

Recorded with the Clerk and Recorder of Eagle County, Colorado on December 7, 1979 in Book 295 at Page 615.

SUPPLEMENTAL DECLARATION OF LAND USE RESTRICTIONS

**Pertaining to Tracts F, L & J (Block 1)
Beaver Creek Subdivision**

I. INTRODUCTION & PURPOSE

1.1 This Supplemental Declaration (a) is filed pursuant to paragraph 7.2 of the General Declaration for Beaver Creek (the "Declaration") recorded February 22, 1979 in Book 282 at Page 360 of the real property records of Eagle County, Colorado, and (b) affects only Tracts F, L and J (Block 1) of Beaver Creek Subdivision, Second Filing, according to the recorded plat thereof and any amendments thereto (the "Affected Property").

1.2 The purposes of this Supplemental Declaration are to set forth additional limitations and restrictions with respect to the use, density and design of improvements on the Affected Property in order to preserve the natural beauty of Beaver Creek at its setting, to maintain Beaver Creek as a pleasant and desirable environment, to establish and preserve a harmonious design for the community, and to protect and promote the value of the Affected Property.

II. DEFINITIONS

2.1 "Living Unit" shall mean one or more rooms designed for or which may readily be occupied exclusively by one family or group of people living independently from any other family or group of people, and having not more than one Cooking Facility.

2.2 "Single Family Structure" shall mean a detached building which contains one Living Unit.

2.3 "Primary/Secondary Structure" shall mean a detached building (a) which contains two Living Units, and (b) in which the Gross Residential

Floor Area of one of the Living Units contains no more than 25% of the Gross Residential Floor Area of the entire building.

2.4 "Gross Residential Floor Area" shall mean the total floor area within the enclosing walls of the Living Unit or building (whichever is applicable), including closets, service areas and interior walls within the unit or building, but excluding balconies, hallways, corridors, stairwells, garages and service areas outside the Living Unit or building, and uninhabitable heating or mechanical equipment areas.

2.5 "Cooking Facility" shall mean fixtures and equipment for food storage and preparation of meals, including at least a sink, oven and refrigerator.

2.6 "Building Envelope" shall mean each area designated as a "building envelope" on the recorded subdivision plat for the lots within the Affected Property.

2.7 Other capitalized terms used herein shall have the meaning set forth in the Declaration or in this Supplemental Declaration.

III. LIMITATION ON BUILDING IMPROVEMENTS

3.1 Lots 1 through 20, Tract F; Lots 1 through 29, Tract J (Block 1); and Lots 1 through 15, Tract L may not contain any building improvements except:

- (1)** A Single Family Structure; or
- (2)** A Primary/Secondary Structure; plus
- (3)** A garage of a size and at a location approved in writing by the Review Board, which may be within or without the Building Envelope for such lot; and
- (4)** Such enclosed service areas for garbage, trash, utilities, clothes lines and other maintenance facilities as may be approved in writing by the Review Board; and

- (5) Such fences, walls, driveways and parking areas as may be approved in writing by the Review Board; and
- (6) Landscaping improvements approved in writing by the Review Board; and
- (7) Swimming pools, hot tubs, tennis courts, solar devices and green houses approved in writing by the Review Board.

3.2 Notwithstanding paragraph 3.1, if the original deed conveying any lot within the Affected Property from Vail Associates, Inc. to a third party shall specify that only one dwelling unit is allocated to such lot, a Primary/Secondary Structure may not be constructed or maintained on such lot.

3.3 Any Single Family Structure or Primary/Secondary Structure built upon any lot within the Affected Property must be built entirely within the Building Envelope for such lots; however, with the prior written approval of the Review Board, minor encroachments outside such Building Envelope may be permitted for roof overhangs, balconies, service areas, porches, patios and carports.

3.4 Each Owner of a lot within the Affected Property agrees that he will not apply to Eagle County, Colorado or any other governmental authority for permission to construct building improvements on such owner's lot other than those permitted by this Article III, without the prior express written authorization of Resort Company and Declarant.

3.5 No Primary/Secondary Structure shall be approved by the Review Board if the exterior appearance of the structure is such that it appears that two substantially similar Living Units are contained in such structure.

IV. USE OF RESTRICTED LOTS

4.1 No Lot within the Affected Property may be used otherwise than for residential purposes with customary accessory uses (including but not limited to long or short term rentals to persons who use such improvements for residential or lodging purposes) except as permitted under paragraph 4.4, and except:

- (a) Lot F-21, Lots J (Block 1)-30 and 32, and Lot L-16, each of which may be used for road right-of-way purposes and customary accessory uses;
- (b) Lot J (Block 1)-31 which may be used for purposes consistent with its open space designation; and
- (c) Lot L-17, which may be used for purposes consistent with its open spaces designation and as an equestrian easement.

4.2 No owner of any lot within the Affected Property may apply to Eagle County, Colorado, or any governmental jurisdiction to change the zoning applicable to such owner's lot, or to subdivide such lot, without the prior written approval of the Resort Company and the Declarant.

4.3 No owner of any lot within the Affected Property shall dedicate or submit such owner's lot to a condominium form of ownership without the prior written approval of the Resort Company and the Declarant.

4.4 No lot within the Affected Property may be used for any commercial activity unless the Resort Company has issued a written permit for such activity; however, this provision shall not prohibit the use of any lot for skiing and ski related activities. The Resort Company may refuse to issue a permit in its sole and absolute discretion, and it will not issue a permit for any commercial activity if, in the Resort Company's reasonable judgment, such activity would:

- (i) create additional vehicular traffic to or from such lot;
- (ii) employ persons at such lot other than those residing at such lot;
- (iii) require storage of any significant materials, machinery, inventory or other items at such lot;
- (iv) require processing of materials into finished products or the assembly of parts produced off site;
- (v) require additional parking at such lot, whether for customers, delivery or otherwise; and

(vi) otherwise violate the provisions of Article VII or VIII of the Declaration.

4.5 Any permit for commercial activity issued by the Resort Company shall be limited to a two-year period, and may be revoked without cause by the Resort Company.

4.6 At such time as any building improvements are completed on any lot within the Affected Property, such building improvements must provide a minimum of two parking spaces per dwelling unit constructed on such lot. In addition, (a) with respect to building improvements containing more than 3,000 square feet of Gross Residential Floor Area, the Review Board may require additional parking spaces to be provided, and (b) the Review Board may require additional off-street parking within any lot in cases where, in the Review Board's opinion, there is insufficient off-street parking available near such lot.

4.7 No building improvement on any lot within the Affected Property may have a building height of more than 35 feet, or such lower limit as set forth in Exhibit A attached hereto. The building height shall be determined by measuring the vertical distance from the finished grade at the midpoint between the front and rear walls of a building to the top of a flat roof or mansard roof or to the midpoint between the eave line and peak of a gable, gambrel, hip, shed or similar pitched roof, and measured to a slope not to exceed 24:12. For complex structures, building heights shall be determined by computing the average height around the perimeter of the building. This average height shall be determined by measuring from the finished grade to the roof line as defined previously, at a series of points at regular intervals around the building. No owner of a lot within the Affected Property shall significantly increase the finished grade of such lot without the prior written approval of the Resort Company.

4.8 No lot within the Affected Property shall be improved in a manner such that more than 30% of such lot is covered by all building improvements thereon, or that 20% of such lot is covered by all other impervious materials.

4.9 No lodging accommodations shall be permitted in any detached garage built on any lot within the Affected Property.

V. BUILDING GUIDELINES

5.1 All building improvements on any lot within the Affected Property must be built strictly in accordance with the provisions of the Design Guidelines adopted by the Review Board.

5.2 By acquiring any interest in a lot within the Affected Property, the owner of such lot consents to and accepts the authority of the Review Board to review and approve the plans and specifications for any building improvement on such lot in accordance with Design Guidelines in effect from time to time. In particular, such owner recognizes that certain of the judgments which will be made by the Review Board are subjective in nature, and such owner agrees not to contest such subjective judgments unless they are made in bad faith or in an arbitrary and capricious manner.

VI. MISCELLANEOUS

6.1 Each provision contained in this Supplemental Declaration which is subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints on alienation shall continue and remain in full force and effect for the period of 21 years following the death of the survivor of Jack Marshall, Charles R. Langhoff and Philip E. Ordway, of Vail, Colorado, and the now living children of said persons, or until this Supplemental Declaration is terminated as hereinafter provided, whichever first occurs. All other provisions contained in this Declaration shall continue and remain in full force and effect until January 1 in the year 2000 A.D., and thereafter for successive periods of 10 years each; unless at least 1 year prior to January 1, 2000 A.D., or at least 1 year prior to the expiration of any such 10 year period of extended duration, this Supplemental Declaration is terminated by recorded instrument, directing termination, signed by the Declarant and the Mountain Special Member and the Resort Company upon the Affirmative Vote of a Majority of the Classes (as that term is defined in the Articles of Incorporation of the Resort Company).

6.2 Any provision contained in this Supplemental Declaration may be amended or repealed, upon the Affirmative Vote of the Owners of Sites within the Affected Property owning at least one-half of the Sites within the Affected Property, and the written approval of the Resort Company and

the Declarant, as evidenced by the recording of a written instrument or instruments specifying the amendment or the repeal, executed by at least the required number of Owners, and by the Declarant and the Resort Company.

6.3 Each provision of this Supplemental Declaration, and a promise, covenant and undertaking to comply with each such provision, (i) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any of the Affected Property is granted, devised or conveyed, (ii) shall by virtue of acceptance of any right, title or interest in any of the Affected Property by an Owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner and shall be binding on such Owner or his respective heirs, personal representatives, successors or assigns, to, with and for the benefit of the Resort Company and the Declarant, and (iii) shall be deemed a covenant, obligation and restriction secured by a lien binding, burdening and encumbering the title to all of such Owner's right, title and interest to any of the Affected Property, which lien shall be deemed a lien in favor of the Resort Company and Declarant, jointly and severally, as their respective interests may appear.

6.4 Each provision of this Supplemental Declaration with respect to an Owner shall be enforced by Declarant or the Resort Company by a proceeding for prohibitive or mandatory injunction or by a suit or action to recover damages or, in the discretion of the Resort Company, for so long as such Owner fails to comply with any of such provisions, by exclusion of such Owner and such Owner's Lessees and Guests from use of any Facility and from enjoyment of any Function. If court proceedings are instituted in connection with the rights of enforcement or remedies provided in this Supplemental Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees.

6.5 No violation or breach of, or failure to comply with, any provision of this Supplemental Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any mortgage, deed of trust or other lien on any property taken in good faith and for value and perfected by recording in the office of the Clerk and Recorder of Eagle County, Colorado, prior to the time of recording in said office of an instrument describing such property and listing the name or names of the owner or owners of fee simple title to the property and giving notice of such violation, breach or failure to comply; nor shall such violation,

breach, failure to comply or action to enforce affect, defeat, render invalid or impair the title or interest of the holder of any such mortgage, deed of trust, or other lien or title or interest acquired by any purchaser upon foreclosure of any such mortgage, deed of trust or other lien or result in any liability, personal or otherwise, of any such holder or purchaser. Any such purchaser on foreclosure shall, however, take subject to this Supplemental Declaration with the exception of violations or breaches of, or failures to comply with, any provisions of this Supplemental Declaration which occurred prior to the vesting of fee simple title in such purchaser shall not be deemed breaches or violations hereof or failures to comply herewith with respect to such purchaser, his heirs, personal representatives, successors or assigns.

6.6 Neither Declarant, the Resort Company, the Review Board, the Board of Directors of the Resort Company nor any member, agent or employee of any of the same shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

6.7 Except as otherwise provided herein, this Supplemental Declaration shall be binding upon and shall inure to the benefit of Declarant, the Resort Company, and each Owner and the respective heirs, personal representatives, successors and assigns of each.

6.8 Invalidity or unenforceability of any provision of this Supplemental Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Supplemental Declaration.

6.9 When necessary for proper construction, the masculine of any word used in this Supplemental Declaration shall include the feminine or neuter gender, and the singular the plural, and vice versa.

6.10 Failure to enforce any provision of this Supplemental Declaration shall not operate as a waiver of any such provision or of any other provision of this Supplemental Declaration.

IN WITNESS WHEREOF, Declarant has executed this Supplemental Declaration the 30th day of November, 1979.

ATTEST: (Corporate Seal) VAIL ASSOCIATES, INC.
a Colorado corporation

/s/ Jack Acuff By: /s/ Jack Marshall
Secretary President

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this 30th day of November, 1979, by Jack Marshall as ___ President and Jack Acuff as _____ Secretary of Vail Associates, Inc., a Colorado corporation, on behalf of such corporation.

My commission expires: July 6, 1983.

Witness my hand and official seal.

/s/ Margaret H. Simpson
Notary Public

EXHIBIT A

(Attached to and made a part of the Supplemental Declaration of Land Use Restrictions Pertaining to Tracts F, L and J (Block 1) Beaver Creek Subdivision)

Notwithstanding the provisions of Paragraph 4.7 of the Supplemental Declaration of Land Use Restrictions to which this Exhibit A is attached, no building improvement on any of the following lots within the Affected Property may have a building height of more than 25 feet, unless specifically approved in writing by the Review Board.

Tract J (Block 1)

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29

