



Saddleback Mountain

DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS

August 30, 2000

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
SADDLEBACK MOUNTAIN
CLEAR CREEK COUNTY, COLORADO,
AS AMENDED AND RE-STATED

THIS RE-STATED DECLARATION, is made on the date herein set forth by Uphill Limited Liability Company, a Colorado Limited Liability Company, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant, and Declarant's successors in interest (Developer, and Saddleback Metropolitan District), are the Owners of certain real property situate in the County of Clear Creek, State of Colorado, which is more particularly described on Exhibit "A" attached hereto and made a part hereof, hereinafter referred to as the "Properties"; and

WHEREAS, Declarant desires to re-state and amend that Declaration of Covenants, Conditions, and Restrictions for Saddleback Mountain Subdivision, recorded at Reception No. 202160 on August 30, 2000, in the records of Clear Creek County, Colorado, to identify the Properties as Saddleback Mountain and as otherwise set forth herein; and

WHEREAS, Declarant desires through this Declaration of Covenants to protect and maintain the Properties platted and known as Saddleback Mountain as a prime residential area of the highest possible quality and value for the purpose of enhancing and protecting the value, desirability, and attractiveness of Saddleback Mountain.

NOW, THEREFORE, Declarant hereby declares that all of the Properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of the Properties and which shall run with the land and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

Section 1. Association. "Association" shall mean and refer to Saddleback Mountain Property Owners Association, a Colorado non-profit corporation, its successors and assigns.

Section 2. Board. "Board" shall mean and refer to the Board of Directors of the Association.

Section 3. Common Area. All real and personal property which the Saddleback Mountain Property Owners Association owns, leases or otherwise

holds possessory or use rights in for the common use and enjoyment of the Owners.

Section 4. Declarant. "Declarant" shall mean and refer to Uphill Limited Liability Company, its successors and assigns.

Section 5. Developer. "Developer" shall mean and refer to Saddleback Mountain Development Corporation, its successors and assigns.

Section 6. FHA. "FHA" shall mean the Federal Housing Administration of the United States Department of Housing and Urban Development, including such department or agency of the United States government as shall succeed to the FHA in insuring notes secured by mortgages and deeds of trust on residential real estate.

Section 7. FHLMC. "FHLMC" shall mean the Federal Home Loan Mortgage Corporation, the Mortgage Corporation created by Title III of the Emergency Home Finance Act of 1970, including any successor thereto.

Section 8. FNMA. "FNMA" shall mean the Federal National Mortgage Association, a government-sponsored private corporation established as such pursuant to Title VIII of the Housing and Urban Development Act of 1968, including any successor thereto.

Section 9. First Mortgage. "First Mortgage" shall mean and refer a purchase money Mortgage having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad

valorem tax liens and special assessments).

Section 10. First Mortgagee. "First Mortgagee" shall mean and refer to the Mortgagee under a First Mortgage.

Section 11. GNMA. "GNMA" shall mean the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, including any successor thereto.

Section 12. Government Mortgage Agencies. "Government Mortgage Agencies" shall mean the FHA, the VA, the FHLMC, the GNMA, the FNMA, or any similar entity, public or private, authorized, approved or sponsored by any governmental agency to insure, guarantee, make or purchase Mortgage loans.

Section 13. Lot. "Lot" shall mean and refer to any numbered plot of land shown upon any recorded subdivision map of the Properties.

Section 14. Member. "Member" shall mean and refer to those persons entitled to membership in the Association as provided in this Declaration.

Section 15. Mortgage. "Mortgage" shall mean and refer to any mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of Clear Creek County, Colorado, and by which a Lot or any part thereof is encumbered.

Section 16. Mortgagee. "Mortgagee" shall mean and refer to any person named as a mortgagee or beneficiary under any Mortgage under which the interest of an Owner is encumbered, or any successor to the interest of any such

person under such mortgage.

Section 17. Owner. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 18. Properties. "Properties" shall mean and refer to that certain real property described in Exhibit "A" attached hereto, and such additional property as may hereafter be made subject to the terms of this Declaration.

Section 19. Saddleback Metropolitan District. "Saddleback Metropolitan District" shall mean a local government subdivision formed according to the laws of the State of Colorado.

Section 20. VA. "VA" shall mean the Veterans Administration of the United States of America, including such department or agency of the United States government as shall succeed to the VA in its present function of issuing guarantees with respect to notes secured by mortgages on residential real estate.

ARTICLE II

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, Developer and the Saddleback Metropolitan District, and shall be entitled to one vote for each Lot owner. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B members shall be the Declarant and the Developer, who shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total outstanding votes of the Class A membership equal or exceed the total outstanding votes of the Class B membership, or

(b) on December 31, 2010.

ARTICLE III

ARCHITECTURAL CONTROL

Section 1. Architectural Approval. No building, fence, wall, other structure, or other improvement shall be commenced, erected, installed, constructed or maintained upon the Properties, (including staking, clearing, excavation, grading and other site work, or planting or removal of landscape

materials), nor shall any exterior addition to or change or alteration therein be made until plans and specifications showing the nature, kind, shape, heights, color, size, materials, and location of the same have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Review Committee established herein. The Architectural Review Committee initially shall consist of 3 members designated by Declarant and the Developer. Three years after Developer's final sale of Lots within the Properties, Declarant and Developer shall appoint 3 persons who are Owners of Lots within the Properties as the Architectural Review Committee. The members of the Architectural Review Committee shall thereafter be appointed by the Association under such rules as it shall adopt for such purpose.

The Architectural Review Committee shall be responsible for reviewing and approving all improvements, construction, landscaping, or other submissions required by the provisions of these covenants. In addition, the Architectural Review Committee shall have absolute and total design control over the Properties. In addition to the express provisions of these covenants, the Architectural Review Committee shall exercise its best judgment in reviewing all proposed improvements and changes, as set forth herein, with the end purpose of maintaining the highest standards of residential living. In the event the Architectural Review Committee fails to approve plans and specifications submitted by an Owner or disapprove the same within sixty (60) days after said plans and specifications have been submitted

to it, such plans and specifications will be deemed to be approved. The Architectural Review Committee may from time to time promulgate and approve Design Standards, and amend and modify the same, provided said Standards and amendments shall apply only to structures or improvements constructed subsequent to the adoption of said Standards. Said Standards may include a fee structure to defray expenses incurred by the Architectural Review Committee.

No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval by the Architectural Review Committee, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

Architectural Limitation of Liability. Neither Declarant, Developer, the Association, or the Architectural Review Committee shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Developer, the Association, the Architectural Review Committee, or any member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modification to any Lots.

Section 2. Contractor Suitability. The Architectural Review

Committee shall have the right to disapprove the choice by an Owner of any construction contractor (including the Owner) for the construction of any building, house, outbuilding, treehouse, playhouse, pen, doghouse and dogruns, tennis court, basketball backboard, porch, patio, gazebo, excavation, landscaping, pit, cave, tunnel, bridge, fence, wall, or any other construction or improvement of any kind on any Lot. The grounds for such disapproval shall be any one or all of the following: (1) a reasonable belief that the contractor is not financially responsible, (2) non-conformance by the contractor with approved plans when previously undertaking construction work on a Lot, or (3) a reasonable belief based on prior undertakings of the contractor that the contractor cannot complete construction in accordance with the standards set by the Architectural Review Committee. This Declaration establishes no duty upon Declarant or the Architectural Review Committee to investigate the financial responsibility of any contractor or the performance by any contractor of construction work. This Declaration vests no right in any Owner, any contractor, or any other third party nor shall any such party have any claim or cause of action, against Declarant, Developer or the Architectural Review Committee, with respect to approval or disapproval of construction contractors.

Section 3. Approval of Contractor and Inspection of Construction. No

Owner shall commence construction or improvement of any building, house, outbuilding, treehouse, playhouse, pen, doghouse or dogruns, tennis court, basketball backboard, porch, patio, gazebo, excavation, landscaping, garden, pit,

cave, tunnel, bridge, fence, wall, or any other improvement or structure of any kind to be placed on any Lot until the Owner shall obtain a building permit, if necessary, from Clear Creek County, Colorado, or from any governmental subdivision having jurisdiction over building permits for the Properties, the approved building permit and the plans and specifications have been submitted to and approved by the Architectural Review Committee and the Architectural Review Committee has approved the contractor suitability as specified in Section 2, above.

Section 4. Utilities. The Architectural Review Committee must approve all utility connections to Lots on the Properties and improvements thereon prior to installation, subject to the same criteria provided for elsewhere in this Article.

Section 5. Restoration of Lots. Upon completion of any improvement or construction on any Lot, the Owner shall promptly restore the Lot to the condition which existed prior to such construction to the greatest extent possible (taking into account such construction) so that the Lot and improvements shall be in harmony with the surrounding area. If a certificate of occupancy is issued or actual occupancy of any Lot occurs prior to September 15 of any calendar year, the Owner must complete said restoration within 45 days following the date of the issuance of the certificate of occupancy or actual occupancy of the Lot. If a certificate of occupancy is issued or actual occupancy of any Lot occurs after September 15 of any calendar year, the Owner must complete the restoration of said Lot on or before July 31 of the following year. In the event restoration is not completed within the applicable time period, Declarant may complete said

restoration at the expense of the Owner. This covenant contained in Section 5 is a covenant running with the land between each Owner and Declarant and, notwithstanding any other provision hereof, may be enforced only by Declarant, the Association or their successors and assigns.

ARTICLE IV

EXTERIOR MAINTENANCE ON LOTS

Each Lot Owner shall provide exterior maintenance upon each Lot owned which is subject hereto, including but not limited to paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements.

In the event that said maintenance is not performed by the Owner of the Lot needing such maintenance or repair, such exterior maintenance may be provided by the Architectural Review Committee, or the Association, and for this purpose the Architectural Review Committee or its agent may enter upon the Lot at any time during reasonable business hours to carry out such maintenance, at the Owner's cost and expense. An Owner shall be entitled to thirty (30) days written notice prior to such action by the Architectural Review Committee.

ARTICLE V

USE RESTRICTIONS

Section 1. The use of the Properties, Lots, and all improvements thereon shall be subject to the restrictions hereinafter set forth.

Section 2. Use of the Properties shall be limited to single-family residential use and open space. Residential dwellings and related improvements shall be constructed only within the buildable envelope for each Lot. Fences may be constructed only within the buildable envelope for each Lot. Each residential dwelling constructed on any Lot shall contain a minimum of 2000 square feet of fully enclosed living space.

Section 3. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that a maximum of three (3) dogs and/or three (3) cats, or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose, and the Owner complies with all Clear Creek County ordinances and regulations. All household pets shall be controlled by their Owner and shall not be allowed off of the Owner's lot except when properly leashed and controlled, and accompanied by the pet Owner or his representative. Each Owner of a household pet shall be financially responsible or liable for any damages caused by said household pet. All dogs shall be confined by fencing of adequate height and design to preclude their escape from the fenced area. Dogs left unattended or outdoors overnight shall be confined in a fully

enclosed kennel or run to protect pets from predatory wildlife. All fencing shall be within the buildable envelope for each lot. The maximum size of the kennel or run shall not exceed one-half of the length and one-half of the depth of the buildable envelope, shall not exceed six feet in height and shall be sized appropriately for the number and type of dog(s).

Since wildlife visitation naturally occurs nearly anywhere in the Clear Creek County, it is the Owner's responsibility to ensure that wildlife is not harmed or harassed by pets.

Section 4. No capturing, trapping or killing of wildlife shall be permitted within the properties, except in accordance with statutes and regulations promulgated by the Colorado Division of Wildlife and in conformity with any safety restrictions that may be promulgated by the Saddleback Metropolitan District. No activities shall be permitted within the Properties which disturb wildlife or vegetation, or which degrades air quality, or which constitutes noise or light pollution. Feeding of wildlife shall be prohibited within the properties, except that hummingbird feeders and bird feeders are permitted. Where feeders are desired, it is recommended that the location is such that they are not readily accessible to non-targeted wildlife species such as bears (e.g., not directly attached to the house or easily accessible from ground or adjacent trees).

Section 5. No advertising sign (except one of not more than five square feet containing the words "For Sale" or "For Rent", unless said sign is

disallowed by the Association), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on any Lot or be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any other Lot. Declarant and Developer shall be exempt from these sign provisions until all Lots are sold.

Section 6. All equipment, garbage cans, service yards, wood piles or storage piles shall be stored so as to conceal them from view of neighboring Lots and streets. All rubbish, trash or garbage shall be regularly removed and shall not be allowed to accumulate on any Lot.

Section 7. No boat, camper, trailer, truck, motorcycle, disabled, junk or abandoned vehicle, recreational vehicle, or any other vehicle the primary purpose of which is recreational, sporting or commercial use shall be parked for more than three (3) consecutive days or stored in, on or about any Lot or streets within the Properties, except within a Lot Owner's attached garage. The Association shall have the right to enter an Owner's Lot to remove and store at Owner's expense vehicles in violation of this Section. An Owner shall be entitled to thirty (30) days written notice prior to such action by the Association.

Section 8. No Lot shall be used as storage or work space for the rebuilding of any motor vehicles or for the storage of explosives, gasoline or other volatile and/or incineratory materials or devices. Gasoline or fuel for an Owners' lawn mower, snowblower and the like may be maintained on an incidental basis on

a Lot in an amount not to exceed two and one-half gallons. Other than for short-term guests or agents of Owner, no more than three (3) vehicles shall be kept on any Lot. Owners shall be entitled to park not more than two vehicles regularly in areas of the Owner's Lot other than garage areas. Garage doors shall remain closed when not in use for ingress or egress of said vehicles or the occupants of said Lot.

Section 9. No exterior television, radio antennas or satellite dishes of any sort shall be placed, allowed or maintained upon any portion of any Lot except as may be approved by the Architectural Review Committee.

Section 10. No noxious or offensive activity shall be carried on upon any Lot or any portion of the Properties nor shall anything be done thereon which may be or become an annoyance or nuisance to other Owners including, without limitation, noxious fumes, smoke, excessive or continuing loud noises, interference with radio or television reception or excessive draining of water or other effluent onto any adjoining Lot. **The use of phosphorous detergents other than low phosphorous detergents shall be prohibited on the Properties.**

Section 11. No further subdivision or resubdivision of any Lot or combination of Lots subject to these Covenants shall be permitted, except by Declarant or Developer during the period of Class B membership.

Section 12. Easements and rights of way as described on the recorded plat of the Properties or in any easement agreement are reserved for

poles, wires, pipes, and conduits for electricity, cable T.V., gas, telephone, sewer, drainage water, sidewalks and pedestrian trails, snow removal, erosion control, reservoirs, water facilities or any other utility purposes, together with the right of ingress and egress for further construction, maintenance and repair thereof along the side, front, and rear Lot lines of each Lot on the said plat, and as otherwise shown and described therein. No dwelling, improvements, materials, equipment, shrubbery, trees, plantings, or refuse shall be placed on any part of any Lot within the area of the easements or right-of-way reserved without the Architectural Review Committee's written approval. No buildings, fences, or structures of any type shall be built over, across, along the line of, or in such a manner as to include such easements within any Lot or Lots without express Architectural Review Committee approval, but such easements shall remain open and readily accessible for service and maintenance of utility and drainage facilities and other uses of such easements as are reserved in this covenant. Any such improvements constructed in areas covered by easements may be removed by the Architectural Review Committee without compensation to the Owner.

Section 13. No structure of a temporary character, or any trailer, tent, garage, or accessory building shall be placed on any Lot and used as a residence either temporarily or permanently, and no used structure of any sort shall be moved onto any Lot. In no event shall trailers of any type be kept on any Lot unless such trailers are kept in an enclosed garage. The foregoing covenant shall

not apply to Declarant, Developer or their agents' real estate sales office, or to any construction trailer owned or used by Declarant or Developer or their agents in the activities conducted in connection with Lot sales and/or construction activity contractors, builders, or similar parties may place temporary structures on a lot subject to approval by the Architectural Review Committee.

Section 14. Pursuant to the requirements of the Augmentation Plan decree in Case #W-9483-78, Water Div. No. 1, use of water within the District shall be limited to domestic use only, with irrigation use prohibited.

Section 15. No Owner shall store more than one (1) face cord of wood on any Lot unless stored in an approved, enclosed structure on the premises.

Section 16. All roofing materials used for buildings constructed within the Properties shall be in conformity with the regulations for fire retardant roofing materials as prescribed by the Clear Creek Fire Authority of Clear Creek County, Colorado.

Section 17. The use of any open space land within the Properties by any Owner or their guests shall be in strict conformity with the Rules and Regulations for the use of said open space promulgated by the Saddleback Metropolitan District.

Section 18. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Properties, all property lines shall be kept free and open one to another and no fences or plantings simulating

fencing shall be permitted on any Lot or Lot lines, except where, in the opinion of the Architectural Review Committee, a fence or other enclosure, as a structure or aesthetic feature of a design concept, will contribute to and be in keeping with the character of the area. **Any fence, or combination of fences (including gates) over 500 feet in total perimeter length shall be limited to a maximum height of forty-two inches; shall be of a see-through design, permitting wildlife to easily see what is on the other side and to allow for wildlife migration; and shall be of materials and design unlikely to cause injury to wildlife.**

Section 19. Landscaping and Maintenance.

a) Owners of Lots within the Properties are encouraged to landscape their Lots using indigenous species. Lawn space shall be minimized. In accordance with current well permit restrictions no outdoor watering of vegetation is permitted. The Architectural Review Committee shall retain the right to require that new plantings of trees or shrubs on a Lot be located or trimmed so as to preserve or enhance the view from other Lots within the immediate vicinity. Each Owner shall be responsible for defensible space thinning of vegetation around the Owner's residence for fire mitigation purposes.

b) No Lot shall be used or maintained as a dumping ground for rubbish. No garbage or trash or other waste shall be placed anywhere other than in covered sanitary containers maintained in good and clean condition, and which shall be stored inside the residential dwelling or garage on any Lot. Containers shall be made of a material which will minimize noise during handling. No waste shall be burned upon any Lot. All garbage and trash collection and disposal shall be in strict compliance with the rules of the Architectural Review Committee. All garbage and trash must be stored indoors until the morning of actual pickup. If outdoor storage is acceptable by the Architectural Review Committee, it shall be limited to only animal-proof trash storage containers.

c) No exterior fires shall be permitted except for barbecue fires contained within receptacles designed for that use. No coal or other type of fuel which gives off smoke, excepting wood and charcoal, shall be used for heating, cooking or any other purpose unless approved by the Architectural Review Committee.

d) All Lots and all improvements thereon shall be maintained at all times by the Owner in good condition and repair. The Owner shall cause all dwellings and other improvements to be refinished, resurfaced or repaired periodically as effects of damage, deterioration or weather become apparent. Appearance, color, type of painting or stain and other exterior conditions shall not be changed without prior approval of the Architectural Review Committee. All appropriate repairs and replacements shall be made as often as necessary. Unsightly conditions shall constitute a nuisance as defined in Section 10 of this Article.

e) Each Lot Owner shall maintain the landscaping upon his Lot as approved by the Architectural Review Committee in good condition. An Owner shall remove weeds and diseased or dead trees, shall trim trees and shrubs as often as the same shall become necessary, and shall remove standing water from his Lot.

Section 20. In the event of any conflict between the use restrictions set forth in this Article and any use restriction or regulation of any applicable governmental agency having jurisdiction over the Properties, the more stringent use restrictions will control. Nothing set forth in this Declaration shall be deemed to modify the plat for Saddleback Mountain as recorded in Book 601, at Page 328, Reception No. 202150, Clear Creek County records. In the event of any conflict between the terms hereof and the terms of said plat, the plat shall be deemed controlling, to the extent said plat is more stringent.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Enforcement. The Architectural Review Committee, the Association, any Owner, the Saddleback Metropolitan District, or the County of Clear Creek, Colorado, shall have the right to enforce, by any proceeding at law or in equity to include the remedies of damages and for injunctive relief, all restrictions, conditions, covenants, reservations, liens or charges now or hereinafter imposed by the provisions of this Declaration. Failure by the Architectural Review Committee, the Saddleback Metropolitan District, the County of Clear Creek, or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no manner affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period upon the affirmative vote of not less than seventy-five percent (75%) of the Class A and B members in the aggregate of the Association, and thereafter upon the affirmative vote of not less than sixty-six and two-thirds percent (66⅔%) of the Lot Owners. Any amendment must be recorded in Clear Creek County.

Section 4. Title. Title to a Lot may be held or owned by any person or persons and any entity or entities and in any manner in which title to real property may be held or owned in the State of Colorado.

Section 5. Access to Lots and Improvements for Maintenance, Repair and Emergencies. The Architectural Review Committee or the Declarant shall have the irrevocable right to have access to each Lot and any house or other improvement thereon from time to time during reasonable hours and upon reasonable prior notice to the Owner as may necessary for the maintenance, repair, or replacement thereof. Such right of access shall be immediate for the making of emergency repairs to prevent property damage or personal injury.

Section 6. Notice. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage pre-paid, to the last known address of the person who appears as Owner on the records of the Association and to the address of the Owner's Lot.

Section 7. Annexation of Additional Property. Until December 31, 2010, Declarant may from time to time unilaterally, subject to the provisions of this Declaration annex additional properties owned by Declarant, including but not limited to all or any portion of the real property described in Exhibit "B." Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Annexation shall be accomplished by filing a Supplemental Declaration annexing such property in the public records of Clear Creek County, Colorado. A Supplemental Declaration annexing property shall not require the consent of the Class "A" Members of the Association, but it shall require the consent of the owner of such property, if other than Declarant. Any other person and/or entity with a property interest in any real property submitted to this Declaration shall not be a "Declarant" unless designated as Declarant in a recorded instrument signed by the preceding Declarant. Any annexation shall be effective upon the filing of record a Supplemental Declaration unless otherwise provided therein. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the property set forth in Exhibit "B" in any manner whatsoever.

Section 8. Costs and Attorney's Fees. The Association, Architectural Review Committee or any Owner enforcing any provision hereof shall be entitled to recover all costs and reasonable attorney's fees and expenses from the opposing party for the enforcement of any provision provided for herein.

ARTICLE VII

EASEMENTS

Each Lot shall be subject to an easement for encroachments created by construction, settling, overhangs, and/or ice, snow and water buildup or runoff as designed or constructed. A valid easement for said encroachments and for maintenance of same, so long as it stands, shall and does exist. In the event a building or improvement is partially or totally destroyed and then rebuilt, the Owners of the Lots so affected agree that minor encroachments of parts of the

adjacent buildings or improvements due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

ARTICLE VIII

FNMA AND FHLMC REQUIREMENTS

(The following requirements shall apply to any FNMA/FHLMC underwriting of the subject Properties).

Section 1. The Association, upon request of any First Mortgagee, (which for this purpose includes the beneficiary of any first deed of trust) will give any such Mortgagee written notification of any default in the performance by any borrower of any obligation under the Declaration, the Articles of Incorporation of Saddleback Mountain Property Owners Association, or the By-Laws, which default is not cured within sixty (60) days after the same shall occur. Such written notification shall be sent to such address as the Mortgagee may request.

Section 2. The Association shall make available to Owners and to holders, insurers or guarantors of any First Mortgage, current copies of the Declaration, By-Laws, other rules concerning the Properties and the books, records and financial statements of the Association, within a reasonable time following a request for the same. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

Section 3. Any holder, insurer or guarantor of a First Mortgage shall be entitled, upon written request, to an audited financial statement of the Association for the immediately preceding fiscal year, free of charge to the party so requesting within a reasonable time following such request.

Section 4. A lien for assessments shall not be affected by any sale or transfer of a Lot, except that a sale or transfer pursuant to a foreclosure of a First Mortgage shall extinguish the lien for assessments which became payable prior to such sale or transfer. However, any such delinquent assessments which were extinguished pursuant to the foregoing provisions may be relocated and assessed to all Lots as a common expense. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a Lot from liability for, nor the Lot from the lien of, any assessments made thereafter.

Section 5. Any First Mortgagee who obtains title to a Lot pursuant to the remedies provided in the deed of trust or mortgage or foreclosure of the deed of trust or mortgage or by deed in lieu of foreclosure will not be liable for any unpaid assessments, dues or charges which accrue prior to the acquisition of title to such Lot by the Mortgagee.

Section 6. Unless at least seventy-five percent (75%) of the First Mortgagees (based upon one vote for each first mortgage owned) and Owners (other than the Declarant) of the individual Lots in Saddleback Mountain shall have given their prior written approval, the Association shall not be entitled to:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer Saddleback Common Areas. The granting of easements for public utilities or for other public purposes consistent with the intended use of The Saddleback Common Areas shall not be deemed a transfer within the meaning of this clause;

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against any Lot or Owner;

(c) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or exterior appearance of improvements constructed upon Lots, the maintenance of Saddleback Common Areas, party walls or common fences and driveways, or the upkeep of lawns and plantings in the Properties;

(d) fail to maintain fire and extended coverage on insurable Saddleback Common Areas on a current replacement cost basis in an amount not less than 100% of the insurable value (based on current replacement cost); and

(e) use hazard insurance proceeds for losses to any Saddleback Common Areas for other than the repair, replacement, or reconstruction of such Saddleback Common Areas.

Section 7. First Mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Saddleback Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Saddleback Common Areas and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. This provision constitutes an agreement with each First Mortgagee, its successors and assigns, that any such mortgagee or mortgagees is entitled to such reimbursement.

Section 8. At each annual meeting, the Board of Directors of the Association shall estimate the amount necessary to provide an adequate reserve fund for maintenance, repair, or replacement of those facilities placed on a periodic basis and shall provide that such amount shall be payable as a part of the regular annual assessments. The Board of Directors shall include as a part of the regular

annual assessments an amount sufficient to pay expense of: (a) fire and extended period insurance coverage on the structures and exterior of the buildings owned by the Association for their full replacement value; and (b) general liability insurance coverage on Saddleback Common Areas in such amount as the Board of Directors shall deem reasonable and prudent.

Section 9. In the event of damage or destruction to Saddleback Common Areas or if all or any part thereof shall be taken by exercise of eminent domain the proceeds of any condemnation award shall be applied to the repair or replacement of the damaged, destroyed, or condemned Saddleback Common Areas or distributed for the payment of general (ad valorem) property taxes, if any, as the Board of Directors may determine. Thereafter, any such funds shall be applied as all First Mortgagees shall agree.

Section 10. In addition to the requirements of this Declaration, any agreement for professional management of the Association or any other contract providing for services by Declarant must provide for termination by either party without cause or payment of termination fee upon not more than ninety (90) days prior written notice, and any such contract shall have a maximum term of three (3) years.

Section 11. No Lot may be leased or rented for a period of less than 30 days.

Section 12. Rights of First Mortgage Holders, Insurers or Guarantors:

a. Notice of Action: Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any such First Mortgage holder, insurer or guarantor

will be entitled to timely written notice of:

i. Any condemnation loss or any casualty loss which affects a material portion of the Properties or any Lot on which there is a First Mortgage held, insured, or guaranteed by a Government Mortgage Agency;

ii. Any delinquency in the payment of assessments or charges owed by the Owner of a Lot subject to a First Mortgage held, insured or guaranteed by a Government Mortgage Agency, which remains uncured for a period of sixty (60) days;

iii. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

b. Other Provisions for First Mortgage Holders: First Mortgage holders, insurers and guarantors shall also be afforded the following rights:

i. Any restoration or repair of the Properties, after a partial condemnation or damages due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original plans and specifications, unless other action is approved by First Mortgage holders holding First Mortgages on Lots which have at least 75 percent of the votes of Lots subject to First Mortgages.

ii. Any election to terminate the legal status of the Properties after substantial destruction or a substantial taking in condemnation of the Properties must require the approval of First Mortgages holders holding First Mortgages on Lots which have at least 75 percent of the votes of Lots subject to First Mortgages.

iii. Unless the formula for reallocation of interests in the Common Areas after a partial condemnation or partial destruction of the project is fixed in advance by the constituent documents or by applicable law, no reallocation or interests in the Common Areas resulting from a partial condemnation or partial destruction may be effected without the prior approval of First Mortgage holders holding First Mortgages on all remaining Lots whether existing in whole or in part, and which have at least 75 percent of the votes of such remaining Lots subject to First Mortgages.

iv. When professional management has been previously required by any First Mortgage holder, insurer or guarantor, whether such entity became a First Mortgage holder, insurer, or guarantor at that time or later, any decision to establish self management by the

Association shall require the prior consent of Owners of Lots to which at least 67 percent of the votes in the Association are allocated and the approval of First Mortgage holders holding mortgages on Lots which have at least 75 percent of the votes of Lots subject to First Mortgages.

c. Amendment to Documents: The following provisions do not apply to amendments to the constituent documents or termination of the Association made as a result of destruction, damage or condemnation described above, or to a reallocation of interests in the Common Areas which might occur pursuant to any plan of expansion or phased development contained in the original constituent documents.

i. The consent of the owners of Lots to which at least 75 percent of the votes in the Association are allocated and the approval of First Mortgage holders holding mortgages on Lots which have at least 75 percent of the votes of Lots subject to First Mortgages, shall be required to add or amend any material provisions of the constituent documents for the Properties which establish, provide for, govern or regulate any of the following:

- Voting;
- Assessments, assessment liens or subordination of such liens;
- Reserves for maintenance, repair and replacement of the Common Areas (or Lots if applicable);
- Insurance or Fidelity Bonds;
- Responsibility for maintenance and repair of the several portions of the Properties;
- The interests in the general Common Area;
- Leasing of Lots;
- Imposition of any right of first refusal or similar restriction on the right of a Lot Owner to sell transfer, or otherwise convey his or her Lot;
- Any provisions which are for the express benefit of First Mortgage holders, or any Governmental Mortgage Agency.

II. An addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. A First Mortgage holder who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within 30 days shall be deemed to have approved such request.

ARTICLE IX

COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association; (1) annual assessment charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment was made. The personal obligation for the payment of delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used to promote the health, safety, and welfare of the residents of the Properties, for the improvement and maintenance of the Common Areas, and other related purposes approved by the Board of Directors.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$20.00 per Lot per month.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 8% above the maximum assessment for the previous year without a two-thirds (2/3rds) vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 8% by a vote of two-thirds (2/3rds) of the members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessment each year, a special assessment applicable to that year only may be assessed for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of capital improvements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent to two-thirds (2/3rds) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice of Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the same subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots. **Six months subsequent to the recordation hereof, the Developer shall commence to pay minimally one-third (1/3rd) of the assessment applicable to each Lot unimproved or improved and unoccupied to which the Declarant retains ownership.** In the event that assessed fees collected for the Association fail to adequately meet Association expenses (because of the partial exemption of the Declarant-held property), then the Developer shall pay sufficient funds up to the full assessed share applicable to such Lot or Lots, as necessary to meet the shortfall.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot by Declarant or Developer to an Owner. The first annual assessment shall be adjusted to the

number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid. A property executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 12 percent per annum. The Association may bring an action of law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any purchase money First Mortgage of record (including deed of trust) and to any executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether such contract is recorded or not. Sale or transfer of any Lot shall not affect the lien for said assessment charges except

that sale or transfer of any Lot pursuant to foreclosure of any such mortgage or any such executory land contract, or any proceeding in lieu thereof, including a deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract shall extinguish the lien of assessment charges which became due prior to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture of any such executory land sales contract shall relieve any Lot from liability for any assessment charges thereafter becoming due, nor from the lien thereof.

Section 10. Exempt Property. All properties dedicated to, and accepted by, a subdivision of local government and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Colorado shall be exempt from the assessment created herein, except no land or improvements devoted to dwelling use shall be exempt from said assessment.

ARTICLE X

CONDEMNATION

[NOTE: No Common Areas currently exist on the subject Properties, however, the following provisions shall apply to any future Common Areas, as applicable].

If at any time or times during the continuance of ownership pursuant to this Declaration any Common Area shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the

following provisions of this Article shall apply:

Section 1. All compensation, damages or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award" shall be payable to the Association.

Section 2. In the event of complete taking:

a. of all the Common Areas, or if all of the Common Areas are sold or otherwise disposed of in lieu of or in avoidance thereof, the Condemnation Award shall be apportioned among the Owners equally and payment of said apportioned amounts shall be payable to the Owner and the First Mortgagee of any Lot jointly.

b. on the basis of the principal set forth in the last preceding paragraph, the Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled.

Section 3. In the event that less than the entire Common Areas are taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Condemnation Award shall first be applied by the Association to the rebuilding or replacement of those improvements on the Common Areas damaged or taken by the condemning public authority, unless two-thirds (2/3rds) of the members and all of the First Mortgagees of each Lot agree otherwise.

IN WITNESS WHEREOF, the undersigned being the Declarant, Developer and Saddleback Metropolitan District, herein have hereunto set their hands and seals this 15th day of October, 2002.

Declarant (and Owner of Lots 43 thru 86 inclusive, plat of Saddleback Mountain):

UPHILL LIMITED LIABILITY COMPANY, a Colorado Limited Liability Company

By: Stephen A. Hellerstein, Trustee
Stephen A. Hellerstein, Trustee, Manager

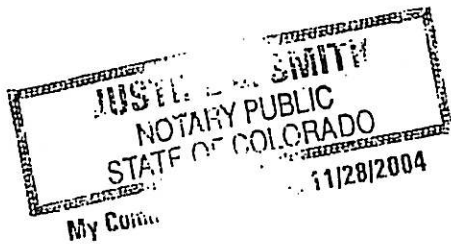
STATE OF COLORADO)
COUNTY OF Denver)ss.

Subscribed and sworn to before me this 11th day of October, 2002, by Stephen A. Hellerstein, Trustee, Manager of Uphill Limited Liability Company, a Colorado Limited Liability Company.

Witness my hand and official seal.

My commission expires:

Justin C. Smith
Notary Public



Developer (Owner of Lots 1 thru 42 inclusive,
plat of Saddleback Mountain):

SADDLEBACK MOUNTAIN DEVELOPMENT
CORPORATION, a Colorado Corporation

By: James E. Hosch
James E. Hosch, President

STATE OF COLORADO)
)ss.
COUNTY OF Jefferson)

Subscribed and sworn to before me this 15th day of October, 2002,
by James E. Hosch, President of Saddleback Mountain Development Corporation, a
Colorado Corporation.

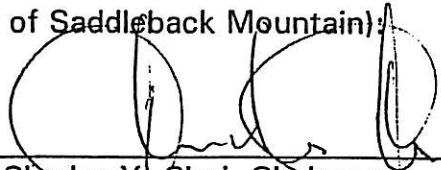
Witness my hand and official seal.

My commission expires: 7/20/05



Michelle R. Cowling
Notary Public

SADDLEBACK METROPOLITAN DISTRICT
(Owner of Tracts A, B, C and D - Open Space,
plat of Saddleback Mountain)


By: Charles Y. Choi, Chairman

Attest:


James E. Hosch, Secretary

STATE OF COLORADO)
)ss.
COUNTY OF Jefferson)

Subscribed and sworn to before me this 15th day of October, 2002,
by Charles Y. Choi, Chairman, Saddleback Metropolitan District.

Witness my hand and official seal.
My commission expires: 7/20/05





Notary Public

STATE OF COLORADO)
)ss.
COUNTY OF Jefferson)

Subscribed and sworn to before me this 15th day of October, 2002,
by James E. Hosch, Secretary, Saddleback Metropolitan District.

Witness my hand and official seal.
My commission expires: 7/20/05




Notary Public

Approved and Consented to

by Mortgagee:

UPHILL LIMITED LIABILITY COMPANY, a
Colorado Limited Liability Company

By: Stephen A. Hellerstein, Trustee
Stephen A. Hellerstein, Trustee, Manager

STATE OF COLORADO.

COUNTY OF

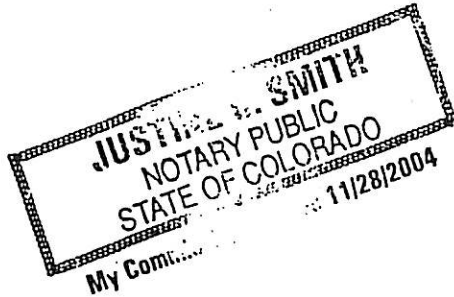
Denver

)
)ss.
)

Subscribed and sworn to before me this 11th day of October,
2002, by Stephen A. Hellerstein, Trustee, Manager of Uphill Limited Liability
Company, a Colorado Limited Liability Company.

Witness my hand and official seal.
My commission expires:

Justice C. Smith
Notary Public



Approved and Consented to

by Mortgagee:

THE BANK OF CHERRY CREEK, A BRANCH
OF WESTERN NATIONAL BANK, NA
(as Trustee of the Saddleback Mountain
Lending Trust)

By: Brian Quintana
Brian Quintana, Trust Officer

STATE OF COLORADO)
)ss.
COUNTY OF Denver)

Subscribed and sworn to before me this 16th day of October,
2002, by Brian Quintana, Trust Officer, The Bank of Cherry Creek, as Trustee.

Witness my hand and official seal.
My commission expires: 7/18/05

Notary Public
LORI J. HENDERSON
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires July 18, 2005
Lori J. Henderson

Approved and Consented to

by Mortgagee:

THE BANK OF CHERRY CREEK, A BRANCH
OF WESTERN NATIONAL BANK, NA
(as Trustee of the Saddleback Mountain Public
Facilities Authority, a Colorado nonprofit
corporation)

By: Brian Quintana
Brian Quintana, Trust Officer

STATE OF COLORADO)
)ss.
COUNTY OF Denver)

Subscribed and sworn to before me this 16th day of October,
2002, by Brian Quintana, Trust Officer, The Bank of Cherry Creek, as Trustee.

Witness my hand and official seal.
My commission expires: 7/18/05

LORI J. HENDERSON
NOTARY PUBLIC
Notary Public OF COLORADO
My Commission Expires July 18, 2005
Lori J. Henderson

LEGAL DESCRIPTION

Saddleback Mountain, a Subdivision as shown on the Plat, recorded in Plat Book 601, at Pages 328 to 335 inclusive, at Reception No. 202150 on August 30, 2000, of the records of the Clerk and Recorder of Clear Creek County, State of Colorado.

SADDLEBACK METROPOLITAN DISTRICT

DESCRIPTIONS

PART D - RESIDUAL SADDLEBACK PROPERTY (NOT PART OF INITIAL SUBDIVISION)

PARCEL NO. 1

That portion of Government Lot 1 not lying within Platted Saddleback Ridge Estates, Filing No. 4 and Saddleback Ridge Estates Filing No. 4, Amended, in Section 4, Township 4 South, Range 72 West of the 6th P.M., in Clear Creek County, Colorado.

PARCEL NO. 2

The Southeast Quarter (SE1/4) of Section 33, Township 3 south, Range 72 West of the 6th P.M., in Clear Creek County, Colorado, EXCEPT Right-of-Way for Interstate Highway No. I-70 described in Rule and Order recorded July 23, 1959 in Book 264 at Page 216.

PARCEL NO. 3

Those portions of Government Lots 2, 3 and 6, not lying within Platted Saddleback Ridge Estates Filing No. 4, Amended; and that portion of the Southwest Quarter (SW1/4) lying westerly of a line from the Northeast Corner of said Southwest Quarter (SW1/4) Southwesterly to a point on the South line of said Southwest Quarter (SW1/4), said point being 1400 feet west of the Southeast Corner of said Southwest Quarter (SW1/4), all in Section 4, Township 4 South, Range 72 West of the 6th P.M., in Clear Creek County, Colorado.

PARCEL NO. 4

The East Half (E1/2) of Government Lot 1; Government Lots 3, 4 and 5, the Southeast Quarter (SE1/4), the South Half of the Southwest Quarter (S1/2 SW1/4); and the Northeast Quarter of the Southwest Quarter (NE1/4 SW1/4), all in Section 5, Township 4 South, Range 72 West of the 6th P.M. in Clear Creek County, Colorado.

Part D, Saddleback Property, contains 996 acres more or less.