

**GRANT OF NON-EXCLUSIVE RECREATIONAL EASEMENT
TO THE VISTA POINTE TOWNHOME ASSOCIATION, INC.**

This Grant of Easement (this "Grant") is made this 10th day of September, 1997, by DRY CREEK SOUTH, LLC, a Delaware limited liability company ("DCS, LLC" or "Grantor"), whose address is 2696 S. Colorado Boulevard, Suite 430, Denver, Colorado 80222, to the VISTA POINTE TOWNHOME ASSOCIATION, INC., a Colorado nonprofit corporation ("Grantee"), whose address is 2696 S. Colorado Boulevard, Suite 430, Denver, Colorado 80222.

DCS, LLC, in consideration of the covenants, conditions and restrictions contained herein, but without monetary consideration, has granted, bargained, sold and conveyed and hereby does grant, bargain, sell, convey and confirm unto the Vista Pointe Townhome Association, Inc., its successors and assigns forever, for the benefit of its members, rights to use Nonexclusive Recreational Easement (as defined below), on that certain real property situate, lying and being in the County of Arapahoe, State of Colorado, described as follows:

Tract B, Final Plat for Nob Hill Sixth Filing, Arapahoe County, State of Colorado, according to the recorded plat;

TOGETHER WITH an access easement along and across the following described property:

Lots 3-9, inclusive, Final Plat for Nob Hill Sixth Filing, County of Arapahoe, State of Colorado, for access to Tract B, Final Plat for Nob Hill Sixth Filing, County of Arapahoe, State of Colorado. This access easement shall not exceed the width and location of any watermain easement of record;

SUBJECT TO the "Permitted Exceptions," which shall mean (a) prior covenants, easements, restrictions, exceptions and conditions as shown of record and/or as shown on recorded plats; (b) prior conveyances of water and mineral rights affecting the Nonexclusive Recreational Easement and other matters of record; (c) subsequent covenants, conditions, restrictions, exceptions, easements as may be established on the property by DCS, LLC, as a part of the Bella Vista Planned Community and as a part of the Amended and Restated Declaration of the Bella Vista Villas; (d) ownership of portions of the real property subject to the Nonexclusive Recreational Easement may be granted by DCS, LLC to the Owners Association of the Bella Vista Villas, Inc.; and (e) any taxes and assessments, including special assessments, not yet due and payable;

AND SUBJECT FURTHER TO the covenants, conditions and restrictions hereinafter set forth;

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EXCEPTING AND RESERVING unto DSC, LLC, its successors and assigns, ownership of the real property subject to the Nonexclusive Recreational Easement and nonexclusive recreation use rights and other rights as may be granted to the Owners Association of the Bella Vista Villas, Inc.;

AND DSC, LLC, for itself, its successors and assigns, covenants and agrees to and with Vista Pointe Townhome Association, Inc., its successors and assigns, to warrant and defend the Nonexclusive Recreational Easement of Vista Pointe Townhome Association, Inc. and its members rights to the use of the Nonexclusive Recreational Easement, to Vista Pointe Townhome Association, Inc., its successors and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, by, through or under DSC, LLC, except as provided in the Permitted Exceptions.

The easements granted and excepted and reserved herein are defined as follows:

"Nonexclusive Recreational Easement" shall mean easements reasonable and necessary for recreation purposes, including nonexclusive use of any improvements as may be constructed on the real property burdened by the Nonexclusive Recreational Easement. The Nonexclusive Recreational Easement includes the right to use and enjoy, for recreation purposes, on a non-exclusive basis, all recreation facilities constructed on the real property burdened by the Nonexclusive Recreational Easement. Additionally, the Nonexclusive Recreational Easement includes an access easement along and across Lots 3-9, inclusive, Final Plat for Nob Hill Sixth Filing, County of Arapahoe, State of Colorado, for access to Tract B, Final Plat for Nob Hill Sixth Filing, County of Arapahoe, State of Colorado. This access easement shall not exceed the width and location of any watermain easement of record.

The covenants, conditions and restrictions referred to herein are as follows:

1. Declaration. "Declaration" shall mean, based on the context, either or both the Amended and Restated Declaration of The Bella Vista Villas and/or the Amended and Restated Declaration of the Vista Pointe Townhomes, all as recorded in the records in the office of the Clerk and Recorder of Arapahoe County, Colorado, as the same may be amended from time to time.
2. Nonexclusive Recreational Easement as a Common Element. The Nonexclusive Recreational Easement, shall constitute Common Elements under the Amended and Restated Declaration of the Vista Pointe Townhomes and shall be subject to all of the covenants, conditions, and restrictions applicable under that Declaration and this Grant.
3. Assessments. The Vista Pointe Townhome Association, Inc., (for and from funds collected from its unit owners) and the Owners Association of The Bella Vista Villas, Inc., a Colorado nonprofit corporation, for itself, for the owners and members in the Bella Vista Villas Planned Community (for and from funds collected from those unit owners) covenant and agree to pay to the Owners Association of The Bella Vista Villas, Inc., annual recreation assessments, and such other assessments as imposed pursuant to this Grant and pursuant to the budget (as provided for in this Grant). Such assessments, including fees, charges, late charges, reasonable attorney fees, costs, fines and interest

shall be a personal obligation at the time when the assessment or other charges became or fell due. The personal obligation to pay any past due sums due the Owners Association of The Bella Vista Villas, Inc., shall pass to a successor of the Owners Association of The Bella Vista Villas, Inc., or to a successor of the Vista Pointe Townhome Association, Inc. Neither the Owners Association of The Bella Vista Villas, Inc., or the Vista Pointe Townhome Association, Inc., or their successors or assigns may become exempt from liability for payment of the assessments by waiver of the use or enjoyment of the Nonexclusive Recreational Easement, or by abandonment of the Nonexclusive Recreational Easement. All assessments shall be payable in the amounts specified in the levy and assessment thereof.

4. Administration and Management. The Owners Association of Bella Vistas Villas, Inc., through its Executive Board shall perform functions, administer and manage the Nonexclusive Recreational Easement as provided in this Grant and as provided in the Amended and Restated Declaration of the Bella Vista Villas and any deed of the real property burdened by the Nonexclusive Recreational Easement, so as to protect value and desirability and to further the interests of the owners, members, residents, occupants, tenants and guests of the Communities.
5. Apportionment. Assessments and votes on the budget shall be based on the number of units in the Vista Pointe Townhome Community and in the Bella Vista Villas Planned Community. Assessments and votes of the Vista Pointe Townhomes Community shall be payable and exercisable (as appropriate) solely by or through the executive board of the Vista Pointe Townhome Association, Inc.
6. Purpose of Assessments. The assessments levied by The Owners Association of the Bella Vista Villas, Inc., pursuant to this Grant and through its Executive Board shall be used exclusively for the purposes of administering the Nonexclusive Recreational Easement and for maintaining, repairing, replacing or improving the real property and improvements subject to the Nonexclusive Recreational Easement, as provided in this Grant, including promoting the health, safety, and welfare of the owners, members, residents, occupants, tenants and guests of the Communities with respect to use.
7. Annual Assessment/Commencement of Assessments. Assessments may be made on an annual basis and shall be based upon The Owners Association of the Bella Vista Villas, Inc.,'s recreation budget (as ratified pursuant to the terms of this Deed) of the cash requirements needed to provide for the administration and performance of duties provided in this Grant during such assessment year or, alternatively, the Vista Pointe Townhome Association's assessment obligation may be based on a pro-rated (on an annual basis) fee or assessment of Two Thousand Dollars (\$2,000.00). The Vista Pointe Townhome Association, Inc. shall pay the greater assessment as would be due based on allocation under the budget or an annual assessment of Two Thousand Dollars (\$2,000.00). Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other reasonable manner, as determined by the Executive Board. Assessments may begin on or after the date any recreational facilities are first made available for use to the Vista Pointe Townhome Association, Inc. or its members. The omission or failure of the

Executive Board to levy the assessment for any period shall not be deemed a waiver, modification or a release from the obligation to pay.

- 8. Budget and Approval of the Budget. The Owners Association of the Bella Vista Villas, Inc. recreation budget is to be prepared and approved as follows: The Executive Board is to prepare a proposed recreation budget at least annually. Then, within thirty (30) days after the Executive Board's adoption of the proposed recreation budget, the Executive Board must mail or deliver the proposed recreation budget to its members and to the Vista Pointe Townhome Association, Inc. and set a date for a special meeting of those parties for their consideration to ratify or reject the proposed recreation budget. At the meeting, unless a majority in interests of the parties reject the proposed recreation budget, the proposed recreation budget is ratified. The presence of the parties at that meeting shall not be required, and the parties may vote by proxy or in writing. In the event the proposed recreation budget is rejected by a majority in interests of the parties, the recreation budget last ratified is continued until such time as the parties ratify a subsequent recreation budget proposed by the Executive Board. For the initial fiscal year, the parties have unanimously approved a recreation budget.

- 9. Effect of Non-Payment of Assessments. Any assessment, charge or fee provided for in this Grant, or any installment thereof, which is not fully paid within thirty (30) days after the due date thereof, as established by the Executive Board of the Owners Association of the Bella Vista Villas, Inc., shall bear interest at the rate as established from time to time by the Executive Board, on a per annum basis from the due date. In addition, The Owners Association of the Bella Vista Villas, Inc., may assess a reasonable late charge thereon [not to exceed five percent (5%)] as determined by it's Executive Board. Failure to make payment within sixty (60) days of the due date thereof shall cause the total amount of such assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Executive Board. Further, The Owners Association of the Bella Vista Villas, Inc., may bring an action against any party personally obligated to pay such overdue assessments, charges or fees, or other installments thereof. An action by The Owners Association of the Bella Vista Villas, Inc., to recover a money judgment for unpaid assessments, charges or fees, or monthly or other installments thereof from the Vista Pointe Townhome Associations, Inc., cannot include a claim to foreclose under any theory of law. Should The Owners Association of the Bella Vista Villas, Inc., fail to pay or transfer funds for its portion of the expense and assessment liabilities established under this Grant, then the Vista Pointe Townhome Association, Inc. may seek a court order requiring such payment or transfer, or may seek the appointment of a court appointed receiver to administer the Nonexclusive Recreational Easement.

- 10. Negligence or Misconduct. In the event that the need for maintenance, repair, or replacement of the real property and improvements subject to the Nonexclusive Recreational Easement, or any portion thereof, is caused through or by the negligent, gross negligent or willful act or omission or misconduct of any party or their agents, employees, owners, members, guests, customers, or invitees, then the expenses, costs, and fees incurred for such maintenance, repair, or replacement shall be a personal obligation of the owners association of the applicable Community, and if not repaid to The Owners Association of the Bella Vista Villas, Inc., (or in the case of The Owners Association of

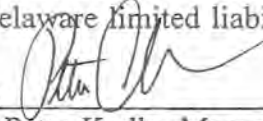
the Bella Vista Villas, Inc., if not paid or transferred by The Owners Association of the Bella Vista Villas, Inc.) within thirty (30) days after notice shall have given to that party of such expenses, costs, and fees, then that failure shall be a default under the provisions of this Grant, such expenses, costs, and fees shall automatically become a default assessment determined and levied, and that party may proceed in accordance with the applicable provisions of this Grant.

11. Individual Community Maintenance. The Owners Association of the Bella Vista Villas, Inc. and the Vista Pointe Townhome Association, Inc. are each individually responsible for the maintenance, repair and replacement of the improvements and properties located within the boundaries of their separate Communities; except for the real property and improvements subject to the Nonexclusive Recreational Easement, which are specifically the collective obligation of the Communities to maintain, repair, replace and improve, as administered by the Owners Association of the Bella Vista Villas, Inc. pursuant to this Grant.
12. Duties of the Executive Board. The Owners Association of the Bella Vista Villas, Inc. and its Executive Board, with the Executive Board as administrator of the Nonexclusive Recreational Easement shall owe the parties the same duties of loyalty, good faith and fair dealing as owed by them to the owners of units in the Bella Vista Villas Planned Community, in their performance and fulfillment of the duties and responsibilities set forth in this Grant.
13. Indemnification. To the full extent permitted by law, and as of the date of execution hereof by the undersigned for events subsequent to their execution, each officer and director of the Owners Association of the Bella Vista Villas, Inc. shall be and are hereby indemnified by the Vista Pointe Townhome Association, Inc. The foregoing indemnification shall be against all expenses and liabilities, including reasonable attorney fees, reasonably incurred by or imposed upon an officer or director of the Owners Association of the Bella Vista Villas, Inc. in any proceeding to which they may be a party or become involved, or settlement thereof, directly resulting from the duties and obligations contained in this Grant, reasonably relating to their fulfilling of their duties and obligations under this Grant, and as to which they were included by reason of being or having been an officer or director of the Owners Association of the Bella Vista Villas, Inc., whether or not they are an officer or director of the Owners Association of the Bella Vista Villas, Inc. at the time such expenses are incurred. The foregoing indemnification shall not apply when such officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of their duties.
14. Use of the Nonexclusive Recreational Easement. The Nonexclusive Recreational Easement shall be used solely in a recreational capacity, for the non-exclusive benefit of the members of the Vista Pointe Townhome Association, Inc. and for the non-exclusive benefit of the members of the Owners Association of the Bella Vista Villas, Inc. Additionally, the Nonexclusive Recreational Easement may be used by any persons with prior easement rights. Owners of units shall be entitled to delegate rights and easements for use and enjoyment as and to the extent provided in their applicable Declarations.

- 15. Term. The covenants, rights and restrictions of this Grant shall run with, benefit and bind the Communities, the real property and improvements subject to the Nonexclusive Recreational Easement in perpetuity.
- 16. Amendment. Except as otherwise provided any provision, covenant, condition, restriction or equitable servitude contained in this Grant may only be amended or repealed, at any time, and from time to time, upon written approval of the Vista Pointe Townhome Association, Inc. and the Owners Association of the Bella Vista Villas, Inc. Any amendment shall be effective upon the recordation in the office of the Clerk and Recorder of the County of Arapahoe, of a certificate, setting forth the amendment in full and certifying that the amendment has been approved as set forth above.
- 17. Interpretation. The provisions hereof shall be liberally construed to effectuate their purposes of creating a uniform plan for the administration and operation of the Nonexclusive Recreational Easement and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Grant. This Grant shall be construed and governed under the laws of the State of Colorado.
- 18. Covenants to Run with Land. The covenants, conditions and restrictions contained in this Grant touch and concern the real property subject to the Nonexclusive Recreational Easement, and the burden of such covenants, conditions and restrictions shall run with that real property and bind all successors and assigns, of Grantor and Grantee and all subsequent owners of any portion of that real property. The benefit of such covenants, conditions and restrictions shall run to, and such covenants, conditions and restrictions may be enforced by, any successor to Declarant. The parties agree and declare that this Grant and the covenants in this Grant are for the purposes of protecting the value and desirability of the Nonexclusive Recreational Easement and to confirm and ratify the rights established and defined herein. The parties further agree and declare that this Grant shall run with the Nonexclusive Recreational Easement and the real property improvements and shall be binding on the undersigned, and all of those having any right, title or interest thereto, their heirs, legal representatives, successors, and assigns.

IN WITNESS WHEREOF, DSC, LLC has executed this Grant the day and year first above written.

DRY CREEK SOUTH, LLC,
a Delaware limited liability company

By: 
Peter Kudla, Manager and Authorized Agent

STATE OF COLORADO)
) ss.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 10th day of September, 1997, by Peter Kudla, as manager and authorized agent of Dry Creek South, LLC, a Delaware limited liability company.

Witness my hand and official seal.

My commission expires:

Deborah M Buker
Notary

ACCEPTANCE BY ASSOCIATION

Accepted and agreed to this 10th day of September, 1997.

VISTA POINTE TOWNHOME ASSOCIATION, INC.,
a Colorado nonprofit corporation

By: [Signature]
Peter Kudla, President

STATE OF COLORADO)
) ss.
COUNTY OF Denver)

The foregoing was acknowledged before me this 10th day of September, 1997, by Peter Kudla, as President of Vista Pointe Townhome Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: My Commission Expires October 7, 2000



Deborah M Buker
Notary Public