

Recorded with the Clerk and Recorder of Eagle County, Colorado on March 12, 1980 in Book 300 at Page 48.

SUPPLEMENTAL DECLARATION OF LAND USE RESTRICTIONS

Pertaining to Tract A (Block 1)
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 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 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 First Amendment to Beaver Creek Subdivision, Block 1, Tract A, recorded in the real property records of Eagle County, Colorado.

2.4 "Pedestrian Mall" shall mean Lot 9 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 7 of the Amended Plat.

2.5 "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.

2.6 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 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 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 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 7 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 Owner of the property upon which such Building Improvements are constructed.

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 Lots 4, 7, 11, 15, 22, 24 and 27 of the Affected Property have been designated "Resort Commercial — Open Space" in the Amended Plat. Except as set forth below, no Building Improvements may be constructed or maintained on any of such lots 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 Lot 2 of the Affected Property has been designated "Resort Commercial — Open Space Recreation" in the Amended Plat. Except as set forth below, no Building Improvements may be constructed on 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, 4, 6, 8, 10, 12, 13, 14, 16, 17, 18, 19, 20, 21, 23, 25 and 26 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, Colorado; 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 permission 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 Declarant.

**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 4, 7, 11, 15, 22, 24 and 27 may be used for purposes consistent with their Open Space designation such as those listed in Paragraph 3.3 hereof;
- (c) Lot 2 may be used for purposes consistent with its Open Space — Recreation designation;
- (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 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. 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.

**V.
PERMIT REVOCATION PROCEDURES**

5.1 The Resort Company may revoke or suspend a Permit granted pursuant to Paragraph 3.6, 4.2, or 4.4 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; 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 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 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 the 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 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 Jack Marshall, Jack Acuff 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).

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 Supplemental Declaration the 7th day of March, 1980.

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

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

ATTEST: (Corporate Seal) BEAVER CREEK RESORT
COMPANY

/s/ Jean A. Marshall By /s/ Brian W. Rapp
Secretary President

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this 7th day of March, 1980, 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: January 2, 1984.

Witness my hand and official seal.

/s/ Janie Jones
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this 7th day of March, 1980, by Brian Rapp as _____ President and Jean A. Marshall as _____ Secretary of BEAVER CREEK RESORT COMPANY, a Colorado corporation, on behalf of such corporation.

My commission expires: January 2, 1984.

Witness my hand and official seal.

/s/ Janie Jones
Notary Public