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93742 B-697 P-750 06/19/96 12:10P PG 1 OF 63  
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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
BACHELOR GULCH VILLAGE  
EAGLE COUNTY, COLORADO**

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**TABLE OF CONTENTS**

	<u>Page</u>
<b>ARTICLE I: DECLARATION-PURPOSES</b> .....	1
1.1 General Purposes .....	1
1.2 Declaration .....	2
<b>ARTICLE II: CERTAIN DEFINITIONS</b> .....	2
2.1 Act .....	2
2.2 Additional Property .....	2
2.3 Affirmative Vote of a Majority of the Classes .....	2
2.4 Articles .....	2
2.5 Association .....	3
2.6 Association Documents .....	3
2.7 Bachelor Gulch Village .....	3
2.8 Bed and Breakfast .....	3
2.9 Board of Directors .....	3
2.10 Bylaws .....	3
2.11 Change in Control Date .....	3
2.12 Commercial Space .....	4
2.13 Common Elements .....	4
2.14 Common Expenses .....	4
2.15 Declarant .....	4
2.16 Declarant Control Period .....	4
2.17 Declaration .....	5
2.18 Design Review Board .....	5
2.19 Developed Unit .....	5
2.20 Development Rights .....	5
2.21 District .....	5
2.22 Dwelling Unit .....	5
2.23 Estate Lots .....	5
2.24 Function .....	5
2.25 Guest .....	6
2.26 Leased Premises .....	6
2.27 Lessee .....	6
2.28 Lodge .....	6
2.29 Lower Bachelor Gulch Village .....	6
2.30 Master Plan .....	6
2.31 Member .....	6
2.32 Membership .....	6
2.33 Owner .....	7
2.34 Person .....	7

593742 B-697 P-750 06/19/96 12:10P PG 2 OF 63 25074

2.35	Plat .....	7
2.36	Property .....	7
2.37	Residential Unit .....	7
2.38	Rules and Regulations .....	7
2.39	Subowner .....	7
2.40	Undeveloped Unit .....	7
2.41	Unit .....	7
2.42	Upper Bachelor Gulch Village .....	8
2.43	Wildlife Agreements .....	8

**ARTICLE III: CERTAIN OBLIGATIONS AND RIGHTS OF ASSOCIATION . 8**

3.1	Property Maintenance Function .....	8
3.2	Operation Function .....	9
3.3	Public Health and Safety Function .....	9
3.4	Parking Function .....	9
3.5	Transportation Function .....	9
3.6	Vehicular Access Limitation Function .....	10
3.7	Recreation Function .....	10
3.8	Marketing Function .....	10
3.9	Solid Waste Collection and Disposal Function .....	11
3.10	Animal Control Function .....	11
3.11	Environmental Function .....	11
3.12	Exterior Maintenance Function .....	11
3.13	Television Function .....	12
3.14	Other Functions .....	12
3.15	Insurance .....	12
3.16	Indemnification .....	12
3.17	Right to Make Rules and Regulations .....	12
3.18	Charges for Use of Common Elements .....	13
3.19	Charges for Functions .....	13
3.20	Taxes .....	13
3.21	Right to Dispose of Common Elements .....	13
3.22	Governmental Successor .....	14
3.23	Records .....	14
3.24	Implied Rights of the Association .....	14
3.25	Association Documents .....	16

**ARTICLE IV: BACHELOR GULCH VILLAGE ASSOCIATION  
MEMBERSHIP AND VOTING ..... 16**

4.1	Membership .....	16
4.2	Voting .....	17
4.3	Declarant .....	18

093742 B-697 P-750 06/19/96 12:10P PG 3 OF 63

0907

**ARTICLE V: ASSESSMENTS, COMMON EXPENSES, OTHER AMOUNTS AND LIENS ..... 19**

5.1 Obligations for Assessments and Other Amounts ..... 19  
 5.2 Purpose of Assessments and Other Amounts ..... 19  
 5.3 Time for Payments ..... 19  
 5.4 Lien for Assessments, Common Expenses and Other Amounts ..... 19  
 5.5 Liability of Owners, Purchasers and Encumbrancers ..... 20  
 5.6 Allocation of Common Expenses ..... 20

**ARTICLE VI: CERTAIN RIGHTS OF DECLARANT, OWNERS AND ASSOCIATION ..... 21**

6.1 Declarant's Easements and Related Rights ..... 21  
 6.2 Rights and Obligations of Owners ..... 21  
 6.3 Common Access Easements ..... 22  
 6.4 Other Association Easements ..... 24  
 6.5 Other Easements ..... 24  
 6.6 Enjoyment of Functions and Common Elements ..... 24  
 6.7 Assignment of Rights or Obligations to a Lessee or Subowner ..... 25  
 6.8 Lessee's Rights and Obligations Appurtenant ..... 25  
 6.9 Transfer of Rights or Obligations to a Sublessee ..... 26  
 6.10 Special Declarant Rights ..... 26  
 6.11 Declarant Right to Appoint ..... 27

**ARTICLE VII: RESTRICTIONS APPLICABLE TO PROPERTY ..... 28**

7.1 Land Use Restrictions ..... 28  
 7.2 Occupancy Limitations ..... 28  
 7.3 Maintenance of Property ..... 29  
 7.4 Approval of Construction Activities ..... 29  
 7.5 Blasting ..... 29  
 7.6 Water and Sanitation ..... 30  
 7.7 Use of Property During Construction ..... 30  
 7.8 No Noxious or Offensive Activity ..... 30  
 7.9 No Harassment of Wildlife ..... 31  
 7.10 No Hazardous Activities ..... 31  
 7.11 No Unsightliness ..... 31  
 7.12 Lights, Sounds and Odors ..... 32  
 7.13 Restriction on Animals ..... 32  
 7.14 Restriction on Signs ..... 32  
 7.15 Restrictions on Parking ..... 32  
 7.16 Restriction on Recreational Vehicles ..... 33  
 7.17 Restriction on Woodburning Devices ..... 33  
 7.18 Drainage Restriction ..... 33

893/42 B-69/ P-150 06/19/96 12:10P PG 4 OF 63

B-697  
P-160  
06/19/96 12:10P PG 5 OF 63

7.19 Landscape Restriction ..... 33  
7.20 No Mining and Drilling ..... 33  
7.21 No Fences ..... 33  
7.22 General Practices Prohibited ..... 33  
7.23 Declarant's Exemption ..... 34  
7.24 Health, Safety and Welfare ..... 34  
7.25 Compliance with Law ..... 34  
7.26 Subdivision of Units ..... 34  
7.27 Additional Covenants, Conditions and Restrictions ..... 35  
7.28 Violation ..... 35

**ARTICLE VIII: COMMON ELEMENTS TO BE CONSTRUCTED BY  
DECLARANT ..... 35**

8.1 Declarant's Obligation to Construct Common Elements ..... 35  
8.2 Common Elements Which May Be Constructed ..... 35

**ARTICLE IX: DESIGN REVIEW ..... 36**

9.1 Purpose ..... 36  
9.2 Objectives ..... 36  
9.3 Design Review Board ..... 37  
9.4 Design Review Board Approval and Control ..... 38  
9.5 Design Standards and Construction Procedures ..... 39  
9.6 Exterior Maintenance ..... 39  
9.7 Review Fee ..... 39  
9.8 Enforcement of Restrictions ..... 39  
9.9 Reconsideration, Review and Appeal ..... 40  
9.10 Lapse of Design Review Approval ..... 40  
9.11 Assignment of Function ..... 40  
9.12 Liability ..... 40

**ARTICLE X: ENFORCEMENT AND REMEDIES ..... 41**

10.1 Enforcement ..... 41  
10.2 Remedies ..... 41

**ARTICLE XI: SPECIAL DISCLOSURE MATTERS ..... 42**

**ARTICLE XII: CASUALTY AND CONDEMNATION ..... 43**

12.1 Casualty ..... 43  
12.2 Condemnation ..... 44

**ARTICLE XIII: MISCELLANEOUS ..... 45**

13.1 Duration of Declaration ..... 45

13.2 Amendment ..... 45

13.3 Effect of Provisions of Declaration ..... 45

13.4 Interpretation of the Declaration ..... 46

13.5 Attorneys' Fees ..... 46

13.6 Protection of Encumbrancer ..... 46

13.7 Limited Liability ..... 47

13.8 Use of Trademark ..... 47

13.9 Access ..... 47

13.10 Disclaimer of Representations ..... 47

13.11 Successors and Assigns ..... 48

13.12 Severability ..... 48

13.13 Captions ..... 48

13.14 Construction ..... 48

13.15 No Waiver ..... 48

13.16 Notices, Registration by Owner of Mailing Address ..... 48

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
BACHELOR GULCH VILLAGE  
EAGLE COUNTY, COLORADO**

This Declaration of Covenants, Conditions and Restrictions for Bachelor Gulch Village, Eagle County, Colorado ("Declaration") is made this 18<sup>th</sup> day of June, 1996, by Vail/Arrowhead, Inc., a Colorado corporation (the "Declarant").

**ARTICLE I  
DECLARATION-PURPOSES**

1.1 **General Purposes:** (a) Declarant owns the real property hereinafter defined as Bachelor Gulch Village and intends to develop said property as a resort community designed to provide services, including lodging, food and beverage services, shops and merchandising areas, and entertainment and recreation opportunities, for all persons residing, visiting or doing business within Bachelor Gulch Village.

(b) Bachelor Gulch Village Association, a Colorado nonprofit corporation (the "Association"), has been formed to hold, manage and maintain certain property for the common benefit of some or all Owners, Lessees, Guests and members of the general public within Bachelor Gulch Village; to administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby; to collect and enforce the assessments, charges and liens imposed pursuant hereto; and for all other purposes set forth in the Articles of Incorporation of the Association. This Declaration defines certain rights and obligations of Owners, Lessees, Guests and members of the general public within Bachelor Gulch Village with respect to the Association and with respect to Functions undertaken and Common Elements held by the Association.

(c) By this Declaration, Declarant intends to establish a means to provide for and maintain the area within Bachelor Gulch Village as a pleasant and desirable environment for all persons residing, visiting or doing business therein.

(d) The common interest community created hereby is a Large Planned Community as defined in Section 38-33.3-103(17.5) of the Colorado Common Interest Ownership Act (the "Act") and is exercising certain exemptions as permitted by the Act. The name of the common interest community is Bachelor Gulch Village.

(e) The Master Plan approved by Eagle County permits, among other things, the construction of up to 691 Dwelling Units and up to 67,880 square feet of commercial space in Lower Bachelor Gulch Village, and the development of 104 Dwelling Units in Upper Bachelor Gulch Village. In order to allow for the creation of Units of Commercial Space of not

less than 150 square feet per Unit, Declarant reserves the right to create a maximum of 1,248 Units in Bachelor Gulch Village. All capitalized terms used herein are defined in Article II below.

**1.2 Declaration:** To further the general purposes herein expressed, Declarant, for itself, its successors and assigns, hereby declares that all real property hereinafter defined as Bachelor Gulch Village, including any property added to Bachelor Gulch Village as hereinafter provided shall, at all times, be owned, held, used, occupied, sold and conveyed subject to the provisions of this Declaration and to the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens herein contained, which shall run with the property defined herein as Bachelor Gulch Village and burden and benefit Declarant, all other parties having any right, title or interest in Bachelor Gulch Village, or any portion thereof, and their respective successors, assigns, heirs, devisees and personal representatives. In addition, Declarant hereby submits the real property described on Exhibit A attached hereto to the provisions of the Act.

## **ARTICLE II CERTAIN DEFINITIONS**

**2.1 Act:** Act means the Colorado Common Interest Ownership Act, Colorado Revised Statutes 38-33.3-101 through 38-33.3-319, as the same may be amended from time to time.

**2.2 Additional Property:** Additional Property means the real property described on Exhibit B attached hereto and made a part hereof.

**2.3 Affirmative Vote of a Majority of the Classes:** The Affirmative Vote of a Majority of the Classes shall be achieved if (and only if) (a) the Class D Member votes in favor of such matter, and (b) at least one-half of the classes of Members that have Members entitled to vote on such matters (other than Class D) voting as classes vote in favor of such matter. For the purpose of determining the vote of a class, the votes of a majority of the members of such class present at such meeting in person or by proxy and entitled to vote on such matter shall be deemed the vote of such class.

The Association recognizes that Tract A will play an essential role in creating and preserving the resort character of Bachelor Gulch Village and in enhancing the value of the entire community by virtue of Tract A's character as a ski tract and its connection to the adjacent ski resort areas. The Association Documents, therefore, require the vote of an Affirmative Vote of a Majority of the Classes on certain specified matters, where the Class D Member, as the Owner of Tract A, has a unique and vital interest.

**2.4 Articles:** Articles means the Articles of Incorporation of Bachelor Gulch Village Association, as the same may be amended from time to time.



2.5 **Association:** Association means Bachelor Gulch Village Association, a Colorado nonprofit corporation, and its successors and assigns.

2.6 **Association Documents:** Association Documents means this Declaration, such Plats as may be required by the Act, the Articles, the Bylaws and the Rules and Regulations, as the same may be amended from time to time.

2.7 **Bachelor Gulch Village:** Bachelor Gulch Village means all the real property located in Eagle County, Colorado, described in Parts I and II of Exhibit A attached hereto, as well as all real property that becomes part of Bachelor Gulch Village as provided in this Section 2.7 and excluding all real property deleted from Bachelor Gulch Village as provided in this Section 2.7. All or any part of the Additional Property described in Exhibit B attached hereto may become part of Bachelor Gulch Village and, in such event, shall be deemed to be within Bachelor Gulch Village and subject to all of the provisions contained in this Declaration upon the recording in the office of the County Clerk and Recorder of Eagle County, Colorado, during the term of this Declaration, of a written instrument signed by Declarant containing a legal description of the additional real property and declaring that such additional real property shall become part of and shall be deemed to be within Bachelor Gulch Village; provided, however, that the addition of any real property to Bachelor Gulch Village shall not violate applicable provisions of the Act. Only real property owned or leased by Declarant at the time it is declared to be part of Bachelor Gulch Village may become part of Bachelor Gulch Village. Any real property included in the definition of Bachelor Gulch Village pursuant to this Section 2.7 which is hereafter incorporated as or becomes a part of a municipal corporation may be excluded from and be deemed outside of Bachelor Gulch Village by the action of the Board of Directors and the written consent of Declarant upon the recording in the office of the Clerk and Recorder of Eagle County, Colorado, of a written instrument signed by Declarant and the Association containing a legal description of the real property to be excluded and declaring that such real property shall be deemed to be outside Bachelor Gulch Village.

2.8 **Bed and Breakfast:** Bed and Breakfast means an operation involving the letting of one or more rooms in a residence to an unrelated party or parties where the Owner (i) is also residing, and (ii) provides his or her guests with breakfast (but no other meals) as part of the lodging accommodations and without additional charge. Bed and Breakfast operations shall be limited as set forth in Section 7.2 below.

2.9 **Board of Directors:** Board of Directors means the board which shall act on behalf of the Association, as more particularly described and defined in the Bylaws.

2.10 **Bylaws:** Bylaws means the Bylaws of Bachelor Gulch Village Association, as the same may be amended from time to time.

2.11 **Change in Control Date:** Change in Control Date means the date upon which Declarant control terminates pursuant to Section 303(5) of the Act.

**2.12 Commercial Space:** Commercial Space means any area which may be used, rented or leased for the purpose of generating retail business or consumer services with the intent of producing a financial profit. Commercial Space is measured from the inside of finished walls and shall include offices and storage spaces contiguous with the primary area but does not include auxiliary storage in remote areas. Commercial Space includes, but is not limited to, business and professional offices, retail specialty and gift shops, restaurants, banks, barber and beauty shops, laundromat/dry cleaning, shoe repair, automobile repair and services, taverns, cinemas, clothing stores, department stores, beverage stores, furniture stores, hardware stores, food stores, real estate sales offices, ski rental and sales stores, and skier cafeterias. The following uses will not be considered Commercial Space: residential and lodging facilities (except for areas used specifically as enumerated above), meeting rooms, banquet rooms, educational classrooms, cultural facilities, recreational facilities, athletic facilities, or resort services, as those terms are more particularly defined in the Master Plan.

**2.13 Common Elements:** Common Elements means, to the extent of the Association's interest in such real estate or improvements, any real estate within Bachelor Gulch Village (i) that is owned by the Association, (ii) that is owned by a Person other than the Association, but in which the Association has rights of use or possession pursuant to a lease, license, easement or other agreement, or (iii) that the Association is otherwise required to operate, manage, maintain or repair, together with any improvements located thereon.

**2.14 Common Expenses:** Common Expenses means allocations to reserves and all costs, expenses and liabilities incurred by or on behalf of the Association, including, but not limited to, costs, expenses and liabilities for (i) acquiring, leasing, renting, designing, constructing, managing, operating, maintaining, repairing and improving the Common Elements; (ii) administering and enforcing the covenants, conditions, restrictions, reservations and easements created by this Declaration; (iii) levying, collecting and enforcing the assessments, charges and liens, imposed pursuant to this Declaration; (iv) advertising, promoting, regulating and managing Bachelor Gulch Village, including performing any and all Functions permitted by this Declaration; (v) operating the Association; and (vi) any other cost or expense legally incurred by the Association.

**2.15 Declarant:** Declarant means, collectively, Vail/Arrowhead, Inc., a Colorado corporation and any party that (i) acquires all or substantially all of the property in Bachelor Gulch Village and (ii) prior to or at the time of such acquisition is designated by a written instrument as a successor or assignee of Declarant under this Declaration. Such instrument may specify the extent and portion of the rights or interests as a Declarant which are being assigned, in which case Vail/Arrowhead, Inc. shall retain all other rights as Declarant.

**2.16 Declarant Control Period:** Declarant Control Period means the period commencing on the date on which Declarant forms the Association and ending on the Change in Control Date. After termination of the Declarant Control Period, Declarant, if still an Owner, will have all of the rights and duties given to Members under the Association Documents and

will retain all of the rights belonging to Declarant under the Association Documents (including without limitation the Special Declarant Rights) other than those which expire by their terms or pursuant to the Act, upon the expiration of the Declarant Control Period.

**2.17 Declaration:** Declaration means this instrument and all amendments or supplements hereto hereafter recorded in the real property records of Eagle County, Colorado, together with all Plats for Bachelor Gulch Village.

**2.18 Design Review Board:** Design Review Board means the Design Review Board established pursuant to Article IX hereof.

**2.19 Developed Unit:** Developed Unit means any Estate Lot and, with respect to Units other than the Estate Lots, a Unit that either (i) has been created by a resubdivision, after the recording of the original Plat for such portion of the Property, or (ii) has been improved and occupied, in compliance with all applicable laws, for other than single family or primary/secondary use.

**2.20 Development Rights:** Development Rights shall have the same meaning as that term is defined from time to time in the Act, and these rights may be exercised by Declarant at any time during the term of this Declaration.

**2.21 District:** District means, collectively, the Smith Creek Metropolitan District and the Bachelor Gulch Village Metropolitan District.

**2.22 Dwelling Unit:** Dwelling Unit means one or more rooms, except lodge/studio units (as those terms are more particularly defined in the Master Plan), occupied by one family or group of people living independently from any other family or group of people and having not more than one indoor cooking facility which is limited to the use of the one family. A Dwelling Unit may or may not be a Residential Unit or Unit as those terms are defined in Sections 2.37 and 2.41; for example, a primary/secondary residential building would comprise one Unit, but two Dwelling Units.

**2.23 Estate Lots:** Estate Lots means, collectively, (i) those Units numbered as lots 1 through 105 inclusive on the Plats designated as Filing No. 1, Filing No. 2 and Filing No. 3, which are described in the land use summary and address table on such Plats as being zoned for single family residential or single family primary/secondary residential occupancy; and (ii) those Units created by any subsequent Plat(s) that contain more than one-half acre of land and that are described in the land use summary and address table on such Plat(s) as being zoned for single family and/or single family primary/secondary residential occupancy.

**2.24 Function:** Function means any activity, function or service required under this Declaration to be undertaken or performed by the Association as well as any activity, function or service otherwise undertaken or performed by the Association.

**2.25 Guest:** Guest means any family member, customer, agent, employee, independent contractor, guest or invitee of an Owner, Lessee, or Subowner and any person or persons, entity or entities who have any right, title or interest in a Unit which is not the fee simple title to the Unit (including a Lessee or Subowner other than a Lessee), and any family member, customer, agent, employee, independent contractor, guest or invitee of such person or persons, entity or entities.

**2.26 Leased Premises:** Leased Premises means any part or all of a Unit under a ground lease to a Lessee, or any space within a building on any Unit under a space lease to a Lessee.

**2.27 Lessee:** Lessee means the person or persons, entity or entities who is the lessee under a ground lease of any part or all of a Unit or the lessee under a space lease of any space within a building on any Unit. The term Lessee shall include Declarant to the extent it is a Lessee as defined above and shall include a sublessee to the extent it becomes a Lessee pursuant to Section 6.9, but it shall not include the Association or any governmental entity (which term shall include but is not limited to special districts formed pursuant to Colorado law).

**2.28 Lodge:** Lodge means a building containing lodge/studio units (as those terms are more particularly defined in the Master Plan), intended or used for the accommodation of tourists, transients, or permanent guests for compensation. Provision may be made for cooking in individual rooms, provided that all applicable building codes have been met.

**2.29 Lower Bachelor Gulch Village:** Lower Bachelor Gulch Village means the real property described in Part II of Exhibit A.

**2.30 Master Plan:** Master Plan means, collectively: (i) the Planned Unit Development Plan -Arrowhead at Vail, as evidenced by The Amended and Restated Guide to such plan recorded on January 18, 1995, in Book 659 at Page 546, as the same may be amended from time to time, and only insofar as it affects Lower Bachelor Gulch Village; and (ii) the Beaver Creek Planned Unit Development Plan, as evidenced by The Amended and Restated Guide to such plan recorded on April 26, 1994, in Book 638 at Page 584, as the same may be amended from time to time, and only insofar as it affects Upper Bachelor Gulch Village; as such plans have been approved or are hereafter approved by the County Commissioners of Eagle County, Colorado.

**2.31 Member:** Member means each person or entity who holds a Membership in the Association.

**2.32 Membership:** Membership means a membership in the Association which is appurtenant to ownership of any Unit, and the rights granted to Owners pursuant to this Declaration to participate in the Association.

**2.33 Owner:** Owner means the record holder of legal title to the fee simple interest in a Unit or interest therein, including contract sellers, but excluding (i) contract purchasers, (ii) the Association and (iii) those having such interest merely as security for the performance of an obligation. Each Owner shall also be the holder or holders of a Membership in the Association, which is appurtenant to ownership of such Unit. The term Owner shall include Declarant to the extent it is the record owner of fee simple title to a Unit.

**2.34 Person:** Person means any natural person, corporation, partnership, limited liability company, association, trustee or any other entity recognized as being capable of owning real property under the laws of the state of Colorado.

**2.35 Plat:** Plat means a land survey plat as set forth in Colorado Revised Statute 38-51-105, which depicts all or any portion of Bachelor Gulch Village in two dimensions, is executed by the Declarant, and is recorded in the real estate records in Eagle County.

**2.36 Property:** Property means any and all real property subject to this Declaration from time to time.

**2.37 Residential Unit:** A Residential Unit means any Developed Unit that includes one or more Dwelling Units, and any Undeveloped Unit for which the Owner has not made an election to be treated as a voting Member of Class C pursuant to Article IV below.

**2.38 Rules and Regulations:** Rules and Regulations means any instruments adopted by the Association or the Design Review Board for the regulation and management of Bachelor Gulch Village or any portion thereof, as the same may be amended from time to time. The Rules and Regulations shall comply with the terms of the Wildlife Agreements and with all wildfire mitigation guidelines and conservation guidelines that affect Bachelor Gulch Village, as in effect from time to time.

**2.39 Subowner:** Subowner means any person or persons, entity or entities who occupy or use a Unit or portion thereof pursuant to a license, concession agreement or other arrangement with an Owner or Lessee or who have any right, title or interest in a Unit pursuant to a mortgage or deed of trust encumbering a Unit, including a mortgagee or beneficiary, as the case may be.

**2.40 Undeveloped Unit:** Undeveloped Unit means any Unit other than the Estate Lots and other than Tract A, that either (i) has not been resubdivided after the recording of the original Plat for such portion of the Property, or (ii) has not been improved and occupied, in compliance with all applicable laws, for other than single family or primary/secondary use.

**2.41 Unit:** Unit means a physical portion of Bachelor Gulch Village that is designated for separate ownership and that may be conveyed in fee in compliance with all applicable subdivision regulations. Notwithstanding the foregoing, a parcel of land owned, held

or used in its entirety by the Association, or by any governmental entity (which term shall include but is not limited to special districts formed pursuant to Colorado law), or for or in connection with the distribution of electricity, gas, water, sewer, telephone, television or other utility service or for access to any property within or without Bachelor Gulch Village shall not be considered a Unit. Moreover, a parcel of land containing 35 acres or more shall be considered as only one Unit.

2.42 **Upper Bachelor Gulch Village:** Upper Bachelor Gulch Village means the real property described in Part I of Exhibit A.

2.43 **Wildlife Agreements:** Wildlife Agreements means the Wildlife Agreement and Mitigation/Game Management Plan for Arrowhead at Vail Planned Unit Development, Eagle County, Colorado, dated August 1, 1995, between Vail/Arrowhead, Inc. and the Colorado Division of Wildlife, and the Amended Beaver Creek Master Plan Wildlife Mitigation Plan dated June 15, 1994, together with the detailed agreements, mitigation plans and game management plans executed or to be executed pursuant thereto, as the same may be amended or supplemented from time to time. Photocopies of the Wildlife Agreements shall be kept in the principal office of the Association, and may be reviewed by any Member during regular business hours.

### **ARTICLE III CERTAIN OBLIGATIONS AND RIGHTS OF ASSOCIATION**

3.1 **Property Maintenance Function:** (a) The Association shall provide for the care, operation, management, maintenance, repair and replacement of all Common Elements. Moreover, the Association may provide for the care and maintenance of other areas of the Property if the Board of Directors, in its sole and exclusive discretion, deems such care and maintenance to be necessary or desirable for access to the boundary of or full utilization of any Unit or any improvements within Bachelor Gulch Village. Such function may include, without limitation, removal of snow from and application of sand and salt to parking areas, roads, walks, drives, malls, stairs and other similar Common Elements as necessary for their customary use and enjoyment; maintenance and care of all type "B" skiway easements as designated on the Plat, open space or unimproved areas included in the Common Elements and of plants, trees and shrubs in such open space or unimproved areas; maintenance of lighting provided for parking areas, roads, type "B" skiway easements, walks, drives, malls, stairs, and other similar Common Elements; and maintenance of mailbox areas. The Board of Directors shall be the sole judge as to the appropriate maintenance, operation and management of the Common Elements and other areas of the Property.

(b) Unless otherwise agreed in writing, the Association shall be obligated to and shall provide for the care, operation, management, maintenance and repair of any Common Elements consisting of only a portion of, or defined space within, a building or other improvement owned by Declarant and shall be obligated to and shall bear and pay to Declarant its proportionate share of Declarant's costs and expenses relating to such building or

improvement as a whole, including without limitation, maintenance, taxes and assessments, insurance and depreciation. The proportionate share of the Association's costs and expenses relating to such building or improvement as a whole shall be determined by Declarant based on the actual amounts of such costs and expenses relating to such building or improvement as a whole multiplied by the ratio with a numerator which is the number of square feet of floor area of such defined space within the building or improvement and a denominator which is the number of square feet of floor area of the entire building or improvement.

(c) If, with respect to any Common Elements, Declarant reserves the right to use all or part of such Common Elements for part of the time or the right to permit third parties to use all or part of such Common Elements for part of the time and Declarant actually exercises such reserved right, Declarant shall pay to the Association the fair rental value of the use of such Common Elements by Declarant or such third party, as determined by Declarant, based on the particular type of use, the portion of such Common Elements used and the time or periods of such use, or based on the actual rental payments, income or fees received by Declarant from any third party for such use, whichever is greater; provided, however, the payment by Declarant shall not exceed the costs and expenses of the Association with respect to such Common Elements including, without limitation, maintenance, taxes and assessments, insurance and depreciation. Declarant shall have the obligation, or shall impose on any such third party the obligation to restore any such Common Elements to a clean and orderly condition after each use.

**3.2 Operation Function:** The Association may do all things that are within the power of the District and which are not being performed by the District which may be reasonably necessary or desirable to keep and maintain Bachelor Gulch Village as a safe, attractive and desirable community.

**3.3 Public Health and Safety Function:** The Association may provide public health and safety services within Bachelor Gulch Village, including but not limited to, providing health care services and facilities, security personnel, security systems, fire protection facilities, and a fire water system which may include periodic fire prevention inspections and equipment certifications.

**3.4 Parking Function:** The Association may construct, purchase, lease, care for, operate, manage, maintain, repair or replace parking areas to accommodate Owners, Lessees, Guests, Subowners and members of the general public, including but not limited to, lighting, signs, landscaping and other similar facilities appurtenant to such parking areas and the removal of snow from and the cleaning of any of such parking areas. To the extent practicable, the Association shall maintain such parking areas so as to meet any requirements imposed on the Association or on Declarant with respect to Bachelor Gulch Village by any federal, state or local governmental agency.

**3.5 Transportation Function:** The Association may provide for the operation, maintenance and repair of one or more transportation systems within Bachelor Gulch Village.

The Association, as it deems necessary, may extend such transportation systems to areas outside of Bachelor Gulch Village to provide transportation to and from Bachelor Gulch Village. Such transportation systems may include, but are not limited to, gondola, bus, automobile, or rail systems and any other facilities deemed necessary or appropriate for the proper operation and maintenance of such systems.

**3.6 Vehicular Access Limitation Function:** The Association may provide control over vehicular access to Bachelor Gulch Village which it deems necessary or desirable for the health, safety or welfare of persons residing, visiting or doing business within Bachelor Gulch Village. Such function may include, without limitation, constructing, operating and maintaining access road control gates (at such location(s) as the Association may from time to time determine to be appropriate, e.g., on Bachelor Gulch Trail, Daybreak Ridge, Bachelor Ridge and/or Horizon), restricting non-commercial vehicular traffic within Bachelor Gulch Village except for Owners, Lessees, Guests or visitors who have overnight accommodations at Bachelor Gulch Village and who obtain parking spaces within Bachelor Gulch Village, and restricting commercial vehicular traffic within Bachelor Gulch Village. All Owners and Lessees may be required to keep the Association informed of all persons who have overnight accommodations at such Owner's or Lessee's property in order to enforce its Rules and Regulations appropriately.

**3.7 Recreation Function:** The Association may provide a year-round recreational program of suitable variety and such miscellaneous equipment as may be necessary therefor, including but not limited to, informing visitors of recreation available and stimulating their participation therein; conducting, operating, managing and maintaining programs for children, including but not limited to, daycare facilities and such equipment as may be appropriate for use in connection therewith; constructing, caring for, operating, managing, maintaining, repairing and replacing within Bachelor Gulch Village swimming pools, ice rinks, skating ponds, clubhouses, foot and bicycle trails and related facilities, sauna and steam baths, tennis courts, game courts, game or sports courts, game and special events areas, fishing areas and facilities, bob sledding and snow shoeing facilities, outdoor entertainment and other recreational amenities, and such equipment as may be appropriate for use in connection therewith; and removing snow from and cleaning such facilities as necessary to permit their full use and enjoyment.

**3.8 Marketing Function:** The Association may provide suitable and continuing programs to promote Bachelor Gulch Village as a desirable year-round destination resort, including but not limited to, stimulating and coordinating major events, advertising and placing articles in news and other media, establishing uniform standards for promotional programs of individual members, involvement in lecture tours and ski shows, encouraging responsible groups to hold conferences and negotiating arrangements and accommodations for such groups, conducting tour operations, publishing a newsletter, providing and operating reception and information centers and buying facilities for the accommodation of Guests and visitors. The Association may undertake or fulfill its obligations hereunder in whole or in part in



conjunction with or through any organization which may be engaged in the promotion of the state or local area ski industry.

**3.9 Solid Waste Collection and Disposal Function:** The Association may provide for the collection, removal and disposal of all solid waste in Bachelor Gulch Village, including but not limited to, the construction, operation and maintenance of a central waste collection and/or disposal facility, and the possible production and sale of any energy generated in connection therewith. The Association shall have the power to adopt, amend and enforce Rules and Regulations to provide for the orderly collection and disposal of such waste, for the sale of any energy generated in connection therewith and the distribution of such energy.

**3.10 Animal Control Function:** The Association shall be obligated to and shall provide for regulations, facilities, personnel and funds to enforce animal control or exclude animals from Bachelor Gulch Village in which case it may provide reasonable kennel facilities for the keeping and care of Owners', Lessees' and Guests' animals or for the orderly dispensing of stray animals.

**3.11 Environmental Function:** The Association may monitor air, soil and water quality in Bachelor Gulch Village to determine trends and to detect violations of federal, state or local environmental laws. Neither Declarant, the Association, nor any of their respective directors, officers, agents or employees shall be required to undertake such monitoring, nor shall the Declarant, the Association, nor any of their respective directors, officers, agents or employees be liable to any third party for any action which they take, or any failure to act, in connection with the inspection or monitoring of air, soil or water quality in Bachelor Gulch Village.

**3.12 Exterior Maintenance Function:** (a) All Owners are expected to maintain their Units as required under this Declaration, and the Association does not intend to provide any exterior maintenance and repair of such property. If any Owner fails to maintain its Unit or related improvements or property or fails to perform any acts of maintenance or repair required under this Declaration, the Association may provide exterior maintenance and repair upon such property thereon pursuant to the provisions of Section 9.6. In addition, the Association may, without notice, make such emergency repairs and maintenance as may in its judgment be necessary for the safety of any person or to prevent damage to any other property. The cost of such exterior maintenance and repair shall be assessed against the Owner of such Unit and shall be a lien and obligation of the Owner pursuant to Section 5.4 herein and shall become due and payable in all respects as set forth in Section 5.3 herein. For the purpose of performing the exterior maintenance authorized by this Section 3.12, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to any Owner, to enter upon such site during reasonable hours on any day. The Association or its designee is hereby granted an irrevocable license over all property in Bachelor Gulch Village to inspect (in a reasonable manner) property within Bachelor Gulch Village in order to determine whether any maintenance or repair is necessary under this Section 3.12.

10/19/96 14:10P PG. 18 OF 63

(b) Neither Declarant, the Association, nor any of their respective directors, members, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any Unit or improvements or portion thereof or to repair or maintain the same. Declarant, the Association or any member of the general public, firm or corporation undertaking such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any Unit, improvements or portion thereof.

**3.13 Television Function:** The Association may provide for the installation, operation, maintenance, repair and replacement of satellite dishes, cable television equipment and related facilities.

**3.14 Other Functions:** The Association may undertake and perform other functions as it deems reasonable or necessary to carry out the provisions of this Declaration, including without limitation, providing the following services for some or all Owners, Lessees, Guests and visitors: a telephone answering service, warehousing and delivery, a central laundry facility, employee training, a central communications operation which may include a central dispatch system, a data information center and central monitoring of fire safety and property security.

**3.15 Insurance:** The Association shall obtain in its name and keep in full force and effect at all times all insurance required to be obtained and maintained by the Association under the Act and any additional insurance that the Board of Directors deems necessary. Any loss covered by insurance maintained by the Association shall be adjusted with the Association in accordance with the terms and conditions of the Act. The insurance proceeds for any such loss shall be paid in accordance with the terms and conditions of the Act.

**3.16 Indemnification:** The Association shall be obligated to and shall indemnify Declarant and hold it harmless from all liability, loss, cost, damage and expense, including without limitation attorneys' fees and disbursements, arising with respect to any operations of the Association or any Common Elements or Functions.

**3.17 Right to Make Rules and Regulations:** The Association shall be authorized to and shall have the power to adopt, amend and enforce Rules and Regulations applicable within Bachelor Gulch Village with respect to any Common Element or Function, and to implement the provisions of the Association Documents, including but not limited to, Rules and Regulations to prevent or reduce fire hazard; to prevent disorder and disturbances of the peace; to regulate pedestrian and vehicular traffic; to regulate animals; to protect wildlife; to regulate signs; to regulate weed and pest control on undeveloped property within Bachelor Gulch Village; to regulate use of any and all Common Elements to assure fullest enjoyment of use; to promote the general health, safety and welfare of persons residing, visiting and doing business within Bachelor Gulch Village; and to protect and preserve property and property rights. All Rules and Regulations shall comply with the Association Documents, the Master Plan, any

supplemental declarations of land use restrictions for Bachelor Gulch Village and the Wildlife Agreements. The Rules and Regulations shall be reasonable and shall be uniformly applied, except such rules may differentiate between reasonable categories of Units, Owners, Lessees, Subowners, Guests or members of the general public. The Association may provide for enforcement of any such Rules and Regulations through reasonable and uniformly applied fines and penalties, through exclusion of violators from Common Elements or from enjoyment of any Functions, or otherwise. Each Owner, Lessee, Subowner, Guest and member of the general public shall be obligated to and shall comply with and abide by such Rules and Regulations and pay such fines or penalties upon failure to comply with or abide by such Rules and Regulations and such unpaid fines and penalties shall be enforceable in accordance with Section 5.4.

**3.18 Charges for Use of Common Elements:** Notwithstanding the provisions of Section 3.20, the Association may establish charges for use of Common Elements to assist the Association in offsetting the costs and expenses of the Association, including depreciation and capital expenses. All charges established under this Section 3.18 shall be reasonable and shall be uniformly applied, except such charges may reasonably differentiate between reasonable categories of Units, Owners, Lessees, Subowners, Guests, Members or members of the general public. Each Owner, Lessee, Subowner and Guest and member of the general public shall be obligated to and shall pay any such charges for use.

**3.19 Charges for Functions:** Notwithstanding the provisions of Section 3.20, the Association may establish charges for providing any service as required or permitted by any Function on a regular or irregular basis to an Owner, Lessee, Subowner, Guest or member of the general public to assist the Association in offsetting the costs and expenses of the Association, including depreciation and capital expenses. All charges established under this Section 3.19 shall be reasonable and shall be uniformly applied, except such charges may differentiate between reasonable categories of Units, Owners, Lessees, Subowners, Guests or members of the general public, but shall not unreasonably differentiate for members of the general public. Each Owner, Lessee, Subowner, Guest and member of the general public shall be obligated to and shall pay any such charges for such services.

**3.20 Taxes:** The Association shall pay all ad valorem real estate taxes, special improvement and other assessments (ordinary and extraordinary), ad valorem personal property taxes, and all other taxes, duties, charges, fees and payments required to be made to any governmental or public authority which shall be imposed, assessed or levied upon, or arise in connection with any Common Elements or Functions.

**3.21 Right to Dispose of Common Elements:** Subject to Section 3.24(viii) below, the Association shall have full power and authority to sell, lease, grant easements, rights-of-way, licenses, leases or concessions in or to, transfer, encumber, abandon or dispose of any Common Elements.

**3.22 Governmental Successor:** Any Common Element and any Function may be turned over to a governmental entity which is willing to accept and assume the same upon such terms and conditions as the Association shall deem to be appropriate with the consent of the Members by the Affirmative Vote of a Majority of the Classes.

**3.23 Records:** The Association shall keep financial records sufficiently detailed to enable the Association to comply with Section 38-33.3-316(8) of the Act concerning statements of unpaid assessments. All financial and other records shall be made available for examination by any Owner or such Owner's authorized agents during normal business hours and under other reasonable circumstances. The Association may charge a reasonable fee for copying such materials.

**3.24 Implied Rights of the Association:** The Association shall have and may exercise any right or privilege given to it expressly in this Declaration or, except to the extent limited by the terms and provisions of this Declaration, given to it by law and shall have and may exercise every other right or privilege or power and authority necessary or desirable to fulfill its obligations under this Declaration, including without limitation the rights to:

(i) adopt and amend the Bylaws and Rules and Regulations of the Association;

(ii) adopt and amend budgets for revenues, expenditures and reserves and collect assessments, including without limitation assessments for Common Expenses, from Owners;

(iii) hire and terminate managing agents and other employees, agents and independent contractors;

(iv) institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting Bachelor Gulch Village;

(v) make contracts and incur liabilities;

(vi) regulate the use, maintenance, repair, replacement and modification of the Common Elements;

(vii) cause additional improvements to be made as part of the Common Elements, including the construction of any capital asset, in whole or in part, for the benefit of some or all of the Owners, Lessees, Subowners, Guests and members of the general public, including without limitation streets, mountain access roads and other limited access roads, paths, walkways, skiways, sidewalks, and trails; any facilities necessary or useful for transit purposes, including gondolas or other means of transportation to and from Bachelor Gulch

Village; bus stops and related structures and signage; mailbox structures; gardens, sprinkler systems and other landscaping changes, improvements (including without limitation, removal of trees and other vegetation) and appurtenances; ponds and water tanks; drainage facilities; monuments; recreational areas and facilities; parking areas; ducts, shafts and flues; conduit installation areas; storage facilities for supplies and equipment; earth walls, retaining walls and other road and skiway supports; lighting; signage; and the additional right to construct any and all types of structures, facilities and improvements that the District may be empowered by law from time to time to construct;

(viii) acquire, hold, encumber and convey in its own name any right, title or interest in real or personal property; provided, however, that the fee interest of a Common Element may not be conveyed or subjected to a security interest unless (a) such action receives approval by an Affirmative Vote of a Majority of the Classes or any greater level of approval if required by the Act; (b) such action is evidenced by a written agreement, or a written ratification of an agreement, executed in the same manner as a deed by the required number of Members; and (c) such action does not deprive any Unit of its rights of ingress, egress and support;

(ix) grant easements, leases, licenses and concessions through or over the Common Elements. Without limiting the generality of the foregoing, the Association may grant easements, rights-of-way, leases, licenses and concessions to suppliers of utilities serving the Property or property adjacent to the Property and may grant such rights to developers or owners of property adjacent to the Property for the purpose of accommodating minor encroachments onto the Common Elements or other purposes that do not unreasonably interfere with the use and enjoyment of the Common Elements;

(x) impose and receive any payments, fees or charges for the use, rental or operation of Common Elements;

(xi) impose charges for late payments of assessments, recover reasonable attorneys' fees and disbursements and other costs of collection for assessments and other actions to enforce the rights of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines and penalties for violations of the Association Documents;

(xii) impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid assessments;

(xiii) provide for the indemnification of the Association's officers and directors and maintain directors' and officers' liability insurance;

(xiv) assign its right to future income, including without limitation, its right to receive assessments (by way of example and not limitation, the Association

may assign its right to receive real estate transfer assessments to secure financing for improvements to Common Elements or performance of Functions, including without limitation construction and/or operation of transit systems which may include gondolas);

(xv) obtain and pay for legal, accounting and other professional services;

(xvi) perform any Function by, through or under contractual arrangements, licenses, or other arrangements with any governmental or private entity as may be necessary or desirable; and

(xvii) enjoy and exercise any other power or authority which similar associations may now or hereafter enjoy or exercise in the state of Colorado.

**3.25 Association Documents:** (a) Each Owner shall comply with and may benefit from each term, provision, covenant, condition, restriction, reservation and easement contained in the Association Documents. The obligations, burdens and benefits of Membership in the Association touch and concern the property comprising Bachelor Gulch Village and are, and shall be, covenants running with each Unit for the benefit of all other Units and the Common Elements.

(b) In the event that there is any conflict or inconsistency between the terms and conditions of the Act and the terms and conditions of this Declaration, the terms and conditions of the Act shall control. In the event that there is any conflict or inconsistency between the terms and conditions of this Declaration and the terms and conditions of the Articles, the Bylaws or the Rules and Regulations, the terms and conditions of this Declaration shall control. In the event that there is any conflict or inconsistency between the terms and conditions of Articles and the terms and conditions of the Bylaws or the Rules and Regulations, the terms and conditions of the Articles shall control. In the event of any conflict or inconsistency between the terms and conditions of the Bylaws and the terms and conditions of the Rules and Regulations, the terms and conditions of the Bylaws shall control.

#### **ARTICLE IV BACHELOR GULCH VILLAGE ASSOCIATION MEMBERSHIP AND VOTING**

**4.1 Membership:** (a) There shall be one Membership in the Association attributable to fee simple ownership of each Unit. Each such Membership shall be appurtenant to the fee simple title to such Unit. The Owner of a Unit shall automatically be the holder of the Membership appurtenant to that Unit and title to and ownership of the Membership for that Unit shall automatically pass with fee simple title to the Unit. Each Owner of a Unit shall automatically be entitled to the benefits and subject to the burdens relating to the Membership for its Unit as set forth in the Association Documents as from time to time in force and effect. If fee

simple title to a Unit is held by more than one person or entity, the Membership appurtenant to that Unit shall be shared by all such persons or entities in the same proportionate interest and by the same type of ownership as fee simple title to the Unit is held.

(b) Membership in the Association shall be limited to Owners.

4.2 **Voting:** (a) The Association shall have the four classes of voting Membership set forth below. A Member may belong to more than one class:

(i) **Class A.** Class A Members shall be all of the Owners of the Estate Lots, and all of the Owners of Undeveloped Units unless the Owner of an Undeveloped Unit shall elect (as provided herein) to be a voting Member of Class B or Class C. A Class A Member shall be entitled to one vote for each such Estate Lot or Undeveloped Unit owned by such Class A Member.

Any election with respect to an Undeveloped Unit (1) shall be made by delivering written notice thereof to the secretary of the Association; (2) may be made no more often than once during any calendar year, unless such Undeveloped Unit is transferred or conveyed to a new Owner, in which event such new Owner may make a new election; and (3) may be made only if such Undeveloped Unit is located in an area in which it could be developed as a multi-family or commercial Developed Unit in accordance with the Master Plan, in which case, an election may be made for Class B or Class C, as applicable. For any time period during which no such election has been made by the Owner (or any successor Owner) of an Undeveloped Unit, the voting Membership for such Unit shall belong to Class A. When any Undeveloped Unit becomes a Developed Unit, the voting Membership for such Unit shall be determined by the classification of such Developed Unit as residential, multi-family or commercial.

(ii) **Class B.** Class B Members shall be all of the Owners of multi-family Residential Units (including, without limitation, condominium, cluster home and townhouse Units), whether such Unit is a Developed Unit or, subject to the election provisions set forth in section (i) above, an Undeveloped Unit. A Class B Member shall be entitled to one vote for each such multi-family Residential Unit owned by such Class B Member.

(iii) **Class C.** Class C Members shall be all of those Owners who own any Unit which may be used as Commercial Space or any Unit that is or could be used as a Lodge, whether such Unit is a Developed Unit or, subject to the election provisions set forth in section (i) above, an Undeveloped Unit. A Class C Member shall be entitled to the greater of: (1) one vote for such commercial Unit (whether or not such Unit is a Developed Unit), or (2) one vote for every 150 square feet of Commercial Space that is owned by such Member, and

one vote for each two lodge/studio units (as those terms are more particularly defined in the Master Plan) in such Member's Lodge. In the event that the calculation of a Class C Member's voting interest results in what would otherwise be a fractional vote, such voting interest shall be rounded down to the nearest whole number of votes. Notwithstanding the foregoing, each Class C Member shall receive a minimum of one vote.

(iv) Class D. The Owner of the Unit shown as Tract A on the Plat designated as Filing No. 1, which is described in the land use summary and address table on such Plat as being zoned for open space recreation, shall constitute the entire Class D Membership. Any future change in the tract name or designation of such Unit shall not affect the Class D Membership, so long as such Unit remains a Unit as defined in Section 2.41 above. The Class D Member shall be entitled to two votes for all purposes.

(b) No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board of Directors is given actual written notice of such change and is provided satisfactory proof thereof. If a Membership in any class is held by more than one person or entity and only one of the holders is present at the meeting, such holder is entitled to cast all of the votes allocated to that Membership. If, however, more than one of the holders are present, such holders may vote in any manner in which they all agree. If such holders cannot agree about how to cast their vote on any specific issue, no vote for that issue shall be recorded for their Membership.

(c) At any meeting of a single class of Members, such Members shall be entitled to vote only the vote to which they are entitled pursuant to being Members of that class. At any meeting of the combined classes of Membership where a vote of combined classes of Members is to be taken, each Member shall be entitled to vote the number of votes for each class of which it is a Member which is in the combined classes. In any election of the directors, the candidates from any class receiving the highest number of votes, up to the number of directors to be elected from such class, shall be deemed elected. Cumulative voting shall not be allowed in the election of directors or for any other purpose.

4.3 **Declarant:** So long as Declarant is an Owner, Declarant will have all of the rights and duties given to Members under the Association Documents, and will have all of the rights belonging to Declarant under the Association Documents (including, without limitation, the Special Declarant Rights) for the duration of those rights as set forth in the Association Documents and in the Act.



**ARTICLE V**  
**ASSESSMENTS, COMMON EXPENSES,**  
**OTHER AMOUNTS AND LIENS**

**5.1 Obligations for Assessments and Other Amounts:** Declarant, for each Unit it owns, hereby covenants, and each Owner by acceptance of a deed for its Unit, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association the Common, Civic, Real Estate Transfer, Default and Special Assessments and charges, fines, penalties or other amounts, to be levied, fixed, established and collected as set forth in the Association Documents as from time to time in force and effect. No Owner shall be exempt from liability under this Section 5.1 by waiving the use or enjoyment of any Common Element or by abandoning a Unit against which such assessments are made.

**5.2 Purpose of Assessments and Other Amounts:** The assessments levied and any charge, fine, penalty or other amount collected by the Association shall be used exclusively to pay expenses and other obligations that the Association may incur in performing any actions permitted or required under the Association Documents as from time to time in force and effect, including but not limited to, operating expenses, the costs of constructing or purchasing Common Elements and performing Functions, repayment of debt and debt service, providing security for third party obligations as provided in the Association Documents, and allocations to reserves. The Association may invest any funds allocated to reserves in a prudent manner. Unless expressly required by an Association Document, the Association need not refund or credit to Owners any excess funds collected by the Association.

**5.3 Time for Payments:** The amount of any assessment, charge, fine, penalty or other amount payable by any member of the general public, any Owner, or with respect to such Owner's Lessees, Subowners, Guests or Unit shall become due and payable as specified in the Association Documents as from time to time in force and effect. The Association may charge interest on such amounts at the rate of 18 percent per annum, or such other interest rate as may from time to time be established by the Board of Directors not to exceed 21 percent per annum, from the date due and payable until paid. In addition, the Association Documents may authorize the Association, during the period of any delinquency, to suspend an Owner's voting privileges or any other privileges.

**5.4 Lien for Assessments, Common Expenses and Other Amounts:** Pursuant to Section 38-33.3-316 of the Act, the Association shall have a statutory lien against each Unit to secure payment of any assessment, charge, fine, late charge, penalty, interest and attorneys' fees, disbursements and costs of collection imposed against its Owner under any Association Document, or with respect to such Owner's Lessees, Subowners, Guests or Unit, plus interest at the rate of 18 percent per annum, or such other interest rate as may from time to time be established by the Board of Directors not to exceed 21 percent per annum, from the date due

and payable. If an assessment is payable in installments, the lien shall secure each installment from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations. The lien is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before the recordation of the Declaration, (ii) a security interest on the Unit which has priority over all other security interests on the Unit and which was recorded before the date on which the assessment or other charge sought to be enforced became delinquent, and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit. The recording of this Declaration constitutes record notice and perfection of a lien of the Association on each Unit. No further recordation of any claim of any lien is required. The lien may be foreclosed in the manner for foreclosures of mortgages in the state of Colorado, and the Owner shall be required to pay the costs and expenses of such proceedings, including but not limited to, reasonable attorneys' fees and disbursements. In any action by the Association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the Owner to collect all sums alleged to be due from the Owner prior to or during the pendency of the action. A court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's assessments.

**5.5 Liability of Owners, Purchasers and Encumbrancers:** (a) The amount of any assessment, charge, fine or penalty payable by any Owner, or with respect to such Owner's Lessees, Subowners, Guests or Unit, shall be a joint and several obligation to the Association of such Owner and such Owner's heirs, devisees, personal representatives, successors and assigns. A Person acquiring fee simple title to a Unit shall be jointly and severally liable with the former Owner of the Unit for all such amounts which had accrued and were payable at the time of the acquisition of the fee simple title to the Unit by such Person, without prejudice to such Person's right to recover any such amounts paid from the former Owner.

(b) Notwithstanding the foregoing, the holder of a mortgage, deed of trust or other lien on a Unit shall not be liable for any such assessment, charge, fine or penalty and the lien for any such assessments, charges, fines or penalties shall be junior to any lien on a Unit 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 a notice of failure to pay any such amount is recorded in said office, describing the Unit and naming the Owner of the Unit.

(c) Each assessment or other charge, together with interest and penalties thereon and all costs and expenses incurred by the Association to collect such assessment or other amount, including reasonable attorneys' fees and disbursements, may be recovered by a suit for a money judgment by the Association without foreclosing or waiving any lien securing the same.

**5.6 Allocation of Common Expenses:** All Common Expenses may be paid from assessments and allocated among the Units in the same proportion as each Unit's assessments are proportionate to the total assessments paid to the Association. Until the Association levies an assessment, Declarant shall pay all Common Expenses.

**ARTICLE VI  
CERTAIN RIGHTS OF DECLARANT, OWNERS  
AND ASSOCIATION**

**6.1 Declarant's Easements and Related Rights:** (a) Declarant hereby reserves for itself and its licensees, invitees, lessees, successors and assigns a perpetual easement on, over, upon, across, above, under and through the Common Elements as may be reasonably necessary to (i) discharge Declarant's obligations under this Declaration; (ii) exercise any Special Declarant Right; and (iii) make improvements within Bachelor Gulch Village.

(b) Declarant hereby reserves to itself and its licensees, invitees, lessees, successors and assigns, the right from time to time to establish and use nonexclusive, perpetual utility and other easements, leases, permits or licenses on, over, upon, across, above, under and through the Common Elements for uses including, but not limited to, streets, mountain access roads and other limited access roads, paths, walkways, skiways, sidewalks, and trails; any facilities necessary or useful for transit purposes, including gondolas or other means of transportation to and from Bachelor Gulch Village; ski lifts; snowmaking facilities; clubhouses; bus stops and related structures and signage; mailbox structures; gardens, sprinkler systems and other landscaping changes, improvements (including without limitation, removal of trees and other vegetation) and appurtenances; ponds and water tanks; drainage facilities; monuments; recreational areas and facilities; parking areas; ducts, shafts and flues; conduit installation areas; storage facilities for supplies and equipment; earth walls, retaining walls and other road and skiway supports; lighting; signage; and the additional right to construct any and all types of structures, facilities and improvements that the District may be empowered by law from time to time to construct; and to create other reservations, exceptions and exclusions for the best interest of the Association, in order to serve all persons residing, visiting or doing business within Bachelor Gulch Village; provided that any such easement, lease, permit or license does not unreasonably impair the use of the Common Elements for their intended purpose.

(c) Declarant hereby reserves to itself, and its licensees, invitees, lessees, successors and assigns, the right at any time, and from time to time, to close or restrict the use of the Western Hillside Road Easement shown on the Plat and any other mountain access roads or limited access roads that exist within or in the vicinity of Bachelor Gulch Village.

**6.2 Rights and Obligations of Owners:** (a) Subject to the provisions of this Declaration and the power of the Association to regulate the use of, and convey or encumber the Common Elements as set forth in the Association Documents and/or in the Act, each Owner, and such Owner's Lessees, Subowners and Guests shall have a nonexclusive easement over, upon, across and with respect to any Common Elements as appropriate and necessary for: access, ingress and egress to the Unit of such Owner, Lessee, Subowner or Guest; and to use the Common Elements and all other real property that must become Common Elements (as described in Section 8.1 below) for all other purposes.

(b) All rights, easements and obligations of an Owner under this Declaration and all rights of an Owner with respect to Membership under this Declaration are hereby declared to be and shall be appurtenant to the fee simple title to the Unit owned by such Owner and may not, except as provided in this Section 6.2, be transferred, conveyed, granted, devised, bequeathed, encumbered or otherwise disposed of separate or apart from fee simple title to such Owner's Unit. Every transfer, conveyance, grant, devise, bequest, encumbrance, other disposition of a Unit shall be deemed to constitute a conveyance, grant, devise, bequest, encumbrance, transfer or disposition of such rights and obligations. A transfer of ownership of a Unit may be made by deed, intestate succession, testamentary disposition, foreclosure of a deed of trust or mortgage of record or such other legal process as is now effective or may hereafter become effective under the laws of the state of Colorado. Any attempt to transfer a Membership in a manner other than those permitted by this Section 6.2 or by Section 6.8 shall be null and void.

(c) Each Owner acknowledges that all roadways servicing Bachelor Gulch Village are limited access roads owned by Declarant, for the use of persons residing, visiting or doing business with Bachelor Gulch Village and constructed and maintained by the District and, in furtherance thereof, nonexclusive easements upon, over and across the roads have been or will be granted by Declarant to the District. Each Owner, by accepting a deed to a Unit, agrees to be subject to the easements and the rules and regulations of the District governing the use of roads, as from time to time in effect.

(d) Each Owner, by accepting a deed to a Unit, agrees to abide by the provisions of the Association Documents and to cooperate with the Association in its efforts to enforce such provisions.

6.3 Common Access Easements: (a) The areas labeled on the Plats designated as Filing No. 1 and Filing No. 2 as "Common Access Easement for Lots 12, 13," "Common Access for Easement Lots 54, 55" and "Common Access Easement for Lots 74, 75" (each, a "Common Access Area") are intended to provide common driveway access to the Units shown as lots 12 and 13, 54 and 55, and 74 and 75, respectively, on the Plats designated as Filing No. 1 and Filing No. 2 (each such pair of lots shall hereinafter be referred to as "Adjoining Lots"). The Adjoining Lot Owners shall have the right to use their respective Common Access Areas as driveway access, provided that such use by one Owner does not interfere with the use and enjoyment of the driveway access by the other Owner. The construction of the common driveway access on a Common Access Area and the maintenance, repair and replacement thereof, including, without limitation, snow and ice removal and management, shall be the responsibility of and shall be performed by the respective Owners of the Adjoining Lots who use such Common Access Area as driveway access at their joint and equal expense; provided, however, that in the event any improvements on a Common Access Area are damaged or destroyed through the act of one such Owner, or such Owner's Lessees or Guests, whether or not such act is negligent or otherwise culpable, so as to deprive the other Owner of the full use and enjoyment of the common driveway access, then the first of such Owners shall forthwith proceed

to rebuild and repair, or contract for the rebuilding and repair of, the common driveway access on the Common Access Area to its former good condition without cost to the other Owner. If either Owner of an Adjoining Lot who uses such Common Access Area as driveway access shall neglect or refuse to pay its share of the cost of constructing the common driveway access on the Common Access Area or of maintaining, repairing or replacing the same, or to pay all of said cost, as the case may be, such liability shall, upon application to the Board of Directors and the affirmative vote of a majority of the directors, be assessed by the Association against the Owner so failing to pay as a special assessment pursuant to the Association Documents and shall be in addition to any other assessment to which such Owner's Unit is subject and the Association shall have all of the rights pertaining to a special assessment specified in the Association Documents for such amount.

(b) The area labeled on the Plat designated as Filing No. 3 as the "Common Access Easement for Lots 95, 96 and 97" (the "Filing No. 3 Common Access Area") is intended to provide common driveway access to the Units shown as lots 95, 96 and 97 on such Plat (such lots shall hereinafter be referred to as "Filing No. 3 Adjoining Lots"). The Filing No. 3 Adjoining Lot Owners shall have the right to use their respective Filing No. 3 Common Access Areas as driveway access, provided that such use by one Owner does not interfere with the use and enjoyment of the driveway access by the other Owners. Except as specifically provided in this subsection (b), the construction of the common driveway access on the Filing No. 3 Common Access Area and the maintenance, repair and replacement thereof, including, without limitation, snow and ice removal and management, shall be the responsibility of and shall be performed by the respective Owners of the Filing No. 3 Adjoining Lots who use such access area as driveway access at their pro rata expense; provided, however, that in the event any improvements on the Filing No. 3 Common Access Area are damaged or destroyed through the act of one such Owner, or such Owner's Lessees or Guests, whether or not such act is negligent or otherwise culpable, so as to deprive the other Owners of the full use and enjoyment of the common driveway access, then the first of such Owners shall forthwith proceed to rebuild and repair, or contract for the rebuilding and repair of, the common driveway access on the Filing No. 3 Common Access Area to its former good condition without cost to the other Owners. If any Owner of a Filing No. 3 Adjoining Lot who uses such access area as driveway access shall neglect or refuse to pay its share of the cost of constructing the common driveway access on the Filing No. 3 Common Access Area or of maintaining, repairing or replacing the same, or to pay all of said cost, as the case may be, such liability shall, upon application to the Board of Directors and the affirmative vote of a majority of the directors, be assessed by the Association against the Owner so failing to pay as a special assessment pursuant to the Association Documents and shall be in addition to any other assessment to which such Owner's Unit is subject and the Association shall have all of the rights pertaining to a special assessment specified in the Association Documents for such amount. Notwithstanding the foregoing, Declarant shall make initial improvements to the Filing No. 3 Common Access Area to a subgrade level, but shall have no other obligations with respect to the construction, repair or maintenance of the Filing No. 3 Common Access Area.

(c) Section 6.3(a) shall apply to all portions of the Property similarly designated on any subsequent Plat as "Common Access Easements" for designated lots.

**6.4 Other Association Easements:** (a) Declarant hereby grants to the Association, its licensees, invitees, lessees, successors and assigns, a nonexclusive, perpetual easement on, over, upon, across, above, under and through the Property and each portion thereof to (i) exercise any right held by the Association under this Declaration or any other Association Document, and (ii) perform any obligation imposed upon the Association by this Declaration or any other Association Document. Notwithstanding the foregoing, the Association shall not enter upon any Unit without reasonable prior notice to the Owner of the Unit, except in cases of emergency.

(b) Without limiting the generality of the foregoing Section 6.4(a) and in addition to the easement rights granted thereunder, Declarant hereby grants to the Association, its licensees, invitees, lessees, successors and assigns, nonexclusive, perpetual easements on, over, upon, across, above and through all of the roadways shown on the Plat, whether or not such roadways are or ever become a part of Bachelor Gulch Village, for vehicular and pedestrian access to all Units and Common Elements, and for all other purposes related to the exercise of any right held by the Association under this Declaration or any other Association Document, or the performance of any Function or obligation imposed upon the Association by this Declaration or any other Association Document. Notwithstanding the foregoing easement rights, the Association shall have no right to approve any relocations of the roadways or any construction, operation or maintenance activities on the roadways so long as the roadways continue to provide reasonable access to all Units and Common Elements within Bachelor Gulch Village. The roadway easements created by the Plat and other recorded documents are hereby confirmed.

**6.5 Other Easements:** (a) The Property shall be subject to all easements shown on any Plat and to any other easements of record or of use. In addition, the Property is subject to all easements created by this Declaration. Each Owner, by accepting a deed to a Unit, agrees to be subject to such easements and the rules and regulations from time to time in effect of the easement owners governing the use of such easement areas.

(b) Declarant hereby grants a nonexclusive perpetual easement across and over the Property for ingress and egress to all police, sheriff, fire protection, ambulance and similar emergency agencies or persons, now or hereafter serving the Property, to enter the Property in the performance of their duties.

**6.6 Enjoyment of Functions and Common Elements:** Each Owner, Lessee, Subowner, Guest and member of the general public shall be entitled to use and enjoy any Common Elements suitable for general use or the services provided by any Functions, subject to the Rules and Regulations and subject to such reasonable and uniformly applied charges which the Association may impose to offset costs and expenses, depreciation and capital expenses, subject to the provisions of this Declaration and subject to the following specific limitations.

Such Rules and Regulations and charges may differentiate between different categories of Owners, Lessees, Subowners, Guests or members of the general public (but the charges shall not unreasonably differentiate for members of the general public), as established by the Board of Directors from time to time; however, the rules, regulations and charges must be uniformly applied within such categories. There shall be no obstruction of any Common Elements, nor shall anything be stored in or on any part of any Common Elements, without the prior written consent of the Association. Nothing shall be altered on, constructed in or removed from any Common Elements, except with the prior written consent of the Association. Nothing shall be done or kept on or in any Common Elements, that would result in the cancellation of the insurance or any part thereof which the Association is required to maintain pursuant hereto or increase the rate of the insurance or any part thereof over the amount that the Association, but for such activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept on or in such Common Elements, that would be in violation of any statute, rule, ordinance, regulation, permit or other requirement of any governmental body. No damage to, or waste of, Common Elements shall be committed, and each visitor and Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by such visitor, Owner or such Owner's Lessees, Subowners or Guests. No noxious, destructive or offensive activity shall be carried on with respect to any Common Elements, nor shall anything be done therein or thereon which may be or become a nuisance to any other visitor, Owner or to any Lessee, Subowner or Guest. All restrictions contained in Article VII below shall be deemed to apply to the Common Elements.

**6.7 Assignment of Rights or Obligations to a Lessee or Subowner:** To the extent permitted by the Act, an Owner may assign or delegate to a Lessee or Subowner all (but not less than all) of its rights under this Declaration as an Owner or as a Member and may enter into an arrangement with such Lessee or Subowner under which the Lessee or Subowner shall agree to assume all of such Owner's obligations hereunder as an Owner or Member. The Association shall recognize any such assignment or delegation of rights or arrangements for assumption of obligations, provided that, to be effective with respect to the Association, Declarant or any other Owner, the assignment or delegation of rights or arrangement for assumption of obligations shall be in writing, shall be in terms deemed satisfactorily specific by the Association, and a copy thereof shall be filed with and approved by the Association. Notwithstanding the foregoing, no Owner shall be permitted to relieve itself of the ultimate responsibility for fulfillment of all obligations hereunder of an Owner arising during the period it is an Owner.

**6.8 Lessee's Rights and Obligations Appurtenant:** All rights, easements and obligations of a Lessee under this Declaration are hereby declared to be and shall be appurtenant to the lease to the Leased Premises leased by such Lessee, and may not, except as provided in Section 6.9, be transferred, conveyed, devised, bequeathed, encumbered or otherwise disposed of separately or apart from the lease to the Leased Premises. Each transfer, conveyance, grant, devise, bequest, encumbrance or other disposition of a Leased Premises shall be deemed to

constitute a conveyance, grant, devise, bequest, encumbrance or transfer or disposition of such rights, easements and obligations.

**6.9 Transfer of Rights or Obligations to a Sublessee:** To the extent permitted by the Act, a Lessee, upon subleasing its entire Leased Premises, shall automatically be deemed to have given up all of its rights and obligations as a Lessee during the term of such sublease, and the sublessee shall automatically be deemed a Lessee upon commencing to own and operate a business on the Leased Premises. If a Lessee subleases only a portion of its Leased Premises, the Lessee shall automatically be deemed to have given up all rights and obligations as a Lessee to such subleased portion and such sublessee shall automatically be deemed a Lessee upon commencing to own and operate a business upon its subleased portion of the Leased Premises. Such sublessor shall maintain its rights and obligations as a Lessee with respect to any retained portion of the Leased Premises. Notwithstanding the foregoing, no sublessor shall be permitted to relieve itself of the ultimate responsibility for fulfillment of all obligations hereunder as a Lessee arising during the period it is a Lessee. The provisions of this Section 6.9 shall not apply to a Lessee of a Dwelling Unit.

**6.10 Special Declarant Rights:** Declarant hereby reserves for itself and its successors and assigns the following rights ("Special Declarant Rights") as defined in Section 103(29) of the Act, which rights may be exercised at any time during the term of this Declaration, including but not limited to:

(a) the right to complete any improvements shown on any Plat, and the right to construct any improvement that Declarant deems necessary or advisable on any Common Element, or any property owned by Declarant, including, without limitation, streets, mountain access roads and other limited access roads, paths, walkways, skiways, sidewalks, and trails; any facilities necessary or useful for transit purposes, including gondolas or other means of transportation to and from Bachelor Gulch Village; ski lifts; snow-making facilities; clubhouses; bus stops and related structures and signage; mailbox structures; gardens, sprinkler systems and other landscaping changes, improvements (including without limitation, removal of trees and other vegetation) and appurtenances; ponds and water tanks; drainage facilities; monuments; recreational areas and facilities; parking areas; ducts, shafts and flues; conduit installation areas; storage facilities for supplies and equipment; earth walls, retaining walls and other road and skiway supports; lighting; signage; and the additional right to construct any and all types of structures, facilities and improvements that the District may be empowered by law from time to time to construct;

(b) the right to construct and maintain sales offices, booths or other structures used for sales or promotional purposes, management offices and models on any Common Element, or any property owned by Declarant. Declarant also reserves for itself and its successors and assigns the right to construct and maintain signs advertising Bachelor Gulch Village. The number, size and location of any such sales structures and signage, management



offices or models or the relocation thereof shall be determined by the Declarant, subject to the prior approval of the Design Review Board;

(c) the right to exercise any Development Right, including without limitation, the right to add additional property to Bachelor Gulch Village pursuant to Section 2.7 above and to amend this Declaration in connection therewith, the right to amend this Declaration to create additional Units and Common Elements, the right to subdivide Units, the right to convert any and all Units into Common Elements, and the right to withdraw any and all portions of the Property from Bachelor Gulch Village;

(d) the right to use easements through the Common Elements for the purpose of making improvements within Bachelor Gulch Village or within real property which may be added to Bachelor Gulch Village;

(e) the right to make Bachelor Gulch Village subject to a master association;

(f) the right to merge or consolidate Bachelor Gulch Village with a common interest community of the same form of ownership; and

(g) the right to appoint and remove officers of the Association and no more than four of the seven directors during the Declarant Control Period, as set forth in Section 6.11.

**6.11 Declarant Right to Appoint:** (a) Subject to the terms and conditions of subsection 6.11(b) below but notwithstanding anything else to the contrary contained in this Declaration or in any other Association Document, Declarant shall have the exclusive right to appoint and remove no more than four of the seven directors of the Board of Directors and all officers of the Association during the Declarant Control Period. Upon the formation of the Association, and continuing until the first annual meeting after the creation of a Class B Membership and/or a Class C Membership, Declarant shall appoint four directors. When a Class B and/or a Class C Membership has(ve) been created, Declarant's right to appoint directors shall be reduced to three (if only one such class of Membership has been created) or two (if both classes of Membership have been created). Declarant shall then continue to have the right to appoint two directors until the Change in Control Date. Declarant hereby waives any right it may have under the Act, in its capacity as Declarant, to appoint the remaining directors of the Board of Directors during the Declarant Control Period.

(b) Declarant may voluntarily surrender its right to appoint and remove officers and directors prior to the expiration of the Declarant Control Period but, in that event, Declarant may require, for the remainder of the Declarant Control Period, that specific actions of the Association or the Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

(c) Upon the expiration of the Declarant Control Period, the Class A, B and C Members shall each retain the right to elect one director from their respective classes. The Class D Member shall retain the right to elect two directors. At least a majority of the Board of Directors must be Owners other than the Declarant or a designated representative of Owners other than the Declarant. The Board of Directors shall elect the officers. The Board of Directors and officers shall take office upon election.

## **ARTICLE VII RESTRICTIONS APPLICABLE TO PROPERTY**

**7.1 Land Use Restrictions:** In addition to the restrictions found in this Article VII, all or any portion of the Property shall be further restricted in its use, density or design according to the Master Plan; any supplemental declarations of land use restrictions for Bachelor Gulch Village recorded with the Clerk and Recorder of Eagle County, Colorado, if any such supplemental declarations are recorded prior to the time Declarant transfers or conveys any such Property to the Association or to any third party; the Rules and Regulations; and the Wildlife Agreements. Each Owner shall comply with all other terms, provisions, covenants, conditions, restrictions, easements and reservations on the Owner's part to be complied with under this Declaration.

**7.2 Occupancy Limitations:** All Residential Units may be used only for dwelling or lodging purposes and typical residential activities incident thereto. No portion of any Property shall be used as a residence or for living or sleeping purposes other than a room designed for living or sleeping in a completed structure for which a certificate of occupancy has been issued. No room in any structure shall be used for living or sleeping purposes by more persons than it was designed to accommodate comfortably. Owners may rent or lease their Units to others for these purposes. Except as otherwise provided in Section 7.23 or as expressly permitted in writing by the Design Review Board, no trailers or temporary structures shall be permitted on any Property. Notwithstanding anything to the contrary contained in this Section 7.2, a gainful home occupation, profession, trade or other nonresidential use will be a permissible use of Residential Units, so long as (i) such use is permitted by the Master Plan and by law, (ii) such use is carried on entirely within a Residential Unit and is secondary and incidental to its use as a residence, (iii) there is no external evidence of any such activity being conducted, (iv) the home occupation does not employ any nonresident of the Residential Unit, nor does it attract any nonresident customers; (v) the Owner receives a permit therefor from the Association, which permit may be granted, denied or revoked in the Association's sole discretion, and (vi) the use is conducted in compliance with the Rules and Regulations. Notwithstanding anything to the contrary contained in this Section 7.2, Bed and Breakfast operations will be a permissible use of commercial Units or Residential Units, except for those Residential Units located on the Estate Lots, so long as (i) such use is permitted by the Master Plan and by law, (ii) the Owner receives a permit therefor from the Association, which permit may be granted,

denied or revoked in the Association's sole discretion, and (iii) the use is conducted in compliance with the Rules and Regulations.

**7.3 Maintenance of Property:** All Property, except for any portion of the Property then undergoing major construction, including all improvements on such Property, shall be kept and maintained by the Owner thereof in a clean, safe, attractive and sightly condition and in good repair, and no trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Unit so that they are visible from, or are a nuisance in any way to, any neighboring Unit or any road.

**7.4 Approval of Construction Activities:** Each Owner shall have the right to construct a building and other improvements on its Unit, provided that no building or other improvements, including without limitation, any fence, wall, driveway, paving, walk, deck, patio, canopy, awning, roof, signage, exterior lighting facility or landscaping, shall be constructed, erected, placed or installed upon any Unit, and no change or alteration of the materials or appearance (including color) of the exterior of a building or other structure shall be made, and no change in the final grade of any Unit shall be performed, and no other construction activity shall be initiated on any Unit, until all approvals as may be required by the Association Documents and by any governmental or quasi-governmental entity having jurisdiction over the Property have been obtained by such Owner. In this regard, without limiting the generality of the foregoing, each Owner is hereby advised and acknowledges that, in connection with any construction on its Unit, it must comply with the applicable provisions of the Association Documents, which documents include, among other things, the following: (i) procedures and necessary fees for making application to the Design Review Board for design review approval, including the documents to be submitted and the time limits in which the Design Review Board must act to approve or disapprove any submission; (ii) time limitations for the completion, within specified periods after approval, of the improvements for which approval is required under such documents; (iii) minimum and maximum square foot areas of living space that may be developed on any Unit; (iv) landscaping and irrigation regulations, with limitations and restrictions prohibiting the removal or requiring the replacement of existing trees, the use of plants indigenous to the locale and other practices benefitting the protection of the environment, aesthetics and architectural harmony of the Property; and (v) instructions and/or Rules and Regulations for the construction, reconstruction, refinishing or alteration of any improvement, including any plan to excavate, fill or make any other temporary or permanent change in the natural or existing surface contour or drainage or any installation of utility lines or conduits on the Property, addressing matters such as grading, transformers, meters, fire protection, loading areas, waste storage, trash and debris removal, parking areas, outside storage, sanitary facilities, and conduct and behavior of builders, subcontractors and Owners' representatives on the Property at any time.

**7.5 Blasting:** If any blasting is to occur, both Declarant and the Design Review Board will be informed far enough in advance to allow them to make such investigation as they deem necessary to confirm that appropriate protective measures have been taken prior to the

blasting. Notwithstanding the foregoing, no approval of any blasting by Declarant or the Design Review Board will in any way release the person conducting the blasting from any and all liability in connection with the blasting, nor will any such approval in any way be deemed to make Declarant and/or the Design Review Board liable for damages which may occur from blasting, and the person doing the blasting and the Owner of whose Unit such blasting occurs will defend and hold harmless and hereby indemnifies Declarant and the Design Review Board from any such expense or liability. Declarant and/or the Design Review Board may impose any reasonable conditions and restrictions, including time and date restrictions and insurance requirements, on all blasting.

**7.6 Water and Sanitation:** Each structure designed for occupancy will connect, prior to occupancy, with water and sanitation facilities as are made available from time to time by the District, the Upper Eagle Valley Consolidated Sanitation District, the Upper Eagle Regional Water Authority or any other approved utility supplier.

**7.7 Use of Property During Construction:** It shall be expressly permissible and proper for Declarant and any Owner acting with the prior written consent of the Design Review Board, and their respective employees, agents, independent contractors, successors and assigns involved in the construction of improvements on, or the providing of utility service to, the Property, to perform such activities and to maintain upon portions of the Property as they deem necessary such facilities as may be reasonably required, convenient, necessary or incidental to such construction and development of the Property. This permission specifically includes, without limiting the generality of the foregoing, maintaining storage yards, construction yards, portable toilets, equipment and signs. However, no activity by an Owner will be performed and no facility will be maintained by an Owner on any portion of the Property in such a way as to unreasonably interfere with the use or access of any other Owner or its Guests to such Owner's Unit. If any Owner's use under this provision is deemed objectionable by the Design Review Board, then the Design Review Board, in its sole discretion, may withdraw this permission. Notwithstanding the foregoing, this section will not operate to prevent the exercise by Declarant of any Special Declarant Rights.

**7.8 No Noxious or Offensive Activity:** No noxious or offensive activity shall be carried on upon any Property nor shall anything be done or placed on any Property which is or may become a nuisance or cause any significant embarrassment, disturbance or annoyance to others. As used herein, the term "noxious or offensive activity" shall not include any activities of an Owner, Declarant or their respective designees which are reasonably necessary to the development of and construction on the Property so long as such activities do not violate Association Documents or the statutes, rules or regulations of any governmental authority having jurisdiction with respect thereto and do not unreasonably interfere with any Owner's use of its Unit or with any Owner's ingress and egress to or from its Unit and a roadway.

**7.9 No Harassment of Wildlife:** No harassment of wildlife shall be permitted. With the exception of bird feeders, the feeding, baiting, salting or other means of attracting wildlife to individual yards or Common Elements shall be prohibited.

**7.10 No Hazardous Activities:** No activities shall be conducted on any Property and no improvements constructed on any Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Property; and no open fires shall be lighted or permitted on any Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior wood or gas burning device (except campfires or picnic fires on Property designated for such use by Declarant or by the Association and controlled and attended fires authorized in writing by Declarant or the Association and required for clearing or maintenance of land).

**7.11 No Unsightliness:** No unsightliness shall be permitted on any Property. Without limiting the generality of the foregoing:

(a) All unsightly structures, facilities, equipment, objects and conditions shall be kept within an enclosed structure at all times;

(b) Motor vehicles classed by manufacturer rating as exceeding three-quarter ton, mobile homes, travel trailers, tent trailers, trailers, trucks (except pickup trucks used for personal, and not commercial transport), snowmobiles, golf carts, boats, boat trailers, tractors, detached campers, camper shells, snow removal equipment and garden or maintenance equipment shall be kept in an enclosed structure at all times, except when in actual use; provided that such equipment may be parked on parking lots or other areas specifically designated by the Design Review Board for such equipment;

(c) Refuse, garbage and trash shall be kept in a covered container at all times and any such container shall be kept within an enclosed structure and in accordance with the terms of the Wildlife Agreements;

(d) Service areas and facilities for hanging, drying or airing clothing or fabrics shall be kept within an enclosed structure;

(e) Pipes for water, gas, sewer, drainage or other purposes, wires, cables, poles, antennas and other facilities for the transmission or reception of audio or visual signals or electricity, utility meters or other utility facilities, gas, oil, water or other tanks, and sewage disposal systems or devices shall be kept and maintained within an enclosed structure or below the surface of the ground, and no satellite dishes shall be permitted;

(f) No lumber, grass, shrub or tree clippings or plant waste, compost, metals, bulk materials or scrap or refuse or trash or unused items of any kind shall be kept, stored or allowed to accumulate on any Property; and

(g) No tennis courts, outdoor swimming pools, outdoor hot tubs or jacuzzis, or similar facilities shall be constructed on the Property.

All enclosed structures shall comply with the Rules and Regulations of the Design Review Board as in effect from time to time. The Design Review Board shall have the power to grant a variance from the provisions of this Section 7.11 from time to time as it deems necessary or desirable.

**7.12 Lights, Sounds and Odors:** All exterior lighting of improvements and grounds on the Property will be subject to regulation by the Design Review Board. No light shall be emitted from any Property which is unreasonably bright or causes unreasonable glare or shines directly onto an adjacent Unit; no sound shall be emitted from any Property which is unreasonably loud or annoying; and no odor shall be emitted from any Property which is noxious or offensive to others. Notwithstanding the foregoing, any lights, sounds or odors that are emitted as a result of any activities related to the operation of the neighboring ski resorts, gondolas and ski lifts shall be exempt from the application of this Section 7.12.

**7.13 Restriction on Animals:** No animals of any kind shall be raised, bred or kept on any Property except domestic cats, dogs or other household pets permitted by the Association so long as they are (i) maintained in accordance with this Declaration, the Rules and Regulations and any other Association Document and the Wildlife Agreements, and (ii) not a nuisance or kept, bred or maintained for any commercial purposes. No person shall allow any dog owned or controlled by such Owner to roam within Bachelor Gulch Village unattended. Dogs shall either be contained indoors or enclosed in a dog run or kennel constructed for the purpose of confinement in a manner approved by the Design Review Board. At all other times, dogs shall be on a leash and under the direct control and supervision of their owners. Pets shall not be permitted within certain Units (as designated in the Wildlife Agreements and the Rules and Regulations), and shall not be fed outside an enclosed structure.

**7.14 Restriction on Signs:** Except as otherwise provided in Section 7.23, no signs or advertising devices of any nature shall be erected or maintained on any Property in such a manner as to be visible outside any Unit except signs approved by the Design Review Board, signs required by the Wildlife Agreements, applicable law or legal proceedings, identification signs for work under construction (as approved by the Design Review Board), temporary signs to caution or warn of danger or the Association signs necessary or desirable to give directions or advise of Rules or Regulations.

**7.15 Restrictions on Parking:** Parking of vehicles on Property is permitted with respect to a Unit only within parking spaces constructed with the prior approval of the Design

Review Board and such parking shall be used only for the parking of personal vehicles. The Association shall have the right to park any type of vehicle owned or used by the Association upon Property only within parking either built by Declarant or approved by the Design Review Board in such areas designated for such purpose by Declarant. Notwithstanding the foregoing, the Association may designate areas for off-street parking on Property for the temporary parking of maintenance and delivery vehicles, for the sole purpose of assisting in a maintenance operation or to provide for the loading or unloading of such vehicles, or to accommodate special circumstances.

**7.16 Restriction on Recreational Vehicles:** No motorcycle, motorbike, snowmobile, golf cart or other motorized recreational vehicle shall be operated within or on the Property, except for (i) snowmobiles operated by Declarant in connection with its resort activities, (ii) licensed motorcycles and motorbikes that are driven on the roadways, and (iii) vehicular uses that are otherwise specifically permitted by the Rules and Regulations. Snowmobile use shall be permitted only in accordance with the terms of the Wildlife Agreements.

**7.17 Restriction on Woodburning Devices:** Unless otherwise permitted by applicable zoning, no wood burning device shall be operated during periods of adverse meteorological conditions or adverse air pollution conditions as determined by the Association.

**7.18 Drainage Restriction:** The flow of any surface drainage into any sewer system on the Property, except into storm sewers constructed for that purpose, shall be prohibited.

**7.19 Landscape Restriction:** No tree of three inches or greater diameter or eight feet or greater height may be removed from any Property without the prior written approval of the Design Review Board. Vegetation on all Property must be maintained to minimize erosion and encourage growth of ground cover and all tree and shrub planting must be consistent with the landscaping plan approved by the Design Review Board. Landscaping shall comply with the terms of any irrigation restrictions applicable to the Property and the Wildlife Agreements.

**7.20 No Mining and Drilling:** No Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.

**7.21 No Fences:** No fences, walls or other barriers shall be permitted for the purpose of enclosing or demarcating any property boundaries without the prior written approval of the Design Review Board. All fences shall comply with the terms of the Wildlife Agreements.

**7.22 General Practices Prohibited:** The following practices are prohibited at the Property: (i) removing any rock, plant material, top soil or similar items from any property of others; (ii) carrying loaded firearms on the Property, except within private residences;

(iii) using surface water for construction; and (iv) disposing carelessly of cigarettes and other flammable materials. Notwithstanding the foregoing, the removal of rock, plant material, top soil or similar items from the Property by Declarant or the Association pursuant to its easement rights shall be exempt from the application of this Section 7.22.

**7.23 Declarant's Exemption:** Nothing contained in this Declaration shall be construed to prevent (i) the exercise by Declarant of any Special Declarant Rights; or (ii) the erection or maintenance by Declarant or its duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing or sale of property within Bachelor Gulch Village.

**7.24 Health, Safety and Welfare:** In the event additional uses, activities and/or facilities are deemed by the Board of Directors to be nuisances or to adversely affect the health, safety or welfare of Owners or members of the general public or the value of any Property, the Board of Directors may adopt Rules and Regulations restricting or regulating the same.

**7.25 Compliance with Law:** In addition to the compliance requirements set forth in Section 7.1 above, no Property shall be used, occupied, altered, changed, improved or repaired except in compliance with all present and future laws, rules, requirements, orders, directions, ordinances and regulations of the United States of America, state of Colorado, County of Eagle, and all other municipal, governmental or lawful authority whatsoever, affecting the Property or the improvements thereon or any part thereof, and of all their departments, bureaus and officials. Furthermore, no Owner shall release, discharge or emit from the Property or dispose of, or allow any person under such Owner's control or direction to release, discharge or emit from the Property or dispose of, any material on, above or under the Property that is designated as a pollutant or contaminant under any federal, state or local law, regulation or ordinance.

**7.26 Subdivision of Units:** Prior to the recording in the office of the County Clerk and Recorder of Eagle County, Colorado, of an instrument submitting any portion of the Property to further subdivision, including without limitation, the creation of cluster home Units, lodge/studio Units, commercial Units or condominium Units, the applicant Owner of such property shall submit to both the Declarant and the Association for their separate review and approval, copies of the proposed subdivision documents, and such other information as may be reasonably requested by the Declarant and/or the Association, which may include without limitation, an owners' association declaration, any maps or plats, and articles of incorporation and bylaws of the owners' association. Upon request, the applicant Owner shall also submit a deposit against attorneys' fees and costs which the Declarant and the Association will incur in reviewing and effectuating the application for approval, in an amount reasonably estimated by the Declarant and the Association. The Declarant and the Association shall separately approve and execute any plats, maps and owners' association declarations that are required for each such subdivision, or shall disapprove the documents. If such documents are disapproved by either Declarant or the Association, the disapproving party shall set forth the specific reasons for such



disapproval, and the applicant Owner shall thereafter either modify its application to satisfy such concerns (while maintaining the approval of the other approving party) or terminate its subdivision application with Eagle County. The approval of the Declarant and the Association under this Section 7.26 shall not be unreasonably withheld or delayed. All costs and attorneys' fees incurred by the Association and the Declarant as a result of an application for approval shall be the sole obligation of the applicant Owner. No subdivision of Units shall be effected without the necessary amendments to the Plat.

**7.27 Additional Covenants, Conditions and Restrictions:** By specific provision in any deed from Declarant, Declarant may subject any Property to be conveyed by such deed to particular covenants, conditions or restrictions applicable to the particular Property conveyed by such deed and, if any such deed contains any such covenants, conditions or restrictions, the deed may contain a provision that Declarant shall have the right, immediately or at any time during the continuation of any violation of breach of or failure to comply with any of said covenants, conditions or restrictions, to re-enter and take possession of the Property described in such deed and that, upon exercise of this right of re-entry, title to such Property shall thereupon re-vest in Declarant. The right of re-entry and re-vesting of title provided under this Section 7.27 shall be subject to the provisions of Article X.

**7.28 Violation:** Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Article VII shall be made by the Board of Directors after notice and an opportunity to be heard and shall be final.

## **ARTICLE VIII COMMON ELEMENTS TO BE CONSTRUCTED BY DECLARANT**

**8.1 Declarant's Obligation to Construct Common Elements:** Set forth below is a general description of every Common Element which Declarant is legally obligated to construct within Bachelor Gulch Village, together with the approximate date by which each such Common Element is to be completed:

Those roadways shown on the Plat.

Except as set forth in this Section 8.1, Declarant is not legally obligated to construct any Common Element within Bachelor Gulch Village.

**8.2 Common Elements Which May Be Constructed:** Set forth below is a general description of the type of any Common Element which Declarant anticipates may be constructed by, maintained by or operated by the Association (however, Declarant shall have no obligation to construct, maintain or operate any such Common Element):

Parking areas, streets, roads, paths, walkways, sidewalks, trails, drives, malls, stairs, skiways, ski lifts, snow-making facilities, health care facilities, security systems, fire

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structures and open space, and do not unnecessarily block scenic views from existing buildings or tend to dominate any general development or the natural landscape;

(3) Ensuring that the architectural design of structures and their materials and colors are visually harmonious with Bachelor Gulch Village's over-all appearance, history and cultural heritage, with surrounding development, with natural landforms and native vegetation, and adheres to or complies with development plans, zoning requirements, and other restrictions officially approved by Declarant, the Association or any government or public authority, if any, for the sites in which the structures are proposed to be located;

(4) Ensuring that plans for the landscaping of open spaces provide visually pleasing settings for structures on such Units and on adjoining and nearby Units and blend harmoniously with the natural landscape;

(5) Ensuring that any development, structure, building or landscaping complies with the provisions of this Declaration, including but not limited to, those provisions set forth in Article VII;

(6) Ensuring that building design and construction techniques respond to energy consumption and environmental quality considerations, such as heat loss, air emissions, and run-off water quality; and

(7) Ensuring that design of Dwelling Units and Lodges provides rooms of types and standards generally consistent throughout Bachelor Gulch Village.

**9.3 Design Review Board:** (a) The Association shall establish a Design Review Board which shall consist of five members, all of which shall be appointed by the Declarant. The regular term of office for each member shall be one year, coinciding with the fiscal year of the Association. Any such member may be removed with or without cause by the Declarant at any time by written notice to such appointee. A successor or successors appointed by Declarant to fill such vacancy shall serve the remainder of the term of the former member.

(b) The Declarant shall select the chairperson and vice-chairperson from among the members of the Design Review Board. The chairperson or in his or her absence, the vice-chairperson shall be the presiding officer of its meetings. In the absence of both the chairperson and the vice-chairperson from a meeting, the members present shall appoint a member to serve as acting chairperson at such meeting. All business of the Design Review Board shall be conducted at meetings which are open to Members of the Association; meetings shall be held at least once in each calendar month or more often upon call of the chairperson; all meetings shall be held at the offices of the Association or of Declarant, unless temporarily changed to another location by the members of the Design Review Board. Three members shall constitute a quorum for the transaction of business, but in the absence of a quorum a lesser number may adjourn any meeting to a later time or date, and in the absence of all members any

staff member may adjourn any meeting to a later time or date. The affirmative vote of a majority of the members of the Design Review Board present at any meeting shall constitute the action of the Design Review Board on any matter before it. The Design Review Board shall operate in accordance with its own rules of procedure; said rules shall be filed with the Association and maintained in the records of the Association and shall be subject to inspection by Members.

(c) The Design Review Board is hereby authorized to retain the services of one or more consulting architects, landscape architects or urban designers, who may also be members of the Design Review Board and entitled to vote in such capacity, and who need not be licensed to practice in the state of Colorado, to advise and assist the Design Review Board in performing the design review functions prescribed in this Article IX and in carrying out the provisions of Article VII. Such consultants may be retained to advise the Design Review Board on a single project, on a number of projects, or on a continuing basis. Consultants who are also members of the Design Review Board shall disclose to the Design Review Board their interests in any project or matter before the board promptly after such project comes up for board consideration.

**9.4 Design Review Board Approval and Control:** (a) In addition to the requirements set forth in Section 7.4 above and except as otherwise provided in Section 7.23, no Owner, Lessee, Subowner or Guest or the Association shall perform the activities described in Section 7.4 above on any Property, Unit or Common Element or building or structure thereon, or change the use of any Property or building or structure thereon, unless the Design Review Board has approved the plans and specifications for the project, showing the nature, kind, shape, height, color, materials and location of same, and the construction procedures to be used to ensure compliance with Article VII, including compliance with land use restrictions made applicable to the Property by Article VII. Alterations or remodeling which are completely within a building or structure and which do not change the exterior appearance and are not visible from the outside of the structure may be undertaken without Design Review Board approval, provided such alterations or remodeling do not change the use of, or the number of Dwelling Units or amount of Commercial Space in, the building or structure. All actions taken by the Design Review Board shall be in accordance with Rules and Regulations established by the Design Review Board which shall be published as set forth in Section 9.5 and shall be in accordance with the purposes and intent of the Master Plan. Such Rules and Regulations may be amended from time to time by action of the Design Review Board that is consistent with and fulfills the purpose of this Declaration. The approval or consent of the Design Review Board on matters properly coming before it shall not be unreasonably withheld, actions taken shall not be arbitrary or capricious and decisions shall be conclusive and binding on all interested parties, subject only to the right of appeal and review by the Board of Directors as set forth below; and such approval or consent shall not prohibit enforcement of the provisions of this Declaration under Article X. The Design Review Board or its designated representative shall monitor any approved project to the extent required to ensure that the construction or work on such project complies with any and all approved plans and construction procedures. The Design Review Board or its designated representatives may enter upon any Property at any reasonable time or times to inspect the

progress, work status, or completion of any project. In addition to the remedies described in Article X, the Design Review Board may withdraw approval of any project thereby stopping all activity at such project, if deviations from the approved plan or approved construction practices are not corrected or reconciled within 24 hours after written notification to the Owner specifying such deviations.

(b) Any material to be submitted or notice to be given to the Design Review Board shall be submitted at the offices of the Declarant or at such other location as the Design Review Board may designate from time to time.

(c) All actions requiring approval of the Association pursuant to the provisions of Article IX shall be deemed approved if such approval is obtained in writing from the Design Review Board.

**9.5 Design Standards and Construction Procedures:** The Design Review Board shall promulgate and publish design guidelines and Rules and Regulations (collectively, the "Design Rules and Regulations") that shall state the general design theme of all projects in Bachelor Gulch Village, specific design requirements, and the general construction procedures that will or will not be allowed in Bachelor Gulch Village. The Design Review Board shall also promulgate and publish Rules and Regulations that shall set forth the procedures to be followed and material which must be provided by any Member or his or her authorized agents in order to obtain review of proposed construction by the Design Review Board. The Association shall be obligated for the cost of such publications and the Design Review Board shall make such publications available to Members.

**9.6 Exterior Maintenance:** Pursuant to the provisions of Section 3.12, the Design Review Board may, by the affirmative vote of a majority of the members of the Design Review Board present at any meeting, after 30 days' notice of such failure to the Owner of such Unit, request that the Association provide exterior maintenance and repair upon any Unit.

**9.7 Review Fee:** The Design Review Board may set a review fee schedule sufficient to cover all or part of the cost of Design Review Board time, consultant's fees, and incidental expenses. Applicants for design review may be required to deposit with the Design Review Board a fee which the Design Review Board deems sufficient to cover the costs of design review from which the actual costs shall be deducted when determined and the balance returned to the applicant following completion of the design review procedure.

**9.8 Enforcement of Restrictions:** Prior to the completion of construction or action subject to review under Section 9.4, the Design Review Board shall have primary responsibility to enforce the restrictions set forth in Article VII of this Declaration, the Design Rules and Regulations, and restrictions set forth in any supplemental declaration recorded in the records of Eagle County, Colorado, pursuant to Section 7.1 hereof; provided, however, that such responsibility shall not limit the right of Declarant or the Association to act under Article X. If

the Design Review Board does not take action to enforce such restrictions within 15 days after being requested to do so by the Board of Directors, the Association may assume responsibility for enforcing such restrictions in any case in which the Design Review Board declined to act. Subsequent to the completion of construction or action subject to review under Section 9.4, the Association shall have primary responsibility to enforce such restrictions.

**9.9 Reconsideration, Review and Appeal:** Within seven days following action of the Design Review Board, its decision to approve or disapprove the project design shall be transmitted to the applicant and to the Association, and shall be made available to other Members upon their written request. The Board of Directors may confirm, modify or reverse the decision of the Design Review Board within 20 days following the decision. The decision shall become final if no action is taken by the Board of Directors and no written request for reconsideration is made to the Design Review Board by the applicant or any aggrieved party within 20 days following the decision of the Design Review Board. If no action was taken by the Board of Directors and a request for reconsideration is timely made, the Design Review Board shall reconsider the matter at its next regularly scheduled meeting. The decision rendered upon such reconsideration shall be transmitted to the applicant, any aggrieved party and to the Board of Directors as set forth above, and shall become final if no written appeal to the Board of Directors is made to such decision within seven days following the date of notice of such decision. Not more than 60 days following the filing of an appeal by the applicant or aggrieved party, the Board of Directors shall review the action of the Design Review Board and shall, in writing, confirm, modify or reverse the decision of the Design Review Board. If the Board of Directors deems insufficient information is available to provide the basis for a sound decision, the Board of Directors may postpone final action for not more than 30 additional days. Failure of the Board of Directors to act within 95 days from the date of the filing of the appeal shall be deemed approval by the Board of Directors of the design of the project unless the applicant consents to a time extension. Any decision by the Design Review Board or Board of Directors which results in disapproval of the project design shall specifically describe the purpose, development plan, covenant or provision of the Design Rules and Regulations with which the project does not comply and the manner of noncompliance.

**9.10 Lapse of Design Review Approval:** Approval of the design of a project shall lapse and become void one year following the date of final approval of the project, unless prior to the expiration of one year a building permit is issued and construction is commenced and diligently pursued toward completion.

**9.11 Assignment of Function:** Any function to be performed by the Design Review Board pursuant to Article VII or Article IX may be assigned to the Association in whole or in part at any time or from time to time by the Design Review Board in its discretion.

**9.12 Liability:** Neither Declarant, the Association nor the Design Review Board nor any of their respective officers, directors, employees or agents shall be responsible or liable for any defects in any plans or specifications submitted, revised or approved under this Article IX

nor for any defects in construction pursuant to such plans and specifications. Approval of plans and specifications under this Article IX shall not be deemed in lieu of compliance by Owners or Lessees with applicable governmental laws or regulations.

## **ARTICLE X ENFORCEMENT AND REMEDIES**

**10.1 Enforcement:** (a) Each provision of this Declaration enforceable against the Association or the Common Elements shall be enforceable by Declarant or by any Owner by a proceeding for a prohibitive or mandatory injunction.

(b) Each provision of this Declaration enforceable against an Owner or member of the general public or Unit shall be enforceable by Declarant or the Association by a proceeding for a prohibitive or mandatory injunction or by suit or action to recover damages, or in the discretion of the Association, for so long as any Owner or member of the general public fails to comply with any such provisions, by exclusion of such member of the general public, Owner and/or such Owner's Lessees, Subowners and Guests from the use of any Common Elements and from the participation in any Function.

**10.2 Remedies:** In addition, if an Owner or member of the general public fails to perform or observe any covenant or condition on such Owner's part to be performed or observed under this Declaration or any other Association Document, the Association shall have the following rights and remedies:

(a) The Association may, but is not obligated to, cure such failure to comply at the Owner's, or other defaulting party's, sole cost and expense. If the Association cures any such failure to comply, (i) such Owner shall pay to the Association the amount of all costs incurred by the Association in connection therewith within 30 days after the Owner receives a written invoice therefor from the Association or (ii) such member of the general public shall pay to the Association the amount of all costs incurred by the Association in connection therewith within 30 days after such party receives notice therefor;

(b) The Association may suspend the Owner's right to vote;

(c) Except as otherwise provided in any Association Document, and in addition to the fines provided for therein, the Association may fine the Owner or member of the general public an amount not to exceed \$1,000 for each violation. The Association may, in its sole and exclusive discretion, annually adjust for inflation the maximum amount of such fine. Each day any violation continues or is permitted to continue shall constitute a separate offense for purposes of levying such fine. The Owner shall pay any such fine to the Association within 30 days after the Owner receives written notice thereof or the member of the general public shall pay any such fine to the Association within 30 days after such party receives notice thereof;

(d) The Association shall have all other rights and remedies available to it under Association Documents, at law or in equity. All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

## **ARTICLE XI SPECIAL DISCLOSURE MATTERS**

Each Owner and member of the general public is hereby advised of the following matters affecting the Property and the use and enjoyment thereof:

The Property is or may be located in close proximity to one or more of the following: skiing and recreation area(s) (collectively, the "Ski Area"), a National Forest, tennis courts, equestrian stables, water reservoirs, and wildlife and conservation areas (collectively, the "Hazard Areas"). All of these areas create or contain certain hazards associated with the character or use of such area. Such areas may also generate an unpredictable amount of visible, audible and odorous impacts and disturbances from activities relating to the construction, operation, use and maintenance thereof.

The activities associated with the Ski Area may include without limitation:

(i) vehicular and pedestrian traffic, including without limitation, (A) buses which transport skiers and others around Bachelor Gulch Village and between the base of the Ski Area and various parking lots, (B) buses, vans, snowcats, snowmobiles and other vehicles which transport people over, around and through the Ski Area and Bachelor Gulch Village, and (C) construction vehicles and equipment; (ii) activities relating to the construction, operation and maintenance of ski trails, skiways and skier bridges and tunnels relating to the Ski Area, including without limitation, (A) tree cutting and clearing, grading and earth-moving, and other construction activities, (B) construction, operation and maintenance of access roads, snowmaking equipment and chair lifts, gondolas and other skier transportation systems, (C) operation of snow-grooming vehicles and equipment and safety and supervision vehicles; and (D) avalanche control activities; and (iii) activities relating to the use of the Ski Area, including, without limitation, skiing, snow-boarding, hiking, horseback riding, bicycling and other recreational activities and organized events and competitions relating to such activities.

Other hazards created by the Hazard Areas may include, but are not limited to, obstructed views, damage or injury caused by the general public, projectiles, attractive nuisances and death, personal injury or property damage caused by wild animals. Moreover, access to and use of the wildlife and conservation areas shall be restricted from time to time, and substantial construction-related activities relating to the development of the Property or other development within or near Bachelor Gulch Village may cause considerable noise, dust and other inconveniences to the persons residing, visiting or doing business in Bachelor Gulch Village.



Each Owner, by accepting a deed to a Unit or any interest therein, acknowledges that the impacts, disturbances, hazards and activities described above may occur in and around such Unit and the Property and each Owner, by accepting a deed to a Unit or any interest therein, for itself and its Lessees, Subowners, Guests, successors and assigns, hereby forever waives and releases any claims which such Owner may have against the Declarant, the District, the owner(s) and operator(s) of the Ski Area, and/or their respective successors and assigns, as a result of, arising out of or in any way relating to the impacts, disturbances, hazards and activities described above.

## **ARTICLE XII CASUALTY AND CONDEMNATION**

**12.1 Casualty:** (a) In the event of damage or destruction to any part of the Common Elements due to fire or other adversity or disaster, any insurance proceeds shall be collected by and paid to the Association and such insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Common Elements, as applicable, or if there are no insurance proceeds, the Board of Directors shall levy a reconstruction assessment pursuant to the Association Documents in the aggregate amount of such deficiency and shall proceed to make such repairs or reconstruction. Notwithstanding the foregoing, the Association shall have no obligation to repair or reconstruct the damaged or destroyed Common Elements if such repair or reconstruction would be illegal under any state or local statute or ordinance governing health or safety or if within 60 days after such damage or destruction Owners representing 80 percent of the votes in the Association elect not to rebuild. The reconstruction assessment provided for herein shall be a debt of each Owner and a lien on its Unit, and may be enforced and collected in the same manner as any assessment lien provided for in the Association Documents. If Owners representing 80 percent of the votes in the Association elect not to rebuild any damage or destruction to the Common Elements in accordance with the terms and provisions set forth above, the Association shall demolish any destroyed or damaged improvements, remove all debris and rubble caused by such demolition and return the damaged or destroyed area to a slightly condition and shall have the right to levy against and collect from the Owners a reconstruction assessment for this limited purpose, if necessary.

(b) In the event of damage or destruction of the improvements located on any Unit or any part thereof (other than any Common Element which is governed by Section 12.1(a)) due to fire or other adversity or disaster, the Owner of such Unit shall, at its sole cost and expense, with due diligence, either (i) cause the damaged or destroyed improvements to be repaired and restored to a condition comparable to that prior to the damage or destruction, or (ii) demolish the destroyed or damaged improvements, in which event the damaged or destroyed improvements shall forthwith be demolished and all debris and rubble caused by such demolition shall be removed and the affected Unit regraded and landscaped. If such repair or restoration or such demolition, debris removal, regrading and landscaping is not commenced within 180 days

from the date of such damage or destruction, or if the same is commenced but then abandoned for a period of more than 90 days, the Association may, after notice and an opportunity to be heard, impose a fine of \$1,000.00 per day or such other rate imposed by the Board of Directors in compliance with the Act, charged against the Owner of the Unit until such repair or restoration or such demolition, debris removal, regrading and landscaping is commenced or re-commenced, as the case may be, unless the Owner can prove to the satisfaction of the Board of Directors that such failure is due to circumstances beyond the Owner's control. Such fine shall be in addition to any assessment to which such Owner's Unit is subject and the Association shall have all of the rights pertaining to a default assessment specified in the Association Documents for such amount.

**12.2 Condemnation:** (a) In the event the Common Elements, or any portion thereof, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain or by purchase in lieu thereof (herein, a "taking"), each Owner will be entitled to notice thereof, but the Association will act as attorney-in-fact for all Owners in the proceedings incident to the taking unless otherwise prohibited by law. The award for such taking will be payable to the Association as trustee for all of the Owners to be disbursed as follows:

(i) If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless restoration or replacement of such improvements would be illegal under any state or local statute or ordinance governing health or safety or unless within 60 days after such taking Owners representing 80 percent of the votes in the Association elect not to restore or replace such improvements, the Association will restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available therefor, in accordance with plans approved by the Board of Directors, the Design Review Board and any other governmental or quasi-governmental entity having jurisdiction over the Property. If such improvements are to be restored or replaced, and the award for the taking is insufficient to restore or replace such improvements, the Board of Directors shall levy a reconstruction assessment in the aggregate amount of such deficiency and shall proceed to restore or replace such improvements.

(ii) If the taking does not involve any improvements, or if there is a decision made not to restore or replace as set forth above, or if there are net funds remaining after any such restoration or replacement of improvements is completed, then the Association may retain such excess proceeds or distribute such excess in proportionate shares on the basis of all assessments levied against such Units (other than default assessments) for the prior 12-month period.

(b) In the event any Unit, or any portion thereof (other than any Common Element which is governed by Section 12.2(a)), shall be taken, the condemnation award for such taking shall be paid solely to the Owner of such Unit. The repair or restoration of any improvements located on such Unit which are affected by the taking shall be governed by the

terms of Section 12.1(b). If an entire Unit shall be condemned, the Owner thereof shall automatically cease to be a Member of the Association.

(c) Section 107 of the Act shall govern the allocation of interests to  
Units.

**ARTICLE XIII  
MISCELLANEOUS**

13.1 **Duration of Declaration:** The covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration shall run with and bind Bachelor Gulch Village for a period of 20 years from the date of recordation of this Declaration, after which they shall be automatically extended for successive ten-year periods, unless at least one year prior to the expiration of any such ten-year period of extended duration, this Declaration is terminated by a recorded termination agreement that has been authorized and executed pursuant to Section 38-33.3-218 of the Act.

13.2 **Amendment:** Except in cases of amendments that may be executed by Declarant or the Association pursuant to the Act, and except with respect to amendments that require a greater vote pursuant to the Act, any provision contained in this Declaration may be amended or repealed only by the affirmative vote or agreement of Owners to which at least sixty-seven percent of the votes in the Association are allocated. Any such amendment or repeal shall be evidenced by a written instrument or instruments specifying the amendment or the repeal, executed by the Declarant and the Association, and recorded in the Office of the County Clerk and Recorder of Eagle County, Colorado.

13.3 **Effect of Provisions of Declaration:** Each provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration: (a) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any real property within Bachelor Gulch Village is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (b) shall, by virtue of acceptance of any right, title or interest in any real property within Bachelor Gulch Village by an Owner or the Association, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner or the Association, as the case may be and, as a personal covenant, shall be binding on such Owner or the Association and such Owner's or the Association's respective heirs, personal representatives, successors and assigns and, as a personal covenant of an Owner, shall be deemed a personal covenant to, with and for the benefit of Declarant and to, with and for the benefit of the Association but not to, with or for the benefit of any other Owner and, if a personal covenant of the Association, shall be deemed a personal covenant to, with and for the benefit of Declarant and to, with and for the benefit of each Owner; (c) shall be deemed a real covenant by Declarant, for itself, its successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the

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title to each parcel of real property within Bachelor Gulch Village and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of any real property now or hereafter owned by Declarant within Bachelor Gulch Village and for the benefit of any and all other real property within Bachelor Gulch Village; and (d) shall be deemed a covenant, obligation and restriction secured by a lien, binding, burdening and encumbering the title to each parcel of real property within Bachelor Gulch Village which lien with respect to any Unit shall be deemed a lien in favor of Declarant and the Association, jointly and severally and, with respect to any real property owned by the Association, shall be deemed a lien in favor of Declarant.

**13.4 Interpretation of the Declaration:** The Association, by and through its Board of Directors, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by the covenants and the provisions hereof.

**13.5 Attorneys' Fees:** In the event of any dispute under or with respect to this Declaration or any other Association Document, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses in connection therewith, including but not limited to reasonable attorneys' fees and disbursements.

**13.6 Protection of Encumbrancer:** (a) The Association shall furnish to an Owner or such Owner's designee or mortgagee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered agent, a statement setting forth the amount of unpaid assessments currently levied against such Owner's Unit. The statement shall be furnished within 14 calendar days after receipt of the request and is binding on the Association, the Board of Directors and every Owner. If no statement is furnished to the Owner, the mortgagee or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert the priority of its assessment lien upon the Unit for unpaid assessments which were due as of the date of the request.

(b) The Association shall report to any Owner's mortgagee any unpaid assessments remaining unpaid for more than 60 days after the same shall have become due, if such mortgagee first shall have delivered to the Association a written request for notice of unpaid assessments. Any mortgagee holding a lien on a Unit may pay any unpaid assessment with respect to such Unit, together with any and all costs and expenses incurred with respect to the assessment lien securing such unpaid assessment, and upon such payment, such mortgagee shall have a lien on the Unit for the amounts paid with the same priority as a lien of the mortgage held by such mortgagee.

**13.7 Limited Liability:** (a) No officer or director of the Association, who was appointed by the Declarant, shall be personally liable to the Association or any Member for any injury, damage, loss, cost or expense suffered or incurred by reason of any act or omission of such officer or director, unless a court of competent jurisdiction finds that such officer or director breached a fiduciary duty that such officer or director owed to the Association or a Member.

(b) No officer or director of the Association, who was not appointed by the Declarant and no employee, agent or committee member of the Association shall be personally liable to the Association or any Member for any injury, damage, loss, cost or expense suffered or incurred by reason of any act or omission of such officer, director, employee, agent or committee member, unless a court of competent jurisdiction finds that the act or omission of such officer, director, employee, agent or committee member was wanton and willful.

(c) The Association shall indemnify and hold harmless each present or former officer, director, employee, agent or committee member against any and all claims, suits, proceedings, injuries, damages, losses, costs and expenses, including, but not limited to, attorneys' fees and disbursements, asserted against or incurred by any such present or former officer, director, employee, agent or committee member to the fullest extent permitted by law; provided, however, that in no event shall the Association indemnify or hold harmless any such officer, director, employee, agent or committee member to the extent that he or she is personally liable for an act or omission under Section 13.7(a) or Section 13.7(b) above.

**13.8 Use of Trademark:** Each Owner by acceptance of a deed for its Unit, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed (i) to acknowledge that "Bachelor Gulch" and "Bachelor Gulch Village" are registered tradenames and trademarks of Vail Trademarks, Inc., and (ii) to covenant that it shall not use the terms "Bachelor Gulch" or "Bachelor Gulch Village" without the prior written consent of Vail Trademarks, Inc.

**13.9 Access:** Each Owner acknowledges that all roadways serving Bachelor Gulch Village are roads constructed by the District, on nonexclusive easements granted to the District by Declarant. Each Owner, by accepting a deed to a Unit, agrees to be subject to the easements and the rules and regulations of Declarant and the District governing the use of roads, as from time to time in effect.

**13.10 Disclaimer of Representations:** Anything to the contrary in this Declaration notwithstanding, and except as otherwise may expressly be set forth on a Plat or other instrument recorded in the office of the Clerk and Recorder for Eagle County, Colorado, Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete development of Bachelor Gulch Village can or will be carried out or that any land now owned or hereafter acquired by Declarant is or will be subjected to this Declaration, or that any such land, whether or not it has been subjected to this Declaration, is or will be

committed to or developed for a particular use, or that if such land is once used for a particular use, that such use will continue in effect.

**13.11 Successors and Assigns:** Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of Declarant, the Association, and each Owner and their respective heirs, personal representatives, successors and assigns.

**13.12 Severability:** Invalidity or unenforceability of any provision of this 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 Declaration.

**13.13 Captions:** The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

**13.14 Construction:** When necessary for proper construction, the masculine of any word used in this Declaration shall include the feminine or neuter gender, and the singular the plural, and vice versa.

**13.15 No Waiver:** Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

**13.16 Notices; Registration by Owner of Mailing Address:** Each Owner shall register its mailing address with the Association, and except for statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by first class mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. An Owner may change its mailing address from time to time by delivering written notice of such change of address to the secretary of the Association. However, if any Owner fails to so notify the Association of a registered address, then any notice or demand may be delivered to such Owner at the address of such Owner's Unit or posted at such Owner's Unit. All notices or demands intended to be served upon the Board of Directors, the Declarant or the Association shall be sent by certified mail, postage prepaid, to 137 Benchmark Road, Avon, Colorado 81620, until such address is changed by any such party.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the day and year first above written.

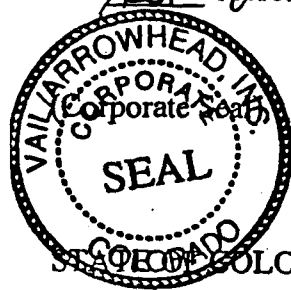
**DECLARANT:**

VAIL/ARROWHEAD, INC.,  
a Colorado corporation

ATTEST:

By: Gerry Arnold  
Asst. Secretary

By: [Signature]  
President

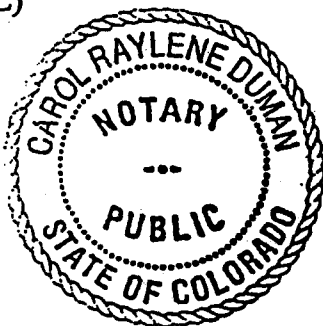


STATE OF COLORADO )  
 ) ss.  
COUNTY OF EAGLE )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of June, 1996, by James P. Thompson as — President and Gerry Arnold as Asst. Secretary of Vail/Arrowhead, Inc., a Colorado corporation, on behalf of such corporation.

WITNESS my hand and official seal.

(SEAL)



Carol Raylene Duman  
Notary Public  
My Commission Expires: 9-28-98

CERTIFICATION OF BACHELOR GULCH VILLAGE ASSOCIATION

The undersigned, Bachelor Gulch Village Association, a Colorado nonprofit corporation, hereby (a) certifies that this Declaration has been approved by the Affirmative Vote of a Majority of the Classes, and (b) consents to the foregoing Declaration.

ATTEST:

BACHELOR GULCH VILLAGE ASSOCIATION, a Colorado nonprofit corporation

By: [Signature]  
Secretary

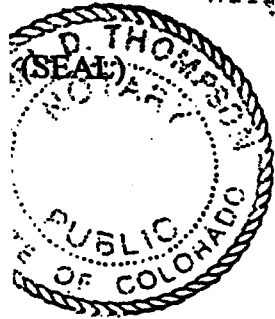
By: [Signature]  
President

SEAL  
(Corporate Seal)

STATE OF COLORADO )  
  ) ss.  
COUNTY OF EAGLE        )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of June, 1996, by James P. Thompson as the President and Richard D. MacCubbin the Secretary of Bachelor Gulch Village Association, a Colorado nonprofit corporation, on behalf of such corporation.

WITNESS my hand and official seal.



[Signature]  
Notary Public        My Commission Expires  
My Commission Expires: 9/12/97





## EXHIBIT A

Attached to and forming a part of the  
Declaration of Covenants, Conditions  
and Restrictions for Bachelor Gulch Village,  
Eagle County, Colorado,  
dated June 18, 1996

### THE PROPERTY

#### Part I - Upper Bachelor Gulch:

Lots 1 through 47 inclusive and Tract A, Bachelor Gulch Village Filing No. 1, Eagle County, Colorado, according to the plat thereof recorded in Book 697 at Page 745 in the office of the Clerk and Recorder of Eagle County, Colorado, as such plat may be amended from time to time.

#### Part II - Lower Bachelor Gulch:

Lots 48 through 76 inclusive and Tracts C and D, Bachelor Gulch Village Filing No. 2, Eagle County, Colorado, according to the plat thereof, recorded in Book 697 at Page 746 in the office of the Clerk and Recorder of Eagle County, Colorado, as such plat may be amended from time to time; and

Lots 77 through 105 inclusive and Tracts E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, Y and YY, Bachelor Gulch Village Filing No. 3, Eagle County, Colorado, according to the plat thereof recorded in Book 697 at Page 747 in the office of the Clerk and Recorder of Eagle County, Colorado, as such plat may be amended from time to time.

## EXHIBIT B

Attached to and forming a part of the  
Declaration of Covenants, Conditions  
and Restrictions for Bachelor Gulch Village,  
Eagle County, Colorado,  
dated June 18, 1996

### ADDITIONAL PROPERTY

#### **Tract Q and Lots 2 and 3**

Lots 2 and 3, Tract Q, according to the recorded plat of Sixth Filing, Beaver Creek Subdivision, Eagle County, Colorado.

#### **Tracts O and P**

Tracts O and P, according to the recorded Exemption Plat of Beaver Creek Subdivision, Tract O and P, Eagle County, Colorado.

#### **Tract H**

Tract H, according to the recorded plat of Benchmark at Beaver Creek, Eagle County, Colorado.

#### **Tract B and Adjacent Land**

A parcel of land located in the North 1/2 of Section 11, Township 5 South, Range 82 West of the Sixth P.M., Eagle County, Colorado, being more particularly described as follows:

Beginning at the East 1/4 corner of Section 11; thence along the westerly line of Lot 7, Tract L, First Amendment to Beaver Creek Subdivision, Second Filing, as recorded in Book 307, at Page 998, Eagle County records, N 00'41'18" E, 45.00 feet to an angle point on the southerly line of Lot 1, Sixth Filing Beaver Creek Subdivision, Tract S, as recorded in Book 337 at Page 129, Eagle County records; thence along the southerly and westerly line of Lot 1 the following three (3) courses: 1) N 36'43'07" W, 244.89 feet, 2) N 14'35'35" W, 495.12 feet, 3) N 24'13'08" E, 106.23 feet to the southeasterly most corner of Lot 1, Beaver Creek Subdivision – Third Filing, Block 1, Tract B, as recorded in Book 316 at Page 725, Eagle County records; thence along the southerly line of Beaver Creek Subdivision – Third Filing the following thirteen (13) courses and curves: 1) 216.92 feet along the arc of a curve to the left having a radius of 3265.00 feet, a

central angle of 03'48'24", and a long chord which bears N 67'41'04" W, 216.88 feet, 2) S 16'41'36" W, 161.10 feet, 3) 125.53 feet along the arc of a curve to the left having a radius of 1175.00 feet, a central angle of 06'07'16", and a long chord which bears S 13'37'58" W, 125.47 feet, 4) S 10'34'20" W, 68.88 feet, 5) 62.45 feet along the arc of a curve to the right having a radius of 105.00 feet, a central angle of 34'04'31", and a long chord which bears S 27'36'36" W, 61.53 feet, 6) S 10'34'20" W, 160.38 feet, 7) N 89'03'39" W, 305.04 feet, 8) N 71'13'55" W, 340.00 feet, 9) N 31'42'46" E, 693.68 feet, 10) N 70'03'50" W, 21.77 feet, 11) 130.38 feet along the arc of a curve to the left having a radius of 465.00 feet, a central angle of 16'03'52", and a long chord which bears N 78'05'45" W, 129.95 feet, 12) N 86'07'40" W, 364.90 feet, 13) 40.21 feet along the arc of a curve to the left having a radius of 2315.11 feet, a central angle of 00'59'42", and a long chord which bears N 86'37'31" W, 40.21 feet to the southeasterly most corner of Lot 1, Beaver Creek Subdivision, Sixth Filing, Tract Q, as recorded in Book 337 at Page 129, Eagle County records; thence along the southerly and westerly line of Tract Q the following four (4) curves and courses: 1) 193.38 feet along the arc of a curve to the left having a radius of 2315.11 feet, a central angle of 04'47'10", and a long chord which bears N 89'30'57" W, 193.33 feet, 2) 100.88 feet along the arc of a curve to the right having a radius of 205.00 feet, a central angle of 28'11'37", and a long chord which bears N 77'48'43" W, 51.48 feet, 3) S 88'21'50" W, 637.89 feet, 4) N 41'38'10" W, 474.39 feet to a point on the southerly right of way of US Highway 6; thence along the southerly right of way the following five (5) courses and curves: 1) N 83'38'10" W, 49.93 feet, 2) S 79'25'50" W, 240.80 feet, 3) 524.47 feet along the arc of a non-tangent curve to the right, having a radius of 2995.00 feet, a central angle of 10'02'00", and a long chord which bears N 78'37'10" W, 523.80 feet, 4) N 73'36'10" W, 603.50 feet, 5) 24.70 feet along the arc of a curve to the left having a radius of 825.00 feet, a central angle of 01'42'55", and a long chord which bears N 74'27'37" W, 24.70 feet to a point on the westerly line of the NE 1/4, NW 1/4 of Section 11; thence along the westerly line S 00'57'45" W, 291.97 feet to the NW 1/16th corner of Section 11; thence along the westerly line of the SE 1/4, NW 1/4 of Section 11 S 00'57'45" W, 1333.26 feet to the W 1/16th corner of Section 11; thence along the southerly line of the SE 1/4, NW 1/4 of Section 11 S 88'47'36" E, 1352.49 feet to the Center 1/4 corner of Section 11; thence along the southerly line of the NE 1/4 of Section 11 S 88'47'36" E, 2710.24 feet to the Point of Beginning

and commonly known as Tract B and Adjacent Land.

### **Confluence**

A parcel of land lying within the South one-half (1/2) of the Northwest one-quarter (1/4) of Section 12, Township 5 South, Range 82 West of the Sixth Principal Meridian, Eagle County, Colorado, said parcel of land being more particularly described as follows:

Commencing at the center corner of said Section 12, Township 5 South, Range 82 West; thence N. 02 degrees 08'18" W. 595.00 feet to a point on the South right-of-way line of the Denver and Rio Grande Western Railroad and the true point of beginning; thence N. 65 degrees 58'08" W. 1762.75 feet along said South right-of-way line more or less to a point on the South boundary of benchmark at Beaver Creek Subdivision, Revised Final Plat, Eagle County, Colorado, said point

being the Southeast corner of Tract "H" of said Subdivision; thence S. 89 degrees 50'48"W. 397.29 feet along the South boundary of Tract "H" of said Subdivision to a point from which the Northwest corner of the South one-half (1/2) of the Northwest one-quarter (1/4) of said Section 12 bears S. 89 degrees 50'48"W. 629.76 feet; thence along the following ten courses of the approximate centerline of the Eagle River: 1) S. 48 degrees 46'06"E. 132.70 feet; 2) S. 57 degrees 59'37"E. 341.00 feet; 3) S. 50 degrees 27'44"E. 455.67 feet; 4) S. 48 degrees 24'11"E. 293.81 feet; 5) S. 44 degrees 17'20"E. 152.41 feet; 6) S. 50 degrees 47'24"E. 154.96 feet; 7) S. 54 degrees 19'56"E. 187.29 feet; 8) S. 82 degrees 03'45"E. 214.88 feet; 9) N. 85 degrees 23'48"E. 162.21 feet; 10) N. 85 degrees 58'54"E. 225.41 feet.

To a point on the Westerly right-of-way of the Colorado State Highway; thence along said Westerly right-of-way on the following three courses: 1) N. 09 degrees 23'26"E. 93.73 feet; 2) N. 42 degrees 47'36"E. 37.43 feet; 3) N. 10 degrees 32'54"E. 54.70 feet to a point of curve; thence continuing along said Colorado State Highway right-of-way 181.09 feet along the arc of a 1101.84 foot radius curve to the left whose central angle is 09 degrees 25'00" and whose long cord bears N. 05 degrees 50'24"E. 180.89 feet to the true point of beginning;

EXCEPT the following 3 parcels:

**PARCEL 1:**

A parcel of land No. TK-10 of the Town of Avon, State of Colorado, situated in the SE1/4 of the NW1/4 of Section 12, Township 5 South, Range 82 West of the Sixth Principal Meridian, more particularly described as follows:

Commencing at the center quarter corner of said section:

Thence N 00 degrees 06'14" East along the meridional centerline of said section, a distance of 449.22 feet;

Thence N 89 degrees 53'46" West a distance of 35.59 feet to the Point of Beginning, said point also being a point on curve from whence the radius point bears N 81 degrees 13'35" West 1095.90 feet said point also being on the westerly right of way of Avon Road, and said curve not being tangent to the previously described course;

Thence along said westerly right of way the following three courses:

1. Thence along said curve to the right, having a central angle of 01 degrees 49'48", a radius of 1095.90 feet, an arc length of 35.00 feet;
2. Thence S 10 degrees 36'13" West a distance of 54.70 feet;
3. Thence S 42 degrees 36'43" West a distance of 37.70 feet;

Thence N 41 degrees 09'04" West a distance of 30.00 feet;

Thence N 11 degrees 30'40" East a distance of 86.00 feet;

Thence N 78 degrees 15'47" East a distance of 45.00 feet to the Point of Beginning.

**PARCEL 2:**

A parcel of land No. PE-10 of the Town of Avon, State of Colorado, situated in the SE1/4 of the NW1/4 of Section 12, Township 5 South, Range 82 West of the Sixth Principal Meridian, more particularly described as follows:

Commencing at the center quarter corner of said section;

Thence N 00 degrees 06'14" East long the meridional centerline of said section, a distance of 449.22 feet;

Thence N 89 degrees 53'46" West a distance of 35.59 feet to the Point of Beginning, said point also being on the westerly right of way of Avon Road;

Thence S 78 degrees 15'47" West a distance of 45.00 feet;

Thence N 20 degrees 40'24" East a distance of 52.00 feet;

Thence N 3 degrees 53'04" East a distance of 119.79 feet to a point on the southerly right of way of the Denver and Rio Grande Western Railroad;

Thence S 65 degrees 58'08" East along said southerly right of way, a distance of 33.06 feet to a point on the westerly right of way of Avon Road, said point also being a point on curve from whence the radius point bears N 88 degrees 52'13" West a distance of 1095.90 feet, said curve also being not tangent to the previously described course;

Thence along said westerly right of way and along said curve to the right, having a central angle of 07 degrees 38'38", a radius of 1095.90 feet, an arc length of 146.20 feet to the Point of Beginning.

**PARCEL 3:**

A parcel of land No. TK-10-A of the Town of Avon, State of Colorado, situated in the SE1/4 of NW1/4 of Section 12, Township 5 South, Range 82 West of the Sixth Principal Meridian,

Commencing at the center quarter corner of said section;

Thence N 00 degrees 06'14" East along the meridional centerline of said section, a distance of 333.13 feet;

Thence N 89 degrees 53'46" West a distance of 76.86 feet to the Point of Beginning, said point also being on the westerly right of way of Avon Road;

Thence S 09 degrees 28'13 West along said westerly right of way a distance of 94.50 feet to a point on the centerline of the Eagle River;

Thence S 85 degrees 58'54" West along said centerline a distance of 28.16 feet;

Thence N 11 degrees 28'18" East a distance of 120.18 feet;

Thence S 41 degrees 09'04" East a distance of 30.00 feet to the Point of Beginning;

and commonly known as Confluence.

#### **Chadwick Parcel**

That certain tract of land containing three (3) acres, more or less, more particularly described as follows, to-wit:

Beginning at the NE corner of the S1/2NE1/4 of Section 11, in Tp. 5, S. R 82 W. of the 6th P.M., thence South to the center of the County Road as it now exists; thence along the center of the County Road as it now exists to a point 10 feet distance form a spring, designated as Spring "A"; thence North to the North line of said described land; thence East to the point of beginning.

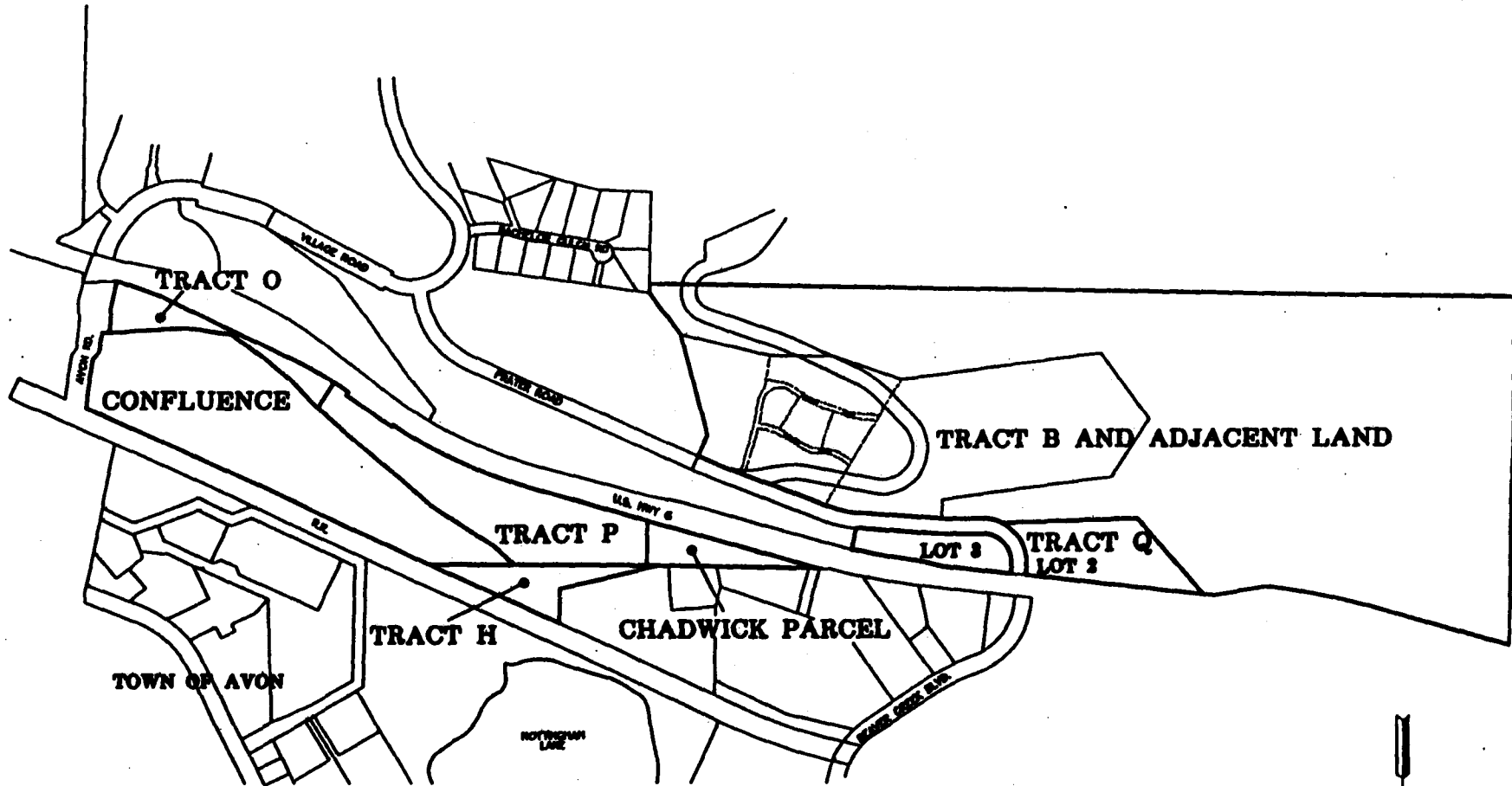
EXCEPTING, however, from the above described tract of land that part deeded by a Right of Way Deed from F.A. Lewis to Eagle County under date of May 31st, 1929. Said Right of Way being recorded in the records of Eagle County, Colorado, in Book 106 at Page 530.

AND FURTHERMORE EXCEPTING from the above described tract of land that part deeded by Right of Way Deed from Marcelle Azoulay to the County of Eagle under date of April 6, 1948 and recorded April 7, 1948 in the records of Eagle County;

and commonly known as Chadwick Parcel.

00101

# SCHEMATIC MAP OF ADDITIONAL PROPERTY



SCALE: 1" = 800'



STATE OF COLORADO )  
 )  
COUNTY OF Eagle ) ss.

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of December, 1997, by James P. Thompson as President of Vail/Arrowhead, Inc., a Colorado corporation.

Witness my hand and official seal.



My commission expires: Sept 21, 2000

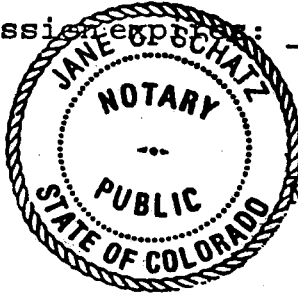
Gerry Arnold  
Notary Public

STATE OF COLORADO )  
 )  
COUNTY OF Eagle ) ss.

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of February, 1998, by Harold J. Corbett as President of Beaver Creek Property Owners Association, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 9/28/98



Jane C. Schatz  
Notary Public

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FIVE  
MAR 19 1998  
LEGAL

SECOND AMENDMENT TO SPECIAL DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
LOWER BACHELOR GULCH

THIS SECOND AMENDMENT TO SPECIAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LOWER BACHELOR GULCH (this "Second Amendment") is made as of December 31, 1997, by Vail/Arrowhead, Inc., a Colorado corporation ("VAI"), and the Beaver Creek Property Owners Association, a Colorado nonprofit corporation (the "Association").

RECITALS

This Second Amendment is made with respect to the following facts:

A. The Vail Corporation, a Colorado corporation ("TVC"), as Declarant, executed that certain Special Declaration of Covenants, Conditions and Restrictions for Lower Bachelor Gulch dated as of July 21, 1995, and recorded on that same date in the office of the Clerk and Recorder of Eagle County, Colorado, in Book 671 at Page 752 (the "Special Declaration").

B. The Special Declaration was amended by that certain Ratification and First Amendment to the Special Declaration of Covenants, Conditions and Restrictions for Lower Bachelor Gulch made by TVC, the Association and VAI, dated as of September 19, 1995, and recorded on October 10, 1995, in the office of the Clerk and Recorder of Eagle County, Colorado, in Book 677 at Page 443 (the "First Amendment"). Additionally, by the First Amendment VAI affirmed, ratified and consented to the terms and provisions of the Special Declaration as if VAI had been the original Declarant of and under the Special Declaration. The Special Declaration, as amended by the First Amendment, shall be referred to herein as the "Amended Special Declaration."

C. Unless otherwise defined herein, all initially capitalized terms used in this Second Amendment shall have the meanings set forth for such terms in the Amended Special Declaration.

D. Section 1.6 of the Amended Special Declaration provides that when referring to Lower Bachelor Gulch, the term Dwelling Unit shall have the meaning set forth for such term in the Arrowhead at Vail Planned Unit Development (as defined in Section 1.1 of the Amended Special Declaration), except that for the purpose of the Amended Special Declaration each single hotel or lodge unit or room which is designed or constructed to be separately let shall be deemed to be a separate Dwelling Unit.

648734 03/03/1998 02:06P 135 Sara Fisher  
1 of 8 R 31.00 D 0.00 N 0.00 Eagle CO

E. The Arrowhead at Vail Planned Unit Development provides that each lodge unit is counted as a dwelling unit and that each lock-off created within a condominium unit is counted as a dwelling unit for purposes of density calculations.

F. VAI intends to apply for an amendment to the Arrowhead at Vail Planned Unit Development for the purpose of, among other things, modifying the definition of the term "Dwelling Unit" so that three lodge units may be counted as one Dwelling Unit and so that a condominium unit having lock-offs dividing it into not more than three separately occupiable rooms or suites may be counted as one Dwelling Unit for purposes of density calculations.

G. Section 1.1 of the Amended Special Declaration provides that future modifications to the Arrowhead at Vail Planned Unit Development shall not be effective to modify the covenants, conditions and restrictions contained in the Amended Special Declaration unless such modifications have been approved in a recorded modification to the Amended Special Declaration executed in accordance with the provisions of Section 3.11 of the Amended Special Declaration.

H. VAI and the Association desire to modify the definition of the term "Dwelling Unit" and "Arrowhead at Vail Planned Unit Development" in the Amended Special Declaration in anticipation of VAI's proposed amendment to the Arrowhead at Vail Planned Unit Development so that, once such amendment is approved, both the Amended Special Declaration and the Arrowhead at Vail Planned Unit Development will provide that three lodge units may be counted as one Dwelling Unit and that a condominium unit having lock-offs dividing it into not more than three separately occupiable rooms or suites may be counted as one Dwelling Unit for purposes of density calculations.

I. Section 3.10 of the Amended Special Declaration contains a typographical error that causes the literal meaning of Section 3.10 to depart significantly from the meaning intended when the Special Declaration and the First Amendment were executed and recorded. VAI and the Association desire to correct such typographical error in order to provide protection for certain holders of mortgages and deeds of trust.

J. Under Section 3.11(a) of the Amended Special Declaration, so long as Declarant holds fee simple title to any portion of Lower Bachelor Gulch, and so long as the Association exists, any amendment to the Amended Special Declaration requires a written, recorded document duly executed by Declarant and the Association. VAI is Declarant under the Amended Special Declaration and holds fee simple title to significant portions of Lower Bachelor Gulch. The Association currently exists and is in good standing and authorized to do business in the State of Colorado.

648734 03/03/1998 02:06P 135 Sara Fisher  
2 of 6 R 31.00 D 0.00 N 0.00 Eagle CO

AMENDMENT

NOW, THEREFORE, the Amended Special Declaration is hereby amended as follows:

1. Section 1.1. Section 1.1 of the Amended Special Declaration is hereby amended by inserting the following at the end of such Section 1.1:

"Notwithstanding the foregoing provisions of this Section 1.1, if the Arrowhead at Vail Planned Unit Development is amended such that the meaning of the terms ' Dwelling Unit ' and ' Condominium ', as defined in section II.14 thereof, are modified as set forth below, then such modifications shall be deemed incorporated into the definition of the term ' Arrowhead at Vail Planned Unit Development ' as used in this Declaration and shall be effective to so modify the covenants, conditions and restrictions contained in this Declaration:

- (a) Modification of the second sentence of the definition of the term ' Dwelling Unit ' contained in the Arrowhead at Vail Planned Unit Development so that it reads substantially as follows: ' For purposes of density calculations, three lodge or studio units shall be counted as one dwelling unit as long as no more than one kitchen is included within the three lodge or studio units being counted as one dwelling unit. '
- (b) Modification of the last sentence of the definition of the term ' Condominium ' contained in the Arrowhead at Vail Planned Unit Development so that it reads substantially as follows: ' For the purposes of this document, two lock-offs will mean that the Dwelling Unit may be divisible into not more than three separately occupiable rooms or suites, whether including the kitchen or not, and such Dwelling Unit shall be counted as one dwelling unit for purposes of density calculations. ' "



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3 of 6 R 31.00 D 0.00 N 0.00 Eagle CO

2. Section 1.6. The second sentence of Section 1.6 of the Amended Special Declaration is hereby amended in its entirety to read as follows:

"When referring to Lower Bachelor Gulch, 'Dwelling Unit' shall have the meaning set forth for such term in the Arrowhead at Vail Planned Unit Development, provided, however, that notwithstanding anything in the Arrowhead at Vail Planned Unit Development to the contrary, for the purposes of this Declaration: (1) three hotel, lodge or studio units that are designed or constructed to be separately let shall be counted as one Dwelling Unit as long as no more than one kitchen is included within the three hotel, lodge or studio units being counted as one Dwelling Unit; and (2) a residential condominium that may be divisible into not more than three separately occupiable rooms or suites, as described in the 'lock-off' provisions of section II.14.B of the Arrowhead at Vail Planned Unit Development, shall be counted as one Dwelling Unit. Dwelling Units counted pursuant to clauses (1) or (2) of the previous sentence are referred to as '3:1 Units.'"

3. Section 2.2. The following is hereby added at the end of Section 2.2 of the Amended Special Declaration:

"Notwithstanding the provisions of Section 1.6, the number of Dwelling Units constructed in Lower Bachelor Gulch which may be counted as 3:1 Units shall not exceed 100."

4. Section 3.10. The first sentence of Section 3.10 of the Amended Special Declaration is hereby amended by deleting the word "not" at the end of the second line of such sentence. Thus, such sentence as so revised now reads as follows:

"No breach of the covenants, conditions or restrictions or the enforcement of any other provisions contained in this Declaration, shall affect, impair, defeat or render invalid the lien or charge of (i) any first mortgage made in good faith and for value encumbering any portion of Lower Bachelor Gulch, or (ii) any deed of trust or mortgage made in good faith for value and securing any loan made to finance the purchase of, or to finance the construction of any Improvements upon, any portion of Lower Bachelor Gulch."



648734 03/03/1998 02:06P 135 Sara Fisher  
4 4 of 6 R 31.00 D 0.00 N 0.00 Eagle CO

5. To the extent any term or provision of this Second Amendment is inconsistent with any term or provision of the Amended Special Declaration, the terms and provisions of this Second Amendment shall control in all instances. Except as expressly modified by this Second Amendment, the terms and provisions of the Amended Special Declaration shall remain unmodified and in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Second Amendment as of the date first above written.



VAIL/ARROWHEAD, INC., a Colorado corporation

By: [Signature]  
Name: James P. Thompson  
Title: President

BEAVER CREEK PROPERTY OWNERS ASSOCIATION, a Colorado nonprofit corporation

By: [Signature]  
Name: Harold J Corbett  
Title: President, BCPOA



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5 of 6 R 31.00 D 0.00 N 0.00 Eagle CO