

SUPPLEMENTAL DECLARATION OF LAND USE RESTRICTIONS

Pertaining to Tract S 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 S of Beaver Creek Subdivision, Sixth Filing, according to the recorded plat thereof and any amendments thereto (the "Affected Property").

1.2 The purposes of this Supplemental Declaration are to set forth additional limitations and restrictions with respect to the use, density and design of improvements on the Affected Property in order to preserve the natural beauty of Beaver Creek 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 "Plat" shall mean the plat for Beaver Creek Subdivision, Sixth Filing, recorded in the real property records of Eagle County, Colorado and any amendments thereto.

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

2.3 "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.

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

III. LIMITATION ON BUILDING IMPROVEMENTS

3.1 Lots 2 and 3, Tract S 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 any 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, 4 and 5, Tract S, of the Affected Property have been designated "Open Space/Recreation" in the 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, a golf course, related facilities, parking facilities, concession stands, air quality monitoring station and underground facilities.

3.3 Any Building Improvement built upon any lot within the Affected Property must be built entirely within the lot lines. 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, skier, drainage, pedestrian, equestrian, golf or otherwise) or within any area designated as a flood plain on the Plat 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, through or within such easements or flood plain of a kind and nature reasonably related to the use of the easement granted. 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.

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 1.2, except Lots 1, 4 and 5, Tract S may be used for purposes consistent with their Open Space/Recreation designation.

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 35 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 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 3.2, 4.1 or 4.2 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 Regulations adopted by the Review Board.

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

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 Zehren, Jack Acuff and Robert W. Parker, 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 years each; unless at least one year prior to January 1, 2000 A.D., or at least one year prior to the expiration of any such ten 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 receiving the written approval of the Resort Company and the Declarant and the affirmative vote of the Owners of Sites within Tract S owning at least one-half of the Sites 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.

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 shall be enforced by Declarant or the Resort Company by a proceeding for prohibitive or mandatory injunction or by a suit or action to recover damages or, in the discretion of the Resort Company, for so long as such Owner fails to comply with any of such provisions by exclusion of such Owner and such Owner's Lessees and Guests from use of any Facilities 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 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 Declaration.

IN WITNESS WHEREOF, the undersigned have executed this Supplemental Declaration the 1st day of March, 1982.

ATTEST: VAIL ASSOCIATES, INC.,
a Colorado corporation

/s/ Jean A. Dennison By: /s/ R. W. Lessman
Assistant Secretary Vice President

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

/s/ Leslie J. Allen By: /s/ W. G. Hoss
Secretary Vice President

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this 1st day of March, 1982 by Roger W. Lessman, as Vice President and Jean A. Dennison as Assistant Secretary of VAIL ASSOCIATES, INC., a Colorado corporation, on behalf of such corporation.

Witness my hand and official seal.

My commission expires: January 21, 1984.

/s/ Roxanne J. Belmont
Notary Public
P.O. Box 7
Vail, Colorado 81568

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this 1st day of March, 1982, by W. G. Hoss as Vice President and Leslie J. Allen as Secretary of BEAVER CREEK RESORT COMPANY, a Colorado non-profit corporation, on behalf of such corporation.

Witness my hand and official seal.

My commission expires: September 24, 1985.

/s/ Diane L. Gorman
Notary Public
P.O. Box 7
Vail, Colorado 81658

