

Recorded in the Clerk and Recorder of Eagle County, Colorado on March 13, 1987 in Book 459 at Page 138.

AMENDED AND RESTATED SUPPLEMENTAL DECLARATION OF LAND USE RESTRICTIONS

**Pertaining to Tract U,
Eleventh Filing, Beaver Creek Subdivision**

I. INTRODUCTION & PURPOSE

1.1 This Amended and Restated Supplemental Declaration (the "Supplemental Declaration") (a) is filed pursuant to Paragraph 7.2 of the Amended and Restated General Declaration for Beaver Creek (the "Declaration") recorded December 27, 1979 in Book 296 at Page 446 of the real property records of Eagle County, Colorado, and (b) affects only Tract U of Beaver Creek Subdivision Eleventh Filing, according to the recorded plat thereof and any amendments thereto (the "Affected Property"), and (c) constitutes an amendment to and restatement, in its entirety, of the Supplemental Declaration of Land Use Restrictions Pertaining to Tract U, Eleventh Filing, Beaver Creek Subdivision recorded March 10, 1987 in Book 458 at Page 967 of the real property records of Eagle County, Colorado.

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

2.3 "Plat" shall mean the Eleventh Filing, Beaver Creek Subdivision, Tract U, recorded in the real property records of Eagle County, Colorado.

2.4 "Building Improvement" shall mean any material improvement of any of the Affected Property including but not limited to landscaping, site preparation, paving, fencing, building construction, exterior changes, or interior changes which would change the use of any interior space to an unauthorized use or which would change the number of Living Units or the number of square feet of commercial space in a structure.

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

III. LIMITATION ON BUILDING IMPROVEMENTS

3.1 The Affected Property has been designated "Resort Commercial" in the Plat. No Building Improvement may be constructed, operated or maintained on the Affected Property except a Building Improvement which: (a) contains a number of Living Units which shall be no greater than (i) the maximum number of Living Units allocated to the Affected Property in the first deed from Declarant to the Owner of the Affected Property, or (ii) such greater number of Living Units as may be designated for the Affected Property by Declarant in an instrument recorded in the real property records of Eagle County, Colorado;

(b) contains a number of square feet of commercial space which shall be no greater than (i) the maximum square feet of commercial space allocated to the Affected Property in the first deed from Declarant to an Owner of the Affected Property, or (ii) such greater number of square feet of commercial space as may be designated for the Affected Property by Declarant in an instrument recorded in the real property records of Eagle County, Colorado; and

(c) has received prior written approval of the Review Board, which approval must cover all aspects of the Building Improvements

including but not limited to approval of garages, parking areas, service areas for garbage, trash, utilities and maintenance facilities, fences, walls, driveways, landscaping improvements, swimming pools, hot tubs, tennis courts and solar devices.

3.2 Any Building Improvement built upon the Affected Property must be built entirely within the boundaries of the Affected Property, and shall not encroach upon any easement shown on the Plat without the prior written permission of the Resort Company. Such approval shall be evidenced by a permit signed by the president or vice-president of the Resort Company identifying the Affected Property and specifying the nature of the Building Improvement. Such permit may only be revoked or suspended for "cause" in accordance with the procedures set forth in Article V hereof.

3.3 Each Owner of 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 the Affected Property other than those permitted by this Article III, without the prior express written authorization of Resort Company and Declarant.

3.4 No fireplaces may be constructed within the Affected Property except a fireplace meeting the requirements and limitations set forth in Paragraph 7.13 of the Declaration. All fireplaces are subject to regulation under the rules and regulations of the Resort Company from time to time in force and effect.

IV. USE OF RESTRICTED LOTS

4.1 The Affected Property may not be used for any purpose or purposes unless a permit for such use has been issued by the Resort Company pursuant to Paragraph 4.2 hereof, except:

- (a)** The Affected Property may be used for lodges, apartments, residences (including but not limited to condominiums), and restaurants; however, no restaurant shall be permitted above or below the first floor or street level of any structure without the prior written approval of the Resort Company; and
- (b)** The portions of the Affected Property which are within any easement may be used for purposes set forth in the Plats.

4.2 Each permit issued by the Resort Company pursuant to Paragraph 4.1 shall only be issued upon the written request of all of the Owners of the Affected Property for which the permit is being requested, and shall (a) specify the portion of the Affected Property to which it pertains, (b) identify each use permitted on the area within the Affected Property or any structure at which such use can be carried out, and (c) be signed by the president or any vice-president of the Resort Company. The Resort Company may make reasonable changes for any permit. Such permits may be amended only at the request of all of the Owners of the Affected Property and may be revoked or suspended only for "cause" and after notice to all of the Owners and a hearing held in accordance with Article V hereof.

4.3 No Owner of the Affected Property may apply to Eagle County, Colorado, or any governmental jurisdiction to change the zoning applicable to the Affected Property, or to subdivide the Affected Property without the prior written approval of the Resort Company and the Declarant.

4.4 No Owner of the Affected Property shall dedicate or submit the Affected Property to a condominium form of ownership without the specific prior written approval of the Resort Company and the Declarant. Such approval shall be evidenced by a written approval of the Resort Company and the Declarant on the Condominium Map identifying the portion of the Affected Property upon which the condominiums may be constructed and maintained and specifying the number of condominiums which may be constructed and maintained on such portion of the Affected Property.

4.5 No Owner of the Affected Property shall offer or sell the Affected Property subject to a "timesharing" or "interval ownership" plan, or any similar plan, without the specific prior written approval of the Resort Company and the Declarant. Such approval shall be evidenced by a permit signed by the president or vice-president of the Resort Company identifying the portion of the Affected Property to which the "timesharing," "interval ownership" or other plan pertains, and giving such other information with respect to such plan as the Resort Company or Declarant shall reasonably require.

4.6 No Building Improvement on the Affected Property may have a building height of more than 55 feet except for architectural features such as towers or steeples which are specifically authorized in writing by the Review Board. In determining building height, a vertical distance shall be

taken at a series of points at equal intervals around the perimeter of the building. The intervals may be of any equal distances less than 30 feet each. Within each interval, the height of any roof with a horizontal projection of 10 feet or greater shall be measured from finished grade to the respective mid-point between the eave and ridge. These heights shall then be averaged to determine the height for that specific interval of the building. Finally, the height of the building shall be determined by averaging the heights of all intervals around the building. Finish grade for purposes of these height calculations shall be the final elevation of the surface material (soil, paving, decking, or plaza) adjacent to the building at the specific interval point as shown on the architect's site plan. No Owner of the Affected Property shall significantly increase the finished grade of the Affected Property without the prior written approval of the Resort Company.

V. PERMIT REVOCATION PROCEDURES

5.1 The Resort Company may revoke or suspend a permit granted pursuant to Article III or IV hereof, or a portion of such permit, for cause at any time by following the procedures set forth in Paragraphs 5.2, 5.3 and 5.4 hereof. For purposes of this Supplemental Declaration, "cause" shall mean (a) any material violation of the Declaration, these Supplemental Declarations, the Design Regulations, or any other rules or regulations issued by the Resort Company which violation continues for a period of at least 30 days after written notice of such violation has been given to all of the Owners of the Site upon which such violation has occurred and any party holding a first lien on such site and of which the Resort Company has notice; or (b) any material violation of the laws, rules, requirements, orders, directions, ordinances and regulations of the United States of America, the State of Colorado, Eagle County, Colorado, or any municipality governing the Affected Property or appurtenances or any part thereof, and of all their departments, bureaus or officials, whether such requirements relate to (i) structural or other alterations, changes, additions or improvements, or (ii) repairs, inside or outside, ordinary or extraordinary, or (iii) the manner in which the Affected Property may be used or occupied, or (iv) any other matter affecting such Site.

5.2 A proceeding to revoke or suspend a permit may be initiated only by the president or any vice-president of the Resort Company filing a written request for revocation or suspension with the secretary of the Resort Company. The request shall specify in reasonable detail the reasons for

which the suspension or revocation is requested. The secretary of the Resort Company shall promptly set a date for a hearing on such matter and shall promptly mail a copy of such request and a notice of the hearing date to all of the Owners of the Affected Property, to any Lessee of all or a portion of the Affected Property of which the Resort Company has notice, to the holder of any first lien on the Affected Property of which the Resort Company has notice, and to each director of the Resort Company. The hearing shall be held not less than 30 or more than 60 days after the mailing of the request and notice of hearing.

5.3 The hearing shall be held before the board of directors of the Resort Company, whose decision shall be based upon the evidence presented to them at the hearing. The affirmative vote of a majority of the directors of the Resort Company then in office shall be required to revoke or suspend a permit.

5.4 The board of directors may vote to revoke or suspend a permit or a specified portion of a permit if they find that "cause" for such suspension or revocation exists or existed. A permit may be suspended for any reasonable period established by the board, or until the violation which resulted in the suspension has been cured. At the hearing, evidence may be presented by any interested party including but not limited to the Resort Company's staff, the Review Board and its staff, the Owner or any Lessee or Sublessee of the Affected Property, and any member of the Resort Company. A transcript of the hearing shall be taken and made available to the Owner or any Lessee or Sublessee affected by the action of the board of directors with respect to such matter. The rules of evidence shall not apply to hearings held pursuant to this Article V.

VI. BUILDING GUIDELINES

6.1 All Building Improvements on any Site within the Affected Property must be built strictly in accordance with the provisions of the Design Guidelines adopted by the Review Board.

6.2 By acquiring any interest in any portion of the Affected Property, the Owner of such interest consents to and accepts the authority of the Review Board to review and approve the plans and specifications for any Building Improvements in accordance with the Design Guidelines in effect from time to time. In particular, such Owner recognizes that certain of the

judgements 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.

VII. MISCELLANEOUS

7.1 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 Harry H. Frampton, III, Jack Acuff, and Larry E. Lichliter, 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 2010 A.D., and thereafter for successive periods of 10 years each; unless at least 1 year prior to January 1, 2010 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).

7.2 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.

7.3 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.

7.4 Each provision of this Supplemental Declaration with respect to an Owner may 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.

7.5 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.

7.6 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.

7.7 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.

7.8 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.

7.9 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.

7.10 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 Amended and Restated Supplemental Declaration the 13th day of March, 1987.

ATTEST: (Corporate Seal) VAIL ASSOCIATES, INC.,
a Colorado corporation
/s/ Nola S. Dyal By: /s/ Robert E. Buckley, Jr.
Secretary Vice President

ATTEST: (Corporate Seal) BEAVER CREEK RESORT COMPANY,
a Colorado nonprofit corporation
/s/ Mary A. Morgan By: /s/ Jerry D. Jones
Secretary President

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this 13th day of March, 1987 by Robert E. Buckley, Jr. as Vice President and Nola S. Dyal as Secretary of VAIL ASSOCIATES, INC., a Colorado corporation, on behalf of such corporation.

My commission expires: August 24, 1988.

Witness my hand and official seal.

/s/ Gerry Arnold
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this 13th day of March, 1987, by Jerry D. Jones as President and Mary A. Morgan as Secretary of BEAVER CREEK RESORT COMPANY, a Colorado nonprofit corporation, on behalf of such corporation.

My commission expires: August 24, 1988.

Witness my hand and official seal.

/s/ Gerry Arnold
Notary Public

