

DECLARATION FOR
VIRGINIA CITY TRAIL CONDOMINIUM

By this Declaration made this 1st day of October, 1980, by JOSEPH B. GARY and MARGARET R. GARY, and GEORGE R. ROEMHILD and MARY S. ROEMHILD, all of Bozeman, Montana, lands and property hereinafter described are submitted to the provisions of Title 70, Chapter 23 of the Montana Code Annotated, which chapter is also known as the "Unit Ownership Act".

This property subject to this Declaration shall be known as VIRGINIA CITY TRAIL CONDOMINIUM. The address of VIRGINIA CITY TRAIL CONDOMINIUM is 1702-8 Virginia City Trail, Units A, B, C and D, Bozeman, Montana 59715.

I. DEFINITIONS

Unless the context expressly provides otherwise, the following definitions shall pertain throughout this Declaration and in the interpretation thereof:

1. Aggregate Voting shall mean the entire number of votes or persons present or available to vote in a particular circumstance.
2. Association or Association of Unit Owners means all of the Unit Owners acting as a group and in accordance with duly adopted By-Laws and this Declaration.
3. Board or Board of Directors shall mean the Board of Directors of the Association as more particularly defined in the By-Laws.
4. Building means a multiple unit building or buildings comprising a part of the property.
5. By-Laws means the By-Laws promulgated by the Association under this Declaration and the Unit Ownership Act.
6. Common Elements means both general common elements and

Limited common elements.

(a) General Common Elements include all those elements which are for the use of all residents and guests of residents of VIRGINIA CITY TRAIL CONDOMINIUM. Specifically included are: grounds surrounding the buildings, exterior wall surfaces, and other elements necessary for the safety, maintenance, and existence of the condominium and in which each Unit Owner shall have his designated percentage of interest.

(b) Limited Common Elements as used in this Declaration shall mean those common elements which are reserved for the use of fewer than all of the residents and guests of residents of VIRGINIA CITY TRAIL CONDOMINIUM. Specifically, as to any given Unit Owner or Owners, limited common elements shall mean the following common elements which are located within, affixed to the building containing the unit in which these elements are located, or upon the real property known as VIRGINIA CITY TRAIL CONDOMINIUM:

Conduits, public utility lines, water, sewer systems, electrical, cable television lines and cold water pipes (all such utility pipes and lines are limited common elements where they service only one or two units; where they service all units, they shall be general common elements), stairways, balconies, entrances, decks and fixtures or other portions of the buildings servicing only a particular unit or less than all of the units. The percentage of the units in the limited common elements shall be computed by determining the number of units that have use of the limited common elements and taking the value of each such unit and dividing it by the value of the unit or all such units making use of the particular limited common element. Such values shall be the same as the values used to

compute the percentage of interest in the Unit Owners in the general common elements and shall be the value of the units at the date of filing this Declaration and which are set forth in this Declaration.

7. Common Expenses means expenses of administration, maintenance, repair or replacement of general common elements, expenses agreed upon by the Association of all Unit Owners, and expenses declared common by Sections 70-23-610, MCA, and 70-23-612, MCA, of the Unit Ownership Act of the State of Montana.

8. Declaration shall mean this document and all parts attached hereto or incorporated by reference.

9. Limited Expenses means the expenses attributable to the maintenance, repair or replacement of limited common elements and are expenses only for owners of units within the building for which expenses are accrued.

10. Manager means the manager, the Board of Directors, management corporation or any other person or group of persons retained or appointed by the Board, or the Association of Unit Owners for the purpose of conducting the day-to-day operations of VIRGINIA CITY TRAIL CONDOMINIUM.

11. Property means all the land, buildings, improvements and structures thereon and all easements, right, and appurtenances belonging thereto, which are herewith submitted to the Unit Ownership Act of Montana.

12. Record Officer means the county officer charged with the duty of filing and recording the deeds, mortgages and other instruments relating to this Declaration and the property which is its subject.

13. Unit shall mean the separate condominium units of VIRGINIA CITY TRAIL CONDOMINIUM and is a parcel of real property including and

containing one or more rooms occupying one or more floors or a part or parts thereof, intended for any type of independent use, and with a direct exit to a public street or highway or to a common area or areas leading to a public street or highway.

14. Unit Designation is the combination of letters, numbers and words which identify the designated units.

15. Unit Owner means the person owning a fee simple absolute, or one who is co-owner in any real estate tenancy relationship that is recognized under the laws of Montana in one or more units of VIRGINIA CITY TRAIL CONDOMINIUM.

II. REAL ESTATE

Description

1. The real property which is by this Declaration submitted to the Unit Ownership Act of Montana is described in Exhibit "A", attached hereto and by this reference made a part of this Declaration, which exhibit also shows the improvements situated thereon, their location and the number and types of units, which real property is owned in fee simple by Declarant.

The condominium units consist of four (4) separate units lettered A through D, consecutively, together with the corresponding garages lettered A through D, consecutively. The provisions of this Declaration and the By-Laws shall be construed to be covenants running with the land including every unit and shall be binding upon the Unit Owner, their heirs, successors, personal representatives and assigns for as long as this condominium Declaration and By-Laws are in effect.

Exclusion of Use

2. Any balcony or deck which is accessible from, associated

with or joins a unit or units shall, without further reference hereto to be used in connection with such unit or units to the exclusion of the use thereof by the other owners of the limit and general common elements, except by invitation.

Condominium Units

3. Each unit, together with the corresponding garages, together with the appurtenant undivided interest in the common elements of each Unit Owner's building, shall together comprise one condominium unit, shall be inseparable, and may be conveyed, leased, devised or encumbered not only as a condominium unit but as a parcel of real property.

Encroachments

4. If any portion of the general common elements or limited common elements encroaches upon a unit or units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion of a unit encroaches upon the general common elements or limited common elements, or upon an adjoining unit or units, a valid easement for the encroachment and for the maintenance for same, so long as it stands, shall and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the general common elements, the limited common elements or on the units for purposes of marketability of title.

Automobile Parking

5. The common elements include parking areas for automobiles of the Unit Owners. These areas will be initially laid out by Declarant and may be changed from time to time by Declarant or by the Association. The right to use one parking space shall be an appurtenance to each unit. The original assignment of such space will be made by Declarant, until such time as Declarant no longer

owns any of the units, and Declarant reserves the right to assign or reassign all parking spaces if such assignment or reassignment becomes necessary. Thereafter, subsequent use and assignment of parking space will be pursuant to regulations of the Association; provided that no change in the designation of parking space shall be made for the benefit of a Unit Owner which discriminates against another Unit Owner without the latter's consent. Parking space shall include an assigned garage.

Unit Boundaries

6. Each unit shall include the part of the building containing a unit that lies within the boundaries of the unit, which boundaries are as follows:

(a) Upper and Lower Boundaries - the upper and lower boundaries of the unit shall be the following boundaries extended to an intersection with the perimetrical boundaries:

- (1) Upper boundary - the plane of the lowest surface of the ceiling of the unit.
- (2) Lower boundary - the plane of the upper surface of the floor of the unit.

(b) Perimetrical boundaries - the perimetrical boundaries of the unit shall be the following boundaries extended to an intersection with the upper and lower boundaries:

- (1) Exterior building walls - the intersecting vertical planes adjacent to the inside of the interior sheathing or wall covering of the outside walls bounding the unit.
- (2) Interior Building walls for boundary units - the intersecting vertical planes adjacent to the inside of the interior sheathing or wall covering of the walls between the units extended to intersections with other perimetrical boundaries.

(c) Finished and Unfinished Surfaces - the owners of the respective units shall not be deemed to own the undecorated and/or

unfinished surfaces of the perimeter walls, floors and ceilings surrounding his respective unit, nor shall said owner be deemed to own pipes, wires, conduits, pressure tank, pump or other public utility lines running through said respective units which are utilized for, or serve more than one (1) unit, except as tenants in common with the other Unit Owners as heretofore provided. Said owner, however, shall be deemed to own the walls and partitions which are contained in said owner's respective unit, and also shall be deemed to own the interdecorated and/or finished surfaces of the perimeter walls, floors and ceilings, including plaster, paint, wallpaper and etc.

III. EASEMENT, COMMON ELEMENT - REMODELING

Common Element Easements

1. A nonexclusive right of ingress and egress and support through the general common elements is appurtenant to each unit and all the general common elements are subject to such rights.

Interior Remodeling

2. Each Unit Owner shall have the exclusive right to paint, repaint, tile, wax, paper, panel, carpet, brick or otherwise maintain, refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his unit, and the interior thereof, so long as such owner does not affect the structural integrity of the building in which his unit is located.

IV. OWNERSHIP AND VOTING

Percentile Interest

1. Each Unit Owner shall be entitled to the exclusive ownership, use and possession of his unit. Additionally, each Unit Owner shall have a percentile undivided interest in the common elements of VIRGINIA CITY TRAIL CONDOMINIUM. Such percentage represents his

ownership in the common elements, his liability for common expenses, and the factor of his voting interest in all matters within the province of the Association of Unit Owners. The percentage of interest for the respective owners has been computed in the approximate relation that the size of the unit at the date of the Declaration bears to the then combined size of all of the units having an interest in such common elements, and such percentile interest shall be as follows:

<u>Unit Number</u>	<u>Relative Size of Unit</u>	<u>Percentage of Interest in Common Elements</u>
A	25%	25%
B	25%	25%
C	25%	25%
D	25%	25%

Floor Plans and Exhibits

2. VIRGINIA CITY TRAIL CONDOMINIUM consists of the real property described above, and two (2) buildings, one of which contain four (4) living units, and a detached garage with four (4) garage spaces. The living unit building is two (2) stories in height. Attached hereto is Exhibit "B" which consists of three pages, which exhibit is incorporated herein for all purposes, are floor plans which show the number of stories, square footage and vertical evaluations of each unit.

Construction Materials

3. The principal material of construction of the units is concrete for the slabs and footings, wood for the framing, structural and finish work, sheetrock and plywood for the interior, siding and exterior surfaces. Asphalt shingles are used on the roof of the building.

Service of Process

4. The name of the person to receive service of process for VIRGINIA CITY TRAIL CONDOMINIUM until other designation is filed of record, shall be _____.

Use

5. The use of each unit in VIRGINIA CITY TRAIL CONDOMINIUM shall be for residential purposes only and there shall be no commercial use whatsoever, except that nothing shall prohibit a Unit Owner from leasing or renting his unit to third parties or holding it out for lease or rental, or entering into an agreement or contract with others for the lease or rental of his unit for residential use. However, the respective units shall not be rented by the owners thereof for transient or hotel purposes, which shall be defined as a rental for any period less than thirty (30) days; or any rental if the occupants of the unit are provided customary hotel services, such as room service for food and beverage, maid service, furnishing laundry and linen and bell boy service. The use of the general common areas shall be for the recreation and enjoyment of the Unit Owners, their guests, tenants, lessees and invitees.

Exclusive Ownership

6. Each owner shall be entitled to exclusive ownership and possession of his unit. Each owner may use the general and limited common elements in accordance with the purposes for which they are intended so long as they do not hinder or encroach upon the lawful rights of other owners.

V. THE ASSOCIATION

Membership

1. An owner of a unit in VIRGINIA CITY TRAIL CONDOMINIUM shall automatically, upon becoming the owner of said unit, be a

member of VIRGINIA CITY TRAIL CONDOMINIUM Unit Ownership Association, hereinafter referred to as the Association, and shall remain a member of said Association until such time as his ownership ceases for any reason, at which time his membership in said Association shall automatically cease. The membership shall be limited to Unit Owners as defined in this Declaration.

Function

2. It shall be the function of the Association to:

(a) Adopt By-Laws for the governance of the Association;

(b) Make provision for the general management of the condominium;

(c) Levy assessments as provided for in this Declaration, the By-Laws, and the Unit Ownership Act of Montana;

(d) Adopt and implement a policy for the affairs of the condominium;

(e) Enter into contracts or hire personnel for the management of the affairs of the Association and the maintenance and repair of the common areas.

Vote

3. On all matters, unless excluded by this Declaration, to be decided by the Association each Unit Owner shall have a vote equal to his percentile interest in the general common elements. An owner of a condominium unit, upon becoming an owner, shall be a member of the Association and remain a member for the period of his unit ownership. Except as otherwise provided in this Declaration, a majority of the aggregate interest present at any meeting or by proxy shall be sufficient to act on matters brought before the Association. Meetings of the Association shall only be conducted when a

quorum is present, as defined in the Association By-Laws.

Failure to Comply

4. Each owner shall comply strictly with the provisions of this Declaration, the By-Laws of the Association, and the decisions and resolutions of the Association adopted pursuant thereto as the same may lawfully be amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief or both, and for reimbursement of all attorneys' fees incurred in connection therewith, which action shall be maintainable by the manager in the name of the Association, on behalf of the owner, or, in a proper case, by an aggrieved owner.

Payment of Assessments

5. All assessments shall be due three (3) days from the date of mailing of such assessment following the meeting at which time assessments are levied by the Association and shall be payable in quarterly installments, at the option of the owner. The amount of the common expenses assessed against each condominium unit and the amount of limited expenses assessed against each condominium unit shall be the personal and individual debt of the owner thereof. No owner may exempt himself from liability for his contribution toward the common expenses and the limited expenses by waiver of the use or enjoyment of any of the general common elements or limited common elements or by abandonment of his unit. All assessments which are not paid within fifteen (15) days from the date they are due and payable become delinquent and are subject to interest and penalty charges. The manager shall have the responsibility of taking prompt action to collect any unpaid assessment which becomes delinquent.

In the event of delinquency in the payment of the assessment, the Unit Owner shall be obligated to pay interest at the rate to be determined by the Board on the amount of the assessment from due date thereof, together with all expenses, including attorneys' fees incurred, together with such late charges as provided by the By-Laws of the Association. Suit to cover money judgment for unpaid common expenses and limited expenses shall be maintainable without foreclosing or waiving the lien securing the same.

Unpaid Assessments

6. All sums assessed by the Association but unpaid for the share of the common expenses chargeable to any unit shall constitute a lien on such unit prior to all the liens except only (1) tax liens on the unit in favor of the assessing unit and special district, and (2) all sums unpaid on the first mortgage of record. Such lien may be foreclosed by suit, by the manager or Board of Directors, acting on behalf of the owners of the units, in like manner as a mortgage on real property. In any foreclosure the Unit Owner shall be required to pay a reasonable rental for the unit, if so provided in the By-Laws, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The manager or Board of Directors, acting on behalf of the owners of the units, shall have power, unless prohibited herein, to bid in the unit at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosure or waiving the lien securing the same.

Unpaid Assessments - Mortgagee

7. Where the mortgagee of a first mortgage of record or other

purchaser of a unit contains title to the unit as a result of foreclosure of the first mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of common expenses or assessments by the Association chargeable to such unit which became due prior to the acquisition of title to such unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the units including such acquirer, his successors and assigns.

Levying Assessments - When Made - Purpose

8. The Association of Unit Owners shall levy assessments upon the Unit Owners in the following manner and for the following reasons:

(a) Assessments shall be made as a part of the regular, annual business meeting of the Association as provided in the By-Laws of the Association or assessments can be made for special purposes at any other regular or special meeting thereof. All assessments shall be fixed by resolution of the Board of Directors. Notice of the assessment, whether regular or special, the amount thereof, and the purpose for which it is made, including an annual budget for expenditures and operation, for regular annual assessments, shall be served on all Unit Owners, effected by mailing a copy of the notice to said owners at their address of record at least ten (10) days prior to the date for such meeting.

(b) Assessments shall be made for the repair, insurance, replacement, general maintenance, management and administration of common elements, fees, costs and expenses of the manager, taxes for common areas, if any, and assessments for the Unit Owner's percentage share of any Special Improvement District Assessments. Assessments shall be based upon and computed by using the percentage

elements.

(c) Assessments may also be made for the payment of limited common element expenses such that the Unit Owners are chargeable only for the expenses relating to their respective units or building. Unit Owners shall share in the payment for limited expenses for the repair, maintenance and replacement of limited common elements for their respective units in accordance with the percentage the condominium unit or units have in the limited common element for which the assessment is being made. If only one unit is associated with the limited common elements involved, then the entire cost of such repair, maintenance or replacement shall be borne by that unit.

(d) Assessments may also be made for any purpose contemplated by this Declaration and for any purpose set out in the Montana Unit Ownership Act.

(e) Common expenses and profits, if any, of VIRGINIA CITY TRAIL CONDOMINIUM shall be distributed among and charged to, the Unit Owners according to the percentage of undivided interest of each and the common elements.

(f) In a voluntary conveyance of a unit the grantee of the unit shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the manager or Board of Directors of the Association, as the case may be, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the



unit conveyed be subject to a lien for any unpaid assessments made by the Association against the grantor in excess of the amount therein set forth.

(g) At the time the Association holds its first meeting a reserve account shall be set up to which initial assessments shall then be deposited and which assessment fee for that year multiplied by the number of units in the condominium project. Said amount shall be divided equally among all Unit Owners. If the Declarant still holds title to one or more units he shall pay the amount assessed against each and every unit so owned.

VI. USE AND OCCUPANCY

Use

1. The units and common elements shall be occupied and used as follows:

 (a) No part of the property shall be used for other than residential purposes. Each family unit shall be used as a residence for a single family and for no other purpose, except that an owner may use a portion of his unit for an office or studio, provided that the activities therein shall not interfere with the quiet enjoyment or comfort of any other owner or occupant and provided further that in no event shall any part of the property be used as a school or music studio. Nothing contained herein shall prevent an owner of a unit from renting or leasing their unit to third parties for residential purposes. 

(b) There shall be no obstruction of the common elements nor shall anything be stored in or on the common elements without prior consent of the Association. Each owner shall be obligated to maintain and keep in good order and repair his own family unit.

(c) Nothing shall be done or kept in any unit, building, or contents thereof applicable for residential use, without the prior written consent of the Association. No owner shall permit anything to be done or kept in his unit or in the common elements which will result in the cancellation of insurance on the building, or contents thereof, or which would be in violation of any law. No waste will be permitted in the common elements. *

(d) Owners shall not cause or permit anything to be hung or displayed on the outside of windows or places on the outside walls of a building and no sign, awning, canopy, radio or television antenna shall be fixed to or placed upon the exterior walls or roof of any part thereof, without the prior written consent of the Association. *

* (e) No dogs, cats, rabbits, livestock, poultry or other animals of any kind shall be raised, bred or kept in any unit, except that dogs, cats and other household pets may be kept in units providing one hundred percent (100%) of the Unit Owners approve of the keeping of dogs, cats and other household pets, provided that they are not kept, bred or maintained for any commercial purposes. *

(f) No nuisances shall be allowed upon the property nor shall any use or practice be allowed which is a source of annoyance to residents of the condominium or which interferes with the peaceful possession and proper use of the property by its residents. No immoral, improper, offensive or unlawful use shall be made of the property nor any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof *

shall be observed.

(g) Nothing shall be done in any family unit or in, on or to the common elements which will impair the structural integrity of the building or which would structurally change the building except as is otherwise provided herein.

(h) No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise shall be conducted, maintained or permitted on any part of the property, nor shall any "for sale" or "for rent" signs or other window displays or advertising be maintained or permitted on any part of the property or in any unit therein, except that Declarant and its agents reserve the right to place "for sale" or "for rent" signs on any unsold or unoccupied units, and the right is hereby given to any mortgagee or trust indenture beneficiary who may become the owner of any unit, to place such sign on any unit owned by such mortgagee or beneficiary.

(i) Nothing shall be altered or constructed in or removed from the common elements, except upon the written consent of the Association.

Exclusive Ownership

2. Each owner or owners shall be entitled to exclusive ownership and possession of their unit. Such owners may use the general and limited common elements in accordance with the purposes for which they are intended and as they may otherwise agree between themselves, so long as they do not hinder or encroach upon the lawful rights or other unit owners.

Alterations by Declarant

3. Declarant reserves the right to change the interior design

and arrangement of all units, and alter the boundaries between units, so long as Declarant owns the units so altered. No such change shall increase the number of units nor alter the boundary of the general common elements without an amendment of this Declaration.

VII. AMENDMENT

Amendment of this Declaration shall be made in the following manner. At any regular or special meeting of the Association of Unit Owners such amendment may be proposed as a resolution by majority vote of those present the amendment shall be made a subject for consideration at the next succeeding meeting of the Association with notice thereof, together with a copy of the amendment to be furnished to each owner, no later than thirty (30) days in advance of such meeting. At such meeting the amendment shall be approved upon receiving the favorable vote of seventy-five percent (75%) of the total percentile vote of all the unit owners. If so approved, it shall be the responsibility of the manager to file the amendment with the recording officer of Gallatin County and the County Assessor. The amendment shall become effective upon being filed with the recording officer.

VIII. CHANGES, REPAIRS AND LIENS

Alterations by Unit Owners

1. The interior plan of a unit may be changed by its owner. No units may be subdivided. No change in the boundaries of units shall encroach upon the boundaries of the common elements except by amendment to this Declaration. Boundary walls must be equal in quality of design and construction to the existing boundary walls. A change in the boundaries between units shall be set forth in

an amendment of this Declaration. In addition to compliance with the provisions of paragraph VI above, such an amendment must further set forth and contain plans of the units concerned showing the units after the change in boundaries, which plans shall be by an architect licensed to practice in Montana, and attached to the amendment as exhibits, together with the certificate of an architect or engineer required by the Unit Ownership Act. Such an amendment shall be signed and acknowledged by the owners of the units concerned and by the owners of the common elements which are affected by such alterations; the amendment shall be also approved by the Board of Directors of the Association and signed and acknowledged by all lienors and mortgagees of the units concerned.

Maintenance by Unit Owner

2. An owner shall maintain and keep in repair the interior of his own unit, including the fixtures thereof. All fixtures and equipment installed in the unit commencing at a point where the utilities enter the unit shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair the structural soundness or integrity of the building or impair any easement. An owner shall also keep the balcony, entrance, patio or deck area appurtenant to his unit in a clean and sanitary condition. The right of each owner to repair, alter and remodel is coupled with the obligation to replace any finishing or other materials removed with similar or other types or kinds of materials. No act of alterations, repairing or remodeling by any Unit Owner shall impair in any way the integrity of the units of adjoining owners or the integrity of limited common elements or general common elements.

Liens for Alterations

3. Labor performed or materials furnished and incorporated into

a unit with the consent or at the request of the Unit Owner, his agent, his contractor or subcontractor shall be the basis for the filing of a lien against the units of the Unit Owner consenting to or requesting the same. Each owner shall indemnify and hold harmless each of the other owners from and against all liability arising from the claim of any lien against the unit or any other owner or against the general common elements, or limited common elements for construction performed or for labor, materials, services or other products incorporated into the owner's unit at such owner's request.

Exterior Alterations

4. No owner may change, alter or remodel the exterior of his unit without the prior written consent of the Association.

Liens for Assessments

5. All sums assessed but unpaid for the share of common expenses and limited expenses chargeable to any condominium unit shall constitute a lien on such unit superior to all other liens and encumbrances, except only for tax and special assessment liens on the unit in favor of any assessing authority, and all sums unpaid on a first mortgage or a first trust indenture of record, including all unpaid obligatory sums as may be provided by such encumbrance. To evidence such lien, the manager shall prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the amount of the accrued interest and late charges thereon, the name of the owner of the condominium unit and a description of the condominium unit. Such notice shall be signed and verified by one of the officers of the Association or by the manager, or his authorized agent, and shall be recorded in the office of the Clerk and Recorder of Gallatin County, State of Montana. Such lien shall

attach from the date of recording of such notice. Such lien may be enforced by the foreclosure of the defaulting owner's condominium unit by the Association in like manner as a mortgage on real property upon the recording of a notice of claim thereof. In any such proceedings the owner may be required to pay the costs, expenses and attorneys' fees incurred for filing a lien, and in the event of foreclosure proceedings, additional costs, all expenses and reasonable attorneys' fees incurred.

Foreclosure

6. The Association shall have the power to bid in the condominium unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage, and vote the votes appurtenant to, convey or otherwise deal with the same. Any encumbrancer holding a lien on a condominium unit may pay, but shall not be required to pay, any unpaid common expenses or limited expenses payable with respect as to such unit, and upon such payment such encumbrancer shall have a lien on said unit for the amounts paid of the same rank as the lien of his encumbrancer without the necessity of having to file a notice or claim of such lien.

Insurance

7.1 Purchase

All insurance policies upon the condominium property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Montana.

(a) Named Insured - The named insured shall be the Association individually and as agent for the Unit Owners, without naming them. Such policies shall provide that payments for losses thereunder

by the insurer shall be paid to the insurance trustee hereinafter designated, and all policies and endorsements thereon shall be deposited with the insurance trustee. Unit Owners may obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense.

(b) Copies to Mortgagees - One copy of each insurance policy and of all endorsements thereon shall be furnished by the Association to each mortgagee of a Unit Owner on request.

7.2 Coverage

(a) Casualty - All buildings and improvements upon the land shall be insured in an amount equal to the maximum insurance replacement value, and all personal property included in the common elements shall be insured for its value, all as determined annually by the Board of Directors of the Association, but subject to such deductible clauses as are required in order to obtain coverage at reasonable costs. Such coverage shall afford protection against:

- (1) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and
- (2) Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the land, including, but not limited to, vandalism and malicious mischief.

The policies shall state whether the following items are included within the coverage in order that Unit Owners may insure themselves if the items are not insured by the Association; air handling equipment for space cooling and heating; service equipment, such as dishwasher, laundry, refrigerator, oven, stove, whether or not such items are built-in equipment; interior fixtures such as electrical and plumbing fixtures; floor coverings; inside paint and other inside

wall finishes.

(b) Public liability in such amounts and with such coverage as shall be required by the Board of Directors of the Association, including, but not limited to, hired automobile and non-owned automobile coverages, and with cross-liability endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner.

(c) Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable and as may be required by the federal and state laws.

7.3 Premiums

Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense, except that the amount of increase in the premium occasioned by use for other than a residence, misuse, occupancy or abandonment of a unit or its appurtenances or of the common elements by a Unit Owner shall be assessed against that owner. Not less than ten (10) days prior to the date when a premium is due, evidence of such payment shall be furnished by the Association to each mortgagee listed in the roster of mortgagees.

7.4 Insurance Trustee

All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to such bank in Montana with trust powers as may be designated as insurance trustee by the Board of Directors of the Association, which trustee is herein referred to as the insurance trustee. The insurance trustee shall not be liable for payment of premiums nor for the renewal or the

sufficiency of policies nor for the failure to collect any insurance proceeds. The duty of the insurance trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated in this instrument and for the benefit of the Unit Owners and their mortgagees in the following shares, but which shares need not be set forth on the records of the insurance trustee:

(a) Unit Owners - an undivided share for each Unit Owner, such share being the same as the undivided share in the common elements appurtenant to his unit.

(b) Mortgagees - in the event a mortgagee endorsement has been issued as to a unit, the share of the Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

7.5 Distribution of Proceeds

Proceeds of insurance policies received by the insurance trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

(a) Miscellaneous Expenses - Miscellaneous expenses of administration, insurance trustee and construction or remodeling supervision shall be considered as part of the cost of reconstruction or repair.

(b) Reconstruction or Repair - If the damage for which

the proceeds are paid is to be repaired or reconstructed by the Association, the remaining proceeds shall be paid to defray the cost thereof or elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, remittances to Unit Owners and their mortgagees being payable joint to them.

(c) Failure to Reconstruction or Repair - If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to Unit Owners and their mortgagees being payable joint to them.

(d) Certificate - In making distribution to Unit Owners and their mortgagees, the insurance trustee may rely upon a certificate of the Association made by its representative or manager as to the names of the Unit Owners and their respective shares of the distribution.

7.6 Association as Agent

The Association is irrevocably appointed agent for each Unit Owner and for each owner of a mortgage or other lien upon a unit and for each owner of the other interest in the condominium property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

7.7 Benefit to Mortgagees

Certain provisions in this paragraph entitled "Insurance" are for the benefit of mortgagees of condominium parcels, and all of such provisions are covenants for the benefit of any mortgage of a unit and may be enforced by such mortgage.

Reconstruction

8.1 Repair After Casualty

If any part of the condominium property shall be damaged by casualty, whether or not it shall be reconstructed or repaired, shall be determined in the following manner:

(a) Lesser Damage - If a unit or units are found by the Board of Directors of the Association to be tenantable after the casualty, the damaged property shall be repaired.

(b) If a unit or units are found by the Board of Directors to be not tenantable after the casualty, the damaged property will be reconstructed or rebuilt.

(c) Certificate - The insurance trustee may rely upon a certificate of the Association made by its president and secretary to determine whether or not the damaged property is to be reconstructed or repaired.

8.2 Plans and Specifications

Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original improvements, or if not, then according to plans and specifications approved by the Board of Directors of the Association and by not less than seventy-five percent (75%) of the Unit Owners, including the owners of all units the plans for which are being altered. Any such reconstruction not in accordance with the original plans and specifications must be set forth in an amendment to this Declaration, which amendment shall be prepared and filed of record in accordance with the provisions of such amended filing, more particularly set forth in paragraph VI and paragraph VII, subparagraph 1., hereinabove.

8.3 Responsibility

The responsibility for reconstruction or repair after casualty shall be the same as for maintenance and repair in the condominium

property.

8.4 Assessments

If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction or repair for which the Association is responsible, or if at any time during such reconstruction or repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against all Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such assessments shall be in proportion to the owners' percentile interest.

8.5 Construction Funds

The funds for payment of costs and reconstruction or repair after casualty, which shall consist of proceeds of insurance held by the insurance trustee and funds collected by the Association from assessments against Unit Owners, shall be disbursed in the sound discretion of the trustee and according to the contract of reconstruction or repair, which contract must have the approval of the Board and the Unit Owners involved.

It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be paid to the Association for the use and benefit of the Unit Owners.

IX. REMOVAL OR PARTITION - SUBDIVISION

VIRGINIA CITY TRAIL CONDOMINIUM may only be removed from condominium ownership and may only be partitioned or sold upon compliance with each of the conditions hereof:

(a) The Board of Directors of the Association shall prepare the plans of removal, partition or sale, including the details of how any partition or sale and the distribution of the property or funds shall be accomplished.

(b) The plan of removal, partition or sale must be approved as provided in the Montana Unit Ownership Act. Upon obtaining such approval the Board of the Association shall be empowered to implement and carry out the removal or partition plan.

(c) No unit may be divided or subdivided into a smaller unit, nor any portion thereof sold or otherwise transferred, except as provided above.

(d) This section shall not apply to the sale of individual condominium units and shall not be considered as a right of first refusal.

(e) The common elements of VIRGINIA CITY TRAIL CONDOMINIUM shall not be abandoned, partitioned, subdivided, encumbered, sold or transferred without compliance with all of the above requirements.

X. INTERPRETATION

The provisions of the Declaration and of the By-Laws to be promulgated and recorded herewith, shall be liberally construed to effectuate the purpose of the said Declaration and By-Laws and to create a building or buildings subject to and under the provisions of the Unit Ownership Act.

XI. REMEDIES

All remedies provided for in the said Declaration and By-Laws shall not be exclusive of any other remedies which may now be, or are hereafter available to the parties hereto as provided for by law.

XII. SEVERABILITY

The provisions hereof shall be deemed independent and severable

and the invalidity or partial invalidity or unenforceability of any one or more provisions shall not affect the validity or enforceability of any other provisions hereof.

XIII. MISCELLANEOUS

Utility Easements

1. Easements are reserved through the condominium property as may be required for utility services, including water, sewer, power and telephone, in order to serve the condominium adequately; provided, however, such easements through the property or through a unit shall be only according to the plans and specifications for the unit building, as set forth in the recorded plat, or as the building is constructed, unless approved in writing by the Unit Owner.

Irrevocable Right

2. The Association shall have the irrevocable right, to be exercised by the manager, to have access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the limited common elements therein necessary to prevent damage to the general or limited common elements or to another unit. Damage to the interior or any part of the unit resulting from the maintenance, repair, emergency repair or replacement of any of the general or limited common elements or as a result of an emergency repair within another unit at the instance of the Association, shall be designated whether limited or common expenses by the Association and assessed in accordance with said designation.

Expenditures

3. No expenditures or debt in excess of \$900.00 may be made or incurred by the Association or manager without the prior approval of a majority of the Unit Owners.

Benefit

4. Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of Declarant, the Association and each Unit Owner and the heirs, personal representatives, successors and assigns of each.

Warranties

5. The Declarants expressly make no warranties or representations concerning the property, the units, the Declaration, By-Laws, or deeds of conveyance except as specifically set forth therein and no one may rely upon such warranty or representation not so specifically expressed therein. Estimates of common expenses are deemed accurate, but no warranty or guarantee is made nor is intended nor may one be relied upon.

IN WITNESS WHEREOF, the undersigned have caused this Declaration to be made and executed according to and under the provisions of the Unit Ownership Act, RCM, Section 67-2301, et seq.

JOSEPH B. GARY

MARGARET R. GARY

GEORGE R. ROEMHILD

MARY S. ROEMHILD

STATE OF MONTANA)
County of Gallatin) SS.

On this _____ day of October, before me, the undersigned, a notary public in and for the State of Montana, personally appeared JOSEPH B. GARY, MARGARET R. GARY, GEORGE R. ROEMHILD and MARY S. ROEMHILD, known to me to be the persons whose names are subscribed to the within instrument and they acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

(SEAL)

Notary Public for the State of Montana
Residing at Bozeman, Montana
My Commission expires _____

CONSENT TO THE DECLARATION
FOR VIRGINIA CITY TRAIL CONDOMINIUM

Home Federal Savings and Loan Association of Helena, Montana, as Beneficiary of a Trust Indenture dated August 2, 1976, and American Land and Title Company, as Trustee of said Trust Indenture, which Trust Indenture was given by Joseph B. Gary and Margaret R. Gary, husband and wife, and George R. Roemhild and Mary S. Roemhild, husband and wife, to secure a Promissory Note, do hereby consent to the formation of a condominium on the real property described in Exhibit "A" attached hereto and consent to the conveyance of the Declarance to the purchasers of the respective condominium units subject, of course, to the Trust Indenture which shall retain its priority until such time as the Trust Indenture is paid off in full.

DATED this _____ day of October, 1980.

HOME FEDERAL SAVINGS & LOAN
ASSOCIATION, Beneficiary

By _____

AMERICAN LAND AND TITLE COMPANY,
Trustee

By _____

STATE OF MONTANA)
COUNTY OF GALLATIN) SS.

On this _____ day of October, 1980, before me, the undersigned, a notary public in and for the State of Montana, personally

appeared _____ on behalf of Home
Federal Savings and Loan Association, and Joan L. Knipfer on
behalf of American Land and Title Company, known to me to be the
persons whose names are subscribed to the within instrument and
they acknowledged to me that they executed the same on behalf
of the beneficiary and trustee.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the
day and year first above written.

(SEAL)

Notary Public for the State of Montana
Residing at Bozeman, Montana
My Commission expires _____

EXHIBIT "A"

Lot Six (6) of Block One (1) of Richards Subdivision, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana.