

PROTECTIVE COVENANTS

OF

VAIL/LIONSHEAD, FIRST FILING,

EAGLE COUNTY, COLORADO

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WHEREAS, Vail Associates, Inc., a corporation duly organized and existing under the laws of the State of Colorado (hereinafter sometimes referred to as "Owner"), is the owner of the following described lands, which are the same lands shown on the plat of the Vail/LionsHead, First Filing, on file in the office of the County Clerk and Recorder of the County of Eagle and State of Colorado:

A part of the South one-half of Section 6 and part of the North one-half of Section 7, Township 5 South, Range 80 West of the Sixth Principal Meridian, County of Eagle, State of Colorado, more particularly described as follows:

Beginning at a point on the Southerly right-of-way line of Interstate Highway I-70 from whence the Southwest corner of said Section 6 bears S. 70°47'32" W., 1844.96 feet; thence Northeasterly along said Southerly right-of-way line and along a curve to the right having a radius of 3650.00 feet, a central angle of 00°23'53", an arc distance of 25.29 feet (the chord of said curve bears N. 76°38'56" E., 25.29 feet); thence S. 04°35'58" E., 236.44 feet; thence N. 85°24'02" E., 150.00 feet; thence N. 04°35'58" W., 255.67 feet to a point of intersection with the Southerly right-of-way line of said Interstate Highway I-70; thence Northeasterly along said Southerly right-of-way line and along a curve to the right having a radius of 3650.00 feet, a central angle of 14°23'34", an arc distance of 916.89 feet (the chord of said curve bears N. 86°25'04" E., 914.48 feet); thence on an angle to the right of 146°07'10" and along a curve to the left having a radius of 46.00 feet, a central angle of 144°40'19", an arc distance of 116.15 feet to a point of tangent (the chord of said curve bears S. 12°36'09" E., 87.66 feet); thence S. 84°56'18" E. and along said tangent

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140.00 feet to a point of curve; thence along a curve to the right having a radius of 151.00 feet, a central angle of  $88^{\circ}03'00''$ , an arc distance of 232.05 feet to a point of compound curve (the chord of said curve bears S.  $40^{\circ}54'48''$  E., 209.88 feet); thence along a curve to the right having a radius of 173.00 feet, a central angle of  $90^{\circ}00'00''$ , an arc distance of 271.75 feet to a point of tangent (the chord of said curve bears S.  $48^{\circ}06'42''$  W., 244.66 feet); thence N.  $86^{\circ}53'18''$  W. and along said tangent 65.80 feet; thence S.  $05^{\circ}43'51''$  W., 341.10 feet; thence N.  $80^{\circ}00'30''$  W., 215.00 feet; thence N.  $89^{\circ}21'00''$  W., 141.70 feet; thence S.  $64^{\circ}22'00''$  W., 126.50 feet; thence S.  $17^{\circ}10'30''$  W., 100.50 feet; thence S.  $11^{\circ}02'30''$  W., 153.50 feet; thence S.  $54^{\circ}34'00''$  W. 89.00 feet; thence N.  $78^{\circ}13'30''$  W., 158.00 feet; thence S.  $83^{\circ}35'00''$  W., 59.50 feet; thence S.  $46^{\circ}22'30''$  W., 275.50 feet; thence S.  $72^{\circ}54'00''$  W., 100.00 feet; thence N.  $78^{\circ}42'00''$  W., 80.00 feet; thence N.  $65^{\circ}13'00''$  W., 142.00 feet; thence N.  $01^{\circ}57'17''$  W., 118.50 feet; thence N.  $86^{\circ}51'43''$  E., 217.40 feet; thence N.  $03^{\circ}08'17''$  W., 5.00 feet; thence N.  $86^{\circ}51'43''$  E., 120.00 feet; thence N.  $04^{\circ}35'58''$  W., 154.36 feet; thence N.  $12^{\circ}43'23''$  W., 130.48 feet; thence N.  $41^{\circ}50'09''$  W., 52.02 feet; thence N.  $04^{\circ}35'58''$  W., 102.84 feet; thence N.  $27^{\circ}05'58''$  W., 33.87 feet; thence N.  $04^{\circ}35'58''$  W., 38.47 feet; thence N.  $28^{\circ}44'30''$  E., 45.49 feet; thence N.  $04^{\circ}35'58''$  W., 424.68 feet to the true point of beginning; containing 24.081 acres, more or less;

embraced within which are all or portions of Lots 14, 15, 16, 17, 18, 19, 20, 21, 22 and Tract B, Vail Village, Second Filing, Eagle County, Colorado, the plat of which is filed under Reception No. 96928 in the Plat Book of Eagle County, Colorado, at Page 56, as amended by a plat which is filed under Reception No. 97199 in said Plat Book at Page 58.

AND WHEREAS, Vail Associates, Inc. desires to place certain restrictions on the use of the lots shown on the plat of Vail/LionsHead, First Filing, for the benefit of the Owner and its respective grantees, successors and assigns, in order to establish and maintain the character and value of property in the Vail/LionsHead, First Filing area,

NOW, THEREFORE, in consideration of the premises, Vail Associates, Inc., for itself and its grantees, successors and assigns does hereby impose, establish, publish, acknowledge and declare that for the benefit of all persons who may acquire an interest in any of the lots in Vail/LionsHead, First Filing, all of the lands in Vail/LionsHead, First Filing, shall be subject to the following restrictions, covenants, and conditions, which shall be deemed to run with the land and to inure to the benefit of and be binding upon the Owner, its grantees, successors and assigns.

1. ARCHITECTURAL CONTROL COMMITTEE

1.1 Committee. The Architectural Control Committee, hereinafter referred to as the "Committee," shall consist of five members who shall be designated by the Owner, its successors or assigns, to review, study and approve or reject proposed improvements within the area described in the plat of Vail/LionsHead, First Filing, of which these restrictive covenants are made a part.

The members of the Committee shall serve for one year, at which time they shall be re-appointed or their successors shall be appointed by the Owner. If no successor is appointed by the Owner on the anniversary of a member's term, he shall be deemed to have been re-appointed by the Owner. A new member shall be appointed by the Owner on the death or resignation of a member.

1.2 Rules. The Committee shall make such rules and bylaws and adopt such procedures as it may deem appropriate to govern its proceedings.

1.3 Approval of Plan. No building, landscaping, parking or vehicular driveway, fence, wall or other improvement shall be constructed, erected, repaired, restored, reconstructed, altered, added to or maintained on any lot until building plans and site plans and specifications showing the color, location, materials, landscaping, and such other information relating to such improvement as the Committee may reasonably require shall have been submitted to and approved by the Committee in writing.

1.4 Criteria. In passing upon such plans and specifications

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the Committee shall consider:

1.4.1 The suitability of the improvement to the site upon which it is to be located and materials of which it is to be constructed;

1.4.2 The nature of adjacent and neighboring improvements;

1.4.3 The quality of the materials to be utilized in any proposed improvement;

1.4.4 The effect of any proposed improvement on the outlook of any adjacent or neighboring property;

1.4.5 Any governmental zoning requirements applicable to the site and improvements thereon; and

1.4.6 The rules and regulations of the Committee.

It shall be an objective of the Committee to make certain that no improvement will be so similar or so dissimilar to others in the vicinity that values, monetary or aesthetic, will be impaired.

1.5 Effect of the Committee's Failure to Act. In the event the Committee fails to approve or disapprove plans and specifications submitted to it within sixty (60) days of submission, approval shall not be required.

**2. LAND USE**

2.1 The lands within Vail/LionsHead, First Filing, designated as numbered lots shall be used for high density, multi-family residential structures, public accommodations, public uses, and commercial and recreational structures; except that Lot 1, Block 2 shall be used for vehicular parking and such other purposes as the Owner may in the future from time to time designate, including, by way of illustration and without limiting the generality of the foregoing, as sites for lodges, hotels, and transportation centers, provided, that if the use of a portion of such lot for such other purposes shall reduce the parking capacity of such lot as agreed upon by the Town of Vail and Owner, then Owner shall provide, or cause to be provided, structured parking in a volume sufficient

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to maintain a parking capacity at the volume agreed upon by the Town and Owner, but not to exceed the capacity which existed prior to such construction. The Owner may impose restrictions prohibiting the use of certain numbered lots, or portions thereof, for commercial purposes.

2.2 The lands within Vail/LionsHead, First Filing, designated as "tracts" shall be used as follows:

2.2.1 Tract A shall be used as an open area for recreational purposes. It may be improved by landscaping, paved or gravel paths, decks, retaining walls, wind screen walls or fences, parapet walls, minor vehicular driveways, fountains, steps, recreational facilities, including swimming pools and related appurtenant buildings, all of which shall not protrude above the elevation of the present ground surface and shall be suitably landscaped to conceal such structure.

2.2.2 Tract B shall be dedicated to the public as open space subject to the reservation by the Owner of such easements for pedestrian bridges, ski lifts, and skier crossings as are in the opinion of the Owner now or in the future reasonably necessary, and further reserving to the Owner the right to construct, repair, maintain and operate such ski lifts in or on Tract B as are, in the opinion of the Owner, needed in the future. The Town of Vail may construct for public use, pedestrian and bridle paths in conformity with a landscape plan to be prepared by the Town and approved by the Owner. Adjoining or contiguous properties shall not have any construction or improvement which encroaches into the said Tract B. Vehicular passage shall not be allowed on this Tract except by special permit from the Town and the Owner.

2.2.3 Tract C shall be used as open area as a pedestrian circulation area, and as the means of ingress and for pedestrian traffic to and from adjacent properties and for emergency vehicles. The owner retains the right to landscape and to construct walkways thereon and to provide by private agreement for uses therein which may be incidental to the use of adjacent property and not incompatible with the above uses.

2.2.4 Tract D shall be used for the purposes and uses permitted in Tract A but, in addition, there shall be

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permitted in Tract D the following uses: ski lift terminals, a health club, underground parking; provided, that the health club and parking improvements shall not protrude above the elevation of the present ground surface and shall be suitably landscaped to conceal such structures. Small portable structures for use as ticket booths, information centers and other uses appurtenant to the permitted uses may also be maintained on Tract D with the consent of Owner. There is reserved to the Owner an easement for drainage purposes over and across Tract D to drain water from Tract D and adjacent lands to be located, at the Owner's discretion, in a manner which will not interfere with the development of the Tract.

2.2.5 Tracts E and F are to be used in conjunction with roads and may be landscaped and lighted. Signs and small covered structures for bus passenger use may be erected. Otherwise, these tracts shall remain open and unimproved.

2.2.6 Tract G shall be maintained by the Owner as a private road for the purposes of granting ingress and egress to and from Lots 5 and 6, and may be, at the Owner's discretion, in conjunction with Tract H used to provide access to and from Tracts B and D. Tract G may be improved with paving and may be dedicated by the Owner to public use as a road.

2.2.7 Tract H shall be maintained as an open area and it may be used, at the Owner's discretion, in conjunction with Tract G to give access to and from Tracts B and D. Tract H may be improved with paving and may be dedicated by the Owner to public use as a road.

2.2.8 Tract I may be used for or in conjunction with roads as a means of ingress and egress to and from lands outside the platted area.

2.2.9 Tract J shall be used as a landscaped open area and for pedestrian access to dedicated open areas.

2.3 The Owner reserves the right to make additional restrictions and limitations upon use not incompatible with the foregoing

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nor less restrictive than any applicable regulations of any governmental agency. Any additional restrictions may be included in instruments of conveyance or lease and by supplement to these protective covenants to be filed in the office of the Clerk and Recorder of Eagle County, Colorado.

3. EASEMENTS AND RIGHTS-OF-WAY

3.1 Easements and rights-of-way for lighting, heating, electricity, gas, telephone, water and sewerage facilities, and any other kind of public or quasi-public utility service are reserved as shown on the plat of Vail/LionsHead, First Filing. No fence, wall, hedge, barrier or other improvement shall be erected or maintained on, across or within the areas reserved for easements and rights-of-way, nor in such close proximity thereto as to impair the access to or use thereof. An easement for pedestrian use shall exist and is hereby reserved on, over and across those portions of the plat of Vail/LionsHead, First Filing, reserved herein for utility service and facilities.

3.2 Easements for drainage purposes are reserved as shown on the plat of Vail/LionsHead, First Filing.

3.3 Easements for drainage purposes reserved in these covenants and on the Vail/LionsHead, First Filing, plat shall be perpetual.

4. SIGNS

No signs, billboards, poster boards or advertising display or structure of any kind shall be placed or maintained within the subdivision for any purpose whatsoever, except such signs as shall have been approved by the Committee as reasonably necessary for the identification of streets, residences and places of business and location markers.

5. WATER AND SEWAGE

Each structure designed for occupancy or use by humans shall connect with the water and sewerage facilities of the Vail Water and Sanitation District. No private well shall be used as a source of water for human consumption or irrigation in Vail/LionsHead, First Filing, nor shall any facility other than those provided by the Vail Water and Sanitation District be used for

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the disposal of sewage. Mechanical garbage disposal facilities shall be provided in each kitchen or food preparation area.

**6. TRASH AND GARBAGE**

**6.1 Disposal of Trash and Garbage.** No trash, ashes, garbage or rubbish may be thrown or dumped on any land within Vail/LionsHead, First Filing. No burning of trash, garbage or rubbish shall be permitted in Vail/LionsHead, First Filing. No incinerator or other device for the burning of trash, garbage or rubbish indoors shall be constructed, installed or used by any person except as approved by the Committee and the Town of Vail. Each property owner shall provide suitable receptacles for the collection of trash, ashes, garbage or rubbish. Such receptacles shall be screened from public view and protected from disturbance.

**6.2 Definition.** As used in this Section 6, "trash, garbage or rubbish" shall include waste, rejected, valueless or worthless matter, materials and debris, useless, unused, unwanted, or discarded articles from an ordinary household, waste from the preparation, cooking, and consumption of food, market refuse, waste from the handling, storage, preparation or sale of produce, tree branches, twigs, grass, shrub clippings, weeds, leaves, and other general yard and garden waste materials; but shall not include food or food products to be prepared over outdoor or open fires nor wood or other materials used for fuel in fireplaces.

**7. LIVESTOCK**

No animals, livestock, horses or poultry of any kind, except dogs, cats and other household pets, shall be kept, raised or bred in Vail/LionsHead, First Filing, except in areas designated for such purposes by the Committee; provided, however, that nothing herein contained shall be construed to permit the commercial breeding of dogs, cats or other household pets in Vail/LionsHead, First Filing.

**8. TREES**

No trees shall be cut, trimmed or removed in Vail/LionsHead, First Filing, except with prior written approval of the Committee, and all such work shall be performed by persons approved by the Committee or by the Town of Vail.



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9. SET BACK REQUIREMENTS

There shall be no general requirement for the location of improvements within property lines except those shown on the plat of the subdivision or imposed by governmental zoning regulations, but the location of each improvement must be approved in advance by the Committee. In determining the proper location for each improvement, the Committee shall consider the proposed location, the location of existing and projected improvements on adjacent property, the effect upon adjacent property owners of any proposed improvement location, and such other considerations as it may deem appropriate.

10. LANDSCAPING AND GARDENING

All ground surface areas not used as improvement sites but disturbed by construction shall be returned promptly to their natural condition and replanted in native grasses, unless such areas are to be utilized for gardens, lawns, and exterior living areas. Every improved building site within the subdivision shall be landscaped according to a plan approved by the Committee. The landscape plan shall be submitted to the Committee at the time of the submission of construction plans and approval by the Committee of either plan may be denied until both the plans for building construction and landscaping shall have been approved. Easements adjacent to a lot but outside the boundaries thereof may be appropriately landscaped, subject to the provisions of these covenants, by the owner of the lot, but in the event such landscaping is disturbed by use of the easement, the cost and expense of restoring such landscaping shall be solely that of the owner of the lot.

11. AREA REQUIREMENTS

No living unit designed for human use or habitation shall be constructed unless the aggregate floor area, exclusive of open porches, basements, carports and garages, shall comply with applicable governmental zoning requirements and shall have been approved by the Committee. The Committee shall determine from the design of the improvement whether an area which is partially below grade may be used to calculate whether the proposed structure complies with the minimum area requirements. The Committee may, pursuant to these covenants, impose greater minimum floor area requirements than those imposed by zoning regulations and may apply different criteria for determining compliance.

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**12. TRADE NAMES**

No trademark, trade name, trade symbol or combination thereof shall be used on structures, or for businesses or services in Vail/LionsHead, First Filing, unless the same shall have been first approved in writing by the Committee.

**13. TEMPORARY STRUCTURES**

No temporary structure, excavation, basement, trailer or tent shall be permitted in Vail/LionsHead, First Filing, except as may be reasonably necessary during construction and authorized by the Committee.

**14. CONTINUITY OF CONSTRUCTION**

All construction commenced in Vail/LionsHead, First Filing, shall be prosecuted diligently to completion and shall be completed within twelve (12) months of commencement, unless the Owner or the Committee shall, in writing, grant additional time.

**15. NUISANCE**

No noxious or offensive activity shall be carried on within the subdivision nor shall anything be done or permitted which shall constitute a public nuisance in Vail/LionsHead, First Filing.

**16. FENCES**

No fences, walls or other barriers shall be permitted in Vail/LionsHead, First Filing, except with the written consent of the Committee or as otherwise herein expressly permitted.

**17. EFFECT AND DURATION OF COVENANTS**

The conditions, restrictions, stipulations, agreements and covenants contained herein shall be for the benefit of and shall regulate the use of each lot, block and tract in Vail/LionsHead, First Filing, Eagle County, Colorado, and shall be binding upon each owner of property therein, his successors, representatives and assigns. These covenants shall continue in full force and effect until January 1, 1999, at which time they shall be automatically extended for five successive terms of ten years each.

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**18. AMENDMENT**

The conditions, restrictions, stipulations, agreements and covenants contained herein shall not be waived, abandoned, terminated, or amended except by written consent of the owners of 66-2/3% of the surface area within the boundaries of Vail/LionsHead, First Filing, as the same may be then shown by the plat on file in the office of the Clerk and Recorder of Eagle County, Colorado, except that use changes of Tracts A and D shall also require approval of the Board of Trustees of the Town of Vail.

**19. ENFORCEMENT**

**19.1 Procedure for Enforcement.** If any person shall violate or threaten to violate any of the provisions of this instrument, Vail Associates, Inc. or its successors or assigns, or any owner of real property in Vail/LionsHead, First Filing, his agents or employees, may, but without obligation to do so, enforce the provisions of this instrument by:

19.1.1 entering upon the property where the violation or threatened violation exists and removing, remedying and abating the violation; such self-help shall only be exercised after having given fifteen (15) days prior written notice to the owner or owners of the property upon which the violation exists and provided the owner shall have failed within such time to take such action as may be necessary to conform to the covenants; or

19.1.2 instituting such proceedings at law or in equity as may be appropriate to enforce the provisions of this instrument, including a demand for injunctive relief to prevent or remedy the threatened or existing violation of these covenants and for damages.

**19.2 Notice and Service of Process.** Each owner of real property in Vail/LionsHead, First Filing, hereby appoints the Town Clerk of the Town of Vail as his agent to receive any notice provided for herein and to accept service of process in any court proceeding brought to enforce the provisions of this instrument. Any notice required under this Section 19 shall be

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written and shall specify the violation or threatened violation objected to, the property subject to the violation and shall demand compliance with these covenants within fifteen (15) days after the giving of such notice. If after reasonable effort the person giving the notice shall be unable to deliver the same personally to the person to whom it is directed and shall be unable to obtain a return receipt showing delivery of notice to the person to whom it is directed, then the required notice shall be deemed sufficiently given if posted upon the property described in the notice and mailed to the last known address of the person to whom the notice is directed and if also mailed or delivered to the Town Clerk of the Town of Vail as agent of the property owner. Personal service of process upon any person owning land in this subdivision made in accordance with the preceding sentence may be obtained, but only for the enforcement of these covenants, by service of process upon the Town Clerk of the Town of Vail as agent for the said owner, if after reasonable diligence such defendant cannot be found within the State of Colorado and personal service cannot be otherwise obtained under the Colorado Rules of Civil Procedure.

**19.3 No Liability for Damages.** Vail Associates, Inc., or any other person hereby authorized to remove or remedy violations or threatened violations of the provisions of this instrument in accordance with paragraph 19.1.1, shall not be liable to any person for so doing except for any injury or damage resulting from intentionally wrongful acts. Any person acquiring any interest in real property in Vail/LionsHead, First Filing, after the recording of this instrument in the records of the County Clerk and Recorder of Eagle County, Colorado, shall be deemed to have waived any and all rights to or claims for damages or injury resulting from efforts to correct or to prevent any violation or threatened violation of these covenants in accordance with paragraph 19.1.1 above with respect to the real property so acquired.

**19.4 Collection of Costs and Expenses.** Vail Associates, Inc., or any other person or persons proceeding in accordance with paragraph 19.1.1, shall have a claim against the owner or owners of the property with respect to which the violation or threatened violation of these covenants has occurred in an amount equal to the actual costs and expenses, including

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reasonable attorneys' fees, incurred in connection with preventing, removing or remedying such violation or threatened violation. Such claim shall not exceed the amount of Two Thousand Dollars (\$2,000.00) for any one violation or threatened violation of the provisions of this instrument and shall be enforceable through any appropriate court action. Vail Associates, Inc. or any other person or persons bringing a proceeding under paragraph 19.1.2 to enforce any provisions of this instrument shall be entitled to judgment for the actual costs and expenses, including reasonable attorneys' fees, incurred by such person in the prosecution of such proceeding in addition to any other relief granted by the court.

19.5 Waiver. No assent or acquiescence, expressed or implied, to any violation or threatened violation of any of the provisions of this instrument shall be deemed or taken to be a waiver of any succeeding or other violation or threatened violation of these protective covenants.

20. DEFINITION OF PROPERTY OWNER

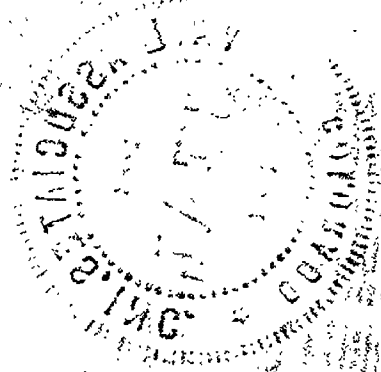
As used in this instrument, the phrases "real property owner" or "owner of real property" shall mean any natural person, partnership, corporation, association or other business entity or relationship which shall own an estate as a co-tenant or otherwise in fee simple or for a term of not less than forty-nine (49) years in any portion of the lands included within the boundaries of Vail/LionsHead, First Filing. Such phrases shall not include within their meaning the holder or owner of any lien or secured interest in lands or improvements thereon within the subdivision, nor any person claiming an easement or right-of-way for utility, transportation or other purpose through, over or across any such lands.

21. SEVERABILITY

A determination of the invalidity of any one or more of the provisions of this instrument by judgment, court order or



113259



STATE OF COLORADO, }  
EAGLE COUNTY. } ss.

I hereby certify that this instrument  
was filed for record in my office the  
18 day of May, 1970 at  
9:05 o'clock A., and is duly recorded  
in Book 217 Page 675

Maxwell R. Bary  
County Clerk and Recorder

By \_\_\_\_\_ Deputy

Fee \$ 21.00