

Recorded with the Clerk and Recorder of Eagle County, Colorado on September 16, 1982 in Book 346 at Page 005.

**AMENDMENT  
OF THE SUPPLEMENTAL DECLARATION  
OF LAND USE RESTRICTIONS**

**Pertaining to Tract A (Block 1)  
Beaver Creek Subdivision**

WHEREAS, Vail Associates, Inc., a Colorado corporation (hereinafter referred to as "VAI"), recorded Supplemental Declaration of Land Use Restrictions Pertaining to Tract A (Block 1), Beaver Creek Subdivision First Filing, on March 12, 1980, in Book 300 at Page 048 of the records of the County Clerk and Recorder of Eagle County, Colorado (the "Supplemental Declaration");

WHEREAS, the undersigned are the Owners of at least one-half of the Sites within the Affected Property;

WHEREAS, as the Owners of at least one-half of the Sites within the Affected Property, they are entitled to amend the Supplemental Declaration pursuant to Section 7.2 thereof; and

WHEREAS, the undersigned have determined that the Supplemental Declaration should be amended in its entirety by making certain revisions thereto.

NOW THEREFORE, the Supplemental Declaration is amended in its entirety to read as follows:

**I.  
INTRODUCTION & PURPOSE**

1.1 This Amended 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 of Page 446 of the real property records of Eagle County, Colorado, and (b) affects only Tract A (Block 1) of Beaver Creek Subdivision, according to the Amended Plat (as hereinafter defined) and any amendments thereto (the "Affected Property").

1.2 The purposes of this Amended 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 "Amended Plat" shall mean the Second Amendment to First Filing to Beaver Creek Subdivision, Block 1, Tract A, recorded in the real property records of Eagle County, Colorado.

2.4 "Pedestrian Mall" shall mean Lots 9 and 26 of the Affected Property, plus the areas designated as a pedestrian easement on the Amended Plat, except areas which may be released from the easement pursuant to the provisions of Note 4 of the Amended Plat.

2.5 "Easement" shall mean any area designated on the Amended Plat as an easement whether it be utility, pedestrian, drainage, skier or otherwise.

2.6 "Building Improvements" 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.

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

### III. LIMITATION ON BUILDING IMPROVEMENTS

3.1 Except as set forth below, no Building Improvements may be constructed on, over, under or through the Pedestrian Mall without the prior written approval of the Resort Company, which (a) may be withheld by the Resort Company in its sole and absolute discretion, and (b) may be subject to such changes and conditions as the Resort Company in its sole and absolute discretion deems appropriate. Each such approval shall be revocable by the Resort Company in its sole and absolute discretion with or without cause. Notwithstanding the foregoing, the Resort Company may construct and maintain Building Improvements on, over, under or through the Pedestrian Mall of a kind and nature reasonably related to the use of the Easement granted to it by Declarant in Note 4 to the Amended Plat. Any Building Improvements constructed on the Pedestrian Mall pursuant to written approval of the Resort Company shall be maintained in good order and repair by the party obtaining permission to build such Building Improvements.

3.2 Lot 1 of the Affected Property has been designated "Resort Commercial — Road Right-of-Way" in the Amended Plat. No Building Improvement shall be built on, over, under or through Lot 1 except a road and related roadway improvements (such as road shoulders, road signs, streetlights, fences, bicycle and skier paths and walkways), underground utilities, and overpasses allowing at least twelve feet of clearance over the finished grade of Lot 1, if approved in writing by the Resort Company and Declarant.

3.3 Lot 4 of the Affected Property has been designated "Resort Commercial — Open Space" in the Amended Plat. Except as set forth below, no Building Improvements may be constructed or maintained on such lot unless the prior written approval of the Resort Company has been obtained, which may be withheld in the Resort Company's sole and absolute discretion. Such approval shall be evidenced by a permit signed by the president or a vice president of the Resort Company identifying the lot upon which the Building Improvement may be constructed, and specifying the nature of the Building Improvement. All permits for Building Improvements on such lots shall be revocable at any time with or without

cause by the Resort Company in its sole and absolute discretion. Notwithstanding the foregoing, the Resort Company may construct, operate and maintain Building Improvements on such lots including but not limited to parks, picnic areas, playing fields, gardens, pools, streams, ponds, tennis courts, parking facilities, concession stands and underground facilities.

3.4 Lots 2, 7, 11, 15, 22, 24, and 27 of the Affected Property have been designated "Resort Commercial — Open Space Recreation" in the Amended Plat. Except as set forth below, no Building Improvements may be constructed on any such lot unless the prior written approval of the Resort Company has been obtained, which may be withheld by the Resort Company in its sole and absolute discretion. Such approval shall be evidenced by a permit signed by the president or a vice president of the Resort Company identifying the lot upon which the Building Improvement may be constructed, and specifying the nature of the Building Improvement. All permits for Building Improvements on such lot shall be revocable at any time with or without cause by the Resort Company in its sole and absolute discretion. Notwithstanding the foregoing, the Resort Company may construct, operate and maintain Building Improvements on such lot as long as such Building Improvements are reasonably related to providing recreational facilities for the Beaver Creek Subdivision.

3.5 Lots 3, 5, 6, 8, 10, 12, 13, 14, 16, 17, 18, 19, 20, 21, 23 and 25 of the Affected Property have been designated "Resort Commercial" in the Amended Plat, and are hereinafter sometimes referred to as "Resort Commercial Lots." No Building Improvement may be constructed, operated or maintained on any such lot except a Building Improvement which:

- (a) contains a number of Living Units which is no greater than (i) the maximum number of Living Units allocated to such lot in the first deed from Declarant to an Owner of such lot, or (ii) such greater number of Living Units as may be designated for such lot 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 is not greater than (i) the maximum square feet of commercial space allocated to such lot in the first deed from Declarant to an Owner of such lot, or (ii) such greater number of square feet of commercial space as may be designated for such lot by Declarant in an instrument recorded in the real property

records of Eagle County; and

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

**3.6** Any Building Improvement built upon any lot within the Affected Property must be built entirely within the lot lines, and shall not encroach upon any Easement shown on the Amended Plat without the prior written approval of the Resort Company. Such approval shall be evidenced by a permit signed by the president or a vice president of the Resort Company identifying the lot upon which the Building Improvement may be constructed 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.

**3.7** 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 any Building Improvement on such Owner's lot other than those permitted by this Article III, without the prior express written authorization of Resort Company and Declarants.

#### **IV. USE OF RESTRICTED LOTS**

**4.1** No Lot within the Affected Property may 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, except:

- (a) Lot 1 may be used for road right-of-way purposes and customary accessory uses such as those listed in Paragraph 3.2 hereof, underground utilities, and overpasses permitted under Paragraph 3.2 hereof;
- (b) Lots 2, 7, 11, 15, 22, 24, and 27 may be used for purposes consistent with their Resort Commercial — Open Space Recreation designation such as those listed in Paragraph 3.4 hereof;

- (c) Lot 4 may be used for purposes consistent with its Resort Commercial — Open Space designation such as those listed in Paragraph 3.3 hereof;

- (d) The portions of the Affected Property which are within the Pedestrian Mall may be used for purposes consistent with the Easement granted to the Resort Company in the Amended Plat; and

- (e) The Resort Commercial Lots may be used for lodges, hotels, apartments, residences, retail stores, restaurants and offices; however, no restaurants or retail stores shall be permitted above or below the first floor or street level of any structure without the prior written approval of the Resort Company.

**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 lot for which the Permit is being requested, and shall (a) specify the lot to which it pertains, (b) identify each use permitted on such lot and the area within the lot 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. Such Permits may be amended only at the request of all of the Owners of the lot to which the Permit pertains and may be revoked or suspended only for "cause" and after notice to all of the Owners of such lot and a hearing held in accordance with Article V hereof.

**4.3** 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.

**4.4** 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 specific prior written approval of the Resort Company and the Declarant. Such approval shall be evidenced by a Permit signed by the president or a vice president of the Resort Company identifying the lot upon which the condominiums may be constructed and maintained and specifying the number of condominiums which may be constructed and maintained on such lot. Such Permit may be revoked or suspended only for "cause" in accordance with the procedures set forth in Article V hereof.

4.5 No Owner of any lot within the Affected Property shall offer or sell any such lot 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 a 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 any lot within 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 the 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 a lot within the Affected Property shall significantly increase the finished grade of such lot 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 Article V. For purposes of this Amended Supplemental Declaration, "cause" shall mean (a) any material violation of the Declaration, these Amended 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; 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, affecting any lot within 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 such lot may be used or occupied, or (iv) any other matter affecting such lot.

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 lot for which the Permit has been issued, to any Lessee of all or a portion of such lot of which the Resort Company has notice, and to each director of the Resort Company. The hearing shall be held not less than 30 nor 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 of directors, 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 lot for which the subject Permit has been issued, 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 lot 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 lot within 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 Improvement on such lot 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 Amended 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, Jack Acuff and Robert W. Parker, of Vail, Colorado, and the now living children of said persons, or until this Amended Supplemental Declaration is terminated as hereinafter provided, whichever first occurs. All other provisions contained in this Amended Supplemental 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 Amended 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 Amended 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 Amended 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 Amended 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 Amended 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 Amended 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 title subject to this Amended Supplemental Declaration with the exception that violations or breaches of, or failures to comply with, any provisions of this Amended 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 Amended 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 Amended 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 Amended Supplemental Declaration.

**7.9** When necessary for proper construction, the masculine of any word used in this Amended 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 Amended Supplemental Declaration shall not operate as a waiver of any such provision or of any other provision of this Amended Supplemental Declaration.

IN WITNESS WHEREOF, the undersigned, being the Owners of at least one-half of the lots within Tract A, Block 1, Second Amendment to First Filing, Beaver Creek Subdivision do hereby ratify approve, confirm and adopt this Amended Supplemental Declaration this 21st day of April, 1982.

THE POSTE MONTANE PARTNERS,  
By its general partners:

BEAVER CREEK MANAGEMENT  
AND INVESTMENT CORPORATION,  
a Colorado corporation

By: /s/ Jack Acuff  
Vice President

ATTEST:

/s/ Jean A. Dennison  
Secretary

VAIL ASSOCIATES INVESTMENTS  
CORPORATION, a Colorado corporation

By: /s/ R. W. Lessman  
Vice President

ATTEST:

/s/ Jean A. Dennison  
Secretary

\_\_\_\_\_  
Paul R. Johnston

MOUNTAIN CREEK ASSOCIATES,  
a California Limited Partnership,  
by INWOOD CORPORATION,  
a California corporation  
General Partner

By: /s/ William W. Crowell  
President

ATTEST:

/s/ Jean A. Dennison  
Assistant Secretary

VAIL ASSOCIATES, INC.,  
a Colorado corporation

By: /s/ Jack Acuff  
Vice President





Recorded with the Clerk and Recorder of Eagle County, Colorado on July 1, 1980 in Book 304 at Page 873.

**SUPPLEMENTAL DECLARATION OF LAND USE RESTRICTIONS**

Pertaining to Tract A (Block 2) and Tract A (Block 3)  
Beaver Creek Subdivision

**I.  
INTRODUCTION & PURPOSE**

1.1 This 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 A (Block 2) and Tract A (Block 3) of Beaver Creek Subdivision, Eagle County, Colorado, according to the Plat thereof (as hereinafter defined) 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 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 Subdivision Plat for Beaver Creek

Subdivision, Fourth Filing, recorded in the real property records of Eagle County, Colorado.

2.4 "Building Improvements" 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 meaning set forth in the Declaration or in this Supplemental Declaration.

**III.  
LIMITATION ON BUILDING IMPROVEMENTS**

3.1 Lot 5, Tract A (Block 2), and Lot 3, Tract A (Block 3), of the Affected Property have been designated "Road Right of Way" in the Plat. No Building Improvement shall be built on, over, under or through either of such lots except a road and related roadway improvement (such as road shoulders, road signs, streetlights, fences, bicycle and skier paths and walkways), underground utilities, and overpasses allowing at least twelve feet of clearance over the finished grade thereof, if approved in writing by the Resort Company and Declarant.

3.2 Lots 1, 2, 3 and 4, Tract A (Block 2), and Lots 1 and 2, Tract A (Block 3) of the Affected Property have been designated "Resort Commercial" in the Plat, and are hereinafter sometimes referred to as "Resort Commercial Lots." No Building Improvement may be constructed, operated or maintained on any such lot except in a Building Improvement which:

- (a) contains a number of Living Units which is no greater than
  - (i) the maximum number of Living Units allocated to such lot in the first deed from Declarant to an Owner of such lot, or
  - (ii) such greater number of Living Units as may be designated for such lot 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 is not greater than (i) the maximum square feet of commercial