit and the Common Area shall be subject to an easement for the Association (including its agents, employees and contractors) for providing maintenance described in Article VI.

Section 4. - Ingress and Egress. The Owner of each Unit shall have a valid easement for ingress and egress over and across the Common Area for pedestrian use from public streets to the individual Units.

ARTICLE VPARTY WALLS

Section 1. - Party Wall Easements. Mutual reciprocal easements are hereby established, declared and granted for all party walls between improvements constructed or to be constructed on Units, which reciprocal easements shall be for mutual support and shall be governed by this Declaration. Every deed, whether or not expressly so stating, shall be deemed to convey and to be subject to such reciprocal easements.

Section 2. - General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the property and placed on the dividing line between the Units shall constitute a party wall, and , to the extent not inconsistent with the provisions of the Article, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 3. - Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 4. - Destruction by Fire or other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 5. - Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against the elements.

Section 6. - Right to Contribution Runs with the Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE VI

EXTERIOR MAINTENANCE

In the event an Owner of any Unit in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3), vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain and restore the Unit and the exterior of the building and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Unit is subject.

ARTICLE VIIINSURANCE

Section 1. The Association shall, on behalf of the Owners:

(a) Keep all improvements on the Common Area insured against loss or damage by fire, with extended coverage (including insurance against loss or damage by vandalism or malicious mischief) in approximately the amount of the maximum replacement value thereof:

(b) Provide and keep in force, for the protection of the Association, its officers and directors, and all the Owners and Encumbrancer, general public liability and property damage insurance against claims for bodily injury or death or property damage occurring upon or in the Common area, in limits of not less than \$250,000 in respect for bodily injury or death of any one person and not less than \$500,000 for bodily injury or death to any number of persons arising out of an accident or disaster, and if higher limits shall at any time be customary to protect against possible tort liability, such higher limits shall be carried; and

(c) Carry insurance in such amounts as the Association may consider necessary or advisable against such other insurable hazards as may from time to time be commonly insured against in the case of a similar property in similar locations elsewhere.

Section 2. Each Owner shall be responsible for all insurance covering loss or damage to personal property and contents in his Unit and liability for injury, death or damage occurring inside his Unit. Any such policy shall contain waivers of subrogation and shall be so written that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished thereby.

ARTICLE VIIICOVENANTS FOR ASSESSMENTS

Section 1. - Creation of the Lien and Personal Obligation of Assessments. The declarant, for each Unit owned within the Property, hereby covenants, and each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or conveyance, is deemed to covenant and agree to pay, to the Association, or to any properly designated agent of behalf of the Association, commencing at such time as this Declaration is recorded, the following:

(1) Annual assessments or charges, (2) Special assessments for capital improvements, such assessments to be established and collected from time to time as hereinafter provided, and (3) Special assessments for damage as provided in Article VIII, Section 5. The annual and special assessments for capital improvements, together with such interest, costs of collection, and reasonable attorneys fees provided herein, shall be a charge on the unit and shall be a continuing lien upon the Unit against which each such assessment is made. Each such assessment, together with such interest, costs of collection, and reasonable attorney's, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment became due.

Section 2. - Purpose of Assessments. The annual assessments levied by the Association through its Board of Directors shall be used exclusively for purpose of promoting the health, safety and welfare of the residents of the Property, and in this particular, for the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area. Without limiting the generality of the foregoing, the Association may levy assessments for the purpose of providing funds with which the Association may pay costs and expenses incurred by it in acquiring, performing or undertaking:

- (a) Insurance policies required or permitted hereunder:
- (b) Utility services such as sewer, gas, or electricity provided in connection with the Common Area.
- (c) Snow removal from walking paths located within the Common Areas.
- (d) Repairing, reconstructing and replacing common parking areas, common walking paths, common utility services, recreational facilities and any other such maintenance or improvement obligations which may be deemed necessary for the common benefit of the Owners.
- (e) Providing such reserves as may be deemed necessary in order to accomplish the objects and purposes of the Association;
- (f) Paying real or personal property taxes levied upon the Common Area and any improvements thereon.
- (g) Maintenance and improvement of the landscaping located in the Common Areas.
- (h) The maintenance and operation of the irrigation water system.

- (i) Maintenance of the landscaping on each lot and the public rights-of-way contiguous to a lot.

Section 3. - Basis and Payment of the Annual Assessments.

- (a) The annual assessments with respect to each Unit shall be determined by the Declarant, prior to the conveyance of the first Unit and shall be payable in twelve equal monthly installments payable on or before the 5th day of each month, but shall be and become a lien as of the date of the annual assessment as determined by the Board of Directors.
- (b) Until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be six hundred sixty (660.00) dollars.
- (c) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year not more than twenty percent (20%) above the maximum assessment for the previous year without a vote of the membership.
- (d) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above twenty percent (20%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (e) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. - Special Assessment for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or part, the cost of any construction of any capital improvement upon the common area, including the necessary fixtures and personal property related thereto, providing that any such assessment shall have the assent of two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) nor more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting. Any such special assessment shall be payable in equal monthly installments together with the regular assessment installment over such period of time as the Association may determine.

Section 5. - Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. - Special Liens for Damage If the Association is entitled, pursuant to these Declarations, to receive contributions or money damages from any Owner such sums shall be a lien against such Owner's Unit in the same manner as the foregoing assessments.

Section 7. - Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Units and may be collected on a monthly basis.

Section 8. - Date of Commencement of Annual Assessments: Due Dates The annual assessments provided for herein shall commence as to each Unit on the first day of the month following the conveyance of title to such Unit. The first annual assessments shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessments against each Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid.

Section 9. - Effect of Nonpayment of Assessments - Remedies of the Association. Any assessment installment which is not paid when due shall be delinquent. If the assessment installment is not paid within thirty (30) days after the date due, the installment may at the discretion of the Association, bear interest from the date of the delinquency at the rate of twenty percent (21%) per annum, and the Association may accelerate and declare immediately due all of the Owner's unpaid installments of the annual assessment for that fiscal year. The Association may sue the Owner personally obligated to pay the sum, or foreclose the lien against his Unit.

Interest, costs of collection, and reasonable attorney's fees of any such action may be added to the amount of such assessment installment. The lien of the Association may be foreclosed in the same manner as a statutory mortgage foreclosure under the statutes of the State of Colorado. No Owner may avoid liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Unit.

Section 10. - Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first deed of trust or first mortgage covering the Unit. Sale or transfer of any Unit shall not affect the assessment lien.

Section 11. - Exempt Property. All Property dedicated to and accepted by a local public authority and the Common Area shall be exempt from the assessments created herein.

ARTICLE IX

USE RESTRICTIONS

Section 1. The use of the Common Area, Units, and structures thereon shall be subject to the restriction set forth in Article III, Section 1, and to those restrictions hereinafter set forth.

Section 2. The use of the Common area shall be subject to such uniformly applied rules and regulation as may be adopted from time to time by the Board of Directors of the Association or the Association Members.

Section 3. No use shall be made of the Common Area which will in any manner violate statutes, rules, regulations, orders or decrees of any governmental authority having jurisdiction over the Common Area.

Section 4. Except as otherwise permitted herein, no Owner shall place any structure upon the Common area, nor shall any Owner do any act which would temporarily or permanently deny free access to any part of the Common Area to all Owners.

Section 5. The Property is hereby restricted to residential dwellings for residential use and uses related to the convenience and enjoyment of such residential use. No business activities of any kind whatever shall be conducted on any portion of the Property, except the business activities, signs and billboards, or the construction and maintenance of buildings, if any, of the Declarant, its agents and assigns during the period of construction and sale of the Units, and of the Association, its successors and assigns, in furtherance of its powers and purposes as hereinafter set forth.

All structures erected upon the Property shall be of new construction. Except for trailers and buildings used by Declarant in connection with construction and sales activities, no structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any portion of the premises at any time as a residence either temporarily or permanently.

Section 6. No animals of any kind shall be raised, bred or kept on any Unit or the Common area, except that each Owner may have a total of two of the following; dogs, cats, or other customary household pets, provided that they are not kept, bred or maintained for any commercial purpose and so long as they remain in direct control of the Owner. Owners shall be responsible for cleaning up after their pets in the Common Area.

Section 7. No advertising sign (except one containing less than five (5) square feet of surface area on any one (1) side and containing the words "For Rent" or "For Sale") billboards, clotheslines or unsightly objects or nuisances shall be erected, placed or permitted to remain on the Property, nor shall the Property be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Unit or any resident thereof.

Section 8. All rubbish, trash and garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. No motor homes, recreational vehicles, boats, motorcycles, trailers, abandoned cars or similar items shall be stored on the Property, except within the enclosed garage of any Unit.

Section 9. Except within the two (2) foot perimeter provided around the Unit, no planting or gardening shall be done. No fences, hedges or walls shall be erected or maintained upon the Property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Board of Directors. The Owners of Units are hereby prohibited and restricted from using any land or air space outside the Unit lines, except as may be allowed by the Association's Board of Directors or as provided in this Declaration.

Section 10. No television or radio antenna, receiver, or transmitter, including but not limited to satellite dishes or receivers, shall be installed or maintained on the outside or exterior surfaces of any unit or in the Common Area.

ARTICLE XARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and the Article will be deemed to have been fully complied with.

ARTICLE XIDAMAGE, DESTRUCTION AND OBSOLESCENCE

Section 1. - Insurance. By virtue of taking title to a Unit, each Unit owner covenants and agrees with all other owners and with the Association that he or she shall carry blanket all-risk casualty insurance on the Unit and structures constructed therein for full replacement value. The Association shall be named as an additional insured under such policy.

At the request of the Board of Directors, owners shall file a copy of each individual policy covering his or her Unit with the Board of Directors within ten (10) day after receiving such request.

In the event that any owner shall fail or refuse to carry insurance as required by this Section, the Association may purchase such insurance and may levy a special assessment against the Unit for the cost of such insurance. The assessment provided herein shall be a debt of the owner and a lien on his Unit and may be enforced or collected as is provided in Article VIII.

Section 2. - Association - Attorney in Fact. This Declaration does hereby make mandatory the irrevocable appointment of an attorney in fact to deal with the Property upon its damage, destruction or obsolescence. Title to any Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute appointment of the attorney in fact herein provided.

All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in their name, place and stead for the purpose of dealing with their property upon its damage, destruction or obsolescence as is hereinafter provided. As attorney in fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the to the interest of any Owner which may necessary and appropriate to exercise the improvements herein granted. Repair and reconstruction of the improvements as used in the succeeding sub-paragraphs means restoring the improvements to substantially the same condition in which they existed prior to the damage, with each Unit having the same boundaries as before. The proceeds of any insurance collected shall, to the extent hereinafter provided, be available to the Association for the purpose of repair, restoration or replacement as is provided hereinafter.

Section 3. - Damage or Destruction.

(a) In the event of damage or destruction due to fire or other disaster of improvements on any one or major Units, the Owners or Owners of such Unit or Units shall cause such improvements to be promptly repaired and reconstructed unless a plan is adopted under Section 3 of the Article XI.

(b) In the event such Owner or Owners fail to promptly commence and diligently prosecute such repair and restoration, the Association shall have full authority, right and power, as attorney in fact, to cause the repair and restoration of the improvements, and to the extent any insurance proceeds are made payable to such Owner or Owners as a result of such casualty said proceeds shall be made available to the Association for such purpose. If the insurance proceeds are insufficient to repair and reconstruct the improvements, such damage or destruction shall be promptly repaired and reconstructed (unless a plan is adopted under Section 3 of this Article XII) by the Association as attorney in fact using the proceeds of insurance on the Unit or Units which have been damaged or destroyed and the proceeds of an assessment against the Unit or Units on which such casualty damage occurred. Any such assessments, which shall only be made by the Board of Directors, shall be due and payable as provided by resolution of the Board of Directors, but not sooner than thirty (30) days after written notice thereof. Such deficiency assessment shall be in an amount determined exclusively and finally by the Association (after as it deems appropriate). The Association shall have full authority, right and power of attorney in fact to cause the repair or restoration of the improvements, using all of the insurance proceeds for such purpose notwithstanding the failure of an Owner to pay the assessment.

The assessment provided for herein shall be a debt of the Owner and a lien on his Unit and may be enforced and collected as is provided in Article VIII. In addition thereto, the Association, as attorney in fact, shall have absolute right and power to sell the Unit of any Owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Unit of the delinquent Owner shall be sold by the Association, as attorney in fact, under the provisions hereof. The proceeds derived from the sale of such Unit shall be used and disbursed by the Association, as attorney in fact, in the following order:

1. For payment of the balance of the lien of a first mortgage;
2. For payment of taxes and special assessment liens in favor of any assessing entity;
3. For payment of the cost of repair and restoration out of which such deficiency assessment arose;
4. For payment of unpaid common expenses;
5. For payment of junior liens and encumbrances in the order of and to the extent of their priority;
6. The balance remaining, if any, shall be paid to the Owner.

Section 4. - Obsolescence.

(a) The Owners representing sixty-seven percent (67%) or more of all of the Owners (the Owners of each Unit being entitled collectively to one (1) vote) may agree that the improvements are obsolete and that the same should be sold. Such plan must have the unanimous approval of every Encumbrancer of record at the time of forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association the entire premises shall be sold by the Association, as attorney in fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Plat and the By-Laws. The sales proceeds shall be apportioned between the Owners and such apportioned proceeds shall be paid into separate accounts, each such account representing one (1) Unit. Each such account shall be in the name of the Association, and shall be further identified by number of the Unit and the name of the Owner. From each separate account, the Association, as attorney in fact, shall use and disburse the total amount of each of such accounts, without contribution from one (1) account to another, for the same purposes and in the same order as is provided in Subparagraph (b) of Section 3.

ARTICLE XIICONDEMNATION

Section 1. If the entire Common Area shall be taken for any public or quasi-public use, under any statute, by right of eminent domain, or by purchase in lieu thereof, the Association, (as attorney in fact for the Owners) shall collect the award made in such taking and shall divide said award equally among the Owners. The proceeds paid to any Owner shall be paid to the Owner and any Encumbrancer with a recorded lien upon the Unit of the Owner.

Section 2. If such taking shall be partial only, the Association (as attorney in fact for the Owners) shall collect the award and shall promptly cause the part of the Common area not so taken to be restored as nearly as possible to its condition prior to the taking, applying the award to that purpose. Any part of the award not required for such restoration shall be divided equally among the Owners. The proceeds paid to any Owner shall be paid to the Owner and any Encumbrancer with a recorded lien upon the Unit of the Owner.

ARTICLE XIIIGENERAL PROVISIONS

Section 1. - Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or equity, all restrictions, condition, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any rights hereunder shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. - Membership Succession. Any person, corporation or other entity which shall succeed to the title of any owner through foreclosure of a deed of trust or other type of security instrument or through other legal proceedings, shall upon issuance of a proper deed of any Unit, become thereupon a Member of the Association as Owner and shall succeed to the rights, duties and liabilities of the previous Owner as herein provided. Conveyance by such person, firm, corporation or other entity shall pass membership in the Association to the buyer as herein provided.

Section 3. - Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Unit subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of the (ten) years.

The covenants and restrictions of this Declaration may be amended by an instrument signed by not less than seventy percent (70%) of the Encumbrancer and seventy percent (70%) of the Unit Owners. Any amendment must be properly recorded. No part of this Declaration may be amended in such a manner that it will adversely affect the existing rights of any Owner or Encumbrancer with particular respect, but not limited to party walls, unpaid assessments or the lien of any mortgage.

Section 4. - Declarant's Easements. Anything to the contrary herein notwithstanding, Declarant hereby reserves an easement and right of way over all Common Area and all Units not conveyed for its use for the purpose of constructing improvements, utilities, and other matters including the right to erect temporary buildings to store any and all materials. Declarant further reserves the right to use any completed structure for the purpose of a sales office or model home for demonstration purposes. This easement shall cease when Declarant has conveyed the last Unit platted in the Property.

Section 5. - Severability. The invalidity of any provisions of this Declaration shall not impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provisions had never been included herein.

Section 6. - Headings. The Article and Section headings herein are for convenient reference only and in way define, limit or describe the scope of this Declaration or the intent of any provision herein.

IN WITNESS WHEREOF, the parties hereto have signed the foregoing Declaration the day and year first above written.



THE B.E.S., INC.
a Colorado Corporation,

By:


President

ATTEST:

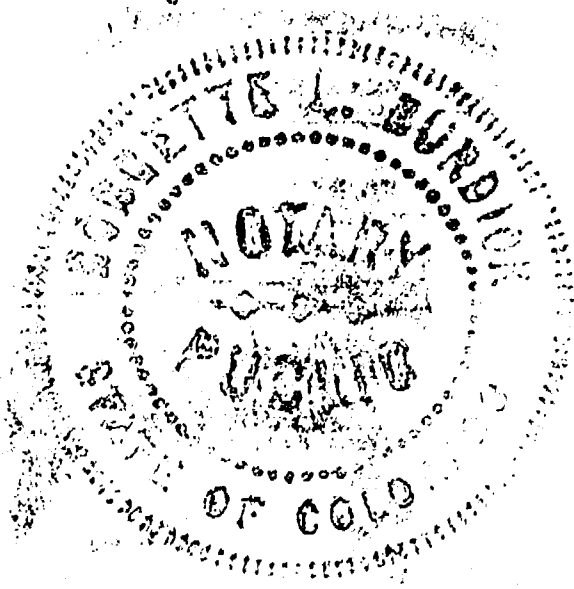

Secretary

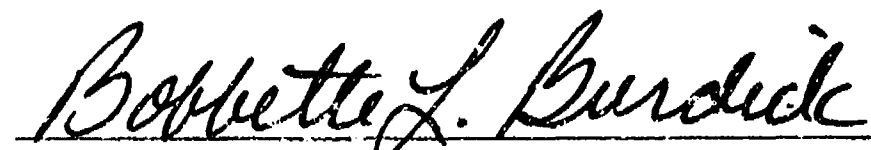
State of Colorado)
) ss.
COUNTY OF MONTROSE)

The foregoing instrument was acknowledged before me this 19th day of April, 1993, by STEVEN M. ANNIS, as President, and E.W. JOHNSON, as Secretary of B.E.S., INC., a Colorado Corporation.

Witness my hand and official seal.

My Commission Expires: 6-8-96.




Notary Public