

## **SUPPLEMENTAL DECLARATION OF LAND USE RESTRICTIONS**

### **Pertaining to Strawberry Park at Beaver Creek Thirteenth Filing, 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 recorded December 27, 1979 in Book 296 at Page 446 of the Real Property records of Eagle County, Colorado, as the same may be amended from time to time (the "Declaration"), and (b) affects only Strawberry Park at Beaver Creek, Thirteenth Filing, Beaver Creek Subdivision, Eagle County, Colorado, according to the recorded Plat thereof, as the same may be amended from time to time (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 "Building Envelope" shall mean the boundaries within which improvements may be constructed on a particular Lot within the Affected Property and designated as a "building envelope" on the Plat.

2.2 "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.

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

2.4 "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.

2.5 "Gross Residential Floor Area" shall mean the total floor area within the enclosed 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 and mechanical equipment areas.

2.6 "Lot" shall mean any of Lots one through 30 of the Affected Property as shown on the Plat.

2.7 "Primary/Secondary Structure" shall mean a detached building which contains two Living Units, one primary unit and one secondary unit, and in which the secondary unit (a) contains no more than 25% of the Gross Residential Floor Area of the entire building, (b) is integral with the architecture of the primary unit, and (c) cannot be subdivided or separately conveyed or transferred in ownership.

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

2.9. "Tract" shall mean any of Tracts A through H of the Affected Property as shown on the Plat.

2.10. "Plat" shall mean the plat for Strawberry Park at Beaver Creek, Thirteenth Filing, Beaver Creek Subdivision, recorded in the real property records of Eagle County, Colorado, as amended from time to time.

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

**III.  
LIMITATION ON BUILDING IMPROVEMENTS**

**3.1.** Lots 1 through 30 (both inclusive) of the Affected Property may not contain any Building Improvements except:

- (a)** A Single Family Structure; or
- (b)** A Primary/Secondary Structure; plus
- (c)** A garage of a size and at a location approved in writing by the Review Board; and
- (d)** 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
- (e)** Such fences, walls, driveways and parking areas as may be approved in writing by the Review Board; and
- (f)** Enclosed dog runs as may be approved in writing by the Review Board, provided that any such run must be located immediately adjacent to the home, within the Building Envelope, shall not exceed 1000 square feet in area and must have an enclosed top to protect dogs from possible lion predation; and
- (g)** Landscaping improvements approved in writing by the Review Board; and
- (h)** Swimming pools, hot tubs, solar devices and greenhouses approved in writing by the Review Board.

**3.2** Notwithstanding Section 3.1 above, if the original deed conveying any Lot within the Affected Property from The Vail Corporation to a third party shall specify that only one Living 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 Lot and must comply with such other building area and floor area restrictions as may be placed upon such Lot; 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, carports and garages.

**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 the Resort Company and the 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.

**3.6** Tracts A and B of the Affected Property have been designated "Open Space, Skiway, Utilities" on the Plat. No Building Improvements may be constructed or maintained on such Tracts except Building Improvements consistent with skiway, skilift and underground utility uses unless the prior written approval of the Resort Company has been obtained, which may be withheld at 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 Tract and the location within such Tract on which the Building Improvement may be constructed, and specifying the nature of such Building Improvement. All permits for such Building Improvements 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, maintain, repair and replace Building Improvements on such Tracts for open space, skiing, and utility purposes, including, but not limited to, parks, picnic areas, playing fields, gardens, pools, streams, ponds, tennis courts, parking facilities, concession stands, walkways, underground utilities and skilifts, skier trails, overpasses, tunnels and other facilities.

**3.7.** Tract C of the Affected Property has been designated "Open Space, Access, Utilities, Drainage, Skiway" on the Plat. No Building Improvements except Building Improvements consistent with access, utility, drainage and skiway uses may be constructed or maintained on such Tract unless the prior written approval of the Resort Company has been obtained,

which may be withheld at 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 Tract and the location within such Tract on which the Building Improvement may be constructed, and specifying the nature of such Building Improvement. All permits for such Building Improvements 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, maintain, repair and replace Building Improvements on Tract C for open space, access, utility, drainage and skiing purposes, including but not limited to, parks, picnic areas, playing fields, gardens, pools, streams, ponds, tennis courts, parking facilities, concession stands, roads and related roadway improvements, walkways, underground utilities and skier trails, overpasses, tunnels and other facilities.

**3.8.** Tract D of the Affected Property has been designated "Open Space, Utilities" on the Plat. No Building Improvements may be constructed or maintained on Tract D except Building Improvements consistent with underground utility uses unless the prior written approval of the Resort Company has been obtained, which may be withheld at 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 Tract and the location within such Tract on which the Building Improvement may be constructed, and specifying the nature of such Building Improvement. All permits for such Building Improvements 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, maintain, repair and replace Building Improvements on Tract D for open space and utility purposes, including, but not limited to, parks, picnic areas, playing fields, gardens, pools, streams, ponds, tennis courts, parking facilities, concession stands, walkways, a pump house and underground utilities.

**3.9.** Tracts E and F of the Affected Property have been designated "Driveway Access, Utilities" on the Plat. No Building Improvement shall be built on, over, under or through Tract E or Tract F except a driveway and related driveway improvements (such as shoulders, signs, lighting, fences and gates) and Building Improvements for utility purposes, if approved in writing by the Resort Company and Declarant.

**3.10.** Tract G of the Affected Property has been designated "Access,

Utilities, Drainage" on the Plat. No Building Improvements may be constructed or maintained on such Tract except Building Improvements consistent with access, utility and drainage uses unless the prior written approval of the Resort Company has been obtained, which may be withheld at 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 Tract and the location within such Tract on which the Building Improvement may be constructed, and specifying the nature of such Building Improvement. All permits for such Building Improvements shall be revocable at any time with or without cause by the Resort Company in its sole and absolute discretion.

**3.11.** Tract H of the Affected Property has been designated "Road Right of Way, Utilities, Drainage" on the Plat. No Building Improvement shall be built on, over, under or through Tract H except a road and related roadway improvements (such as road shoulders, road signs, street lights, fences, gates, bicycle and skier paths and walkways), Building Improvements for utility and drainage purposes, and tunnels, overpasses and skilifts so long as such overpasses and skilifts provide reasonable clearance above the road for pedestrian and vehicular access, if approved in writing by the Resort Company and Declarant.

**3.12.** Except as set forth below, no Building Improvements may be constructed on, over, under, through or within an area designated as an easement (whether it be utility, roadway, access, skier, drainage, equestrian or otherwise) or within any area designated as a flood plain on the Plat without the prior written approval of the Resort Company, which approval (a) may be withheld by the Resort Company in its sole and absolute discretion, and (b) may be subject to such charges 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 person or entity to whom any such easement has been granted or reserved may construct, maintain, repair and replace Building Improvements on, over, under, through or within such easement areas of a kind and nature reasonably related to the use of the easement granted or reserved. Any Building Improvements constructed on such area pursuant to written approval of the Resort Company shall be maintained in good order and repair by the Owner of the property upon which such Building Improvements are constructed.

**3.13.** No fireplace 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** 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 Section 4.6 hereof.

**4.2** No Tract within the Affected Property may be used otherwise than for purposes consistent with its designation as set forth in Article III 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, or to combine two or more Lots, 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 prior written approval of the Resort Company and the Declarant.

**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.

**4.6** No Lot or Tract 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 or Tract for skiing, ski lifts and ski related activities and for bicycling, horseback riding, snowmobile and other recreational activities. The Resort Company may refuse to issue a permit in its sole 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; or
- (vi) otherwise violate the provisions of Article VII or VIII of the Declaration.

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.

**4.7** 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 (2) parking spaces per Living Unit constructed on such Lot, except for Building Improvements containing more than 3,000 square feet of Gross Residential Floor Area for which one (1) on-site parking space per bedroom is required. 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.

**4.8** 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 and the Declarant.

**4.9.** No lodging accommodations shall be permitted in any detached garage built on any Lot or Tract within the Affected Property.

**4.10.** No building improvement on any Lot within the Affected Property may have a building height other than as specified in the Design Regulations. No owner of a Lot within the Affected Property shall significantly increase the finished grade of such Lot without the prior approval of the Resort Company.

**4.11.** 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.

## **V. BUILDING GUIDELINES**

**5.1** All Building Improvements on any Lot or Tract within the Affected Property must be built strictly in accordance with the provisions of the Design Regulations adopted by the Review Board.

**5.2** By acquiring any interest in a Lot or Tract within the Affected Property, the Owner of such Lot or Tract 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 or Tract in accordance with the Design Regulations 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.

## **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 rules prohibiting unreasonable restraints on alienation shall continue and remain in full force and effect for the period of twenty-one (21) years following the death of the survivor of Andrew P. Daly, and J. Kent Myers, 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 ten (10) years each;

unless at least one (1) year prior to January 1, 2000 A.D. or at least one (1) year prior to the expiration of any such ten (10) year period of extended duration, this Supplemental Declaration is terminated by recorded instrument, directing termination, signed by the Declarant 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 receiving (a) the written approval of the Resort Company and the Declarant, (b) the affirmative vote of Owners of Lots within the Affected Property owning at least one-half (1/2) of the Lots within the Affected Property, and (c) the affirmative vote of Owners of Tracts within the Affected Property owning at least one-half (1/2) of the Tracts within the Affected Property. Such amendment or repeal shall be 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 any agreement, promise, covenant or 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, whether or not set forth or referred to in such deed or other instrument, (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 and his heirs, personal representatives, successors and 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 the 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 the 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 such 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 that 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 the 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 the 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 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 provisions of this Supplemental Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

IN WITNESS WHEREOF, the undersigned have executed this Supplemental Declaration the 19th day of May, 1995.

ATTEST: THE VAIL CORPORATION,  
a Colorado corporation, doing  
business as VAIL ASSOCIATES, INC.

/s/ Gerry Arnold  
Asst. Secretary

By: /s/ James S. Mandel  
James S. Mandel  
Sr. Vice President

ATTEST: BEAVER CREEK RESORT COMPANY  
OF COLORADO, a Colorado  
non-profit corporation

/s/ Jean A. Dennison  
Secretary

By: /s/ Kent Myers  
Kent Myers  
President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF EAGLE )

The foregoing instrument was acknowledged before me this 19th day of May, 1995, by James S. Mandel as Sr. Vice President and Gerry Arnold as Assistant Secretary of The Vail Corporation, a Colorado corporation, doing business as Vail Associates, Inc., on behalf of such corporation.

Witness my hand and official seal.

My Commission expires: March 23, 1999.

Deborah Kemblowski  
Notary Public

STATE OF COLORADO )  
                                  ) ss.  
COUNTY OF EAGLE )

The foregoing was acknowledged before me this 19th day of May, 1995,  
by Kent Myers as President and Jean A. Dennison as \_\_\_\_\_  
Secretary of Beaver Creek Resort Company of Colorado, a Colorado non-  
profit corporation, on behalf of such corporation.

Witness my hand and official seal.

My Commission expires: December 27, 1997

/s/ Kristine Patterson  
Notary Public

